BILL ANALYSIS

Senate Research Center
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S.B. 860
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Despite existing federal mental health parity laws, many consumers encounter barriers due to lack of clear regulatory and enforcement guidelines. Currently, the Texas Department of Insurance (TDI) regulates some forms of parity for fully insured plans sold to large employers, but not for similar plans sold to small employers. What's more, TDI can enforce quantitative treatment limitations but has no ability to enforce parity for non-quantitative treatment limitations. Because TDI does not have clear authority to enforce many parity complaints, enforcement falls to federal counterparts.

S.B. 860 would expand TDI's regulatory authority to include parity protections for all fully insured plans, including both quantitative treatment limitations and non-quantitative treatment limitations. The bill also would designate a person within the Health and Human Services Commission (HHSC) to be an ombudsman for behavioral health access to care to address complaints regarding mental health parity; create a Mental Health and Substance Use Disorder stakeholder work group to develop a framework to implement and enforce mental health parity in Texas; and require TDI and HHSC to gather data regarding the denial rate of mental health and substance use disorder services compared to denials of medical and surgical services to better understand parity issues currently experienced by consumers.

As proposed, S.B. 860 amends current law relating to access to and benefits for mental health conditions and substance use disorders.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 2 (Section 1355.257, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 531, Government Code, by adding Sections 531.02251 and 531.02252, as follows:

Sec. 531.02251. OMBUDSMAN FOR BEHAVIORAL HEALTH ACCESS TO CARE. (a) Defines "ombudsman."

(b) Requires the executive commissioner of the Health and Human Services Commission (HHSC) to designate an ombudsman for behavioral health access to care.

(c) Provides that the ombudsman is administratively attached to the Office of the Ombudsman for HHSC.

(d) Provides that the ombudsman serves as a neutral party to help consumers, including consumers who are uninsured or have public or private health benefit coverage, and behavioral health care providers navigate and resolve issues related to consumer access to behavioral health care, including care for mental health conditions and substance use disorders.

(e) Requires the ombudsman to:

(1) interact with consumers and behavioral health care providers with concerns or complaints to help the consumers and providers resolve behavioral health care access issues;

(2) identify, track, and help report potential violations of state or federal rules, regulations, or statutes concerning the availability of, and terms and conditions of, benefits for mental health conditions or substance use disorders, including potential violations related to nonquantitative treatment limitations;

(3) report concerns, complaints, and potential violations described by Subdivision (2) to the appropriate regulatory or oversight agency;

(3) provide appropriate referrals to help consumers obtain behavioral health care;

(4) develop appropriate points of contact for referrals to other state and federal agencies; and

(5) provide appropriate referrals and information to help consumers or providers file appeals or complaints with the appropriate entities, including insurers and other state and federal agencies.

(f) Requires the ombudsman to participate on the mental health condition and substance use disorder parity work group established under Section 531.02252, and provide summary reports of concerns, complaints, and potential violations described by Subsection (e)(2) to the work group. Provides that this subsection expires September 1, 2021.

(g) Requires the Texas Department of Insurance (TDI) to appoint a liaison to the ombudsman to receive reports of concerns, complaints, and potential violations described by Subsection (e)(2) from the ombudsman, consumers, or behavioral health care providers.

Sec. 531.02252. MENTAL HEALTH CONDITION AND SUBSTANCE USE DISORDER PARITY WORK GROUP. (a) Requires HHSC to establish and facilitate a mental health condition and substance use disorder parity work group (work group) at the Office of Mental Health Coordination to increase understanding of and compliance with state and federal rules, regulations, and statutes concerning the availability of, and terms and conditions of, benefits for mental health conditions and substance use disorders.

(b) Authorizes the work group to be a part of or a subcommittee of the Behavioral Health Advisory Committee.

(c) Sets forth the composition of the work group.

(d) Requires the work group to meet at least quarterly.

(e) Requires the work group to study and make recommendations on certain topics.

(f) Requires the work group to develop a strategic plan with metrics to serve as a roadmap to increase compliance with the rules, regulations, and statutes described by Subsection (a) in this state and to increase education and outreach relating to these laws.

(g) Requires the work group, not later than September 1 of each even-numbered year, to submit a report to the appropriate committees of the legislature and the

appropriate state agencies on the findings, recommendations, and strategic plan required by Subsections (e) and (f).

