

# SB1568



## 103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1568

Introduced 2/8/2023, 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.

LRB103 28639 BMS 55020 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 July 23, 2021 (the effective date of  
10 Public Act 102-135), every insurer that amends, delivers,  
11 issues, or renews a group or individual policy of accident and  
12 health insurance or a qualified health plan offered through  
13 the Health Insurance Marketplace in this State providing  
14 coverage for hospital or medical treatment and for the  
15 treatment of mental, emotional, nervous, or substance use  
16 disorders or conditions shall ensure prior to policy issuance  
17 that:

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

1 requirements that are applicable only with respect to  
2 mental, emotional, nervous, or substance use disorder or  
3 condition benefits; and

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

12 (a-5) On and after the effective date of this amendatory  
13 Act of the 103rd General Assembly, every insurer that amends,  
14 delivers, issues, or renews a group or individual policy or  
15 certificate of disability insurance or disability income  
16 insurance in or to any person in this State shall ensure that:

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

25 (2) the treatment limitations or other coverage  
26 limitations applicable to such mental, emotional, nervous,

1       or substance use disorder or condition benefits are no  
2       more restrictive than the benefits available for other  
3       physical conditions covered by the policy and that there  
4       are no separate payment limitations that may be applied  
5       specifically with respect to mental, emotional, nervous,  
6       or substance use disorder or condition benefits.

7       (b) The following provisions shall apply concerning  
8 aggregate lifetime limits:

9           (1) In the case of a group or individual policy of  
10 accident and health insurance or a qualified health plan  
11 offered through the Health Insurance Marketplace amended,  
12 delivered, issued, or renewed in this State on or after  
13 September 9, 2015 (the effective date of Public Act  
14 99-480) that provides coverage for hospital or medical  
15 treatment and for the treatment of mental, emotional,  
16 nervous, or substance use disorders or conditions the  
17 following provisions shall apply:

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

24           (B) if the policy includes an aggregate lifetime  
25 limit on substantially all hospital and medical  
26 benefits (in this subsection referred to as the

1 "applicable lifetime limit"), then the policy shall  
2 either:

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

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

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

1 (c) The following provisions shall apply concerning annual  
2 limits:

3 (1) In the case of a group or individual policy of  
4 accident and health insurance or a qualified health plan  
5 offered through the Health Insurance Marketplace amended,  
6 delivered, issued, or renewed in this State on or after  
7 September 9, 2015 (the effective date of Public Act  
8 99-480) that provides coverage for hospital or medical  
9 treatment and for the treatment of mental, emotional,  
10 nervous, or substance use disorders or conditions the  
11 following provisions shall apply:

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

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

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

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

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

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

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

1 coverage determination requirements for substance abuse  
2 treatment drugs set forth in Section 45.2 of the Managed Care  
3 Reform and Patient Rights Act.

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

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

17 (g) As used in this Section:

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

22 "Mental, emotional, nervous, or substance use disorder or  
23 condition" means a condition or disorder that involves a  
24 mental health condition or substance use disorder that falls  
25 under any of the diagnostic categories listed in the mental  
26 and behavioral disorders chapter of the current edition of the



1 International Classification of Disease or that is listed in  
2 the most recent version of the Diagnostic and Statistical  
3 Manual of Mental Disorders.

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

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

26 (1) By January 1, 2016, the Department shall develop a

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

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

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

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

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

1 (B) Cover the methodology the Departments use to  
2 check for compliance with this Section and Sections  
3 356z.23 and 370c of this Code.

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

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

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

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

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

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

26 (D) Detail any educational or corrective actions

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

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

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

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

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

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

26 (1) claims denials due to benefit limits, if

1 applicable;

2 (2) administrative denials for no prior authorization;

3 (3) denials due to not meeting medical necessity;

4 (4) denials that went to external review and whether  
5 they were upheld or overturned for medical necessity;

6 (5) out-of-network claims;

7 (6) emergency care claims;

8 (7) network directory providers in the outpatient  
9 benefits classification who filed no claims in the last 6  
10 months, if applicable;

11 (8) the impact of existing and pertinent limitations  
12 and restrictions related to approved services, licensed  
13 providers, reimbursement levels, and reimbursement  
14 methodologies within the Division of Mental Health, the  
15 Division of Substance Use Prevention and Recovery  
16 programs, the Department of Healthcare and Family  
17 Services, and, to the extent possible, federal regulations  
18 and law; and

19 (9) when reporting and publishing should begin.

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

25 (k) An insurer that amends, delivers, issues, or renews a  
26 group or individual policy of accident and health insurance or

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

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

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

25 (3) A summary of how the plan's policies and  
26 procedures for utilization management for mental,



1 emotional, nervous, or substance use disorder or condition  
2 benefits compare to those for other medical benefits.

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

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

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

1 limitation to medical and surgical benefits within the  
2 corresponding classification of benefits; at a minimum,  
3 the results of the analysis shall:

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

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

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

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

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

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

15 (7) Any other information necessary to clarify data  
16 provided in accordance with this Section requested by the  
17 Director, including information that may be proprietary or  
18 have commercial value, under the requirements of Section  
19 30 of the Viatical Settlements Act of 2009.

20 (1) An insurer that amends, delivers, issues, or renews a  
21 group or individual policy of accident and health insurance or  
22 a qualified health plan offered through the health insurance  
23 marketplace in this State providing coverage for hospital or  
24 medical treatment and for the treatment of mental, emotional,  
25 nervous, or substance use disorders or conditions on or after  
26 January 1, 2019 (the effective date of Public Act 100-1024)

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

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

24 (Source: P.A. 102-135, eff. 7-23-21; 102-579, eff. 8-25-21;  
25 102-813, eff. 5-13-22.)