**State of South Dakota**

**NINETY-FOURTH SESSION**

**LEGISLATIVE ASSEMBLY, 2018**

XXXZXXXX

**HOUSE BILL NO. XXXX**

Introduced by: Representatives \_\_\_\_\_\_, \_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_

FOR AN ACT ENTITLED, An Act to specify Director of the Division of Insurance parity implementation requirements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Terms used in this Act mean:

1. “Director,” the director of the Division of Insurance;
2. “Health Carrier,” an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services;
3. “Mental health and substance use disorder benefits,” 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;
4. “Nonquantitative treatment limitations,” are limitations that are not expressed numerically, but otherwise limit the scope or duration of benefits for treatment.

Section 2. That Chapter 58-2 be amended by adding a NEW SECTION to read:

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:

1. Proactively ensuring compliance by any health carrier that issues any individual or group policy, contract, or certificate that provides mental health or substance use disorder benefits;
2. Evaluating all consumer or provider complaints regarding mental health and substance use disorder coverage for possible parity violations;
3. Performing parity compliance market conduct examinations of health carriers that issue any individual or group policy, contract, or certificate that provides 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;
4. Requesting that health 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;
5. The director may promulgate rules pursuant to Chapter 1-26 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.

Section 3. That Chapter 58-2 be amended by adding a NEW SECTION to read:

Not later than April 30, 2020, the director shall issue a report and educational presentation to the State Legislature, which shall:

1. 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;
2. Cover the methodology the director is using to check for compliance with 58-17-98, 58-17-30.5, 58-17-30.6, 58-17-30.7, 58-18-80, 58-18-7.1, 58-18-7.2, 58-18-7.3, 58-18B-53, 58-38-40, 58-38-11.1, 58-38-11.2, 58-38-11.3, 58-40-37, 58-40-10.1, 58-40-10.2, 58-40-10.3, 58-41-115, and 58-41-35.1;
3. 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.
4. Detail any educational or corrective actions the director has taken to ensure health carrier compliance with MHPAEA and 58-17-98, 58-17-30.5, 58-17-30.6, 58-17-30.7, 58-18-80, 58-18-7.1, 58-18-7.2, 58-18-7.3, 58-18B-53, 58-38-40, 58-38-11.1, 58-38-11.2, 58-38-11.3, 58-40-37, 58-40-10.1, 58-40-10.2, 58-40-10.3, 58-41-115, and 58-41-35.1;
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 director finds appropriate, posting the report on the Internet website of the Division of Insurance.