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SENATE BILL NO. 706

Offered January 22, 2010

A *BILL to amend and reenact §§ 38.2-3412.1 and 38.2-3412.1:01 of the Code of Virginia, relating to health insurance coverage for mental health and substance abuse services.*

Patrons—Houck, Barker, Lucas, Puller and Ticer; Delegates: Brink and Morgan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3412.1 and 38.2-3412.1:01 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-3412.1. Coverage for mental health and substance abuse services.

A. As used in this section:

"Adult" means any person who is ~~nineteen~~ 19 years of age or older.

"Alcohol or drug rehabilitation facility" means a facility in which a state-approved program for the treatment of alcoholism or drug addiction is provided. The facility shall be either (i) licensed by the State Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or by the Department of Behavioral Health and Developmental Services pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 or (ii) a state agency or institution.

"Child or adolescent" means any person under the age of ~~nineteen~~ 19 years.

"Inpatient treatment" means mental health or substance abuse services delivered on a twenty-four-hour per day basis in a hospital, alcohol or drug rehabilitation facility, an intermediate care facility or an inpatient unit of a mental health treatment center.

"Intermediate care facility" means a licensed, residential public or private facility that is not a hospital and that is operated primarily for the purpose of providing a continuous, structured twenty-four-hour per day, state-approved program of inpatient substance abuse services.

"Medication management visit" means a visit no more than ~~twenty~~ 20 minutes in length with a licensed physician or other licensed health care provider with prescriptive authority for the sole purpose of monitoring and adjusting medications prescribed for mental health or substance abuse treatment.

"Mental health services" or "*mental health benefits*" means treatment for mental, emotional or nervous disorders.

"Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written plan approved and monitored by a physician, clinical psychologist, or a psychologist licensed to practice in this Commonwealth. The facility shall be (i) licensed by the Commonwealth, (ii) funded or eligible for funding under federal or state law, or (iii) affiliated with a hospital under a contractual agreement with an established system for patient referral.

"Outpatient treatment" means mental health or substance abuse treatment services rendered to a person as an individual or part of a group while not confined as an inpatient. Such treatment shall not include services delivered through a partial hospitalization or intensive outpatient program as defined herein.

"Partial hospitalization" means a licensed or approved day or evening treatment program that includes the major diagnostic, medical, psychiatric and psychosocial rehabilitation treatment modalities designed for patients with mental, emotional, or nervous disorders, and alcohol or other drug dependence who require coordinated, intensive, comprehensive and multi-disciplinary treatment. Such a program shall provide treatment over a period of six or more continuous hours per day to individuals or groups of individuals who are not admitted as inpatients. Such term shall also include intensive outpatient programs for the treatment of alcohol or other drug dependence which provide treatment over a period of three or more continuous hours per day to individuals or groups of individuals who are not admitted as inpatients.

"Substance abuse services" or "*substance use disorder benefits*" means treatment for alcohol or other drug dependence.

"Treatment" means services including diagnostic evaluation, medical, psychiatric and psychological care, and psychotherapy for mental, emotional or nervous disorders or alcohol or other drug dependence rendered by a hospital, alcohol or drug rehabilitation facility, intermediate care facility, mental health treatment center, a physician, psychologist, clinical psychologist, licensed clinical social worker, licensed professional counselor, licensed substance abuse treatment practitioner, licensed marriage and family therapist or clinical nurse specialist who renders mental health services. Treatment for physiological or

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59 psychological dependence on alcohol or other drugs shall also include the services of counseling and
60 rehabilitation as well as services rendered by a state certified alcoholism, drug, or substance abuse
61 counselor or substance abuse counseling assistant, limited to the scope of practice set forth in
62 § 54.1-3507.1 or 54.1-3507.2, respectively, employed by a facility or program licensed to provide such
63 treatment.

64 *B. Each Except for group health insurance coverage issued to a large employer as defined in*
65 *§ 38.2-3431, each individual and group accident and sickness insurance policy or individual and group*
66 *subscription contract providing coverage on an expense-incurred basis for a family member of the*
67 *insured or the subscriber shall provide coverage for inpatient and partial hospitalization mental health*
68 *and substance abuse services as follows:*

69 1. Treatment for an adult as an inpatient at a hospital, inpatient unit of a mental health treatment
70 center, alcohol or drug rehabilitation facility or intermediate care facility for a minimum period of
71 twenty days per policy or contract year.

72 2. Treatment for a child or adolescent as an inpatient at a hospital, inpatient unit of a mental health
73 treatment center, alcohol or drug rehabilitation facility or intermediate care facility for a minimum period
74 of ~~twenty-five~~ 25 days per policy or contract year.

75 3. Up to ~~ten~~ 10 days of the inpatient benefit set forth in subdivisions 1 and 2 of this subsection may
76 be converted when medically necessary at the option of the person or the parent, as defined in
77 § 16.1-336, of a child or adolescent receiving such treatment to a partial hospitalization benefit applying
78 a formula which shall be no less favorable than an exchange of 1.5 days of partial hospitalization
79 coverage for each inpatient day of coverage. An insurance policy or subscription contract described
80 herein ~~which~~ *that* provides inpatient benefits in excess of ~~twenty~~ 20 days per policy or contract year for
81 adults or ~~twenty-five~~ 25 days per policy or contract year for a child or adolescent may provide for the
82 conversion of such excess days on the terms set forth in this subdivision.

