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**HOUSE BILL NO. 1185**

Offered January 16, 2014

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

Patrons—Spruill, Dance, Howell, A.T., Joannou, McClellan, O'Bannon and Ward

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That § 38.2-3412.1 of the Code of Virginia is 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 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 19 years.

"Inpatient treatment" means mental health or substance abuse services delivered on a 24-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 24-hour per day, state-approved program of inpatient substance abuse services.

"Medication management visit" means a visit no more than 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 psychological dependence on alcohol or other drugs shall also include the services of counseling and

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

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

68 1. Treatment for an adult as an inpatient at a hospital, inpatient unit of a mental health treatment  
69 center, alcohol or drug rehabilitation facility or intermediate care facility for a minimum period of 20  
70 days per policy or contract year.

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

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

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

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

88 6. *The determination of whether the provision of inpatient treatment described in subdivision 1 or 2*  
89 *is medically necessary shall give due consideration to the treatment recommendation of the health care*  
90 *provider treating the individual. A denial of coverage for inpatient treatment or partial hospitalization*  
91 *shall not be based primarily on a subjective evaluation of the imminence of the individual's suicide risk*  
92 *or risk of danger to others made by an employee or contractor of the insurer or corporation if that*  
93 *evaluation is inconsistent with the assessment of such risk made by the health care provider treating the*  
94 *individual.*

95 7. *If (i) an insurer or corporation providing coverage for inpatient treatment or partial*  
96 *hospitalization under this subsection validly denies coverage for such a benefit on the basis that a less*  
97 *intensive treatment option, such as outpatient treatment, represents the medically necessary level of care*  
98 *and (ii) the covered individual receives the more intensive treatment notwithstanding such denial of*  
99 *coverage, then the insurer or corporation shall provide coverage for the more intensive treatment that*  
100 *the covered individual received on the basis of the reimbursement and payment rates that would have*  
101 *applied had the less intensive treatment been provided to the covered individual.*

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

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

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

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

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

118 5. This subsection shall not apply to short-term travel, accident only, or limited or specified disease  
119 policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage  
120 under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under

121 state or federal governmental plans.

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

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

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

132 G. The provisions of this section shall not apply in any instance in which the provisions of this  
133 section are inconsistent or in conflict with a provision of Article 6 (§ 38.2-3438 et seq.) of Chapter 34.

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