

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1339

STATE OF NEW JERSEY
218th LEGISLATURE

ADOPTED JANUARY 17, 2019

Sponsored by:

Senator ROBERT M. GORDON
District 38 (Bergen and Passaic)

Senator THOMAS H. KEAN, JR.
District 21 (Morris, Somerset and Union)

Senator JOSEPH F. VITALE
District 19 (Middlesex)

Co-Sponsored by:

**Senators Brown, Gopal, Singleton, Bateman, A.R.Bucco, Diegnan, Turner,
Pou and Cardinale**

SYNOPSIS

Enhances enforcement and oversight of behavioral health parity laws.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Commerce Committee.



1 AN ACT concerning health insurance coverage for behavioral health
2 care services and amending various parts of the statutory law and
3 supplementing P.L.1997, c.192 (C.26:2S-1 et al.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 1 of P.L.1999, c.106 (C.17:48-6v) is amended to
9 read as follows:

10 1. a. (1) Every individual and group hospital service
11 corporation contract that provides hospital or medical expense
12 benefits and is delivered, issued, executed or renewed in this State
13 pursuant to P.L.1938, c.366 (C.17:48-1 et seq.), or approved for
14 issuance or renewal in this State by the Commissioner of Banking
15 and Insurance, on or after the effective date of this act shall provide
16 coverage for **biologically-based mental illness** behavioral health
17 care services under the same terms and conditions as provided for
18 any other sickness under the contract and shall meet the
19 requirements of the federal Paul Wellstone and Pete Domenici
20 Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C.
21 18031(j), and any amendments to, and federal guidance or
22 regulations issued under that act, including 45 C.F.R. Parts 146 and
23 147 and 45 C.F.R. 156.115(a)(3). **["Biologically-based mental**
24 **illness"]**

25 (2) As used in this section:

26 "Behavioral health care services" means **a mental or nervous**
27 **condition that is caused by a biological disorder of the brain and**
28 **results in a clinically significant or psychological syndrome or**
29 **pattern that substantially limits the functioning of the person with**
30 **the illness, including but not limited to, schizophrenia,**
31 **schizoaffective disorder, major depressive disorder, bipolar**
32 **disorder, paranoia and other psychotic disorders, obsessive-**
33 **compulsive disorder, panic disorder and pervasive developmental**
34 **disorder or autism** procedures or services rendered by a health care
35 provider or health care facility for the treatment of mental illness,
36 emotional disorders, pervasive developmental disorder and autism,
37 or drug or alcohol abuse.

38 "Health care facility" means the same as defined in section 2 of
39 P.L.1971, c.136 (C.26:2H-2).

40 "Health care provider" means a health care professional licensed
41 pursuant to Title 45 of the Revised Statutes.

42 "Same terms and conditions" means that the hospital service
43 corporation cannot apply different copayments, deductibles or
44 benefit limits to **biologically-based mental health** behavioral

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 health care services benefits than those applied to other medical or
2 surgical benefits.

3 b. **【Nothing in this section shall be construed to change the**
4 **manner in which a hospital service corporation determines:**

5 (1) whether a mental health care service meets the medical
6 necessity standard as established by the hospital service
7 corporation; or

8 (2) which providers shall be entitled to reimbursement for
9 providing services for mental illness under the contract. **】** (Deleted
10 by amendment, P.L. , c.)(pending before the Legislature as
11 this bill)

12 c. The provisions of this section shall apply to all contracts in
13 which the hospital service corporation has reserved the right to
14 change the premium.

15 (cf: P.L.1999, c.106, s.1)

16

17 2. Section 2 of P.L.1999, c.106 (C.17:48A-7u) is amended to
18 read as follows:

19 2. a. (1) Every individual and group medical service
20 corporation contract that provides hospital or medical expense
21 benefits that is delivered, issued, executed or renewed in this State
22 pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.), or approved for
23 issuance or renewal in this State by the Commissioner of Banking
24 and Insurance, on or after the effective date of this act shall provide
25 coverage for **【biologically-based mental illness】** behavioral health
26 care services under the same terms and conditions as provided for
27 any other sickness under the contract and shall meet the
28 requirements of the federal Paul Wellstone and Pete Domenici
29 Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C.
30 18031(j), and any amendments to, and federal guidance or
31 regulations issued under that act, including 45 C.F.R. Parts 146 and
32 147 and 45 C.F.R. 156.115(a)(3). **【"Biologically-based mental**
33 **illness"】**

34 (2) As used in this section:

35 "Behavioral health care services" means 【a mental or nervous
36 condition that is caused by a biological disorder of the brain and
37 results in a clinically significant or psychological syndrome or
38 pattern that substantially limits the functioning of the person with
39 the illness, including but not limited to, schizophrenia,
40 schizoaffective disorder, major depressive disorder, bipolar
41 disorder, paranoia and other psychotic disorders, obsessive-
42 compulsive disorder, panic disorder and pervasive developmental
43 disorder or autism】 procedures or services rendered by a health care
44 provider or health care facility for the treatment of mental illness,
45 emotional disorders, pervasive developmental disorder and autism,
46 or drug or alcohol abuse.

