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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