

## AMENDMENTS TO HOUSE BILL NO. 1696

Sponsor: REPRESENTATIVE A. DAVIS

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1 Amend Bill, page 1, lines 12 and 13, by striking out  
2 "providing for annual reporting by" in line 12 and all of line  
3 13 and inserting  
4 further providing for definitions and for adoption of Federal  
5 acts and providing for annual attestation by insurers and for  
6 insurer analysis and disclosure information.

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

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

13 Section 603-B. Definitions.

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

17 \* \* \*

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

22 (1) An accident only policy.

23 (2) A fixed indemnity policy.

24 (3) A limited benefit policy.

25 (4) A credit only policy.

26 (5) A dental only policy.

27 (6) A vision only policy.

28 (7) A specified disease policy.

29 (8) A Medicare supplement policy.

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

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

34 (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  
31 § 13001 of the 21st Century Cures Act (Public Law 114-255), as  
32 amended.

33          \* \* \*

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

36          \* \* \*

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

38          Section 604-B. Adoption of Federal acts.

39          Insurers shall comply with the Federal acts as contained in  
40 sections [2701, 2702, 2705, 2707, 2721, 2753 and 2754 of the  
41 Public Health Service Act (58 Stat. 682, 42 U.S.C. §§ 300gg,  
42 300gg-1, 300gg-5, 300gg-7, 300gg-21, 300gg-53 and 300gg-54).]  
43 2704, 2705, 2722, 2726, 2728, 2753 and 2754 of the Public Health  
44 Service Act (58 Stat. 682, 42 U.S.C. §§ 300gg-3, 300gg-4, 300gg-  
45 21, 300gg-26, 300gg-28, 300gg-53 and 300gg-54) and their  
46 implementing and related Federal regulations.

47          Section 3. The act is amended by adding sections to read:  
48 Section 604.1-B. Annual attestation by insurers.

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

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

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

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

14 Section 604.2-B. Insurer analysis and disclosure documentation.

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

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

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

28 (3) Prepare disclosure documentation required by section  
29 300gg-26(a)(4) of MHPAEA (42 U.S.C. § 300gg-26(a)(4)), as  
30 amended, consistent with then-current MH/SUD parity Federal  
31 guidance issued under section 13001 of the 21st Century Cures  
32 Act (Public Law 114-255, 42 U.S.C. § 300gg-26(6) and (7)), as  
33 amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 Section 5. This act shall take effect immediately.