

CONSENT CALENDAR

April 20, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Commerce and Consumer Affairs to
which was referred SB 373,**

**AN ACT relative to coverage for certain mental
illnesses. Having considered the same, report the same
with the recommendation that the bill OUGHT TO
PASS.**

Rep. John Hunt

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Commerce and Consumer Affairs
Bill Number:	SB 373
Title:	relative to coverage for certain mental illnesses.
Date:	April 20, 2022
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill is an update to the mental health coverage requirements in state law, in order to align NH statutes with the requirements under federal law. The bill is about mental health parity and our expectations for insurance companies to perform a comparative analysis of benefits to demonstrate compliance with state and federal laws. The changes should result in improved consumer protections and lower administrative costs for insurance companies.

Vote 18-0.

Rep. John Hunt
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Commerce and Consumer Affairs

SB 373, relative to coverage for certain mental illnesses. **OUGHT TO PASS.**

Rep. John Hunt for Commerce and Consumer Affairs.

This bill is an update to the mental health coverage requirements in state law, in order to align NH statutes with the requirements under federal law. The bill is about mental health parity and our expectations for insurance companies to perform a comparative analysis of benefits to demonstrate compliance with state and federal laws. The changes should result in improved consumer protections and lower administrative costs for insurance companies.

Vote 18-0.

Original: House Clerk

Cc: Committee Bill File

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on SB 373

BILL TITLE: relative to coverage for certain mental illnesses.

DATE: April 20, 2022

LOB ROOM: 302-304

MOTIONS: OUGHT TO PASS

Moved by Rep. Hunt

Seconded by Rep. Bartlett

Vote: 18-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Keith Ammon, Clerk



1/10/2022 8:55:58 AM
Roll Call Committee Registers
Report

2022 SESSION

Commerce and Consumer Affairs

Bill #: SB 373 Motion: OTP AM #: _____ Exec Session Date: 4/20/22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Hunt, John B. Chairman	18		
Potucek, John M. Vice Chairman	1		
Osborne, Jason M.	2		
Ammon, Keith M. Clerk	3		
Abramson, Max			
Ham, Bonnie D.	4		
Depalma IV, Joseph	5		
Greeson, Jeffrey	6		
Johnson, Dawn M.	7		
Terry, Paul A.	8		
Bartlett, Christy D.	9		
Abel, Richard M.	10		
Herbert, Christopher J.	11		
Van Houten, Constance	12		
Fargo, Kristina M.	13		
Weston, Joyce	14		
Beaulieu, Jane E.	15		
Burroughs, Anita D.	16		
McAler, Chris R.	17		
TOTAL VOTE:	18	0	

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION on SB 373

BILL TITLE: relative to coverage for certain mental illnesses.

DATE: April 14, 2022

Subcommittee Members: Reps. Hunt, Johnson, Terry, Bartlett, Burroughs and McAleer

Comments and Recommendations: Straw vote OK

MOTIONS: OUGHT TO PASS

Moved by Rep. Rep. Hunt

Seconded by Rep. Rep. Bartlett

Vote: 7-0

Respectfully submitted,

Rep. John Hunt
Subcommittee Chairman

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION on SB 373

BILL TITLE: relative to coverage for certain mental illnesses.

DATE: 4/14/22

Subcommittee Members: Reps Hunt, Potucek, Ammon, Osborne, Abramson, Ham, Depalma IV, Greeson, Johnson, Terry, Bartlett, Abel, Herbert, Van Houten, Fargo, Weston, Beaulieu, Burroughs and McAleer

Comments and Recommendations:

Straw vote okay

MOTIONS: (OTP) OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. Hunt Secoded by Rep. Bartlett AM Vote: 2-0

Adoption of Amendment # _____

Moved by Rep. _____ Secoded by Rep. _____ Vote: _____

Amendment Adopted Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. _____ Secoded by Rep. _____ AM Vote: _____

Adoption of Amendment # _____

Moved by Rep. _____ Secoded by Rep. _____ Vote: _____

Amendment Adopted Amendment Failed

Respectfully submitted,

[Handwritten signature]

Rep. _____ Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE & CONSUMER AFFAIRS

PUBLIC HEARING on Bill # SB373

BILL TITLE:

DATE: 4/7/2022

ROOM: Zoom Time Public Hearing Called to Order: 1:35 PM

Time Adjourned: 1:48 PM

(please bold if present)

