

SENATE BILL 684

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EMERGENCY BILL

4lr2261
CF HB 1074

By: **Senator Augustine**

Introduced and read first time: January 29, 2024

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 29, 2024

CHAPTER _____

1 AN ACT concerning

2 **Health Insurance – Mental Health and Substance Use Disorder Benefits –**
3 **Sunset Repeal and Modification of Reporting Requirements**

4 FOR the purpose of altering certain reporting requirements on health insurance carriers
5 relating to compliance with the federal Mental Health Parity and Addiction Equity
6 Act; altering requirements for certain analyses of nonquantitative treatment
7 limitations required of health insurance carriers; ~~authorizing the Maryland~~
8 ~~Insurance Commissioner to exercise discretion to review subsets of nonquantitative~~
9 ~~treatment limitations under certain circumstances~~; establishing certain remedies
10 the Commissioner may use to enforce compliance with the Mental Health Parity and
11 Addiction Equity Act and related reporting requirements; establishing that a health
12 insurance carrier has the burden of persuasion in demonstrating that its health plan
13 complies with the federal Mental Health Parity and Addiction Equity Act; repealing
14 the requirement that the Commissioner use a certain form for the reporting
15 requirements; repealing the termination date for the reporting requirements; and
16 generally relating to health insurance carriers and mental health and substance use
17 disorder benefits.

18 BY repealing and reenacting, with amendments,
19 Article – Insurance
20 Section 15–144
21 Annotated Code of Maryland
22 (2017 Replacement Volume and 2023 Supplement)

23 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Insurance
 2 Section 15–1309(a)(1) and (3)
 3 Annotated Code of Maryland
 4 (2017 Replacement Volume and 2023 Supplement)

5 BY repealing
 6 Chapter 211 of the Acts of the General Assembly of 2020
 7 Section 2

8 BY repealing and reenacting, with amendments,
 9 Chapter 211 of the Acts of the General Assembly of 2020
 10 Section 4

11 BY repealing
 12 Chapter 212 of the Acts of the General Assembly of 2020
 13 Section 2

14 BY repealing and reenacting, with amendments,
 15 Chapter 212 of the Acts of the General Assembly of 2020
 16 Section 4

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 18 That the Laws of Maryland read as follows:

19 **Article – Insurance**

20 15–144.

21 (a) (1) In this section the following words have the meanings indicated.

22 (2) “Carrier” means:

23 (i) an insurer that holds a certificate of authority in the State and
 24 provides health insurance in the State;

25 (ii) a health maintenance organization that is licensed to operate in
 26 the State;

27 (iii) a nonprofit health service plan that is licensed to operate in the
 28 State; or

29 (iv) any other person or organization that provides health benefit
 30 plans subject to State insurance regulation.

31 (3) “Health benefit plan” means:

1 (i) for a large group or blanket plan, a health benefit plan as defined
2 in § 15–1401 of this title;

3 (ii) for a small group plan, a health benefit plan as defined in §
4 15–1201 of this title;

5 (iii) for an individual plan:

6 1. a health benefit plan as defined in § 15–1301(l) of this title;

7 or

8 2. an individual health benefit plan as defined in §
9 15–1301(o) of this title;

10 (iv) short-term limited duration insurance as defined in § 15–1301(s)
11 of this title; or

12 (v) a student health plan as defined in § 15–1318(a) of this title.

13 (4) “Medical/surgical benefits” has the meaning stated in 45 C.F.R. §
14 146.136(a) and 29 C.F.R. § 2590.712(a).

15 (5) “Mental health benefits” has the meaning stated in 45 C.F.R. §
16 146.136(a) and 29 C.F.R. § 2590.712(a).

17 (6) “Nonquantitative treatment limitation” means treatment limitations
18 as defined in 45 C.F.R. § 146.136(a) and 29 C.F.R. § 2590.712(a).

19 (7) **(I)** “Parity Act” means the Paul Wellstone and Pete Domenici
20 Mental Health Parity and Addiction Equity Act of 2008 [and 45 C.F.R. § 146.136 and 29
21 C.F.R. § 2590.712], **AS AMENDED**.

22 **(II) “PARITY ACT” INCLUDES 45 C.F.R. § 146.136, 29 C.F.R. §**
23 **2590.712, AND ANY OTHER RELATED FEDERAL REGULATIONS FOUND IN THE CODE**
24 **OF FEDERAL REGULATIONS TO IMPLEMENT OR ENFORCE THE PAUL WELLSTONE**
25 **AND PETE DOMENICI MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF**
26 **2008.**

27 (8) “Parity Act classification” means:

28 (i) inpatient in-network benefits;

29 (ii) inpatient out-of-network benefits;

30 (iii) outpatient in-network benefits;

1 (iv) outpatient out-of-network benefits;

2 (v) prescription drug benefits; and

3 (vi) emergency care benefits.

