

[First Reprint]

SENATE, No. 1192

STATE OF NEW JERSEY

221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

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SYNOPSIS

Requires prescription drug coverage for serious mental illness without prior authorization or utilization management, including step therapy.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on May 13, 2024, with amendments.



(Sponsorship Updated As Of: 5/13/2024)

1 AN ACT concerning utilization management, amending P.L.2019,
2 c.58, and supplementing P.L.1968, c.413 (30:4D-1 et seq.).
3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:
6

7 1. Section 11 of P.L.2019, c.58 (C.26:2S-10.8) is amended to
8 read as follows:

9 11. a. For the purposes of this section:

10 "Benefit limits" includes both quantitative treatment limitations
11 and non-quantitative treatment limitations.

12 "Carrier" means an insurance company, health service
13 corporation, hospital service corporation, medical service
14 corporation, or health maintenance organization authorized to issue
15 health benefits plans in this State or any entity contracted to
16 administer health benefits in connection with the State Health
17 Benefits Program or School Employees' Health Benefits Program.

18 "Classification of benefits" means the classifications of benefits
19 found at 45 C.F.R. 146.136(c)(2)(ii)(A) and 45 C.F.R.
20 s.146.136(c)(3)(iii).

21 "Department" means the Department of Banking and Insurance.

22 "Mental health condition" means a condition defined to be
23 consistent with generally recognized independent standards of
24 current medical practice referenced in the current version of the
25 Diagnostic and Statistical Manual of Mental Disorders.

26 "Non-quantitative treatment limitations" or "NQTL" means
27 processes, strategies, or evidentiary standards, or other factors that
28 are not expressed numerically, but otherwise limit the scope or
29 duration of benefits for treatment. NQTLs shall include, but shall
30 not be limited to:

31 (1) Medical management standards limiting or excluding
32 benefits based on medical necessity or medical appropriateness, or
33 based on whether the treatment is experimental or investigative;

34 (2) Formulary design for prescription drugs;

35 (3) For plans with multiple network tiers, such as preferred
36 providers and participating providers, network tier design;

37 (4) Standards for provider admission to participate in a network,
38 including reimbursement rates;

39 (5) Plan methods for determining usual, customary, and
40 reasonable charges;

41 (6) Refusal to pay for higher-cost therapies until it can be shown
42 that a lower-cost therapy is not effective, also known as fail-first
43 policies or step therapy protocols;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted May 13, 2024.

- 1 (7) Exclusions based on failure to complete a course of
2 treatment;
- 3 (8) Restrictions based on geographic location, facility type,
4 provider specialty, and other criteria that limit the scope or duration
5 of benefits for services provided under the plan or coverage;
- 6 (9) In and out-of-network geographic limitations;
- 7 (10) Limitations on inpatient services for situations where the
8 participant is a threat to self or others;
- 9 (11) Exclusions for court-ordered and involuntary holds;
- 10 (12) Experimental treatment limitations;
- 11 (13) Service coding;
- 12 (14) Exclusions for services provided by a licensed professional
13 who provides mental health condition or substance use disorder
14 services;
- 15 (15) Network adequacy; and
- 16 (16) Provider reimbursement rates.
- 17 “Serious mental illness” means the following psychiatric
18 illnesses as defined in the most current version of the Diagnostic
19 and Statistical Manual of Mental Disorders:
- 20 (1) bipolar disorders including hypomanic, manic, depressive,
21 and mixed;
- 22 (2) depression in childhood and adolescence;
- 23 (3) major depressive disorders, whether a single episode or
24 recurrent¹, including, but not limited to, any major depressive disorder
25 with peripartum onset¹;
- 26 (4) obsessive compulsive disorders;
- 27 (5) paranoid and other psychotic disorders;
- 28 (6) schizo-affective disorders including bipolar and depressive;
- 29 ¹[and]¹
- 30 (7) schizophrenia¹; and
- 31 (8) post-traumatic stress disorder¹.
- 32 "Substance use disorder" means a disorder defined to be
33 consistent with generally recognized independent standards of
34 current medical practice referenced in the most current version of
35 the Diagnostic and Statistical Manual of Mental Disorders.
- 36 b. A carrier shall approve a request for an in-plan exception if
37 the carrier's network does not have any providers who are qualified,
38 accessible and available to perform the specific medically necessary
39 service. A carrier shall communicate the availability of in-plan
40 exceptions:
- 41 (1) on its website where lists of network providers are
42 displayed; and
- 43 (2) to beneficiaries when they call the carrier to inquire about
44 network providers.
- 45 c. A carrier that provides hospital or medical expense benefits
46 through individual or group contracts shall submit an annual report
47 to the department on or before March 1. The annual report shall

