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H.B. 123

MENTAL HEALTH PARITY

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Bryan D. Holladay

AN ACT RELATING TO INSURANCE; REQUIRING, THROUGH A THREE-YEAR PHASE IN, AN INSURER TO OFFER AT LEAST ONE HEALTH INSURANCE POLICY THAT COVERS SERIOUS MENTAL ILLNESS TO THE SAME EXTENT AS PHYSICAL ILLNESS; PERMITTING POLICYHOLDERS TO CHOOSE WHETHER OR NOT TO SELECT THE POLICY AND CLARIFYING THAT AN INCREASED PREMIUM MAY BE CHARGED; PERMITTING POLICIES THAT COMPLY TO USE MANAGED CARE SYSTEMS AND TO BE EXEMPT FROM CERTAIN INSURANCE PROVISIONS; MAKING IT UNLAWFUL CONDUCT TO KNOWINGLY PROVIDE A FALSE OR MISLEADING DIAGNOSIS; AND PROVIDING A REPEAL DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

31A-22-617, as last amended by Chapters 314 and 316, Laws of Utah 1994

31A-22-618, as last amended by Chapter 204, Laws of Utah 1986

58-60-109, as last amended by Chapter 248, Laws of Utah 1997

58-61-501, as enacted by Chapter 32, Laws of Utah 1994

58-67-501, as last amended by Chapter 227, Laws of Utah 1997

63-55-231, as last amended by Chapter 131, Laws of Utah 1999

ENACTS:

31A-22-625, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-22-617** is amended to read:

31A-22-617. Preferred provider contract provisions.

Health insurance policies may provide for insureds to receive services or reimbursement

under the policies in accordance with preferred health care provider contracts as follows:

(1) Subject to restrictions under this section, any insurer or third party administrator may enter into contracts with health care providers as defined in Section 78-14-3 under which the health care providers agree to supply services, at prices specified in the contracts, to persons insured by an insurer. The health care provider contract may require the health care provider to accept the specified payment as payment in full, relinquishing the right to collect additional amounts from the insured person. The insurance contract may reward the insured for selection of preferred health care providers by reducing premium rates, reducing deductibles, coinsurance, or other copayments, or in any other reasonable manner.

(2) (a) Subject to Subsections (2)(b) through (2)(f), an insurer using preferred health care provider contracts shall pay for the services of health care providers not under the contract, unless the illnesses or injuries treated by the health care provider are not within the scope of the insurance contract. As used in this section, "class of health care providers" means all health care providers licensed or licensed and certified by the state within the same professional, trade, occupational, or facility licensure or licensure and certification category established pursuant to Titles 26 and 58.

(b) When the insured receives services from a health care provider not under contract, the insurer shall reimburse the insured for at least 75% of the average amount paid by the insurer for comparable services of preferred health care providers who are members of the same class of health care providers. The commissioner may adopt a rule dealing with the determination of what constitutes 75% of the average amount paid by the insurer for comparable services of preferred health care providers who are members of the same class of health care providers.

(c) When reimbursing for services of health care providers not under contract, the insurer may make direct payment to the insured.

(d) Notwithstanding Subsection (2)(b), an insurer using preferred health care provider contracts may impose a deductible on coverage of health care providers not under contract.

(e) When selecting health care providers with whom to contract under Subsection (1), an insurer may not unfairly discriminate between classes of health care providers, but may discriminate within a class of health care providers, subject to Subsection (7).

(f) For purposes of this section, unfair discrimination between classes of health care providers shall include:

(i) refusal to contract with class members in reasonable proportion to the number of

insureds covered by the insurer and the expected demand for services from class members; and

(ii) refusal to cover procedures for one class of providers that are:

(A) commonly utilized by members of the class of health care providers for the treatment of illnesses, injuries, or conditions;

(B) otherwise covered by the insurer; and

(C) within the scope of practice of the class of health care providers.

(3) Before the insured consents to the insurance contract, the insurer shall fully disclose to the insured that it has entered into preferred health care provider contracts. The insurer shall provide sufficient detail on the preferred health care provider contracts to permit the insured to agree to the terms of the insurance contract. The insurer shall provide at least the following information:

(a) a list of the health care providers under contract and if requested their business locations and specialties;

(b) a description of the insured benefits, including any deductibles, coinsurance, or other copayments;

(c) a description of the quality assurance program required under Subsection (4); and

(d) a description of the grievance procedures required under Subsection (5).

(4) (a) An insurer using preferred health care provider contracts shall maintain a quality assurance program for assuring that the care provided by the health care providers under contract meets prevailing standards in the state.

(b) The commissioner in consultation with the executive director of the Department of Health may designate qualified persons to perform an audit of the quality assurance program. The auditors shall have full access to all records of the organization and its health care providers, including medical records of individual patients.