4 **(9) "PRODUCT" HAS THE MEANING STATED IN § 15-1309(A)(3) OF**
 5 **THIS TITLE.**

6 ~~(9)~~ **(10)** "Substance use disorder benefits" has the meaning stated in 45
 7 C.F.R. § 146.136(a) and 29 C.F.R. § 2590.712(a).

8 (b) This section applies to a carrier that delivers or issues for delivery a health
 9 benefit plan in the State.

10 **(C) (1) EACH CARRIER SUBJECT TO THIS SECTION SHALL:**

11 **(I) FOR EACH PARITY ACT CLASSIFICATION, IDENTIFY ALL**
 12 **NONQUANTITATIVE TREATMENT LIMITATIONS THAT ARE APPLIED TO MENTAL**
 13 **HEALTH BENEFITS, SUBSTANCE USE DISORDER BENEFITS, AND MEDICAL/SURGICAL**
 14 **BENEFITS;**

15 **(II) IN ACCORDANCE WITH THE PARITY ACT, PERFORM AND**
 16 **DOCUMENT COMPARATIVE ANALYSES OF THE DESIGN AND APPLICATION OF ALL**
 17 **NONQUANTITATIVE TREATMENT LIMITATIONS IMPOSED ON MENTAL HEALTH**
 18 **BENEFITS AND SUBSTANCE USE DISORDER BENEFITS;**

19 **(III) PROVIDE THE COMPARATIVE ANALYSIS FOR EACH**
 20 **NONQUANTITATIVE TREATMENT LIMITATION REQUESTED BY THE COMMISSIONER**
 21 **WITHIN:**

22 **1. 15 WORKING DAYS AFTER A WRITTEN REQUEST; OR**

23 **2. IF ADOPTED BY THE FEDERAL GOVERNMENT, LESS**
 24 **THAN 15 WORKING DAYS TO ALIGN WITH THE FEDERAL RULE OR REGULATION;**

25 **(IV) WITHIN 30 DAYS AFTER A WRITTEN REQUEST, PROVIDE THE**
 26 **COMPARATIVE ANALYSIS FOR EACH NONQUANTITATIVE TREATMENT LIMITATION**
 27 **AND RELATED IN OPERATION DATA ANALYSIS, IF AVAILABLE AND REQUESTED BY A**
 28 **MEMBER IN ACCORDANCE WITH THE PARITY ACT DISCLOSURE REQUIREMENTS OR,**
 29 **FOR MEMBERS WITH INDIVIDUAL PLANS, IN ACCORDANCE WITH SUBSECTION (E)(7)**
 30 **OF THIS SECTION; AND**

31 **(V) SUBMIT THE REPORTS REQUIRED UNDER PARAGRAPH (2)**
 32 **OF THIS SUBSECTION.**

1 ~~(e)~~ ~~(1)~~ **(2)** On or before [March 1, 2022, and March 1, 2024] ~~MARCH 1~~
 2 ~~EACH YEAR, BEGINNING IN 2025 JULY 1, 2024, AND EVERY 2 YEARS THEREAFTER,~~
 3 each carrier subject to this section shall:

4 ~~(i)~~ ~~identify the five health benefit plans with the highest enrollment~~
 5 ~~for each product offered by the carrier in the individual, small, and large group markets;~~
 6 ~~and~~

7 ~~(ii)~~ submit a report to the Commissioner ON EACH PRODUCT
 8 OFFERED BY THE CARRIER IN THE INDIVIDUAL, SMALL, AND LARGE GROUP
 9 MARKETS to demonstrate the carrier's compliance with the Parity Act.

10 ~~(2)~~ **(3)** The report submitted under paragraph ~~(1)~~ **(2)** of this subsection
 11 shall include ~~the~~ the following information:

12 **(I) ALL NONQUANTITATIVE TREATMENT LIMITATION**
 13 ~~COMPARATIVE ANALYSIS~~ INFORMATION REQUIRED UNDER THE PARITY ACT,
 14 **SUBSECTION (D) OF THIS SECTION, AND ANY STATE REGULATIONS** for the ~~health~~
 15 ~~benefit plans identified~~ **PRODUCTS IDENTIFIED** under [item] ~~PARAGRAPH (1)(i)~~ **(2)** of
 16 this subsection; ~~INCLUDING:~~

