

# SB1449



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

**SB1449**

Introduced 2/13/2019, by Sen. Julie A. Morrison

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/370c.1

Amends the Illinois Insurance Code. Provides that every insurer that amends, delivers, issues, or renews a group or individual policy or certificate of disability insurance or disability income insurance shall ensure parity for the payment of mental, emotional, nervous, or substance use disorders or conditions. Changes the definition of "treatment limitation" to include benefit payments under disability insurance or disability income insurance.

LRB101 05881 SMS 50901 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by  
5 changing Section 370c.1 as follows:

6 (215 ILCS 5/370c.1)

7 Sec. 370c.1. Mental, emotional, nervous, or substance use  
8 disorder or condition parity.

9 (a) On and after the effective date of this amendatory Act  
10 of the 99th General Assembly, every insurer that amends,  
11 delivers, issues, or renews a group or individual policy of  
12 accident and health insurance or a qualified health plan  
13 offered through the Health Insurance Marketplace in this State  
14 providing coverage for hospital or medical treatment and for  
15 the treatment of mental, emotional, nervous, or substance use  
16 disorders or conditions shall ensure that:

17 (1) the financial requirements applicable to such  
18 mental, emotional, nervous, or substance use disorder or  
19 condition benefits are no more restrictive than the  
20 predominant financial requirements applied to  
21 substantially all hospital and medical benefits covered by  
22 the policy and that there are no separate cost-sharing  
23 requirements that are applicable only with respect to

1           mental, emotional, nervous, or substance use disorder or  
2           condition benefits; and

3           (2) the treatment limitations applicable to such  
4           mental, emotional, nervous, or substance use disorder or  
5           condition benefits are no more restrictive than the  
6           predominant treatment limitations applied to substantially  
7           all hospital and medical benefits covered by the policy and  
8           that there are no separate treatment limitations that are  
9           applicable only with respect to mental, emotional,  
10          nervous, or substance use disorder or condition benefits.

11          (a-5) On and after the effective date of this amendatory  
12          Act of the 101st General Assembly, every insurer that amends,  
13          delivers, issues, or renews a group or individual policy or  
14          certificate of disability insurance or disability income  
15          insurance in or to any person in this State shall ensure that:

16                 (1) the benefits applicable to such mental, emotional,  
17                 nervous, or substance use disorders or conditions are no  
18                 more restrictive than the benefits available for all other  
19                 medical conditions covered by the policy or certificate and  
20                 that there are no separate requirements that are applicable  
21                 only with respect to mental, emotional, nervous, or  
22                 substance use disorder or condition benefits; and

23                 (2) the treatment limitations or other coverage  
24                 limitations applicable to such mental, emotional, nervous,  
25                 or substance use disorder or condition benefits are no more  
26                 restrictive than the benefits available for other

1       physiologic conditions covered by the policy and that there  
2       are no separate payment limitations that may be applied  
3       specifically with respect to mental, emotional, nervous,  
4       or substance use disorder or condition benefits.

5       (b) The following provisions shall apply concerning  
6 aggregate lifetime limits:

7           (1) In the case of a group or individual policy of  
8 accident and health insurance or a qualified health plan  
9 offered through the Health Insurance Marketplace amended,  
10 delivered, issued, or renewed in this State on or after the  
11 effective date of this amendatory Act of the 99th General  
12 Assembly that provides coverage for hospital or medical  
13 treatment and for the treatment of mental, emotional,  
14 nervous, or substance use disorders or conditions the  
15 following provisions shall apply:

16           (A) if the policy does not include an aggregate  
17 lifetime limit on substantially all hospital and  
18 medical benefits, then the policy may not impose any  
19 aggregate lifetime limit on mental, emotional,  
20 nervous, or substance use disorder or condition  
21 benefits; or

22           (B) if the policy includes an aggregate lifetime  
23 limit on substantially all hospital and medical  
24 benefits (in this subsection referred to as the  
25 "applicable lifetime limit"), then the policy shall  
26 either:

1           (i) apply the applicable lifetime limit both  
2           to the hospital and medical benefits to which it  
3           otherwise would apply and to mental, emotional,  
4           nervous, or substance use disorder or condition  
5           benefits and not distinguish in the application of  
6           the limit between the hospital and medical  
7           benefits and mental, emotional, nervous, or  
8           substance use disorder or condition benefits; or

9           (ii) not include any aggregate lifetime limit  
10          on mental, emotional, nervous, or substance use  
11          disorder or condition benefits that is less than  
12          the applicable lifetime limit.