1 “Health care facility” means the same as defined in section 2 of
2 P.L.1971, c.136 (C.26:2H-2).

3 “Health care provider” means a health care professional licensed
4 pursuant to Title 45 of the Revised Statutes.

5 "Same terms and conditions" means that the medical service
6 corporation cannot apply different copayments, deductibles or
7 benefit limits to **【biologically-based mental health】** behavioral
8 health care services benefits than those applied to other medical or
9 surgical benefits.

10 b. **【Nothing in this section shall be construed to change the**
11 manner in which a medical service corporation determines:

12 (1) whether a mental health care service meets the medical
13 necessity standard as established by the medical service
14 corporation; or

15 (2) which providers shall be entitled to reimbursement for
16 providing services for mental illness under the contract. **】** (Deleted
17 by amendment, P.L. , c.)(pending before the Legislature as
18 this bill)

19 c. The provisions of this section shall apply to all contracts in
20 which the medical service corporation has reserved the right to
21 change the premium.

22 (cf: P.L.1999, c.106, s.2)

23
24 3. Section 3 of P.L.1999, c.106 (C.17:48E-35.20) is amended
25 to read as follows:

26 3. a. (1) Every individual and group health service corporation
27 contract that provides hospital or medical expense benefits and is
28 delivered, issued, executed or renewed in this State pursuant to
29 P.L.1985, c.236 (C.17:48E-1 et seq.), or approved for issuance or
30 renewal in this State by the Commissioner of Banking and
31 Insurance, on or after the effective date of this act shall provide
32 coverage for **【biologically-based mental illness】** behavioral health
33 care services under the same terms and conditions as provided for
34 any other sickness under the contract and shall meet the
35 requirements of the federal Paul Wellstone and Pete Domenici
36 Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C.
37 18031(j), and any amendments to, and federal guidance or
38 regulations issued under that act, including 45 C.F.R. Parts 146 and
39 147 and 45 C.F.R. 156.115(a)(3). **【"Biologically-based mental**
40 illness"】

41 (2) As used in this section:

42 “Behavioral health care services” means **【a mental or nervous**
43 condition that is caused by a biological disorder of the brain and
44 results in a clinically significant or psychological syndrome or
45 pattern that substantially limits the functioning of the person with
46 the illness, including but not limited to, schizophrenia,
47 schizoaffective disorder, major depressive disorder, bipolar

1 disorder, paranoia and other psychotic disorders, obsessive-
2 compulsive disorder, panic disorder and pervasive developmental
3 disorder or autism】 procedures or services rendered by a health care
4 provider or health care facility for the treatment of mental illness,
5 emotional disorders, pervasive developmental disorder and autism,
6 or drug or alcohol abuse.

7 “Health care facility” means the same as defined in section 2 of
8 P.L.1971, c.136 (C.26:2H-2).

9 “Health care provider” means a health care professional licensed
10 pursuant to Title 45 of the Revised Statutes.

11 "Same terms and conditions" means that the health service
12 corporation cannot apply different copayments, deductibles or
13 benefit limits to 【biologically-based mental health】 behavioral
14 health care services benefits than those applied to other medical or
15 surgical benefits.

16 b. 【Nothing in this section shall be construed to change the
17 manner in which the health service corporation determines:

18 (1) whether a mental health care service meets the medical
19 necessity standard as established by the health service corporation;
20 or

21 (2) which providers shall be entitled to reimbursement for
22 providing services for mental illness under the contract.】 (Deleted
23 by amendment, P.L. , c.)(pending before the Legislature as
24 this bill)

25 c. The provisions of this section shall apply to all contracts in
26 which the health service corporation has reserved the right to
27 change the premium.