1 contain, to the extent that the commissioner determines practicable,
2 the following information:

3 (1) A description of the process used to develop or select the
4 medical necessity criteria for mental health benefits, the process
5 used to develop or select the medical necessity criteria for substance
6 use disorder benefits, and the process used to develop or select the
7 medical necessity criteria for medical and surgical benefits;

8 (2) Identification of all NQTLs that are applied to mental health
9 benefits, all NQTLs that are applied to substance use disorder
10 benefits, and all NQTLs that are applied to medical and surgical
11 benefits, including, but not limited to, those listed in subsection a.
12 of this section;

13 (3) The results of an analysis that demonstrates that for the
14 medical necessity criteria described in paragraph (1) of this
15 subsection and for selected NQTLs identified in paragraph (2) of
16 this subsection, as written and in operation, the processes,
17 strategies, evidentiary standards, or other factors used to apply the
18 medical necessity criteria and selected NQTLs to mental health
19 condition and substance use disorder benefits are comparable to,
20 and are no more stringently applied than the processes, strategies,
21 evidentiary standards, or other factors used to apply the medical
22 necessity criteria and selected NQTLs, as written and in operation,
23 to medical and surgical benefits. A determination of which selected
24 NQTLs require analysis will be determined by the department; at a
25 minimum, the results of the analysis shall entail the following,
26 provided that some NQTLs may not necessitate all of the steps
27 described below:

28 (a) identify the factors used to determine that an NQTL will
29 apply to a benefit, including factors that were considered but
30 rejected;

31 (b) identify and define the specific evidentiary standards, if
32 applicable, used to define the factors and any other evidentiary
33 standards relied upon in designing each NQTL;

34 (c) provide the comparative analyses, including the results of
35 the analyses, performed to determine that the processes and
36 strategies used to design each NQTL, as written, for mental health
37 and substance use disorder benefits are comparable to and applied
38 no more stringently than the processes and strategies used to design
39 each NQTL as written for medical and surgical benefits;

40 (d) provide the comparative analyses, including the results of
41 the analyses, performed to determine that the processes and
42 strategies used to apply each NQTL, in operation, for mental health
43 and substance use disorder benefits are comparable to and applied
44 no more stringently than the processes or strategies used to apply
45 each NQTL in operation for medical and surgical benefits; and

46 (e) disclose the specific findings and conclusions reached by the
47 carrier that the results of the analyses above indicate that the carrier
48 is in compliance with this section and the Paul Wellstone and Pete

1 Domenici Mental Health Parity and Addiction Equity Act of 2008,
2 42 U.S.C. s.18031(j), and its implementing and related regulations,
3 which includes 45 C.F.R. s.146.136, 45 C.F.R. s.147.160, and 45
4 C.F.R. s.156.115(a)(3); and

5 (4) Any other information necessary to clarify data provided in
6 accordance with this section requested by the Commissioner of
7 Banking and Insurance including information that may be
8 proprietary or have commercial value, provided that no proprietary
9 information shall be made publicly available by the department.