13          (2) In the case of a policy that is not described in  
14          paragraph (1) of subsection (b) of this Section and that  
15          includes no or different aggregate lifetime limits on  
16          different categories of hospital and medical benefits, the  
17          Director shall establish rules under which subparagraph  
18          (B) of paragraph (1) of subsection (b) of this Section is  
19          applied to such policy with respect to mental, emotional,  
20          nervous, or substance use disorder or condition benefits by  
21          substituting for the applicable lifetime limit an average  
22          aggregate lifetime limit that is computed taking into  
23          account the weighted average of the aggregate lifetime  
24          limits applicable to such categories.

25          (c) The following provisions shall apply concerning annual  
26          limits:

1           (1) In the case of a group or individual policy of  
2           accident and health insurance or a qualified health plan  
3           offered through the Health Insurance Marketplace amended,  
4           delivered, issued, or renewed in this State on or after the  
5           effective date of this amendatory Act of the 99th General  
6           Assembly that provides coverage for hospital or medical  
7           treatment and for the treatment of mental, emotional,  
8           nervous, or substance use disorders or conditions the  
9           following provisions shall apply:

10                   (A) if the policy does not include an annual limit  
11                   on substantially all hospital and medical benefits,  
12                   then the policy may not impose any annual limits on  
13                   mental, emotional, nervous, or substance use disorder  
14                   or condition benefits; or

15                   (B) if the policy includes an annual limit on  
16                   substantially all hospital and medical benefits (in  
17                   this subsection referred to as the "applicable annual  
18                   limit"), then the policy shall either:

19                           (i) apply the applicable annual limit both to  
20                           the hospital and medical benefits to which it  
21                           otherwise would apply and to mental, emotional,  
22                           nervous, or substance use disorder or condition  
23                           benefits and not distinguish in the application of  
24                           the limit between the hospital and medical  
25                           benefits and mental, emotional, nervous, or  
26                           substance use disorder or condition benefits; or

1           (ii) not include any annual limit on mental,  
2           emotional, nervous, or substance use disorder or  
3           condition benefits that is less than the  
4           applicable annual limit.

5           (2) In the case of a policy that is not described in  
6           paragraph (1) of subsection (c) of this Section and that  
7           includes no or different annual limits on different  
8           categories of hospital and medical benefits, the Director  
9           shall establish rules under which subparagraph (B) of  
10          paragraph (1) of subsection (c) of this Section is applied  
11          to such policy with respect to mental, emotional, nervous,  
12          or substance use disorder or condition benefits by  
13          substituting for the applicable annual limit an average  
14          annual limit that is computed taking into account the  
15          weighted average of the annual limits applicable to such  
16          categories.

17          (d) With respect to mental, emotional, nervous, or  
18          substance use disorders or conditions, an insurer shall use  
19          policies and procedures for the election and placement of  
20          mental, emotional, nervous, or substance use disorder or  
21          condition treatment drugs on their formulary that are no less  
22          favorable to the insured as those policies and procedures the  
23          insurer uses for the selection and placement of drugs for  
24          medical or surgical conditions and shall follow the expedited  
25          coverage determination requirements for substance abuse  
26          treatment drugs set forth in Section 45.2 of the Managed Care

1 Reform and Patient Rights Act.

2 (e) This Section shall be interpreted in a manner  
3 consistent with all applicable federal parity regulations  
4 including, but not limited to, the Paul Wellstone and Pete  
5 Domenici Mental Health Parity and Addiction Equity Act of 2008,  
6 final regulations issued under the Paul Wellstone and Pete  
7 Domenici Mental Health Parity and Addiction Equity Act of 2008  
8 and final regulations applying the Paul Wellstone and Pete  
9 Domenici Mental Health Parity and Addiction Equity Act of 2008  
10 to Medicaid managed care organizations, the Children's Health  
11 Insurance Program, and alternative benefit plans.

