

Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

INDEPENDENT REGULATORY

REVIEW COMMISSION

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Independent Regulatory
Review Commission

(1) Agency

Department of Insurance

(2) Agency Number: 11

Identification Number: 258

IRRC Number: 3252

(3) PA Code Cite:

31 Pa. Code Ch. 168

(4) Short Title:

Mental Health Parity Analysis Documentation

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This proposed rulemaking will facilitate the Department's regulation of mental health and substance use disorder (MH/SUD) insurance coverage in this Commonwealth. The proposed rulemaking will require an insurer to: (1) attest to documented analyses of its efforts to comply with MH/SUD parity requirements; and (2) make available for review the documentation necessary to demonstrate compliance with MH/SUD parity requirements.

(8) State the statutory authority for the regulation. Include specific statutory citation.

This regulation is proposed under the Department's general rulemaking authority of sections 205, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and § 606-B of the act of May 17, 1921 (P.L. 682, No. 284), known as The Insurance Company Law of 1921 as amended by the Health Insurance Coverage Parity and Nondiscrimination Act (40 P.S. § 908-16).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

While this regulation itself is not mandated by federal law, a state must "substantially enforce" MHPAEA in order to prevent federal enforcement of the law within the Commonwealth. See 42 U.S.C. §§ 300gg-22(a)(2), 300gg-61(a)(2). This proposed rulemaking will facilitate the Department's regulation of health insurers' compliance with mental health parity requirements in this Commonwealth, and thereby maintain the Commonwealth's sovereignty over the regulation of health insurance in Pennsylvania. See § 602-B of the Insurance Company Law of 1921 as amended by the Health Insurance Coverage Parity and Nondiscrimination Act (40 P.S. §§ 908-12). Further, this regulation will provide guidance to insurers on how to document their MHPAEA compliance efforts.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Ongoing compliance and enforcement efforts by the Department have demonstrated that monitoring the industry's compliance with MHPAEA is administratively challenging. Further, if the Department does not substantially enforce the law, the federal government will. Therefore, the regulation is needed to provide more specific guidance requirements to the industry, which will thereby facilitate the Department's substantial enforcement of the law.

All insurers that write insurance policies in this Commonwealth that provide MH/SUD coverage will benefit from having clearly articulated attestation and documentation requirements.

Additionally, all consumers who access, or seek to access, MH/SUD coverage will benefit. Consumers will benefit because this regulation will assist insurers in complying with the federal law requirements for consumer disclosures and for substantive compliance. This will ensure that consumers: (1) have clear information about their coverage; and (2) receive the coverage promised in their insurance policies and required by law.

This proposed rulemaking will specifically benefit consumers who access, or seek to access, MH/SUD coverage through commercial insurance policies issued in this Commonwealth, as those policies will be directly subject to this regulation. That segment of the population is approximately 24% of the residents of this Commonwealth as of 2016. See <https://www.insurance.pa.gov/Coverage/Pages/Health-Insurance.aspx> (showing 2016 data).

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No, there are no provisions that are more stringent than federal standards. These amendments are designed to specify the types of documentation necessary to evidence an insurer's existing compliance efforts.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation will have no effect on Pennsylvania's ability to compete with other states in any context. Insurers must comply with MHPAEA requirements regardless of state regulations on this issue; this regulation will simply help Pennsylvania better monitor compliance with those requirements.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No, this regulation will not affect any other regulations of the Department or any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department provided a draft copy of Annex A, which includes all of the proposed regulatory provisions, to representatives of insurance carriers who currently issue, or may potentially issue, policies that offer MH/SUD coverage. This includes Geisinger, Highmark, UPMC, Capital Blue Cross, Independence Blue Cross, United Healthcare, Oscar Health, Pennsylvania Health and Wellness (Centene), and Aetna. A draft copy of the Annex was also provided to the Insurance Federation of Pennsylvania. Such comments were considered by the Department in the drafting of this rulemaking. Additionally, in the drafting of this rulemaking, the Department incorporated feedback it received from the industry that it previously received in the course of regulating the matters at issue in this rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This proposed rulemaking will affect each entity offering mental health and substance use disorder coverage that falls within the definition of "Insurer" in section 603-B of the Insurance Company Law of 1921 as amended by the Health Insurance Coverage Parity and Nondiscrimination Act (40 P.S. § 908-13). The Department has identified approximately 1031 licensees that fall within this definition, which includes a foreign or domestic insurance company with authority to write accident and health insurance, including an association or exchange, health maintenance organization, hospital plan corporation, professional health services plan corporation, fraternal benefit society or risk-assuming preferred provider organization. However, the Department is only aware of five (5) entities that are currently offering policies that are subject to MHPAEA and MH/SUD requirements.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

