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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 41

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO COVERAGE FOR SERIOUS MENTAL ILLNESS AND DRUG AND ALCOHOL DEPENDENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 3343, Title 18 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 3343. Insurance coverage for serious mental illness.

4 (a) *Definitions.* — For the purposes of this section, the following words and phrases shall have the following
5 meanings:

6 (1) "Carrier" means any entity that provides health insurance in this State. For the purposes of this
7 section, carrier includes an insurance company, health service corporation, health maintenance ~~organization~~
8 organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance
9 regulation. "Carrier" also includes any third-party administrator or other entity that adjusts, ~~administers~~
10 administers, or settles claims in connection with health benefit plans.

11 (2) "Health benefit plan" means any hospital or medical policy or certificate, major medical expense
12 insurance, health service corporation subscriber ~~contract~~ contract, or health maintenance organization subscriber
13 contract. Health benefit plan does not include accident-only, credit, dental, vision, Medicaid plans, long-term care
14 or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or
15 similar ~~insurance~~ insurance, or automobile medical payment insurance.

16 "Health benefit plan" shall not include policies or certificates of specified disease, hospital confinement
17 ~~indemnity~~ indemnity, or limited benefit health insurance, provided that the carrier offering such policies or
18 certificates complies with the following:

19 a. The carrier files on or before March 1 of each year a certification with the Commissioner that
20 contains the statement and information described in subparagraph b. of this paragraph.

21 b. The certification required in subparagraph a. of this paragraph shall contain the following:

22 1. A statement from the carrier certifying that policies or certificates described in this paragraph
23 are being offered and marketed as supplemental health insurance and not as a substitute for hospital
24 or medical expense insurance or major medical expense insurance.

25 2. A summary description of each policy or certificate described in this paragraph, including the
26 average annual premium rates (or range of premium rates in cases where premiums vary by age,
27 ~~gender~~ gender, or other factors) charged for such policies and certificates in this State.

28 c. In the case of a policy or certificate that is described in this paragraph and that is offered for the
29 first time in this State on or after January 1, 1999, the carrier files with the Commissioner the information
30 and statement required in subparagraph b. of this paragraph at least 30 days prior to the date such a policy
31 or certificate is issued or delivered in this State.

32 (3) "Serious mental illness" means any of the following biologically based mental illnesses:
33 schizophrenia, bipolar disorder, obsessive-compulsive disorder, major depressive disorder, panic disorder,
34 anorexia nervosa, bulimia nervosa, schizo affective ~~disorder~~ disorder, and delusional disorder. The diagnostic
35 criteria set out in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders shall be
36 utilized to determine whether a beneficiary of a health benefit plan is suffering from a serious mental illness.

37 (4) "Drug and alcohol dependencies" means substance abuse disorder or the chronic, habitual, regular, or
38 recurrent use of alcohol, inhalants, or controlled substances as identified in Chapter 47 of Title 16.

39 (b) *Coverage of serious mental illnesses and drug and alcohol dependencies.* —

40 (1)a. Carriers shall provide coverage for serious mental illnesses and drug and alcohol dependencies in all
41 health benefit plans delivered or issued for delivery in this State. Coverage for serious mental illnesses and drug
42 and alcohol dependencies must provide:

43 1. Inpatient coverage for the diagnosis and treatment of drug and alcohol dependencies.

44 2. Unlimited medically necessary treatment for drug and alcohol dependencies provided in
45 residential settings as required by the Mental Health Parity and Addiction Equity Act of 2008 (29
46 U.S.C. § 1185a).

47 b. Subject to subsections (a) and (c) through ~~(h)~~ (g) of this section, no carrier may issue for delivery,
48 or deliver, in this State any health benefit plan containing terms that place a greater financial burden on an

49 insured for covered services provided in the diagnosis and treatment of a serious mental illness and drug
50 and alcohol dependency than for covered services provided in the diagnosis and treatment of any other
51 illness or disease covered by the health benefit plan. By way of example, such terms include deductibles,
52 co-pays, monetary limits, co-insurance factors, limits in the numbers of visits, limits in the length of
53 inpatient stays, durational limits or limits in the coverage of prescription medicines.