17 ~~(i)~~ ~~a description of the process used to develop or select the medical~~
 18 ~~necessity criteria for mental health benefits and substance use disorder benefits and the~~
 19 ~~process used to develop or select the medical necessity criteria for medical and surgical~~
 20 ~~benefits;~~

21 ~~(ii)~~ ~~for each Parity Act classification, identification of~~
 22 ~~nonquantitative treatment limitations that are applied to mental health benefits and~~
 23 ~~substance use disorder benefits and medical and surgical benefits;~~

24 ~~(iii)~~ ~~identification of the description of the nonquantitative treatment~~
 25 ~~limitations identified under item (ii) of this paragraph in documents and instruments under~~
 26 ~~which the plan is established or operated; and~~

27 ~~(iv)~~ **(II)** the results of ~~the~~ **A** comparative analysis ~~as described~~
 28 ~~under subsections (d) and (e) of this section.~~ CONDUCTED BY THE CARRIER ON NOT
 29 FEWER THAN FIVE NONQUANTITATIVE TREATMENT LIMITATIONS SELECTED BY THE
 30 COMMISSIONER IN ACCORDANCE WITH PARAGRAPH (5) OF THIS SUBSECTION; AND

31 **(III) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, A**
 32 STATEMENT, SIGNED BY A CORPORATE OFFICER, ATTESTING THAT, FOR EACH
 33 PRODUCT IDENTIFIED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE SELECTED
 34 NONQUANTITATIVE TREATMENT LIMITATIONS AND THE PROCESSES, STRATEGIES,
 35 EVIDENTIARY STANDARDS, OR OTHER FACTORS USED IN DESIGNING AND APPLYING

1 THE SELECTED NONQUANTITATIVE TREATMENT LIMITATIONS TO MENTAL HEALTH
2 BENEFITS, SUBSTANCE USE DISORDER BENEFITS, AND MEDICAL/SURGICAL
3 BENEFITS ARE THE SAME FOR ALL PLANS WITHIN THE PRODUCT, AS WRITTEN AND
4 IN OPERATION.

5 (4) IF, FOR ANY PLAN WITHIN A PRODUCT IDENTIFIED UNDER
6 PARAGRAPH (2) OF THIS SUBSECTION, THE PROCESSES, STRATEGIES, EVIDENTIARY
7 STANDARDS, OR OTHER FACTORS USED IN DESIGNING AND APPLYING THE
8 SELECTED NONQUANTITATIVE TREATMENT LIMITATIONS TO MENTAL HEALTH
9 BENEFITS, SUBSTANCE USE DISORDER BENEFITS, OR MEDICAL/SURGICAL BENEFITS
10 ARE DIFFERENT, AS WRITTEN OR IN OPERATION, FROM THE OTHER PLANS WITHIN
11 THE PRODUCT:

12 (I) THE STATEMENT REQUIRED UNDER PARAGRAPH (3)(III) OF
13 THIS SUBSECTION SHALL NOTE THE EXCEPTION AND IDENTIFY THE PLAN; AND

14 (II) THE CARRIER SHALL SUBMIT A SEPARATE COMPARATIVE
15 ANALYSIS FOR THE SELECTED NONQUANTITATIVE TREATMENT LIMITATIONS FOR
16 THE PLAN.

17 (5) (I) IN SELECTING THE NONQUANTITATIVE TREATMENT
18 LIMITATIONS REQUIRED TO BE INCLUDED FOR EACH REPORTING PERIOD, THE
19 COMMISSIONER:

20 1. SHALL PRIORITIZE THE NONQUANTITATIVE
21 TREATMENT LIMITATIONS IDENTIFIED BY THE COMMISSIONER AS HAVING THE
22 GREATEST IMPACT ON MEMBER ACCESS TO CARE;

23 2. SHALL REVIEW THE SAME SUBSET OF
24 NONQUANTITATIVE TREATMENT LIMITATIONS FOR EACH CARRIER REPORT; AND

25 3. MAY TAKE INTO CONSIDERATION OTHER FACTORS
26 DETERMINED RELEVANT BY THE COMMISSIONER, INCLUDING COMPLAINT TRENDS,
27 FEDERAL PARITY ACT GUIDANCE, AND WHETHER THE NONQUANTITATIVE
28 TREATMENT LIMITATION WAS SELECTED FOR A PREVIOUS REPORTING YEAR.

