LEGISLATURE OF THE STATE OF IDAHO

Sixty-fifth Legislature First Regular Session – 2019

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. XXX

BY \_\_\_\_\_\_\_\_\_\_\_

AN ACT

RELATING TO THE MENTAL HEALTH AND ADDICTION COVERAGE TRANSPARENCY AND ACCOUNTABILITY ACT; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF CHAPTER 65

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 41, Idaho Code, be, and the same is hereby amended by the addition of a NEW CHAPTER, to be known and designated as Chapter 65, Idaho Code, and to read as follows:

41-6501. SHORT TITLE. Sections 41-6501 through 41-6505 shall be known and may be cited as the “Mental Health and Addiction Coverage Transparency and Accountability Act.”

SECTION 2. That Title 41, Idaho Code, be, and the same is hereby amended by the addition of a NEW SECTION, to be known and designated as Section 41-6502, Idaho Code, and to read as follows:

41-6502. DEFINITIONS. For the purposes of this chapter:

(1) "Carrier" means any entity that provides health insurance in this state. For purposes of this chapter, carrier includes an insurance company, a hospital or professional service corporation, a fraternal benefit society, a health maintenance organization, any entity providing health insurance coverage or benefits to residents of this state as certificate holders under a group policy issued or delivered outside of this state, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

(2) "Health benefit plan" means any hospital or medical policy or certificate, any subscriber contract provided by a hospital or professional service corporation, or health maintenance organization subscriber contract. Health benefit plan does not include policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits only, coverage issued as a supplement to liability insurance, worker’s compensation or similar insurance, automobile medical payment insurance, or nonrenewable short-term coverage issued for a period of twelve (12) months or less.

(3) "Individual carrier" means a carrier that offers health benefit plans covering eligible individuals and their dependents.

(4) “Mental health and substance use disorder benefits” means benefits for the treatment of any condition or disorder that involves a mental health condition or substance use disorder that falls under any of the diagnostic categories listed in the mental disorders section of the current edition of the International Classification of Disease or that is listed in the mental disorders section of the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

(5) “Nonquantitative treatment limitation” means limitations that are not expressed numerically, but otherwise limit the scope or duration of benefits for treatment.

SECTION 3. That Title 41, Idaho Code, be, and the same is hereby amended by the addition of a NEW SECTION, to be known and designated as Section 41-6503, Idaho Code, and to read as follows:

41-6503. PARITY REPORTING. (1) All carriers and individual carriers providing health benefit plans that provide mental health and substance use disorder benefits shall submit an annual report to the director on or before March 1 that contains the following information:

(a) A description of the process used to develop or select the medical necessity criteria for mental health and substance use disorder benefits and the process used to develop or select the medical necessity criteria for medical and surgical benefits;

(b) Identification of all non-quantitative treatment limitations (NQTLs) that are applied to both mental health and substance use disorder benefits and medical and surgical benefits within each classification of benefits; there may be no separate NQTLs that apply to mental health and substance use disorder benefits but do not apply to medical and surgical benefits within any classification of benefits;

(c) The results of an analysis that demonstrates that for the medical necessity criteria described in item (a) and for each NQTL identified in item (b), as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to mental health and substance use disorder benefits within each classification of benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to medical and surgical benefits within the corresponding classification of benefits; at a minimum, the results of the analysis shall:

(i) Identify the factors used to determine that an NQTL will apply to a benefit, including factors that were considered but rejected;

(ii) Identify and define the specific evidentiary standards used to define the factors and any other evidence relied upon in designing each NQTL;

(iii) Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to design each NQTL, as written, and the as written processes and strategies used to apply the NQTL to mental health and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each NQTL, as written, and the as written processes and strategies used to apply the NQTL to medical and surgical benefits;

(iv) Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to apply each NQTL, in operation, for mental health and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes or strategies used to apply each NQTL, in operation, for medical and surgical benefits;

(v) Disclose the specific findings and conclusions reached by the carrier or individual carrier that the results of the analyses above indicate that the carrier or individual carrier is in compliance with this section and the Mental Health Parity and Addiction Equity Act of 2008 and its implementing and related regulations, which includes 45 CFR 146.136, 45 CFR 147.160, and 45 CFR 156.115(a)(3).