As noted above, there are 1031 licensees operating in Pennsylvania that have the authority to write accident and health insurance. However, the Department is only aware of five (5) entities that are currently offering policies that are subject to MHPAEA and MH/SUD requirements. All of these entities are part of larger insurance groups and therefore would not fall within the definition of small business, which is an insurer who earns less than \$38.5 million in direct written premium annually.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

This regulation is not expected to have an adverse financial impact on insurers in this Commonwealth and therefore is not expected to have an adverse financial impact on small businesses. Rather, the regulation aims to facilitate compliance by insurers with MH/SUD coverage parity requirements. While this may necessitate the expenditure of initial implementation expenses, the requirements of the regulation are expected to result in streamlined processes on a going-forward basis, resulting in more efficient compliance efforts.

This regulation is expected to benefit individuals, small businesses, businesses and labor communities and other public and private organizations that have major medical commercial health insurance, as compliance with MH/SUD coverage parity requirements is required for all of those health care coverage mediums.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no anticipated adverse effects or significant costs associated with this regulation. To the extent that insurers will incur minimal documentation costs, the benefits of streamlined compliance will outweigh those costs.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

While the Department cannot quantify the exact costs or savings to the regulated community, the Department believes that the regulated community may have initial implementation expenses. The initial implementation expenses are expected to be any administrative costs related to compiling the documentation and analyses. This should be minimal because issuers are already required by federal law to have completed the underlying analyses and have the documentation to support them. However, the regulation is expected to streamline processes on a going-forward basis, resulting in efficient compliance efforts.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Department does not anticipate that this regulation will provide any costs or savings to local governments.

(21) Provide a specific estimate of the costs and/or savings to the state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation is anticipated to have no costs or savings to state government. However, by requiring more efficient compliance methods by insurers, this regulation is anticipated to result in streamlined enforcement efforts by the Department.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Other than the execution of simple attestation with each form filing and preparation of analyses necessary in order to comply with MHPAEA, the proposed regulation does not impose additional requirements for legal accounting or consulting procedures or additional reporting, recordkeeping or paperwork upon the regulated community, local governments or state government.

(22a) Are forms required for implementation of the regulation?

There are no forms required for implementation of the regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

There are no forms required for implementation of the regulation. However, each insurer may create its own forms or use an optional template. The following forms are available if an insurer opts to use them:

21st Century Cures Act disclosure form: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/mhpaea-model-disclosure-request-form>

ERISA self-compliance tools: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/health-plans/hbec/checksheets>

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:	0	0	0	0	0	0
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:	0	0	0	0	0	0
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A*	N/A	N/A	N/A	N/A

* There is no “program” operated by the Department that will be affected by this regulation. Rather, the regulatory activities that are necessary to ensure compliance with this regulation are dispersed throughout the Department and the Department’s Bureau of Market Actions.

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Identification and Estimate of Small Businesses Subject to the Regulation

The Department reviewed the standards set forth by 13 C.F.R. § 121.201 and the U.S. Business Administration (SBA) Table of Small Business Size Standards Matched to North American Industry Classification System (NAICS) Codes to determine the applicability of this rulemaking to small businesses. There are no entities currently offering policies subject to MHPAEA requirements that fall within the definition of small business.

The standards for small business classification vary by type of business written. For direct health and medical insurance carriers, the threshold for being considered a small business is \$38.5 million in annual receipts.

Subsector 524 – Insurance Carriers and Related Activities		
524114	Direct Health and Medical Insurance Carriers	\$38.5 million annual receipts

Projected Costs and Impact on Small Businesses

As there are no entities that qualify as small businesses that are currently offering policies subject to MHPAEA requirements, this proposed rulemaking will not impose any costs or have an impact on small businesses.

