

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1222.01 Christy Chase x2008

HOUSE BILL 18-1357

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HOUSE SPONSORSHIP

Michaelson Jenet,

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Gardner and Williams A., Jahn

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House Committees

Public Health Care & Human Services

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING ACCESS TO BEHAVIORAL HEALTH CARE SERVICES, AND,  
102 IN CONNECTION THEREWITH, ESTABLISHING AN OMBUDSPERSON  
103 FOR BEHAVIORAL HEALTH ACCESS TO CARE TO ASSIST  
104 CONSUMERS IN ACCESSING CARE AND REQUIRING HEALTH  
105 INSURERS AND THE COMMISSIONER OF INSURANCE TO REPORT  
106 ON COMPLIANCE WITH MENTAL HEALTH PARITY LAWS.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

**Section 1** of the bill establishes an office of the ombudsperson for

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

behavioral health access to care as an independent office within the office of the executive director of the department of human services to assist Coloradans in accessing behavioral health care.

**Section 3** requires health insurers and the commissioner of insurance to report on issues related to mental health parity requirements.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 3 to article  
3 80 of title 27 as follows:

4 PART 3

5 BEHAVIORAL HEALTH ACCESS TO  
6 CARE OMBUDSPERSON

7 **27-80-301. Short title.** THE SHORT TITLE OF THIS PART 3 IS THE  
8 "BEHAVIORAL HEALTH ACCESS TO CARE OMBUDSPERSON ACT".

9 **27-80-302. Definitions.** AS USED IN THIS PART 3, UNLESS THE  
10 CONTEXT OTHERWISE REQUIRES:

11 (1) "BEHAVIORAL HEALTH CARE PROVIDER" MEANS A  
12 PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102 (17), OR  
13 MENTAL HEALTH PROFESSIONAL LICENSED OR CERTIFIED UNDER ARTICLE  
14 43 OF TITLE 12.

15 (2) "OFFICE" MEANS THE OFFICE OF THE OMBUDSPERSON FOR  
16 BEHAVIORAL HEALTH ACCESS TO CARE CREATED IN SECTION 27-80-303.

17 (3) "OMBUDSPERSON" MEANS THE INDIVIDUAL DESIGNATED  
18 PURSUANT TO SECTION 27-80-303 AS THE OMBUDSPERSON FOR  
19 BEHAVIORAL HEALTH ACCESS TO CARE.

20 **27-80-303. Office of ombudsperson for behavioral health  
21 access to care - creation - appointment of ombudsperson - duties.**

22 (1) THERE IS HEREBY CREATED IN THE OFFICE OF THE EXECUTIVE  
23 DIRECTOR THE OFFICE OF THE OMBUDSPERSON FOR BEHAVIORAL HEALTH

1 ACCESS TO CARE FOR THE PURPOSE OF ASSISTING COLORADANS IN  
2 ACCESSING BEHAVIORAL HEALTH CARE.

3 (2) BY JANUARY 1, 2019, THE GOVERNOR SHALL DESIGNATE AN  
4 OMBUDSPERSON FOR BEHAVIORAL HEALTH ACCESS TO CARE, WHO SHALL  
5 SERVE AS DIRECTOR OF THE OFFICE. THE OMBUDSPERSON SHALL SERVE AS  
6 A NEUTRAL PARTY TO HELP CONSUMERS, INCLUDING CONSUMERS WHO ARE  
7 UNINSURED OR HAVE PUBLIC OR PRIVATE HEALTH BENEFIT COVERAGE,  
8 INCLUDING COVERAGE THAT IS NOT SUBJECT TO STATE REGULATION, AND  
9 BEHAVIORAL HEALTH CARE PROVIDERS, ACTING ON THEIR OWN BEHALF,  
10 ON BEHALF OF A CONSUMER WITH THE CONSUMER'S WRITTEN PERMISSION,  
11 OR ON BEHALF OF A GROUP OF BEHAVIORAL HEALTH CARE PROVIDERS,  
12 NAVIGATE AND RESOLVE ISSUES RELATED TO CONSUMER ACCESS TO  
13 BEHAVIORAL HEALTH CARE, INCLUDING CARE FOR MENTAL HEALTH  
14 CONDITIONS AND SUBSTANCE USE DISORDERS.

