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Reps. K. Johnson, Seigfried, K. Williams; Sens. Delcollo,  
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HOUSE OF REPRESENTATIVES  
150th GENERAL ASSEMBLY

HOUSE BILL NO. 218

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO LICENSED PROFESSIONAL ART THERAPISTS.

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

1           Section 1. The General Assembly declares that the purpose of this Act is to amend Title 18 of the Delaware Code  
2 to implement Subchapter V of Chapter 30 of Title 24 of the Delaware Code, relating to regulating professional art  
3 therapists, for consumers of mental health services receiving art therapy services provided by a licensed professional art  
4 therapist.

5           Section 2. The General Assembly finds and declares all of the following:

6                   (1) It is important for consumers of mental health services to have access to the licensed mental health  
7 professions in this State, including licensed professional art therapists.

8                   (2) Through the implementation of Subchapter V of Chapter 30 of Title 24 of the Delaware Code, licensed  
9 professional art therapists independently assess, treat, and prevent recognized mental health disorders, including  
10 complex trauma, mood disorders, substance abuse disorders, behavior disorders, anxiety, psychosis, cognitive  
11 disorders, and autism spectrum disorders, and provide psychotherapy to save lives and promote individuals' overall  
12 health, mental health, recovery, self-sufficiency, and relationships.

13                   (3) This State, as a "Trauma-Informed State", as declared by Governor John Carney in Executive Order 24,  
14 has an interest in securing the reimbursement eligibility of art therapy services, as a trauma recovery best practice to  
15 "prevent and respond to toxic stress and build resilience in children, teens, and communities," and in promoting the  
16 "evidence-based contributions of art therapists" in "school-based prevention and early intervention services to reduce  
17 barriers to learning" among other reimbursed specialized instruction support personnel treating students, as recognized  
18 by the United States Congress, H.Res. 823, April 12, 2018 and S.Res. 346, May 22, 2018.

19                   (4) Licensed professional art therapists are a distinct mental health profession, but are scarce in this State,  
20 largely due to health insurance carrier restrictions that exclude art therapists from the array of insureds' eligible  
21 reimbursed mental health care benefits in contracts or as provider-eligible, even though art therapists are licensed  
22 mental health care providers. These benefit and provider exclusions manufacturer real and significant barriers to health

23 care for consumers of mental health services wanting and needing art therapy services and suppresses the availability  
24 of these qualified health care workers in this State.

25 (5) The General Assembly passed the Mental Health Parity Act (Senate Bill No. 230 of the 149<sup>th</sup> General  
26 Assembly), signed by Governor Carney on August 29, 2018, to eliminate mental health care coverage discrimination  
27 and ensure fair access to behavioral health treatment for those in need.

28 (6) This State prohibits health insurance carriers from discriminating with respect to services provided by its  
29 licensed health care providers under § 3517L of Title 18 of the Delaware Code, which states: “A group health plan and  
30 a health insurer offering group health insurance coverage shall not discriminate with respect to participation under the  
31 plan or coverage against any health-care provider who is acting within the scope of that provider's license or  
32 certification under applicable state law.” This State also prohibits health insurance carriers from discriminating against  
33 consumers of mental health services in health insurance contracts, under § 2304(13)b. of Title 18 of the Delaware  
34 Code, which states: “No person shall make or permit any unfair discrimination between individuals of the same class  
35 and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of  
36 accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract,  
37 or in any other manner whatever.” Despite these laws, licensed professional art therapists continue to be excluded from  
38 the array of insureds’ eligible reimbursed mental health care benefits in contracts or as provider-eligible.

39 (7) Based on the findings of paragraphs (1) through (6) of this Section, the General Assembly declares its  
40 intent to do both of the following:

41 a. Include art therapy services provided by licensed professional art therapists as eligible for  
42 reimbursement and include licensed professional art therapists as provider-eligible.

43 b. Promote access to eligible licensed professional art therapy services by reimbursing services delivered  
44 in various settings where consumers of mental health services may receive care, including at inpatient and  
45 outpatient facilities, schools, colleges, community centers, residential facilities, in the community, and at home.

46 Section 3. Amend Chapter 23, Title 18 of the Delaware Code by making deletions as shown by strike through and  
47 insertions as shown by underline as follows:

48 § 2319. Mental health care by licensed professional art therapists.

49 (a) For purposes of this section:

50 (1) “Art therapy services” means as the term is defined in § 3060 of Title 24.

51           (2) “Carrier” means an entity that provides health insurance in this State. "Carrier" includes an insurance  
52 company, health service corporation, health maintenance organization, and any other entity providing a plan of health  
53 insurance or health benefits subject to State insurance regulation.

54           (3) “Licensed professional art therapist” means as the term is defined in § 3060 of Title 24.

55           (4) “Mental condition” means a mental disorder as defined in the most recent edition of the American  
56 Psychiatric Association’s “Diagnostic and Statistical Manual of Mental Disorders.”

57           (b) Art therapy services rendered or performed by a licensed professional art therapist allow for the independent  
58 diagnosis, treatment, and prevention of mental conditions and are reimbursement-eligible services when rendered or  
59 performed by a licensed professional art therapist in any of the following settings:

60           (1) An accredited hospital or other inpatient medical or mental health facility licensed in this State.

61           (2) An intensive outpatient program.

62           (3) A day treatment program.

63           (4) An outpatient medical or mental health facility or practice licensed in this State.

64           (5) A school or an institution of higher learning.

65           (6) A community center.

66           (7) A residential facility.

67           (8) In the community.

68           (9) In a home-based setting.

69           (c) A carrier, or a third-party administrator or other person that adjusts, administers, or settles claims in connection  
70 with a plan of insurance or health benefits, may not deny benefits for eligible services when those services are rendered or  
71 performed by a licensed art therapist acting independently within the scope of the licensed professional art therapist’s  
72 practice of providing art therapy services.

73           (d) A carrier may not issue or issue for delivery a contract of insurance in this State that excludes licensed  
74 professional art therapists as providers of services covered in the contract.

75           (e) A carrier, or a third-party administrator or other person that adjusts, administers, or settles claims in connection  
76 with a plan of insurance or health benefits, may not discriminate against or unreasonably deny a licensed professional art  
77 therapist compensation for art therapy services rendered or performed if the carrier would otherwise compensate a provider  
78 who is not a licensed professional art therapist but who is otherwise licensed to render or perform substantially similar  
79 mental health assessment, diagnostic, treatment, psychotherapy, or prevention services as licensed.

80           (f) A carrier, or a third-party administrator or other person that adjusts, administers, or settles claims in connection  
81 with a plan of insurance or health benefits, may not engage in rate fixing or other discriminatory or unreasonable practices  
82 related to compensation for art therapy services provided by a licensed professional art therapist.

83           (g) A carrier, or a third-party administrator or other person that adjusts, administers, or settles claims in connection  
84 with a plan of insurance or health benefits, may not waive, void, or nullify subsections (b) through (f) of this section by  
85 contract or in the fulfillment of these obligations.

86           Section 4. This Act is to be known as the Art Therapist Reimbursement Act.

#### SYNOPSIS

This Act, the Art Therapist Reimbursement Act, expands consumers' access to mental health care by designating licensed professional art therapists as reimbursement-eligible under health insurance contracts in this State. By assuring parity and equity in health care, this Act not only secures art therapy services for consumers, but operates to increase the number of licensed professional art therapists available in this State to advance the State's comprehensive behavioral health, trauma-responsive, early-intervention, and student success initiatives.

This Act also allows licensed professional art therapists to provide art therapy services in various treatment settings to expand mental health access in this State.