12 (f) The provisions of subsections (b) and (c) of this  
13 Section shall not be interpreted to allow the use of lifetime  
14 or annual limits otherwise prohibited by State or federal law.

15 (g) As used in this Section:

16 "Financial requirement" includes deductibles, copayments,  
17 coinsurance, and out-of-pocket maximums, but does not include  
18 an aggregate lifetime limit or an annual limit subject to  
19 subsections (b) and (c).

20 "Mental, emotional, nervous, or substance use disorder or  
21 condition" means a condition or disorder that involves a mental  
22 health condition or substance use disorder that falls under any  
23 of the diagnostic categories listed in the mental and  
24 behavioral disorders chapter of the current edition of the  
25 International Classification of Disease or that is listed in  
26 the most recent version of the Diagnostic and Statistical



1 Manual of Mental Disorders.

2 "Treatment limitation" includes limits on benefits based  
3 on the frequency of treatment, number of visits, days of  
4 coverage, days in a waiting period, or other similar limits on  
5 the scope or duration of treatment, and shall also include  
6 benefit payments under disability insurance or disability  
7 income insurance policies or certificates. "Treatment  
8 limitation" includes both quantitative treatment limitations,  
9 which are expressed numerically (such as 50 outpatient visits  
10 per year), and nonquantitative treatment limitations, which  
11 otherwise limit the scope or duration of treatment, or the  
12 duration of benefit payments under the terms of a disability  
13 insurance policy or certificate or disability income insurance  
14 policy or certificate. A permanent exclusion of all benefits  
15 for a particular condition or disorder shall not be considered  
16 a treatment limitation. "Nonquantitative treatment" means  
17 those limitations as described under federal regulations (26  
18 CFR 54.9812-1). "Nonquantitative treatment limitations"  
19 include, but are not limited to, those limitations described  
20 under federal regulations 26 CFR 54.9812-1, 29 CFR 2590.712,  
21 and 45 CFR 146.136.

22 (h) The Department of Insurance shall implement the  
23 following education initiatives:

24 (1) By January 1, 2016, the Department shall develop a  
25 plan for a Consumer Education Campaign on parity. The  
26 Consumer Education Campaign shall focus its efforts

1 throughout the State and include trainings in the northern,  
2 southern, and central regions of the State, as defined by  
3 the Department, as well as each of the 5 managed care  
4 regions of the State as identified by the Department of  
5 Healthcare and Family Services. Under this Consumer  
6 Education Campaign, the Department shall: (1) by January 1,  
7 2017, provide at least one live training in each region on  
8 parity for consumers and providers and one webinar training  
9 to be posted on the Department website and (2) establish a  
10 consumer hotline to assist consumers in navigating the  
11 parity process by March 1, 2017. By January 1, 2018 the  
12 Department shall issue a report to the General Assembly on  
13 the success of the Consumer Education Campaign, which shall  
14 indicate whether additional training is necessary or would  
15 be recommended.

16 (2) The Department, in coordination with the  
17 Department of Human Services and the Department of  
18 Healthcare and Family Services, shall convene a working  
19 group of health care insurance carriers, mental health  
20 advocacy groups, substance abuse patient advocacy groups,  
21 and mental health physician groups for the purpose of  
22 discussing issues related to the treatment and coverage of  
23 mental, emotional, nervous, or substance use disorders or  
24 conditions and compliance with parity obligations under  
25 State and federal law. Compliance shall be measured,  
26 tracked, and shared during the meetings of the working

1 group. The working group shall meet once before January 1,  
2 2016 and shall meet semiannually thereafter. The  
3 Department shall issue an annual report to the General  
4 Assembly that includes a list of the health care insurance  
5 carriers, mental health advocacy groups, substance abuse  
6 patient advocacy groups, and mental health physician  
7 groups that participated in the working group meetings,  
8 details on the issues and topics covered, and any  
9 legislative recommendations developed by the working  
10 group.

