CHAPTER 18

INSURANCE

HOUSE BILL 25-1002

BY REPRESENTATIVE(S) Brown and Gilchrist, Johnson, McCormick, Winter T., Bacon, Bird, Clifford, Duran, English, Froelich, Garcia, Hamrick, Jackson, Joseph, Lieder, Lindsay, Mabrey, Marshall, Paschal, Rutinel, Rydin, Smith, Stewart K., Stewart R., Story, Taggart, Titone, Valdez, Woodrow, McCluskie, Boesenecker, Camacho, Lukens, Ricks, Sirota;
also SENATOR(S) Amabile and Pelton B., Simpson, Ball, Bridges, Cutter, Daugherty, Exum, Gonzales J., Hinrichsen, Jodeh, Kipp, Kolker, Marchman, Michaelson Jenet, Mullica, Snyder, Weissman, Winter F., Coleman.

AN ACT

CONCERNING THE DETERMINATION OF HEALTH BENEFITS COVERAGE FOR MENTAL HEALTH SERVICES.

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

SECTION 1. In Colorado Revised Statutes, 10-16-104, **amend** (5.5)(a)(I), (5.5)(a)(V)(A), (5.5)(a)(V)(B), (5.5)(a)(V)(D), (5.5)(b), and (5.5)(d); and **add** (5.5)(a)(I.5), (5.5)(a)(V)(F), (5.5)(a)(VI), (5.5)(c.3), (5.5)(c.5), and (5.5)(e) as follows:

10-16-104. Mandatory coverage provisions - definitions - rules - applicability. (5.5) **Behavioral, mental health, and substance use disorders - utilization review criteria - federal treatment limitation requirements - meaningful benefits - rules - definitions.** (a) (I) Every health benefit plan subject to part 2, 3, or 4 of this article 16, except those described in section 10-16-102 (32)(b), must provide coverage:

(A) For the prevention of, screening for, and treatment of behavioral, mental health, and substance use disorders that is no less extensive than the coverage provided for any physical illness, ~~and~~ that complies with the requirements of the MHPAEA, and THAT DOES NOT DISCRIMINATE IN ITS BENEFIT DESIGN AGAINST INDIVIDUALS BECAUSE OF THEIR PRESENT OR PREDICTED BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE DISORDER;

(B) At a minimum, for the treatment of substance use disorders in accordance with the American Society of Addiction Medicine criteria for placement, medical

———

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

necessity, and utilization management determinations as set forth in the most recent edition of "The ASAM Criteria: TREATMENT CRITERIA for Addictive, Substance-related, and Co-occurring Conditions"; except that the commissioner may identify by rule, in consultation with the department of health care policy and financing and the behavioral health administration in the department of human services, ~~an~~ alternate nationally recognized and evidence-based substance-use-disorder-specific NOT-FOR-PROFIT UTILIZATION REVIEW criteria THAT IS CONSISTENT WITH GENERALLY ACCEPTED STANDARDS OF SUBSTANCE USE DISORDER CARE for placement, medical necessity, or utilization ~~management~~ REVIEW, if the American Society of Addiction Medicine criteria are no longer available or relevant or do not follow best practices for substance use disorder treatment; AND

(C) FOR MEDICALLY NECESSARY TREATMENT OF COVERED BEHAVIORAL, MENTAL HEALTH, AND SUBSTANCE USE DISORDER BENEFITS, INCLUDING SERVICES THAT ARE CONSISTENT WITH CRITERIA, GUIDELINES, OR CONSENSUS RECOMMENDATIONS FROM NATIONALLY RECOGNIZED NOT-FOR-PROFIT CLINICAL SPECIALTY ASSOCIATIONS OF THE RELEVANT BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE DISORDER SPECIALTY.

(I.5) (A) ALL UTILIZATION REVIEW AND UTILIZATION REVIEW CRITERIA MUST BE CONSISTENT WITH CURRENT GENERALLY ACCEPTED STANDARDS OF BEHAVIORAL, MENTAL HEALTH, AND SUBSTANCE USE DISORDER CARE.

