

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1696 Session of 2019

INTRODUCED BY MURT, POLINCHOCK, SCHLOSSBERG, GABLER, MILLARD, BOBACK, WHEELAND, CALTAGIRONE, GILLEN, McNEILL, SCHWEYER, HOHENSTEIN, DAVIDSON, DeLUCA, BURGOS, SOLOMON, TOOHIL, VITALI, OTTEN, ROZZI, KIRKLAND, HILL-EVANS, ISAACSON, JOHNSON-HARRELL, DAY, MARKOSEK, STURLA, ROEBUCK, KAUFER, FRANKEL AND READSHAW, JULY 8, 2019

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 27, 2020

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," in health insurance coverage parity
12 and nondiscrimination, providing for annual reporting by <--
13 insurers. FURTHER PROVIDING FOR DEFINITIONS AND FOR ADOPTION <--
14 OF FEDERAL ACTS AND PROVIDING FOR ANNUAL ATTESTATION BY
15 INSURERS AND FOR INSURER ANALYSIS AND DISCLOSURE INFORMATION.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. The act of May 17, 1921 (P.L.682, No.284), known <--
19 as The Insurance Company Law of 1921, is amended by adding a
20 section to read:

21 Section 604.1 B. Annual reporting by insurers.

22 An insurer shall annually file with the department such

1 ~~information as required by the department to determine the~~  
2 ~~insurer's compliance with the Paul Wellstone and Pete Domenici~~  
3 ~~Mental Health Parity and Addiction Equity Act of 2008 (Public~~  
4 ~~Law 110-343, 122 Stat. 3881).~~

5 ~~Section 2. This act shall take effect in 60 days.~~

6 SECTION 1. SECTION 603-B(A) OF THE ACT OF MAY 17, 1921 <--  
7 (P.L.682, NO.284), KNOWN AS THE INSURANCE COMPANY LAW OF 1921,  
8 IS AMENDED BY ADDING DEFINITIONS TO READ:

9 SECTION 603-B. DEFINITIONS.

10 (A) GENERAL RULE.--THE FOLLOWING WORDS AND PHRASES WHEN USED  
11 IN THIS ARTICLE SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
12 SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

13 \* \* \*

14 "HEALTH INSURANCE POLICY." A POLICY, SUBSCRIBER CONTRACT,  
15 CERTIFICATE OR PLAN ISSUED BY AN INSURER THAT PROVIDES MEDICAL  
16 OR HEALTH CARE COVERAGE. THE TERM DOES NOT INCLUDE ANY OF THE  
17 FOLLOWING:

18 (1) AN ACCIDENT ONLY POLICY.

19 (2) A FIXED INDEMNITY POLICY.

20 (3) A LIMITED BENEFIT POLICY.

21 (4) A CREDIT ONLY POLICY.

22 (5) A DENTAL ONLY POLICY.

23 (6) A VISION ONLY POLICY.

24 (7) A SPECIFIED DISEASE POLICY.

25 (8) A MEDICARE SUPPLEMENT POLICY.

26 (9) A POLICY UNDER WHICH BENEFITS ARE PROVIDED BY THE  
27 FEDERAL GOVERNMENT TO ACTIVE OR FORMER MILITARY PERSONNEL AND  
28 THEIR DEPENDENTS.

29 (10) A LONG-TERM CARE OR DISABILITY INCOME POLICY.

30 (11) A WORKERS' COMPENSATION POLICY.

1           (12) AN AUTOMOBILE MEDICAL PAYMENT POLICY.

2           \* \* \*

3           "INSURED." A PERSON ON WHOSE BEHALF AN INSURER IS OBLIGATED  
4 TO PAY COVERED HEALTH CARE EXPENSE BENEFITS OR PROVIDE HEALTH  
5 CARE SERVICES UNDER AN HEALTH INSURANCE POLICY. THE TERM  
6 INCLUDES A POLICYHOLDER, SUBSCRIBER, CERTIFICATE HOLDER, MEMBER,  
7 DEPENDENT OR OTHER INDIVIDUAL WHO IS ELIGIBLE TO RECEIVE HEALTH  
8 CARE SERVICES THROUGH A HEALTH INSURANCE POLICY.