10 d. The department shall implement and enforce applicable
11 provisions of the Paul Wellstone and Pete Domenici Mental Health
12 Parity and Addiction Equity Act of 2008, 42 U.S.C. 18031(j), any
13 amendments to, and federal guidance or regulations issued under
14 that act, including 45 C.F.R. Parts 146 and 147, 45 C.F.R.
15 s.156.115(a)(3), P.L.1999, c.106 (C.17:48-6v et al.), and section 2
16 of P.L.1999, c.441 (C.52:14-17.29e), which includes:

17 (1) Ensuring compliance by individual and group contracts,
18 policies, plans, or enrollee agreements delivered, issued, executed,
19 or renewed in this State pursuant to P.L.1938, c.366 (C.17:48-1 et
20 seq.), P.L.1940, c.74 (C.17:48A-1 et seq.), P.L.1985, c.236
21 (C.17:48E-1 et seq.), chapter 26 of Title 17B of the New Jersey
22 Statutes (N.J.S.17B:26-1 et seq.), chapter 27 of Title 17B of the
23 New Jersey Statutes (N.J.S.17B:27-26 et seq.), P.L.1992, c.161
24 (C.17B:27A-2 et seq.), P.L.1992, c.162 (C.17B:27A-17 et seq.),
25 P.L.1973, c.337 (C.26:2J-1 et seq.), and P.L.1961, c.49 (C.52:14-
26 17.25 et seq.), or approved for issuance or renewal in this State by
27 the Commissioner of Banking and Insurance.

28 (2) Detecting violations of the law by individual and group
29 contracts, policies, plans, or enrollee agreements delivered, issued,
30 executed, or renewed in this State pursuant to P.L.1938, c.366
31 (C.17:48-1 et seq.), P.L.1940, c.74 (C.17:48A-1 et seq.), P.L.1985,
32 c.236 (C.17:48E-1 et seq.), chapter 26 of Title 17B of the New
33 Jersey Statutes (N.J.S.17B:26-1 et seq.), chapter 27 of Title 17B of
34 the New Jersey Statutes (N.J.S.17B:27-26 et seq.), P.L.1992, c.161
35 (C.17B:27A-2 et seq.), P.L.1992, c.162 (C.17B:27A-17 et seq.),
36 P.L.1973, c.337 (C.26:2J-1 et seq.), and P.L.1961, c.49 (C.52:14-
37 17.25 et seq.), or approved for issuance or renewal in this State by
38 the Commissioner of Banking and Insurance.

39 (3) Accepting, evaluating, and responding to complaints
40 regarding violations.

41 (4) Maintaining and regularly reviewing for possible parity
42 violations a publicly available consumer complaint log regarding
43 mental health condition and substance use disorder coverage,
44 provided that the names of specific carriers will be redacted and not
45 disclosed on the complaint log.

46 (5) The commissioner shall adopt rules as may be necessary to
47 effectuate any provisions of this section and the Paul Wellstone and

1 Pete Domenici Mental Health Parity and Addiction Equity Act of
2 2008 that relate to the business of insurance.

3 e. Not later than May 1 of each year, the department shall issue
4 a report to the Legislature pursuant to section 2 of P.L.1991, c.164
5 (C.52:14-19.1). The report shall:

6 (1) Describe the methodology the department is using to check
7 for compliance with the Paul Wellstone and Pete Domenici Mental
8 Health Parity and Addiction Equity Act of 2008, 42 U.S.C
9 s.18031(j), and any federal regulations or guidance relating to the
10 compliance and oversight of that act.

11 (2) Describe the methodology the department is using to check
12 for compliance with P.L.1999, c.106 (C.17:48-6v et al.) and section
13 2 of P.L.1999, c.441 (C.52:14-17.29e).