29 (II) OF THE FIVE SELECTED NONQUANTITATIVE TREATMENT
30 LIMITATIONS:

31 1. NOT MORE THAN TWO MAY BE FOR UTILIZATION
32 REVIEW; AND

33 2. AT LEAST ONE MUST BE FOR NETWORK COMPOSITION,
34 INCLUDING REIMBURSEMENT RATE SETTING.

1 **(6) A FINDING OF NONCOMPLIANCE FOR A PRODUCT SHALL APPLY TO**
 2 **ALL PLANS WITHIN THE PRODUCT.**

3 (d) (1) A carrier subject to this section shall conduct a comparative analysis
 4 for the nonquantitative treatment limitations ~~identified~~ **SELECTED** under subsection
 5 ~~(e)(2)(ii)~~ **(C)(5)** of this section as nonquantitative treatment limitations are:

6 (i) written; and

7 (ii) in operation.

8 (2) The comparative analysis of the nonquantitative treatment limitations
 9 ~~identified~~ **SELECTED** under subsection ~~(e)(2)(ii)~~ **(C)(5)** of this section shall:

10 **(I) demonstrate that the processes, strategies, evidentiary**
 11 **standards, or other factors used in DESIGNING AND applying ~~the medical necessity criteria~~**
 12 **and each SELECTED nonquantitative treatment limitation to mental health benefits and**
 13 **substance use disorder benefits in each Parity Act classification are comparable to, and are**
 14 **applied no more stringently than, the processes, strategies, evidentiary standards, or other**
 15 **factors used in DESIGNING AND applying ~~the medical necessity criteria~~ and each**
 16 **SELECTED nonquantitative treatment limitation to ~~medical and surgical~~**
 17 **MEDICAL/SURGICAL benefits within the same Parity Act classification; AND**

18 **(II) INCLUDE ALL INFORMATION REQUIRED UNDER THE PARITY**
 19 **ACT.**

20 **(3) REGARDLESS OF WHETHER IT WAS USED BEFORE THE PARITY**
 21 **ACT WAS ENACTED AND AS REQUESTED BY THE COMMISSION, A CARRIER SHALL**
 22 **PERFORM AND PROVIDE A COMPARATIVE ANALYSIS FOR EACH PROCESS, STRATEGY,**
 23 **EVIDENTIARY STANDARD, OR OTHER FACTOR USED IN DESIGNING AND APPLYING A**
 24 **SELECTED NONQUANTITATIVE TREATMENT LIMITATION USED DURING A**
 25 **REPORTING PERIOD.**

26 (e) In providing the analysis required under subsection (d) of this section, a
 27 carrier shall:

28 (1) identify the factors used to determine that a nonquantitative treatment
 29 limitation will apply to a benefit, including:

30 (i) the sources for the factors, ~~INCLUDING SOURCES IN EFFECT~~
 31 ~~BEFORE THE ENACTMENT OF THE PARITY ACT;~~

32 (ii) the factors that were considered but rejected; ~~and~~

~~(H) THE FACTORS THAT WERE IN EFFECT BEFORE THE ENACTMENT OF THE PARITY ACT AND ARE USED IN THE DESIGN OR APPLICATION OF THE NONQUANTITATIVE TREATMENT LIMITATION; AND~~

~~{(iii)}~~ **(IV)** if a factor was given more weight than another, the reason for the difference in weighting;

(2) identify and define the specific evidentiary standards used to define the factors and any other evidence relied on in designing each nonquantitative treatment limitation, ~~INCLUDING EVIDENTIARY STANDARDS IN EFFECT BEFORE THE ENACTMENT OF THE PARITY ACT;~~

~~(3) IDENTIFY AND DEFINE THE PROCESSES AND STRATEGIES THAT ARE USED TO DESIGN OR APPLY THE NONQUANTITATIVE TREATMENT LIMITATION, INCLUDING THE PROCESSES AND STRATEGIES IN EFFECT BEFORE THE ENACTMENT OF THE PARITY ACT;~~

~~{(3)}~~ **(4)** include the results of the audits, reviews, and analyses performed on the nonquantitative treatment limitations identified under subsection ~~(e)(2)(ii)~~ **(C)(5)** of this section to conduct the analysis required under subsection (d)(2) of this section for the plans AND PRODUCTS as written;

~~{(4)}~~ **(5)** include the results of the audits, reviews, and analyses performed on the nonquantitative treatment limitations identified under subsection ~~(e)(2)(ii)~~ **(C)(5)** of this section to conduct the analysis required under subsection (d)(2) of this section for the plans AND PRODUCTS as in operation;

~~{(5)}~~ **(6)** identify the measures used to ensure comparable design and application of nonquantitative treatment limitations that are implemented by the carrier and any entity delegated by the carrier to manage mental health benefits, substance use disorder benefits, or medical/surgical benefits on behalf of the carrier;