11 (3) Not later than August 1 of each year, the  
12 Department, in conjunction with the Department of  
13 Healthcare and Family Services, shall issue a joint report  
14 to the General Assembly and provide an educational  
15 presentation to the General Assembly. The report and  
16 presentation shall:

17 (A) Cover the methodology the Departments use to  
18 check for compliance with the federal Paul Wellstone  
19 and Pete Domenici Mental Health Parity and Addiction  
20 Equity Act of 2008, 42 U.S.C. 18031(j), and any federal  
21 regulations or guidance relating to the compliance and  
22 oversight of the federal Paul Wellstone and Pete  
23 Domenici Mental Health Parity and Addiction Equity Act  
24 of 2008 and 42 U.S.C. 18031(j).

25 (B) Cover the methodology the Departments use to  
26 check for compliance with this Section and Sections

1 356z.23 and 370c of this Code.

2 (C) Identify market conduct examinations or, in  
3 the case of the Department of Healthcare and Family  
4 Services, audits conducted or completed during the  
5 preceding 12-month period regarding compliance with  
6 parity in mental, emotional, nervous, and substance  
7 use disorder or condition benefits under State and  
8 federal laws and summarize the results of such market  
9 conduct examinations and audits. This shall include:

10 (i) the number of market conduct examinations  
11 and audits initiated and completed;

12 (ii) the benefit classifications examined by  
13 each market conduct examination and audit;

14 (iii) the subject matter of each market  
15 conduct examination and audit, including  
16 quantitative and nonquantitative treatment  
17 limitations; and

18 (iv) a summary of the basis for the final  
19 decision rendered in each market conduct  
20 examination and audit.

21 Individually identifiable information shall be  
22 excluded from the reports consistent with federal  
23 privacy protections.

24 (D) Detail any educational or corrective actions  
25 the Departments have taken to ensure compliance with  
26 the federal Paul Wellstone and Pete Domenici Mental

1 Health Parity and Addiction Equity Act of 2008, 42  
2 U.S.C. 18031(j), this Section, and Sections 356z.23  
3 and 370c of this Code.

4 (E) The report must be written in non-technical,  
5 readily understandable language and shall be made  
6 available to the public by, among such other means as  
7 the Departments find appropriate, posting the report  
8 on the Departments' websites.

9 (i) The Parity Advancement Fund is created as a special  
10 fund in the State treasury. Moneys from fines and penalties  
11 collected from insurers for violations of this Section shall be  
12 deposited into the Fund. Moneys deposited into the Fund for  
13 appropriation by the General Assembly to the Department shall  
14 be used for the purpose of providing financial support of the  
15 Consumer Education Campaign, parity compliance advocacy, and  
16 other initiatives that support parity implementation and  
17 enforcement on behalf of consumers.

18 (j) The Department of Insurance and the Department of  
19 Healthcare and Family Services shall convene and provide  
20 technical support to a workgroup of 11 members that shall be  
21 comprised of 3 mental health parity experts recommended by an  
22 organization advocating on behalf of mental health parity  
23 appointed by the President of the Senate; 3 behavioral health  
24 providers recommended by an organization that represents  
25 behavioral health providers appointed by the Speaker of the  
26 House of Representatives; 2 representing Medicaid managed care

1 organizations recommended by an organization that represents  
2 Medicaid managed care plans appointed by the Minority Leader of  
3 the House of Representatives; 2 representing commercial  
4 insurers recommended by an organization that represents  
5 insurers appointed by the Minority Leader of the Senate; and a  
6 representative of an organization that represents Medicaid  
7 managed care plans appointed by the Governor.

