



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1694

S.P. 559

In Senate, May 7, 2019

### An Act To Amend the Mental Health Insurance Coverage Laws

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Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator GRATWICK of Penobscot.  
Cosponsored by Representative SCHNECK of Bangor and  
Senators: CARPENTER of Aroostook, CLAXTON of Androscoggin, DILL of Penobscot,  
MILLETT of Cumberland, ROSEN of Hancock.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24 MRSA §2325-A, sub-§8**, as amended by PL 1995, c. 407, §3, is  
3 repealed and the following enacted in its place:

4 **8. Reports to the superintendent.** A nonprofit hospital and medical service  
5 organization shall submit annual reports in accordance with this subsection.

6 A. A nonprofit hospital or medical service organization subject to this section shall  
7 report its experience for each calendar year to the superintendent no later than April  
8 30th of the following year. The report must be in a form prescribed by the  
9 superintendent and include the amount of claims paid in this State for the services  
10 required by this section and the total amount of claims paid in this State for group  
11 health care contracts, both separated according to those paid for inpatient, day  
12 treatment and outpatient services. The superintendent shall compile this data for all  
13 nonprofit hospitals and medical service organizations in an annual report.

14 B. A nonprofit hospital or medical service organization subject to this section shall  
15 submit an annual report to the superintendent no later than April 30th that contains  
16 the following information:

17 (1) A description of the process used to develop or select the medically  
18 necessary health care criteria for mental illness and substance use disorder  
19 benefits and the process used to develop or select the medically necessary health  
20 care criteria for medical and surgical benefits;

21 (2) Identification of all nonquantitative treatment limitations that are applied to  
22 mental illness and substance use disorder benefits and medical and surgical  
23 benefits within each classification of benefits. The report must include  
24 information demonstrating that each nonquantitative treatment limitation that  
25 applies to mental illness and substance use disorder benefits also applies to  
26 medical and surgical benefits within any classification of benefits; and

27 (3) The results of an analysis that demonstrate that for the medically necessary  
28 health care criteria described in subparagraph (1) and for each nonquantitative  
29 treatment limitation identified in subparagraph (2), as written and in operation,  
30 the processes, strategies, evidentiary standards or other factors used in applying  
31 the medically necessary health care criteria and each nonquantitative treatment  
32 limitation to mental illness and substance use disorder benefits within each  
33 classification of benefits are comparable to, and are applied no more stringently  
34 than, the processes, strategies, evidentiary standards or other factors used in  
35 applying the medically necessary health care criteria and each nonquantitative  
36 treatment limitation to medical and surgical benefits within the corresponding  
37 classification of benefits. At a minimum, the results of the analysis must:

38 (a) Identify the factors used to determine that a nonquantitative treatment  
39 limitation applies to a benefit, including factors that were considered but  
40 rejected;

1                   (b) Identify and define the specific evidentiary standards used to define the  
2                   factors and any other evidence relied upon in designing each nonquantitative  
3                   treatment limitation;

4                   (c) Identify and describe the comparative analyses, including the results of  
5                   the analyses, used to determine that the processes and strategies used to  
6                   design each nonquantitative treatment limitation, as written, for mental  
7                   illness and substance use disorder benefits are comparable to, and are applied  
8                   no more stringently than, the processes and strategies used to design each  
9                   nonquantitative treatment limitation, as written, for medical and surgical  
10                  benefits;

11                  (d) Identify and describe the comparative analyses, including the results of  
12                  the analyses, used to determine that the processes and strategies used to apply  
13                  each nonquantitative treatment limitation, in operation, for mental illness and  
14                  substance use disorder benefits are comparable to, and applied no more  
15                  stringently than, the processes and strategies used to apply each  
16                  nonquantitative treatment limitation, in operation, for medical and surgical  
17                  benefits; and

18                  (e) Disclose the specific findings and conclusions reached by the nonprofit  
19                  hospital or medical service organization that the results of the analyses in this  
20                  subparagraph indicate that the nonprofit hospital or medical service  
21                  organization is in compliance with this section and the federal Paul Wellstone  
22                  and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008  
23                  and its implementing and related regulations, which include 45 Code of  
24                  Federal Regulations, Sections 146.136, 147.160 and 156.115(a)(3).

25                  For the purposes of this paragraph, "nonquantitative treatment limitation" means a  
26                  limitation that is not expressed numerically but otherwise limits the scope or duration  
27                  of benefits for treatment.

