**HOUSE BILL No. XXXX**

January 19, 2019, Introduced by Reps. \_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_ and referred to the Committee on Health Policy.

A bill to amend 1956 PA 218, entitled

"The insurance code of 1956,"

(MCL 500.100 to 500.8302) by adding section 3406u.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

 **SEC. 3406U. (1) AN INSURER THAT DELIVERS, ISSUES FOR DELIVERY, OR RENEWS IN THIS STATE AN EXPENSE-INCURRED HOSPITAL, MEDICAL, OR SURGICAL POLICY OR CERTIFICATE AND A HEALTH MAINTENANCE ORGANIZATION THAT ISSUES OR RENEWS A GROUP OR INDIVIDUAL CONTRACT SHALL SUBMIT AN ANNUAL REPORT TO THE COMMISSIONER 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 NONQUANTITATIVE TREATMENT LIMITATIONS (NQTLS) THAT ARE APPLIED TO BOTH MENTAL HEALTH AND SUBSTANCE USE DISORDER BENEFITS AND MEDICAL 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 PARAGRAPH (A) AND FOR EACH NQTL IDENTIFIED IN PARAGRAPH (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 AND STRATEGIES USED TO APPLY EACH NQTL, IN OPERATION, FOR MEDICAL AND SURGICAL BENEFITS.**

 **(*v*) DISCLOSE THE SPECIFIC FINDINGS AND CONCLUSIONS REACHED BY THE INSURER OR HEALTH MAINTENANCE ORGANIZATION THAT THE RESULTS OF THE ANALYSES ABOVE INDICATE THAT THE INSURER 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:**

 **(A) PROACTIVELY ENSURING COMPLIANCE BY ANY INSURER THAT DELIVERS, ISSUES FOR DELIVERY, OR RENEWS IN THIS STATE AN EXPENSE-INCURRED HOSPITAL, MEDICAL, OR SURGICAL POLICY OR CERTIFICATE, ANY HEALTH MAINTENANCE ORGANIZATION THAT ISSUES OR RENEWS A GROUP OR INDIVIDUAL CONTRACT, AND ANY HEALTH CARE CORPORATION THAT ISSUES OR RENEWS A GROUP OR NONGROUP CERTIFICATE**.

 **(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, HEALTH MAINTENANCE ORGANIZATIONS, AND HEALTH CARE CORPORATIONS, 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, HEALTH MAINTENANCE ORGANIZATIONS, AND HEALTH CARE CORPORATIONS 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 COMMISSIONER MAY ADOPT RULES, AS AUTHORIZED UNDER SECTION 500.210, AS MAY BE NECESSARY TO EFFECTUATE ANY PROVISIONS OF THE PAUL WELLSTONE AND PETE DOMENICI MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT.**

 **(3) NOT LATER THAN APRIL 1, 2020, THE COMMISSIONER SHALL ISSUE A REPORT AND EDUCATIONAL PRESENTATION TO THE LEGISLATURE, WHICH SHALL:**

 **(A) COVER THE METHODOLOGY THE COMMISSIONER IS USING TO CHECK FOR COMPLIANCE WITH THE PAUL WELLSTONE AND PETE DOMENICI MENTAL HEALTH PARITY AND ADDICITON EQUITY ACT OF 2008 (MHPAEA), AND ANY FEDERAL REGULATIONS OR GUIDANCE RELATING TO THE COMPLIANCE AND OVERSIGHT OF MHPAEA.**

 **(B) COVER THE METHODOLOGY THE COMMISSIONER IS USING TO CHECK FOR COMPLIANCE WITH SECTION 500.3425 AND SECTION 550.1414A.**

 **(C) 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 UNDER STATE AND FEDERAL LAWS AND SUMMARIZE THE RESULTS OF SUCH MARKET CONDUCT EXAMINATIONS.**

 **(D) DETAIL ANY EDUCATIONAL OR CORRECTIVE ACTIONS THE COMMISSIONER HAS TAKEN TO ENSURE INSURER, HEALTH MAINTENANCE ORGANIZATION, AND HEALTH CARE CORPORATION COMPLIANCE WITH MHPAEA AND SECTIONS 500.3425 AND 550.1414A.**

 **(E) THE REPORT MUST BE WRITTEN IN NON-TECHNICAL, READILY-UNDERSTANDABLE LANGUAGE AND SHALL BE MADE AVAILABLE TO THE PUBLIC BY, AMONG OTHER SUCH MEANS AS THE COMMISSIONER FINDS APPROPRIATE, POSTING THE REPORT ON THE INTERNTET WEBSITE OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES.**

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.