Committee Members: Reps. Hunt, Potucek, Ammon, Osborne, Abramson, Ham, Depalma IV, Greeson, Johnson, Terry, Bartlett, Abel, Herbert, Van Houten, Fargo, Weston, Beaulieu, Burroughs and McAleer

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Grant Bosse - for Sen Bradley

My name is Grant Bosse with the New Hampshire Senate here to introduce Senate bill 373 on behalf of Senator Bradley its prime sponsor. Senator Bradley introduced this bill at the request of the insurance department to require that insurers submit a mental health benefit, comparative analysis, consistent with federal requirements to ensure they are in compliance with mental health parity requirements. The bill also removes a state permissible maximum coverage cap for autism. This section would be preempted by federal mental health parity laws, but could cause confusion if it were left in the state statute, the bill also removes the requirement that the department develop rules for autism coverage opting for the enabling may language instead existing federal rules provide the necessary regulatory structure at this time. Michelle Heaton of the insurance department is here to give us more complete understanding of the changes. And I would defer any questions of the committee to her. Thank you for consideration of this legislation, Senator Bradley, ask for your support of Senate bill 373.

Michelle Heaton - NH Insur Dept

I'm the health law policy legal council. So we requested this legislation and are in support. There are three parts to this bill, but the last two are more essentially administrative cleanups for. So for the first part, New Hampshire was one of the first states to perform a market conduct examination related to health parody. At the end of the exam, two years ago, we entered into a monitor monitoring agreeance with Anthem and Harvard Pilgrim because there were red flags that came up and we could not conclude at the time that a violation had taken place. Those monitoring periods are, have currently been extended another year. So as that are still ongoing, the formal market conduct exam process is lengthy confidential and resource intensive. This is not always ideal for transparency, effective use of resources and other issues. The legislation clarifies that the parody compliance work can take place in tandem with the new federal government requirements. More efficiently. The mental health parity requirements are frequently misunderstood. Mental health parity requirements are found in federal law and essentially require that the financial requirements

and treatment limitations applicable to mental health or substance use disorder benefits are no more restrictive than those applicable to medical surgical benefits. A P (?) is applicable to all health plans in both the individual and group markets and does not mandate benefits, only parody of the benefits offered. However, the ACA does set minimum benefits for mental health by including and substance abuse treatment, as it is an essential health benefit. So the consolidated appropriations act of 2021 amended MEWA to add new federal reporting requirements that carriers are expected to comply with. So for each NQTL, which is a non quantitative treatment limit imposed, the insurer must prepare a comparative analysis. That includes that minimum, a clear description of the NQTL identification of applicable plan terms and policies, identification of the specific mental health substance use disorder and med surge benefits to which it applies, identify any factors, evidence, standard sources, strategies used and considered in the design and application. And then detailed analysis demonstrating that the NQTL is applied as written in an operation are comparable for mental health and the med surge benefits. So what we would like to do is instead of having to do frequent mental parody examinations, we would like to take this report and be able to analyze this along with the department of labor, who is also going to be doing this analysis and as well as CMS, and we envision this information becoming public, and it aligns our efforts to streamline the reporting obligations on the carrier and strengthen the ability of the N H I D and the federal government to identify violations consistently. This would be a major step forward, ensuring mental health parity coverage requirements are met. Second, the section removes what looks like a permitted cap on autism treatment. This provision would most certainly be preempted by federal laws, and it's not cleared, but that's not clear to the readers of the statute. So we're requesting to remove it to avoid any confusion. And then finally we would like to change shell to may the N H I D does not believe that rules are necessary. And that's why none have been promulgated, but in a recent LBA audited, it was identified as a deficiency that we didn't not have rules. If the federal guidelines were to disappear, then we would be in a position to promulgate rules. So we asked that you act upon this legislation. I'm happy to take any questions.

Q: Rep Greason

Thank you, Ms. Chair, thank you for your testimony. In other legislation, we use the words shall adopt rules as necessary, and that seemed to pacify objections. It's a shall, but only as necessary. So you change from shall to may, which that always opens a can of worms. Would it be amenable to if, if we were to change back to shall, but then put it as necessary because you just said that it's possible that federal rules could change and then it may become necessary. So what if we amended this to say, shall as maybe necessary?

A: That would be fine.

Q: Rep Greason - Okay. I know it's nitnoid but we did it in another piece of legislation. So I just wanna see if we'd be consistent.

A: Yeah. We just wanna make sure that we're not being forced to promulgate rules when they're not necessary.