(B) IN CONDUCTING UTILIZATION REVIEW OF COVERED SERVICES FOR THE DIAGNOSIS, PREVENTION, AND TREATMENT OF BEHAVIORAL OR MENTAL HEALTH DISORDERS, A HEALTH BENEFIT PLAN SHALL APPLY THE CRITERIA AND GUIDELINES SET FORTH IN THE MOST RECENT VERSION OF THE TREATMENT CRITERIA DEVELOPED BY UNAFFILIATED NATIONALLY RECOGNIZED NOT-FOR-PROFIT CLINICAL SPECIALTY ASSOCIATIONS OF THE RELEVANT BEHAVIORAL OR MENTAL HEALTH DISORDERS. IN CONDUCTING UTILIZATION REVIEW OF COVERED SERVICES FOR THE DIAGNOSIS, PREVENTION, AND TREATMENT OF SUBSTANCE USE DISORDERS, A HEALTH BENEFIT PLAN SHALL APPLY THE CRITERIA SPECIFIED IN SUBSECTION (5.5)(a)(I)(B) OF THIS SECTION.

(C) IN CONDUCTING UTILIZATION REVIEW RELATING TO SERVICE INTENSITY, LEVEL OF CARE PLACEMENT, OR ANY OTHER PATIENT CARE DECISIONS THAT ARE WITHIN THE SCOPE OF THE SOURCES SPECIFIED IN SUBSECTIONS (5.5)(a)(I)(B) AND (5.5)(a)(I.5)(B) OF THIS SECTION, A HEALTH BENEFIT PLAN SHALL NOT APPLY DIFFERENT, ADDITIONAL, CONFLICTING, OR MORE RESTRICTIVE UTILIZATION REVIEW CRITERIA THAN THE CRITERIA SET FORTH IN THOSE SOURCES. IF THE REQUESTED SERVICE INTENSITY OR LEVEL OF CARE PLACEMENT IS INCONSISTENT WITH THE HEALTH BENEFIT PLAN'S ASSESSMENT USING THE RELEVANT CRITERIA, AS PART OF ANY ADVERSE BENEFIT DETERMINATION, THE HEALTH BENEFIT PLAN SHALL PROVIDE FULL DETAIL OF ITS ASSESSMENT AND THE RELEVANT CRITERIA USED IN THE ASSESSMENT TO THE PROVIDER AND THE COVERED PERSON.

(D) IN CONDUCTING UTILIZATION REVIEW THAT IS OUTSIDE THE SCOPE OF THE CRITERIA SPECIFIED IN SUBSECTIONS (5.5)(a)(I)(B) AND (5.5)(a)(I.5)(B) OF THIS SECTION OR RELATED TO ADVANCEMENTS IN TECHNOLOGY OR TYPES OF LEVELS OF CARE THAT ARE NOT ADDRESSED IN THE MOST RECENT VERSIONS OF THE SOURCES

SPECIFIED IN THOSE SUBSECTIONS, A HEALTH BENEFIT PLAN SHALL CONDUCT UTILIZATION REVIEW IN ACCORDANCE WITH SUBSECTION (5.5)(a)(I.5)(A) OF THIS SECTION. IF A HEALTH BENEFIT PLAN PURCHASES OR LICENSES UTILIZATION REVIEW CRITERIA PURSUANT TO THIS SUBSECTION (5.5)(a)(I.5)(D), THE HEALTH BENEFIT PLAN SHALL VERIFY AND DOCUMENT BEFORE USE THAT THE CRITERIA COMPLY WITH THE REQUIREMENTS OF SUBSECTION (5.5)(a)(I.5)(A) OF THIS SECTION.

(E) A HEALTH BENEFIT PLAN MUST NOT LIMIT BENEFITS OR COVERAGE FOR CHRONIC BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE DISORDERS TO SHORT-TERM SYMPTOM REDUCTION AT ANY LEVEL-OF-CARE PLACEMENT.