~~{(6)}~~ **(7)** disclose the specific findings and conclusions reached by the carrier that indicate that the health benefit plan is in compliance with this section and the Parity Act [and its implementing regulations, including 45 C.F.R. 146.136 and 29 C.F.R. 2590.712 and any other related federal regulations found in the Code of Federal Regulations]; and

~~{(7)}~~ **(8)** identify the process used to comply with the Parity Act disclosure requirements for mental health benefits, substance use disorder benefits, and medical/surgical benefits, including:

(i) the criteria for a medical necessity determination;

(ii) reasons for a denial of benefits; and

(iii) in connection with a member’s request for **INDIVIDUAL OR** group plan information and for purposes of filing an internal coverage or grievance matter and appeals, plan documents that contain information about processes, strategies, evidentiary standards, and any other factors used to apply a nonquantitative treatment limitation.

~~(f) On or before [March 1, 2022, and March 1, 2024] **MARCH 1 EACH YEAR, BEGINNING IN 2025**, each carrier subject to this section shall submit a report for the health benefit plans identified under subsection (c)(1)(i) of this section to the Commissioner on the following data for the immediately preceding calendar year for mental health benefits, substance use disorder benefits, and medical/surgical benefits by Parity Act classification:~~

~~(1) the frequency, reported by number and rate, with which the health benefit plan received, approved, and denied prior authorization requests for mental health benefits, substance use disorder benefits, and medical and surgical benefits in each Parity Act classification during the immediately preceding calendar year; [and]~~

~~(2) the number of claims submitted for mental health benefits, substance use disorder benefits, and medical and surgical benefits in each Parity Act classification during the immediately preceding calendar year and the number and rates of, and reasons for, denial of claims; AND~~

~~(3) DATA IDENTIFIED BY THE COMMISSIONER OR FEDERAL REGULATIONS TO EVALUATE NONQUANTITATIVE TREATMENT LIMITATION COMPLIANCE WITH THE IN-OPERATION STANDARD OF THE PARITY ACT.~~

(F) THE COMMISSIONER SHALL:

(1) DEVELOP ADDITIONAL STANDARDIZED DATA TEMPLATES:

(I) TO EVALUATE THE COMPARATIVE ANALYSIS OF NONQUANTITATIVE TREATMENT LIMITATIONS IN OPERATION; AND

(II) THAT MEET OR EXCEED ANY MINIMUM REQUIREMENTS FOR DATA REPORTING SPECIFIED IN FEDERAL REGULATIONS;

(2) REQUIRE EACH CARRIER SUBJECT TO THIS SECTION TO SUBMIT:

(I) FOR EACH PRODUCT IDENTIFIED UNDER SUBSECTION (C)(2) OF THIS SECTION, THE DATA TEMPLATES DESCRIBED IN ITEM (1) OF THIS SUBSECTION FOR THE NONQUANTITATIVE TREATMENT LIMITATIONS SELECTED BY THE COMMISSIONER FOR THE REPORTING YEAR IN ACCORDANCE WITH SUBSECTION (C)(5) OF THIS SECTION; AND

1 (II) A SEPARATE DATA TEMPLATE FOR ANY PLANS DESCRIBED
 2 IN SUBSECTION (C)(4) OF THIS SECTION; AND

3 (3) POST THE DATA TEMPLATES ON THE ADMINISTRATION'S WEBSITE
 4 FOR A COMMENT PERIOD OF NOT LESS THAN 30 DAYS BEFORE ADOPTION.

5 (g) The reports required under ~~subsections (e) and (f)~~ of this section shall:

6 (1) be submitted on a standard form developed by the Commissioner THAT
 7 ~~CONFORMS TO~~ MEETS OR EXCEEDS ANY MINIMUM REQUIREMENTS SPECIFIED IN
 8 THE FEDERAL REGULATIONS AND SUB-REGULATORY GUIDANCE ON
 9 NONQUANTITATIVE TREATMENT LIMITATIONS ~~COMPARATIVE ANALYSIS~~
 10 REPORTING;

11 (2) be submitted by the carrier that issues or delivers the ~~health benefit~~
 12 ~~plan~~ PRODUCT;

13 (3) be prepared in coordination with any entity the carrier contracts with
 14 to provide mental health benefits and substance use disorder benefits;

15 (4) contain a statement, signed by a corporate officer, attesting to the
 16 accuracy of the information contained in the report;

17 (5) be available to plan members and the public on the carrier's website in
 18 a summary form that removes confidential or proprietary information and is developed by
 19 the Commissioner in accordance with subsection [(m)(2)] **(N)(2)** of this section; and

20 (6) exclude any identifying information of any plan member.