(c) The information contained in the medical records of individual patients shall remain confidential. All information, interviews, reports, statements, memoranda, or other data furnished for purposes of the audit and any findings or conclusions of the auditors are privileged. The information is not subject to discovery, use, or receipt in evidence in any legal proceeding except hearings before the commissioner concerning alleged violations of this section.

(5) An insurer using preferred health care provider contracts shall provide a reasonable procedure for resolving complaints and grievances initiated by the insureds and health care

providers.

(6) An insurer may not contract with a health care provider for treatment of illness or injury unless the health care provider is licensed to perform that treatment.

(7) (a) No health care provider or insurer may discriminate against a preferred health care provider for agreeing to a contract under Subsection (1).

(b) Any health care provider licensed to treat any illness or injury within the scope of the health care provider's practice, who is willing and able to meet the terms and conditions established by the insurer for designation as a preferred health care provider, shall be able to apply for and receive the designation as a preferred health care provider. Contract terms and conditions may include reasonable limitations on the number of designated preferred health care providers based upon substantial objective and economic grounds, or expected use of particular services based upon prior provider-patient profiles.

(8) Upon the written request of a provider excluded from a provider contract, the commissioner may hold a hearing to determine if the insurer's exclusion of the provider is based on the criteria set forth in Subsection (7)(b).

(9) Insurers are subject to the provisions of Sections 31A-22-613.5, 31A-22-614.5, and 31A-22-618.

(10) Nothing in this section is to be construed as to require an insurer to offer a certain benefit or service as part of a health benefit plan.

(11) This section does not apply to mental health benefits provided in a policy that complies with Section 31A-22-625.

Section 2. Section **31A-22-618** is amended to read:

31A-22-618. Nondiscrimination among health care professionals.

(1) Except as provided under Section 31A-22-617, and except as to insurers licensed under Chapter 8, no insurer may unfairly discriminate against any licensed class of health care providers by structuring contract exclusions which exclude payment of benefits for the treatment of any illness, injury, or condition by any licensed class of health care providers when the treatment is within the scope of the licensee's practice and the illness, injury, or condition falls within the coverage of the contract. Upon the written request of an insured alleging an insurer has violated this section, the commissioner shall hold a hearing to determine if the violation exists. The commissioner may consolidate two or more related alleged violations into a single hearing.

(2) This section does not apply to mental health benefits provided in a policy that complies with Section 31A-22-625.

Section 3. Section **31A-22-625** is enacted to read:

31A-22-625. Coverage of serious mental illness.

(1) As used in this section:

(a) "Managed care system" means:

(i) an insurer's contractual arrangements with providers that may include:

(A) capitation payments with or without provider risk-sharing;

(B) physician or other specified provider gatekeepers;

(C) prior authorization of specified services; and

(D) general administrative services, including utilization review, claims processing, provider credentialing, and customer service; and

(ii) an insurer's limitation on the number and class of providers who may provide services for which coverage for mental illness is required under this section.

(b) "Serious mental illness" means one of the following:

(i) schizophrenia;

(ii) schizo affective disorder;

(iii) delusional disorder;

(iv) bipolar affective disorders;

(v) major depression;

(vi) obsessive compulsive disorder; or

(vii) anxiety, panic disorders.

(2) An insurer shall offer at least one group health insurance policy or one group health maintenance organization contract to potential and existing policyholders that complies with this section.

(3) A policyholder:

(a) is under no obligation to select a policy or contract that complies with this section; and

(b) may be required to pay a higher premium if a policy or contract that complies with this section is selected.

(4) To comply with this section, a policy or contract shall:

(a) cover inpatient care, extended care, office services, and pharmaceuticals for serious

mental illness at no less than:

(i) 50% of physical illness from July 1, 2000 to June 30, 2001;

(ii) 75% of physical illness from July 1, 2001 to June 30, 2002; and

(iii) 100% of physical illness on and after July 1, 2002; and

(b) apply cost-sharing factors, such as deductibles, coinsurance, and copayments, to serious mental illness at no less than:

(i) 50% of physical illness from July 1, 2000 to June 30, 2001;

(ii) 75% of physical illness from July 1, 2001 to June 30, 2002; and

(iii) 100% of physical illness on and after July 1, 2002.

(5) A contract or policy that complies with Subsection (4) may provide benefits for serious mental illness using a managed care system.

(6) The commissioner shall adopt rules as necessary to ensure compliance with this section.

Section 4. Section **58-60-109** is amended to read:

58-60-109. Unlawful conduct.

