

1                                   **MENTAL HEALTH COVERAGE AMENDMENTS**

2   2021 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Christine F. Watkins**

5                                   Senate Sponsor: \_\_\_\_\_

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7 **LONG TITLE**

8 **General Description:**

9                   This bill amends Insurance Code provisions related to health benefit plans.

10 **Highlighted Provisions:**

11                   This bill:

12                   ▶ defines terms;

13                   ▶ prohibits a health insurer from offering a health benefit plan in which, within a  
14 single class of benefits, nonquantitative treatment limitations for mental health and  
15 substance use disorder benefits differ from nonquantitative treatment limitations for  
16 medical and surgical benefits;

17                   ▶ requires a health insurer that offers a health benefit plan that provides a mental  
18 health and substance use disorder benefit to submit a report to the insurance  
19 commissioner each year that includes specified information and an analysis  
20 indicating the insurer is in compliance with certain state and federal laws governing  
21 mental health and substance use disorder benefits;

22                   ▶ requires the insurance commissioner to enforce certain federal laws governing  
23 mental health and substance use disorder benefits and specifies minimum  
24 enforcement actions that must be taken by the commissioner;

25                   ▶ requires the insurance commissioner to report to the Legislature on the  
26 commissioner's monitoring and enforcement of compliance by insurers with certain  
27 state and federal mental health and substance use disorder benefit laws; and



28           ▶ requires certain actions and prohibits others by a health benefit plan that provides a  
29 prescription drug benefit for the treatment of a substance use disorder.

30 **Money Appropriated in this Bill:**

31           None

32 **Other Special Clauses:**

33           None

34 **Utah Code Sections Affected:**

35 ENACTS:

36           **31A-22-656**, Utah Code Annotated 1953

37           **31A-22-657**, Utah Code Annotated 1953



39 *Be it enacted by the Legislature of the state of Utah:*

40           Section 1. Section **31A-22-656** is enacted to read:

41           **31A-22-656. Mental health and substance use disorder benefits -- Parity -- Insurer**  
42 **reporting -- Enforcement -- Report to Legislature.**

43           (1) As used in this section:

44           (a) "Mental health and substance use disorder benefits" means benefits for the  
45 treatment of a condition or disorder that involves a mental health condition or substance use  
46 disorder that:

47           (i) falls under any of the diagnostic categories listed in the mental disorders section of  
48 the current edition of the International Classification of Disease; or

49           (ii) is listed in the mental disorders section of the most recent version of the Diagnostic  
50 and Statistical Manual of Mental Disorders.

51           (b) "Nonquantitative treatment limitation" means a treatment limitation that is not  
52 expressed numerically but otherwise limits the scope or duration of a treatment benefit.

53           (2) A health insurer may not offer a health benefit plan in which, within a single class  
54 of benefits, nonquantitative treatment limitations for mental health and substance use disorder  
55 benefits differ from nonquantitative treatment limitations for medical and surgical benefits.

56           (3) (a) On or before March 1 of each year, an insurer that offers a health benefit plan  
57 that provides a mental health and substance use disorder benefit shall submit a report to the  
58 commissioner that contains the following information about the plan:

59           (i) (A) a description of the process used to develop or select the medical necessity  
60 criteria for mental health and substance use disorder benefits; and  
61           (B) the process used to develop or select the medical necessity criteria for medical and  
62 surgical benefits;  
63           (ii) for each class of benefits:  
64           (A) nonquantitative treatment limitations that apply to a mental health and substance  
65 use disorder benefit; and  
66           (B) nonquantitative treatment limitations that apply to a medical and surgical benefit;  
67 and  
68           (iii) the results of an analysis that demonstrates that, as planned in writing and as put  
69 into operation, for the medical necessity criteria described under Subsection (3)(a)(i) and for  
70 each nonquantitative treatment limitation identified in Subsection (3)(a)(ii), the processes,  
71 strategies, evidentiary standards, or other factors used in applying the medical necessity criteria  
72 and each nonquantitative treatment limitation to mental health and substance use disorder  
73 benefits within each class of benefits are comparable to, and applied no more stringently than,  
74 the processes, strategies, evidentiary standards, or other factors used in applying the medical  
75 necessity criteria and each nonquantitative treatment limitation to medical and surgical benefits  
76 within the same class of benefits.  
77           (b) At a minimum, the results of the analysis described in Subsection (3)(a)(iii) shall:  
78           (i) identify the factors used to determine that a nonquantitative treatment limitation  
79 applies to a benefit, including factors that were considered but rejected;  
80           (ii) identify and define the specific evidentiary standards used to define the factors and  
81 any other evidence relied upon in designing each nonquantitative treatment limitation;  
82           (iii) provide the comparative analysis, including the results of the analysis, performed  
83 to determine that the as-written processes and strategies used to design each nonquantitative  
84 treatment limitation and the as-written processes and strategies used to apply each  
85 nonquantitative treatment limitation to mental health and substance use disorder benefits are  
86 comparable to, and are applied no more stringently than, the as-written processes and strategies  
87 used to design each nonquantitative treatment limitation and the as-written processes and  
88 strategies used to apply each nonquantitative treatment limitation to medical and surgical  
89 benefits;

90 (iv) provide the comparative analysis, including the results of the analysis, performed  
91 to determine that the processes and strategies used to put each nonquantitative treatment  
92 limitation into operation for mental health and substance use disorder benefits are comparable  
93 to, and are applied no more stringently than, the processes and strategies used to put each  
94 nonquantitative treatment limitation into operation for medical and surgical benefits; and

95 (v) disclose the specific findings and conclusions reached by the insurer that the results  
96 of the analysis required under Subsection (3)(a)(iii) and this Subsection (3)(b) confirm that the  
97 insurer is in compliance with:

98 (A) Subsection (2); and

99 (B) 42 U.S.C. Sec. 300gg-26 and related federal regulations and guidance.