Q: Rep Herbert - If you, could Doug go through the explanation for on the rule you ruled out, section three part two section three, in order to put on, put in a cap or for this particular type of autism. I, I, I'm a little confused as to what that, the, what you intend to do by taking that out.

A: So this autism provision originally when the statute was passed, it was pre ACA. So there were treatment limitations put in there once the ACA was passed, ACA federal law would likely preempt any of these treatment limitations, and, but they're still in our statute and it can cause some confusion because people will look at it and think that you can have treatment limitations when really federal law would prohibit you from doing that. So we're just trying to clean up the statute to make clear that you cannot have treatment limitations on autism.

Q: Rep Abel - Yes. Thank you. Are there other developmental disorders besides autism that have caps on them? Or is autism the only one? I just wondered if it needs to be broader than just one particular

A: This particular statute here is specific to autism.

Q: Rep Abel - I see. So we don't have, but do we have, do we have, do we I'm, I wonder if you could let us know later or something, if there are others that we might have to come back and address in the future so that if, if that's the case, we could do it all now.

Q: Rep Hunt - So this is a health insurance mandate that did get passed while I was here. And so I was, and the limitations were put in because what this was, this was a mandate that insurance companies have to reimburse the school district. And so at that time to make it seem less minimize the mandate that, that these dollar amounts per put in. So yes, this is the only, only mental disability man health insurance mandate that we have. And, and yes, it would be the only one with dollar limits. And the reason I say that is that because there's plenty of other statutes that have dollar limits, like hearing aids have a dollar limit medical, durable goods, <laugh> a dollar amount limitations. So there are plenty of other, you know, limitations, but in this case, this was related to just this mandate. And it was and that was what was passed here in New Hampshire.

A: Yes. And in the mental health statute, the chapter 417 E this is the only one that has those limits, but yeah. In other statutes for other mandates, there could be.

Q: Rep Beaulieu - Thank you, Mr. Chair. my question is did you ask for this bill to be brought forward?

A: Insurance? It was yes. The insurance department. Okay.

Q: Rep Fargo - Thanks for your testimony again. My question is on the very first change, I see that a sentence was removed that says such examination and evaluation shall include provider reimbursement practices. Is there a reason why that was stricken?

A: So provider reimbursement practices are one NQTL, but there are many others. We didn't want be limited to looking just at provider reimbursements. We didn't want to imply that that's the only NQTL we would be looking at, but the mental parity exam we just completed was specific to provider reimbursement.

Q: Rep Fargo - I think it's really important that that stays there because that's been something we've addressed in, in other other discussions on other things. I would hate to think that we would go through this and not provide that information. And I think without it being in statute, it could, could be passed by. So

A: There are other sections of RSA 417 E one that do include specific requirements for provider reimbursement. Okay. So amending this particular section, I don't think is going to cause that problem, but we can look at amending language if necessary.

Respectfully submitted,

Rep. Keith Ammon, Clerk

House Remote Testify

Commerce and Consumer Affairs Committee Testify List for Bill SB373 on 2022-04-07

Support: 6 Oppose: 0 Neutral: 0 Total to Testify: 0

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Trudel, Karen	Penacook, NH tktrudel1@gmail.com	A Member of the Public	Myself	Support	No	No	4/1/2022 9:27 PM
Manseau, Joline	Hollis, NH joline.manseau@gmail.com	A Member of the Public	Myself	Support	No	No	4/1/2022 9:43 PM
Seifert, Bernadette	Sunapee, NH bernieseifert@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 7:04 AM
Bradley, Jeb	SD3, NH jeb.bradley@leg.state.nh.us	An Elected Official	SD3	Support	No	No	4/6/2022 9:31 AM
Berry, Jake	Concord, NH jberry@new-futures.org	A Lobbyist	New Futures	Support	No	No	4/6/2022 4:37 PM
Stevens, Holly	Concord, NH hstevens@naminh.org	A Lobbyist	NAMI New Hampshire	Support	No	No	4/7/2022 1:21 PM

Archived: Thursday, May 19, 2022 12:44:47 PM
From: [Bragdon, Peter E.](#)
Sent: Wednesday, January 19, 2022 11:40:43 PM
To: [~House Commerce Committee](#)
Subject: My testimony on HB 1622 - an act relative to mental health parity
Importance: Normal

Honorable members of the House Commerce and Consumer Affairs Committee:

Earlier today (Wednesday) I testified on behalf of Harvard-Pilgrim Health Care opposed to HB 1622. My remarks followed the bullet points below and I am happy to share them with you. The main point of my testimony is that the bill duplicates authorities and procedures already in place and is therefore unnecessary.