28                  **Sec. 2. 24 MRSA §2325-D** is enacted to read:

29                  **§2325-D. Prescription drug benefits for substance use disorder treatment**

30                  A nonprofit hospital or medical service organization that issues group health care  
31                  contracts that provide prescription drug benefits for the treatment of substance use  
32                  disorder:

33                  **1. Prior authorization requirements.** May not impose any prior authorization  
34                  requirements on any prescription medication approved by the federal Food and Drug  
35                  Administration for the treatment of substance use disorder;

36                  **2. Step therapy requirements.** May not impose any step therapy requirements  
37                  before the nonprofit hospital or medical service organization authorizes coverage for a  
38                  prescription medication approved by the federal Food and Drug Administration for the  
39                  treatment of substance use disorder;

40                  **3. Drug formulary.** Shall place all prescription medications approved by the federal  
41                  Food and Drug Administration for the treatment of substance use disorder on the lowest

1 tier of the drug formulary developed and maintained by the nonprofit hospital or medical  
2 service organization; and

3 **4. Court-ordered medication.** May not exclude coverage for any prescription  
4 medication approved by the federal Food and Drug Administration for the treatment of  
5 substance use disorder or any associated counseling or wraparound services on the  
6 grounds that such medications and services were court ordered.

7 **Sec. 3. 24-A MRSA §238** is enacted to read:

8 **§238. Implementation of federal mental health parity laws**

9 **1. Implementation of federal mental health parity laws.** The superintendent shall  
10 implement and enforce applicable provisions of the federal Paul Wellstone and Pete  
11 Domenici Mental Health Parity and Addiction Equity Act of 2008, and any amendments  
12 to and federal guidance or regulations relevant to that Act, including 45 Code of Federal  
13 Regulations, Sections 146.136, 147.136, 147.160 and 156.115(a)(3), by:

14 A. Proactively ensuring compliance by insurers, health maintenance organizations  
15 and nonprofit hospital or medical service organizations that execute, deliver, issue for  
16 delivery, continue or renew individual policies or individual and group health care  
17 contracts;

18 B. Evaluating all consumer or provider complaints regarding mental illness and  
19 substance use disorder coverage for possible parity violations;

20 C. Performing parity compliance market conduct examinations of insurers, health  
21 maintenance organizations and nonprofit hospital or medical service organizations  
22 that execute, deliver, issue for delivery, continue or renew individual policies or  
23 individual and group health care contracts, particularly market conduct examinations  
24 that focus on nonquantitative treatment limitations, including, but not limited to, prior  
25 authorization, concurrent review, retrospective review, step therapy, network  
26 admission standards, reimbursement rates and geographic restrictions; and

27 D. Requesting that insurers, health maintenance organizations and nonprofit hospital  
28 or medical service organizations submit comparative analyses during the form review  
29 process demonstrating how they design and apply nonquantitative treatment  
30 limitation, both as written and in operation, for mental illness and substance use  
31 disorder benefits as compared to how they design and apply nonquantitative  
32 treatment limitation, as written and in operation, for medical and surgical benefits.

33 The superintendent may adopt rules, as authorized under section 212, as may be  
34 necessary to effectuate any provisions of the federal Paul Wellstone and Pete Domenici  
35 Mental Health Parity and Addiction Equity Act of 2008 that relate to the business of  
36 insurance. Rules adopted pursuant to this subsection are routine technical rules as  
37 defined in Title 5, chapter 375, subchapter 2-A.

38 **2. Report.** No later than March 1, 2020 and periodically thereafter, the  
39 superintendent shall provide a report and educational presentation to the Legislature. The  
40 report must:

1 A. Cover the methodology the superintendent is using to check for compliance with  
2 the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction  
3 Equity Act of 2008 and any federal regulations or guidance relating to the compliance  
4 and oversight of that Act;

5 B. Cover the methodology the superintendent is using to check for compliance with  
6 sections 2749-C, 2842, 2843 and 4234-A and Title 24, sections 2325-A and 2329;

7 C. Identify market conduct examinations conducted or completed during the  
8 preceding 12-month period regarding compliance with parity in mental illness and  
9 substance use disorder benefits under state and federal laws, and summarize the  
10 results of such market conduct examinations;

11 D. Detail any educational or corrective actions the superintendent has taken to ensure  
12 insurer compliance with the federal Paul Wellstone and Pete Domenici Mental Health  
13 Parity and Addiction Equity Act of 2008 and sections 2749-C, 2842, 2843 and  
14 4234-A and Title 24, sections 2325-A and 2329; and

15 E. Be written in nontechnical, understandable language and made available to the  
16 public by posting the report on the bureau's publicly accessible website and other  
17 means the superintendent finds appropriate.