(V) A carrier offering a health benefit plan subject to the requirements of this subsection (5.5) shall:

(A) Comply with the nonquantitative treatment limitation requirements specified in ~~45 CFR 146.136 (c)(4)~~ 45 CFR 146.136 OR 29 CFR 2590.712, or any successor regulation, regarding any limitations that are not expressed numerically but otherwise limit the scope or duration of benefits for treatment, which, in addition to the limitations and examples listed in 45 CFR 146.136 (c)(4)(ii) and ~~(c)(4)(iii)~~ (c)(4)(vi) OR 29 CFR 2590.712 (c)(4)(ii) AND (c)(4)(vi), or any successor regulation, and ~~78 FR 68246~~ 78 FED. REG. 68246 (NOVEMBER 13, 2013) AND 89 FED. REG. 77586 (SEPTEMBER 23, 2024), include the methods by which the carrier establishes and maintains its provider networks pursuant to section 10-16-704 and responds to deficiencies in the ability of its networks to provide timely access to care;

(B) Comply with the financial requirements and quantitative treatment limitations specified in 45 CFR 146.136 (c)(2) and (c)(3) or any successor regulation OR 29 CFR 2590.712 (c)(2) AND (c)(3);

(D) Establish procedures to authorize MEDICALLY NECESSARY treatment with ~~a~~ AN APPROPRIATE nonparticipating provider AND TO PROVIDE SERVICES TO MAKE AVAILABLE THE COVERED SERVICE if a covered service is not available within established time and distance standards, and within a reasonable period, after a service is requested, and with the same coinsurance, deductible, or copayment requirements, ACCRUING TO IN-NETWORK ANNUAL COST-SHARING LIMITS, as would apply if the services were provided by a participating provider, and at no greater cost to the covered person than if the services were obtained at or from a participating provider; ~~and~~

(F) NOT REVERSE OR ALTER A DETERMINATION OF MEDICAL NECESSITY MADE PURSUANT TO THIS SUBSECTION (5.5), INCLUDING DOWNGRADING OR BUNDLING THE CODING OF A CLAIM, THROUGH A REVIEW OR AUDIT OF A CLAIM, EXCEPT IN CASES OF FRAUD OR WHERE THE COVERED PERSON DID NOT HAVE A VALID POLICY WHEN THE SERVICE WAS PROVIDED.

(VI) IF A HEALTH BENEFIT PLAN PROVIDES ANY BENEFITS FOR A MENTAL HEALTH CONDITION OR SUBSTANCE USE DISORDER IN ANY CLASSIFICATION OF BENEFITS, IT MUST PROVIDE MEANINGFUL BENEFITS FOR THAT MENTAL HEALTH CONDITION OR SUBSTANCE USE DISORDER IN EVERY CLASSIFICATION IN WHICH MEDICAL OR SURGICAL BENEFITS ARE PROVIDED. WHETHER THE BENEFITS PROVIDED ARE MEANINGFUL BENEFITS IS DETERMINED IN COMPARISON TO THE BENEFITS PROVIDED

FOR MEDICAL CONDITIONS AND SURGICAL PROCEDURES IN THE CLASSIFICATION AND REQUIRES, AT A MINIMUM, COVERAGE OF BENEFITS FOR THAT CONDITION OR DISORDER IN EACH CLASSIFICATION IN WHICH THE HEALTH BENEFIT PLAN PROVIDES BENEFITS FOR ONE OR MORE MEDICAL CONDITIONS OR SURGICAL PROCEDURES. A HEALTH BENEFIT PLAN DOES NOT PROVIDE MEANINGFUL BENEFITS UNLESS IT PROVIDES BENEFITS FOR A CORE TREATMENT FOR THAT CONDITION OR DISORDER IN EACH CLASSIFICATION IN WHICH THE HEALTH BENEFIT PLAN PROVIDES BENEFITS FOR A CORE TREATMENT FOR ONE OR MORE MEDICAL CONDITIONS OR SURGICAL PROCEDURES. A CORE TREATMENT FOR A CONDITION OR DISORDER IS A STANDARD TREATMENT OR COURSE OF TREATMENT, THERAPY, SERVICE, OR INTERVENTION INDICATED BY GENERALLY ACCEPTED STANDARDS OF BEHAVIORAL, MENTAL HEALTH, AND SUBSTANCE USE DISORDER CARE. IF THERE IS NO CORE TREATMENT FOR A COVERED MENTAL HEALTH CONDITION OR SUBSTANCE USE DISORDER WITH RESPECT TO A CLASSIFICATION, THE HEALTH BENEFIT PLAN IS NOT REQUIRED TO PROVIDE BENEFITS FOR A CORE TREATMENT FOR SUCH CONDITION OR DISORDER IN THAT CLASSIFICATION, BUT MUST PROVIDE BENEFITS FOR SUCH CONDITION OR DISORDER IN EVERY CLASSIFICATION IN WHICH MEDICAL OR SURGICAL BENEFITS ARE PROVIDED.