8 The workgroup shall provide recommendations to the General  
9 Assembly on health plan data reporting requirements that  
10 separately break out data on mental, emotional, nervous, or  
11 substance use disorder or condition benefits and data on other  
12 medical benefits, including physical health and related health  
13 services no later than December 31, 2019. The recommendations  
14 to the General Assembly shall be filed with the Clerk of the  
15 House of Representatives and the Secretary of the Senate in  
16 electronic form only, in the manner that the Clerk and the  
17 Secretary shall direct. This workgroup shall take into account  
18 federal requirements and recommendations on mental health  
19 parity reporting for the Medicaid program. This workgroup shall  
20 also develop the format and provide any needed definitions for  
21 reporting requirements in subsection (k). The research and  
22 evaluation of the working group shall include, but not be  
23 limited to:

24 (1) claims denials due to benefit limits, if  
25 applicable;

26 (2) administrative denials for no prior authorization;

- 1 (3) denials due to not meeting medical necessity;
- 2 (4) denials that went to external review and whether
- 3 they were upheld or overturned for medical necessity;
- 4 (5) out-of-network claims;
- 5 (6) emergency care claims;
- 6 (7) network directory providers in the outpatient
- 7 benefits classification who filed no claims in the last 6
- 8 months, if applicable;
- 9 (8) the impact of existing and pertinent limitations
- 10 and restrictions related to approved services, licensed
- 11 providers, reimbursement levels, and reimbursement
- 12 methodologies within the Division of Mental Health, the
- 13 Division of Substance Use Prevention and Recovery
- 14 programs, the Department of Healthcare and Family
- 15 Services, and, to the extent possible, federal regulations
- 16 and law; and
- 17 (9) when reporting and publishing should begin.

18 Representatives from the Department of Healthcare and  
19 Family Services, representatives from the Division of Mental  
20 Health, and representatives from the Division of Substance Use  
21 Prevention and Recovery shall provide technical advice to the  
22 workgroup.

23 (k) An insurer that amends, delivers, issues, or renews a  
24 group or individual policy of accident and health insurance or  
25 a qualified health plan offered through the health insurance  
26 marketplace in this State providing coverage for hospital or

1 medical treatment and for the treatment of mental, emotional,  
2 nervous, or substance use disorders or conditions shall submit  
3 an annual report, the format and definitions for which will be  
4 developed by the workgroup in subsection (j), to the  
5 Department, or, with respect to medical assistance, the  
6 Department of Healthcare and Family Services starting on or  
7 before July 1, 2020 that contains the following information  
8 separately for inpatient in-network benefits, inpatient  
9 out-of-network benefits, outpatient in-network benefits,  
10 outpatient out-of-network benefits, emergency care benefits,  
11 and prescription drug benefits in the case of accident and  
12 health insurance or qualified health plans, or inpatient,  
13 outpatient, emergency care, and prescription drug benefits in  
14 the case of medical assistance:

15 (1) A summary of the plan's pharmacy management  
16 processes for mental, emotional, nervous, or substance use  
17 disorder or condition benefits compared to those for other  
18 medical benefits.

19 (2) A summary of the internal processes of review for  
20 experimental benefits and unproven technology for mental,  
21 emotional, nervous, or substance use disorder or condition  
22 benefits and those for other medical benefits.

23 (3) A summary of how the plan's policies and procedures  
24 for utilization management for mental, emotional, nervous,  
25 or substance use disorder or condition benefits compare to  
26 those for other medical benefits.



1           (4) A description of the process used to develop or  
2           select the medical necessity criteria for mental,  
3           emotional, nervous, or substance use disorder or condition  
4           benefits and the process used to develop or select the  
5           medical necessity criteria for medical and surgical  
6           benefits.

7           (5) Identification of all nonquantitative treatment  
8           limitations that are applied to both mental, emotional,  
9           nervous, or substance use disorder or condition benefits  
10          and medical and surgical benefits within each  
11          classification of benefits.