18 **Sec. 4. 24-A MRSA §2749-C, sub-§4**, as enacted by PL 1995, c. 407, §5, is  
19 repealed and the following enacted in its place:

20 **4. Reports to the superintendent.** An insurer shall submit annual reports in  
21 accordance with this subsection.

22 A. An insurer subject to this section shall report its experience for each calendar year  
23 to the superintendent no later than April 30th of the following year. The report must  
24 be in a form prescribed by the superintendent and include the amount of claims paid  
25 in this State for the services required by this section and the total amount of claims  
26 paid in this State for individual health care policies, both separated according to those  
27 paid for inpatient, day treatment and outpatient services, as those terms are defined in  
28 section 2843. The superintendent shall compile this data for all insurers in an annual  
29 report.

30 B. An insurer subject to this section shall submit an annual report to the  
31 superintendent no later than April 30th that contains the following information:

32 (1) A description of the process used to develop or select the medically  
33 necessary health care criteria for mental illness and substance use disorder  
34 benefits and the process used to develop or select the medically necessary health  
35 care criteria for medical and surgical benefits;

36 (2) Identification of all nonquantitative treatment limitations that are applied to  
37 mental illness and substance use disorder benefits and medical and surgical  
38 benefits within each classification of benefits. The report must include  
39 information demonstrating that each nonquantitative treatment limitation that  
40 applies to mental illness and substance use disorder benefits also applies to  
41 medical and surgical benefits within any classification of benefits; and

1 (3) The results of an analysis that demonstrate that for the medically necessary  
2 health care criteria described in subparagraph (1) and for each nonquantitative  
3 treatment limitation identified in subparagraph (2), as written and in operation,  
4 the processes, strategies, evidentiary standards or other factors used in applying  
5 the medically necessary health care criteria and each nonquantitative treatment  
6 limitation to mental illness and substance use disorder benefits within each  
7 classification of benefits are comparable to, and are applied no more stringently  
8 than, the processes, strategies, evidentiary standards or other factors used in  
9 applying the medically necessary health care criteria and each nonquantitative  
10 treatment limitation to medical and surgical benefits within the corresponding  
11 classification of benefits. At a minimum, the results of the analysis must:

12 (a) Identify the factors used to determine that a nonquantitative treatment  
13 limitation applies to a benefit, including factors that were considered but  
14 rejected;

15 (b) Identify and define the specific evidentiary standards used to define the  
16 factors and any other evidence relied upon in designing each nonquantitative  
17 treatment limitation;

18 (c) Identify and describe the comparative analyses, including the results of  
19 the analyses, used to determine that the processes and strategies used to  
20 design each nonquantitative treatment limitation, as written, for mental  
21 illness and substance use disorder benefits are comparable to, and are applied  
22 no more stringently than, the processes and strategies used to design each  
23 nonquantitative treatment limitation, as written, for medical and surgical  
24 benefits;

25 (d) Identify and describe the comparative analyses, including the results of  
26 the analyses, used to determine that the processes and strategies used to apply  
27 each nonquantitative treatment limitation, in operation, for mental illness and  
28 substance use disorder benefits are comparable to, and applied no more  
29 stringently than, the processes and strategies used to apply each  
30 nonquantitative treatment limitation, in operation, for medical and surgical  
31 benefits; and

32 (e) Disclose the specific findings and conclusions reached by the insurer that  
33 the results of the analyses in this subparagraph indicate that the insurer is in  
34 compliance with this section and the federal Paul Wellstone and Pete  
35 Domenici Mental Health Parity and Addiction Equity Act of 2008 and its  
36 implementing and related regulations, which include 45 Code of Federal  
37 Regulations, Sections 146.136, 147.160 and 156.115(a)(3).

38 For the purposes of this paragraph, "nonquantitative treatment limitation" means a  
39 limitation that is not expressed numerically but otherwise limits the scope or duration  
40 of benefits for treatment.

41 **Sec. 5. 24-A MRSA §2749-D** is enacted to read:

1 **§2749-D. Prescription drug benefits for substance use disorder treatment**

2 An insurer that executes, delivers, issues for delivery, continues or renews individual  
3 health care policies that provide prescription drug benefits for the treatment of substance  
4 use disorder:

5 **1. Prior authorization requirements.** May not impose any prior authorization  
6 requirements on any prescription medication approved by the federal Food and Drug  
7 Administration for the treatment of substance use disorder;

8 **2. Step therapy requirements.** May not impose any step therapy requirements  
9 before the insurer authorizes coverage for a prescription medication approved by the  
10 federal Food and Drug Administration for the treatment of substance use disorder;

11 **3. Drug formulary.** Shall place all prescription medications approved by the federal  
12 Food and Drug Administration for the treatment of substance use disorder on the lowest  
13 tier of the drug formulary developed and maintained by the insurer; and

14 **4. Court-ordered medication.** May not exclude coverage for any prescription  
15 medication approved by the federal Food and Drug Administration for the treatment of  
16 substance use disorder or any associated counseling or wraparound services on the  
17 grounds that such medications and services were court ordered.