14 (3) Identify market conduct examinations conducted or
15 completed during the preceding 12-month period regarding
16 compliance with parity in mental health and substance use disorder
17 benefits under state and federal laws and summarize the results of
18 such market conduct examinations. This shall include:

19 (a) The number of market conduct examinations initiated and
20 completed;

21 (b) The benefit classifications examined by each market conduct
22 examination;

23 (c) The subject matters of each market conduct examination,
24 including quantitative and non-quantitative treatment limitations;

25 (d) A summary of the basis for the final decision rendered in
26 each market conduct examination; and

27 (e) Individually identifiable information shall be excluded from
28 the reports consistent with state and Federal privacy protections.

29 (4) Detail any educational or corrective actions the department
30 has taken to ensure compliance with Paul Wellstone and Pete
31 Domenici Mental Health Parity and Addiction Equity Act of 2008,
32 42 U.S.C s.18031(j), P.L.1999, c.106 (C.17:48-6v et al.) and section
33 2 of P.L.1999, c.441 (C.52:14-17.29e).

34 (5) Detail the department's educational approaches relating to
35 informing the public about mental health condition and substance
36 use disorder parity protections under State and federal law.

37 (6) Be written in non-technical, readily understandable language
38 and shall be made available to the public by, among such other
39 means as the department finds appropriate, posting the report on the
40 department's website.

41 f. The department shall post on its Internet website a report
42 disclosing the department's conclusions as to whether the analyses
43 collected from the carriers as specified in paragraph (3) of
44 subsection c. of this section demonstrate compliance with the
45 Mental Health Parity and Addiction Equity Act of 2008 and its
46 implementing regulations, specifically including whether or not
47 there is compliance with 45 C.F.R. 146.136(c)(4). The name and

1 identity of carriers shall be confidential, shall not be made public by
2 the department, and shall not be subject to public inspection.

3 g. A carrier shall provide coverage for a prescription drug
4 prescribed for serious mental illness to covered persons without the
5 imposition of any prior authorization or other utilization
6 management requirements, including, but not limited to, a step
7 therapy protocol.

8 (cf: P.L.2019, c.58, s.11)

9
10 2. (New section) a. Notwithstanding the provisions of any law,
11 rule, or regulation to the contrary, the division shall provide
12 coverage for prescription drugs to treat serious mental illness under
13 the Medicaid program and the NJ FamilyCare program without the
14 imposition of any prior authorization or other utilization
15 management requirements, including, but not limited to, a step
16 therapy protocol, provided that the prescription drug is prescribed to
17 an enrollee by a licensed medical practitioner who is authorized to
18 prescribe that treatment pursuant to State and federal law.

19 b. The division shall require each managed care organization
20 contracted with the division to provide pharmacy benefits to
21 Medicaid and NJ FamilyCare enrollees to comply with the
22 provisions of this section.

23 c. As used in this section:

24 “Division” means the Division of Medical Assistance and Health
25 Services in the Department of Human Services.

26 “Medicaid program” means the program established pursuant to
27 P.L.1968, c.413 (C.30:4D-1 et seq.).

28 “NJ FamilyCare program” means the program established
29 pursuant to P.L.2005, c.156 (C.30:4J-8 et al.).

30 “Serious mental illness” means the following psychiatric
31 illnesses as defined in the most current version of the Diagnostic
32 and Statistical Manual of Mental Disorders:

33 (1) bipolar disorders including hypomanic, manic, depressive,
34 and mixed;

35 (2) depression in childhood and adolescence;

36 (3) major depressive disorders, whether a single episode or
37 recurrent¹, including, but not limited to, any major depressive disorder
38 with peripartum onset¹;

39 (4) obsessive compulsive disorders;

40 (5) paranoid and other psychotic disorders;

41 (6) schizo-affective disorders including bipolar and depressive;

42 ¹**[and]**¹

43 (7) schizophrenia¹; and

44 (8) post-traumatic stress disorder¹.

45
46 3. This act shall take effect on the 180th day next following the
47 date of enactment and shall apply to policies issued or renewed on
48 or after that effective date.