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HOUSE BILL NO. 601

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on February 8, 2024)

(Patron Prior to Substitute—Delegate Kilgore)

A *BILL to amend and reenact §§ 38.2-3412.1, 38.2-3438, and 38.2-3445 of the Code of Virginia, relating to health insurance; emergency services; mobile crisis response services.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3412.1, 38.2-3438, and 38.2-3445 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.

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

"Crisis receiving center" means a community-based facility licensed by the Department of Behavioral Health and Developmental Services to provide short-term assessment, observation, and crisis stabilization services.

"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 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.

"Mobile crisis response services" means services ~~delivered~~ *licensed by the Department of Behavioral Health and Developmental Services* to provide for rapid response to, assessment of, and early intervention for individuals experiencing an acute mental health crisis that are deployed at the location of the individual.

"Network adequacy" means access to services by measure of distance, time, and average length of referral to scheduled visit.

"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

60 as inpatients.

61 "Residential crisis stabilization unit" means a *community-based*, short-term residential program
62 ~~providing~~ *licensed by the Department of Behavioral Health and Developmental Services to provide*
63 *short-term assessment, observation, support, and crisis stabilization* for individuals who are experiencing
64 an acute mental health crisis.

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

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

79 B. Except as provided in subsections C and D, group and individual health insurance coverage, as
80 defined in § 38.2-3431, shall provide coverage for mental health and substance use disorder benefits.
81 Such benefits shall be in parity with the medical and surgical benefits contained in the coverage in
82 accordance with the federal Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), P.L.
83 110-343, even where those requirements would not otherwise apply directly. Coverage required under
84 this subsection shall include mobile crisis response services and support and stabilization services
85 provided in a residential crisis stabilization unit *or crisis receiving center* to the extent that such services
86 are covered in other settings or modalities, regardless of any difference in billing codes.

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

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

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

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

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

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

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

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

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

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

121 4. For the purpose of this subsection, if all covered expenses for a visit for outpatient mental health

or substance abuse treatment apply toward any deductible required by a policy or contract, such visit shall not count toward the outpatient visit benefit maximum set forth in the policy or contract.

5. This subsection shall not apply to any excepted benefits policy as defined in § 38.2-3431, nor to 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. The Bureau of Insurance, in consultation with health carriers providing coverage for mental health and substance use disorder benefits pursuant to this section, shall develop reporting requirements regarding denied claims, complaints, appeals, and network adequacy involving such coverage set forth in this section. By November 1 of each year, the Bureau shall compile the information for the preceding year into a report that ensures the confidentiality of individuals whose information has been reported and is written in nontechnical, readily understandable language. The Bureau shall include in the report a summary of all comparative analyses prepared by health carriers pursuant to 42 U.S.C. § 300gg-26(a)(8) that the Bureau requested during the reporting period. This summary shall include the Bureau's explanation of whether the analyses were accepted as compliant, rejected as noncompliant, or are in process of review. For analyses that were noncompliant, the report shall include the corrective actions that the Bureau required the health carrier to take to come into compliance. The Bureau shall make the report available to the public by, among such other means as the Bureau finds appropriate, posting the reports on the Bureau's website and submit the report to the House Committee on Commerce and Energy and the Senate Committee on Commerce and Labor.

§ 38.2-3438. Definitions.

As used this article, unless the context requires a different meaning:

"Allowed amount" means the maximum portion of a billed charge a health carrier will pay, including any applicable cost-sharing requirements, for a covered service or item rendered by a participating provider or by a nonparticipating provider.

"Balance bill" means a bill sent to an enrollee by an out-of-network provider for health care services provided to the enrollee after the provider's billed amount is not fully reimbursed by the carrier, exclusive of applicable cost-sharing requirements.

"Behavioral health crisis service provider" means a provider licensed by the Department of Behavioral Health and Developmental Services to provide mental health or substance use services as a provider of mobile crisis response, residential crisis stabilization, or a crisis receiving center.

"Child" means a son, daughter, stepchild, adopted child, including a child placed for adoption, foster child, or any other child eligible for coverage under the health benefit plan.