15 (3) THE OMBUDSPERSON SHALL:

16 (a) INTERACT WITH CONSUMERS AND BEHAVIORAL HEALTH CARE  
17 PROVIDERS WITH CONCERNS OR COMPLAINTS TO HELP THE CONSUMERS  
18 AND PROVIDERS RESOLVE BEHAVIORAL HEALTH CARE ACCESS AND  
19 COVERAGE ISSUES;

20 (b) IDENTIFY, TRACK, AND REPORT TO THE APPROPRIATE  
21 REGULATORY OR OVERSIGHT AGENCY CONCERNS, COMPLAINTS, AND  
22 POTENTIAL VIOLATIONS OF STATE OR FEDERAL RULES, REGULATIONS, OR  
23 STATUTES CONCERNING THE AVAILABILITY OF, AND TERMS AND  
24 CONDITIONS OF, BENEFITS FOR MENTAL HEALTH CONDITIONS OR  
25 SUBSTANCE USE DISORDERS, INCLUDING POTENTIAL VIOLATIONS RELATED  
26 TO QUANTITATIVE AND NONQUANTITATIVE TREATMENT LIMITATIONS;

27 (c) RECEIVE AND REPORT CONCERNS AND COMPLAINTS RELATING

1 TO INAPPROPRIATE CARE, AN EMERGENCY PROCEDURE UNDER SECTION  
2 27-65-105, A CERTIFICATION FOR SHORT-TERM TREATMENT UNDER  
3 SECTION 27-65-107, OR A CERTIFICATION FOR LONG-TERM CARE AND  
4 TREATMENT UNDER SECTION 27-65-109;

5 (d) PROVIDE APPROPRIATE INFORMATION TO HELP CONSUMERS  
6 OBTAIN BEHAVIORAL HEALTH CARE;

7 (e) DEVELOP APPROPRIATE POINTS OF CONTACT FOR REFERRALS TO  
8 OTHER STATE AND FEDERAL AGENCIES; AND

9 (f) PROVIDE APPROPRIATE INFORMATION TO HELP CONSUMERS OR  
10 BEHAVIORAL HEALTH CARE PROVIDERS FILE APPEALS OR COMPLAINTS  
11 WITH THE APPROPRIATE ENTITIES, INCLUDING INSURERS AND OTHER STATE  
12 AND FEDERAL AGENCIES.

13 **27-80-304. Liaisons - department - commissioner of insurance.**

14 THE COMMISSIONER OF INSURANCE AND THE EXECUTIVE DIRECTOR SHALL  
15 EACH APPOINT A LIAISON TO THE OMBUDSPERSON TO RECEIVE REPORTS OF  
16 CONCERNS, COMPLAINTS, AND POTENTIAL VIOLATIONS DESCRIBED IN  
17 SECTION 27-80-303 (3)(b) FROM THE OMBUDSPERSON, CONSUMERS, OR  
18 BEHAVIORAL HEALTH CARE PROVIDERS.

19 **27-80-305. Annual report.** (1) ON OR BEFORE SEPTEMBER 1,  
20 2020, AND ON OR BEFORE SEPTEMBER 1 OF EACH YEAR THEREAFTER, THE  
21 OMBUDSPERSON SHALL PREPARE AND SUBMIT, IN ACCORDANCE WITH  
22 SUBSECTION (2) OF THIS SECTION, A WRITTEN REPORT THAT INCLUDES  
23 INFORMATION FROM THE PRECEDING FISCAL YEAR CONCERNING ACTIONS  
24 TAKEN BY THE OMBUDSPERSON RELATING TO THE DUTIES OF THE OFFICE  
25 SET FORTH IN SECTION 27-80-303.