Alternative Methods

As there are no entities that qualify as small businesses that are currently offering policies subject to MHPAEA requirements, no alternative methods were considered.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The Department has not developed any special provisions for the needs of particular affected groups or persons.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions have been considered by the Department.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The Department did not consider the less stringent compliance or reporting requirements for small businesses because there are no small businesses that are currently issuing policies that are subject to MHPAEA requirements. Additionally, even if there were, such disparate documentation requirements would create discrepancies in the marketplace. Mental health parity requirements apply based on the types of policies issued by insurers, not on the insurer's size. Additionally, since all regulated entities issuing policies subject to MHPAEA must comply with the underlying MHPAEA requirements, the Department is without authority to waive the requirements for businesses that would qualify as small businesses. Furthermore, because the proposed regulation requires only an attestation and analyses that are necessary in order document compliance with MHPAEA, the Department is not aware of any less burdensome alternative to accomplish this objective.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No data has been used as the basis for this regulation.

(29) Include a schedule for review of the regulation including:

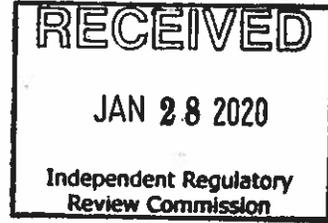
- A. The length of the public comment period: 30 days
- B. The date or dates on which any public meetings or hearings will be held: None
- C. The expected date of delivery of the final-form regulation: Summer 2020
- D. The expected effective date of the final-form regulation: Upon publication as final-form in the *Pennsylvania Bulletin*
- E. The expected date by which compliance with the final-form regulation will be required: Upon publication as final-form in the *Pennsylvania Bulletin*
- F. The expected date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: <u>Lois P. Hara</u> (DEPUTY ATTORNEY GENERAL)</p> <p><u>JAN 17 2020</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Insurance Department</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>11-258</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Jessica K. Altman</u> Jessica K Altman Insurance Commissioner</p> <p>TITLE _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>Marisa G. Z. Lehn</u></p> <p><u>DEC 23 2019</u> DATE OF APPROVAL Deputy General Counsel (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF PROPOSED RULEMAKING
INSURANCE DEPARTMENT

31 Pa. Code Chapter 168

MENTAL HEALTH PARITY ANALYSIS DOCUMENTATION

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

31 Pa. CODE CH. 168

Mental Health Parity Analysis Documentation

[Pa.B.]

[Saturday, , 202]

Preamble

The Commonwealth of Pennsylvania Insurance Department (Department) proposes to add a new Chapter 168 (31 Pa. Code §§ 168.1 – 168.5) to the Department's regulations to read as set forth in Annex A. This rulemaking is proposed pursuant to the Department's general rulemaking authority as set forth in sections 205, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and the Department's rulemaking authority under section 606-B of the act of May 17, 1921 (P.L. 682, No. 284), known as the Insurance Company Law of 1921 as amended by the Health Insurance Coverage Parity and Nondiscrimination Act (40 P.S. § 908-16).

Purpose

Sections 601-B – 606-B of the Insurance Company Law of 1921 as amended by the Health Insurance Coverage Parity and Nondiscrimination Act (40 P.S. §§ 908-11 – 908-16) incorporate into state law the mental health and substance use disorder (MH/SUD) parity standards set forth in the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (42 U.S.C. § 300gg-26) (MHPAEA). The parity standards require health insurers offering individual and group health insurance to ensure that quantitative and nonquantitative coverage limitations that are applied to MH/SUD treatment are no more restrictive than quantitative and nonquantitative coverage limitations applied to medical or surgical treatment. These standards have been set forth pursuant to MHPAEA in federal regulation including 45 C.F.R. § 146.136 (relating to parity in mental health and substance use disorder benefits), 45 C.F.R. § 147.160 (relating to parity in mental health and substance use disorder benefits) and 45 C.F.R. Subtitle A, Subchapter B, Part 156 (relating to health issuer standards under the Affordable Care Act, including standards related to exchanges), as amended, and its associated formal administrative guidance.

