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Legislative Document

No. 1694

S.P. 559

In Senate, May 7, 2019

An Act To Amend the Mental Health Insurance Coverage Laws

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator GRATWICK of Penobscot.
Cosponsored by Representative SCHNECK of Bangor and
Senators: CARPENTER of Aroostook, CLAXTON of Androscoggin, DILL of Penobscot,
MILLETT of Cumberland, ROSEN of Hancock.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24 MRSA §2325-A, sub-§8**, as amended by PL 1995, c. 407, §3, is
3 repealed and the following enacted in its place:

4 **8. Reports to the superintendent.** A nonprofit hospital and medical service
5 organization shall submit annual reports in accordance with this subsection.

6 A. A nonprofit hospital or medical service organization subject to this section shall
7 report its experience for each calendar year to the superintendent no later than April
8 30th of the following year. The report must be in a form prescribed by the
9 superintendent and include the amount of claims paid in this State for the services
10 required by this section and the total amount of claims paid in this State for group
11 health care contracts, both separated according to those paid for inpatient, day
12 treatment and outpatient services. The superintendent shall compile this data for all
13 nonprofit hospitals and medical service organizations in an annual report.

14 B. A nonprofit hospital or medical service organization subject to this section shall
15 submit an annual report to the superintendent no later than April 30th that contains
16 the following information:

17 (1) A description of the process used to develop or select the medically
18 necessary health care criteria for mental illness and substance use disorder
19 benefits and the process used to develop or select the medically necessary health
20 care criteria for medical and surgical benefits;

21 (2) Identification of all nonquantitative treatment limitations that are applied to
22 mental illness and substance use disorder benefits and medical and surgical
23 benefits within each classification of benefits. The report must include
24 information demonstrating that each nonquantitative treatment limitation that
25 applies to mental illness and substance use disorder benefits also applies to
26 medical and surgical benefits within any classification of benefits; and

27 (3) The results of an analysis that demonstrate that for the medically necessary
28 health care criteria described in subparagraph (1) and for each nonquantitative
29 treatment limitation identified in subparagraph (2), as written and in operation,
30 the processes, strategies, evidentiary standards or other factors used in applying
31 the medically necessary health care criteria and each nonquantitative treatment
32 limitation to mental illness and substance use disorder benefits within each
33 classification of benefits are comparable to, and are applied no more stringently
34 than, the processes, strategies, evidentiary standards or other factors used in
35 applying the medically necessary health care criteria and each nonquantitative
36 treatment limitation to medical and surgical benefits within the corresponding
37 classification of benefits. At a minimum, the results of the analysis must:

38 (a) Identify the factors used to determine that a nonquantitative treatment
39 limitation applies to a benefit, including factors that were considered but
40 rejected;

1 (b) Identify and define the specific evidentiary standards used to define the
2 factors and any other evidence relied upon in designing each nonquantitative
3 treatment limitation;

4 (c) Identify and describe the comparative analyses, including the results of
5 the analyses, used to determine that the processes and strategies used to
6 design each nonquantitative treatment limitation, as written, for mental
7 illness and substance use disorder benefits are comparable to, and are applied
8 no more stringently than, the processes and strategies used to design each
9 nonquantitative treatment limitation, as written, for medical and surgical
10 benefits;

11 (d) Identify and describe the comparative analyses, including the results of
12 the analyses, used to determine that the processes and strategies used to apply
13 each nonquantitative treatment limitation, in operation, for mental illness and
14 substance use disorder benefits are comparable to, and applied no more
15 stringently than, the processes and strategies used to apply each
16 nonquantitative treatment limitation, in operation, for medical and surgical
17 benefits; and

18 (e) Disclose the specific findings and conclusions reached by the nonprofit
19 hospital or medical service organization that the results of the analyses in this
20 subparagraph indicate that the nonprofit hospital or medical service
21 organization is in compliance with this section and the federal Paul Wellstone
22 and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008
23 and its implementing and related regulations, which include 45 Code of
24 Federal Regulations, Sections 146.136, 147.160 and 156.115(a)(3).

25 For the purposes of this paragraph, "nonquantitative treatment limitation" means a
26 limitation that is not expressed numerically but otherwise limits the scope or duration
27 of benefits for treatment.

