SENATE BILL **No. 11**

Introduced by Senator Beall

December 3, 2018

An act to add Sections 1374.77 and 1374.78 to the Health and Safety Code, and to add Sections 10144.41 and 10144.42 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 11, as introduced, Beall. Health care coverage: mental health parity.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requires health care service plan contracts or health insurance policies issued, amended, or renewed on or after July 1, 2000, to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses, as defined, and of serious emotional disturbances of a child, as specified, under the same terms and conditions applied to other medical conditions.

Existing federal law, the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), requires group health plans and health insurance issuers that provides both medical and surgical benefits and mental health or substance use disorder benefits to ensure that financial requirements and treatment limitations applicable to mental health or substance use disorder benefits are no more restrictive than the predominant requirements or limitations applied to substantially all medical and surgical benefits. Existing state law subjects nongrandfathered individual and small group health care

service plan contracts and health insurance policies that provide coverage for essential health benefits to those provisions of the MHPAEA.

This bill would require a health care service plan and a health insurer to submit an annual report to the Department of Managed Health Care or the Department of Insurance, as appropriate, certifying compliance with state and federal mental health parity laws, as specified. The bill would require the departments to review the reports submitted by health care service plans to ensure compliance with state and federal mental health parity laws, and would require the departments to make the reports and the results of the reviews available upon request and to post the reports and the results of the reviews on the departments' Internet Web site. The bill would also require the departments to report to the Legislature the information obtained through the reports and the results of the review of the reports and on all other activities taken to enforce state and federal mental health parity laws.

Existing law authorizes a health care service plan and a health insurer to utilize formularies, prior authorization, step therapy, or other reasonable medical management practices, as specified, in the provision of outpatient prescription drug coverage.

The bill would prohibit a health care service plan and a health insurer that provides prescription drug benefits for the treatment of substance use disorders from, among other things, imposing any prior authorization requirements on, or any step therapy requirements before authorizing coverage for, a prescription medication approved by the federal Food and Drug Administration for the treatment of substance use disorders.

Because a willful violation of the bill's provisions by a health care service plan would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1374.77 is added to the Health and Safety Code, to read:

1374.77. (a) A health care service plan shall submit an annual report to the department on or before March 1 of each year certifying compliance with Sections 1374.72, 1374.76, and 1374.78, and the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343), hereafter referred to as the MHPAEA, its implementing regulations, and all related federal guidance. The department shall make the report available upon request and shall post the report on the department's Internet Web site.

(b) A health care service plan shall include, but not be limited to, all of the following information in the annual report required pursuant to subdivision (a):

(1) A description of the process used to develop or select the medical necessity criteria for mental health and substance use disorder benefits and the process used to develop or select the medical necessity criteria for medical and surgical benefits.

(2) Identification of all nonquantitative treatment limitations (NQTLs) that are applied to both mental health and substance use disorder benefits and medical and surgical benefits within each classification of benefits.

(3) The results of an analysis that demonstrates that for the medical necessity criteria described in paragraph (1) and for each NQTL identified in paragraph (2), as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to mental health and substance use disorder benefits within each classification of benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to medical and surgical benefits within the corresponding classification of benefits. At a minimum, the results of the analysis shall do all of the following:

(A) Identify the factors used to determine that an NQTL 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 NQTL.

(C) Provide the comparative analyses, including the results of the analyses performed to determine that the processes and strategies used to design each NQTL, as written, and the written processes and strategies used to apply the NQTL to mental health and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each NQTL, as written, and the written processes and strategies used to apply the NQTL to medical and surgical benefits.

(D) Provide the comparative analyses, including the results of the analyses performed to determine that the processes and strategies used to apply each NQTL, in operation, for mental health and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes or strategies used to apply each NQTL, in operation, for medical and surgical benefits.

(E) Disclose the specific findings and conclusions reached by the health care service plan that the results of the analyses described in this paragraph indicate that the health care service plan is in compliance with the MHPAEA, its implementing regulations, and all related federal guidance.

(c) A report submitted to the department pursuant to this section shall not include any information that may individually identify insureds, including, but not limited to, medical record numbers, names, and addresses.

(d) The department shall review the reports submitted by health care service plans pursuant to subdivision (a) to ensure compliance with this section, Sections 1374.72, 1374.76, and 1374.78, and the MHPAEA, its implementing regulations, and all related federal guidance. The department shall make the results of the review available upon request and shall post the review of the reports on the department's Internet Web site.

(e) (1) The department shall annually report to the Legislature the information obtained through the reports and the results of the review of the reports and on all other activities taken to enforce this section, Sections 1374.72, 1374.76, and 1374.78, and the MHPAEA, its implementing regulations, and all related federal guidance.

(2) The California State Auditor shall review the department's implementation of this section, and shall report its findings from the review to the Legislature.

