SPONSOR: Sen. Townsend & Rep. Bentz
Sens. Ennis, Hansen, Cloutier, Lopez; Reps. Bolden, Briggs King, Heffernan, Keeley, Kowalko, Lynn, Matthews

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 109

AN ACT TO AMEND TITLE 18 AND TITLE 31 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:

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

§ 3343. Insurance coverage for serious mental illness.

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

(1) "ASAM criteria" means the comprehensive set of guidelines for placement, continued stay, and transfer or discharge of patients with addiction established by the American Society of Addiction Medicine ("ASM") for use in determining medically necessary treatment.

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

§ 3343. Insurance coverage for serious mental illness.

(b) Coverage of serious mental illness and drug and alcohol dependencies.

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

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

2. Unlimited medically necessary treatment for drug and alcohol dependencies as required by the Mental Health Parity and Addiction Equity Act of 2008 (29 U.S.C. § 1185a) and determined by the use of the full set of ASAM criteria, in all of the following: ~~provided in residential settings as required by the Mental Health Parity and Addiction Equity Act of 2008 (29 U.S.C. § 1185a).~~

A. Treatment provided in residential setting.

B. Intensive Outpatient Programs.

C. Inpatient withdrawal management.

Section 3. Amend § 3343, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3343. Insurance coverage for serious mental illness.

(d) Benefit management. —

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

c. The benefit prescribed by subsection (b)(1) of this section may not be subject to concurrent utilization review during the first 14 days of any inpatient admission to a facility approved by a nationally recognized healthcare accrediting organization or the Division of Substance Abuse and Mental Health, 30 days of Intensive Outpatient Program treatment, or 5 days of inpatient withdrawal management, provided that the facility notifies the carrier of both the admission and the initial treatment plan within 48 hours of the admission. The facility shall perform daily clinical review of the patient, including the periodic consultation with the carrier to ensure that the facility is using the evidence-based and peer reviewed clinical review tool utilized by the carrier which is designated by the American Society of Addiction Medicine ("ASAM") or, if applicable, any state-specific ASAM criteria, and appropriate to the age of the patient, to ensure that the inpatient treatment is medically necessary for the patient.

d. Any utilization review of treatment provided under subsection (b)(1) of this section may include a review of all services provided during such inpatient treatment, including all services provided during the first 14 days of such inpatient ~~treatment;~~ treatment, 30 days of Intensive Outpatient Program treatment, or 5 days of inpatient withdrawal management; provided, however, the carrier may only deny coverage for any portion of the initial 14 day inpatient treatment on the basis that such treatment was not medically necessary if such inpatient treatment was contrary to the evidence-based and peer reviewed clinical review tool utilized by the carrier which is designated by ASAM or, if applicable, any state-specific ASAM criteria.

Section 4. Amend § 3578, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline and redesignating accordingly as follows:

§ 3578. Insurance coverage for serious mental illness.

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

(1) "ASAM criteria" means the comprehensive set of guidelines for placement, continued stay, and transfer or discharge of patients with addiction established by the American Society of Addiction Medicine ("ASM") for use in determining medically necessary treatment.

Section 5. Amend § 3578, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3578. Insurance coverage for serious mental illness.

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

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

2. Unlimited medically necessary treatment for drug and alcohol dependencies as required by the Mental Health Parity and Addiction Equity Act of 2008 (29 U.S.C. § 1185a) and determined by the use of the full set of ASAM criteria, in all of the following: ~~provided in residential settings as required by the Mental Health Parity and Addiction Equity Act of 2008 (29 U.S.C. § 1185a).~~

A. Treatment provided in residential setting.

B. Intensive Outpatient Programs.

C. Inpatient withdrawal management.

Section 6. Amend § 3578, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3578. Insurance coverage for serious mental illness.

(d) Benefit management. —

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

c. The benefit prescribed by subsection (b)(1) of this section may not be subject to concurrent utilization review during the first 14 days of any inpatient admission to a facility approved by a nationally recognized healthcare accrediting organization or the Division of Substance Abuse and Mental Health, 30 days of Intensive Outpatient Program treatment, or 5 days of inpatient withdrawal management, provided that the facility notifies the carrier of both the admission and the initial treatment plan within 48 hours of the admission. The facility shall perform daily clinical review of the patient, including the periodic consultation with the carrier to ensure that the facility is using the evidence-based and peer reviewed

clinical review tool utilized by the carrier which is designated by the American Society of Addiction Medicine ("ASAM") or, if applicable, any state-specific ASAM criteria, and appropriate to the age of the patient, to ensure that the inpatient treatment is medically necessary for the patient.

d. Any utilization review of treatment provided under subsection (b)(1) of this section may include a review of all services provided during such inpatient treatment, including all services provided during the first 14 days of such inpatient ~~treatment;~~ treatment, 30 days of Intensive Outpatient Program treatment, or 5 days of inpatient withdrawal management; provided, however, the carrier may only deny coverage for any portion of the initial 14 day inpatient treatment on the basis that such treatment was not medically necessary if such inpatient treatment was contrary to the evidence-based and peer reviewed clinical review tool utilized by the carrier which is designated by ASAM or, if applicable, any state-specific ASAM criteria.