100 (4) (a) The commissioner shall implement and enforce applicable provisions of 42  
101 U.S.C. Sec. 300gg-26 and related federal regulations and guidance by, at a minimum:

102 (i) probatively ensuring compliance by an insurer that offers a health benefit plan that  
103 provides mental health and substance use disorder benefits;

104 (ii) evaluating all consumer or provider complaints regarding mental health and  
105 substance use disorder coverage for possible parity violations;

106 (iii) performing parity compliance market conduct examinations of insurers that offer  
107 health benefit plans that provide mental health and substance use disorder benefits, particularly  
108 market conduct examinations that focus on nonquantitative treatment limitations, including  
109 prior authorization, concurrent review, retrospective review, step therapy, network admission  
110 standards, reimbursement rates, and geographic restrictions; and

111 (iv) requesting that an insurer submit an analysis during the form review process that  
112 compares how the insurer's design and application of nonquantitative treatment limitations, as  
113 planned in writing and as put into operation, for mental health and substance use disorder  
114 benefits compare with the insurer's design and application of nonquantitative treatment  
115 limitations, as planned in writing and as put into operation, for medical and surgical benefits.

116 (b) The commissioner may adopt rules, in accordance with Title 63G, Chapter 3, Utah  
117 Administrative Rulemaking Act, necessary to ensure the implementation and enforcement of  
118 42 U.S.C. Sec. 300gg-26, including related federal regulations and guidance, with respect to  
119 insurers.

120 (5) (a) No later than March 1, 2021, the commissioner shall submit a report to the

121 Legislature that:

122 (i) describes the methodology used by the commissioner to monitor insurer compliance  
123 with 42 U.S.C. Sec. 300gg-26, including related federal regulations and guidance;

124 (ii) describes the methodology used by the commissioner to monitor insurer  
125 compliance with Section [31A-22-625](#);

126 (iii) (A) identifies market conduct examinations conducted by the commissioner,  
127 whether completed or not, during the preceding 12-month period regarding compliance with  
128 state and federal mental health and substance use disorder benefit parity laws; and

129 (B) summarizes the results of the market conduct examinations; and

130 (iv) describes any educational or corrective action taken by the commissioner to ensure  
131 insurer compliance with:

132 (A) 42 U.S.C. Sec. 300gg-26, including related federal regulations and guidance; and

133 (B) Section [31A-22-625](#).

134 (b) (i) The report required under Subsection (5)(a) shall be written in non-technical,  
135 simple, and understandable language.

136 (ii) The commissioner shall make the report available to the public, including by  
137 posting the report on the department's website.

138 Section 2. Section **31A-22-657** is enacted to read:

139 **31A-22-657. Prescription drug benefit for substance use disorders -- Formulary**  
140 **placement -- Prior authorization prohibited -- Step therapy prohibited -- Coverage of**  
141 **court ordered treatment.**

142 (1) As used in this section:

143 (a) "FDA" means the United States Food and Drug Administration.

144 (b) "Prescription drug" means the same as that term is defined in Section [58-17b-102](#).

145 (c) "Prescription drug benefit for the treatment of a substance use disorder" means a  
146 prescription drug benefit for the treatment of a condition or disorder that involves a substance  
147 use disorder that:

148 (i) falls under any of the diagnostic categories listed in the mental disorders section of  
149 the current edition of the International Classification of Diseases; or

150 (ii) is listed in the mental disorders section of the most recent version of the Diagnostic  
151 and Statistical Manual of Mental Disorders.

152           (2) An insurer that offers a health benefit plan that provides a prescription drug benefit  
153 for the treatment of a substance use disorder:

154           (a) shall place all prescription drugs approved by the FDA for the treatment of the  
155 substance use disorder on the lowest tier of the drug formulary developed and maintained by  
156 the insurer for the health benefit plan; and

157           (b) may not:

158           (i) impose a prior authorization requirement as a condition of coverage of a  
159 prescription drug approved by the FDA for the treatment of the substance use disorder;

160           (ii) impose a step therapy requirement as a condition of coverage of a prescription drug  
161 approved by the FDA for the treatment of the substance use disorder;

162           (iii) exclude from coverage a prescription drug approved by the FDA for the treatment  
163 of the substance use disorder on grounds the prescription drug is court ordered; or

164           (iv) exclude from coverage counseling or wraparound services related to prescription  
165 drug treatment of the substance use disorder on grounds the prescription drug or associated  
166 counseling or wraparound services is court ordered.