

Senate Bill 342

By: Senators Kirkpatrick of the 32nd, Watson of the 1st, Hufstetler of the 52nd, Burke of the 11th, Jackson of the 41st and others

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to
2 insurance generally, so as to provide for annual reporting regarding mental health parity and
3 treatment limitations, including nonquantitative treatment limitations, in certain healthcare
4 plans offered in the individual, small group, and large group markets; to require an insurer
5 to post current, accurate data on treatment limitations, including nonquantitative treatment
6 limitations, on the insurer's public-facing website; to provide for the Commissioner to
7 compile and release summary reports and data summaries on the department's website; to
8 provide for definitions; to establish penalties and enforcement mechanisms; to provide for
9 rules and regulations; to provide for related matters; to provide for an effective date and
10 applicability; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance
14 generally, is amended by adding a new Code section to read as follows:

15 "33-24-59.31.

16 (a) As used in this Code section, the term:

17 (1) 'Healthcare plan' means any hospital or medical insurance policy or certificate,
18 healthcare plan contract or certificate, qualified higher deductible health plan, health
19 maintenance organization or other managed care subscriber contract, or state healthcare
20 plan. Such term shall not include limited benefit insurance policies or plans listed under
21 paragraph (3) of Code Section 33-1-2, air ambulance insurance, Chapter 31 of this title,
22 relating to credit insurance, Chapter 9 of Title 24, relating to workers' compensation,
23 Part A, B, C, or D of Title XVIII of the Social Security Act (Medicare), or any plan or
24 program not described in this paragraph over which the Commissioner does not have
25 regulatory authority.

26 (2) 'Individual market' means the market for healthcare plans where the healthcare plan
27 is issued directly to a natural person and not through coverage under a group, blanket, or
28 franchise healthcare plan. Such market includes healthcare plans acquired independently,
29 through an agent or agency, or through a state, federal, or partnership exchange or
30 marketplace operating in Georgia pursuant to Section 1311 of the federal Patient
31 Protection and Affordable Care Act (P.L. 111-148), as amended by the federal Health
32 Care and Education Reconciliation Act of 2010 (P.L. 111-152).

33 (3) 'Insurer' means an entity subject to the insurance laws and regulations of this state,
34 or subject to the jurisdiction of the Commissioner, that contracts, offers to contract, or
35 enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the
36 costs of healthcare services, including those of an accident and sickness insurance
37 company, a health maintenance organization, a healthcare plan, a managed care plan, or
38 any other entity providing a health insurance plan, a health benefit plan, or a healthcare
39 plan.

40 (4) 'Large group market' means the market within which coverage is sold to a group or
41 subgroups for more than 50 employees, members, or enrollees.

42 (5) 'Medical/surgical benefits' has the same meaning stated in 45 C.F.R.
43 Section 146.136(a) and 29 C.F.R. Section 2590.712(a) as of January 1, 2022.

44 (6) 'Mental health benefits' has the same meaning stated in 45 C.F.R. Section 146.136(a)
45 and 29 C.F.R. Section 2590.712(a) as of January 1, 2022.

46 (7) 'Parity Act' means the Paul Wellstone and Pete Domenici Mental Health Parity and
47 Addiction Equity Act of 2008, 42 U.S.C. Section 300gg-26, and federal regulations
48 implementing that act, as of January 1, 2022.

49 (8) 'Parity Act classifications' means the following classifications of benefits:

50 (A) Inpatient, in-network benefits;

51 (B) Inpatient, out-of-network benefits;

52 (C) Outpatient, in-network benefits;

53 (D) Outpatient, out-of-network benefits;

54 (E) Emergency care benefits; and

55 (F) Prescription drugs benefits.

56 (9) 'Small group market' means the market within which coverage is sold to a group or
57 subgroup of at least two and no more than 50 employees, members, or enrollees.

58 (10) 'Substance use disorder benefits' has the same meaning stated in 45 C.F.R.
59 Section 146.136(a) and 29 C.F.R. Section 2590.712(a) as of January 1, 2022.

60 (11) 'Treatment limitations' has the same meaning stated in 45 C.F.R. Section 146.136(a)
61 and 29 C.F.R. Section 2590.712(a) as of January 1, 2022.

62 (b) An insurer subject to this Code section shall:

63 (1) Identify the five healthcare plans with the highest enrollment for each product offered
64 by the insurer in the individual, small group, and large group markets; and

65 (2) Prepare a report for each identified healthcare plan that provides mental health
66 benefits or substance use disorder benefits demonstrating whether or not the insurer
67 provides actual parity in compliance with the requirements of the Parity Act and as
68 further provided in subsection (c) of this Code section.

