



November 10, 2022

Director Dana Popish Severinghaus
Illinois Department of Insurance
122 S. Michigan Av., 19th Floor
Chicago, IL 60603

Re: P.A. 100-1024 Mental Health Parity Working Group Finding Cited in Market Conduct Examination Report of Celtic Insurance

Dear Director Severinghaus,

The Illinois Life and Health Insurance Council (ILHIC) and the health insurance industry recognizes the importance of our role in the overall effort to reduce barriers to access to the treatment of mental health and substance use disorders; an effort that along with federal, state, and local policymakers involves a vast infrastructure of stakeholders ranging from the provider to the public safety, social services, educational and business communities. We have been a willing and collaborative partner on Illinois' efforts to remain at the forefront of ensuring consumers have access to health insurance coverage that complies with federal and state mental health and substance use disorder parity laws, including the enactment of P.A 100-1024 in 2018 that established a parity reporting framework through which health insurers must demonstrate compliance with non-quantitative treatment limitations (NQTLs) that are a cornerstone of state and federal parity laws.

On behalf of ILHIC and our members, I would like to take this opportunity to address a recent finding cited in a Market Conduct Examination Report of Celtic Insurance published on October 18, 2022. While the Council does not make a practice of weighing in on specific market conduct examinations performed on insurance companies, we believe one finding noted in this report under Section VII (I) warrants a response given my involvement on behalf of ILHIC in the representation of the commercial health insurance companies as part of the Mental Health Parity Working Group created in accordance with 215 ILCS 5/370c.1(j).

Specifically, the finding indicates that the Mental Health Parity Working Group, which is comprised of representatives from both commercial and Medicaid health plans, behavioral health providers, and patients established under P.A. 100-1024 to assist both the Departments of Insurance (DOI) and Healthcare and Family Services (HFS) in the development of reporting of certain NQTLs to determine compliance with state and federal mental health parity laws did not follow the statute.

ILHIC would therefore request 1) the Department provide a detailed justification as to why they believe the working group failed to comply the statute; 2) the Department submit proposed rules clarifying their

interpretation of the reporting standards required under the statute since no such rules exist to date; and 3) work with members of the General Assembly to amend the statute to dissolve the working group and assume control of the reporting requirements going forward.

P.A. 100-1024 tasked the working group with developing the format and definitions for specific provisions outlined in 215 ILCS 4/370c.1(k), which Medicaid health plans and commercial health insurers must report on annually to their respective Departments. As set forth in the statute, both Departments currently serve in a technical advisory capacity to the workgroup.

The first working group meeting convened on February 28, 2020. Subsequent meetings followed in 2020, 2021, and 2022 with varying frequencies depending on the volume of work undertaken. The bulk of the meetings took place in late 2020 and nearly monthly throughout 2021 in an effort to develop a reporting template and instructions to health insurers and Medicaid health plans in their first annual submission of Phase I NQTL reporting analysis on July 1, 2021 to the DOI and HFS.¹

The work undertaken by the members of this working group and their respective mental health parity compliance experts, and the insurance companies themselves has been nothing short of substantial. The hours invested in the process and the numerous conversations that took place between all interested parties, including the Departments, both inside and outside of the working group to develop the work product that we believed was in compliance with the charge outlined in 215 ILCS 4/370c.1(j) ultimately culminated in the Phase I reporting template and instructions the Department notified health plans they must complete and submit on July 1, 2021 per Company Bulletin 2021-08 published on May 25, 2021.²

I was surprised to see that the Department, after notifying health plans to submit Phase I reports via the bulletin, is now indicating that the templates and reporting instructions approved by the working group and published in the bulletin were not in compliance with the statute. Specifically, Crit #72 in the final market conduct examination of Celtic Insurance published October 18, 2022, states: “[u]nder 215 ILCS 5/370c.1(j) a working group was formed to create instructions and templates to file annually with the Department the Company’s NQTL comparative analysis. **Unfortunately, the current instructions and templates do not fully encompass the filing requirements under the statutes as outlined in 215 ILCS 5/370c.1(j) & (k). The statu[t]e does not empower the working group to supersede, alter, reinterpret, or undermine the statutory requirements as written. Celtic relied heavily on the work from the working group and did not follow all of the statutory requirements in their submission.**”³