28 **Sec. 2. 24 MRSA §2325-D** is enacted to read:

29 **§2325-D. Prescription drug benefits for substance use disorder treatment**

30 A nonprofit hospital or medical service organization that issues group health care
31 contracts that provide prescription drug benefits for the treatment of substance use
32 disorder:

33 **1. Prior authorization requirements.** May not impose any prior authorization
34 requirements on any prescription medication approved by the federal Food and Drug
35 Administration for the treatment of substance use disorder;

36 **2. Step therapy requirements.** May not impose any step therapy requirements
37 before the nonprofit hospital or medical service organization authorizes coverage for a
38 prescription medication approved by the federal Food and Drug Administration for the
39 treatment of substance use disorder;

40 **3. Drug formulary.** Shall place all prescription medications approved by the federal
41 Food and Drug Administration for the treatment of substance use disorder on the lowest

1 tier of the drug formulary developed and maintained by the nonprofit hospital or medical
2 service organization; and

3 **4. Court-ordered medication.** May not exclude coverage for any prescription
4 medication approved by the federal Food and Drug Administration for the treatment of
5 substance use disorder or any associated counseling or wraparound services on the
6 grounds that such medications and services were court ordered.

7 **Sec. 3. 24-A MRSA §238** is enacted to read:

8 **§238. Implementation of federal mental health parity laws**

9 **1. Implementation of federal mental health parity laws.** The superintendent shall
10 implement and enforce applicable provisions of the federal Paul Wellstone and Pete
11 Domenici Mental Health Parity and Addiction Equity Act of 2008, and any amendments
12 to and federal guidance or regulations relevant to that Act, including 45 Code of Federal
13 Regulations, Sections 146.136, 147.136, 147.160 and 156.115(a)(3), by:

14 A. Proactively ensuring compliance by insurers, health maintenance organizations
15 and nonprofit hospital or medical service organizations that execute, deliver, issue for
16 delivery, continue or renew individual policies or individual and group health care
17 contracts;

18 B. Evaluating all consumer or provider complaints regarding mental illness and
19 substance use disorder coverage for possible parity violations;

20 C. Performing parity compliance market conduct examinations of insurers, health
21 maintenance organizations and nonprofit hospital or medical service organizations
22 that execute, deliver, issue for delivery, continue or renew individual policies or
23 individual and group health care contracts, particularly market conduct examinations
24 that focus on nonquantitative treatment limitations, including, but not limited to, prior
25 authorization, concurrent review, retrospective review, step therapy, network
26 admission standards, reimbursement rates and geographic restrictions; and

27 D. Requesting that insurers, health maintenance organizations and nonprofit hospital
28 or medical service organizations submit comparative analyses during the form review
29 process demonstrating how they design and apply nonquantitative treatment
30 limitation, both as written and in operation, for mental illness and substance use
31 disorder benefits as compared to how they design and apply nonquantitative
32 treatment limitation, as written and in operation, for medical and surgical benefits.

33 The superintendent may adopt rules, as authorized under section 212, as may be
34 necessary to effectuate any provisions of the federal Paul Wellstone and Pete Domenici
35 Mental Health Parity and Addiction Equity Act of 2008 that relate to the business of
36 insurance. Rules adopted pursuant to this subsection are routine technical rules as
37 defined in Title 5, chapter 375, subchapter 2-A.

38 **2. Report.** No later than March 1, 2020 and periodically thereafter, the
39 superintendent shall provide a report and educational presentation to the Legislature. The
40 report must:

1 A. Cover the methodology the superintendent is using to check for compliance with
2 the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction
3 Equity Act of 2008 and any federal regulations or guidance relating to the compliance
4 and oversight of that Act;

5 B. Cover the methodology the superintendent is using to check for compliance with
6 sections 2749-C, 2842, 2843 and 4234-A and Title 24, sections 2325-A and 2329;

7 C. Identify market conduct examinations conducted or completed during the
8 preceding 12-month period regarding compliance with parity in mental illness and
9 substance use disorder benefits under state and federal laws, and summarize the
10 results of such market conduct examinations;

11 D. Detail any educational or corrective actions the superintendent has taken to ensure
12 insurer compliance with the federal Paul Wellstone and Pete Domenici Mental Health
13 Parity and Addiction Equity Act of 2008 and sections 2749-C, 2842, 2843 and
14 4234-A and Title 24, sections 2325-A and 2329; and

15 E. Be written in nontechnical, understandable language and made available to the
16 public by posting the report on the bureau's publicly accessible website and other
17 means the superintendent finds appropriate.

18 **Sec. 4. 24-A MRSA §2749-C, sub-§4**, as enacted by PL 1995, c. 407, §5, is
19 repealed and the following enacted in its place:

20 **4. Reports to the superintendent.** An insurer shall submit annual reports in
21 accordance with this subsection.