(b) The commissioner:

(I) May adopt rules as necessary to ensure that this subsection (5.5) is implemented and COMPLIANTLY administered; ~~in compliance with federal law and shall adopt rules to establish reasonable time periods for visits with a provider for treatment of a behavioral, mental health, or substance use disorder after an initial visit with a provider.~~

(II) MAY ADOPT RULES TO ESTABLISH CARRIER UTILIZATION REVIEW COMPLIANCE IN ACCORDANCE WITH SUBSECTION (5.5)(a)(I.5) OF THIS SECTION;

(III) MAY ADOPT RULES AS NECESSARY TO SPECIFY DATA TESTING REQUIREMENTS TO DETERMINE PLAN DESIGN AND APPLICATION OF PARITY COMPLIANCE FOR NONQUANTITATIVE TREATMENT LIMITATIONS USING OUTCOMES DATA;

(IV) MAY ADOPT RULES TO SET STANDARD DEFINITIONS FOR COVERAGE REQUIREMENTS, INCLUDING PROCESSES, STRATEGIES, EVIDENTIARY STANDARDS, AND OTHER FACTORS;

(V) MAY ADOPT RULES TO ESTABLISH SPECIFIC TIMELINES FOR CARRIER COMPLIANCE TO PROVIDE COMPARATIVE ANALYSIS INFORMATION TO THE DIVISION FOR REVIEW, INCLUDING THE EFFECT OF A CARRIER'S LACK OF SUFFICIENT COMPARATIVE ANALYSES TO DEMONSTRATE COMPLIANCE; AND

(VI) MAY ADOPT RULES TO ESTABLISH REASONABLE TIME PERIODS AND DOCUMENTATION OF SUCH TIME PERIODS FOR VISITS WITH A PROVIDER FOR TREATMENT OF A BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE DISORDER AFTER AN INITIAL VISIT WITH A PROVIDER.

(c.3) THIS SUBSECTION (5.5) APPLIES TO ANY INDIVIDUAL, ENTITY, OR CONTRACTING PROVIDER THAT PERFORMS UTILIZATION REVIEW FUNCTIONS ON BEHALF OF A HEALTH BENEFIT PLAN.

(c.5) A CARRIER OFFERING A HEALTH BENEFIT PLAN SHALL NOT ADOPT, IMPOSE, OR ENFORCE TERMS IN ITS POLICIES OR PROVIDER AGREEMENT, IN WRITING OR IN OPERATION, THAT UNDERMINE, ALTER, OR CONFLICT WITH THE REQUIREMENTS OF THIS SUBSECTION (5.5).

(d) As used in this subsection (5.5):

(I) "APPROPRIATE NONPARTICIPATING PROVIDER" MEANS A PROVIDER WHO IS ACCESSIBLE AND HAS THE TRAINING AND EXPERIENCE NECESSARY TO PROVIDE AGE-APPROPRIATE, MEDICALLY NECESSARY TREATMENT OF A BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE DISORDER.

(II) "Behavioral, mental health, and substance use disorder":

~~(I)~~ (A) Means a condition or disorder, regardless of etiology, that may be the result of a combination of genetic and environmental factors and that falls under any of the diagnostic categories listed in the mental disorders section of the most recent version of

~~(A)~~ the "International Statistical Classification of Diseases and Related Health Problems",

~~(B)~~ the "Diagnostic and Statistical Manual of Mental Disorders", or

~~(C)~~ the "Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood"; and

~~(II)~~ (B) Includes autism spectrum disorders, as defined in subsection (1.4)(a)(III) of this section.

