

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2031**

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 2019

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2031 ACS, with committee amendments.

As amended, this substitute bill requires hospital, medical and health service corporations, commercial insurers, health maintenance organizations, health benefits plans issued pursuant to the New Jersey Individual Health Coverage and Small Employer Health Benefits Programs, the State Health Benefits Program, and the School Employees' Health Benefits Program, to provide coverage for mental health conditions and substance use disorders and to meet the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. That act prevents certain health insurers that provide mental health or substance use disorder benefits from imposing less favorable benefit limitations on those benefits than on medical or surgical benefits, commonly referred to as mental health parity.

The bill amends several statutes, initially enacted in 1999, which require hospital, medical and health service corporations, individual and group health insurers and the State Health Benefits Program to provide coverage for biologically-based mental illness under the same terms and conditions as provided for any other sickness. The bill expands that coverage to include coverage for mental health conditions and substance use disorders. Mental health conditions and substance use disorders are defined as conditions or disorders consistent with generally recognized independent standards of current medical practice.

The bill also removes certain provisions of the statutes that provide that nothing in those statutes shall be construed to change the manner in which the insurer determines:

(1) whether a mental health care service meets the medical necessity standard as established by the insurer; or

(2) which providers shall be entitled to reimbursement or to be participating providers, as appropriate, for mental health services under the policy or contract.

The bill also supplements the "Health Care Quality Act," P.L.1997, c.192 (C.26:2S-1 et al.) to place certain restrictions and reporting requirements on carriers to ensure parity with respect to coverage for mental health conditions and substance use disorders.

The bill requires a carrier to approve a request for an in-plan exception if the carrier's network does not have any providers who are qualified, accessible and available to perform the specific medically necessary service.

The bill requires carriers to submit an annual report to the Department of Banking and Insurance on or before March 1 that contains certain information, to the extent that the commissioner determines practicable, concerning compliance with the bill's provisions, especially with respect to the use of non-quantitative treatment limitations (NQL).

The bill also requires the department to implement and enforce applicable provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

Finally, the bill requires the department, not later than May 1 of each year, to issue a report to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1). The report is to detail certain information relating to the department's oversight of the bill's provisions.

The section of this bill that pertain to mandated health benefits for mental health conditions and substance use disorders are not intended to expand or diminish those benefits as they currently exist. These sections are being amended to ensure that the mandated benefits are in fact being provided, and that the parity law is being enforced on the State level. The changes also align the terms and definitions used in State law with those used in Federal laws and guidance that have been passed subsequent to the State mental health parity law. This bill is not intended to overturn provisions of existing regulatory and common law, including, but not limited to, Department of Banking and Insurance Bulletin 10-02, and case law, including but not limited to, Micheletti v State Health Benefits Commission, 389 N.J. Super, 510 (App. Div. 2007), and Markiewicz v State Health Benefits Commission, 390 N.J. Super, 289 (App. Div.2007).

As amended and reported by the committee, this substitute bill is identical to Senate Bill No. 1339 SCS, as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

1) replace the term "behavioral health care services" with the terms "mental health conditions and substance use disorders," and provide that those terms mean conditions or disorders consistent with generally recognized independent standards of current medical practice;

2) provide that “same terms and conditions” means that more restrictive non-qualitative limitations such as utilization review and other criteria, or more quantitative limitations such as copayments, deductibles, aggregate or annual limits or benefit limits, cannot be applied to mental health condition and substance use disorder benefits than those applied to substantially all other medical or surgical benefits;

3) provide that nothing in the bill reduces current requirements for the provision of benefits for treatment of substance use disorders; and

4) provide that, with respect to the annual report the bill requires carriers to submit to the Department of Banking and Insurance, that the information is to be submitted to the extent the commissioner determines practicable.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill will result in an indeterminate increase in State administrative expenditures tied to the Department of Banking and Insurance’s (DOBI) implementation and enforcement of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addition Equity Act, including costs of preparing the required annual reports under the bill. Absent information from DOBI, however, the OLS cannot anticipate the resources the department will allocate to the implementation of the bill.

The OLS notes that the State Health Benefits Program (SHBP) and School Employees’ Health Benefits Program (SEHBP) are in full compliance with federal and State mental health parity laws and services for mental health conditions and substance use disorders as defined under the bill. Thus, this bill will have no fiscal impact to the SHBP or the SEHBP. However, the OLS notes that the bill may potentially increase the expenditures of Rutgers University, The State University of New Jersey (Rutgers Health) expenditures, to the extent that Rutgers Health is a self-funded, nonfederal governmental health plan and applies for a mental health parity inpatient day limit exception under the “Affordable Care Act,” the federal Patient Protection and Affordable Care Act, Pub.L.111-148, as amended by the federal “Health Care and Education Reconciliation Act of 2010” Pub.L.111-152 (ACA).

The OLS also notes that enacting this bill may result in an indeterminate impact on annual employee health benefit expenditures by certain local units to the extent that the bill may cause insurance carriers and third-party administrators, which impose less favorable benefit limitations on behavioral and mental health benefits than on medical or surgical benefits, to alter the amounts they charge local units for their benefits plans and services due to the requirements under the bill.

The OLS further notes that enactment of the bill may result in an indeterminate annual increase in revenues to: University Hospital, an independent non-profit legal entity that is an instrumentality of the State located in Newark; and Bergen Regional Medical Center, a county-owned entity located in Paramus, to the extent that they may see an increase in payments for claims to insurance carriers that currently do not fully comply with mental health parity laws.