83 4. The limits of the benefits set forth in this subsection shall not be more restrictive than for any
84 other illness, except that the benefits may be limited as set out in this subsection.

85 5. This subsection shall not apply to short-term travel, accident only, limited or specified disease
86 policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage
87 under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under
88 state or federal governmental plans.

89 *C. Each Except for group health insurance coverage issued to a large employer as defined in*
90 *§ 38.2-3431, each individual and group accident and sickness insurance policy or individual and group*
91 *subscription contract providing coverage on an expense-incurred basis for a family member of the*
92 *insured or the subscriber shall also provide coverage for outpatient mental health and substance abuse*
93 *services as follows:*

94 1. A minimum of ~~twenty~~ 20 visits for outpatient treatment of an adult, child or adolescent shall be
95 provided in each policy or contract year.

96 2. The limits of the benefits set forth in this subsection shall be no more restrictive than the limits of
97 benefits applicable to physical illness; however, the coinsurance factor applicable to any outpatient visit
98 beyond the first five of such visits covered in any policy or contract year shall be at least ~~fifty~~ 50
99 percent.

100 3. For the purpose of this section, medication management visits shall be covered in the same
101 manner as a medication management visit for the treatment of physical illness and shall not be counted
102 as an outpatient treatment visit in the calculation of the benefit set forth herein.

103 4. For the purpose of this subsection, if all covered expenses for a visit for outpatient mental health
104 or substance abuse treatment apply toward any deductible required by a policy or contract, such visit
105 shall not count toward the outpatient visit benefit maximum set forth in the policy or contract.

106 5. This subsection shall not apply to short-term travel, accident only, or limited or specified disease
107 policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage
108 under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under
109 state or federal governmental plans.

110 D. The provisions of this section shall not be applicable to "biologically based mental illnesses," as
111 defined in § 38.2-3412.1:01, unless coverage for any such mental illness is not otherwise available
112 pursuant to the provisions § 38.2-3412.1:01.

113 E. The requirements of this section shall apply to all insurance policies and subscription contracts
114 delivered, issued for delivery, reissued, or extended, or at any time when any term of the policy or
115 contract is changed or any premium adjustment made.

116 *F. Group health insurance coverage issued to a large employer as defined in § 38.2-3431 shall*
117 *provide mental health and substance use disorder benefits in parity with the medical and surgical*
118 *benefits contained in the coverage in accordance with the Mental health Parity and Addiction Act of*
119 *2008 (P.L. 110-343).*

120 § 38.2-3412.1:01. Coverage for biologically based mental illness.

121 A. Notwithstanding the provisions of § 38.2-3419, each insurer proposing to issue group accident and
122 sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an
123 expense-incurred basis; each corporation providing group accident and sickness subscription contracts;
124 and each health maintenance organization providing a health care plan for health care services shall
125 provide coverage for biologically based mental illnesses.

126 B. ~~Benefits~~ *Except for group health insurance coverage issued to a large employer as defined in*
127 *§ 38.2-3431, each* for biologically based mental illnesses may be different from benefits for other
128 illnesses, conditions or disorders if such benefits meet the medical criteria necessary to achieve the same
129 outcomes as are achieved by the benefits for any other illness, condition or disorder that is covered by
130 such policy or contract. *Group health insurance coverage issued to a large employer shall provide*
131 *mental health and substance use disorder benefits in parity with the medical and surgical benefits*
132 *contained in the coverage in accordance with the Mental health Parity and Addiction Act of 2008 (P.L.*
133 *110-343).*

134 C. Coverage for biologically based mental illnesses shall neither be different nor separate from
135 coverage for any other illness, condition or disorder for purposes of determining deductibles, benefit
136 year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment
137 limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayment
138 and coinsurance factors.

139 D. Nothing shall preclude the undertaking of usual and customary procedures to determine the
140 appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this
141 option, provided that all such appropriateness and medical necessity determinations are made in the same
142 manner as those determinations made for the treatment of any other illness, condition or disorder
143 covered by such policy or contract.

144 E. For purposes of this section, a "biologically based mental illness" is any mental or nervous
145 condition caused by a biological disorder of the brain that results in a clinically significant syndrome
146 that substantially limits the person's functioning; specifically, the following diagnoses are defined as
147 biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective
148 disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder,
149 attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

150 F. The provisions of this section shall not apply to (i) short-term travel, accident only, limited or
151 specified disease policies, (ii) short-term nonrenewable policies of not more than six months' duration,
152 (iii) policies, contracts, or plans issued in the individual market or small group markets to employers
153 with 25 or fewer employees, or (iv) policies or contracts designed for issuance to persons eligible for
154 coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar
155 coverage under state or federal governmental plans.

156 G. The requirements of this section shall apply to all insurance policies, subscription contracts, and
157 health care plans delivered, issued for delivery, reissued or extended on or after January 1, 2000, and to
158 all such policies, contracts or plans to which a term is changed or any premium adjustment is made on
159 or after such date.