

# STATE OF NEW YORK

1156--B

2017-2018 Regular Sessions

## IN SENATE

January 6, 2017

Introduced by Sens. ORTT, BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to establishing the mental health and substance use disorder parity report act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "mental health and substance use disorder parity report act".  
3 § 2. Subsection (a) of section 210 of the insurance law, as amended by  
4 chapter 579 of the laws of 1998, is amended to read as follows:  
5 (a) The superintendent shall annually publish on or before September  
6 first, nineteen hundred ninety-nine, and annually thereafter, a consumer  
7 guide to insurers providing managed care products, individual accident  
8 and health insurance or group or blanket accident and health insurance  
9 and entities licensed pursuant to article forty-four of the public  
10 health law providing comprehensive health service plans which includes,  
11 in detail, a ranking from best to worst based upon each company's claim  
12 processing or medical payments record during the preceding calendar year  
13 using criteria available to the department, adjusted for volume of  
14 coverage provided. Such ranking shall also take into consideration the  
15 corresponding total number or percentage of claims denied which were  
16 reversed or compromised after intervention by the department and the  
17 department of health, consumer complaints to the department and the  
18 department of health, violations of section three thousand two hundred  
19 twenty-four-a of this chapter and other pertinent data which would  
20 permit the department to objectively determine a company's performance.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD02509-09-8

1 The department in publishing such consumer guide shall publish one  
2 state-wide guide or no more than five regional guides so as to facili-  
3 tate comparisons among individual insurers and entities within a service  
4 market area. Such rankings shall be printed in a format which ranks all  
5 health insurers and all entities certified pursuant to article forty-  
6 four of the public health law in one combined list. The consumer guide  
7 on or before September first, two thousand nineteen and annually there-  
8 after, shall include a mental health parity report and a substance uses  
9 disorder parity report based upon each company's compliance with mental  
10 health parity and substance use disorder parity laws based on each  
11 company's record during the preceding calendar year using criteria  
12 available to the department, including, but not limited to, information  
13 required by this subsection and subsections (b), (c) and (d) of this  
14 section. In addition, notwithstanding such requirements and any law to  
15 the contrary, the data to be included in the mental health parity report  
16 and the substance use disorder parity report and collected by the super-  
17 intendent and the commissioner of health from insurers and health plans,  
18 for such purposes shall include:

19 (1) Annual mental health parity and substance use disorder parity  
20 compliance reports from each insurer and health plan outlining how it  
21 complies with Timothy's law, the insurance law provisions regarding  
22 substance use disorder and eating disorders and the Paul Wellstone and  
23 Pete Domenici mental health parity and addiction equity act of two thou-  
24 sand eight;

25 (2) Rates of utilization review for mental health and substance use  
26 disorder claims as compared to medical and surgical claims, including  
27 rates of approval and denial, categorized by benefits provided under the  
28 following classifications, as required under 45 C.F.R. § 146.136, 29  
29 C.F.R. § 2590.712 and 26 C.F.R. § 54.9812-1.: inpatient in-network,  
30 inpatient out-of-network, outpatient in-network, outpatient out-of-net-  
31 work, emergency care, and prescription drugs;

32 (3) The number of prior or concurrent authorization requests for  
33 mental health services and for substance use disorder services and the  
34 number of denials for such requests, compared with the number of prior  
35 or concurrent authorization requests for medical and surgical services  
36 and the number of denials for such requests, categorized by the same  
37 classifications identified in paragraph two of this subsection which  
38 shall also include the rates of internal and external appeals, including  
39 rates of appeals upheld and overturned, specifically for mental health  
40 benefits and substance use disorder benefits;

41 (4) The number of prior or concurrent authorization requests for  
42 mental health services and substance use disorder services that went to  
43 clinical peer review as a result of a disagreement between the service  
44 provider and the insurer or health plan and the number that went to  
45 clinical peer review for medical and surgical services categorized in  
46 the same manner as provided in paragraph two of this subsection;

47 (5) The list of services that have a prior or concurrent authorization  
48 requirement based on a numerical threshold defined by a specific number  
49 of visits or days of care for mental health services, substance use  
50 disorder services and medical and surgical services and identification  
51 of the threshold requirements;

52 (6) The list of covered medications for the treatment of a substance  
53 use disorder on the prescription drug list of the insurer or health plan  
54 including tier placement, authorization requirements and all other  
55 utilization management requirements;

1 (7) The percentage of claims paid for in-network mental health  
2 services and for substance use disorder services and the percentage of  
3 claims paid for in-network medical and surgical services;

4 (8) The percentage of claims paid for out-of-network mental health  
5 services and substance use disorder services compared with the percent-  
6 age of claims paid for other types of out-of-network medical and surgi-  
7 cal services;

