AMENDMENTS TO HOUSE BILL NO. 1696

Sponsor: REPRESENTATIVE A. DAVIS

Printer's No. 2288

Amend Bill, page 1, lines 12 and 13, by striking out "providing for annual reporting by" in line 12 and all of line 13 and inserting

further providing for definitions and for adoption of Federal acts and providing for annual attestation by insurers and for insurer analysis and disclosure information.

Amend Bill, page 1, lines 16 through 21; page 2, lines 1 through 4; by striking out all of said lines on said pages and inserting

Section 1. Section 603-B(a) of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, is amended by adding definitions to read:

Section 603-B. Definitions.

(a) General rule.--The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Health insurance policy." A policy, subscriber contract, certificate or plan issued by an insurer that provides medical or health care coverage. The term does not include any of the following:

(1) An accident only policy.

(2) A fixed indemnity policy.

(3) A limited benefit policy.

(4) A credit only policy.

(5) A dental only policy.

(6) A vision only policy.

(7) A specified disease policy.

(8) A Medicare supplement policy.

(9) A policy under which benefits are provided by the Federal Government to active or former military personnel and their dependents.

(10) A long-term care or disability income policy.

(11) A workers' compensation policy.

(12) An automobile medical payment policy.

* * *

"Insured." A person on whose behalf an insurer is obligated to pay covered health care expense benefits or provide health care services under an health insurance policy. The term includes a policyholder, subscriber, certificate holder, member, dependent or other individual who is eligible to receive health care services through a health insurance policy.

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"MH/SUD." Mental health and substance use disorder.

"MH/SUD parity Federal guidance." Federal guidance issued pursuant to or in conjunction with MHPAEA and the MH/SUD parity Federal regulations.

"MH/SUD parity Federal regulations." Regulations promulgated by the Federal Government to implement MHPAEA, including 45 CFR 146.136 (relating to parity in mental health and substance use disorder benefits), 147.160 (relating to parity in mental health and substance use disorder benefits) and Pt. 156 (relating to health insurance issuer standards under the Affordable Care Act, including standards related to exchanges), as amended.

"MHPAEA." The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343, 122 Stat. 3881), originally enacted as section 2705 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 300gg-5), as renumbered and amended by the Patient Protection and Affordable Care Act (Public Law 111-148, 124 Stat. 119), together with the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152, 124 Stat. 1029) as section 2726 of the Public Health Service Act (42 U.S.C. § 300gg-26), as further amended by the enhanced compliance with the MH/SUD coverage requirements under § 13001 of the 21st Century Cures Act (Public Law 114-255), as amended.

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"Treatment limitation." A limit on the scope of a benefit or duration of treatment for a covered service.

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Section 2. Section 604-B of the act is amended to read:

Section 604-B. Adoption of Federal acts.

Insurers shall comply with the Federal acts as contained in sections [2701, 2702, 2705, 2707, 2721, 2753 and 2754 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. §§ 300gg, 300gg-1, 300gg-5, 300gg-7, 300gg-21, 300gg-53 and 300gg-54).] 2704, 2705, 2722, 2726, 2728, 2753 and 2754 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. §§ 300gg-3, 300gg-4, 300gg-21, 300gg-26, 300gg-28, 300gg-53 and 300gg-54) and their implementing and related Federal regulations.

Section 3. The act is amended by adding sections to read:

Section 604.1-B. Annual attestation by insurers.

(a) Statement regarding MHPAEA compliance.--For the form for each health insurance policy offered, issued or renewed by an insurer in this Commonwealth to which MHPAEA applies, the

insurer shall annually file with the department a statement attesting to the insurer's documented analyses of its efforts to comply with MHPAEA and the MH/SUD parity Federal regulations as of the date of the attestation.

(b) Statement regarding MHPAEA nonapplicability.--For the form for each health insurance policy offered, issued or renewed by an insurer in this Commonwealth that is required to be filed but to which MHPAEA does not apply, the insurer shall annually file with the department a statement attesting to the nonapplicability of MHPAEA to the policy form.

(c) Filing.--Each attestation required under this section must be filed by April 30 of each year or with each form filing, whichever is earlier.

Section 604.2-B. Insurer analysis and disclosure documentation.

(a) Information available for review.--For the form for each health insurance policy offered, issued or renewed by an insurer in this Commonwealth to which MHPAEA applies, the insurer shall:

(1) Perform and document a baseline parity analysis to demonstrate compliance with MHPAEA and the MH/SUD parity Federal regulations for each quantitative treatment limitation and each nonquantitative treatment limitation applicable to an MH/SUD benefit.

(2) Perform and document a parity analysis to demonstrate compliance with MHPAEA and the MH/SUD parity Federal regulations for each change to a quantitative treatment limitation or nonquantitative treatment limitation applicable to an MH/SUD benefit.

(3) Prepare disclosure documentation required by section 300gg-26(a)(4) of MHPAEA (42 U.S.C. § 300gg-26(a)(4)), as amended, consistent with then-current MH/SUD parity Federal guidance issued under section 13001 of the 21st Century Cures Act (Public Law 114-255, 42 U.S.C. § 300gg-26(6) and (7)), as amended.

(b) Contents of documented analysis.--Each documented analysis performed under subsection (a)(1) and (2) for a nonquantitative treatment limitation, including medical management, must:

(1) Identify the limitation that is applied to MH/SUD benefits and that is applied to medical and surgical benefits.

(2) Describe the process used to develop, select or continue the use of the limitation for MH/SUD benefits and the process used to develop, select or continue the use of that limitation for medical and surgical benefits.

(3) Identify and define each factor used to determine that the limitation is applicable to the MH/SUD benefit, including processes, strategies and evidentiary standards used to develop, select or continue the use of each factor.

(4) Contain a comparative analysis, including the results of the analysis, performed to determine that, as designed and written, each factor applicable to the

limitation of the MH/SUD benefit is comparable to that same factor as applicable to the limitation of medical and surgical benefits.

(5) Specify the findings and conclusions in the analysis that indicate that the insurer is in compliance with this article, MHPAEA and the MH/SUD parity Federal regulations.

(c) Documentation.--For each nonquantitative treatment limitation, including medical management, that is or has been in operation and applied under a health insurance policy offered, issued or renewed by an insurer in this Commonwealth, an insurer shall maintain documentation to demonstrate that each factor applicable to the limitation for the MH/SUD benefit is comparable to, and is applied no more stringently than, that same factor as applicable to the limitation for medical and surgical benefits. The documentation shall be maintained in accordance with all record retention requirements applicable to consumer claims files.

(d) Availability of information and documentation.--An insurer shall make the information and documentation specified in subsections (a), (b) and (c) available as follows:

(1) The information and documentation specified in subsections (a), (b) and (c) shall be available to the department upon request.

(2) The information and documentation specified in subsection (a)(3) shall be available to an insured or provider as required by section 300gg-26(a)(4) of MHPAEA (42 U.S.C. § 300gg-26(a)(4)) in response to a good faith request.

(3) If applicable, an insurer may designate the information and documentation produced in accordance with this subsection as a trade secret or confidential proprietary information.

Section 4. This act shall apply to the forms for each health insurance policy to be offered, issued or renewed by an insurer in this Commonwealth after December 31, 2021.

Section 5. This act shall take effect immediately.