**A BILL FOR AN ACT**

RELATING TO INSURANCE

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII

SECTION 1. Chapter 431M, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“431M- Parity reporting requirements.** (a) All entities that issue individual or group accident and health or sickness insurance policies, individual or group hospital or medical service corporation contracts, nonprofit mutual benefit society contracts, fraternal benefit society contracts, and health maintenance organization contracts shall submit an annual report to the Insurance Commissioner on or before January 1, 2020 that contains the following information:

(1) A description of the process used to develop or select the medical necessity criteria for mental health or alcohol use disorder and substance use disorder 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 health or alcohol use disorder 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 or alcohol used disorder and substance use disorder benefits but do not apply to medical and surgical benefits within any classification of benefits; and

(3) The results of an analysis that demonstrates that for the medical necessity criteria described in item (1) and for each NQTL identified in item (2), 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 or alcohol use disorder 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 or alcohol use disorder 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 or alcohol use disorder 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

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

(b) The Insurance Commissioner shall implement and enforce this section and the 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 entities that issue individual or group accident and health or sickness insurance policies, individual or group hospital or medical service corporation contracts, nonprofit mutual benefit society contracts, fraternal benefit society contracts, and health maintenance organization contracts;

(2) Evaluating all consumer or provider complaints regarding mental health or alcohol use disorder and substance use disorder coverage for possible parity violations;

(3) Performing parity compliance market conduct examinations of entities that issue individual or group accident and health or sickness insurance policies, individual or group hospital or medical service corporation contracts, nonprofit mutual benefit society contracts, fraternal benefit society contracts, and health maintenance organization contracts, 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; and

(4) Requesting that entities that issue individual or group accident and health or sickness insurance policies, individual or group hospital or medical service corporation contracts, nonprofit mutual benefit society contracts, fraternal benefit society contracts, and health maintenance organization contracts 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 or alcohol use disorder 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) Not later than January 31st, 2020, the Insurance Commissioner shall issue a report and educational presentation to the Legislature; such report and presentation shall:

(1) Cover the methodology the Insurance 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) Identify market conduct examinations conducted or completed during the preceding 12-month period regarding compliance with parity in mental health or alcohol use disorder and substance use disorder benefits and summarize the results of such market conduct examinations;

(3) Detail any educational or corrective actions the Commissioner has taken to ensure entity compliance with MHPAEA; and

(4) 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 Insurance Commissioner finds appropriate, posting the report on the website of the Hawaii Insurance Division.

1. SECTION 2. Section 431M-4, Hawaii Revised Statutes, is amended to read as follows:

(a)  Alcohol and drug dependence benefits shall be as follows:

1. Detoxification services as a covered benefit under this chapter shall be provided either in a hospital or in a nonhospital facility that has a written affiliation agreement with a hospital for emergency, medical, and mental health support services. The following services shall be covered under detoxification services:

(A) Room and board;

(B) Diagnostic x-rays;

(C) Laboratory testing; and

(D) Drugs, equipment use, special therapies, and supplies.

1. Detoxification services shall be included as part of the covered in-hospital services;
2. Alcohol or drug dependence treatment through in-hospital, nonhospital residential, or day treatment substance abuse services as a covered benefit under this chapter shall be provided in a hospital or nonhospital facility. Before a person qualifies to receive benefits under this subsection, a qualified physician, psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse shall determine that the person suffers from alcohol or drug dependence, or both; provided that the substance abuse services covered under this paragraph shall include those services that are required for licensure and accreditation. Excluded from alcohol or drug dependence treatment under this subsection are detoxification services and educational programs to which drinking or drugged drivers are referred by the judicial system and services performed by mutual self-help groups;
3. Alcohol or drug dependence outpatient services as a covered benefit under this chapter shall be provided under an individualized treatment plan approved by a qualified physician, psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse and shall be services reasonably expected to produce remission of the patient's condition. An individualized treatment plan approved by a licensed marriage and family therapist, licensed mental health counselor, licensed clinical social worker, or an advanced practice registered nurse for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist; and
4. Substance abuse assessments for alcohol or drug dependence as a covered benefit under this section for a child facing disciplinary action under section 302A-1134.6 shall be provided by a qualified physician, psychologist, licensed clinical social worker, advanced practice registered nurse, or certified substance abuse counselor. The certified substance abuse counselor shall be employed by a hospital or nonhospital facility providing substance abuse services. The substance abuse assessment shall evaluate the suitability for substance abuse treatment and placement in an appropriate treatment setting.
5. Medications approved by the federal Food and Drug Administration (FDA) for the treatment of substance use disorders shall not be subject to any prior authorization requirements.
6. Medications approved by the FDA for the treatment of substance use disorders shall not be subject to any step therapy requirements.
7. All medications approved by the FDA for the treatment of substance use disorders shall be placed on the lowest tier of the drug formulary.
8. Coverage for prescription medications approved by the FDA for the treatment of substance use disorders and any associated counseling or wraparound services shall not be denied on the grounds that such medications and services were court ordered.

(b)  Mental illness benefits.

1. Covered benefits for mental health services set forth in this subsection shall be limited to coverage for diagnosis and treatment of mental disorders. All mental health services shall be provided under an individualized treatment plan approved by a physician, psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, advanced practice registered nurse, or licensed dietitian treating eating disorders, and must be reasonably expected to improve the patient's condition. An individualized treatment plan approved by a licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, advanced practice registered nurse, or a licensed dietitian treating eating disorders, for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist;
2. In-hospital and nonhospital residential mental health services as a covered benefit under this chapter shall be provided in a hospital or a nonhospital residential facility. The services to be covered shall include those services required for licensure and accreditation;
3. Mental health partial hospitalization as a covered benefit under this chapter shall be provided by a hospital or a mental health outpatient facility. The services to be covered under this paragraph shall include those services required for licensure and accreditation; and
4. Mental health outpatient services shall be a covered benefit under this chapter.

SECTION 3. This act shall take effect on July 1, 2019.