26 (2) THE OMBUDSPERSON SHALL SUBMIT THE REPORT REQUIRED BY  
27 THIS SECTION TO THE GOVERNOR, THE EXECUTIVE DIRECTOR, THE

1 COMMISSIONER OF INSURANCE, THE SENATE COMMITTEE ON HEALTH AND  
2 HUMAN SERVICES OR ANY SUCCESSOR COMMITTEE, AND THE HOUSE OF  
3 REPRESENTATIVES COMMITTEES ON HEALTH, INSURANCE, AND  
4 ENVIRONMENT AND PUBLIC HEALTH CARE AND HUMAN SERVICES OR ANY  
5 SUCCESSOR COMMITTEES. NOTWITHSTANDING SECTION 24-1-136  
6 (11)(a)(I), THE REPORTING REQUIREMENT SET FORTH IN THIS SECTION  
7 CONTINUES INDEFINITELY.

8 (3) THE OMBUDSPERSON SHALL POST THE ANNUAL REPORT ON THE  
9 DEPARTMENT'S WEBSITE.

10 (4) THE OMBUDSPERSON SHALL NOT INCLUDE IN THE REPORT  
11 REQUIRED BY THIS SECTION ANY PERSONALLY IDENTIFYING INFORMATION  
12 ABOUT AN INDIVIDUAL CONSUMER OR BEHAVIORAL HEALTH CARE  
13 PROVIDER.

14 **SECTION 2.** In Colorado Revised Statutes, 24-1-120, **add** (12)  
15 as follows:

16 **24-1-120. Department of human services - creation.** (12) THE  
17 OFFICE OF THE OMBUDSPERSON FOR BEHAVIORAL HEALTH ACCESS TO CARE  
18 CREATED IN SECTION 27-80-303 SHALL EXERCISE ITS POWERS AND  
19 PERFORM ITS DUTIES AND FUNCTIONS AS IF THE OFFICE WERE  
20 TRANSFERRED BY A **TYPE 1** TRANSFER, AS DEFINED IN SECTION 24-1-105,  
21 TO THE DEPARTMENT OF HUMAN SERVICES.

22 **SECTION 3.** In Colorado Revised Statutes, **add** 10-16-147 as  
23 follows:

24 **10-16-147. Parity reporting - carriers - commissioner -**  
25 **definition.** (1) A CARRIER THAT OFFERS A HEALTH BENEFIT PLAN THAT IS  
26 SUBJECT TO SECTION 10-16-104 (5.5) SHALL SUBMIT A REPORT TO THE  
27 COMMISSIONER BY JANUARY 1, 2019, AND BY EACH JANUARY 1

1 THEREAFTER THAT CONTAINS THE FOLLOWING INFORMATION:

2 (a) A DESCRIPTION OF THE PROCESS USED TO DEVELOP OR SELECT:

3 (I) THE MEDICAL NECESSITY CRITERIA USED IN DETERMINING  
4 BENEFITS FOR THE TREATMENT OF BEHAVIORAL, MENTAL HEALTH, OR  
5 SUBSTANCE USE DISORDERS; AND

6 (II) THE MEDICAL NECESSITY CRITERIA USED IN DETERMINING  
7 MEDICAL AND SURGICAL BENEFITS;

8 (b) IDENTIFICATION OF ALL NONQUANTITATIVE TREATMENT  
9 LIMITATIONS THAT ARE APPLIED TO BENEFITS FOR THE TREATMENT OF  
10 BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE DISORDERS AND TO  
11 MEDICAL AND SURGICAL BENEFITS WITHIN EACH CLASSIFICATION OF  
12 BENEFITS;

13 (c) A DESCRIPTION OF CARRIER COMPLIANCE WITH THE  
14 REQUIREMENTS SPECIFIED IN SECTION 10-16-704 FOR MAINTAINING AN  
15 ADEQUATE NETWORK OF BEHAVIORAL, MENTAL HEALTH, AND SUBSTANCE  
16 USE DISORDER PROVIDERS; AND