22 A. An insurer subject to this section shall report its experience for each calendar year
23 to the superintendent no later than April 30th of the following year. The report must
24 be in a form prescribed by the superintendent and include the amount of claims paid
25 in this State for the services required by this section and the total amount of claims
26 paid in this State for individual health care policies, both separated according to those
27 paid for inpatient, day treatment and outpatient services, as those terms are defined in
28 section 2843. The superintendent shall compile this data for all insurers in an annual
29 report.

30 B. An insurer subject to this section shall submit an annual report to the
31 superintendent no later than April 30th that contains the following information:

32 (1) A description of the process used to develop or select the medically
33 necessary health care criteria for mental illness and substance use disorder
34 benefits and the process used to develop or select the medically necessary health
35 care criteria for medical and surgical benefits;

36 (2) Identification of all nonquantitative treatment limitations that are applied to
37 mental illness and substance use disorder benefits and medical and surgical
38 benefits within each classification of benefits. The report must include
39 information demonstrating that each nonquantitative treatment limitation that
40 applies to mental illness and substance use disorder benefits also applies to
41 medical and surgical benefits within any classification of benefits; and

1 (3) The results of an analysis that demonstrate that for the medically necessary
2 health care criteria described in subparagraph (1) and for each nonquantitative
3 treatment limitation identified in subparagraph (2), as written and in operation,
4 the processes, strategies, evidentiary standards or other factors used in applying
5 the medically necessary health care criteria and each nonquantitative treatment
6 limitation to mental illness and substance use disorder benefits within each
7 classification of benefits are comparable to, and are applied no more stringently
8 than, the processes, strategies, evidentiary standards or other factors used in
9 applying the medically necessary health care criteria and each nonquantitative
10 treatment limitation to medical and surgical benefits within the corresponding
11 classification of benefits. At a minimum, the results of the analysis must:

12 (a) Identify the factors used to determine that a nonquantitative treatment
13 limitation applies to a benefit, including factors that were considered but
14 rejected;

15 (b) Identify and define the specific evidentiary standards used to define the
16 factors and any other evidence relied upon in designing each nonquantitative
17 treatment limitation;

18 (c) Identify and describe the comparative analyses, including the results of
19 the analyses, used to determine that the processes and strategies used to
20 design each nonquantitative treatment limitation, as written, for mental
21 illness and substance use disorder benefits are comparable to, and are applied
22 no more stringently than, the processes and strategies used to design each
23 nonquantitative treatment limitation, as written, for medical and surgical
24 benefits;

25 (d) Identify and describe the comparative analyses, including the results of
26 the analyses, used to determine that the processes and strategies used to apply
27 each nonquantitative treatment limitation, in operation, for mental illness and
28 substance use disorder benefits are comparable to, and applied no more
29 stringently than, the processes and strategies used to apply each
30 nonquantitative treatment limitation, in operation, for medical and surgical
31 benefits; and

32 (e) Disclose the specific findings and conclusions reached by the insurer that
33 the results of the analyses in this subparagraph indicate that the insurer is in
34 compliance with this section and the federal Paul Wellstone and Pete
35 Domenici Mental Health Parity and Addiction Equity Act of 2008 and its
36 implementing and related regulations, which include 45 Code of Federal
37 Regulations, Sections 146.136, 147.160 and 156.115(a)(3).

38 For the purposes of this paragraph, "nonquantitative treatment limitation" means a
39 limitation that is not expressed numerically but otherwise limits the scope or duration
40 of benefits for treatment.

41 **Sec. 5. 24-A MRSA §2749-D** is enacted to read:

1 **§2749-D. Prescription drug benefits for substance use disorder treatment**

2 An insurer that executes, delivers, issues for delivery, continues or renews individual
3 health care policies that provide prescription drug benefits for the treatment of substance
4 use disorder:

5 **1. Prior authorization requirements.** May not impose any prior authorization
6 requirements on any prescription medication approved by the federal Food and Drug
7 Administration for the treatment of substance use disorder;

8 **2. Step therapy requirements.** May not impose any step therapy requirements
9 before the insurer authorizes coverage for a prescription medication approved by the
10 federal Food and Drug Administration for the treatment of substance use disorder;

11 **3. Drug formulary.** Shall place all prescription medications approved by the federal
12 Food and Drug Administration for the treatment of substance use disorder on the lowest
13 tier of the drug formulary developed and maintained by the insurer; and

14 **4. Court-ordered medication.** May not exclude coverage for any prescription
15 medication approved by the federal Food and Drug Administration for the treatment of
16 substance use disorder or any associated counseling or wraparound services on the
17 grounds that such medications and services were court ordered.