(III) "GENERALLY ACCEPTED STANDARDS OF BEHAVIORAL, MENTAL HEALTH, AND SUBSTANCE USE DISORDER CARE" MEANS STANDARDS OF CARE AND CLINICAL PRACTICE THAT ARE GENERALLY RECOGNIZED BY HEALTH-CARE PROVIDERS PRACTICING IN RELEVANT CLINICAL SPECIALTIES SUCH AS PSYCHIATRY, PSYCHOLOGY, CLINICAL SOCIAL WORK, PSYCHIATRIC NURSING, ADDICTION MEDICINE AND COUNSELING, AND BEHAVIORAL HEALTH TREATMENT. VALID, EVIDENCE-BASED SOURCES REFLECTING GENERALLY ACCEPTED STANDARDS OF BEHAVIORAL, MENTAL HEALTH, AND SUBSTANCE USE DISORDER CARE INCLUDE PEER-REVIEWED SCIENTIFIC STUDIES AND MEDICAL LITERATURE; CLINICAL PRACTICE GUIDELINES AND RECOMMENDATIONS OF NONPROFIT HEALTH-CARE PROVIDER PROFESSIONAL ASSOCIATIONS, SPECIALTY SOCIETIES, AND FEDERAL GOVERNMENT AGENCIES; AND DRUG LABELING APPROVED BY THE FDA.

(IV) "MEDICALLY NECESSARY TREATMENT" MEANS A SERVICE OR PRODUCT ADDRESSING THE SPECIFIC NEEDS OF A PATIENT FOR THE PURPOSE OF SCREENING, PREVENTING, DIAGNOSING, MANAGING, OR TREATING A BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE DISORDER OR ITS SYMPTOMS, INCLUDING MINIMIZING THE PROGRESSION OF THE DISORDER, IN A MANNER THAT IS:

(A) IN ACCORDANCE WITH THE GENERALLY ACCEPTED STANDARDS OF BEHAVIORAL, MENTAL HEALTH, AND SUBSTANCE USE DISORDER CARE;

(B) CLINICALLY APPROPRIATE IN TERMS OF TYPE, FREQUENCY, EXTENT, SITE, AND DURATION; AND

(C) NOT PRIMARILY FOR THE ECONOMIC BENEFIT OF THE INSURER OR PURCHASER OR FOR THE CONVENIENCE OF THE COVERED PERSON, TREATING PHYSICIAN, OR OTHER HEALTH-CARE PROVIDER.

(V) "UTILIZATION REVIEW" MEANS PROSPECTIVELY, RETROSPECTIVELY, OR CONCURRENTLY REVIEWING AND APPROVING, MODIFYING, DELAYING, OR DENYING REQUESTS BY HEALTH-CARE PROVIDERS, COVERED PERSONS, OR THEIR AUTHORIZED REPRESENTATIVES FOR COVERAGE, BASED IN WHOLE OR IN PART ON MEDICAL NECESSITY, OR FOR OUT-OF-NETWORK SERVICES REQUIRED PURSUANT TO SUBSECTION (5.5)(a)(V)(D) OF THIS SECTION.

(VI) "UTILIZATION REVIEW CRITERIA" MEANS AN EVALUATION OF THE NECESSITY, APPROPRIATENESS, AND EFFICIENCY OF THE USE OF HEALTH-CARE SERVICES, PROCEDURES, AND FACILITIES, INCLUDING OUT-OF-NETWORK SERVICES REQUIRED PURSUANT TO SUBSECTION (5.5)(a)(V)(D) OF THIS SECTION. "UTILIZATION REVIEW CRITERIA" DOES NOT INCLUDE AN INDEPENDENT MEDICAL EXAMINATION PROVIDED FOR IN ANY POLICY.

(e) (I) THIS SUBSECTION (5.5) DOES NOT EXPAND COVERAGE REQUIREMENTS BEYOND THE STATE ESSENTIAL HEALTH BENEFITS BENCHMARK PLAN AS REQUIRED PURSUANT TO 45 CFR 156.111.

(II) IF AN EXCLUSION FOR BEHAVIORAL HEALTH, MENTAL HEALTH, OR SUBSTANCE USE DISORDER SERVICES IS NOT PERMITTED UNDER THE MHPAEA, COVERAGE FOR THESE SERVICES MUST MEET THE REQUIREMENTS OF THIS SUBSECTION (5.5).

SECTION 2. Act subject to petition - effective date. This act takes effect January 1, 2026; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 20, 2025