28 (cf: P.L.1999, c.106, s.3)

29
30 4. Section 4 of P.L.1999, c.106 (C.17B:26-2.1s) is amended to
31 read as follows:

32 4. a. (1) Every individual health insurance policy that
33 provides hospital or medical expense benefits and is delivered,
34 issued, executed or renewed in this State pursuant to chapter 26 of
35 Title 17B of the New Jersey Statutes, or approved for issuance or
36 renewal in this State by the Commissioner of Banking and
37 Insurance, on or after the effective date of this act shall provide
38 coverage for 【biologically-based mental illness】 behavioral health
39 care services under the same terms and conditions as provided for
40 any other sickness under the contract and shall meet the
41 requirements of the federal Paul Wellstone and Pete Domenici
42 Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C.
43 18031(j), and any amendments to, and federal guidance or
44 regulations issued under that act, including 45 C.F.R. Parts 146 and
45 147 and 45 C.F.R. 156.115(a)(3). 【"Biologically-based mental
46 illness"】

47 (2) As used in this section:

1 "Behavioral health care services" means **【a mental or nervous**
2 condition that is caused by a biological disorder of the brain and
3 results in a clinically significant or psychological syndrome or
4 pattern that substantially limits the functioning of the person with
5 the illness, including but not limited to, schizophrenia,
6 schizoaffective disorder, major depressive disorder, bipolar
7 disorder, paranoia and other psychotic disorders, obsessive-
8 compulsive disorder, panic disorder and pervasive developmental
9 disorder or autism**】** procedures or services rendered by a health care
10 provider or health care facility for the treatment of mental illness,
11 emotional disorders, pervasive developmental disorder and autism,
12 or drug or alcohol abuse.

13 "Health care facility" means the same as defined in section 2 of
14 P.L.1971, c.136 (C.26:2H-2).

15 "Health care provider" means a health care professional licensed
16 pursuant to Title 45 of the Revised Statutes.

17 "Same terms and conditions" means that the insurer cannot apply
18 different copayments, deductibles or benefit limits to **【biologically-**
19 based mental health**】** behavioral health care services benefits than
20 those applied to other medical or surgical benefits.

21 b. **【Nothing in this section shall be construed to change the**
22 manner in which the insurer determines:

23 (1) whether a mental health care service meets the medical
24 necessity standard as established by the insurer; or

25 (2) which providers shall be entitled to reimbursement for
26 providing services for mental illness under the policy.**】** (Deleted by
27 amendment, P.L. , c.) (pending before the Legislature as this
28 bill)

29 c. The provisions of this section shall apply to all policies in
30 which the insurer has reserved the right to change the premium.
31 (cf: P.L.1999, c.106, s.4)

32

33 5. Section 5 of P.L.1999, c.106 (C.17B:27-46.1v) is amended
34 to read as follows:

35 5. a. (1) Every group health insurance policy that provides
36 hospital or medical expense benefits and is delivered, issued,
37 executed or renewed in this State pursuant to chapter 27 of Title
38 17B of the New Jersey Statutes, or approved for issuance or renewal
39 in this State by the Commissioner of Banking and Insurance, on or
40 after the effective date of this act shall provide benefits for
41 **【biologically-based mental illness】** behavioral health care services
42 under the same terms and conditions as provided for any other
43 sickness under the policy and shall meet the requirements of the
44 federal Paul Wellstone and Pete Domenici Mental Health Parity and
45 Addiction Equity Act of 2008, 42 U.S.C. 18031(j), and any
46 amendments to, and federal guidance or regulations issued under

1 that act, including 45 C.F.R. Parts 146 and 147 and 45 C.F.R.
2 156.115(a)(3). ["Biologically-based mental illness"]

3 (2) As used in this section:

4 "Behavioral health care services" means [a mental or nervous
5 condition that is caused by a biological disorder of the brain and
6 results in a clinically significant or psychological syndrome or
7 pattern that substantially limits the functioning of the person with
8 the illness, including but not limited to, schizophrenia,
9 schizoaffective disorder, major depressive disorder, bipolar
10 disorder, paranoia and other psychotic disorders, obsessive-
11 compulsive disorder, panic disorder and pervasive developmental
12 disorder or autism] procedures or services rendered by a health care
13 provider or health care facility for the treatment of mental illness,
14 emotional disorders, pervasive developmental disorder and autism,
15 or drug or alcohol abuse.

16 "Health care facility" means the same as defined in section 2 of
17 P.L.1971, c.136 (C.26:2H-2).

18 "Health care provider" means a health care professional licensed
19 pursuant to Title 45 of the Revised Statutes.

20 "Same terms and conditions" means that the insurer cannot apply
21 different copayments, deductibles or benefit limits to [biologically-
22 based mental health] behavioral health care services benefits than
23 those applied to other medical or surgical benefits.

24 b. [Nothing in this section shall be construed to change the
25 manner in which the insurer determines:

26 (1) whether a mental health care service meets the medical
27 necessity standard as established by the insurer; or

28 (2) which providers shall be entitled to reimbursement for
29 providing services for mental illness under the policy.] (Deleted by
30 amendment, P.L. , c.) (pending before the Legislature as this
31 bill)

32 c. The provisions of this section shall apply to all policies in
33 which the insurer has reserved the right to change the premium.