This proposed rulemaking furthers the purpose set forth in section 602-B of the Insurance Company Law of 1921 as amended by the Health Insurance Coverage Parity and Nondiscrimination Act (40 P.S. § 908-12), which is to maintain the Commonwealth's sovereignty over the regulation of health insurance in this Commonwealth by implementing the requirements of, inter alia, the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343, 122 Stat. 3881), contained in the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 201 et seq.). Having these standards in state law

retains the Commonwealth's authority to regulate health insurance in this Commonwealth, consistent with sections 2722 and 2761 of the Public Health Service Act.

Specifically, the purpose of this proposed rulemaking is to create specific reporting requirements that will facilitate the Department's regulation of MH/SUD insurance coverage. Specifically, the proposed rulemaking will require an insurer to attest that it has completed documented analyses of its efforts to comply with MH/SUD parity requirements and ensure that an insurer will have available for review by the Department the documentation necessary to demonstrate compliance with MH/SUD parity requirements set forth in MHPAEA.

Explanation of Regulatory Requirements

Proposed section 168.1 (relating to definitions) defines the words and terms used in Chapter 168.

Proposed section 168.2 (relating to purpose) sets forth that the purpose of the chapter is to specify attestation and documentation requirements on insurers required to comply with MH/SUD statutory and regulatory provisions, which will enable the Department to effectively review a health insurer's compliance with these requirements.

Proposed section 168.3 (relating to annual attestations) sets forth requirements that insurers submit annual attestations for insurance policy forms to which MHPAEA applies and for those to which MHPAEA does not apply. For policies to which MHPAEA applies, the insurer would be required to attest to the insurer's documented analyses of its efforts to comply with MHPAEA parity standards. For policies to which MHPAEA does not apply, the insurer would be required to attest to the non-applicability of MHPAEA to the policy form.

Proposed section 168.4 (relating to analysis and disclosure documentation) sets forth requirements for insurers to document parity analyses, including any changes to parity analyses, and disclosure documentation as required by MHPAEA. Additionally, the proposed section includes specific factors that must be included in the analyses for nonquantitative treatment limitations.

Proposed section 168.5 (relating to penalties) sets forth the penalties which may be imposed by the Department for violations of the proposed chapter.

External Comments

The Department circulated an exposure draft substantially similar to this proposed rulemaking on December 16, 2019, to the Insurance Federation of Pennsylvania and those health insurers issuing group and individual accident and health policies in Pennsylvania. Those comments were carefully considered in the drafting of this proposed rulemaking.

Affected Parties

This proposed rulemaking applies to all insurers licensed to transact business in the Commonwealth that offer individual and/or group accident and health insurance.

Fiscal Impact

State Government

This regulation is anticipated to have no costs or savings to state government. However, by requiring more efficient compliance methods by insurers, this regulation is anticipated to result in streamlined enforcement efforts by the Department.

General Public

The proposed rulemaking will have no fiscal impact upon the general public.

Political Subdivisions

The proposed rulemaking will have no fiscal impact upon political subdivisions.

Private Sector

While the Department cannot quantify the exact costs to the private sector, the Department believes that the costs to the private sector will be minimal because the health insurers that must comply with MHPAEA are already aware of the parity standards and have mechanisms for compliance already in place. The proposed regulation will add additional minimal administrative requirements that are not anticipated to be unreasonably burdensome.

Paperwork

The proposed rulemaking would not impose additional paperwork requirements upon the Department. The documentation and analysis requirements of this regulation are already required by MHPAEA. To the extent an insurer is not in compliance with these requirements, the proposed rulemaking will impose minimal additional paperwork for the private sector, because it sets forth clear standards that require annual attestations as to compliance with the MHPAEA documentation and analysis requirements and that the documented analyses must be submitted to the Department upon request.

Effectiveness/Sunset Date

The rulemaking will become effective immediately after final adoption and publication in the *Pennsylvania Bulletin* as final-form rulemaking. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Bridget Burke, Regulatory Coordinator, Insurance Department, 1341 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to briburke@pa.gov or faxed to (717) 772-1969.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 28, 2020, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final delivery of the rulemaking, by the Department, the General Assembly and the Governor for comments, recommendations or objections raised.

