FISCAL IMPACT REPORT

SPONSOR HHHC **LAST UPDATED** 03/03/2023
ORIGINAL DATE 02/21/2023
SHORT TITLE Health Insurance Mental Health Coverage **BILL NUMBER** CS/House Bill 260/HHHCS/aHAFC
ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PSIA increased costs		$330.0	$680.0	$1,100.0	Recurring	General Fund
RHCA increased costs		$36.0	$36.0	$72.0	Recurring	General Fund
Other agency increased costs (GSD, APS)		Unknown	Unknown	Unknown	Recurring	General Fund
Total		At least $366.0	At least $716.0	At least $1,172.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Duplicate of Senate Bill 273.

Sources of Information

LFC Files

Responses Received From
Office of the Superintendent of Insurance (OSI)
Office of the Attorney General (NMAG)
Human Services Department (HSD)
Public School Insurance Authority (NMPSIA)
Retiree Health Care Authority (RHCA)
General Services Department (GSD)

No Response Received
New Mexico Health Insurance Exchange (NMHIX)
Albuquerque Public Schools (APS)

SUMMARY

Synopsis of HAFC Amendment to HHHC Substitute for House Bill 260

The HAFC amendment strikes the appropriation from the bill.

Synopsis of HHHC Substitute for House Bill 260

The House Health and Human Services Committee substitute for House Bill 260 provides that insurance products sold in New Mexico may not apply more coverage restrictions on mental health and substance use disorders than are applied to general health services. This is made applicable to policies through the Health Purchasing Act as well as private health insurance plans. Confidentiality regarding an insured patient's use of mental health and substance use disorder treatment options is assured. Insurers may not discriminate against patients regarding mental health and substance use disorder treatment on the basis of a patient's disability, on the basis that a court has ordered treatment, or on the basis that there are other diagnoses along with the mental health or substance use disorder.

Sections of the bill follow:

Bill section	Section of statute modified	Type of insurance covered	Provisions
1	New	Health Care Purchasing Act, Section 13-7 NMSA 1978	Definitions; includes that of "generally recognized standards," being guidelines from evidence-based sources, clinical practice guidelines in relevant disciplines". Mental health services" includes inpatient and outpatient services, prescription drugs, and professional talk therapy services used under generally recognized standards of care.
2	New	Health Care Purchasing Act	Mental health and substance use disorder (MHSUD) care will be covered under these policies.
3	New	Health Care Purchasing Act	Restrictions on MHSUD care cannot be more stringent than on general health care.
4	New	Health Care Purchasing Act	Insurers should make all efforts to maintain an adequate network for MHSUD; if it not adequate, providers outside the network can be used with no greater restrictions or cost sharing
5	New	Health Care Purchasing Act	Insurers should provide expert utilization review of MHSUD services according to the most recent evidence available, policies for which can be no more restrictive than for general health services.
6	New	Health Care Purchasing Act	Insurers may not exclude patient coverage for MHSUD because a patient has a disability, is court-ordered to receive the service, or there is a concurrent diagnosis.
7	New	Health Care Purchasing Act	All in-network services needed by a patient must be provided as needed and determined by consultation as to level of care between the insurer and the insured's provider, determined on the basis of the patient's need as to location and duration, rather than on arbitrary time limits.
8	New	Health Care Purchasing Act	Insurers may help coordinate care between a patient's general provider and his/her MHSUD provider.
9	New	Health Care Purchasing Act	Insurers must maintain confidentiality of patients requiring MHSUD care.
10	New	Health Care Purchasing Act	Provisions of Sections 1-9 do not apply to short-term plans subject to Short-Term Health Plan and Excepted Benefit Act
11	New	Prior Authorization Act, Section 13-17-20 NMSA 1978	Once an MHSUD service has been authorized, the authorization cannot be changed or rescinded once the service has been provided, except in cases of fraud or violation of the contract between insurer and provider.
12	New	Prior Authorization Act	Prior authorization for in-network MHSUD care cannot be required for acute or emergent MHSUD or initial substance use disorder care. Limitation of services are to be discussed with the MHSUD provider and based on patient need rather than a specific time limit.