As used in this chapter, "unlawful conduct" includes:

(1) practice of the following unless licensed in the appropriate classification or exempted from licensure under this title:

(a) mental health therapy;

(b) clinical social work;

(c) certified social work;

(d) marriage and family therapy;

(e) professional counseling;

(f) practice as a social service worker; or

(g) licensed substance abuse counselor;

(2) practice of mental health therapy by a licensed psychologist who has not acceptably documented to the division his completion of the supervised training in mental health therapy required under Subsection 58-61-304(1)(f); [~~or~~]

(3) representing oneself as or using the title of any of the following unless currently licensed in a license classification under this title:

(a) psychiatrist;

(b) psychotherapist;

(c) registered psychiatric mental health nurse specialist;

(d) mental health therapist;

(e) clinical social worker;

(f) certified social worker;

(g) marriage and family therapist;

(h) professional counselor;

(i) clinical hypnotist;

(j) social service worker; [~~or~~]

(k) licensed substance abuse counselor[~~.~~]; or

(4) knowingly providing a false or misleading diagnosis to an insurer to bring a person within the definition of "serious mental illness" for purposes of Section 31A-22-625.

Section 5. Section **58-61-501** is amended to read:

58-61-501. Unlawful conduct.

As used in this chapter, "unlawful conduct" includes:

(1) practice of psychology unless licensed under this chapter or exempted from licensure under this title;

(2) practice of mental health therapy by a licensed psychologist who has not acceptably documented to the division his completion of the supervised training in psychotherapy required under Subsection 58-61-304(1)(f); [~~or~~]

(3) representing oneself as or using the title of psychologist unless currently licensed under this chapter[~~.~~]; or

(4) knowingly providing a false or misleading diagnosis to an insurer to bring a person within the definition of "serious mental illness" for purposes of Section 31A-22-625.

Section 6. Section **58-67-501** is amended to read:

58-67-501. Unlawful conduct.

(1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

(a) buying, selling, or fraudulently obtaining, any medical diploma, license, certificate, or registration;

(b) aiding or abetting the buying, selling, or fraudulently obtaining of any medical diploma, license, certificate, or registration;

(c) substantially interfering with a licensee's lawful and competent practice of medicine in accordance with this chapter by:

(i) any person or entity that manages, owns, operates, or conducts a business having a direct or indirect financial interest in the licensee's professional practice; or

(ii) anyone other than another physician licensed under this title, who is engaged in direct clinical care or consultation with the licensee in accordance with the standards and ethics of the profession of medicine; [~~or~~]

(d) entering into a contract that limits a licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients[~~.~~]; or

(e) knowingly providing a false or misleading diagnosis to an insurer to bring a person within the definition of "serious mental illness" for purposes of Section 31A-22-625.

(2) "Unlawful conduct" does not include:

(a) establishing, administering, or enforcing the provisions of a policy of disability insurance by an insurer doing business in this state in accordance with Title 31A, Insurance Code;

(b) adopting, implementing, or enforcing utilization management standards related to payment for a licensee's services, provided that:

(i) utilization management standards adopted, implemented, and enforced by the payer have been approved by a physician or by a committee that contains one or more physicians; and

(ii) the utilization management standards does not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;

(c) developing and implementing clinical practice standards that are intended to reduce morbidity and mortality or developing and implementing other medical or surgical practice standards related to the standardization of effective health care practices, provided that:

(i) the practice standards and recommendations have been approved by a physician or by a committee that contains one or more physicians; and

(ii) the practice standards do not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;

(d) requesting or recommending that a patient obtain a second opinion from a licensee;

(e) conducting peer review, quality evaluation, quality improvement, risk management, or similar activities designed to identify and address practice deficiencies with health care providers, health care facilities, or the delivery of health care;

(f) providing employment supervision or adopting employment requirements that do not interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients, provided that employment requirements that may not be considered to interfere with an employed licensee's exercise of independent professional judgment include:

(i) an employment requirement that restricts the licensee's access to patients with whom the licensee's employer does not have a contractual relationship, either directly or through contracts with one or more third-party payers; or

(ii) providing compensation incentives that are not related to the treatment of any particular patient;

(g) providing benefit coverage information, giving advice, or expressing opinions to a patient or to a family member of a patient to assist the patient or family member in making a decision about health care that has been recommended by a licensee; or

(h) any otherwise lawful conduct that does not substantially interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients and that does not constitute the practice of medicine as defined in this chapter.

Section 7. Section **63-55-231** is amended to read:

63-55-231. Repeal dates, Title 31A.

(1) Section 31A-2-208.5, Comparison tables, is repealed July 1, 2005.

(2) Section 31A-22-315, Motor Vehicle Insurance Reporting, is repealed July 1, 2000.

(3) Section 31A-22-625, Insurance coverage for serious mental illness, is repealed July 1, 2005.

[~~(3)~~] (4) Title 31A, Chapter 31, Insurance Fraud Act, is repealed July 1, 2007.

Legislative Review Note
as of 2-7-00 11:31 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel