

SB3425



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3425

Introduced 2/14/2020, by Sen. Melinda Bush

SYNOPSIS AS INTRODUCED:

215 ILCS 5/370c.1

Amends the Illinois Insurance Code. Provides that a workgroup convened by the Department of Insurance and the Department of Healthcare and Family Services shall provide recommendations to the General Assembly on health plan data reporting requirements that separately break out data on mental, emotional, nervous, or substance use disorder or condition benefits and data on other medical benefits no later than May 31, 2020 (rather than December 31, 2019). Effective immediately.

LRB101 17932 BMS 67368 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 (b) The following provisions shall apply concerning
12 aggregate lifetime limits:

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

22 (A) if the policy does not include an aggregate
23 lifetime limit on substantially all hospital and
24 medical benefits, then the policy may not impose any
25 aggregate lifetime limit on mental, emotional,
26 nervous, or substance use disorder or condition

1 benefits; or

2 (B) if the policy includes an aggregate lifetime
3 limit on substantially all hospital and medical
4 benefits (in this subsection referred to as the
5 "applicable lifetime limit"), then the policy shall
6 either:

7 (i) apply the applicable lifetime limit both
8 to the hospital and medical benefits to which it
9 otherwise would apply and to mental, emotional,
10 nervous, or substance use disorder or condition
11 benefits and not distinguish in the application of
12 the limit between the hospital and medical
13 benefits and mental, emotional, nervous, or
14 substance use disorder or condition benefits; or

15 (ii) not include any aggregate lifetime limit
16 on mental, emotional, nervous, or substance use
17 disorder or condition benefits that is less than
18 the applicable lifetime limit.

19 (2) In the case of a policy that is not described in
20 paragraph (1) of subsection (b) of this Section and that
21 includes no or different aggregate lifetime limits on
22 different categories of hospital and medical benefits, the
23 Director shall establish rules under which subparagraph
24 (B) of paragraph (1) of subsection (b) of this Section is
25 applied to such policy with respect to mental, emotional,
26 nervous, or substance use disorder or condition benefits by

1 substituting for the applicable lifetime limit an average
2 aggregate lifetime limit that is computed taking into
3 account the weighted average of the aggregate lifetime
4 limits applicable to such categories.

5 (c) The following provisions shall apply concerning annual
6 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 annual limit
17 on substantially all hospital and medical benefits,
18 then the policy may not impose any annual limits on
19 mental, emotional, nervous, or substance use disorder
20 or condition benefits; or

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

25 (i) apply the applicable annual limit both to
26 the hospital and medical benefits to which it

1 otherwise would apply and to mental, emotional,
2 nervous, or substance use disorder or condition
3 benefits and not distinguish in the application of
4 the limit between the hospital and medical
5 benefits and mental, emotional, nervous, or
6 substance use disorder or condition benefits; or

7 (ii) not include any annual limit on mental,
8 emotional, nervous, or substance use disorder or
9 condition benefits that is less than the
10 applicable annual limit.

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

23 (d) With respect to mental, emotional, nervous, or
24 substance use disorders or conditions, an insurer shall use
25 policies and procedures for the election and placement of
26 mental, emotional, nervous, or substance use disorder or

1 condition treatment drugs on their formulary that are no less
2 favorable to the insured as those policies and procedures the
3 insurer uses for the selection and placement of drugs for
4 medical or surgical conditions and shall follow the expedited
5 coverage determination requirements for substance abuse
6 treatment drugs set forth in Section 45.2 of the Managed Care
7 Reform and Patient Rights Act.

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

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

21 (g) As used in this Section:

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

26 "Mental, emotional, nervous, or substance use disorder or

1 condition" means a condition or disorder that involves a mental
2 health condition or substance use disorder that falls under any
3 of the diagnostic categories listed in the mental and
4 behavioral disorders chapter of the current edition of the
5 International Classification of Disease or that is listed in
6 the most recent version of the Diagnostic and Statistical
7 Manual of Mental Disorders.

8 "Treatment limitation" includes limits on benefits based
9 on the frequency of treatment, number of visits, days of
10 coverage, days in a waiting period, or other similar limits on
11 the scope or duration of treatment. "Treatment limitation"
12 includes both quantitative treatment limitations, which are
13 expressed numerically (such as 50 outpatient visits per year),
14 and nonquantitative treatment limitations, which otherwise
15 limit the scope or duration of treatment. A permanent exclusion
16 of all benefits for a particular condition or disorder shall
17 not be considered a treatment limitation. "Nonquantitative
18 treatment" means those limitations as described under federal
19 regulations (26 CFR 54.9812-1). "Nonquantitative treatment
20 limitations" include, but are not limited to, those limitations
21 described under federal regulations 26 CFR 54.9812-1, 29 CFR
22 2590.712, and 45 CFR 146.136.

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

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

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

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

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

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

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

26 (B) Cover the methodology the Departments use to

1 check for compliance with this Section and Sections
2 356z.23 and 370c of this Code.

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

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

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

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

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

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

25 (D) Detail any educational or corrective actions
26 the Departments have taken to ensure compliance with

1 the federal Paul Wellstone and Pete Domenici Mental
2 Health Parity and Addiction Equity Act of 2008, 42
3 U.S.C. 18031(j), this Section, and Sections 356z.23
4 and 370c of this Code.

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

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

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

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

9 The workgroup shall provide recommendations to the General
10 Assembly on health plan data reporting requirements that
11 separately break out data on mental, emotional, nervous, or
12 substance use disorder or condition benefits and data on other
13 medical benefits, including physical health and related health
14 services no later than May 31, 2020 ~~December 31, 2019~~. The
15 recommendations to the General Assembly shall be filed with the
16 Clerk of the House of Representatives and the Secretary of the
17 Senate in electronic form only, in the manner that the Clerk
18 and the Secretary shall direct. This workgroup shall take into
19 account federal requirements and recommendations on mental
20 health parity reporting for the Medicaid program. This
21 workgroup shall also develop the format and provide any needed
22 definitions for reporting requirements in subsection (k). The
23 research and evaluation of the working group shall include, but
24 not be limited to:

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

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

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

24 (k) An insurer that amends, delivers, issues, or renews a
25 group or individual policy of accident and health insurance or
26 a qualified health plan offered through the health insurance

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

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

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

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

1 those for other medical benefits.

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

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

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

1 corresponding classification of benefits; at a minimum,
2 the results of the analysis shall:

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

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

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

21 (D) provide the comparative analyses, including
22 the results of the analyses, performed to determine
23 that the processes and strategies used to apply each
24 nonquantitative treatment limitation, in operation,
25 for mental, emotional, nervous, or substance use
26 disorder or condition benefits are comparable to, and

1 applied no more stringently than, the processes or
2 strategies used to apply each nonquantitative
3 treatment limitation, in operation, for medical and
4 surgical benefits; and

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

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

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

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

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

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

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.