18 **Sec. 6. 24-A MRSA §2843, sub-§7,** as amended by PL 1995, c. 407, §8, is  
19 repealed and the following enacted in its place:

20 **7. Reports to the superintendent.** An insurer shall submit annual reports in  
21 accordance with this subsection.

22 A. An insurer subject to this section shall report its experience for each calendar year  
23 to the superintendent no later than April 30th of the following year. The report must  
24 be in a form prescribed by the superintendent and include the amount of claims paid  
25 in this State for the services required by this section and the total amount of claims  
26 paid in this State for group health care contracts, both separated according to those  
27 paid for inpatient, day treatment and outpatient services. The superintendent shall  
28 compile this data for all insurers in an annual report.

29 B. An insurer subject to this section shall submit an annual report to the  
30 superintendent no later than April 30th that contains the following information:

31 (1) A description of the process used to develop or select the medically  
32 necessary health care criteria for mental illness and substance use disorder  
33 benefits and the process used to develop or select the medically necessary health  
34 care criteria for medical and surgical benefits;

35 (2) Identification of all nonquantitative treatment limitations that are applied to  
36 mental illness and substance use disorder benefits and medical and surgical  
37 benefits within each classification of benefits. The report must include  
38 information demonstrating that each nonquantitative treatment limitation that  
39 applies to mental illness and substance use disorder benefits also applies to  
40 medical and surgical benefits within any classification of benefits; and

1 (3) The results of an analysis that demonstrate that for the medically necessary  
2 health care criteria described in subparagraph (1) and for each nonquantitative  
3 treatment limitation identified in subparagraph (2), as written and in operation,  
4 the processes, strategies, evidentiary standards or other factors used in applying  
5 the medically necessary health care criteria and each nonquantitative treatment  
6 limitation to mental illness and substance use disorder benefits within each  
7 classification of benefits are comparable to, and are applied no more stringently  
8 than, the processes, strategies, evidentiary standards or other factors used in  
9 applying the medically necessary health care criteria and each nonquantitative  
10 treatment limitation to medical and surgical benefits within the corresponding  
11 classification of benefits. At a minimum, the results of the analysis must:

12 (a) Identify the factors used to determine that a nonquantitative treatment  
13 limitation applies to a benefit, including factors that were considered but  
14 rejected;

15 (b) Identify and define the specific evidentiary standards used to define the  
16 factors and any other evidence relied upon in designing each nonquantitative  
17 treatment limitation;

18 (c) Identify and describe the comparative analyses, including the results of  
19 the analyses, used to determine that the processes and strategies used to  
20 design each nonquantitative treatment limitation, as written, for mental  
21 illness and substance use disorder benefits are comparable to, and are applied  
22 no more stringently than, the processes and strategies used to design each  
23 nonquantitative treatment limitation, as written, for medical and surgical  
24 benefits;

25 (d) Identify and describe the comparative analyses, including the results of  
26 the analyses, used to determine that the processes and strategies used to apply  
27 each nonquantitative treatment limitation, in operation, for mental illness and  
28 substance use disorder benefits are comparable to, and applied no more  
29 stringently than, the processes and strategies used to apply each  
30 nonquantitative treatment limitation, in operation, for medical and surgical  
31 benefits; and

32 (e) Disclose the specific findings and conclusions reached by the insurer that  
33 the results of the analyses in this subparagraph indicate that the insurer is in  
34 compliance with this section and the federal Paul Wellstone and Pete  
35 Domenici Mental Health Parity and Addiction Equity Act of 2008 and its  
36 implementing and related regulations, which include 45 Code of Federal  
37 Regulations, Sections 146.136, 147.160 and 156.115(a)(3).

38 For the purposes of this paragraph, "nonquantitative treatment limitation" means a  
39 limitation that is not expressed numerically but otherwise limits the scope or duration  
40 of benefits for treatment.

