

304.17A-661 Treatment of mental health conditions to be covered under terms or conditions that are no more restrictive than terms or conditions for treatment of physical health conditions -- Parity coverage for nonquantitative treatment limitations and medical necessity criteria.

- (1) Notwithstanding any other provision of law:
 - (a)
 1. A health benefit plan issued or renewed on or after January 1, 2022, that provides coverage for treatment of a mental health condition shall provide coverage of any treatment of a mental health condition under terms or conditions that are no more restrictive than the terms or conditions provided for treatment of a physical health condition.
 2. Expenses for mental health and physical health conditions shall be combined for purposes of meeting deductible and out-of-pocket limits required under a health benefit plan.
 3. A health benefit plan that does not otherwise provide for management of care under the plan or that does not provide for the same degree of management of care for all health or mental health conditions may provide coverage for treatment of mental health conditions through a managed care organization;
 - (b) With respect to mental health condition benefits in any classification of benefits, a health benefit plan required to comply with paragraph (a) of this subsection shall not impose:
 1. A nonquantitative treatment limitation that does not apply to medical and surgical benefits in the same classification; and
 2. Medical necessity criteria or a nonquantitative treatment limitation unless, under the terms of the plan, as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the criteria or limitation to mental health condition benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the criteria or limitation to medical and surgical benefits in the same classification; and
 - (c) Paragraph (b) of this subsection shall be construed to require, at a minimum, compliance with the requirements for nonquantitative treatment limitations set forth in the Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C. sec. 300gg-26, as amended, and any related federal regulations, as amended, including but not limited to 45 C.F.R. secs. 146.136, 147.160, and 156.115(a)(3).
- (2) (a) An insurer that issues or renews a health benefit plan that is subject to the provisions of this section shall submit an annual report to the commissioner on or before April 1 of each year following January 1, 2022, that contains the following:
 1. A description of the process used to develop or select the medical necessity criteria for both mental health condition benefits and medical

- and surgical benefits;
2. Identification of all nonquantitative treatment limitations applicable to benefits and services covered under the plan that are applied to both mental health condition benefits and medical and surgical benefits within each classification of benefits;
 3. The results of an analysis that demonstrates compliance with subsection (1)(b) and (c) of this section for the medical necessity criteria described in subparagraph 1. of this paragraph and for each nonquantitative treatment limitation identified in subparagraph 2. of this paragraph, as written and in operation. At a minimum, the results of the analysis shall:
 - a. Identify the factors used to determine that a nonquantitative treatment limitation will apply to a benefit, including factors that were considered but rejected;
 - b. Identify and define the specific evidentiary standards used to define the factors and any other evidence relied upon in designing each nonquantitative treatment limitation;
 - c. Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies:
 - i. Used to design each nonquantitative treatment limitation, as written, and the as-written processes and strategies used to apply the nonquantitative treatment limitation to mental health condition benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each nonquantitative treatment limitation, as written, and the as-written processes and strategies used to apply the nonquantitative treatment limitation to medical and surgical benefits; and
 - ii. Used to apply each nonquantitative treatment limitation, in operation, for mental health condition benefits are comparable to, and are applied no more stringently than, the processes and strategies used to apply each nonquantitative treatment limitation, in operation, for medical and surgical benefits; and
 - d. Disclose the specific findings and conclusions reached by the insurer that the results of the analyses performed under this subparagraph indicate that the insurer is in compliance with subsection (1)(b) and (c) of this section; and
 4. Any additional information that may be prescribed by the commissioner for use in determining compliance with the requirements of this section.
- (b) The annual report shall be submitted in a manner and format prescribed by the commissioner through administrative regulation.
- (3) A willful violation of this section shall constitute an act of discrimination and shall be an unfair trade practice under this chapter. The remedies provided under Subtitle

12 of this chapter shall apply to conduct in violation of this section.

Effective: January 1, 2022

History: Amended 2021 Ky. Acts ch. 15, sec. 2, effective January 1, 2022. -- Created
2000 Ky. Acts ch. 463, sec. 2, effective July 14, 2000.