2019 SESSION

HOUSE BILL ***XXXX***

AN ACT relative to parity implementation and medication-assisted treatment.

SPONSORS \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_

COMMITTEE Health and Human Services

ANALYSIS

This bill:

I. Requires insurers to report on parity compliance.

II. Specifies parity implementation and reporting requirements for the commissioner.

III. Specifies insurance requirements for medications to treat substance use disorder.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [in brackets and ~~struckthrough~~.]

Matter which is either (a) all new or (b) repealed and reenacted appears in

regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nineteen*

AN ACT relative to mental health and substance use disorder insurance coverage

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1. Parity; RSA 415 by inserting after chapter J the following new chapter:

I. In this chapter:

(a) "Health benefit policy" means any individual or group plan, policy, or contract for health care services issued, delivered, issued for delivery, executed, or renewed in this state, including, but not limited to, those contracts executed by the state of New Hampshire on behalf of state employees under RSA 21-I, by an insurer.

(b) "Insurer" means an accident and sickness insurer, fraternal benefit society, hospital service corporation, medical service corporation, health care corporation, health maintenance organization, preferred provider organization, provider sponsored health care corporation, managed care entity, or any similar entity authorized to issue contracts under this title or to provide health benefit policies.

(c) “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.

(d) “Non-quantitative treatment limitation” means any limitation that is not expressed numerically, but otherwise limits the scope or duration of benefits for treatment.

II. Any insurer providing a health benefit policy that provides mental health and substance use disorder benefits shall submit an annual report to the commissioner on or before May 1st, 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:

(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 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;

(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 health and substance use disorder 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; and

(5) Disclose the specific findings and conclusions reached by the insurer that the results of the analyses above indicate that the insurer 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).

III. 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:

(a) Proactively ensuring compliance by insurers that provide coverage of 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 insurers 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 insurers 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.

(c) The commissioner may adopt rules, under 400-A:15, 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. Substance use disorder coverage; Amend 420-J:18 to read as follows:

420-J:18 Authorization for Medication-Assisted Treatment. – Whenever substance use disorder services are a covered benefit under a health benefit plan subject to this chapter, a health carrier ~~that has authorized or otherwise approved medication-assisted treatment for such services shall not require a renewal of such authorization more frequently than once every 12 months.~~ ***shall:***

***(a) 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.***

***(b) Not impose any step therapy requirements before the health carrier will authorize coverage for a prescription medication approved by the FDA for the treatment of substance use disorders.***

***(c) 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 health carrier.***

***(d) 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.***

3. Effective Date. This act shall take effect 60 days after its passage.