54 (2)a. A health benefit plan that provides coverage for prescription drugs must provide coverage for the
55 treatment of alcohol and drug dependencies that includes immediate access, without prior authorization, to a 5 day
56 emergency supply of prescribed medications covered under the health benefit plan for the medically necessary
57 treatment of alcohol and drug dependencies where an emergency medical condition, as defined in § 3349(e) of this
58 title, exists, including a prescribed drug or medication associated with the management of opioid withdrawal or
59 stabilization, except where otherwise prohibited by law.

60 b. Coverage of an emergency supply of prescribed medications must include medication for opioid
61 overdose reversal otherwise covered under the health benefit plan prescribed to a covered person.

62 c. Coverage provided under this paragraph (b)(2) of this section may be subject to copayments, co-
63 insurance, and annual deductibles that are consistent with those imposed on other benefits within the
64 health benefit plan; provided, however, a health benefit plan must not impose an additional copayment or
65 co-insurance on a covered person who received an emergency supply of the same medication in the same
66 30 day period in which the emergency supply of medication was dispensed.

67 d. This paragraph (b)(2) of this section does not preclude the imposition of a copayment or co-
68 insurance on the initial emergency supply of medication in an amount that is less than the copayment or
69 co-insurance otherwise applicable to a 30 day supply of such medication, provided that the total sum of
70 copayments or co-insurance for an entire 30 day supply of the medication does not exceed the copayment
71 or co-insurance otherwise applicable to a 30 day supply of such medication.

72 (c) *Eligibility for coverage.* — A Subject to the limitations set forth in subsection (d) of this section, a health
73 benefit plan may condition coverage of services provided in the diagnosis and treatment of a serious mental illness and drug
74 and alcohol dependency on the further requirements that the service(s):

75 (1) Must be rendered by a mental health professional licensed or certified by the State Board of Licensing
76 including, but not limited to, psychologists, psychiatrists, ~~social workers~~ social workers, and other such mental
77 health professionals, or a drug and alcohol counselor who has been certified by the Delaware Certified Alcohol
78 and Drug Counselors Certification ~~Board~~ Board, or in a mental health facility licensed by the State or in a

79 treatment facility approved by the Department of Health and Social Services or the Bureau of Alcoholism and
80 Drug Abuse as set forth in Chapter 22 of Title 16 or substantially similar licensing entities in other states;

81 (2) Must be medically necessary; and

82 (3) Must be covered services subject to any administrative requirements of the health benefit plan.

83 A health benefit plan may further condition coverage of services provided in the diagnosis and treatment of a
84 serious mental illness and drug and alcohol dependency in the same manner and to the same extent as coverage for all other
85 illnesses and diseases is conditioned. Such conditions may include, by way of example, and not by way of limitation,
86 precertification and referral requirements.

87 (d) *Benefit management.* —

88 (1) A carrier may, directly or by contract with another qualified entity, manage the benefit prescribed by
89 subsection (b) of this section in order to limit coverage of services provided in the diagnosis and treatment of a
90 serious mental illness and drug and alcohol dependency to those services that are deemed medically ~~necessary~~.
91 necessary as follows:

92 a. The management of benefits for serious mental illnesses and drug and alcohol dependencies may
93 be by methods used for the management of benefits provided for other medical conditions, or may be by
94 management methods unique to mental health benefits. Such may include, by way of example and not
95 limitation, pre-admission screening, prior authorization of services, utilization review and the
96 development and monitoring of treatment plans.

97 b. A carrier may not impose precertification, prior authorization, pre-admission screening, or referral
98 requirements for the diagnosis and medically necessary treatment, including in-patient treatment, of drug
99 and alcohol dependencies.

100 c. The benefit prescribed by subsection (b)(1) of this section may not be subject to concurrent
101 utilization review during the first 14 days of any inpatient admission to a facility approved by a nationally
102 recognized healthcare accrediting organization or the Division of Substance Abuse and Mental Health,
103 provided that the facility notifies the carrier of both the admission and the initial treatment plan within 48
104 hours of the admission. The facility shall perform daily clinical review of the patient, including the
105 periodic consultation with the carrier to ensure that the facility is using the evidence-based and peer
106 reviewed clinical review tool utilized by the carrier which is designated by the American Society of
107 Addiction Medicine (“ASAM”) or, if applicable, any state-specific ASAM criteria, and appropriate to the
108 age of the patient, to ensure that the inpatient treatment is medically necessary for the patient.