34 (cf: P.L.1999, c.106, s.5)

35
36 6. Section 6 of P.L.1999, c.106 (C.17B:27A-7.5) is amended to
37 read as follows:

38 6. a. (1) Every individual health benefits plan that provides
39 hospital or medical expense benefits and is delivered, issued,
40 executed or renewed in this State pursuant to P.L.1992, c.161
41 (C.17B:27A-2 et seq.) or approved for issuance or renewal in this
42 State on or after the effective date of this act shall provide benefits
43 for [biologically-based mental illness] behavioral health care
44 services under the same terms and conditions as provided for any
45 other sickness under the health benefits plan and shall meet the
46 requirements of the federal Paul Wellstone and Pete Domenici
47 Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C.

1 18031(j), and any amendments to, and federal guidance or
2 regulations issued under that act, including 45 C.F.R. Parts 146 and
3 147 and 45 C.F.R. 156.115(a)(3). ["Biologically-based mental
4 illness"]

5 (2) As used in this section:

6 "Behavioral health care services" means [a mental or nervous
7 condition that is caused by a biological disorder of the brain and
8 results in a clinically significant or psychological syndrome or
9 pattern that substantially limits the functioning of the person with
10 the illness, including but not limited to, schizophrenia,
11 schizoaffective disorder, major depressive disorder, bipolar
12 disorder, paranoia and other psychotic disorders, obsessive-
13 compulsive disorder, panic disorder and pervasive developmental
14 disorder or autism] procedures or services rendered by a health care
15 provider or health care facility for the treatment of mental illness,
16 emotional disorders, pervasive developmental disorder and autism,
17 or drug or alcohol abuse.

18 "Health care facility" means the same as defined in section 2 of
19 P.L.1971, c.136 (C.26:2H-2).

20 "Health care provider" means a health care professional licensed
21 pursuant to Title 45 of the Revised Statutes.

22 "Same terms and conditions" means that the plan cannot apply
23 different copayments, deductibles or benefit limits to [biologically-
24 based mental health] behavioral health care services benefits than
25 those applied to other medical or surgical benefits.

26 b. [Nothing in this section shall be construed to change the
27 manner in which the carrier determines:

28 (1) whether a mental health care service meets the medical
29 necessity standard as established by the carrier; or

30 (2) which providers shall be entitled to reimbursement for
31 providing services for mental illness under the plan.] (Deleted by
32 amendment, P.L. , c.) (pending before the Legislature as this
33 bill)

34 c. The provisions of this section shall apply to all health
35 benefits plans in which the carrier has reserved the right to change
36 the premium.

37 (cf: P.L.1999, c.106, s.6)

38
39 7. Section 7 of P.L.1999, c.106 (C.17B:27A-19.7) is amended
40 to read as follows:

41 7. a. (1) Every small employer health benefits plan that
42 provides hospital or medical expense benefits and is delivered,
43 issued, executed or renewed in this State pursuant to P.L.1992,
44 c.162 (C.17B:27A-17 et seq.) or approved for issuance or renewal
45 in this State on or after the effective date of this act shall provide
46 benefits for [biologically-based mental illness] behavioral health
47 care services under the same terms and conditions as provided for

1 any other sickness under the health benefits plan and shall meet the
2 requirements of the federal Paul Wellstone and Pete Domenici
3 Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C.
4 18031(j), and any amendments to, and federal guidance or
5 regulations issued under that act, including 45 C.F.R. Parts 146 and
6 147 and 45 C.F.R. 156.115(a)(3). **["Biologically-based mental**
7 **illness"]**

8 (2) As used in this section:

9 "Behavioral health care services" means [a mental or nervous
10 condition that is caused by a biological disorder of the brain and
11 results in a clinically significant or psychological syndrome or
12 pattern that substantially limits the functioning of the person with
13 the illness, including but not limited to, schizophrenia,
14 schizoaffective disorder, major depressive disorder, bipolar
15 disorder, paranoia and other psychotic disorders, obsessive-
16 compulsive disorder, panic disorder and pervasive developmental
17 disorder or autism] procedures or services rendered by a health care
18 provider or health care facility for the treatment of mental illness,
19 emotional disorders, pervasive developmental disorder and autism,
20 or drug or alcohol abuse.

21 "Health care facility" means the same as defined in section 2 of
22 P.L.1971, c.136 (C.26:2H-2).

23 "Health care provider" means a health care professional licensed
24 pursuant to Title 45 of the Revised Statutes.

25 "Same terms and conditions" means that the plan cannot apply
26 different copayments, deductibles or benefit limits to **[biologically-**
27 **based mental health]** behavioral health care services benefits than
28 those applied to other medical or surgical benefits.

