

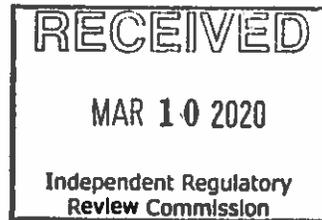
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Insurance Federation of Pennsylvania, Inc.

www.ifpenn.org

March 9, 2020

Bridget Burke, Regulatory Coordinator
Pennsylvania Insurance Department
1341 Strawberry Square
Harrisburg, PA 17120



Re: Proposed Rulemaking – Mental Health Parity Analysis Documentation

Dear Ms. Burke:

The Insurance Federation offers the following comments on the Insurance Department's proposed Chapter 168 of its regulations. The new chapter sets forth requirements for health insurers to make annual attestations, disclosures and analyses establishing parity of mental health and substance abuse benefits with medical and surgical benefits; it goes on to require not only that all this be filed with the Department, but also that portions of it be available to providers and insureds.

We agree with the substance of the filing requirements. As the Department notes, it engaged us and the Blues, along with other parties and legislative staff, in working through these details. It did so, however, not in the context of this proposed regulation, but in the context of language to be amended into House Bills 1439 and 1696. Those bills and their amendments are set to be approved by the House Insurance Committee on March 16, with no apparent opposition; a similar bill is being introduced in the Senate and should be ready for movement when it returns later this month, too.

We support those legislative efforts, and the strong likelihood is that the bills will have passed at least one chamber and be on their way to enactment even before the IRRC shares its comments on this proposed (and duplicative) regulation.

- There seems one key difference between the proposed regulation and the amendments about to be inserted into House Bills 1439 and 1696: Those

March 9, 2020

Page two

amendments apply to insurance policies offered, issued or renewed on or after January 1, 2022. The proposed regulation has an effective date of whenever it is published in final form, which could be much sooner (or a little later). The January 1, 2022 timing should set forth here.

Our primary concern is that this requirement is appropriately done by legislation, not regulation. We understand the reasoning behind these requirements and the balances on all sides that resulted in both this proposed regulation and the amendments soon to be added to House Bills 1439 and 1696.

But these requirements, and the balances of legitimate if competing views that led to them, haven't been made simply to enable the Insurance Department to carry out the parity provisions set forth in Article VI-B of the Insurance Company Law, 40 P.S. Sections 908-11 through 908-16. They have been made to build on those provisions and reflect both a legislative hearing and meetings with legislators and/or their staff, the Insurance Department, insurers and other parties. That's why, for instance, they include mandating that insurers make available portions of their annual reports to insureds and providers, not just the Department – something not envisioned in the current statutes.

We also note the legislative process isn't finished: The General Assembly could decide it wants different requirements, or none at all, or different penalties, or different timing, or different availability to the public. We doubt it, but the point is that the General Assembly could do that or more – and that's to be decided through the legislative process as a matter of legislative power, not the IRRC process as a matter of regulatory authority.

The IRRC process would be better used for supplying details to the terms in the bill, rather than repeating those terms – as with defining what constitute quantitative and non-quantitative treatment limitations, or outlining the role of the Health Department in ascertaining parity.

Again, we agree with the substance here, assuming this is only applicable to policies offered, issued or renewed after January 1, 2022. We recommend this substance be established by the General Assembly as an extension of Article VI-B of the Insurance Company Law, not by the IRRC as a regulation under that Article.

March 9, 2020
Page three

Sincerely,

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