Jessica K. Altman
Insurance Commissioner

Annex

Title 31. Insurance

Part XIII. Miscellaneous Provisions

Chapter 168. Mental Health Parity Analysis Documentation

168.1. Definitions

The definitions as set forth in section 603-B of the act of May 17, 1921 (P.L. 682, No. 284), known as the Insurance Company Law of 1921 as amended by the Health Insurance Coverage Parity and Nondiscrimination Act (40 P.S. § 908-13), are hereby incorporated and apply to the terms used in this chapter. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Insurance Policy – A policy, subscriber contract, certificate or plan issued by an insurer that provides medical or health care coverage. The term does not include any of the following:

- (1) An accident only policy.
- (2) A fixed indemnity policy.
- (3) A limited benefit policy.
- (4) A credit only policy.
- (5) A dental only policy.
- (6) A vision only policy.
- (7) A specified disease policy.
- (8) A Medicare supplement policy.
- (9) A policy under which benefits are provided by the federal government to active or former military personnel and their dependents.
- (10) A long-term care or disability income policy.
- (11) A workers' compensation policy.
- (12) An automobile medical payment policy.

Insured – A person on whose behalf an insurer is obligated to pay covered health care expense benefits or provide health care services under an insurance policy. The term includes a policyholder, subscriber, certificate holder, member, dependent, or other individual who is eligible to receive health care services through an insurance policy.

MH/SUD — Mental Health and Substance Use Disorder.

MH/SUD Parity Federal Guidance — Federal guidance issued pursuant to or in conjunction with MHPAEA and the MH/SUD Parity Federal Regulations.

MH/SUD Parity Federal Regulations — Regulations promulgated by the federal government to implement MHPAEA, including 45 C.F.R. § 146.136 (relating to parity in mental health and

substance use disorder benefits), 45 C.F.R. § 147.160 (relating to parity in mental health and substance use disorder benefits) and 45 C.F.R. Subtitle A, Subchapter B, Part 156 (relating to health issuer standards under the Affordable Care Act, including standards related to exchanges), as amended.

MHPAEA — The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343, 122 Stat. 3881), originally enacted as section 2705 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 300gg-5); as renumbered and amended by the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) together with The Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152) as section 2726 of the Public Health Service Act (42 U.S.C. § 300gg-26); as further amended by Div. B, Title XIII § 13001 of the 21st Century Cures Act (Pub. L. No. 114-255); as amended.

Treatment Limitation – A limit on the scope of a benefit or duration of treatment for a covered service.

168.2. Purpose

The purpose of this chapter is to specify attestation and documentation requirements on insurers required to comply with sections 601-B – 606-B of the Insurance Company Law of 1921 as amended by the Health Insurance Coverage Parity and Nondiscrimination Act (40 P.S. §§ 908-11 – 908-16), which incorporate into state law the standards set forth in MHPAEA and the MH/SUD Parity Federal Regulations, and to enable the Department to effectively review a health insurer's compliance with these requirements.

168.3. Annual Attestation.

- (a) For the form for each insurance policy offered, issued or renewed by an insurer in this Commonwealth to which MHPAEA applies, the insurer shall annually file with the Department a statement attesting to the insurer's documented analyses of its efforts to comply with MHPAEA and the MH/SUD Parity Federal Regulations as of the date of the attestation.
- (b) For the form for each insurance policy offered, issued or renewed by an insurer in this Commonwealth that is required to be filed by an insurer with the Department for approval but to which MHPAEA does not apply, the insurer shall annually file with the Department a statement attesting to the non-applicability of MHPAEA to the form for each insurance policy.
- (c) Each attestation required under this section must be filed by April 30 of each year, or with each form filing, whichever is earlier.

168.4. Analysis and Disclosure Documentation.

- (a) For each form for each insurance policy offered, issued or renewed by an insurer in this Commonwealth to which MHPAEA applies, the insurer shall:
 - (1) Perform and document a baseline parity analysis to demonstrate compliance with

MHPAEA and the MH/SUD Parity Federal Regulations for each quantitative treatment limitation and each nonquantitative treatment limitation applicable to a MH/SUD benefit.