9           \* \* \*

10          "MH/SUD." MENTAL HEALTH AND SUBSTANCE USE DISORDER.

11          "MH/SUD PARITY FEDERAL GUIDANCE." FEDERAL GUIDANCE ISSUED  
12 PURSUANT TO OR IN CONJUNCTION WITH MHPAEA AND THE MH/SUD PARITY  
13 FEDERAL REGULATIONS.

14          "MH/SUD PARITY FEDERAL REGULATIONS." REGULATIONS PROMULGATED  
15 BY THE FEDERAL GOVERNMENT TO IMPLEMENT MHPAEA, INCLUDING 45 CFR  
16 146.136 (RELATING TO PARITY IN MENTAL HEALTH AND SUBSTANCE USE  
17 DISORDER BENEFITS), 147.160 (RELATING TO PARITY IN MENTAL HEALTH  
18 AND SUBSTANCE USE DISORDER BENEFITS) AND PT. 156 (RELATING TO  
19 HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT,  
20 INCLUDING STANDARDS RELATED TO EXCHANGES), AS AMENDED.

21          "MHPAEA." THE PAUL WELLSTONE AND PETE DOMENICI MENTAL HEALTH  
22 PARITY AND ADDICTION EQUITY ACT OF 2008 (PUBLIC LAW 110-343, 122  
23 STAT. 3881), ORIGINALLY ENACTED AS SECTION 2705 OF THE PUBLIC  
24 HEALTH SERVICE ACT (58 STAT. 682, 42 U.S.C. § 300GG-5), AS  
25 RENUMBERED AND AMENDED BY THE PATIENT PROTECTION AND AFFORDABLE  
26 CARE ACT (PUBLIC LAW 111-148, 124 STAT. 119), TOGETHER WITH THE  
27 HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010 (PUBLIC LAW  
28 111-152, 124 STAT. 1029), AS SECTION 2726 OF THE PUBLIC HEALTH  
29 SERVICE ACT (42 U.S.C. § 300GG-26), AS FURTHER AMENDED BY THE  
30 ENHANCED COMPLIANCE WITH THE MH/SUD COVERAGE REQUIREMENTS UNDER

1 § 13001 OF THE 21ST CENTURY CURES ACT (PUBLIC LAW 114-255), AS  
2 AMENDED.

3 \* \* \*

4 "TREATMENT LIMITATION." A LIMIT ON THE SCOPE OF A BENEFIT OR  
5 DURATION OF TREATMENT FOR A COVERED SERVICE.

6 \* \* \*

7 SECTION 2. SECTION 604-B OF THE ACT IS AMENDED TO READ:

8 SECTION 604-B. ADOPTION OF FEDERAL ACTS.

9 INSURERS SHALL COMPLY WITH THE FEDERAL ACTS AS CONTAINED IN  
10 SECTIONS [2701, 2702, 2705, 2707, 2721, 2753 AND 2754 OF THE  
11 PUBLIC HEALTH SERVICE ACT (58 STAT. 682, 42 U.S.C. §§ 300GG,  
12 300GG-1, 300GG-5, 300GG-7, 300GG-21, 300GG-53 AND 300GG-54).]

13 2704, 2705, 2722, 2726, 2728, 2753 AND 2754 OF THE PUBLIC HEALTH  
14 SERVICE ACT (58 STAT. 682, 42 U.S.C. §§ 300GG-3, 300GG-4, 300GG-  
15 21, 300GG-26, 300GG-28, 300GG-53 AND 300GG-54) AND THEIR  
16 IMPLEMENTING AND RELATED FEDERAL REGULATIONS.

17 SECTION 3. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:

18 SECTION 604.1-B. ANNUAL ATTESTATION BY INSURERS.

19 (A) STATEMENT REGARDING MHPAEA COMPLIANCE.--FOR THE FORM FOR  
20 EACH HEALTH INSURANCE POLICY OFFERED, ISSUED OR RENEWED BY AN  
21 INSURER IN THIS COMMONWEALTH TO WHICH MHPAEA APPLIES, THE  
22 INSURER SHALL ANNUALLY FILE WITH THE DEPARTMENT A STATEMENT  
23 ATTESTING TO THE INSURER'S DOCUMENTED ANALYSES OF ITS EFFORTS TO  
24 COMPLY WITH MHPAEA AND THE MH/SUD PARITY FEDERAL REGULATIONS AS  
25 OF THE DATE OF THE ATTESTATION.