(h) Provides that the work group is abolished and this section expires September 1, 2021.

SECTION 2. Amends Chapter 1355, Insurance Code, by adding Subchapter F, as follows:

SUBCHAPTER F. COVERAGE FOR MENTAL HEALTH CONDITIONS AND SUBSTANCE USE DISORDERS

Sec. 1355.251. DEFINITIONS. Defines "financial requirement," "mental health benefit," "nonquantitative treatment limitation," "substance abuse disorder benefit," and "treatment limitation."

Sec. 1355.252. APPLICABILITY OF SUBCHAPTER. (a) Provides that this subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, an individual or group evidence of coverage, or a similar coverage document, that is offered by certain entities.

(b) Provides that, notwithstanding Section 1501.251 (Exception From Certain Mandated Benefit Requirements) or any other law, this subchapter applies to coverage under a small employer health benefit plan subject to Chapter 1501 (Health Insurance Portability and Availability Act).

(c) Provides that this subchapter applies to a standard health benefit plan issued under Chapter 1507 (Consumer Choice of Benefits Plans).

Sec. 1355.253. EXCEPTIONS. (a). Provides that this subchapter does not apply to certain insurance policies.

(b) Provides that to the extent that this section would otherwise require this state to make a payment under 42 U.S.C. Section 18031(d)(3)(B)(ii), a qualified health plan, as defined by 45 C.F.R. Section 155.20, is not required to provide a benefit under this subchapter that exceeds the specified essential health benefits required under 42 U.S.C. Section 18022(b).

Sec. 1355.254. REQUIRED COVERAGE FOR MENTAL HEALTH CONDITIONS AND SUBSTANCE USE DISORDERS. (a) Requires a health benefit plan to provide benefits for mental health conditions and substance use disorders under the same terms and conditions applicable to benefits for medical or surgical expenses.

(b) Prohibits coverage under Subsection (a) to impose treatment limitations or financial requirements on benefits for a mental health condition or substance use disorder that are generally more restrictive than treatment limitations or financial requirements imposed on coverage of benefits for medical or surgical expenses.

Sec. 1355.255. DEFINITIONS UNDER PLAN. (a) Requires a health benefit plan to define a condition to be a mental health condition or not a mental health condition in the manner consistent with generally recognized independent standards of medical practice.

(b) Requires a health benefit plan to define a condition to be a substance use disorder or not a substance use disorder in a manner consistent with generally recognized independent standards of medical practice.

Sec. 1355.256. COORDINATION WITH OTHER LAW; INTENT OF LEGISLATURE. Provides that this subchapter supplements Subchapters A (Group Health Benefit Plan Coverage for Serious Mental Illnesses and Other Disorders) and B (Alternative Mental

Health Treatment Benefits) of this chapter (Benefits for Certain Mental Disorders) and Chapter 1368 (Availability of Chemical Dependency Coverage) and TDI rules adopted under those statutes. Provides that it is the intent of the legislature that Subchapter A or B of this chapter or Chapter 1368 or TDI rules adopted under those statutes controls in any circumstance in which the other law requires a benefit that is not required by this subchapter or a more extensive benefit than is required by this subchapter.

Sec. 1355.257. RULES. Requires the commissioner of insurance to adopt rules necessary to implement this subchapter.

SECTION 3. (a) Requires TDI to conduct a study and prepare a report on benefits for medical or surgical expenses and for mental health conditions and substance use disorders.

(b) Requires TDI, in conducting the study, to collect and compare data from health benefit plan issuers subject to Subchapter F, Chapter 1355, Insurance Code, as added by this Act, on medical or surgical benefits and mental health condition or substance use disorder benefits that meets certain criteria.

(c) Requires TDI, not later than September 1, 2018, to report the results of the study and TDI's findings.

SECTION 4. (a) Requires HHSC to conduct a study and prepare a report on benefits for medical or surgical expenses and for mental health conditions and substance use disorders provided by Medicaid managed care organizations.

(b) Requires HHSC, in conducting the study, to collect and compare data from Medicaid managed care organizations on medical or surgical benefits and mental health condition or substance use disorder benefits.

(c) Requires HHSC, not later than September 1, 2018, to report the results of the study and HHSC's findings.

SECTION 5. Makes application of Subchapter F, Chapter 1355, Insurance Code, as added by this Act, prospective to January 1, 2018.

SECTION 6. Effective date: September 1, 2017.