109 d. Any utilization review of treatment provided under subsection (b)(1) of this section may include a
110 review of all services provided during such inpatient treatment, including all services provided during the
111 first 14 days of such inpatient treatment; provided, however, the carrier may only deny coverage for any
112 portion of the initial 14 day inpatient treatment on the basis that such treatment was not medically
113 necessary if such inpatient treatment was contrary to the evidence-based and peer reviewed clinical
114 review tool utilized by the carrier which is designated by ASAM or, if applicable, any state-specific
115 ASAM criteria.

116 e. A covered person does not have any financial obligation to the facility for any treatment under
117 subsection (b)(1) of this section other than any copayment, co-insurance, or deductible otherwise required
118 under the health benefit plan.

119 (2) This section shall not be interpreted to require a carrier to employ the same benefit management
120 procedures for serious mental illnesses and drug and alcohol dependencies that are employed for the management
121 of other illnesses or diseases covered by the health benefit plan or to require parity or equivalence in the rate, or
122 dollar value of, claims denied.

123 (e) *Exclusions.* — This section shall not apply to plans or policies not within the definition of health benefit plan,
124 as set out in subsection (a)(2) of this section.

125 (f) *Out of network services.* — Where a health benefit plan provides benefits for the diagnosis and treatment of
126 serious mental illnesses and drug and alcohol dependencies within a network of providers and where a beneficiary of the
127 health benefit plan obtains services consisting of diagnosis and treatment of a serious mental illness and drug and alcohol
128 dependency outside of the network of providers, this section shall not apply. The health benefit plan may contain terms and
129 conditions applicable to out of network services without reference to this section.

130 (g) Nothing in this section shall be construed to limit or reduce any benefit, entitlement, or coverage conferred by
131 § 3366 of this title including, but not limited to, provider and service eligibility.

132 Section 2. Amend § 3578, Title 18 of the Delaware Code by making deletions as shown by strike through and
133 insertions as shown by underline as follows:

134 § 3578 Insurance coverage for serious mental illness.

135 (a) *Definitions.* — For the purposes of this section, the following words and phrases shall have the following
136 meanings:

137 (1) "Carrier" means any entity that provides health insurance in this State. For the purposes of this
138 section, carrier includes an insurance company, health service corporation, health maintenance ~~organization~~

139 organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance
140 regulation. "Carrier" also includes any third-party administrator or other entity that adjusts, ~~administers~~
141 administers, or settles claims in connection with health benefit plans.

142 (2) "Health benefit plan" means any hospital or medical policy or certificate, major medical expense
143 insurance, health service corporation subscriber ~~contract~~ contract, or health maintenance organization subscriber
144 contract. Health benefit plan does not include accident-only, credit, dental, vision, Medicaid plans, long-term care
145 or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or
146 similar ~~insurance~~ insurance, or automobile medical payment insurance.

147 "Health benefit plan" shall not include policies or certificates or specified disease, hospital confinement
148 ~~indemnity~~ indemnity, or limited benefit health insurance, provided that the carrier offering such policies or
149 certificates complies with the following:

150 a. The carrier files on or before March 1 of each year a certification with the Commissioner that
151 contains the statement and information described in paragraph (a)(2)b. of this section.

152 b. The certification required in paragraph (a)(2)a. of this section shall contain the following:

153 1. A statement from the carrier certifying that policies or certificates described in this paragraph
154 are being offered and marketed as supplemental health insurance and not as a substitute for hospital
155 or medical expense insurance or major medical expense insurance.

156 2. A summary description of each policy or certificate described in this paragraph, including the
157 average annual premium rates (or range of premium rates in cases where premiums vary by age,
158 gender or other factors) charged for such policies and certificates in this State.

159 c. In the case of a policy or certificate that is described in this paragraph and that is offered for the
160 first time in this State on or after January 1, 1999, the carrier files with the Commissioner the information
161 and statement required in paragraph (a)(2)b. of this section at least 30 days prior to the date such a policy
162 or certificate is issued or delivered in this State.