- (2) Perform and document a parity analysis to demonstrate compliance with MHPAEA and the MH/SUD Parity Federal Regulations for each change to a quantitative treatment limitation or nonquantitative treatment limitation applicable to a MH/SUD benefit.
 - (3) Prepare disclosure documentation required by subsection (a)(4) of MHPAEA (42 U.S.C. § 300gg-26(a)(4)) as amended, consistent with then-current MH/SUD Parity Federal Guidance issued under section 13001 of the 21st Century Cures Act (Pub. L. No. 114-255) (42 U.S.C. § 300gg-26(6), (7)), as amended.
- (b) Each documented analysis performed under subsection (a)(1) and (2) for a nonquantitative treatment limitation, including medical management, must:
- (1) Identify the limitation that is applied to MH/SUD benefits and that is applied to medical and surgical benefits.
 - (2) Describe the process used to develop, select, or continue the use of the limitation for MH/SUD benefits, and the process used to develop, select, or continue the use of that limitation for medical and surgical benefits.
 - (3) Identify and define each factor used to determine that the limitation is applicable to the MH/SUD benefit, including processes, strategies, and evidentiary standards used to develop each factor.
 - (4) Contain a comparative analysis, including the results of the analysis, performed to determine that, as designed and written, each factor applicable to the limitation of the MH/SUD benefit is comparable to that same factor as applicable to the limitation of medical and surgical benefits.
 - (5) Specify the findings and conclusions in the analysis that indicate that the insurer is in compliance with this Chapter, MHPAEA and the MH/SUD Parity Federal Regulations.
- (c) For each nonquantitative treatment limitation, including medical management, that is or has been in operation and applied under an insurance policy form offered, issued or renewed by an insurer in this Commonwealth, an insurer shall maintain documentation to demonstrate that each factor applicable to the limitation for the MH/SUD benefit is comparable to, and is applied no more stringently than, that same factor as applicable to the limitation for medical and surgical benefits. The documentation required by subsection (a) and (b) shall be maintained so that it is available for examination by the Commissioner or the Commissioner's appointed designees pursuant to an examination under section 901 of the Insurance Company Law of 1921.
- (d) An insurer shall make the information and documentation set forth in subsections (a) through (c) available as follows:

- (1) The information and documentation set forth in subsection (a)(1)-(3), (b), and (c) shall be available to the Department upon request.
- (2) The information and documentation set forth in subsection (a)(3) shall be available to an insured or provider as required by subsection (a)(4) of MHPAEA (42 U.S.C. § 300gg-26(a)(4)) in response to a good faith request.
- (3) If applicable, an insurer may designate the information and documentation produced pursuant to this provision as trade secret or confidential proprietary information.

168.5. Penalties.

Failure to comply with the provisions of this Chapter will subject an insurer to the penalties provided by section 605-B of The Insurance Company Law of 1921 as amended by the Health Insurance Coverage Parity and Nondiscrimination Act (40 P.S. § 908-15), and any other penalty provided by law.

Insurance Department

Notice of Proposed Rulemaking

31 Pa. Code Chapter 168

MENTAL HEALTH PARITY ANALYSIS DOCUMENTATION

Document/Fiscal Note No. 11-258

INSURANCE COMMISSIONER'S CERTIFICATION

I, Jessica K. Altman, hereby certify that I have reviewed this Proposed Form Regulation and determined that it is consistent with the principles outlined in Executive Order 1996-1.



Jessica K. Altman
Insurance Commissioner



GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 28, 2020

Honorable Tina Pickett
Majority Chairman
House Insurance Committee
315-A Main Capitol Bldg
P.O. Box 202110
Harrisburg, PA 17120-2110

Re: Insurance Department Proposed Regulation No. 11-258, Mental Health Parity Analysis Documentation

Dear Representative Pickett:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 168 Mental Health Parity Analysis Documentation.

The proposed rulemaking would add a new Chapter 168 to the Insurance Department's regulations to facilitate the Department's efficient regulation of mental health parity and substance use disorder coverage limitations.