18 **Sec. 6. 24-A MRSA §2843, sub-§7,** as amended by PL 1995, c. 407, §8, is
19 repealed and the following enacted in its place:

20 **7. Reports to the superintendent.** An insurer shall submit annual reports in
21 accordance with this subsection.

22 A. An insurer subject to this section shall report its experience for each calendar year
23 to the superintendent no later than April 30th of the following year. The report must
24 be in a form prescribed by the superintendent and include the amount of claims paid
25 in this State for the services required by this section and the total amount of claims
26 paid in this State for group health care contracts, both separated according to those
27 paid for inpatient, day treatment and outpatient services. The superintendent shall
28 compile this data for all insurers in an annual report.

29 B. An insurer subject to this section shall submit an annual report to the
30 superintendent no later than April 30th that contains the following information:

31 (1) A description of the process used to develop or select the medically
32 necessary health care criteria for mental illness and substance use disorder
33 benefits and the process used to develop or select the medically necessary health
34 care criteria for medical and surgical benefits;

35 (2) Identification of all nonquantitative treatment limitations that are applied to
36 mental illness and substance use disorder benefits and medical and surgical
37 benefits within each classification of benefits. The report must include
38 information demonstrating that each nonquantitative treatment limitation that
39 applies to mental illness and substance use disorder benefits also applies to
40 medical and surgical benefits within any classification of benefits; and

1 (3) The results of an analysis that demonstrate that for the medically necessary
2 health care criteria described in subparagraph (1) and for each nonquantitative
3 treatment limitation identified in subparagraph (2), as written and in operation,
4 the processes, strategies, evidentiary standards or other factors used in applying
5 the medically necessary health care criteria and each nonquantitative treatment
6 limitation to mental illness and substance use disorder benefits within each
7 classification of benefits are comparable to, and are applied no more stringently
8 than, the processes, strategies, evidentiary standards or other factors used in
9 applying the medically necessary health care criteria and each nonquantitative
10 treatment limitation to medical and surgical benefits within the corresponding
11 classification of benefits. At a minimum, the results of the analysis must:

12 (a) Identify the factors used to determine that a nonquantitative treatment
13 limitation applies to a benefit, including factors that were considered but
14 rejected;

15 (b) Identify and define the specific evidentiary standards used to define the
16 factors and any other evidence relied upon in designing each nonquantitative
17 treatment limitation;

18 (c) Identify and describe the comparative analyses, including the results of
19 the analyses, used to determine that the processes and strategies used to
20 design each nonquantitative treatment limitation, as written, for mental
21 illness and substance use disorder benefits are comparable to, and are applied
22 no more stringently than, the processes and strategies used to design each
23 nonquantitative treatment limitation, as written, for medical and surgical
24 benefits;

25 (d) Identify and describe the comparative analyses, including the results of
26 the analyses, used to determine that the processes and strategies used to apply
27 each nonquantitative treatment limitation, in operation, for mental illness and
28 substance use disorder benefits are comparable to, and applied no more
29 stringently than, the processes and strategies used to apply each
30 nonquantitative treatment limitation, in operation, for medical and surgical
31 benefits; and

32 (e) Disclose the specific findings and conclusions reached by the insurer that
33 the results of the analyses in this subparagraph indicate that the insurer is in
34 compliance with this section and the federal Paul Wellstone and Pete
35 Domenici Mental Health Parity and Addiction Equity Act of 2008 and its
36 implementing and related regulations, which include 45 Code of Federal
37 Regulations, Sections 146.136, 147.160 and 156.115(a)(3).

38 For the purposes of this paragraph, "nonquantitative treatment limitation" means a
39 limitation that is not expressed numerically but otherwise limits the scope or duration
40 of benefits for treatment.