26 (B) STATEMENT REGARDING MHPAEA NONAPPLICABILITY.--FOR THE  
27 FORM FOR EACH HEALTH INSURANCE POLICY OFFERED, ISSUED OR RENEWED  
28 BY AN INSURER IN THIS COMMONWEALTH THAT IS REQUIRED TO BE FILED  
29 BUT TO WHICH MHPAEA DOES NOT APPLY, THE INSURER SHALL ANNUALLY  
30 FILE WITH THE DEPARTMENT A STATEMENT ATTESTING TO THE

1 NONAPPLICABILITY OF MHPAEA TO THE POLICY FORM.

2 (C) FILING.--EACH ATTESTATION REQUIRED UNDER THIS SECTION  
3 MUST BE FILED BY APRIL 30 OF EACH YEAR OR WITH EACH FORM FILING,  
4 WHICHEVER IS EARLIER.

5 SECTION 604.2-B. INSURER ANALYSIS AND DISCLOSURE DOCUMENTATION.

6 (A) INFORMATION AVAILABLE FOR REVIEW.--FOR THE FORM FOR EACH  
7 HEALTH INSURANCE POLICY OFFERED, ISSUED OR RENEWED BY AN INSURER  
8 IN THIS COMMONWEALTH TO WHICH MHPAEA APPLIES, THE INSURER SHALL:

9 (1) PERFORM AND DOCUMENT A BASELINE PARITY ANALYSIS TO  
10 DEMONSTRATE COMPLIANCE WITH MHPAEA AND THE MH/SUD PARITY  
11 FEDERAL REGULATIONS FOR EACH QUANTITATIVE TREATMENT  
12 LIMITATION AND EACH NONQUANTITATIVE TREATMENT LIMITATION  
13 APPLICABLE TO AN MH/SUD BENEFIT.

14 (2) PERFORM AND DOCUMENT A PARITY ANALYSIS TO  
15 DEMONSTRATE COMPLIANCE WITH MHPAEA AND THE MH/SUD PARITY  
16 FEDERAL REGULATIONS FOR EACH CHANGE TO A QUANTITATIVE  
17 TREATMENT LIMITATION OR NONQUANTITATIVE TREATMENT LIMITATION  
18 APPLICABLE TO AN MH/SUD BENEFIT.

19 (3) PREPARE DISCLOSURE DOCUMENTATION REQUIRED BY SECTION  
20 300GG-26(A)(4) OF MHPAEA (42 U.S.C. § 300GG-26(A)(4)), AS  
21 AMENDED, CONSISTENT WITH THEN-CURRENT MH/SUD PARITY FEDERAL  
22 GUIDANCE ISSUED UNDER SECTION 13001 OF THE 21ST CENTURY CURES  
23 ACT (PUBLIC LAW 114-255, 42 U.S.C. § 300GG-26(6) AND (7)), AS  
24 AMENDED.

25 (B) CONTENTS OF DOCUMENTED ANALYSIS.--EACH DOCUMENTED  
26 ANALYSIS PERFORMED UNDER SUBSECTION (A) (1) AND (2) FOR A  
27 NONQUANTITATIVE TREATMENT LIMITATION, INCLUDING MEDICAL  
28 MANAGEMENT, MUST:

29 (1) IDENTIFY THE LIMITATION THAT IS APPLIED TO MH/SUD  
30 BENEFITS AND THAT IS APPLIED TO MEDICAL AND SURGICAL

1 BENEFITS.

2 (2) DESCRIBE THE PROCESS USED TO DEVELOP, SELECT OR  
3 CONTINUE THE USE OF THE LIMITATION FOR MH/SUD BENEFITS AND  
4 THE PROCESS USED TO DEVELOP, SELECT OR CONTINUE THE USE OF  
5 THAT LIMITATION FOR MEDICAL AND SURGICAL BENEFITS.

