§4320-T. Implementation of federal mental health parity laws

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 4/30/28)

(WHOLE SECTION TEXT REPEALED 4/30/28)

(REALLOCATED FROM TITLE 24-A, SECTION 4320-R)

1. Nonquantitative treatment limitation; definition. For the purposes of this section, "nonquantitative treatment limitation" means a limitation that is not expressed numerically but otherwise limits the scope or duration of benefits for treatment.
[PL 2021, c. 638, §4 (NEW); RR 2021, c. 2, Pt. A, §80 (RAL).]

2. Compliance with federal mental health parity laws. A carrier offering a health plan in this State providing health coverage for mental health and substance use disorder services pursuant to sections 2749-C, 2842, 2843, 4234-A and 4320-D and Title 24, sections 2325-A and 2329 must meet the requirements of the federal 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 Code of Federal Regulations, Sections 146.136, 147.136, 147.160 and 156.115(a)(3).
[PL 2021, c. 638, §4 (NEW); RR 2021, c. 2, Pt. A, §80 (RAL).]

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

A. Proactively ensuring compliance by insurers, health maintenance organizations and nonprofit hospital or medical service organizations that execute, deliver, issue for delivery, continue or renew individual policies or individual and group health care contracts; [PL 2021, c. 638, §4 (NEW); RR 2021, c. 2, Pt. A, §80 (RAL).]

B. Evaluating all consumer or provider complaints regarding mental health and substance use disorder coverage for possible parity violations; [PL 2021, c. 638, §4 (NEW); RR 2021, c. 2, Pt. A, §80 (RAL).]

C. Performing parity compliance market conduct examinations of carriers that execute, deliver, issue for delivery, continue or renew individual policies or individual and group health care contracts, particularly market conduct examinations that focus on nonquantitative treatment limitations, including, but not limited to, prior authorization, concurrent review, retrospective review, step therapy, network admission standards, reimbursement rates and geographic restrictions; and [PL 2021, c. 638, §4 (NEW); RR 2021, c. 2, Pt. A, §80 (RAL).]

D. Requesting that carriers submit comparative analyses during the form review process demonstrating how they design and apply nonquantitative treatment limitation, both as written and in operation, for mental health and substance use disorder benefits as compared to how they design and apply nonquantitative treatment limitation, as written and in operation, for medical and surgical benefits. [PL 2021, c. 638, §4 (NEW); RR 2021, c. 2, Pt. A, §80 (RAL).]

The superintendent may adopt rules, as authorized under section 212, as may be necessary to effectuate any provisions of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 that relate to the business of insurance. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2021, c. 638, §4 (NEW); RR 2021, c. 2, Pt. A, §80 (RAL).]

4. Reports to superintendent. As part of the report submitted to the superintendent, and subsequently reported by the superintendent to the Legislature, pursuant to section 2749-C, subsection 4, section 2843, subsection 7, section 4234-A, subsection 10 and Title 24, section 2325-A, subsection 8, a carrier shall submit the following information to the superintendent:

A. A description of the process used to develop or select the medically necessary health care criteria for mental health and substance use disorder benefits and the process used to develop or select the medically necessary health care criteria for medical and surgical benefits; [PL 2021, c. 638, §4 (NEW); RR 2021, c. 2, Pt. A, §80 (RAL).]

B. Identification of all nonquantitative treatment limitations that are applied to mental health and substance use disorder benefits and medical and surgical benefits within each classification of benefits. The report must include information demonstrating that each nonquantitative treatment limitation that applies to mental health and substance use disorder benefits also applies to medical and surgical benefits within any classification of benefits; and [PL 2021, c. 638, §4 (NEW); RR 2021, c. 2, Pt. A, §80 (RAL).]

C. The results of an analysis that demonstrate that for the medically necessary health care criteria described in paragraph A and for each nonquantitative treatment limitation identified in paragraph B, as written and in operation, the processes, strategies, evidentiary standards or other factors used in applying the medically necessary health care criteria and each nonquantitative treatment limitation 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 medically necessary health care criteria and each nonquantitative treatment limitation to medical and surgical benefits within the corresponding classification of benefits. At a minimum, the results of the analysis must:

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

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

(3) Identify and describe the comparative analyses, including the results of the analyses, used to determine that the processes and strategies used to design each nonquantitative treatment limitation, as written, for 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 nonquantitative treatment limitation, as written, for medical and surgical benefits;

(4) Identify and describe the comparative analyses, including the results of the analyses, used to determine that the processes and strategies used to apply each nonquantitative treatment limitation, in operation, for mental health and substance use disorder benefits are comparable to, and applied no more stringently than, the processes and strategies used to apply each nonquantitative treatment limitation, in operation, for medical and surgical benefits; and

(5) Disclose the specific findings and conclusions reached by the insurer that the results of the analyses in this paragraph indicate that the carrier is in compliance with this section and the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 and its implementing and related regulations, including 45 Code of Federal Regulations, Sections 146.136, 147.136, 147.160 and 156.115(a)(3). [PL 2021, c. 638, §4 (NEW); RR 2021, c. 2, Pt. A, §80 (RAL).]

Information submitted by a carrier to the superintendent pursuant to this subsection is public information in accordance with section 216, except for information that a carrier requests be designated as confidential and the superintendent has determined is proprietary information. For the purposes of this subsection, "proprietary information" means information that is a trade secret or business or

financial information the disclosure of which would impair the competitive position of a carrier or that would result in significant detriment to a carrier if the information were made available to the public. [PL 2021, c. 638, §4 (NEW); RR 2021, c. 2, Pt. A, §80 (RAL).]

5. Repeal. This section is repealed April 30, 2028.
[PL 2021, c. 638, §4 (NEW); RR 2021, c. 2, Pt. A, §80 (RAL).]

SECTION HISTORY

PL 2021, c. 638, §4 (NEW). RR 2021, c. 2, Pt. A, §80 (RAL).

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