SPONSOR: Sen. Townsend & Rep. Bentz
Sen. Henry

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 230
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18 AND TITLE 31 OF THE DELAWARE CODE RELATING TO INSURANCE COVERAGE FOR SERIOUS MENTAL ILLNESS AND DRUG AND ALCOHOL DEPENDENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3343, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3343. Insurance coverage for serious mental illness.

(g) Reporting requirements.—Each carrier must submit a report to the Delaware Health Information Network in conjunction with the Commissioner on or before July 1 2019, and any year thereafter during which the carrier makes significant changes to how it designs and applies its medical management protocols; the report must contain the following information:

(1) A description of the process used to develop or select the medical necessity criteria for mental illness and drug and alcohol dependencies 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 mental illness and drug and alcohol dependencies benefits and medical and surgical benefits within each classification of benefits; there may be no separate NQTLs that apply to mental illness and drug and alcohol dependencies benefits that do not also 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 illness and drug and alcohol dependencies 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:

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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, for mental illness and drug and alcohol dependencies benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each NQTL, as written, for 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 illness and drug and alcohol dependencies 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.

e. Disclose the specific findings and conclusions reached by the carrier that the results of the analyses above indicate that the carrier is in compliance with this section and the Mental Health Parity and Addiction Equity Act of 2008 and its implementing regulations, which includes 45 CFR 146.136, 45 CFR 147.160, and any other related federal regulations found in the Code of Federal Regulations.

(4) Any information submitted to the Delaware Health Information Network and the Commissioner by a carrier that is considered proprietary by the carrier shall not be made public record.

(5) The Insurance Commissioner shall retain the authority to enforce the provisions of this section. The provisions of this section shall not give rise to a private cause of action.

~~(g)~~(h) Nothing in this section shall be construed to limit or reduce any benefit, entitlement, or coverage conferred by § 3366 of this title including, but not limited to, provider and service eligibility.

Section 2. Amend Chapter 35, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3571T. Mental Health Parity and Addiction Equity Act Reporting Requirements.

(a) Each health insurer offering group health insurance coverage that provides mental illness and drug and alcohol dependencies benefits must submit a report to the Delaware Health Information Network and Commissioner on or before July 1 2019, and any year thereafter during which the insurer makes significant changes to how it designs and applies its medical management protocols; the report must contain the following information:

(1) A description of the process used to develop or select the medical necessity criteria for

mental illness and drug and alcohol dependencies 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 mental illness and drug and alcohol dependencies benefits and medical and surgical benefits within each classification of benefits; there may be no separate NQTLs that apply to mental illness and drug and alcohol dependencies benefits that do not also 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 illness and drug and alcohol dependencies 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, for mental illness and drug and alcohol dependencies benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each NQTL, as written, for 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 illness and drug and alcohol dependencies 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.

e. Disclose the specific findings and conclusions reached by the insurer that the results of the analyses above indicate that the carrier is in compliance with this section and the Mental Health Parity and Addiction Equity Act of 2008 and its implementing regulations, which includes 45 CFR 146.136 and any other related federal regulations found in the Code of Federal Regulations.

(4) Any information submitted to the Delaware Health Information Network and Commissioner by a carrier that is considered proprietary by the carrier shall not be made public record.

(5) The Insurance Commissioner shall retain the authority to enforce the provisions of this section. The provisions of this section shall not give rise to a private cause of action.

Section 3. Amend § 525, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 525 Insurance coverage for serious mental illness and drug and alcohol dependency for recipients of aid under § 505(3) of this title.

(f) Reporting requirements.— Each carrier must submit a report to the Department on or before July 1, 2019, and any year thereafter during which the carrier makes significant changes to how it designs and applies its medical management protocols; the report must contain the following information:

(1) A description of the process used to develop or select the medical necessity criteria for mental illness and drug and alcohol dependencies benefits and the process used to develop or select the medical necessity criteria for medical and surgical benefits.

(2) As requested by the Department, identification of select non-quantitative treatment limitations (NQTLs) that are applied to mental illness and drug and alcohol dependencies benefits and medical and surgical benefits within each classification of benefits; there may be no separate NQTLs that apply to mental illness and drug and alcohol dependencies benefits that do not also 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 illness and drug and alcohol dependencies 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, for mental illness and drug and alcohol dependencies benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each NQTL, as written, for 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 illness and drug and alcohol dependencies 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.

e. Disclose the specific findings and conclusions reached by the carrier that the results of the analyses above indicate that the carrier is in compliance with this section and the Mental Health Parity and Addiction Equity Act of 2008 and its implementing regulations, which includes Subpart K of Part 438 of 42 CFR and any other related federal regulations found in the Code of Federal Regulations.

4) Any information submitted to the Department of Health and Social Services by a carrier that is considered proprietary by the carrier shall not be made public record.

(5) The Department of Health and Social Services shall retain the authority to enforce the provisions of this section. The provisions of this section shall not give rise to a private cause of action.

Section 4. The Department of Insurance shall adopt regulations regarding the format of the report required under this Act and regarding when such reports shall be submitted pursuant to the requirements of the Act.

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