

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 684

(Senator Augustine)

Finance

Health and Government Operations

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

This emergency bill alters and expands reporting requirements for carriers to demonstrate compliance with the federal Mental Health Parity and Addiction Equity Act (Parity Act). A carrier must submit a biennial compliance report beginning July 1, 2024, that includes specified information, including information on select nonquantitative treatment limitations (NQTLs), and results from a comparative analysis conducted by the carrier. The bill also authorizes the Insurance Commissioner to take additional actions to enforce compliance with reporting requirements. The bill specifies that a carrier has the burden of persuasion in demonstrating compliance and that “Parity Act” includes any regulations to implement the Act. The bill also repeals the termination date of Chapters 211 and 212 of 2020, the requirement that the Commissioner use a specified form for reporting, and the requirement that carriers submit a benefits report.

Fiscal Summary

State Effect: Maryland Insurance Administration (MIA) special fund revenues increase by an indeterminate amount in FY 2025 and every two years thereafter from any charges or penalties assessed on carriers, as discussed below. MIA special fund expenditures for contractual services for review of reports decrease by an indeterminate amount in FY 2024 and 2025 but increase every two years thereafter, as discussed below. No effect on the State Employee and Retiree Health and Welfare Benefits Program.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law: Chapters 211 and 212 require carriers to submit two specified reports to the Commissioner, by March 1, 2022, and March 1, 2024, to demonstrate compliance with the Parity Act and conduct a specified comparative analysis. The Acts terminate September 30, 2026.

Compliance Report

Under current law, by March 1, 2022, and March 1, 2024, each carrier must identify the five health benefit plans with the highest enrollment for each product offered by the carrier in the individual, small, and large group markets and submit a report to the Commissioner to demonstrate the carrier's compliance with the Parity Act. The reports must include the following information for the five health benefit plans identified:

- a description of the process used to develop or select the medical necessity criteria for mental health, substance use disorder (SUD), and medical and surgical benefits;
- for each Parity Act classification, identification of NQTLs that are applied to mental health, SUD, and medical and surgical benefits;
- identification of the description of NQTLs in the carrier's plan documents and instruments under which the plan is established or operated; and
- the results of a specified comparative analysis.

A carrier must conduct a comparative analysis for NQTLs identified in the compliance report as those limitations are written and in operation. The comparative analysis must demonstrate that the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to mental health and SUD benefits in each Parity Act classification are comparable to, and are applied no more stringently than, those used for medical and surgical benefits.

Under the bill, each carrier must (1) identify all NQTLs that are applied to mental health, SUD, and medical/surgical benefits for each Parity Act classification; (2) perform and document comparative analyses of the design and application of all NQTLs imposed on mental health and SUD benefits; (3) provide the comparative analysis for each NQTL requested by the Commissioner within specified time periods; and (4) submit compliance reports as required.

Compliance reports must be submitted by July 1, 2024, and every two years thereafter. Each carrier must submit a report to the Commissioner on each product offered by the carrier in the individual, small, and large group markets.

A report must include (1) all NQTL information required under the Parity Act, the bill, and any State regulations for the products; (2) the results of a comparative analysis conducted by the carrier on at least five NQTLs selected by the Commissioner; and (3) attestation that, for each product, the selected NQTLs and the processes, strategies, evidentiary standards, or other factors used in designing and applying the selected NQTLs to mental health, SUD, and medical/surgical benefits are the same for all plans within the product, as written and in operation.

For any plan within a product with any differences in the application of NQTLs, the attestation must note the exception and identify the plan; the carrier must also submit a separate comparative analysis for the selected NQTLs for the identified plan.

In selecting the NQTLs required to be included for each reporting period, the Commissioner (1) must prioritize the NQTLs identified by the Commissioner as having the greatest impact on member access to care; (2) must review the same subset of NQTLs for each carrier report; and (3) may take into consideration other factors determined relevant by the Commissioner. Of the five selected NQTLs, no more than two may be for utilization review and at least one must be for network composition, including reimbursement rate setting.

The compliance report must be submitted on a standard form that meets or exceeds any minimum requirements specified in federal regulations and subregulatory guidance on NQTL reporting.

Comparative Analysis

Under current law, in providing the comparative analysis, a carrier must (1) identify the factors used to determine that an NQTL will apply to a benefit; (2) identify and define the specific evidentiary standards used to define the factors and any other evidence relied on in designing each NQTL; (3) include the results of specified audits, reviews, and analyses performed on NQTLs; (4) identify the measures used to ensure comparable design and application of NQTLs; (5) disclose the specific findings and conclusions reached by the carrier that indicate that the health benefit plan is in compliance with the Parity Act; and (6) identify the process used to comply with the Parity Act disclosure requirements for mental health, SUD, and medical/surgical benefits.

Under the bill, a carrier must conduct a comparative analysis for the five NQTLs selected. The comparative analysis must include all information required under the Parity Act and demonstrate that the processes, strategies, evidentiary standards, or other factors used in *designing and applying each selected* NQTL to mental health and SUD benefits are comparable to and applied no more stringently than those used in *designing and applying each* NQTL to medical/surgical benefits within the same Parity Act classification.

As requested by the Commissioner, a carrier must perform and provide a comparative analysis for each process, strategy, evidentiary standard, or other factor used in designing and applying a selected NQTL used during a reporting period, regardless of whether it was used before the Parity Act was enacted.

The Commissioner must (1) develop additional standardized data templates to evaluate the comparative analysis of NQTLs in operation and that meet or exceed any minimum requirements for data reporting specified in federal regulations; (2) require each carrier to submit the data templates for each product for the NQTLs selected for the reporting year (and a separate data template for any plans with exceptions or differences); and (3) post the data templates on the MIA website for a comment period of at least 30 days before adoption.