21 (h) (1) A carrier submitting a report under ~~subsections (e) and (f)~~ of this section
 22 may submit a written request to the Commissioner that disclosure of specific information
 23 included in the report be denied under the Public Information Act and, if submitting a
 24 request, shall:

25 (i) identify the particular information the disclosure of which the
 26 carrier requests be denied; and

27 (ii) cite the statutory authority under the Public Information Act
 28 that authorizes denial of access to the information.

29 (2) The Commissioner may review a request submitted under paragraph
 30 (1) of this subsection on receipt of a request for access to the information under the Public
 31 Information Act.

1 (3) The Commissioner may notify the carrier that submitted the request
2 under paragraph (1) of this subsection before granting access to information that was the
3 subject of the request.

4 (4) A carrier shall disclose to a member on request any plan information
5 contained in a report that is required to be disclosed to that member under federal or State
6 law.

7 (i) (1) The Commissioner shall:

8 [(1)] (I) review each report submitted in accordance with subsections (c),
9 ~~(D)~~, and (f) of this section to assess each carrier's compliance with the Parity Act FOR EACH
10 PARITY ACT CLASSIFICATION;

11 [(2)] (II) notify a carrier in writing of any noncompliance with the Parity
12 Act before issuing an administrative order; and

13 [(3)] (III) within 90 days after the notice of noncompliance is issued, allow
14 the carrier to:

15 [(i)] 1. submit a compliance plan to the Administration to comply
16 with the Parity Act; and

17 [(ii)] 2. reprocess any claims that were improperly denied, in
18 whole or in part, because of the noncompliance.

19 ~~(2) THE COMMISSIONER MAY EXERCISE DISCRETION TO REVIEW A~~
20 ~~SUBSET OF NONQUANTITATIVE TREATMENT LIMITATIONS FOR THE PURPOSES OF~~
21 ~~THIS SECTION IF THE COMMISSIONER:~~

22 ~~(I) AFTER THE REPORTING DEADLINES ESTABLISHED UNDER~~
23 ~~SUBSECTIONS (C) AND (F) OF THIS SECTION, IDENTIFIES THE NONQUANTITATIVE~~
24 ~~TREATMENT LIMITATIONS THAT WILL BE REVIEWED BY THE COMMISSIONER;~~

25 ~~(II) DESCRIBES AND POSTS ON THE ADMINISTRATION'S~~
26 ~~WEBSITE THE CRITERIA USED TO IDENTIFY THE NONQUANTITATIVE TREATMENT~~
27 ~~LIMITATIONS THAT WILL BE REVIEWED EACH YEAR;~~

28 ~~(III) REVIEWS NONQUANTITATIVE TREATMENT LIMITATIONS~~
29 ~~THAT HAVE THE GREATEST EFFECT ON ACCESS TO MENTAL HEALTH AND~~
30 ~~SUBSTANCE USE DISORDER CARE;~~

31 ~~(IV) REVIEWS THE SAME SUBSET OF NONQUANTITATIVE~~
32 ~~TREATMENT LIMITATIONS FOR EACH CARRIER REPORT;~~

~~(v) REVIEWS NOT LESS THAN 10 NONQUANTITATIVE TREATMENT LIMITATIONS FOR EACH CARRIER REPORT; AND~~

~~(vi) ISSUES A DETERMINATION IN ANY MATTER THAT IMPLICATES PARITY ACT COMPLIANCE REGARDLESS OF WHETHER A NONQUANTITATIVE TREATMENT LIMITATION AT ISSUE IN THE MATTER HAS BEEN REVIEWED UNDER THIS SECTION.~~

(2) THE COMMISSIONER MAY REQUIRE CARRIERS TO COMPLETE DATA TEMPLATES FOR A NONQUANTITATIVE TREATMENT LIMITATION MORE FREQUENTLY THAN EVERY 2 YEARS.

(j) **(1)** If the Commissioner finds that the carrier failed to submit a complete report required under ~~subsection (e) or (f)~~ of this section, the Commissioner may:

(I) TAKE ACTION AUTHORIZED UNDER PARAGRAPH (2) OF THIS SUBSECTION;

(II) IN ACCORDANCE WITH § 2-208 OF THIS ARTICLE, CHARGE THE CARRIER FOR ANY ADDITIONAL EXPENSES INCURRED BY THE COMMISSIONER TO REVIEW ADDITIONAL REPORTS;

(III) IMPOSE A PENALTY FOR EACH DAY THAT THE CARRIER FAILS TO SUBMIT INFORMATION REQUIRED BY THE COMMISSIONER TO EVALUATE COMPLIANCE; OR

(IV) impose any penalty or take any action as authorized:

~~(1)~~ **1.** for an insurer, nonprofit health service plan, or any other person subject to this section, under this article; or

~~(2)~~ **2.** for a health maintenance organization, under this article or the Health – General Article.