6 (3) IDENTIFY AND DEFINE EACH FACTOR USED TO DETERMINE  
7 THAT THE LIMITATION IS APPLICABLE TO THE MH/SUD BENEFIT,  
8 INCLUDING PROCESSES, STRATEGIES AND EVIDENTIARY STANDARDS  
9 USED TO DEVELOP, SELECT OR CONTINUE THE USE OF EACH FACTOR.

10 (4) CONTAIN A COMPARATIVE ANALYSIS, INCLUDING THE  
11 RESULTS OF THE ANALYSIS, PERFORMED TO DETERMINE THAT, AS  
12 DESIGNED AND WRITTEN, EACH FACTOR APPLICABLE TO THE  
13 LIMITATION OF THE MH/SUD BENEFIT IS COMPARABLE TO THAT SAME  
14 FACTOR AS APPLICABLE TO THE LIMITATION OF MEDICAL AND  
15 SURGICAL BENEFITS.

16 (5) SPECIFY THE FINDINGS AND CONCLUSIONS IN THE ANALYSIS  
17 THAT INDICATE THAT THE INSURER IS IN COMPLIANCE WITH THIS  
18 ARTICLE, MHPAEA AND THE MH/SUD PARITY FEDERAL REGULATIONS.

19 (C) DOCUMENTATION.--FOR EACH NONQUANTITATIVE TREATMENT  
20 LIMITATION, INCLUDING MEDICAL MANAGEMENT, THAT IS OR HAS BEEN IN  
21 OPERATION AND APPLIED UNDER A HEALTH INSURANCE POLICY OFFERED,  
22 ISSUED OR RENEWED BY AN INSURER IN THIS COMMONWEALTH, AN INSURER  
23 SHALL MAINTAIN DOCUMENTATION TO DEMONSTRATE THAT EACH FACTOR  
24 APPLICABLE TO THE LIMITATION FOR THE MH/SUD BENEFIT IS  
25 COMPARABLE TO, AND IS APPLIED NO MORE STRINGENTLY THAN, THAT  
26 SAME FACTOR AS APPLICABLE TO THE LIMITATION FOR MEDICAL AND  
27 SURGICAL BENEFITS. THE DOCUMENTATION SHALL BE MAINTAINED IN  
28 ACCORDANCE WITH ALL RECORD RETENTION REQUIREMENTS APPLICABLE TO  
29 CONSUMER CLAIMS FILES.

30 (D) AVAILABILITY OF INFORMATION AND DOCUMENTATION.--AN

1 INSURER SHALL MAKE THE INFORMATION AND DOCUMENTATION SPECIFIED  
2 IN SUBSECTIONS (A), (B) AND (C) AVAILABLE AS FOLLOWS:

3 (1) THE INFORMATION AND DOCUMENTATION SPECIFIED IN  
4 SUBSECTIONS (A), (B) AND (C) SHALL BE AVAILABLE TO THE  
5 DEPARTMENT UPON REQUEST.

6 (2) THE INFORMATION AND DOCUMENTATION SPECIFIED IN  
7 SUBSECTION (A) (3) SHALL BE AVAILABLE TO AN INSURED OR  
8 PROVIDER AS REQUIRED BY SECTION 300GG-26(A) (4) OF MHPAEA (42  
9 U.S.C. § 300GG-26(A) (4)) IN RESPONSE TO A GOOD FAITH REQUEST.

10 (3) IF APPLICABLE, AN INSURER MAY DESIGNATE THE  
11 INFORMATION AND DOCUMENTATION PRODUCED IN ACCORDANCE WITH  
12 THIS SUBSECTION AS A TRADE SECRET OR CONFIDENTIAL PROPRIETARY  
13 INFORMATION.

14 SECTION 4. THIS ACT SHALL APPLY TO THE FORMS FOR EACH HEALTH  
15 INSURANCE POLICY TO BE OFFERED, ISSUED OR RENEWED BY AN INSURER  
16 IN THIS COMMONWEALTH AFTER DECEMBER 31, 2021.

17 SECTION 5. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.