13	New	Prior Authorization Act	FDA-approved drugs for SUD must be covered, without step therapy
14	New	Section 59A-23 on group health plans, blanket health plans	Definitions, same as in section 1 of the bill
15	New	Group health plans, blanket health plans	Benefits required, as in section 2 of the bill
16	New	Group health plans, blanket health plans	Coverage parity, as in section 3 of the bill
17	New	Group health plans, blanket health plans	Network adequacy, as in section 4 of the bill
18	New	Group health plans, blanket health plans	Utilization review, as in section 5 of the bill
19	New	Group health plans, blanket health plans	No MHSUD coverage exclusions, as in section 6 of the bill
20	New	Group health plans, blanket health plans	Level of care determinations, as in section 7 of the bill
21	New	Group health plans, blanket health plans	Coordination of care, as in section 8 of the bill
22	New	Group health plans, blanket health plans	Confidentiality provisions, as in section 9 of the bill
23	New	Group health plans, blanket health plans	Provisions of Sections 14 to 22 do not apply to short-term plans subject to Short-Term Health Plan and Excepted Benefit Act
24	Section 59A-23E-18	Group or individual health insurance	Removes redundant language, leaving language prohibiting these plans from making financial restrictions or limitations more stringent for MHSUD than other conditions.
25	New	Health maintenance organization products	Definitions, as in section 1 of the bill
26	New	Health maintenance organization products	Benefits required, as in section 2 of the bill
27	New	Health maintenance organization products	Coverage parity, as in section 3 of the bill
28	New	Health maintenance organization products	Network adequacy, as in section 4 of the bill
29	New	Health maintenance organization products	Utilization review, as in section 5 of the bill
30	New	Health maintenance organization products	No MHSUD coverage exclusions, as in section 6 of the bill
31	New	Health maintenance organization products	Level of care determinations, as in section 7 of the bill
32	New	Health maintenance organization products	Coordination of care, as in section 8 of the bill
33	New	Health maintenance organization products	Confidentiality provisions, as in section 9 of the bill
34	New	Health maintenance organization products	
35	New	Non-profit health care plans	Definitions, as in section 1 of the bill
36	New	Non-profit health care plans	Benefits required, as in section 2 of the bill
37	New	Non-profit health care plans	Coverage parity, as in section 3 of the bill
38	New	Non-profit health care plans	Network adequacy, as in section 4 of the bill
39	New	Non-profit health care plans	Utilization review, as in section 5 of the bill
40	New	Non-profit health care plans	No MHSUD coverage exclusions, as in section 6 of the bill
41	New	Non-profit health care plans	Level of care determinations, as in section 7 of the bill
42	New	Non-profit health care plans	Coordination of care, as in section 8 of the bill
43	New	Non-profit health care plans	Confidentiality provisions, as in section 9 of the bill
44	New	Non-profit health care plans	Provisions of Sections 35-43 do not apply to short-term plans subject to Short-Term Health Plan and Excepted Benefit Act

Section 45 requires OSI to report annually to the Legislative Health and Human Services Committee and the Legislature on results of this act.

In Section 46, the original version of House Bill 260 appropriated $1 million from the general fund to the Office of Superintendent of Insurance; however, this has been removed with the amendment.

As stated in Section 47, the effective date of this bill is January 1, 2024, for all health insurance products other than small group health plans issued or delivered after that date.

FISCAL IMPLICATIONS

There is no appropriation in the amended bill.

Analysis from state's health insurance purchasing agencies forecast increased costs from the bill. NMPSIA notes that while it currently provides members with coverage for in-network mental health and substance use disorder services, the bill would expand those benefits to out-of-network coverage when there are no reasonably available in-network providers. The bill also prohibits prior authorization and utilization management restrictions that are more stringent than those applied to non-behavioral health conditions. Given historical experience, NMPSIA anticipates additional costs of $330 thousand in FY24 and $680 thousand in FY25. This could result in higher premium rate increases for plans offered by NMPSIA, but the overall amount is relatively small in context of the total fund, which has revenue of about $350 million per year. On March 2, NMPSIA's board approved a 7.24 percent rate increase for health insurance benefits for FY24.

RHCA forecasts a minimal increase related to prescription drug coverage that will likely not have any material impact of the fund. GSD was unable to provide an estimate of costs, but it could be similar to the amount reported by NMPSIA. Even this minor increase in costs could complicate the department's efforts to reduce costs to resolve an outstanding deficit in the employee group benefits fund. Forecasts from the current year show the department spending $39.4 million more than the amount of revenue collected.