(2) IF THE COMMISSIONER CANNOT MAKE A DETERMINATION THAT A SPECIFIC CONDUCT OR PRACTICE IS COMPLIANT WITH THE PARITY ACT BECAUSE THE CARRIER FAILED TO PROVIDE A SUFFICIENT COMPARATIVE ANALYSIS FOR A NONQUANTITATIVE TREATMENT LIMITATION, THE COMMISSIONER MAY:

(1) ISSUE AN ADMINISTRATIVE ORDER REQUIRING THE CARRIER OR AN ENTITY DELEGATED BY THE CARRIER TO TAKE THE FOLLOWING ACTION UNTIL THE COMMISSIONER CAN MAKE A DETERMINATION OF COMPLIANCE WITH THE PARITY ACT:

1 **1. MODIFY THE CONDUCT OR PRACTICE AS SPECIFIED**
 2 **BY THE COMMISSIONER;**

3 **2. CEASE THE CONDUCT OR PRACTICE; OR**

4 **3. SUBMIT PERIODIC DATA RELATED TO THE CONDUCT**
 5 **OR PRACTICE; OR**

6 **(II) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION,**
 7 **REQUIRE THE CARRIER TO PERFORM A NEW COMPARATIVE ANALYSIS.**

8 **(3) THE COMMISSIONER MAY REQUIRE THE CARRIER TO ESTABLISH**
 9 **SPECIFIC QUANTITATIVE THRESHOLDS FOR EVIDENTIARY STANDARDS AND**
 10 **CONDUCT A NEW COMPARATIVE ANALYSIS FOR A NONQUANTITATIVE TREATMENT**
 11 **LIMITATION IF THE COMMISSIONER DETERMINES A CARRIER FAILED TO PROVIDE A**
 12 **SUFFICIENT COMPARATIVE ANALYSIS BECAUSE THE CARRIER DID NOT:**

13 **(I) USE APPLICABLE QUANTITATIVE THRESHOLDS FOR THE**
 14 **EVIDENTIARY STANDARD; OR**

15 **(II) PROVIDE A SPECIFIC, DETAILED, AND REASONED**
 16 **EXPLANATION OF HOW THE CARRIER ENSURES THAT THE FACTORS FOR THE**
 17 **NONQUANTITATIVE TREATMENT LIMITATION ARE BEING APPLIED COMPARABLY**
 18 **AND NO MORE STRINGENTLY TO MENTAL HEALTH AND SUBSTANCE USE DISORDER**
 19 **SERVICES.**

20 **(4) SUBSECTION (I)(1)(III) OF THIS SECTION DOES NOT APPLY TO THE**
 21 **FAILURE OF A CARRIER TO SUBMIT A COMPLETE REPORT.**

22 (k) If, as a result of the review required under subsection [(i)(1)] ~~(I)(1)(I)~~ of this
 23 section, the Commissioner finds that the carrier failed to comply with [the provisions of]
 24 the Parity Act, ~~and~~ did not submit a compliance plan to adequately correct the
 25 noncompliance, ~~OR FAILED TO SUBMIT INFORMATION THAT IS REQUIRED TO~~
 26 ~~EVALUATE COMPLIANCE WITH THE PARITY ACT~~, the Commissioner may:

27 (1) issue an administrative order that requires:

28 (i) the carrier or an entity delegated by the carrier to cease the
 29 noncompliant conduct or practice; ~~or~~

30 ~~(II) THE CARRIER OR AN ENTITY DELEGATED BY THE CARRIER~~
 31 ~~TO CEASE THE IMPLEMENTATION OF THE NONQUANTITATIVE TREATMENT~~
 32 ~~LIMITATION; OR~~

1 ~~[(ii)] (iii)~~ the carrier to provide a payment that has been denied
 2 improperly because of the noncompliance, ~~INCLUDING A FAILURE TO PROVIDE~~
 3 ~~INFORMATION THAT DEMONSTRATES COMPLIANCE; [or]~~

4 ~~(2) IMPOSE A PENALTY OF NOT LESS THAN \$1,000 FOR EACH DAY IN~~
 5 ~~WHICH THE CARRIER FAILS TO SUBMIT INFORMATION REQUIRED BY THE~~
 6 ~~COMMISSIONER TO EVALUATE COMPLIANCE; OR~~

7 ~~[(2)] (3)~~ impose any OTHER penalty or take any action as authorized:

8 (i) for an insurer, nonprofit health service plan, or any other person
 9 subject to this section, under this article; or

10 (ii) for a health maintenance organization, under this article or the
 11 Health – General Article.