I would be happy to answer any questions you may have – Peter Bragdon

~~~~~

- While Harvard Pilgrim has signed-in in opposition to HB 1622, we fully understand how vitally important mental health care is. Its importance has been highlighted particularly throughout the COVID-19 pandemic.
- The concerns we have with this bill are that its goals appear to already be addressed in other parts of statute, therefore the bill is unnecessary.
- Section I of the bill gives the NHID the authority to investigate insurance carrier conduct that may violate the federal mental health parity law. However, the NHID already has investigational authority under RSA 400-A:16, which states that the NHID “may conduct such investigations in addition to those specifically provided for as he or she may find necessary in order to promote the efficient administration of the provisions of this title.” The NHID also has examination authority under RSA 400-A:37. The NHID recently completed a market conduct exam on 3 of NH’s commercial carriers to ensure compliance with the federal mental health parity law, which shows that no additional authority is needed.
- Section I further requires that the NHID establish a specific mental health parity complaint process. The NHID already has a complaint process, which is managed by the Consumer Services Division. A separate complaint process specifically for mental health parity is unnecessary and would be confusing to the consumer.
- Section I would also require insurers to submit annual reports on their compliance with federal Mental Health Parity and Addiction Enforcement Act (MHPAEA). The Consolidated Appropriations Act recently amended the federal MHPAEA by requiring plans to do a comparative analysis of all nonquantitative treatment limitations to demonstrate compliance with MHPAEA. We should be striving to align with the federal requirements rather than create new requirements. I would just note that the NHID has filed their own bill (SB 373) that would require commercial insurers to file the comparative analysis with the Department for their review to ensure compliance.
- Finally, the bill would require reimbursement rates for behavioral health care to be no less extensive than rates provided for any other type of health care for physical illness. MHPAEA already addresses how insurance carriers should be addressing reimbursement rates and we should not be reinterpreting the law in state statute.
- I would also note that the legislature revisited the state MHP law in 2020 and added language that requires insurers to include in their contracts with participating providers reimbursement terms for

MH/SUD treatment services that are on average, at least as favorable as those in their contracts for professional services provided by non-hospital affiliated PCPs. This section of the law has only been in effect for 18 months.

# # #

**Peter E. Bragdon**

Senior Policy Advisor

603.410.1573 Tel

603.554.7730 Cell

[pbragdon@preti.com](mailto:pbragdon@preti.com)

[Bio](#) | [LinkedIn](#) | [pretistrategies.com](http://pretistrategies.com)

**PretiSTRATEGIES**

P.O. Box 1318

Concord, NH 03302-1318

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**Archived:** Thursday, May 19, 2022 12:44:35 PM

**From:** [Joline Manseau](#)

**Sent:** Saturday, April 9, 2022 1:27:30 PM

**To:** [~House Commerce Committee](#)

**Subject:** Please support SB 373

**Importance:** Normal

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Dear committee,

I am asking you to please support SB373. NAMI supports this. Health parity should be a priority, not a backseat, for those suffering from mental illness.

I am a nurse practitioner and a former guardian of a family member who suffers from mental illness. I have seen firsthand the inequities to those with mental wellness.

Thank you,

Joline Manseau

Hollis, NH



left to access care in emergency rooms or other high-cost locations. This not only leads to further human suffering but increases costs to the health care system.<sup>1</sup>

Strengthened parity reporting, as proposed in SB 373, will help individuals better access the care they need, and will help keep healthcare costs down for all consumers. For these reasons, New Futures respectfully requests that the Committee recommend this bill Ought to Pass. Please do not hesitate to contact me if you have questions or need additional information.

Respectfully submitted,



Jake Berry  
Vice President of Policy  
New Futures

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<sup>1</sup> Milliman, High Cost Patient Study, August 13, 2020 at <https://www.milliman.com/-/media/milliman/pdfs/articles/milliman-high-cost-patient-study-2020.ashx>

April 7, 2022

The Honorable John Hunt, Chair  
House Commerce and Consumer Affairs Committee  
Legislative Office Building, Room 302  
33 North State Street  
Concord, NH 03301

Re: New Futures Support for SB 373 (relative to coverage for certain mental illnesses),

Dear Representative Hunt and Honorable Members of the Committee,

New Futures appreciates the opportunity to testify in support of HB SB 373, relative to coverage for certain mental illnesses. New Futures is a nonpartisan, nonprofit organization that advocates, educates and collaborates to improve the health and wellness of all New Hampshire residents. In this role, we work extensively with policy makers, service providers and families afflicted by substance misuse and mental illness to prevent, address and reduce behavioral health issues in our state.

