H. B. XXXX

(By Delegates \_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_)

[Introduced January XX, 2019; referred to the Committee on Banking and Insurance.]



A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4p; to amend said code by adding thereto a new section, designated §33-15-4q; to amend said code by adding thereto a new section, designated §33-16-3bb; to amend said code by adding thereto a new section, designated §33-16-cc; to amend said code by adding thereto a new section, designated §33-2-9b; to amend said code by adding thereto a new section, designated §33-2-15e, all relating to health insurance coverage of mental health and substance use disorders; setting forth insurer reporting requirements; setting forth Commissioner implementation requirements; setting forth Commissioner reporting requirements; setting forth insurance coverage requirements for substance use disorder medications.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-15-4p; that said code be amended by adding thereto a new section, designated §33-15-4q; that said code be amended by adding thereto a new section, designated §33-16-3bb; that said code be amended by adding thereto a new section, designated §33-16-cc; that said code be amended by adding thereto a new section, designated §33-2-9b; that said code be amended by adding thereto a new section, designated §33-2-15e, all to read as follows:

**CHAPTER 33. INSURANCE.**

**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE**

**§33-15-4p. Reporting requirements for mental health and substance use disorder parity.**

(a) Each insurer that issues, delivers, or renews any policy of accident and sickness insurance coverage that provides mental health and substance use disorder benefits shall submit an annual report to the commissioner on or before March 1 that contains the following information:

(1) 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.

(2) 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.

(3) The results of an analysis that demonstrates that for the medical necessity criteria described in paragraph 1 and for each NQTL identified in paragraph (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 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 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).

(b) As used in this section:

(1) "Accident and sickness insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy of certificate, hospital or medical service plan contract, or health maintenance organization contract offered by an insurer, but does not include short-term limited duration insurance.

(2) "Insurer" means an entity licensed by the commissioner to transact accident and sickness insurance in this state and subject to this chapter, but does not include a group health plan or short term limited duration insurance.

(3) “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.

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

**CHAPTER 33. INSURANCE.**

**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE**

**§33-15-4q. Medication-assisted treatment coverage.**

(a) Each insurer that issues, delivers, or renews any policy of accident and sickness insurance coverage that provides 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.

(b) Each insurer that issues, delivers, or renews any policy of accident and sickness insurance coverage that provides prescription drug benefits for the treatment of substance use disorders shall not impose any step therapy requirements before the insurer will authorize coverage for a prescription medication approved by the FDA for the treatment of substance use disorders.

(c) Each insurer that issues, delivers, or renews any policy of accident and sickness insurance coverage that provides 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 insurer.

(d) Each insurer that issues, delivers, or renews any policy of accident and sickness insurance coverage that provides 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.

(e) As used in this section:

(1) "Accident and sickness insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy of certificate, hospital or medical service plan contract, or health maintenance organization contract offered by an insurer, but does not include short-term limited duration insurance.

(2) "Insurer" means an entity licensed by the commissioner to transact accident and sickness insurance in this state and subject to this chapter, but does not include a group health plan or short term limited duration insurance.

(3) “Substance use disorder” means condition or disorder that involves a 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.

**CHAPTER 33**

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

**§33-16-3bb. Reporting requirements for mental health and substance use disorder parity.**

(a) Each health insurer that issues, delivers, or renews any health benefit plan that provides mental health and substance use disorder benefits shall submit an annual report to the commissioner on or before March 1 that contains the following information:

(1) 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.

(2) 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.

(3) The results of an analysis that demonstrates that for the medical necessity criteria described in paragraph 1 and for each NQTL identified in paragraph (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 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 health insurer that the results of the analyses above indicate that the health 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).

(b) As used in this section:

(1) "Health benefit plan" means benefits consisting of medical care provided directly, through insurance or reimbursement, or indirectly, including items and services paid for as medical care, under any hospital or medical expense incurred policy or certificate; hospital, medical or health service corporation contract; health maintenance organization contract; or plan provided by a multiple-employer trust or a multiple-employer welfare arrangement. "Health benefit plan" does not include excepted benefits.

(2) "Health insurer" means an entity licensed by the commissioner to transact accident and sickness in this state and subject to this chapter. "Health insurer" does not include a group health plan.

(3) “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.

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

**CHAPTER 33**

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

**§33-16-3cc. Medication-assisted treatment coverage.**

(a) Each health insurer that issues, delivers, or renews any health benefit plan that provides 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.

(b) Each health insurer that issues, delivers, or renews any health benefit plan that provides prescription drug benefits for the treatment of substance use disorders shall not impose any step therapy requirements before the health insurer will authorize coverage for a prescription medication approved by the FDA for the treatment of substance use disorders.

(c) Each health insurer that issues, delivers, or renews any health benefit plan that provides 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 health insurer.

(d) Each health insurer that issues, delivers, or renews any health benefit plan that provides 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.

(e) As used in this section:

(1) "Health benefit plan" means benefits consisting of medical care provided directly, through insurance or reimbursement, or indirectly, including items and services paid for as medical care, under any hospital or medical expense incurred policy or certificate; hospital, medical or health service corporation contract; health maintenance organization contract; or plan provided by a multiple-employer trust or a multiple-employer welfare arrangement. "Health benefit plan" does not include excepted benefits.

(2) "Health insurer" means an entity licensed by the commissioner to transact accident and sickness in this state and subject to this chapter. "Health insurer" does not include a group health plan.

(3) “Substance use disorder” means condition or disorder that involves a 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.

**CHAPTER 33. INSURANCE.**

**ARTICLE 2. ACCIDENT AND SICKNESS INSURANCE**

**§33-2-9b. Parity implementation requirements.**

(a) 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:

(1) Proactively ensuring compliance by insurers that issue, deliver, or renew policies of accident and sickness insurance coverage under Article 15 that provide mental health and substance use disorder benefits and health insurers that issue, deliver, or renew health benefit plans under Article 16 that provide mental health and 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 insurers that issue, deliver, or renew policies of accident and sickness insurance coverage under Article 15 that provide mental health and substance use disorder benefits and health insurers that issue, deliver, or renew health benefit plans under Article 16 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.

(4) Requesting that insurers, as defined in Article 15, and health insurers, as defined under Article 16, 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 Commissioner may adopt rules, under §33-2-10, 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.

**CHAPTER 33. INSURANCE.**

**ARTICLE 2. ACCIDENT AND SICKNESS INSURANCE**

**§33-2-15e. Parity reporting requirements.**

(a) Not later than February 14, 2020, the commissioner shall issue a report and educational presentation to the Legislature, which shall:

(1) Cover the methodology the 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) Cover the methodology the commissioner is using to check for compliance with §33-15-4a and §33-16-3a.

(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 commissioner has taken to ensure insurer compliance with MHPAEA and §33-15-4a and §33-16-3a.

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 commissioner finds appropriate, posting the report on the Internet website of the Offices of the Insurance Commissioner.

NOTE: The purpose of this bill is to require mental health and substance use disorder parity reporting and implementation and to establish coverage requirements for medications for the treatment of substance use disorders. The bill sets forth how insurers shall report on their application of nonquantitative treatment limitations. The bill sets for commissioner implementation and reporting requirements. The bill establishes coverage specifications for substance use disorder medications. The bill also defines terms.

These sections are new; therefore, they have been completely underscored.