29 b. **["Nothing in this section shall be construed to change the**
30 **manner in which the carrier determines:**

31 (1) whether a mental health care service meets the medical
32 necessity standard as established by the carrier; or

33 (2) which providers shall be entitled to reimbursement for
34 providing services for mental illness under the health benefits
35 plan.] (Deleted by amendment, P.L. , c.) (pending before the
36 Legislature as this bill)

37 c. The provisions of this section shall apply to all health
38 benefits plans in which the carrier has reserved the right to change
39 the premium.

40 (cf: P.L.1999, c.106, s.7)

41
42 8. Section 8 of P.L.1999, c.106 (C.26:2J-4.20) is amended to
43 read as follows:

44 8. a. (1) Every enrollee agreement delivered, issued, executed,
45 or renewed in this State pursuant to P.L.1973, c.337 (C.26:2J-1 et
46 seq.) or approved for issuance or renewal in this State by the
47 Commissioner of Banking and Insurance, on or after the effective

1 date of this act shall provide health care services for **【biologically-**
2 **based mental illness】** behavioral health care services under the
3 same terms and conditions as provided for any other sickness under
4 the agreement and shall meet the requirements of the federal Paul
5 Wellstone and Pete Domenici Mental Health Parity and Addiction
6 Equity Act of 2008, 42 U.S.C. 18031(j), and any amendments to,
7 and federal guidance or regulations issued under that act, including
8 45 C.F.R. Parts 146 and 147 and 45 C.F.R. 156.115(a)(3).

9 **【"Biologically-based mental illness"】**

10 (2) As used in this section:

11 "Behavioral health care services" means 【a mental or nervous
12 condition that is caused by a biological disorder of the brain and
13 results in a clinically significant or psychological syndrome or
14 pattern that substantially limits the functioning of the person with
15 the illness, including but not limited to, schizophrenia,
16 schizoaffective disorder, major depressive disorder, bipolar
17 disorder, paranoia and other psychotic disorders, obsessive-
18 compulsive disorder, panic disorder and pervasive developmental
19 disorder or autism】 procedures or services rendered by a health care
20 provider or health care facility for the treatment of mental illness,
21 emotional disorders, pervasive developmental disorder and autism,
22 or drug or alcohol abuse.

23 "Health care facility" means the same as defined in section 2 of
24 P.L.1971, c.136 (C.26:2H-2).

25 "Health care provider" means a health care professional licensed
26 pursuant to Title 45 of the Revised Statutes.

27 "Same terms and conditions" means that the health maintenance
28 organization cannot apply different copayments, deductibles, or
29 health care services limits to **【biologically-based mental】**
30 behavioral health care services than those applied to other medical
31 or surgical health care services.

32 b. **【Nothing in this section shall be construed to change the**
33 **manner in which a health maintenance organization determines:**

34 (1) whether a mental health care service meets the medical
35 necessity standard as established by the health maintenance
36 organization; or

37 (2) which providers shall be entitled to reimbursement or to be
38 participating providers, as appropriate, for mental health services
39 under the enrollee agreement.】 (Deleted by amendment,
40 P.L. , c.) (pending before the Legislature as this bill)

41 c. The provisions of this section shall apply to enrollee
42 agreements in which the health maintenance organization has
43 reserved the right to change the premium.

44 (cf: P.L.2012, c.17, s.271)

45
46 9. Section 1 of P.L.1999, c.441 (C.52:14-17.29d) is amended to
47 read as follows:

1 1. As used in this act:

2 **["Biologically-based mental illness"]** "Behavioral health care
3 services" means **[a mental or nervous condition that is caused by a**
4 **biological disorder of the brain and results in a clinically significant**
5 **or psychological syndrome or pattern that substantially limits the**
6 **functioning of the person with the illness including, but not limited**
7 **to, schizophrenia, schizoaffective disorder, major depressive**
8 **disorder, bipolar disorder, paranoia and other psychotic disorders,**
9 **obsessive-compulsive disorder, panic disorder and pervasive**
10 **developmental disorder or autism]** procedures or services rendered
11 by a health care provider or health care facility for the treatment of
12 mental illness, emotional disorders, pervasive developmental
13 disorder and autism, or drug or alcohol abuse.

14 "Carrier" means an insurance company, health service
15 corporation, hospital service corporation, medical service
16 corporation or health maintenance organization authorized to issue
17 health benefits plans in this State.

18 "Health care facility" means the same as defined in section 2 of
19 P.L.1971, c.136 (C.26:2H-2).

20 "Health care provider" means a health care professional licensed
21 pursuant to Title 45 of the Revised Statutes.