12 (L) (1) A CARRIER SHALL HAVE THE BURDEN OF PERSUASION IN
 13 DEMONSTRATING THAT ITS ~~HEALTH PLAN~~ DESIGN AND APPLICATION OF A
 14 NONQUANTITATIVE TREATMENT LIMITATION COMPLIES WITH THE PARITY ACT:

15 (I) IN ANY REVIEW CONDUCTED BY THE COMMISSIONER
 16 UNDER THIS SECTION; OR

17 (II) ~~IN ANY MATTER FILED WITH COMPLAINT INVESTIGATION OR~~
 18 MARKET CONDUCT ACTION UNDERTAKEN BY THE COMMISSIONER THAT INVOLVES
 19 THE APPLICATION OF THE PARITY ACT.

20 (2) (I) A FAILURE OF A CARRIER TO SUBMIT COMPLETE PARITY
 21 ACT COMPLIANCE INFORMATION REQUIRED UNDER THIS SECTION OR IN
 22 CONNECTION WITH ~~A MATTER FILED WITH AN INVESTIGATION OR EXAMINATION BY~~
 23 THE COMMISSIONER SHALL CONSTITUTE NONCOMPLIANCE WITH THE PARITY ACT.

24 (II) SUBSECTION (I)(1)(III) OF THIS SECTION DOES NOT APPLY
 25 TO A CARRIER THAT FAILS TO SUBMIT COMPLETE PARITY ACT COMPLIANCE
 26 INFORMATION.

27 [(l)] (M) In determining an appropriate penalty under subsection (j) or (k) of this
 28 section, the Commissioner shall consider the late filing of a report required under
 29 subsection (c) or (f) of this section and any parity violation to be a serious violation with a
 30 significantly deleterious effect on the public.

31 [(m)] (N) ~~On or before December 31, 2021, the~~ THE Commissioner shall create:

32 (1) a standard form for entities to submit the reports in accordance with
 33 subsection (g)(1) of this section; and

1 (2) a summary form for entities to post to their websites in accordance with
2 subsection (g)(5) of this section.

3 [(n)] (O) ~~On or before December 31, [2021] 2024, the~~ **THE** Commissioner shall,
4 in consultation with interested stakeholders, adopt regulations to implement this section,
5 including to ensure uniform definitions and methodology for the reporting requirements
6 established under this section.

7 15-1309.

8 (a) (1) In this section the following words have the meanings indicated.

9 (3) (i) “Product” means a discrete package of health benefits that are
10 offered using a particular product network type within a geographic service area.

11 (ii) “Product” comprises all plans offered within the product.

12 **Chapter 211 of the Acts of 2020**

13 [SECTION 2. AND BE IT FURTHER ENACTED, That the standard form the
14 Maryland Insurance Commissioner is required to develop under § 15-144(m)(1) of the
15 Insurance Article, as enacted by Section 1 of this Act, for the report required under §
16 15-144(c) of the Insurance Article, as enacted by Section 1 of this Act, shall be the National
17 Association of Insurance Commissioners’ Data Collection Tool for Mental Health Parity
18 Analysis, Nonquantitative Treatment Limitations and any amendments by the
19 Commissioner to the tool necessary to incorporate the requirements of § 15-144(c), (d), and
20 (e) of the Insurance Article, as enacted by Section 1 of this Act.]

21 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2020. [It shall remain in effect for a period of 6 years and, at the end of
23 September 30, 2026, this Act, with no further action required by the General Assembly,
24 shall be abrogated and of no further force and effect.]

25 **Chapter 212 of the Acts of 2020**

26 [SECTION 2. AND BE IT FURTHER ENACTED, That the standard form the
27 Maryland Insurance Commissioner is required to develop under § 15-144(m)(1) of the
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4 shall be abrogated and of no further force and effect.]

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect July~~
6 ~~1, 2024~~ is an emergency measure, is necessary for the immediate preservation of the public
7 health or safety, has been passed by a ye and nay vote supported by three-fifths of all the
8 members elected to each of the two Houses of the General Assembly, and shall take effect
9 from the date it is enacted.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.