163 (3) "Serious mental illness" means any of the following biologically based mental illnesses:
164 schizophrenia, bipolar disorder, obsessive-compulsive disorder, major depressive disorder, panic disorder,
165 anorexia nervosa, bulimia nervosa, schizo affective ~~disorder~~ disorder, and delusional disorder. The diagnostic
166 criteria set out in the most recent edition of the Diagnostic and Statistical Manual shall be utilized to determine
167 whether a beneficiary of a health benefit plan is suffering from a serious mental illness.

168 (4) “Drug and alcohol dependencies” means substance abuse disorder or the chronic, habitual, regular, or
169 recurrent use of alcohol, inhalants, or controlled substances as identified in Chapter 47 of Title 16.

170 (b) *Coverage of serious mental illness and drug and alcohol dependency.* —

171 (1)a. Carriers shall provide coverage for serious mental illnesses and drug and alcohol dependencies in all
172 health benefit plans delivered or issued for delivery in this State. Coverage for serious mental illnesses and drug
173 and alcohol dependencies must provide:

174 1. Inpatient coverage for the diagnosis and treatment of drug and alcohol dependencies.

175 2. Unlimited medically necessary treatment for drug and alcohol dependencies provided in
176 residential settings as required by the Mental Health Parity and Addiction Equity Act of 2008 (29
177 U.S.C. § 1185a).

178 c. Subject to subsections (a) and (c) through (h) (g) of this section, no carrier may issue for delivery,
179 or deliver, in this State any health benefit plan containing terms that place a greater financial burden on an
180 insured for covered services provided in the diagnosis and treatment of a serious mental illness and drug
181 and alcohol dependency than for covered services provided in the diagnosis and treatment of any other
182 illness or disease covered by the health benefit plan. By way of example, such terms include deductibles,
183 co-pays, monetary limits, co-insurance factors, limits in the numbers of visits, limits in the length of
184 inpatient stays, durational limits or limits in the coverage of prescription medicines.

185 (2)a. A health benefit plan that provides coverage for prescription drugs must provide coverage for the
186 treatment of alcohol and drug dependencies that include immediate access, without prior authorization, to a 5 day
187 emergency supply of prescribed medications covered under the health benefit plan for the medically necessary
188 treatment of alcohol and drug dependencies where an emergency medical condition, as defined in § 3565(e) of this
189 title, exists, including a prescribed drug or medication associated with the management of opioid withdrawal or
190 stabilization, except where otherwise prohibited by law.

191 b. Coverage of an emergency supply of prescribed medications must include medication for opioid
192 overdose reversal otherwise covered under the health benefit plan prescribed to a covered person.

193 c. Coverage provided under this paragraph (b)(2) of this section may be subject to copayments, co-
194 insurance, and annual deductibles that are consistent with those imposed on other benefits within the
195 health benefit plan; provided, however, a health benefit plan must not impose an additional copayment or
196 co-insurance on a covered person who received an emergency supply of the same medication in the same
197 30 day period in which the emergency supply of medication was dispensed.

198 d. This paragraph (b)(2) of this section does not preclude the imposition of a copayment or co-
199 insurance on the initial emergency supply of medication in an amount that is less than the copayment or
200 co-insurance otherwise applicable to a 30 day supply of such medication, provided that the total sum of
201 copayments or co-insurance for an entire 30 day supply of the medication does not exceed the copayment
202 or co-insurance otherwise applicable to a 30 day supply of such medication.

203 (c) *Eligibility for coverage.* — A Subject to the limitations set forth in subsection (d) of this section, a health
204 benefit plan may condition coverage of services provided in the diagnosis and treatment of a serious mental illness and drug
205 and alcohol dependency on the further requirements that the service or services:

206 (1) Must be rendered by a mental health professional licensed or certified by the State Board of Licensing
207 including, but not limited to, psychologists, psychiatrists, social workers and such other mental health
208 professionals, or a drug and alcohol counselor who has been certified by the Delaware Certified Alcohol and Drug
209 Counselors Certification Board Board, or in a mental health facility licensed by the State or in a treatment facility
210 approved by the Department of Health and Social Services or the Bureau of Alcoholism and Drug Abuse as set
211 forth in Chapter 22 of Title 16 or substantially similar licensing entities in other states;

212 (2) Must be medically necessary; and

213 (3) Must be covered services subject to any administrative requirements of the health benefit plan.