22 "Same terms and conditions" means that a carrier cannot apply
23 different copayments, deductibles or benefit limits to **[biologically-**
24 **based mental health]** behavioral health care services benefits than
25 those applied to other medical or surgical benefits.

26 (cf: P.L.1999, c.441, s.1)

27

28 10. Section 2 of P.L.1999, c.441 (C.52:14-17.29e) is amended to
29 read as follows:

30 2. a. The State Health Benefits Commission shall ensure that
31 every contract purchased by the commission on or after the
32 effective date of this act that provides hospital or medical expense
33 benefits shall provide coverage for **[biologically-based mental**
34 **illness]** behavioral health care services under the same terms and
35 conditions as provided for any other sickness under the contract and
36 shall meet the requirements of the federal Paul Wellstone and Pete
37 Domenici Mental Health Parity and Addiction Equity Act of 2008,
38 42 U.S.C. 18031(j), and any amendments to, and federal guidance
39 or regulations issued under that act, including 45 C.F.R. Parts 146
40 and 147 and 45 C.F.R. 156.115(a)(3).

41 b. **[Nothing in this section shall be construed to change the**
42 **manner in which a carrier determines:**

43 (1) whether a mental health care service meets the medical
44 necessity standard as established by the carrier; or

45 (2) which providers shall be entitled to reimbursement for
46 providing services for mental illness under the contract.

1 c. The commission shall provide notice to employees regarding
2 the coverage required by this section in accordance with this
3 subsection and regulations promulgated by the Commissioner of
4 Health [and Senior Services] pursuant to the "Administrative
5 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The notice
6 shall be in writing and prominently positioned in any literature or
7 correspondence and shall be transmitted at the earliest of: (1) the
8 next mailing to the employee; (2) the yearly informational packet
9 sent to the employee; or (3) July 1, 2000. The commission shall
10 also ensure that the carrier under contract with the commission,
11 upon receipt of information that a covered person is receiving
12 treatment for [a biologically-based mental illness] behavioral
13 health care services, shall promptly notify that person of the
14 coverage required by this section.

15 (cf: P.L.1999, c.441, s.2)

16
17 11. (New section) a. For the purposes of this section:

18 "Behavioral health care services" means procedures or services
19 rendered by a health care provider or health care facility for the
20 treatment of mental illness, emotional disorders, pervasive
21 developmental disorder and autism, or drug or alcohol abuse.

22 "Benefit limits" includes both quantitative treatment limitations
23 and non-quantitative treatment limitations.

24 "Carrier" means an insurance company, health service
25 corporation, hospital service corporation, medical service
26 corporation, or health maintenance organization authorized to issue
27 health benefits plans in this State or any entity contracted to
28 administer health benefits in connection with the State Health
29 Benefits Program or School Employees' Health Benefits Program.

30 "Classification of benefits" means the classifications of benefits
31 found at 45 C.F.R. 146.136(c)(2)(ii)(A) and 45 C.F.R.
32 146.136(c)(3)(iii).

33 "Department" means the Department of Banking and Insurance.

34 "Non-quantitative treatment limitations" or "NQTL" means
35 processes, strategies, or evidentiary standards, or other factors that
36 are not expressed numerically, but otherwise limit the scope or
37 duration of benefits for treatment. NQTLs shall include, but shall
38 not be limited to:

39 (1) Medical management standards limiting or excluding
40 benefits based on medical necessity or medical appropriateness, or
41 based on whether the treatment is experimental or investigative;

42 (2) Formulary design for prescription drugs;

43 (3) For plans with multiple network tiers, such as preferred
44 providers and participating providers, network tier design;

45 (4) Standards for provider admission to participate in a network,
46 including reimbursement rates;

47 (5) Plan methods for determining usual, customary, and
48 reasonable charges;