If you have any questions regarding this matter, please contact me at (717) 787-2567.

Sincerely yours,

Bridget E. Burke
Regulatory Coordinator

cc: David Sumner, Executive Director IRRC



GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 28, 2020

Honorable Anthony DeLuca
Minority Chairman
House Insurance Committee
115 Irvis Office Building
P.O. Box 202032
Harrisburg, PA 17120-2032

Re: Insurance Department Proposed Regulation No. 11-258, Mental Health Parity Analysis Documentation

Dear Representative DeLuca:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 168 Mental Health Parity Analysis Documentation.

The proposed rulemaking would add a new Chapter 168 to the Insurance Department's regulations to facilitate the Department's efficient regulation of mental health parity and substance use disorder coverage limitations.

If you have any questions regarding this matter, please contact me at (717) 787-2567.

Sincerely yours,

Bridget E. Burke
Regulatory Coordinator

cc: David Sumner, Executive Director IRRC



GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 28, 2020

Honorable Sharif Street
Minority Chairman
Senate Banking and Insurance Committee
Senate Box 203003
535 Main Capitol
Harrisburg, PA 17120-3003

Re: Insurance Department Proposed Regulation No. 11-258, Mental Health Parity Analysis Documentation

Dear Senator Street:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 168 Mental Health Parity Analysis Documentation.

The proposed rulemaking would add a new Chapter 168 to the Insurance Department's regulations to facilitate the Department's efficient regulation of mental health parity and substance use disorder coverage limitations.

If you have any questions regarding this matter, please contact me at (717) 787-2567.

Sincerely yours,

A handwritten signature in black ink that reads "Bridget E. Burke".

Bridget E. Burke
Regulatory Coordinator

cc: David Sumner, Executive Director IRRC



GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 28, 2020

Honorable Mario M. Scavello
Majority Chairman
Senate Banking and Insurance Committee
Senate Box 203040
20 East Wing
Harrisburg, PA 17120-3040

Re: Insurance Department Proposed Regulation No. 11-258, Mental Health Parity Analysis Documentation

Dear Senator Scavello:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 168 Mental Health Parity Analysis Documentation.

The proposed rulemaking would add a new Chapter 168 to the Insurance Department's regulations to facilitate the Department's efficient regulation of mental health parity and substance use disorder coverage limitations.

If you have any questions regarding this matter, please contact me at (717) 787-2567.

Sincerely yours,

A handwritten signature in black ink that reads "Bridget E. Burke".

Bridget E. Burke
Regulatory Coordinator

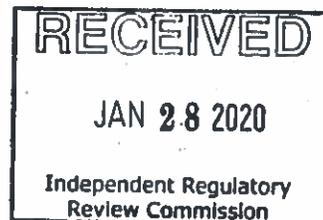
cc: David Sumner, Executive Director IRRC

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 11-258
SUBJECT: MENTAL HEALTH PARITY ANALYSIS DOCUMENTATION
AGENCY: PENNSYLVANIA INSURANCE DEPARTMENT

TYPE OF REGULATION

- X Proposed Regulation
 Final Regulation
 Final Regulation with Notice of Proposed Rulemaking Omitted
 120-day Emergency Certification of the Attorney General
 120-day Emergency Certification of the Governor
 Delivery of Tolled Regulation
 a. _____ With Revisions b. _____ Without Revisions



FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON INSURANCE:</i>
1-28-2020	<i>[Signature]</i>	MAJORITY CHAIR – <u>REP. TINA PICKETT</u>
1-28-2020	<i>[Signature]</i>	MINORITY CHAIR – <u>REP. ANTHONY DELUCA</u>
		<i>SENATE COMMITTEE ON BANKING & INSURANCE:</i>
1-28-2020	<i>[Signature]</i>	MAJORITY CHAIR: <u>SEN. MARIO M. SCAVELLO</u>
1-28-2020	<i>[Signature]</i>	MINORITY CHAIR: <u>SEN. SHARIF STREET</u>
1/28/20	<i>[Signature]</i>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		ATTORNEY GENERAL (for Final Omitted Only)
1/28/2020	<i>[Signature]</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed Only)

January 28, 2020