17 (d) (I) EXCEPT AS PROVIDED IN SUBSECTION (1)(d)(III) OF THIS  
18 SECTION, THE RESULTS OF ANALYSES DEMONSTRATING THAT FOR MEDICAL  
19 NECESSITY CRITERIA DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION  
20 AND FOR EACH NONQUANTITATIVE TREATMENT LIMITATION IDENTIFIED IN  
21 SUBSECTION (1)(b) OF THIS SECTION, AS WRITTEN AND IN OPERATION, THE  
22 PROCESSES, STRATEGIES, EVIDENTIARY STANDARDS, OR OTHER FACTORS  
23 USED IN APPLYING THE MEDICAL NECESSITY CRITERIA AND EACH  
24 NONQUANTITATIVE TREATMENT LIMITATION TO BENEFITS FOR THE  
25 TREATMENT OF BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE  
26 DISORDERS WITHIN EACH CLASSIFICATION OF BENEFITS ARE COMPARABLE  
27 TO, AND ARE APPLIED NO MORE STRINGENTLY THAN, THE PROCESSES,

1 STRATEGIES, EVIDENTIARY STANDARDS, OR OTHER FACTORS USED IN  
2 APPLYING THE MEDICAL NECESSITY CRITERIA AND EACH  
3 NONQUANTITATIVE TREATMENT LIMITATION TO MEDICAL AND SURGICAL  
4 BENEFITS WITHIN THE CORRESPONDING CLASSIFICATION OF BENEFITS.

5 (II) A CARRIER'S REPORT ON THE RESULTS OF THE ANALYSES  
6 SPECIFIED IN THIS SUBSECTION (1)(d) MUST, AT A MINIMUM:

7 (A) IDENTIFY THE FACTORS USED TO DETERMINE WHETHER A  
8 NONQUANTITATIVE TREATMENT LIMITATION WILL APPLY TO A BENEFIT,  
9 INCLUDING FACTORS THAT WERE CONSIDERED BUT REJECTED;

10 (B) IDENTIFY AND DEFINE THE SPECIFIC EVIDENTIARY STANDARDS  
11 USED TO DEFINE THE FACTORS AND ANY OTHER EVIDENCE RELIED ON IN  
12 DESIGNING THE NONQUANTITATIVE TREATMENT LIMITATIONS;

13 (C) PROVIDE THE COMPARATIVE ANALYSES, INCLUDING THE  
14 RESULTS OF THE ANALYSES, PERFORMED TO DETERMINE THAT THE  
15 PROCESSES AND STRATEGIES USED TO DESIGN EACH NONQUANTITATIVE  
16 TREATMENT LIMITATION, AS WRITTEN, FOR BENEFITS FOR BEHAVIORAL,  
17 MENTAL HEALTH, OR SUBSTANCE USE DISORDERS ARE COMPARABLE TO,  
18 AND ARE APPLIED NO MORE STRINGENTLY THAN, THE PROCESSES AND  
19 STRATEGIES USED TO DESIGN EACH NONQUANTITATIVE TREATMENT  
20 LIMITATION, AS WRITTEN, FOR MEDICAL AND SURGICAL BENEFITS;

21 (D) PROVIDE THE COMPARATIVE ANALYSES, INCLUDING THE  
22 RESULTS OF THE ANALYSES, PERFORMED TO DETERMINE THAT THE  
23 PROCESSES AND STRATEGIES USED TO APPLY EACH NONQUANTITATIVE  
24 TREATMENT LIMITATION, IN OPERATION, FOR BENEFITS FOR BEHAVIORAL,  
25 MENTAL HEALTH, OR SUBSTANCE USE DISORDERS ARE COMPARABLE TO,  
26 AND ARE APPLIED NO MORE STRINGENTLY THAN, THE PROCESSES AND  
27 STRATEGIES USED TO APPLY EACH NONQUANTITATIVE TREATMENT

1       LIMITATION, IN OPERATION, FOR MEDICAL AND SURGICAL BENEFITS;

2               (E) DISCLOSE THE SPECIFIC FINDINGS AND CONCLUSIONS REACHED  
3 BY THE CARRIER THAT THE RESULTS OF THE ANALYSES INDICATE THAT  
4 EACH HEALTH BENEFIT PLAN OFFERED BY THE CARRIER COMPLIES WITH  
5 SECTION 10-16-104 (5.5), THE MHPAEA, AND THE REGULATIONS  
6 ADOPTED PURSUANT TO THAT ACT, INCLUDING 45 CFR 146.136 AND 45  
7 CFR 147.160.

