

ASSEMBLY, No. 4838

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED SEPTEMBER 23, 2024

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex and Hudson)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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 consistent
23 with generally recognized independent standards of current medical
24 practice referenced in the current version of the Diagnostic and
25 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 not
30 be limited to:

31 (1) Medical management standards limiting or excluding benefits
32 based on medical necessity or medical appropriateness, or based on
33 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;

44 (7) Exclusions based on failure to complete a course of treatment;

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.

(8) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage;

(9) In and out-of-network geographic limitations;

(10) Limitations on inpatient services for situations where the participant is a threat to self or others;

(11) Exclusions for court-ordered and involuntary holds;

(12) Experimental treatment limitations;

(13) Service coding;

(14) Exclusions for services provided by a licensed professional who provides mental health condition or substance use disorder services;

(15) Network adequacy; and

(16) Provider reimbursement rates.

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

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

(2) depression in childhood and adolescence;

(3) major depressive disorders, whether a single episode or recurrent;

(4) obsessive compulsive disorders;

(5) paranoid and other psychotic disorders;

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

(7) schizophrenia.

"Substance use disorder" means a disorder defined to be consistent with generally recognized independent standards of current medical practice referenced in the most current version of the Diagnostic and Statistical Manual of Mental Disorders.

b. A carrier shall approve a request for an in-plan exception if the carrier's network does not have any providers who are qualified, accessible and available to perform the specific medically necessary service. A carrier shall communicate the availability of in-plan exceptions:

(1) on its website where lists of network providers are displayed; and

(2) to beneficiaries when they call the carrier to inquire about network providers.

c. A carrier that provides hospital or medical expense benefits through individual or group contracts shall submit an annual report to the department on or before March 1. The annual report shall contain, to the extent that the commissioner determines practicable, the following information:

(1) A description of the process used to develop or select the medical necessity criteria for mental health benefits, the process used to develop or select the medical necessity criteria for substance use

1 disorder benefits, and the process used to develop or select the
2 medical necessity criteria for medical and surgical benefits;

3 (2) Identification of all NQTLs that are applied to mental health
4 benefits, all NQTLs that are applied to substance use disorder
5 benefits, and all NQTLs that are applied to medical and surgical
6 benefits, including, but not limited to, those listed in subsection a. of
7 this section;

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

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

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

27 (c) provide the comparative analyses, including the results of the
28 analyses, performed to determine that the processes and strategies
29 used to design each NQTL, as written, for mental health and
30 substance use disorder benefits are comparable to and applied no
31 more stringently than the processes and strategies used to design each
32 NQTL as written for medical and surgical benefits;

33 (d) provide the comparative analyses, including the results of the
34 analyses, performed to determine that the processes and strategies
35 used to apply each NQTL, in operation, for mental health and
36 substance use disorder benefits are comparable to and applied no
37 more stringently than the processes or strategies used to apply each
38 NQTL in operation for medical and surgical benefits; and

39 (e) disclose the specific findings and conclusions reached by the
40 carrier that the results of the analyses above indicate that the carrier
41 is in compliance with this section and the Paul Wellstone and Pete
42 Domenici Mental Health Parity and Addiction Equity Act of 2008,
43 42 U.S.C. s.18031(j), and its implementing and related regulations,
44 which includes 45 C.F.R. s.146.136, 45 C.F.R. s.147.160, and 45
45 C.F.R. s.156.115(a)(3); and

46 (4) Any other information necessary to clarify data provided in
47 accordance with this section requested by the Commissioner of
48 Banking and Insurance including information that may be proprietary

1 or have commercial value, provided that no proprietary information
2 shall be made publicly available by the department.

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

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

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

32 (3) Accepting, evaluating, and responding to complaints
33 regarding violations.

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

39 (5) The commissioner shall adopt rules as may be necessary to
40 effectuate any provisions of this section and the Paul Wellstone and
41 Pete Domenici Mental Health Parity and Addiction Equity Act of
42 2008 that relate to the business of insurance.

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

46 (1) Describe the methodology the department is using to check
47 for compliance with the Paul Wellstone and Pete Domenici Mental
48 Health Parity and Addiction Equity Act of 2008, 42 U.S.C s.18031(j),

1 and any federal regulations or guidance relating to the compliance
2 and oversight of that act.

3 (2) Describe the methodology the department is using to check
4 for compliance with P.L.1999, c.106 (C.17:48-6v et al.) and section
5 2 of P.L.1999, c.441 (C.52:14-17.29e).

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

11 (a) The number of market conduct examinations initiated and
12 completed;

13 (b) The benefit classifications examined by each market conduct
14 examination;

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

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

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

21 (4) Detail any educational or corrective actions the department
22 has taken to ensure compliance with Paul Wellstone and Pete
23 Domenici Mental Health Parity and Addiction Equity Act of 2008,
24 42 U.S.C s.18031(j), P.L.1999, c.106 (C.17:48-6v et al.) and section
25 2 of P.L.1999, c.441 (C.52:14-17.29e).

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

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

33 f. The department shall post on its Internet website a report
34 disclosing the department's conclusions as to whether the analyses
35 collected from the carriers as specified in paragraph (3) of subsection
36 c. of this section demonstrate compliance with the Mental Health
37 Parity and Addiction Equity Act of 2008 and its implementing
38 regulations, specifically including whether or not there is compliance
39 with 45 C.F.R. 146.136(c)(4). The name and identity of carriers shall
40 be confidential, shall not be made public by the department, and shall
41 not be subject to public inspection.

42 g. A carrier shall provide coverage for a prescription drug
43 prescribed for serious mental illness to covered persons without the
44 imposition of any prior authorization or other utilization management
45 requirements, including, but not limited to, a step therapy protocol.
46 (cf: P.L.2019, c.58, s.11)

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

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

c. As used in this section:

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

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

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

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

- (1) bipolar disorders including hypomanic, manic, depressive, and mixed;
- (2) depression in childhood and adolescence;
- (3) major depressive disorders, whether a single episode or recurrent;
- (4) obsessive compulsive disorders;
- (5) paranoid and other psychotic disorders;
- (6) schizo-affective disorders including bipolar and depressive;
- and
- (7) schizophrenia.

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

STATEMENT

This bill requires health insurance carriers and the State Medicaid and NJ FamilyCare programs to provide coverage for a prescription drug prescribed for serious mental illness to covered persons without the imposition of any prior authorization or other utilization management requirements, including, but not limited to, a step therapy protocol.

- 1 Under the bill, "carrier" is defined to mean an insurance company,
2 health service corporation, hospital service corporation, medical
3 service corporation, or health maintenance organization authorized
4 to issue health benefits plans in this State or any entity contracted to
5 administer health benefits in connection with the State Health
6 Benefits Program or School Employees' Health Benefits Program.
- 7 The bill defines "serious mental illness" to mean the following
8 psychiatric illnesses, as defined in the most current version of the
9 Diagnostic and Statistical Manual of Mental Disorders:
- 10 (1) bipolar disorders including hypomanic, manic, depressive,
11 and mixed;
12 (2) depression in childhood and adolescence;
13 (3) major depressive disorders, whether a single episode or
14 recurrent;
15 (4) obsessive compulsive disorders;
16 (5) paranoid and other psychotic disorders;
17 (6) schizo-affective disorders including bipolar and depressive;
18 and
19 (7) schizophrenia.