41 **Sec. 7. 24-A MRSA §2847-V** is enacted to read:

1           **§2847-V. Prescription drug benefits for substance use disorder treatment**

2           An insurer that issues group health care contracts that provide prescription drug  
3           benefits for the treatment of substance use disorder:

4           **1. Prior authorization requirements.** May not impose any prior authorization  
5           requirements on any prescription medication approved by the federal Food and Drug  
6           Administration for the treatment of substance use disorder;

7           **2. Step therapy requirements.** May not impose any step therapy requirements  
8           before the insurer authorizes coverage for a prescription medication approved by the  
9           federal Food and Drug Administration for the treatment of substance use disorder;

10          **3. Drug formulary.** Shall place all prescription medications approved by the federal  
11          Food and Drug Administration for the treatment of substance use disorder on the lowest  
12          tier of the drug formulary developed and maintained by the insurer; and

13          **4. Court-ordered medication.** May not exclude coverage for any prescription  
14          medication approved by the federal Food and Drug Administration for the treatment of  
15          substance use disorder or any associated counseling or wraparound services on the  
16          grounds that such medications and services were court ordered.

17          **Sec. 8. 24-A MRSA §4234-A, sub-§10,** as enacted by PL 1995, c. 407, §10, is  
18          repealed and the following enacted in its place:

19          **10. Reports to the superintendent.** A health maintenance organization shall submit  
20          annual reports in accordance with this subsection.

21           A. A health maintenance organization subject to this section shall report its  
22           experience for each calendar year to the superintendent no later than April 30th of the  
23           following year. The report must be in a form prescribed by the superintendent and  
24           include the amount of claims paid in this State for the services required by this  
25           section and the total amount of claims paid in this State for individual and group  
26           health care contracts, both separated according to those paid for inpatient, day  
27           treatment and outpatient services. The superintendent shall compile this data for all  
28           health maintenance organizations in an annual report.

29           B. A health maintenance organization subject to this section shall submit an annual  
30           report to the superintendent no later than April 30th that contains the following  
31           information:

32           (1) A description of the process used to develop or select the medically  
33           necessary health care criteria for mental illness and substance use disorder  
34           benefits and the process used to develop or select the medically necessary health  
35           care criteria for medical and surgical benefits;

36           (2) Identification of all nonquantitative treatment limitations that are applied to  
37           mental illness and substance use disorder benefits and medical and surgical  
38           benefits within each classification of benefits. The report must include  
39           information demonstrating that each nonquantitative treatment limitation that

1 applies to mental illness and substance use disorder benefits also applies to  
2 medical and surgical benefits within any classification of benefits; and

3 (3) The results of an analysis that demonstrate that for the medically necessary  
4 health care criteria described in subparagraph (1) and for each nonquantitative  
5 treatment limitation identified in subparagraph (2), as written and in operation,  
6 the processes, strategies, evidentiary standards or other factors used in applying  
7 the medically necessary health care criteria and each nonquantitative treatment  
8 limitation to mental illness and substance use disorder benefits within each  
9 classification of benefits are comparable to, and are applied no more stringently  
10 than, the processes, strategies, evidentiary standards or other factors used in  
11 applying the medically necessary health care criteria and each nonquantitative  
12 treatment limitation to medical and surgical benefits within the corresponding  
13 classification of benefits. At a minimum, the results of the analysis must:

14 (a) Identify the factors used to determine that a nonquantitative treatment  
15 limitation applies to a benefit, including factors that were considered but  
16 rejected;

17 (b) Identify and define the specific evidentiary standards used to define the  
18 factors and any other evidence relied upon in designing each nonquantitative  
19 treatment limitation;

20 (c) Identify and describe the comparative analyses, including the results of  
21 the analyses, used to determine that the processes and strategies used to  
22 design each nonquantitative treatment limitation, as written, for mental  
23 illness and substance use disorder benefits are comparable to, and are applied  
24 no more stringently than, the processes and strategies used to design each  
25 nonquantitative treatment limitation, as written, for medical and surgical  
26 benefits;

27 (d) Identify and describe the comparative analyses, including the results of  
28 the analyses, used to determine that the processes and strategies used to apply  
29 each nonquantitative treatment limitation, in operation, for mental illness and  
30 substance use disorder benefits are comparable to, and applied no more  
31 stringently than, the processes and strategies used to apply each  
32 nonquantitative treatment limitation, in operation, for medical and surgical  
33 benefits; and

34 (e) Disclose the specific findings and conclusions reached by the health  
35 maintenance organization that the results of the analyses in this subparagraph  
36 indicate that the health maintenance organization is in compliance with this  
37 section and the federal Paul Wellstone and Pete Domenici Mental Health  
38 Parity and Addiction Equity Act of 2008 and its implementing and related  
39 regulations, which include 45 Code of Federal Regulations, Sections  
40 146.136, 147.160 and 156.115(a)(3).

41 For the purposes of this paragraph, "nonquantitative treatment limitation" means a  
42 limitation that is not expressed numerically but otherwise limits the scope or duration  
43 of benefits for treatment.

