80th OREGON LEGISLATIVE ASSEMBLY--2019 Regular Session

**Senate Bill XXX**

Sponsored by COMMITTEE ON HEALTH CARE

# SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor’s brief statement of the essential features of the measure **as introduced.**

Requires carriers to demonstrate compliance with the Mental Health Parity and Addiction Equity Act, specifies implementation requirements for the Department of Consumer and Business Services, and establishes substance use disorder treatment medication coverage requirements.

# A BILL FOR AN ACT

Relating to mental health and substance use disorder parity and coverage; creating new provisions.

# Be It Enacted by the People of the State of Oregon:

# Section 1. Section 2 and Section 3 of this Act are added to and made part of the Insurance Code.

# Section 2. (1) As used in this section:

# (a) “Carrier” has the meaning given that term in ORS 743B.005.

# (b) “Health benefit plan” has the meaning given that term in ORS 743B.005.

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

# (2) All carriers that issue, extend, or renew individual or group health benefit plans that provide mental health or substance use disorder benefits shall submit an annual report to the Department of Consumer and Business Services on or before March 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:

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

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

# (C) 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.

# (D) 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.

# (E) Disclose the specific findings and conclusions reached by the carrier that the results of the analyses above indicate that the 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).

# (3) The Department 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 that issue, extend, or renew individual or group health benefit plans that provide mental health or 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 that issue, extend, or renew individual or group health benefit plans that provide mental health or 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 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 Department may adopt rules, 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.

# (4) Not later than September 1, 2020, the Department shall issue a report and educational presentation to the Legislative Assembly, which shall:

# (a) Cover the methodology the Department 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) Cover the methodology the Department is using to check for compliance with 743A.168.

# (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 Department has taken to ensure compliance with MHPAEA and 743.168.

# (e) 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 Department finds appropriate, posting the report on the Internet website of the Department.

# Section 3. (1) As used in this section:

# (a) “Carrier” has the meaning given that term in ORS 743B.005.

# (b) “Health benefit plan” has the meaning given that term in ORS 743B.005.

# (2) All carriers that that issue, extend, or renew individual or group 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.

# (3) All carriers that that issue, extend, or renew individual or group 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 will authorize coverage for a prescription medication approved by the FDA for the treatment of substance use disorders.

# (4) All carriers that issue, extend, or renew individual or group 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.

# (5) All carriers that that issue, extend, or renew individual or group 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.

# Section 4. Section 2 and section 3 of this 2019 Act apply to carriers that issue, extend, or renew health benefit plans on or after the effective date of this 2019 Act.