"Cost-sharing requirement" means an enrollee's deductible, copayment amount, or coinsurance rate.

"Covered benefits" or "benefits" means those health care services to which an individual is entitled under the terms of a health benefit plan.

"Covered person" means a policyholder, subscriber, enrollee, participant, or other individual covered by a health benefit plan.

"Dependent" means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract, or plan covering the eligible employee.

"Emergency medical condition" means, regardless of the final diagnosis rendered to a covered person, a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, so that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment to bodily functions, (iii) serious dysfunction of any bodily organ or part, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

"Emergency services" means with respect to an emergency medical condition (i) (a) a medical screening examination as required under § 1867 of the Social Security Act (42 U.S.C. § 1395dd) that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate such emergency medical condition, and ~~(ii)~~ (b) such further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under § 1867 of the Social Security Act (42 U.S.C. § 1395dd (e)(3)) to stabilize the patient, and (ii) as it relates any mental health services or substance abuse services, as those terms are defined in § 38.2-3412.1, rendered at a behavioral health crisis service provider (a) a behavioral health assessment that is within the capability of a behavioral health

183 *crisis service provider, including ancillary services routinely available to evaluate such emergency*
184 *medical condition, and (b) such further examination and treatment, to the extent that they are within the*
185 *capabilities of the staff and facilities available at the behavioral health crisis service provider, as are*
186 *required so that the patient's condition does not deteriorate.*

187 "ERISA" means the Employee Retirement Income Security Act of 1974.

188 "Essential health benefits" include the following general categories and the items and services
189 covered within the categories in accordance with regulations issued pursuant to the PPACA as of
190 January 1, 2019: (i) ambulatory patient services; (ii) emergency services; (iii) hospitalization; (iv)
191 laboratory services; (v) maternity and newborn care; (vi) mental health and substance abuse disorder
192 services, including behavioral health treatment; (vii) pediatric services, including oral and vision care;
193 (viii) prescription drugs; (ix) preventive and wellness services and chronic disease management; and (x)
194 rehabilitative and habilitative services and devices.

195 "Facility" means an institution providing health care related services or a health care setting,
196 including hospitals and other licensed inpatient centers; ambulatory surgical or treatment centers; skilled
197 nursing centers; residential treatment centers; diagnostic, laboratory, and imaging centers; and
198 rehabilitation and other therapeutic health settings.

199 "Genetic information" means, with respect to an individual, information about: (i) the individual's
200 genetic tests; (ii) the genetic tests of the individual's family members; (iii) the manifestation of a disease
201 or disorder in family members of the individual; or (iv) any request for, or receipt of, genetic services,
202 or participation in clinical research that includes genetic services, by the individual or any family
203 member of the individual. "Genetic information" does not include information about the sex or age of
204 any individual. As used in this definition, "family member" includes a first-degree, second-degree,
205 third-degree, or fourth-degree relative of a covered person.

206 "Genetic services" means (i) a genetic test; (ii) genetic counseling, including obtaining, interpreting,
207 or assessing genetic information; or (iii) genetic education.

208 "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, if the
209 analysis detects genotypes, mutations, or chromosomal changes. "Genetic test" does not include an
210 analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or
211 pathological condition.

212 "Grandfathered plan" means coverage provided by a health carrier to (i) a small employer on March
213 23, 2010, or (ii) an individual that was enrolled on March 23, 2010, including any extension of coverage
214 to an individual who becomes a dependent of a grandfathered enrollee after March 23, 2010, for as long
215 as such plan maintains that status in accordance with federal law.

216 "Group health insurance coverage" means health insurance coverage offered in connection with a
217 group health benefit plan.

218 "Group health plan" means an employee welfare benefit plan as defined in § 3(1) of ERISA to the
219 extent that the plan provides medical care within the meaning of § 733(a) of ERISA to employees,
220 including both current and former employees, or their dependents as defined under the terms of the plan
221 directly or through insurance, reimbursement, or otherwise.