- 1 (6) Refusal to pay for higher-cost therapies until it can be shown
- 2 that a lower-cost therapy is not effective, also known as fail-first
- 3 policies or step therapy protocols;
- 4 (7) Exclusions based on failure to complete a course of
- 5 treatment;
- 6 (8) Restrictions based on geographic location, facility type,
- 7 provider specialty, and other criteria that limit the scope or duration
- 8 of benefits for services provided under the plan or coverage;
- 9 (9) In and out-of-network geographic limitations;
- 10 (10) Limitations on inpatient services for situations where the
- 11 participant is a threat to self or others;
- 12 (11) Exclusions for court-ordered and involuntary holds;
- 13 (12) Experimental treatment limitations;
- 14 (13) Service coding;
- 15 (14) Exclusions for services provided by a licensed professional
- 16 who provides behavioral health care services;
- 17 (15) Network adequacy; and
- 18 (16) Provider reimbursement rates.
- 19 b. A carrier shall approve a request for an in-plan exception if
- 20 the carrier's network does not have any providers who are qualified,
- 21 accessible and available to perform the specific medically necessary
- 22 service. A carrier shall communicate the availability of in-plan
- 23 exceptions:
- 24 (1) on its website where lists of network providers are
- 25 displayed; and
- 26 (2) to beneficiaries when they call the carrier to inquire about
- 27 network providers.
- 28 c. A carrier that provides hospital or medical expense benefits
- 29 through individual or group contracts shall submit an annual report
- 30 to the department on or before March 1 that contains the following
- 31 information:
- 32 (1) A description of the process used to develop or select the
- 33 medical necessity criteria for mental health benefits, the process
- 34 used to develop or select the medical necessity criteria for substance
- 35 use disorder benefits, and the process used to develop or select the
- 36 medical necessity criteria for medical and surgical benefits;
- 37 (2) Identification of all NQTLs that are applied to mental health
- 38 benefits, all NQTLs that are applied to substance use disorder
- 39 benefits, and all NQTLs that are applied to medical and surgical
- 40 benefits, including, but not limited to, those listed in subsection a.
- 41 of this section;
- 42 (3) The results of an analysis that demonstrates that for the
- 43 medical necessity criteria described in paragraph (1) of this
- 44 subsection and for selected NQTLs identified in paragraph (2) of
- 45 this subsection, as written and in operation, the processes,
- 46 strategies, evidentiary standards, or other factors used to apply the
- 47 medical necessity criteria and selected NQTLs to behavioral health
- 48 care benefits are comparable to, and are no more stringently applied

1 than the processes, strategies, evidentiary standards, or other factors
2 used to apply the medical necessity criteria and selected NQTLs, as
3 written and in operation, to medical and surgical benefits. A
4 determination of which selected NQTLs require analysis will be
5 determined by the department; at a minimum, the results of the
6 analysis shall entail the following, provided that some NQTLs may
7 not necessitate all of the steps described below:

8 (a) identify the factors used to determine that an NQTL will
9 apply to a benefit, including factors that were considered but
10 rejected;

11 (b) identify and define the specific evidentiary standards used to
12 define the factors and any other evidentiary standards relied upon in
13 designing each NQTL;

14 (c) provide the comparative analyses, including the results of
15 the analyses, performed to determine that the processes and
16 strategies used to design each NQTL, as written, for mental health
17 and substance use disorder benefits are comparable to and applied
18 no more stringently than the processes and strategies used to design
19 each NQTL as written for medical and surgical benefits;

20 (d) provide the comparative analyses, including the results of
21 the analyses, performed to determine that the processes and
22 strategies used to apply each NQTL, in operation, for mental health
23 and substance use disorder benefits are comparable to and applied
24 no more stringently than the processes or strategies used to apply
25 each NQTL in operation for medical and surgical benefits; and

26 (e) disclose the specific findings and conclusions reached by the
27 carrier that the results of the analyses above indicate that the carrier
28 is in compliance with this section and the Paul Wellstone and Pete
29 Domenici Mental Health Parity and Addiction Equity Act of 2008,
30 42 U.S.C. 18031(j), and its implementing and related regulations,
31 which includes 45 C.F.R. 146.136, 45 C.F.R. 147.160, and 45
32 C.F.R. 156.115(a)(3); and

33 (4) Any other information necessary to clarify data provided in
34 accordance with this section requested by the Commissioner of
35 Banking and Insurance including information that may be
36 proprietary or have commercial value, provided that no proprietary
37 information shall be made publicly available by the department.

38 d. The department shall implement and enforce applicable
39 provisions of the Paul Wellstone and Pete Domenici Mental Health
40 Parity and Addiction Equity Act of 2008, 42 U.S.C. 18031(j), any
41 amendments to, and federal guidance or regulations issued under
42 that act, including 45 C.F.R. Parts 146 and 147, 45 C.F.R.
43 156.115(a)(3), P.L.1999, c.106 (C.17:48-6v et al.), and section 2 of
44 P.L.1999, c.441 (C.52:14-17.29e), which includes:

45 (1) Ensuring compliance by individual and group contracts,
46 policies, plans, or enrollee agreements delivered, issued, executed,
47 or renewed in this State pursuant to P.L.1938, c.366 (C.17:48-1 et
48 seq.), P.L.1940, c.74 (C.17:48A-1 et seq.), P.L.1985, c.236

1 (C.17:48E-1 et seq.), chapter 26 of Title 17B of the New Jersey
2 Statutes (N.J.S.17B:26-1 et seq.), chapter 27 of Title 17B of the
3 New Jersey Statutes (N.J.S.17B:27-26 et seq.), P.L.1992, c.161
4 (C.17B:27A-2 et seq.), P.L.1992, c.162 (C.17B:27A-17 et seq.),
5 P.L.1973, c.337 (C.26:2J-1 et seq.), and P.L.1961, c.49 (C.52:14-
6 17.25 et seq.), or approved for issuance or renewal in this State by
7 the Commissioner of Banking and Insurance.