41 **Sec. 7. 24-A MRSA §2847-V** is enacted to read:

1 **§2847-V. Prescription drug benefits for substance use disorder treatment**

2 An insurer that issues group health care contracts that provide prescription drug
3 benefits for the treatment of substance use disorder:

4 **1. Prior authorization requirements.** May not impose any prior authorization
5 requirements on any prescription medication approved by the federal Food and Drug
6 Administration for the treatment of substance use disorder;

7 **2. Step therapy requirements.** May not impose any step therapy requirements
8 before the insurer authorizes coverage for a prescription medication approved by the
9 federal Food and Drug Administration for the treatment of substance use disorder;

10 **3. Drug formulary.** Shall place all prescription medications approved by the federal
11 Food and Drug Administration for the treatment of substance use disorder on the lowest
12 tier of the drug formulary developed and maintained by the insurer; and

13 **4. Court-ordered medication.** May not exclude coverage for any prescription
14 medication approved by the federal Food and Drug Administration for the treatment of
15 substance use disorder or any associated counseling or wraparound services on the
16 grounds that such medications and services were court ordered.

17 **Sec. 8. 24-A MRSA §4234-A, sub-§10,** as enacted by PL 1995, c. 407, §10, is
18 repealed and the following enacted in its place:

19 **10. Reports to the superintendent.** A health maintenance organization shall submit
20 annual reports in accordance with this subsection.

21 A. A health maintenance organization subject to this section shall report its
22 experience for each calendar year to the superintendent no later than April 30th of the
23 following year. The report must be in a form prescribed by the superintendent and
24 include the amount of claims paid in this State for the services required by this
25 section and the total amount of claims paid in this State for individual and group
26 health care contracts, both separated according to those paid for inpatient, day
27 treatment and outpatient services. The superintendent shall compile this data for all
28 health maintenance organizations in an annual report.

29 B. A health maintenance organization subject to this section shall submit an annual
30 report to the superintendent no later than April 30th that contains the following
31 information:

32 (1) A description of the process used to develop or select the medically
33 necessary health care criteria for mental illness and substance use disorder
34 benefits and the process used to develop or select the medically necessary health
35 care criteria for medical and surgical benefits;

36 (2) Identification of all nonquantitative treatment limitations that are applied to
37 mental illness and substance use disorder benefits and medical and surgical
38 benefits within each classification of benefits. The report must include
39 information demonstrating that each nonquantitative treatment limitation that

1 applies to mental illness and substance use disorder benefits also applies to
2 medical and surgical benefits within any classification of benefits; and

3 (3) The results of an analysis that demonstrate that for the medically necessary
4 health care criteria described in subparagraph (1) and for each nonquantitative
5 treatment limitation identified in subparagraph (2), as written and in operation,
6 the processes, strategies, evidentiary standards or other factors used in applying
7 the medically necessary health care criteria and each nonquantitative treatment
8 limitation to mental illness and substance use disorder benefits within each
9 classification of benefits are comparable to, and are applied no more stringently
10 than, the processes, strategies, evidentiary standards or other factors used in
11 applying the medically necessary health care criteria and each nonquantitative
12 treatment limitation to medical and surgical benefits within the corresponding
13 classification of benefits. At a minimum, the results of the analysis must:

14 (a) Identify the factors used to determine that a nonquantitative treatment
15 limitation applies to a benefit, including factors that were considered but
16 rejected;

17 (b) Identify and define the specific evidentiary standards used to define the
18 factors and any other evidence relied upon in designing each nonquantitative
19 treatment limitation;

20 (c) Identify and describe the comparative analyses, including the results of
21 the analyses, used to determine that the processes and strategies used to
22 design each nonquantitative treatment limitation, as written, for mental
23 illness and substance use disorder benefits are comparable to, and are applied
24 no more stringently than, the processes and strategies used to design each
25 nonquantitative treatment limitation, as written, for medical and surgical
26 benefits;

27 (d) Identify and describe the comparative analyses, including the results of
28 the analyses, used to determine that the processes and strategies used to apply
29 each nonquantitative treatment limitation, in operation, for mental illness and
30 substance use disorder benefits are comparable to, and applied no more
31 stringently than, the processes and strategies used to apply each
32 nonquantitative treatment limitation, in operation, for medical and surgical
33 benefits; and

34 (e) Disclose the specific findings and conclusions reached by the health
35 maintenance organization that the results of the analyses in this subparagraph
36 indicate that the health maintenance organization is in compliance with this
37 section and the federal Paul Wellstone and Pete Domenici Mental Health
38 Parity and Addiction Equity Act of 2008 and its implementing and related
39 regulations, which include 45 Code of Federal Regulations, Sections
40 146.136, 147.160 and 156.115(a)(3).

41 For the purposes of this paragraph, "nonquantitative treatment limitation" means a
42 limitation that is not expressed numerically but otherwise limits the scope or duration
43 of benefits for treatment.