222 "Health benefit plan" means a policy, contract, certificate, or agreement offered by a health carrier to
223 provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. "Health
224 benefit plan" includes short-term and catastrophic health insurance policies, and a policy that pays on a
225 cost-incurred basis, except as otherwise specifically exempted in this definition. "Health benefit plan"
226 does not include the "excepted benefits" as defined in § 38.2-3431.

227 "Health care professional" means a physician or other health care practitioner licensed, accredited, or
228 certified to perform specified health care services consistent with state law.

229 "Health care provider" or "provider" means a health care professional or facility.

230 "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a
231 health condition, illness, injury, or disease.

232 "Health carrier" means an entity subject to the insurance laws and regulations of the Commonwealth
233 and subject to the jurisdiction of the Commission that contracts or offers to contract to provide, deliver,
234 arrange for, pay for, or reimburse any of the costs of health care services, including an insurer licensed
235 to sell accident and sickness insurance, a health maintenance organization, a health services plan, or any
236 other entity providing a plan of health insurance, health benefits, or health care services.

237 "Health maintenance organization" means a person licensed pursuant to Chapter 43 (§ 38.2-4300 et
238 seq.).

239 "Health status-related factor" means any of the following factors: health status; medical condition,
240 including physical and mental illnesses; claims experience; receipt of health care services; medical
241 history; genetic information; evidence of insurability, including conditions arising out of acts of domestic
242 violence; disability; or any other health status-related factor as determined by federal regulation.

243 "Individual health insurance coverage" means health insurance coverage offered to individuals in the
244 individual market, which includes a health benefit plan provided to individuals through a trust

arrangement, association, or other discretionary group that is not an employer plan, but does not include coverage defined as "excepted benefits" in § 38.2-3431 or short-term limited duration insurance. Student health insurance coverage shall be considered a type of individual health insurance coverage.

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

"In-network" or "participating" means a provider that has contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees and be reimbursed by the carrier at a contracted rate as payment in full for the health care services, including applicable cost-sharing requirements.

"Managed care plan" means a health benefit plan that either requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by the health carrier.

"Network" means the group of participating providers providing services to a managed care plan.

"Nonprofit data services organization" means the nonprofit organization with which the Commissioner of Health negotiates and enters into contracts or agreements for the compilation, storage, analysis, and evaluation of data submitted by data suppliers pursuant to § 32.1-276.4.

"Offer to pay" or "payment notification" means a claim that has been adjudicated and paid by a carrier or determined by a carrier to be payable by an enrollee to an out-of-network provider for services described in subsection A of § 38.2-3445.01.

"Open enrollment" means, with respect to individual health insurance coverage, the period of time during which any individual has the opportunity to apply for coverage under a health benefit plan offered by a health carrier and must be accepted for coverage under the plan without regard to a preexisting condition exclusion.

"Out-of-network" or "nonparticipating" means a provider that has not contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees.

"Out-of-pocket maximum" or "maximum out-of-pocket" means the maximum amount an enrollee is required to pay in the form of cost-sharing requirements for covered benefits in a plan year, after which the carrier covers the entirety of the allowed amount of covered benefits under the contract of coverage.

"Participating health care professional" means a health care professional who, under contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payments, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

"PPACA" means the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), and as it may be further amended.

"Preexisting condition exclusion" means a limitation or exclusion of benefits, including a denial of coverage, based on the fact that the condition was present before the effective date of coverage, or if the coverage is denied, the date of denial, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the effective date of coverage. "Preexisting condition exclusion" also includes a condition identified as a result of a pre-enrollment questionnaire or physical examination given to an individual, or review of medical records relating to the pre-enrollment period.

"Premium" means all moneys paid by an employer, eligible employee, or covered person as a condition of coverage from a health carrier, including fees and other contributions associated with the health benefit plan.

"Preventive services" means (i) evidence-based items or services for which a rating of A or B is in effect in the recommendations of the U.S. Preventive Services Task Force with respect to the individual involved; (ii) immunizations for routine use in children, adolescents, and adults for which a recommendation of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention is in effect with respect to the individual involved; (iii) evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration with respect to infants, children, and adolescents; and (iv) evidence-informed preventive care and screenings recommended in comprehensive guidelines supported by the Health Resources and Services Administration with respect to women. For purposes of this definition, a recommendation of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention is considered in effect after it has been adopted by the Director of the Centers for Disease Control and Prevention, and a recommendation is considered to be for routine use if it is listed on the Immunization Schedules of the Centers for Disease Control and Prevention.