Section 7. Amend Chapter 5, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 524. Insurance coverage for serious mental illness and drug and alcohol dependency for recipients of aid under § 505(3) of this title.

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

(1) "ASAM criteria" means the comprehensive set of guidelines for placement, continued stay, and transfer or discharge of patients with addiction established by the American Society of Addiction Medicine ("ASAM") for use in determining medically necessary treatment.

(2) "Carrier" means any entity that provides health insurance under § 505(3) of this title.

(3) "Health benefit plan" means any assistance provided to an individual under § 505(3) of this title.

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

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

(b) Coverage of serious mental illness and drug and alcohol dependencies. ---

(1)a. Carriers shall provide coverage for serious mental illnesses and drug and alcohol dependencies in all health benefit plans delivered or issued for delivery under § 505(3) of this title. Coverage for serious mental illnesses and drug and alcohol dependencies must provide:

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

2. Unlimited medically necessary treatment for drug and alcohol dependencies as required by the Mental Health Parity and Addiction Equity Act of 2008 (29 U.S.C. § 1185a) and determined by the use of the full set of ASAM criteria, in all of the following:

A. Treatment provided in residential setting.

B. Intensive Outpatient Programs.

C. Inpatient withdrawal management.

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

(2)a. A health benefit plan under § 505(3) that provides coverage for prescription drugs must provide coverage for the treatment of serious mental illnesses and drug and alcohol dependencies that includes immediate access, without prior authorization, to a 72 hour emergency supply of prescribed medications covered under the health benefit plan for the medically necessary treatment of serious mental illnesses and drug and alcohol dependencies where an emergency medical condition exists, including a prescribed drug or medication associated with the management of opioid withdrawal or stabilization, except where otherwise prohibited by law.

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

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

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

(c)(1) Eligibility for coverage. — Subject to the limitations set forth in subsection (d) of this section, a health benefit plan may condition coverage of services provided in the diagnosis and treatment of a serious mental illness and drug and alcohol dependency on the following further requirements that the service(s):

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

b. Must be medically necessary.

c. Must be covered services subject to any administrative requirements of the health benefit plan.

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

(d) Benefit management. —

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

a. The management of benefits for serious mental illnesses and drug and alcohol dependencies may be by methods used for the management of benefits provided for other medical conditions, or may be by management methods unique to mental health benefits. Such may include, by way of example and not

limitation, pre-admission screening, prior authorization of services, utilization review, and the development and monitoring of treatment plans.

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

c. The benefit prescribed by subsection (b)(1) of this section may not be subject to concurrent utilization review during the first 14 days of any inpatient admission to a facility approved by a nationally recognized healthcare accrediting organization or the Division of Substance Abuse and Mental Health, 30 days of Intensive Outpatient Program treatment, or 5 days of inpatient withdrawal management, provided that the facility notifies the carrier of both the admission and the initial treatment plan within 48 hours of the admission. The facility shall perform daily clinical review of the patient, including the periodic consultation with the carrier to ensure that the facility is using the evidence-based and peer reviewed clinical review tool utilized by the carrier which is designated by the American Society of Addiction Medicine ("ASAM") or, if applicable, any state-specific ASAM criteria, and appropriate to the age of the patient, to ensure that the inpatient treatment is medically necessary for the patient.

d. Any utilization review of treatment provided under subsection (b)(1) of this section may include a review of all services provided during such inpatient treatment, including all services provided during the first 14 days of such inpatient treatment, 30 days of Intensive Outpatient Program treatment, or 5 days of inpatient withdrawal management; provided, however, the carrier may only deny coverage for any portion of the initial 14 day inpatient treatment on the basis that such treatment was not medically necessary if such inpatient treatment was contrary to the evidence-based and peer reviewed clinical review tool utilized by the carrier which is designated by ASAM or, if applicable, any state-specific ASAM criteria.

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

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

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

SYNOPSIS

Individuals who receive health care via Medicaid deserve the same dedication to treatment of substance abuse disorders as individuals who receive health care via private insurance. This Act extends the same access to treatment of a substance use disorder within the Medicaid framework that Senate Bill 41 of the 149th General Assembly afforded to individuals covered by private health insurance, except that a 72 hour supply instead of 5 day supply of emergency medication is required. This Act also clarifies that Medicaid health plans must use the full set of American Society of Addiction Medicine criteria when determining whether "medical necessity" exists for the placement, continued stay, and transfer/discharge of patients with a substance use disorder in treatment programs. Additionally, this Act aligns protections relating to services, specifically 5 days of treatment in detox centers and 30 days of treatment in Intensive Outpatient Programs, with the residential treatment option that is protected pursuant to Senate Bill 41 of the 149th General Assembly.

Author: Senator Townsend