(3) A report submitted pursuant to this subdivision shall be submitted in accordance with Section 9795 of the Government Code.

(f) For purposes of this section, "nonquantitative treatment limitations" or "NQTL" means those limitations described in the implementing regulations of the MHPAEA.

SEC. 2. Section 1374.78 is added to the Health and Safety Code, to read:

1374.78. Notwithstanding any other law, a health care service plan that provides prescription drug benefits for the treatment of substance use disorders shall place all prescription medications approved by the federal Food and Drug Administration (FDA) for the treatment of substance use disorders on the lowest tier of the drug formulary developed and maintained by the health care service plan, and shall not do any of the following:

(a) Impose any prior authorization requirements on any prescription medication approved by FDA for the treatment of substance use disorders.

(b) Impose any step therapy requirements before authorizing coverage for a prescription medication approved by the FDA for the treatment of substance use disorders.

(c) Exclude coverage for any prescription medication approved by the FDA for the treatment of substance use disorders and any associated counseling or wraparound services on the grounds that those medications and services were court ordered.

SEC. 3. Section 10144.41 is added to the Insurance Code, to read:

10144.41. (a) A health insurer shall submit an annual report to the department on or before March 1 of each year certifying compliance with Sections 10144.4, 10144.42, and 10144.5, and the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343), hereafter referred to as the MHPAEA, its implementing regulations, and all related federal guidance. The department shall make the report available upon request and shall post the report on the department's Internet Web site.

(b) A health insurer shall include, but not be limited to, all of the following information in the annual report required pursuant to subdivision (a):

(1) A description of the process used to develop or select the medical necessity criteria for mental health and substance use disorder benefits and the process used to develop or select the medical necessity criteria for medical and surgical benefits.

(2) Identification of all nonquantitative treatment limitations (NQTLs) that are applied to both mental health and substance use disorder benefits and medical and surgical benefits within each classification of benefits.

(3) The results of an analysis that demonstrates that for the medical necessity criteria described in paragraph (1) and for each NQTL identified in paragraph (2), as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to mental health and substance use disorder benefits within each classification of benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to medical and surgical benefits within the corresponding classification of benefits. At a minimum, the results of the analysis shall do all of the following:

(A) Identify the factors used to determine that an NQTL 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 NQTL.

(C) Provide the comparative analyses, including the results of the analyses performed to determine that the processes and strategies used to design each NQTL, as written, and the written processes and strategies used to apply the NQTL to mental health and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each NQTL, as written, and the written processes and strategies used to apply the NQTL to medical and surgical benefits.

(D) Provide the comparative analyses, including the results of the analyses performed to determine that the processes and strategies used to apply each NQTL, in operation, for mental health

and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes or strategies used to apply each NQTL, in operation, for medical and surgical benefits.

(E) Disclose the specific findings and conclusions reached by the health insurance policy that the results of the analyses described in this paragraph indicate that the health insurance policy is in compliance with the MHPAEA, its implementing regulations, and all related federal guidance.

(c) A report submitted to the department pursuant to this section shall not include any information that may individually identify insureds, including, but not limited to, medical record numbers, names, and addresses.

(d) The department shall review the reports submitted by health insurers pursuant to subdivision (a) to ensure compliance with this section, Sections 10144.4, 10144.42, 10144.5, and the MHPAEA, its implementing regulations, and all related federal guidance. The results of the review shall be made available upon request and shall be posted on the department's Internet Web site.

(e) (1) The department shall annually report to the Legislature the information obtained through the reports and the results of the review of the reports, and on all other activities taken to enforce this section, Sections 10144.4, 10144.42, and 10144.5, and the MHPAEA, its implementing regulations, and all related federal guidance.

(2) The California State Auditor shall review the department's implementation of this section, and shall report its findings from the review to the Legislature.

(3) A report submitted pursuant to this subdivision shall be submitted in accordance with Section 9795 of the Government Code.

(f) For purposes of this section, "nonquantitative treatment limitations" or "NQTL" means those limitations described in the implementing regulations of the MHPAEA.

SEC. 4. Section 10144.42 is added to the Insurance Code, to read:

10144.42. Notwithstanding any other law, a health insurer that provides prescription drug benefits for the treatment of substance use disorders shall place all prescription medications approved by the federal Food and Drug Administration (FDA) for the treatment

of substance use disorders on the lowest tier of the drug formulary developed and maintained by the health insurer, and shall not do any of the following:

(a) Impose any prior authorization requirements on any prescription medication approved by FDA for the treatment of substance use disorders.

(b) Impose any step therapy requirements before authorizing coverage for a prescription medication approved by the FDA for the treatment of substance use disorders.

(c) Exclude coverage for any prescription medication approved by the FDA for the treatment of substance use disorders and any associated counseling or wraparound services on the grounds that those medications and services were court ordered.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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