SECTION 4. That Title 41, Idaho Code, be, and the same is hereby amended by the addition of a NEW SECTION, to be known and designated as Section 41-6504, Idaho Code, and to read as follows:

41-6504. DIRECTOR IMPLEMENTATION AND REPORTING. (1) The director shall implement and enforce applicable provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, and any amendments to, and any federal guidance or regulations relevant to, that act, including 45 CFR 146.136, 45 CFR 147.136, 45 CFR 147.160, and 45 CFR 156.115(a)(3), which includes:

(a) Proactively ensuring compliance by carriers and individual carriers providing health benefit plans that provide mental health and substance use disorder benefits;

(b) Evaluating all consumer or provider complaints regarding mental health and substance use disorder coverage for possible parity violations;

(c) Performing parity compliance market conduct examinations of carriers and individual carriers providing health benefit plans that provide mental health and substance use disorder benefits, particularly market conduct examinations that focus on nonquantitative treatment limitations such as prior authorization, concurrent review, retrospective review, step-therapy, network admission standards, reimbursement rates, and geographic restrictions, among other nonquantitative treatment limitations;

(d) Requesting that carriers and individual carriers providing health benefit plans that provide mental health and substance use disorder benefits submit comparative analyses during the form review process demonstrating how they design and apply nonquantitative treatment limitations, both as written and in operation, for mental health and substance use disorder benefits as compared to how they design and apply nonquantitative treatment limitations, as written and in operation, for medical and surgical benefits;

(e) The director may adopt rules, under 41-211, as may be necessary to effectuate any provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 that relate to the business of insurance.

(2) Not later than February 1, 2020, the director shall issue a report and educational presentation to the Legislature, which shall:

(a) Cover the methodology the director is using to check for compliance with the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), and any federal regulations or guidance relating to the compliance and oversight of MHPAEA;

(b) Identify market conduct examinations conducted or completed during the preceding 12-month period regarding compliance with parity in mental health and substance use disorder benefits and summarize the results of such market conduct examinations;

(c) Detail any educational or corrective actions the director has taken to ensure carrier and individual carrier compliance with MHPAEA;

(d) The report must be written in non-technical, readily understandable language and shall be made available to the public by, among such other means as the director finds appropriate, posting the report on the internet website of the department of insurance.

SECTION 5. That Title 41, Idaho Code, be, and the same is hereby amended by the addition of a NEW SECTION, to be known and designated as Section 41-6505, Idaho Code, and to read as follows:

41-6505. MEDICATION-ASSISTED TREATMENT. (1) All carriers and individual carriers providing health benefit plans that provide prescription drug benefits for the treatment of substance use disorders shall not impose any prior authorization requirements on any prescription medication approved by the federal Food and Drug Administration (FDA) for the treatment of substance use disorders.

(2) All carriers and individual carriers providing health benefit plans that provide prescription drug benefits for the treatment of substance use disorders shall not impose any step therapy requirements before the carrier or individual carrier will authorize coverage for a prescription medication approved by the FDA for the treatment of substance use disorders.

(3) All carriers and individual carriers providing health benefit plans that provide prescription drug benefits for the treatment of substance use disorders shall place all prescription medications approved by the FDA for the treatment of substance use disorders on the lowest tier of the drug formulary developed and maintained by the carrier or individual carrier.

(4) All carriers and individual carriers providing health benefit plans that provide prescription drug benefits for the treatment of substance use disorders shall not exclude coverage for any prescription medication approved by the FDA for the treatment of substance use disorders and any associated counseling or wraparound services on the grounds that such medications and services were court ordered.