69 (c)(1) No later than January 1, 2023, and annually thereafter, each insurer subject to this
70 Code section shall submit a report to the Commissioner containing the following

71 information, comparing medical/surgical benefits to mental health benefits and substance
 72 use disorder benefits, for each of the healthcare plans identified in paragraph (1) of
 73 subsection (b) of this Code section as to:

74 (A) A description of the process used to develop or select the medical necessity
 75 criteria;

76 (B) The criteria for a medical necessity determination;

77 (C) The reasons and frequency for a denial of benefits;

78 (D) The reasons and frequency for a denial of prior authorization requests;

79 (E) For each of the Parity Act classifications, a description of the treatment limitations,
 80 which includes nonquantitative treatment limitations;

81 (F) For each of the Parity Act classifications, sufficient claims paid and reimbursement
 82 rate data for the Commissioner to assess and confirm whether the 'substantially all'
 83 financial results threshold between two benefit classes has been met;

84 (G) For healthcare plans subject to the Parity Act only, the results of the comparative
 85 analysis and other information required by the Parity Act; and

86 (H) Such additional information as the Commissioner requires.

87 (2) The Commissioner shall establish a standard form for insurers to submit the report
 88 under paragraph (1) of this subsection.

89 (3) The report submitted under paragraph (1) of this subsection shall not be recognized
 90 as being proprietary, confidential, or to contain trade secrets, provided that qualifying
 91 information provided in accordance with subparagraph (F) of paragraph (1) of this
 92 subsection shall be confidential by law and privileged and shall not be subject to Article 4
 93 of Chapter 18 of Title 50, relating to open records, if submitted in a manner approved by
 94 the Commissioner or as otherwise prescribed by regulation promulgated by the
 95 Commissioner.

96 (4) The Commissioner is authorized to use the documents, materials, or other
97 information in the furtherance of any regulatory or legal action brought as part of the
98 Commissioner's official duties.

99 (d)(1) No later than July 1, 2023, and annually thereafter, an insurer subject to this Code
100 section shall make current, accurate data available regarding the treatment limitations,
101 including nonquantitative treatment limitations, for medical/surgical benefits compared
102 to mental health benefits and substance use disorders benefits on the insurer's
103 public-facing website in a summary form that is readily accessible to the public.

104 (2) The Commissioner shall develop a summary form for insurers to use when making
105 current, accurate data available to the insured, prospective plan members, and the public
106 as directed under paragraph (1) of this subsection.

107 (e) No later than July 1, 2023, and annually thereafter, the Commissioner shall compile
108 and release a summary report of each report submitted under paragraph (1) of subsection
109 (c) of this Code section and make such summary report available to the public in a
110 prominent location on the department's website. Data summaries shall be compiled and
111 the summary report shall be structured in such a manner as to enable comparison between
112 insurers by consumers.

113 (f) The Commissioner shall:

114 (1) Review each report submitted under paragraph (1) of subsection (c) of this Code
115 section to assess the insurer's compliance with this title or with the Parity Act if
116 applicable; and

117 (2) Notify an insurer in writing of any noncompliance with this title or with the Parity
118 Act if applicable.

119 (g)(1) If the Commissioner determines that an insurer failed to submit a report or failed
120 to submit a timely or sufficient report required under paragraph (1) of subsection (c) of
121 this Code section, the Commissioner may impose a monetary penalty of up to \$2,000.00
122 for each and every act in violation, unless the insurer knew or reasonably should have

123 known that he or she was in violation, in which case the monetary penalty may be
124 increased to an amount of up to \$5,000.00 for each and every act in violation.

125 (2) If the Commissioner determines that an insurer failed to comply with this Code
126 section or with the Parity Act if applicable, the Commissioner may take any action
127 authorized, including but not limited to issuing an administrative order imposing
128 monetary penalties, imposing a compliance plan, ordering the insurer to develop a
129 compliance plan, or ordering the insurer to reprocess claims.

130 (h) The Commissioner shall adopt rules and regulations to implement and administer this
131 Code section and to ensure uniform definitions and methodology for the reporting
132 requirements established under this Code section."

133 **SECTION 2.**

134 This Act shall become effective January 1, 2023, and shall apply to all policies issued,
135 delivered, issued for delivery, or renewed in this state on or after such date.

136 **SECTION 3.**

137 All laws and parts of laws in conflict with this Act are repealed.