8               (III) THE COMMISSIONER MAY ALLOW CARRIERS TO SUBMIT  
9 ANALYSES FOR A SELECT NUMBER OF NONQUANTITATIVE TREATMENT  
10 LIMITATIONS SPECIFIED BY THE COMMISSIONER IN ORDER TO RELIEVE  
11 CARRIERS FROM THE REQUIREMENT TO PERFORM ANALYSES OF EVERY  
12 NONQUANTITATIVE TREATMENT LIMITATION IMPOSED UNDER THEIR  
13 HEALTH BENEFIT PLANS.

14              (2) THE COMMISSIONER MAY ADOPT RULES AS NECESSARY TO  
15 IMPLEMENT THE REPORTING REQUIREMENTS OF SUBSECTION (1) OF THIS  
16 SECTION, INCLUDING RULES TO SPECIFY THE FORM AND MANNER OF  
17 CARRIER REPORTS.

18              (3) (a) BY MARCH 1, 2019, AND EVERY OTHER MARCH 1  
19 THEREAFTER, THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT AND  
20 PROVIDE A PRESENTATION OF THE REPORT TO THE GENERAL ASSEMBLY  
21 THAT:

22              (I) SPECIFIES THE METHODOLOGY THE COMMISSIONER USES TO  
23 VERIFY THAT CARRIERS ARE COMPLYING WITH SECTION 10-16-104 (5.5)  
24 AND RULES ADOPTED UNDER THAT SECTION AND WITH THE MHPAEA,  
25 ANY REGULATIONS ADOPTED PURSUANT TO THAT ACT, OR GUIDANCE  
26 RELATED TO COMPLIANCE WITH AND OVERSIGHT OF THAT ACT;

27              (II) IDENTIFIES MARKET CONDUCT EXAMINATIONS INITIATED,

1 CONDUCTED, OR COMPLETED DURING THE PRECEDING TWELVE MONTHS  
2 REGARDING COMPLIANCE WITH SECTION 10-16-104 (5.5) AND RULES  
3 ADOPTED UNDER THAT SECTION AND WITH THE MHPAEA AND  
4 REGULATIONS ADOPTED UNDER THAT ACT AND SUMMARIZES THE  
5 OUTCOMES OF THOSE MARKET CONDUCT EXAMINATIONS;

6 (III) DETAILS ANY EDUCATIONAL OR CORRECTIVE ACTIONS THE  
7 COMMISSIONER HAS TAKEN TO ENSURE CARRIER COMPLIANCE WITH  
8 SECTION 10-16-104 (5.5) AND RULES ADOPTED UNDER THAT SECTION AND  
9 WITH THE MHPAEA AND REGULATIONS ADOPTED UNDER THAT ACT.

10 (b) THE COMMISSIONER SHALL ENSURE THAT THE REPORT IS  
11 WRITTEN IN PLAIN LANGUAGE AND IS MADE AVAILABLE TO THE PUBLIC BY,  
12 AT A MINIMUM, POSTING THE REPORT ON THE DIVISION'S WEBSITE.

13 (c) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE  
14 REPORTING REQUIREMENT SPECIFIED IN THIS SECTION CONTINUES  
15 INDEFINITELY.

16 (4) AS USED IN THIS SECTION, "MHPAEA" MEANS THE FEDERAL  
17 "PAUL WELLSTONE AND PETE DOMENICI MENTAL HEALTH PARITY AND  
18 ADDICTION EQUITY ACT OF 2008", PUB.L. 110-343, AS AMENDED.

19 **SECTION 4. Act subject to petition - effective date.** This act  
20 takes effect at 12:01 a.m. on the day following the expiration of the  
21 ninety-day period after final adjournment of the general assembly (August  
22 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a  
23 referendum petition is filed pursuant to section 1 (3) of article V of the  
24 state constitution against this act or an item, section, or part of this act  
25 within such period, then the act, item, section, or part will not take effect  
26 unless approved by the people at the general election to be held in

1 November 2018 and, in such case, will take effect on the date of the  
2 official declaration of the vote thereon by the governor.