The working group approved without dissent the Phase I reporting template and instructions on January 29, 2021.⁴ The Department was silent and never expressed concerns that the template and the instructions conflicted with the statute during the 10 previous working group meetings before unanimous approval. Beyond failing to inform the working group and its members of their interpretation of a potential conflict, the Department published CB 2021-08 on May 25, 2021, directing all regulated accident and health insurers to complete the template by July 1, 2021.

¹ Illinois Department of Insurance - Mental Health Parity Working Group Notice of Meetings; [Calendar of Events - Calendar \(illinois.gov\)](#)

² IDOI Company Bulletins, May 25, 2021: [CB 2021-08 \(supersedes CB 2021-03\)](#)

³ Pg. 28, [Illinois Department of Insurance Market Conduct Examination - Celtic Insurance Company](#), October 18, 2022.

⁴ P.A. 100-1024 Mental Health Parity Working Group Meeting Minutes, January 29, 2021: [MHPAgendaFeb19.pdf \(illinois.gov\)](#)

It is not only perplexing to understand how the Department directs companies to complete a form they are now suggesting is not in compliance with the statute, it is also disheartening and disingenuous to suggest that a working group comprised of stakeholders representing a broad array of interested parties ranging from patient groups to providers to insurers and managed care plans would actively choose to “supersede, alter, reinterpret, or undermine the statutory requirements as written.”⁵

Furthermore, we fail to understand how the template and instructions conflict with the statute as noted. The Department has yet to offer a clear interpretation via guidance or rulemaking for all issuers as to what would be compliant with statute and how the template and instructions from the working group deviate from that standard. The working group, which recommended and approved phased-in reporting of specific NQTL classifications (and was subsequently reinforced under CB 2021-08), aligned Phase I NQTL reporting with the provisions outlined in 215 ILCS 5/370c.1(k). The NQTLs identified for Phase I were aligned with those NQTLs explicitly listed in Section 370c.1(k)(1-4): 1) Prior Authorization (utilization management); 2) Fail-First/Step Therapy (pharmacy management); 3) Formulary/PDL Design (pharmacy management); 4) Medical Necessity Criteria; and 5) Experimental/Investigational Determinations.⁶

Additional NQTL types were identified and approved by the working group for Phase II reporting, which was submitted by the issuers on July 1, 2022 and Phase III NQTLs reporting, which is still in the process of being developed, is to be submitted by July 1, 2023.⁷ Phase II NQTLs include: 1) Concurrent Review; 2) Retrospective Review; 3) Outlier Management; 4) Failure to Complete; 5) Blanket Exclusions of Services; 6) Exclusions for Court-Ordered Treatment or Involuntary Holds; 7) Provider-Type Exclusions; 8) Out-of-Network Coverage Standards; 9) Geographic Restrictions. Phase III NQTLs will focus on in-network and out-of-network provider reimbursement and network credentialing.

The reporting template and corresponding instructions, which were updated to align with the federal Consolidated Appropriations Act (CAA) enacted on December 27, 2020 also outlined the five step analysis issuers were expected to complete for each NQTL type across applicable benefit classifications identified in Section 370c.1(k) (inpatient and outpatient in-network and out-of-network benefits, emergency care, and prescription drug benefits).⁸ Step 1 requires issuers to identify the specific plan or coverage terms or other relevant terms regarding the NQTL and a description of all the mental health or substance use disorder and medical or surgical benefits to which each such term applies in each respective benefits classification.

