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HOUSE BILL NO. 255

Offered January 13, 2016

Prefiled December 30, 2015

A BILL to amend and reenact §§ 38.2-3412.1 and 54.1-2400.1 of the Code of Virginia, relating to health insurance; coverage for mental health and substance abuse disorders; treatment providers.

 Patron—Greason

 Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3412.1 and 54.1-2400.1 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-3412.1. Coverage for mental health and substance use disorders.

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.

"Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

"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.

"Licensed mental health professional" means any mental health professional as defined in § 54.1-2400.1 who is licensed in the Commonwealth to engage in the practice of providing mental health 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 benefits with respect to items or services for mental health conditions as defined under the terms of the health benefit plan. Any condition defined by the health benefit plan as being or as not being a mental health condition shall be defined to be consistent with generally recognized independent standards of current medical practice.

"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

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59 of three or more continuous hours per day to individuals or groups of individuals who are not admitted
60 as inpatients.

61 "Substance abuse services" or "substance use disorder benefits" means benefits with respect to items
62 or services for substance use disorders as defined under the terms of the health benefit plan. Any
63 disorder defined by the health benefit plan as being or as not being a substance use disorder shall be
64 defined to be consistent with generally recognized independent standards of current medical practice.

65 "Treatment" means services, including diagnostic evaluation, medical, psychiatric and psychological
66 care, ~~and~~ psychotherapy, *and applied behavior analysis*, for mental, emotional, or nervous disorders or
67 alcohol or other drug dependence rendered by a hospital, alcohol or drug rehabilitation facility,
68 intermediate care facility, mental health treatment center, a physician, psychologist, clinical psychologist,
69 licensed clinical social worker, licensed professional counselor, licensed substance abuse treatment
70 practitioner, licensed marriage and family therapist ~~or~~, clinical nurse specialist who renders mental health
71 services, *or licensed mental health professional acting within their scope of practice*. Treatment for
72 physiological or psychological dependence on alcohol or other drugs shall also include the services of
73 counseling and rehabilitation as well as services rendered by a state certified alcoholism, drug, or
74 substance abuse counselor or substance abuse counseling assistant, limited to the scope of practice set
75 forth in § 54.1-3507.1 or 54.1-3507.2, respectively, employed by a facility or program licensed to
76 provide such treatment.

77 B. Except as provided in subsections C and D, group and individual health insurance coverage, as
78 defined in § 38.2-3431, shall provide mental health and substance use disorder benefits. Such benefits
79 shall be in parity with the medical and surgical benefits contained in the coverage in accordance with
80 the Mental Health Parity and Addiction Equity Act of 2008, P.L. 110-343, even where those
81 requirements would not otherwise apply directly.

82 C. Any grandfathered plan as defined in § 38.2-3438 in the small group market shall either continue
83 to provide benefits in accordance with subsection B or continue to provide coverage for inpatient and
84 partial hospitalization mental health and substance abuse services as follows:

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

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

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

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

101 5. This subsection shall not apply to any excepted benefits policy as defined in § 38.2-3431, nor to
102 policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the
103 Social Security Act, known as Medicare, or any other similar coverage under state or federal
104 governmental plans.

105 D. Any grandfathered plan as defined in § 38.2-3438 in the small group market shall also either
106 continue to provide benefits in accordance with subsection B or continue to provide coverage for
107 outpatient mental health and substance abuse services as follows:

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

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

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

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

119 5. This subsection shall not apply to any excepted benefits policy as defined in § 38.2-3431, nor to
120 policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the

Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

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

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

G. *Any health insurance policy or plan providing coverage pursuant to the provisions of this section that requires that any treatment be provided by a licensed mental health professional shall provide that such treatment may be provided by a licensed behavior analyst or licensed assistant behavior analyst acting within their scope of practice as defined in 18VAC85-150-110.*

§ 54.1-2400.1. Mental health service providers; duty to protect third parties; immunity.

A. As used in this section:

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Client" or "patient" means any person who is voluntarily or involuntarily receiving mental health services or substance abuse services from any mental health service provider.

"Clinical psychologist" means a person who practices clinical psychology as defined in § 54.1-3600.

"Clinical social worker" means a person who practices social work as defined in § 54.1-3700.

"Licensed practical nurse" means a person licensed to practice practical nursing as defined in § 54.1-3000.

"Licensed substance abuse treatment practitioner" means any person licensed to engage in the practice of substance abuse treatment as defined in § 54.1-3500.

"Marriage and family therapist" means a person licensed to engage in the practice of marriage and family therapy as defined in § 54.1-3500.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development. *"Mental health professional" includes any licensed behavior analyst or licensed assistant behavior analyst acting within their scope of practice as defined in 18VAC85-150-110.*

"Mental health service provider" or "provider" refers to any of the following: (i) a person who provides professional services as a certified substance abuse counselor, clinical psychologist, clinical social worker, licensed substance abuse treatment practitioner, licensed practical nurse, marriage and family therapist, mental health professional, physician, professional counselor, psychologist, registered nurse, school psychologist, or social worker; (ii) a professional corporation, all of whose shareholders or members are so licensed; or (iii) a partnership, all of whose partners are so licensed.

"Professional counselor" means a person who practices counseling as defined in § 54.1-3500.

"Psychologist" means a person who practices psychology as defined in § 54.1-3600.

"Registered nurse" means a person licensed to practice professional nursing as defined in § 54.1-3000.

"School psychologist" means a person who practices school psychology as defined in § 54.1-3600.

"Social worker" means a person who practices social work as defined in § 54.1-3700.

B. A mental health service provider has a duty to take precautions to protect third parties from violent behavior or other serious harm only when the client has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider reasonably believes, or should believe according to the standards of his profession, that the client has the intent and ability to carry out that threat immediately or imminently. If the third party is a child, in addition to taking precautions to protect the child from the behaviors in the above types of threats, the provider also has a duty to take precautions to protect the child if the client threatens to engage in behaviors that would constitute physical abuse or sexual abuse as defined in § 18.2-67.10. The duty to protect does not attach unless the threat has been communicated to the provider by the threatening client while the provider is engaged in his professional duties.

C. The duty set forth in subsection B is discharged by a mental health service provider who takes one or more of the following actions:

1. Seeks involuntary admission of the client under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

2. Makes reasonable attempts to warn the potential victims or the parent or guardian of the potential victim if the potential victim is under the age of 18.

3. Makes reasonable efforts to notify a law-enforcement official having jurisdiction in the client's or

182 potential victim's place of residence or place of work, or place of work of the parent or guardian if the
183 potential victim is under age 18, or both.

184 4. Takes steps reasonably available to the provider to prevent the client from using physical violence
185 or other means of harm to others until the appropriate law-enforcement agency can be summoned and
186 takes custody of the client.

187 5. Provides therapy or counseling to the client or patient in the session in which the threat has been
188 communicated until the mental health service provider reasonably believes that the client no longer has
189 the intent or the ability to carry out the threat.

190 D. A mental health service provider shall not be held civilly liable to any person for:

191 1. Breaching confidentiality with the limited purpose of protecting third parties by communicating the
192 threats described in subsection B made by his clients to potential third party victims or law-enforcement
193 agencies or by taking any of the actions specified in subsection C.

194 2. Failing to predict, in the absence of a threat described in subsection B, that the client would cause
195 the third party serious physical harm.

196 3. Failing to take precautions other than those enumerated in subsection C to protect a potential third
197 party victim from the client's violent behavior.