12          (6) The results of an analysis that demonstrates that  
13          for the medical necessity criteria described in  
14          subparagraph (A) and for each nonquantitative treatment  
15          limitation identified in subparagraph (B), as written and  
16          in operation, the processes, strategies, evidentiary  
17          standards, or other factors used in applying the medical  
18          necessity criteria and each nonquantitative treatment  
19          limitation to mental, emotional, nervous, or substance use  
20          disorder or condition benefits within each classification  
21          of benefits are comparable to, and are applied no more  
22          stringently than, the processes, strategies, evidentiary  
23          standards, or other factors used in applying the medical  
24          necessity criteria and each nonquantitative treatment  
25          limitation to medical and surgical benefits within the  
26          corresponding classification of benefits; at a minimum,

1 the results of the analysis shall:

2 (A) identify the factors used to determine that a  
3 nonquantitative treatment limitation applies to a  
4 benefit, including factors that were considered but  
5 rejected;

6 (B) identify and define the specific evidentiary  
7 standards used to define the factors and any other  
8 evidence relied upon in designing each nonquantitative  
9 treatment limitation;

10 (C) provide the comparative analyses, including  
11 the results of the analyses, performed to determine  
12 that the processes and strategies used to design each  
13 nonquantitative treatment limitation, as written, for  
14 mental, emotional, nervous, or substance use disorder  
15 or condition benefits are comparable to, and are  
16 applied no more stringently than, the processes and  
17 strategies used to design each nonquantitative  
18 treatment limitation, as written, for medical and  
19 surgical benefits;

20 (D) provide the comparative analyses, including  
21 the results of the analyses, performed to determine  
22 that the processes and strategies used to apply each  
23 nonquantitative treatment limitation, in operation,  
24 for mental, emotional, nervous, or substance use  
25 disorder or condition benefits are comparable to, and  
26 applied no more stringently than, the processes or

1 strategies used to apply each nonquantitative  
2 treatment limitation, in operation, for medical and  
3 surgical benefits; and

4 (E) disclose the specific findings and conclusions  
5 reached by the insurer that the results of the analyses  
6 described in subparagraphs (C) and (D) indicate that  
7 the insurer is in compliance with this Section and the  
8 Mental Health Parity and Addiction Equity Act of 2008  
9 and its implementing regulations, which includes 42  
10 CFR Parts 438, 440, and 457 and 45 CFR 146.136 and any  
11 other related federal regulations found in the Code of  
12 Federal Regulations.

13 (7) Any other information necessary to clarify data  
14 provided in accordance with this Section requested by the  
15 Director, including information that may be proprietary or  
16 have commercial value, under the requirements of Section 30  
17 of the Viatical Settlements Act of 2009.

18 (1) An insurer that amends, delivers, issues, or renews a  
19 group or individual policy of accident and health insurance or  
20 a qualified health plan offered through the health insurance  
21 marketplace in this State providing coverage for hospital or  
22 medical treatment and for the treatment of mental, emotional,  
23 nervous, or substance use disorders or conditions on or after  
24 the effective date of this amendatory Act of the 100th General  
25 Assembly shall, in advance of the plan year, make available to  
26 the Department or, with respect to medical assistance, the

1 Department of Healthcare and Family Services and to all plan  
2 participants and beneficiaries the information required in  
3 subparagraphs (C) through (E) of paragraph (6) of subsection  
4 (k). For plan participants and medical assistance  
5 beneficiaries, the information required in subparagraphs (C)  
6 through (E) of paragraph (6) of subsection (k) shall be made  
7 available on a publicly-available website whose web address is  
8 prominently displayed in plan and managed care organization  
9 informational and marketing materials.

10 (m) In conjunction with its compliance examination program  
11 conducted in accordance with the Illinois State Auditing Act,  
12 the Auditor General shall undertake a review of compliance by  
13 the Department and the Department of Healthcare and Family  
14 Services with Section 370c and this Section. Any findings  
15 resulting from the review conducted under this Section shall be  
16 included in the applicable State agency's compliance  
17 examination report. Each compliance examination report shall  
18 be issued in accordance with Section 3-14 of the Illinois State  
19 Auditing Act. A copy of each report shall also be delivered to  
20 the head of the applicable State agency and posted on the  
21 Auditor General's website.

22 (Source: P.A. 99-480, eff. 9-9-15; 100-1024, eff. 1-1-19.)