The other reporting steps for each NQTL were explicitly aligned with Section 370c.1(k)(6)(A-E) as follows:⁹

- Step 2 requires issuers to identify the factors used to determine that the NQTL will apply to mental health or substance use disorder benefits and medical or surgical benefits [Section 370c.1(k)(6)(A)].

⁵ See citation 3.

⁶ P.A. 100-1024 Mental Health Parity Working Group Meeting Minutes, October 16, 2020: [MHP-Mtg-Min-10-16-2020.pdf \(illinois.gov\)](https://www2.illinois.gov/sites/Insurance/Companies/Documents/Phase-I-NQTL-Template.docx)

⁷ P.A. 100-1024 Mental Health Parity Working Group Meeting Minutes, March 19, 2021: [MHPWG-Materials1.pdf \(illinois.gov\)](https://www2.illinois.gov/sites/Insurance/Companies/Documents/Phase-I-NQTL-Template.docx)

⁸ See citation 4.

⁹ NQTL Reporting Template, Phase I: <https://www2.illinois.gov/sites/Insurance/Companies/Documents/Phase-I-NQTL-Template.docx>

- Step 3 requires issuers to identify any source or evidence relied upon to design and apply the NQTL to mental health or substance use disorder benefits and medical or surgical benefits [Section 370c.1.(k)(6)(B)].
- Step 4 requires issuers to provide the comparative analyses demonstrating that the processes, strategies, evidentiary standards, and other factors used to apply the NQTL to mental health or substance use disorder benefits, as written and in operation, are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used to apply the NQTL to medical or surgical benefits in the benefits classification [Section 370c.1(k)(6)(C)].
- Step 5 requires issuers to provide the specific findings and conclusions reached by the group health plan or health insurance issuer with respect to the health insurance coverage, including any results that indicate that the plan or coverage is or is not in compliance with this section [Section 370c.1(k)(6)(D) and (E)].

The intent of the annual reporting is to provide the Department with an additional tool to enforce compliance with state and federal parity laws; a tool that the federal government has since reinforced under the CAA and subsequent guidance and regulations issued by the U.S. Department of Labor (USDOL). The General Instructions developed and approved by the working group, and circulated by the Department under CB 2021-08, also affirm the DOI's ability to request additional information, data, and supporting documentation "upon request or in the event of a market conduct examination or other enforcement action."¹⁰

As cited in the report under the October 18, 2022 market conduct examination Crit #72, the Department notes that "the Company" filed information "[that]" *did not provide a sufficient comparative analysis for the NQTLs for Prior Authorization for inpatient and outpatient services, Medical Necessity, and Experimental and Investigative Treatments and did not provide a sufficient comparative analysis for prescription drug NQTLs for Medical Necessity, Prior Authorization and Step Therapy. . . [which is] a violation of 215 ILCS 5/370[c].1(k)(6).*"¹¹

ILHIC had absolutely no involvement in how the insurance companies completed the form nor do we have knowledge of what the Department did or did not ask for in the way of additional information, data, and supporting documentation as was indicated in the General Instructions. However, we fail to understand how the Department further justifies the criticism by maligning the working group's instructions and templates when they themselves failed to note any potential conflict with the current statute prior to recommendation and approval, and further published the template and instructions directing insurers to complete and submit the Phase I report by July 1, 2021.

It is also worth noting that during the January 28, 2022, working group meeting, ILHIC asked the Department to share feedback regarding the Phase I reporting process. The Department reported at that time that it appeared "to be a seamless process."¹² While the feedback did acknowledge the ability of the Department to perform a review of the analysis was stunted by the lack of additional appropriations to support that additional review, DOI stated it was working to incorporate these into the

¹⁰ Pg. 2; NQTL Reporting Instruction Guide, Phase I: [Phase-I-NQTL-Rpt-Template-Instructions.pdf \(illinois.gov\)](https://www.illinois.gov/Phase-I-NQTL-Rpt-Template-Instructions.pdf)

¹¹ See citation 3, pg. 27.