SIGNIFICANT ISSUES

OSI states that they "used legislative funding from FY22 to hire contractors with Georgetown University to conduct a gap analysis of OSI's regulatory authority and staff capacity to properly enforce the federal mental health parity law and ensure access to behavioral health benefits in private insurance. Georgetown University's report analyzed best practices from states which have had some success in analyzing and enforcing insurers' compliance with mental health parity and access laws.

Georgetown's analysis found that: "The Mental Health Parity and Addiction Equity Act (MHPAEA) is a complex law with evolving regulations and enforcement tools. Based on the experience of other states, it will require more time and resources to enforce than would apply to other laws."

According to the Kaiser Family Foundation (kff.org),

> More than 25 years after the first federal mental health parity protections were put in place, adequate coverage for behavioral health (BH) care – including both mental health and substance use conditions –remains elusive for many consumers with health insurance.[1] Federal BH parity rules require health plans that offer BH coverage to ensure

that financial requirements (such as deductibles, copayments, coinsurance, and out-of-pocket limits) and treatment limits (such as day and visit limits as well as nonquantitative limits on benefits such as prior authorization) on these benefits are no more restrictive than those on medical and surgical benefits. The COVID-19 pandemic has heightened awareness and exacerbated existing challenges in BH. Strengthening BH parity protections is just one part of a larger policy discussion that includes addressing the BH workforce shortage, rising BH treatment needs among children and youth, an inadequate health care infrastructure to address those in crisis, and the need for improved coordination and integration of primary care and BH care in the health care delivery system.

All of these issues contribute to the access and coverage challenges in health insurance that BH parity was supposed to address. The stakes are high for coverage protection, as nearly 90 percent of nonelderly individuals with a BH condition have some form of health coverage. Despite having coverage, many insured adults (36 percent) with moderate to severe symptoms of anxiety and depression did not receive care in 2019. There have been consistent calls for more federal guidance on the specific protections in the federal BH parity law, as well as for increased enforcement. As Congress[2] debates reforms to address these concerns in BH care, and as federal agencies plan to update parity regulations, this brief explains the federal BH parity requirements – including who they apply to and how they're enforced — and sets out key policy issues.

Federal protections for BH coverage sought to correct historical differences in how health insurance covered this care when compared to medical/surgical benefits. The focal point of these protections has evolved over the years from the narrow initial federal law, the Mental Health Parity Act of 1996 (MHPA), to the broader protections in the current law, the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).

HSD points to two articles supporting the necessity of behavioral health parity:

- A 2013 article in JAMA Psychiatry found that state parity laws were positively correlated with increased access to substance use disorder treatment.
- A 2012 article in Medical Care found that initiations of care with masters level providers increased due to comprehensive behavioral health care parity laws.

DUPLICATION

HB260 duplicates the Senate Tax, Business and Transportation Committee substitute for Senate Bill 273 as amended by the Senate Finance Committee, from which the appropriation has also been stripped. However, the amendments to SB273 also address a drafting error in which "proscribed" was used in multiple places where "prescribed" was intended.

TECHNICAL ISSUES

In four locations, noted below, the word "proscribed" had been written into the bill in place of "prescribed."

"Adequacy" of MHSUD services within networks is not defined.

OSI raises the following issues:

- The sections of the legislation that are duplicated in Articles 23, 46, and 47 of the Insurance Code need to be duplicated in Article 22 of the Insurance Code to ensure that the law applies to all individual health plans offered in the state.

- The "Applicability" section should be labeled "Effective Date." Applicability is done through duplication in other sections of the Insurance Code.

HSD notes that "In order to include all practitioners that fall under the New Mexico Regulation and Licensing Department's Counseling and Therapy Practice Board, Social Work Examiners Board, and Psychologist Examiners Board/OR the following professions should be added: Substance abuse counselors, Licensed practicing clinical counselors, and Licensed practicing art therapists."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

As noted by OSI, "Without enacting this bill, the State of New Mexico will not have the capacity to enact mental health parity consumer protections, or take enforcement action, against those insurers violating state and federal law."

LAC/al/ne/rl/hg/mg