Sixty-sixth **HOUSE BILL NO. XXX**

Legislative Assembly

of North Dakota

Introduced by

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A BILL for an Act to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to mental disorder and substance abuse parity; to amend and reenact section 26.1-36-08 relating to substance abuse insurance coverage.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**Section 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

1. Each insurance company, nonprofit health service corporation, or health maintenance organization that issues, executes, or renews any health insurance policy or health service contract on an individual, group, blanket, franchise, or association basis that provides mental disorder or substance abuse benefits shall submit an annual report to the commissioner on or before March 1st, that contains the following information:
   1. A description of the process used to develop or select the medical necessity criteria for mental disorder or substance abuse benefits and the process used to develop or select the medical necessity criteria for medical and surgical benefits.
   2. Identification of all non-quantitative treatment limitations (NQTLs) that are applied to both mental disorder or substance abuse benefits and medical and surgical benefits within each classification of benefits; there may be no separate NQTLs that apply to mental disorder or substance abuse benefits but do not apply to medical and surgical benefits within any classification of benefits.
   3. 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 disorder or substance abuse 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:
      1. Identify the factors used to determine that an NQTL will apply to a benefit, including factors that were considered but rejected.
      2. Identify and define the specific evidentiary standards used to define the factors and any other evidence relied upon in designing each NQTL.
      3. 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 disorder or substance abuse 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.
      4. 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 disorder or substance abuse benefits are comparable to, and applied no more stringently than, the processes or strategies used to apply each NQTL, in operation, for medical and surgical benefits.
      5. Disclose the specific findings and conclusions reached by the insurance company, nonprofit health service corporation, or health maintenance organization that the results of the analyses above indicate that the insurance company, nonprofit health service corporation, or health maintenance organization 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).
2. The commissioner 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:
   1. Proactively ensuring compliance by each insurance company, nonprofit health service corporation, or health maintenance organization that issues, executes, or renews any health insurance policy or health service contract on an individual, group, blanket, franchise, or association basis that provides mental disorder or substance abuse benefits.
   2. Evaluating all consumer or provider complaints regarding mental disorder and substance abuse coverage for possible parity violations.
   3. Performing parity compliance market conduct examinations of each insurance company, nonprofit health service corporation, or health maintenance organization that issues, executes, or renews any health insurance policy or health service contract on an individual, group, blanket, franchise, or association basis that provides mental disorder or substance abuse 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.
   4. Requesting that each insurance company, nonprofit health service corporation, or health maintenance organization that issues, executes, or renews any health insurance policy or health service contract on an individual, group, blanket, franchise, or association basis that provides mental disorder or substance abuse 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 disorder and substance abuse benefits as compared to how they design and apply nonquantitative treatment limitations, as written and in operation, for medical and surgical benefits.
   5. The Commissioner may adopt rules, under 28-32-02, 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.
3. Not later March 31, 2021, the commissioner shall issue a report and educational presentation to the Legislative Assembly, which shall:
   1. Cover the methodology the commissioner 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.
   2. Cover the methodology the commissioner is using to check for compliance with 26.1-36-08, 26.1-36-08.1, and 26.1-36-09.
   3. Identify market conduct examinations conducted or completed during the preceding 12-month period regarding compliance with parity in mental disorder and substance abuse benefits under state and federal laws and summarize the results of such market conduct examinations.
   4. Detail any educational or corrective actions the commissioner has taken to ensure insurance company, nonprofit health service corporation, or health maintenance organization compliance with MHPAEA and 26.1-36-08, 26.1-36-08.1, and 26.1-36-09.
   5. 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 commissioner finds appropriate, posting the report on the Internet website of the insurance department.

**Section 2.** **Amendment.** Section 26.1-36-08 is amended and reenacted by adding a new subsection as follows:

1. Each insurance company, nonprofit health service corporation, or health maintenance organization that issues, executes, or renews any health insurance policy or health service contract on an individual group, blanket, franchise, or association basis that provides prescription drug benefits for medications for the treatment of substance abuse:
   1. 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 abuse.
   2. Shall not impose any step therapy requirements before the insurance company, nonprofit health service corporation, or health maintenance organization will authorize coverage for a prescription medication approved by the FDA for the treatment of substance abuse.
   3. Shall place all prescription medications approved by the FDA for the treatment of substance abuse on the lowest tier of the drug formulary developed and maintained by the insurance company, nonprofit health service corporation, or health maintenance organization.
   4. Shall not exclude coverage for any prescription medication approved by the FDA for the treatment of substance abuse and any associated counseling or wraparound services on the grounds that such medications and services were court ordered.