Benefits Report

Under current law, by March 1, 2022, and March 1, 2024, each carrier must submit a report to the Commissioner for the five health benefit plans identified in the compliance report on the following data for the immediately preceding calendar year for mental health, SUD, and medical/surgical benefits by Parity Act classification:

- the frequency, reported by number and rate, with which the health benefit plan received, approved, and denied prior authorization requests for mental health, SUD, and medical and surgical benefits in each Parity Act classification; and
- the number of claims submitted for mental health, SUD, and medical and surgical benefits in each Parity Act classification and the number, rates of, and reasons for denials of claims.

The bill repeals this requirement.

Insurance Commissioner Review of Reports

Under current law, the Commissioner must (1) review each report to assess each carrier's compliance with the Parity Act; (2) notify a carrier in writing of any noncompliance before issuing an administrative order; and (3) within 90 days after the notice of noncompliance is issued, allow the carrier to submit a compliance plan to MIA and reprocess any claims that were improperly denied because of the noncompliance.

Under the bill, the Commissioner must review each report submitted to assess each carrier's compliance with the Parity Act *for each Parity Act classification*. The Commissioner may require carriers to complete data templates for an NQTL more frequently than every two years. A finding of noncompliance for a product must apply to all plans within the product.

Penalties and Enforcement

Under current law, if the Commissioner finds that a carrier failed to submit a complete compliance report, the Commissioner may impose any penalty or take any action as authorized under current law.

Under the bill, the Commissioner is also authorized to (1) charge the carrier for any additional expenses incurred by the Commissioner to review additional reports or (2) impose a penalty for each day that the carrier fails to submit information required by the Commissioner to evaluate compliance.

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 an NQTL, the Commissioner may (1) issue an administrative order requiring the carrier (or a delegated entity) to take specified action until the Commissioner can determine compliance with the Parity Act or (2) require the carrier to perform a new comparative analysis, as specified.

Burden of Persuasion

The bill establishes that, in any review conducted by the Commissioner or in any complaint investigation or market conduct action undertaken by the Commissioner that involves the application of the Parity Act, a carrier has the burden of persuasion in demonstrating that its design and application of an NQTL complies with the Parity Act. Failure of a carrier to submit complete Parity Act compliance information constitutes noncompliance with the Parity Act.

Standard Form

Under current law, the standard form the Commissioner must use for submission of compliance reports must be the National Association of Insurance Commissioners' *Data Collection Tool for Mental Health Parity Analysis, Nonquantitative Treatment Limitations* and any amendments by the Commissioner.

The bill repeals this requirement.

State Revenues: Under the bill, if the Commissioner finds that a carrier failed to submit a complete compliance report, the Commissioner may charge the carrier for any additional expenses incurred to review additional reports or impose a penalty for each day that the carrier fails to submit information required by the Commissioner to evaluate compliance. Thus, MIA special fund revenues increase by an indeterminate amount beginning in

fiscal 2025 (and every two years thereafter) from any charges or penalties assessed on carriers.

State Expenditures: Under current law, each carrier must submit a compliance and benefit report for the top five plans for each product offered by the carrier in each of the individual, small group, and large group markets. In 2022, MIA received 213 separate reports from 17 different carriers, including approximately 2,982 NQTLs to be reviewed over a two-year period.

Under the bill, MIA advises that it must select and review five NQTLs every other year for each report. MIA advises that review of a single NQTL typically takes 60 to 80 hours. Generally, the first report reviewed for each carrier takes 80 hours, while additional reports from the same carrier take less time to review. MIA estimates that, under the bill, it will receive 40 reports (rather than the 213 under current requirements) and review a total of 200 NQTLs (rather than 2,982 under current requirements) in fiscal 2025. Thus, the bill significantly reduces the number of NQTLs that must be reviewed and, as a result, the amount of time required to review compliance reports compared with current practice.

As MIA contracts with a contractor/vendor to review NQTLs at a fully loaded fixed hourly rate of \$155, a reduction in the number of hours required to review NQTLs reduces MIA special fund expenditures by an indeterminate amount in fiscal 2024 and 2025 (consistent with the timing for the final report (March 1, 2024) under current law). However, as the bill establishes a permanent biennial reporting requirement concurrent with the start of the fiscal year, special fund expenditures *increase* every two years thereafter beginning in fiscal 2027.

As noted above, the bill permits MIA to charge a carrier for any additional expenses incurred by the Commissioner to review additional reports if the initial submission is determined to be incomplete. Thus, the cost of any additional review is offset by an indeterminate amount of special fund revenues in fiscal 2025 and every other year thereafter.

Additional Comments: In December 2023, MIA submitted an interim [report](#) on NQTLs and data based on March 2022 report submissions. MIA determined that carrier reports were uniformly and significantly inadequate, impeding the ability to reach parity determinations. MIA offered several recommendations for options to streamline the reporting process to make the reviews more effective and efficient including granting MIA greater enforcement authority and discretion on the frequency and number of reports required to be filed, the specific NQTLs that should be subject to the reporting requirements, the structure and content of the standard reporting forms and data, and additional options for corrective actions.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced in the last three years.

Designated Cross File: HB 1074 (Delegate Bagnall, *et al.*) - Health and Government Operations.

Information Source(s): Department of Budget and Management; Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2024
js/ljm Third Reader - March 19, 2024
Revised - Amendment(s) - March 19, 2024

Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510