"Primary care health care professional" means a health care professional designated by a covered person to supervise, coordinate, or provide initial care or continuing care to the covered person and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

306 "Rescission" means a cancellation or discontinuance of coverage under a health benefit plan that has
307 a retroactive effect. "Rescission" does not include:

308 1. A cancellation or discontinuance of coverage under a health benefit plan if the cancellation or
309 discontinuance of coverage has only a prospective effect, or the cancellation or discontinuance of
310 coverage is effective retroactively to the extent it is attributable to a failure to timely pay required
311 premiums or contributions towards the cost of coverage; or

312 2. A cancellation or discontinuance of coverage when the health benefit plan covers active employees
313 and, if applicable, dependents and those covered under continuation coverage provisions, if the employee
314 pays no premiums for coverage after termination of employment and the cancellation or discontinuance
315 of coverage is effective retroactively back to the date of termination of employment due to a delay in
316 administrative recordkeeping.

317 "Stabilize" means with respect to an emergency medical condition, to provide such medical treatment
318 as may be necessary to assure, within reasonable medical probability, that no material deterioration of
319 the condition is likely to result from or occur during the transfer of the individual from a facility, or,
320 with respect to a pregnant woman, that the woman has delivered, including the placenta.

321 "Student health insurance coverage" means a type of individual health insurance coverage that is
322 provided pursuant to a written agreement between an institution of higher education, as defined by the
323 Higher Education Act of 1965, and a health carrier and provided to students enrolled in that institution
324 of higher education and their dependents, and that does not make health insurance coverage available
325 other than in connection with enrollment as a student, or as a dependent of a student, in the institution
326 of higher education, and does not condition eligibility for health insurance coverage on any health
327 status-related factor related to a student or a dependent of the student.

328 "Surgical or ancillary services" means professional services, including surgery, anesthesiology,
329 pathology, radiology, or hospitalist services and laboratory services.

330 "Wellness program" means a program offered by an employer that is designed to promote health or
331 prevent disease.

332 **§ 38.2-3445. Patient access to emergency services.**

333 A. Notwithstanding any provision of § 38.2-3407.11, 38.2-4312.3, or any other section of this title to
334 the contrary, if a health carrier providing individual or group health insurance coverage provides any
335 benefits with respect to services in an emergency department of a hospital, the health carrier shall
336 provide coverage for emergency services:

337 1. Without the need for any prior authorization determination, regardless of whether the emergency
338 services are provided on an in-network or out-of-network basis;

339 2. Without regard to the final diagnosis rendered to the covered person or whether the health care
340 provider furnishing the emergency services is a participating health care provider with respect to such
341 services;

342 3. If such services are provided out-of-network, without imposing any administrative requirement or
343 limitation on coverage that is more restrictive than the requirements or limitations that apply to such
344 services received from an in-network provider;

345 4. If such services are provided out-of-network, the health carrier shall pay the out-of-network
346 provider in accordance with § 38.2-3445.01 less any cost-sharing requirement. Any such cost-sharing
347 requirement shall not exceed the cost-sharing requirement that would apply if such services were
348 provided in-network as provided in § 38.2-3445.01; and

349 5. Without regard to any term or condition of such coverage other than the exclusion of or
350 coordination of benefits or an affiliation or waiting period.

351 *B. Coverage for emergency services that are related to mental health services or substance abuse*
352 *services, as those terms are defined in § 38.2-3412.1, shall be provided in accordance with the federal*
353 *Mental Health Parity and Addiction Equity Act of 2008, P.L. 110-343, even where those requirements*
354 *would not otherwise apply directly. Such emergency services may be rendered at a location other than*
355 *the emergency department of a hospital, such as a behavioral health crisis service provider, as required.*