New Futures stands strongly in support of SB 373 as it aims to strengthen enforcement of federal parity laws and ensure equal access to substance use and mental health treatment services for individuals in need.

Currently, the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (federal Parity Law) requires health insurance carriers to achieve parity between benefits for mental health and substance use disorders and medical and surgical benefits, including coverage amounts, number of visits and other conditions. In recent years, the N.H. Insurance Department (NHID) has worked to educate consumers, review regulated insurance plans and investigate market conduct to ensure compliance with mental health parity. Still, enforcing parity law remains a significant challenge across New Hampshire. A 2020 report from NHID indicated there was a “strong indicator of potential non-compliance with non-quantitative treatment limitation ... requirements” (NQTLs). NQTLs are prescription drug formularies, network tier designs and other policies and criteria that limit the scope or duration of insurance benefits.

As proposed, SB 373 would help address this concern and strengthen parity enforcement by allowing the Insurance Department to require self-funded plans, which are not overseen by the State, to submit comparative analysis reports, already reported to the federal government, to NHID. These comparative analysis reports, which review the design and application of NQTLs, are already required under federal law. Therefore submitting them to NHID should not result in any added burden for insurers, and will instead provide the State with additional information and tools to help strengthen parity enforcement and ensure that our consumers have equal access to benefits covering mental health and substance use treatment. This will enhance transparency, consumer confidence and access to services, and will ultimately help to lower health care costs. Without adequate and equitable insurance coverage, individuals with mental illness or Substance Use Disorder are often

SB 373 - AS AMENDED BY THE SENATE

02/16/2022 0464s

2022 SESSION

22-3070  
11/08

SENATE BILL        **373**

AN ACT            relative to coverage for certain mental illnesses.

SPONSORS:        Sen. Bradley, Dist 3; Rep. Potucek, Rock. 6

COMMITTEE:      Health and Human Services

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ANALYSIS

This bill requires submission of the federal comparative analysis for certain mental illnesses and removes the mandate for rules to regulate this type of specific insurance coverage.

.....

Explanation:     Matter added to current law appears in ***bold italics***.  
                      Matter removed from current law appears [~~in brackets and struckthrough~~]  
                      Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Two*

AN ACT relative to coverage for certain mental illnesses.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Coverage for Certain Biologically-Based Mental Illnesses. Amend RSA 417-E:1, V-a to read as  
2 follows:

3 V-a. [~~Under examination authority in RSA 400-A:37, the~~] *The* commissioner shall  
4 periodically [~~examine and evaluate~~] *require* health insurers, health service corporations, and health  
5 maintenance organizations *to submit the comparative analysis described in 42 U.S.C. section*  
6 *300gg-26(a)(8)(A) for review to ensure* compliance with this chapter and with the Act. *To the*  
7 *extent allowable under state and federal law, such analysis shall be made public.* [~~Such~~  
8 ~~examination and evaluation shall include provider reimbursement practices. The result of such~~  
9 ~~examinations and evaluations shall be made public to the fullest extent allowed under RSA 400-~~  
10 ~~A:37.~~]

11 2 Coverage for Treatment of Pervasive Developmental Disorder or Autism. Amend RSA 417-  
12 E:2, III-V to read as follows:

13 III. [~~The policy, contract, or certificate may limit coverage for applied behavior analysis to~~  
14 ~~\$36,000 per year for children 0 to 12 years of age, and \$27,000 from ages 13 to 21. An insurer may~~  
15 ~~not apply payments for coverage unrelated to autism spectrum disorders to any maximum benefit~~  
16 ~~established under this paragraph.~~

17 IV.] Nothing in this section shall be construed to affect any obligation by a school district or  
18 the state of New Hampshire to provide services to an individual under an individualized family  
19 service plan or an individualized education program, as required under the federal Individuals With  
20 Disabilities Education Act, the state children's health insurance program authorized by 42 U.S.C.  
21 section 1397aa et seq., or the provision of services to an individual under any other federal or state  
22 law.

23 [V.] IV. The commissioner [~~shall~~] *may* adopt rules, pursuant to RSA 541-A, relative to the  
24 insurance coverage requirements established under this section.

25 3 Effective Date. This act shall take effect 60 days after its passage.