214 A health benefit plan may further condition coverage of services provided in the diagnosis and treatment
215 of a serious mental illness and drug and alcohol dependency in the same manner and to the same extent as
216 coverage for all other illnesses and diseases is conditioned. Such conditions may include, by way of example and
217 not by way of limitation, precertification and referral requirements.

218 (d) *Benefit management.* —

219 (1) A carrier may, directly or by contract with another qualified entity, manage the benefit prescribed by
220 subsection (b) of this section in order to limit coverage of services provided in the diagnosis and treatment of a
221 serious mental illness and drug and alcohol dependency to those services that are deemed medically ~~necessary.~~
222 necessary as follows:

223 a. The management of benefits for serious mental illnesses and drug and alcohol dependencies may
224 be by methods used for the management of benefits provided for other medical conditions, or may be by
225 management methods unique to mental health benefits. Such may include, by way of example and not
226 limitation, pre-admission screening, prior authorization of services, utilization review and the
227 development and monitoring of treatment plans.

228 b. A carrier may not impose precertification, prior authorization, pre-admission screening, or referral
229 requirements for the diagnosis and medically necessary treatment, including in-patient treatment, of drug
230 and alcohol dependencies.

231 c. The benefit prescribed by subsection (b)(1) of this section may not be subject to concurrent
232 utilization review during the first 14 days of any inpatient admission to a facility approved by a nationally
233 recognized healthcare accrediting organization or the Division of Substance Abuse and Mental Health,
234 provided that the facility notifies the carrier of both the admission and the initial treatment plan within 48
235 hours of the admission. The facility shall perform daily clinical review of the patient, including the
236 periodic consultation with the carrier to ensure that the facility is using the evidence-based and peer
237 reviewed clinical review tool utilized by the carrier which is designated by the American Society of
238 Addiction Medicine (“ASAM”) or, if applicable, any state-specific ASAM criteria, and appropriate to the
239 age of the patient, to ensure that the inpatient treatment is medically necessary for the patient.

240 d. Any utilization review of treatment provided under subsection (b)(1) of this section may include a
241 review of all services provided during such inpatient treatment, including all services provided during the
242 first 14 days of such inpatient treatment; provided, however, the carrier may only deny coverage for any
243 portion of the initial 14 day inpatient treatment on the basis that such treatment was not medically
244 necessary if such inpatient treatment was contrary to the evidence-based and peer reviewed clinical
245 review tool utilized by the carrier which is designated by ASAM or, if applicable, any state-specific
246 ASAM criteria.

247 e. A covered person does not have any financial obligation to the facility for any treatment under
248 subsection (b)(1) of this section other than any copayment, co-insurance, or deductible otherwise required
249 under the health benefit plan.

250 (2) This section shall not be interpreted to require a carrier to employ the same benefit management
251 procedures for serious mental illnesses and drug and alcohol dependencies that are employed for the management
252 of other illnesses or diseases covered by the health benefit plan or to require parity or equivalence in the rate, or
253 dollar value of, claims denied.

254 (e) *Exclusions.* — This section shall not apply to plans or policies not within the definition of health benefit plan,
255 as set out in paragraph (a)(2) of this section.

256 (f) *Out of network services.* — Where a health benefit plan provides benefits for the diagnosis and treatment of
257 serious mental illnesses and drug and alcohol dependencies within a network of providers and where a beneficiary of the

258 health benefit plan obtains services consisting of diagnosis and treatment of a serious mental illness and drug and alcohol
259 dependency outside of the network of providers, the provisions of this section shall not apply. The health benefit plan may
260 contain terms and conditions applicable to out of network services without reference to the provisions of this section.

261 (g) Nothing in this section shall be construed to limit or reduce any benefit, entitlement, or coverage conferred by
262 § 3570A of this title including, but not limited to, provider and service eligibility.

263 Section 3. Applicability Date. This Act applies to all individual and group health benefit plans issued or renewed
264 on or after January 1, 2018.

SYNOPSIS

In an effort to reduce overdose deaths relating to the growing epidemic of opioid addiction, this Act requires carriers to provide coverage for medically necessary inpatient treatment of alcohol and drug dependencies and prohibits carriers from imposing precertification, prior authorization, pre-admission screening, or referral requirements for the diagnosis and treatment, including in-patient treatment, of drug and alcohol dependencies. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Hansen