8 (9) The medical necessity criteria the insurer or health plan uses to  
9 make prior authorization or continuing care and discharge determi-  
10 nations, which in conjunction must be conspicuously posted for policy-  
11 holders and providers to be able to review without making a request on  
12 the insurer's or the health plan's website and be made available in hard  
13 copy upon request;

14 (10) The number of behavioral health advocates, pursuant to an agree-  
15 ment with the office of the attorney general if applicable, or staff on  
16 hand to assist policyholders with benefits for mental health or  
17 substance use disorder;

18 (11) The network adequacy of insurers and health plans, which in addi-  
19 tion to the requirements of subsection (a) of section three thousand two  
20 hundred forty-one of this chapter and subsection (c) of this section,  
21 shall consist of verifying the mental health and substance use disorder  
22 providers listed in an insurer's or health plan's provider directory as  
23 in network. Such verification shall be provided by the insurer or health  
24 plan, on a semi-annual basis, by providing its list of in-network mental  
25 health and substance use disorder providers and the number of claims  
26 each provider has submitted within the past six months. The list shall  
27 include the name, address and telephone number of all participating  
28 in-network providers. For providers that have had no claims in the past  
29 six months, the insurer or health plan must provide an attestation that  
30 such provider is still part of the network and that the provider is  
31 accepting new patients. For qualified health plans offered on New York  
32 state of health, the department of health shall review the network  
33 adequacy to ensure it is consistent with 45 CFR § 156.230 and the  
34 department of health's managed care network adequacy standard including  
35 verification of the mental health and substance use disorder providers  
36 listed in a qualified health plan's provider directory as in-network.  
37 Such verification shall be provided by a qualified health plan, on a  
38 semi-annual basis, by providing its list of in-network mental health and  
39 substance use disorder providers and the number of claims each provider  
40 has submitted within the past six months. The list shall include the  
41 name, address and telephone number of all participating providers. For  
42 providers that have no claims in the past six months, the qualified  
43 health plan must provide an attestation that such provider is still part  
44 of the network and that the provider is accepting new patients;

45 (12) The number of mental health and substance use disorder providers  
46 who have left or been removed from the provider network in the past six  
47 months and the reason that they have left or been removed; and

48 (13) Any other data or metric the superintendent or the commissioner  
49 of health deems is necessary to measure compliance with mental health  
50 parity and substance use disorder parity.

51 § 3. Paragraph 2 of subsection (c) of section 210 of the insurance  
52 law, as added by chapter 579 of the laws of 1998, is amended to read as  
53 follows:

54 (2) the percentage of primary care physicians who remained participat-  
55 ing providers, provided however, that such percentage shall exclude  
56 voluntary terminations due to physician retirement, relocation or other

1 similar reasons, and the percentage of mental health professionals,  
2 defined as physicians who are licensed pursuant to article one hundred  
3 thirty-one of the education law who are diplomats of the American board  
4 of psychiatry and neurology or are eligible to be certified by that  
5 board, or are certified by the American osteopathic board of neurology  
6 and psychiatry or are eligible to be certified by that board, a social  
7 worker licensed pursuant to article one hundred fifty-four of the educa-  
8 tion law or a psychologist licensed pursuant to article one hundred  
9 fifty-three of the education law, who remained as participating provid-  
10 ers and the number of claims each type of mental health professional has  
11 submitted in the last twelve months and the number of mental health  
12 professionals, if any, who have not had any claims in the last twelve  
13 months;

14 § 4. Subsection (d) of section 210 of the insurance law, as added by  
15 chapter 579 of the laws of 1998, is amended to read as follows:

16 (d) Health insurers and entities certified pursuant to article forty-  
17 four of the public health law shall provide annually to the superinten-  
18 dent and the commissioner of health, and the commissioner of health  
19 shall provide to the superintendent, all of the information necessary  
20 for the superintendent to produce the annual consumer guide, including  
21 the mental health parity report and the substance use disorder parity  
22 report. In compiling the guide, the superintendent shall make every  
23 effort to ensure that the information is presented in a clear, under-  
24 standable fashion which facilitates comparisons among individual insur-  
25 ers and entities, and in a format which lends itself to the widest  
26 possible distribution to consumers. The superintendent shall either  
27 include the information from the annual consumer guide in the consumer  
28 shopping guide required by subsection (a) of section four thousand three  
29 hundred twenty-three of this chapter or combine the two guides as long  
30 as consumers in the individual market are provided with the information  
31 required by subsection (a) of section four thousand three hundred twen-  
32 ty-three of this chapter.

33 § 5. This act shall take effect on the sixtieth day after it shall  
34 have become a law, provided, however, effective immediately, the amend-  
35 ment and/or repeal of any rule or regulation necessary for the implemen-  
36 tation of this act on its effective date are authorized and directed to  
37 be made and completed on or before such effective date.