8 (2) Detecting violations of the law by individual and group
9 contracts, policies, plans, or enrollee agreements delivered, issued,
10 executed, or renewed in this State pursuant to P.L.1938, c.366
11 (C.17:48-1 et seq.), P.L.1940, c.74 (C.17:48A-1 et seq.), P.L.1985,
12 c.236 (C.17:48E-1 et seq.), chapter 26 of Title 17B of the New
13 Jersey Statutes (N.J.S.17B:26-1 et seq.), chapter 27 of Title 17B of
14 the New Jersey Statutes (N.J.S.17B:27-26 et seq.), P.L.1992, c.161
15 (C.17B:27A-2 et seq.), P.L.1992, c.162 (C.17B:27A-17 et seq.),
16 P.L.1973, c.337 (C.26:2J-1 et seq.), and P.L.1961, c.49 (C.52:14-
17 17.25 et seq.), or approved for issuance or renewal in this State by
18 the Commissioner of Banking and Insurance.

19 (3) Accepting, evaluating, and responding to complaints
20 regarding violations.

21 (4) Maintaining and regularly reviewing for possible parity
22 violations a publically available consumer complaint log regarding
23 behavioral health care coverage, provided that the names of specific
24 carriers will be redacted and not disclosed on the complaint log.

25 (5) The commissioner shall adopt rules as may be necessary to
26 effectuate any provisions of this section and the Paul Wellstone and
27 Pete Domenici Mental Health Parity and Addiction Equity Act of
28 2008 that relate to the business of insurance.

29 e. Not later than May 1 of each year, the department shall issue
30 a report to the Legislature pursuant to section 2 of P.L.1991, c.164
31 (C.52:14-19.1). The report shall:

32 (1) Describe the methodology the department is using to check
33 for compliance with the Paul Wellstone and Pete Domenici Mental
34 Health Parity and Addiction Equity Act of 2008, 42 U.S.C 18031(j),
35 and any federal regulations or guidance relating to the compliance
36 and oversight of that act.

37 (2) Describe the methodology the department is using to check
38 for compliance with P.L.1999, c.106 (C.17:48-6v et al.) and section
39 2 of P.L.1999, c.441 (C.52:14-17.29e).

40 (3) Identify market conduct examinations conducted or
41 completed during the preceding 12-month period regarding
42 compliance with parity in mental health and substance use disorder
43 benefits under state and federal laws and summarize the results of
44 such market conduct examinations. This shall include:

45 (a) The number of market conduct examinations initiated and
46 completed;

47 (b) The benefit classifications examined by each market conduct
48 examination;

- 1 (c) The subject matters of each market conduct examination,
2 including quantitative and non-quantitative treatment limitations;
- 3 (d) A summary of the basis for the final decision rendered in
4 each market conduct examination; and
- 5 (e) Individually identifiable information shall be excluded from
6 the reports consistent with state and Federal privacy protections.
- 7 (4) Detail any educational or corrective actions the department
8 has taken to ensure compliance with Paul Wellstone and Pete
9 Domenici Mental Health Parity and Addiction Equity Act of 2008,
10 42 U.S.C 18031(j), P.L.1999, c.106 (C.17:48-6v et al.) and section
11 2 of P.L.1999, c.441 (C.52:14-17.29e).
- 12 (5) Detail the department's educational approaches relating to
13 informing the public about behavioral health care parity protections
14 under State and federal law.
- 15 (6) Be written in non-technical, readily understandable language
16 and shall be made available to the public by, among such other
17 means as the department finds appropriate, posting the report on the
18 department's website.
- 19 f. The department shall post on its Internet website a report
20 disclosing the department's conclusions as to whether the analyses
21 collected from the carriers as specified in paragraph (3) of
22 subsection c. of this section demonstrate compliance with the
23 Mental Health Parity and Addiction Equity Act of 2008 and its
24 implementing regulations, specifically including whether or not
25 there is compliance with 45 C.F.R. 146.136(c)(4). The name and
26 identity of carriers shall be confidential, shall not be made public by
27 the department, and shall not be subject to public inspection.
- 28
- 29 12. This act shall take effect on the 60th day after enactment and
30 shall apply to all contracts and policies delivered, issued, executed
31 or renewed on or after that date.