¹² P.A. 100-1024 Mental Health Parity Working Group Meeting Minutes, January 28, 2022: [MHPWG-Materials-02-25-2022.pdf \(illinois.gov\)](https://www.illinois.gov/MHPWG-Materials-02-25-2022.pdf)

market examination review process and “working with carriers to do the reviews, provide feedback and give an opportunity for resubmission.”¹³

The Department’s justification of Crit #72 therefore creates substantial confusion and places insurers in jeopardy who have, in good faith, recently completed Phase II NQTL reporting on July 1, 2022. Phase II template and instructions, like Phase I, were also approved without dissent by the working group on March 19, 2021.¹⁴ As noted previously, the Department never once noted potential conflict with the statute and to date, has not publicly stated this conflict until the final market conduct examination report was published on October 18, 2022.

The justification also creates potential risk for those Medicaid health plans who completed the same form and followed the same reporting instructions for submission to HFS. HFS released their 2021 parity analysis summary report in July and did not highlight any potential conflict with the state statute.¹⁵ The report specifically cited that Health Services Advisory Group (HSAG), who conducted the mental health parity analysis on behalf of HFS, “determined that the health plans demonstrated parity between medical/surgical (M/S) and mental health and substance use disorder (MH/SUD) services. Documentation and implementation of health plans’ processes demonstrated compliance with State and federal MHP requirements and standards.”¹⁶

Given the lack of details included in the market conduct examination report as to why the Department believes the reporting conflicts with the statute, we believe it is critical that the Department provide a detailed justification as to why they believe the NQTL instructions and templates do not fully encompass the filing requirements as outlined under 215 ILCS 5/370c.1(j) and (k) due to the risks this poses to Medicaid and commercial health plans. Additionally, since the Department has now indicated that the working group has somehow reinterpreted the statutory requirements as written, we respectfully request the Department submit proposed rules as mandated by the Illinois Administrative Procedures Act clarifying their interpretation since no such rules exist to date.

We also respectfully suggest that the Department work with members of the General Assembly to amend the statute to dissolve the working group and take over the development of parity reporting standards and instructions. With the Department in control of the construction and reporting requirements, there will be no risk of any actual or perceived failure to follow the statute. This risk continues as long as the working group develops requirements without meaningful input from the Department in the form of meeting participation and written guidance.

In the meantime, ILHIC remains concerned that ongoing participation in the working group may otherwise compromise the ability of insurers to report the “filing requirements” outlined under the statute despite our organization and that of the working group’s good faith efforts to follow the current statute.

¹³ Id.

¹⁴ See citation 7; Phase II template and instructions posted to IDOI Checklists – Life-Accident-Health webpage under MH/SUD Comparative Analysis: [Checklists Life - Accident - Health - Companies \(illinois.gov\)](https://www.idoi.org/Checklists/Life-Accident-Health-Companies)

¹⁵ [2021 Mental Health Parity Analysis Summary Report for HealthChoice Illinois](#); July 2022.

¹⁶ Id.

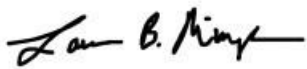
The absence of a detailed summary of why the Department believes the current template and instructions are not in compliance with the statute makes that participation incredibly difficult if not impossible.

ILHIC and its members remain committed to working with the Department and all stakeholders to ensure compliance with all state and federal mental health parity laws. These laws are incredibly complex and require a substantial level of expertise to ensure they are applied correctly, but they are important to ensuring consumers do not face unnecessary barriers to access of critical behavioral health care services in this state.

My previous statements should not be construed as diminishing that commitment on behalf of the industry, but we must have clarity on this compliance process going forward as soon as possible to effectively deliver on the shared goal of providing coverage and access to important behavioral health care services for all Illinois consumers.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura B. Minzer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Laura Minzer

Cc: KC Stralka, Chief of Staff, Illinois Department of Insurance
Erica Weyhenmeyer, Chief Market Conduct Examiner, Illinois Department of Insurance
Members of the IL Mental Health Parity Working Group