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S.B. No. 861

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to coverage for serious mental illness, other disorders,  
3 and chemical dependency under certain health benefit plans.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Subchapter A, Chapter 1355,  
6 Insurance Code, is amended to read as follows:

7 SUBCHAPTER A. [~~GROUP~~] HEALTH BENEFIT PLAN COVERAGE FOR CERTAIN  
8 SERIOUS MENTAL ILLNESSES AND OTHER DISORDERS

9 SECTION 2. Section 1355.001, Insurance Code, is amended by  
10 amending Subdivision (1) and adding Subdivisions (5), (6), and (7)  
11 to read as follows:

12 (1) "Serious mental illness" means the following  
13 psychiatric illnesses as defined by the American Psychiatric  
14 Association in the Diagnostic and Statistical Manual of Mental  
15 Disorders (DSM), fifth edition, or a later edition adopted by the  
16 commissioner by rule:

17 (A) bipolar disorders (hypomanic, manic,  
18 depressive, and mixed);

19 (B) depression in childhood and adolescence;

20 (C) major depressive disorders (single episode  
21 or recurrent);

22 (D) obsessive-compulsive disorders;

23 (E) paranoid and other psychotic disorders;

24 (F) posttraumatic stress disorder;

1           (G) schizo-affective disorders (bipolar or  
2 depressive); and

3           (H) [~~(G)~~] schizophrenia.

4           (5) "Posttraumatic stress disorder" means a disorder  
5 that:

6           (A) meets the diagnostic criteria for  
7 posttraumatic stress disorder specified by the American  
8 Psychiatric Association in the Diagnostic and Statistical Manual of  
9 Mental Disorders, fifth edition, or a later edition adopted by the  
10 commissioner by rule; and

11           (B) results in an impairment of a person's  
12 functioning in the person's community, employment, family, school,  
13 or social group.

14           (6) "Eating disorder" means:

15           (A) any eating disorder described by the  
16 Diagnostic and Statistical Manual of Mental Disorders, fifth  
17 edition, or a later edition adopted by the commissioner by rule,  
18 including:

19                           (i) anorexia nervosa;

20                           (ii) bulimia nervosa;

21                           (iii) binge eating disorder;

22                           (iv) rumination disorder;

23                           (v) avoidant/restrictive food intake  
24 disorder; or

25                           (vi) any eating disorder not otherwise  
26 specified; or

27           (B) any eating disorder contained in a subsequent

1 edition of the Diagnostic and Statistical Manual of Mental  
2 Disorders published by the American Psychiatric Association and  
3 adopted by the commissioner by rule.

4 (7) "Serious emotional disturbance of a child" means  
5 an emotional or behavioral disorder or a neuropsychiatric condition  
6 that causes a person's functioning to be impaired in thought,  
7 perception, affect, or behavior and that:

8 (A) has been diagnosed, by a physician licensed  
9 to practice medicine in this state, a psychologist licensed to  
10 practice in this state, or a licensed professional counselor  
11 licensed to practice in this state, in a person who is at least 3  
12 years of age and younger than 17 years of age; and

13 (B) meets at least one of the following criteria:

14 (i) the disorder substantially impairs the  
15 person's ability in at least two of the following activities or  
16 tasks:

- 17 (a) self-care;  
18 (b) engaging in family relationships;  
19 (c) functioning in school; or  
20 (d) functioning in the community;

21 (ii) the disorder creates a risk that the  
22 person will be removed from the person's home and placed in a more  
23 restrictive environment, including in a facility or program  
24 operated by the Department of Family and Protective Services or an  
25 agency that is part of the juvenile justice system;

26 (iii) the disorder causes the person to:

- 27 (a) display psychotic features or

1 violent behavior; or

2 (b) pose a danger to the person's self

3 or others; or

4 (iv) the disorder results in the person  
5 meeting state special education eligibility requirements for  
6 serious emotional disturbance.

7 SECTION 3. Section 1355.002, Insurance Code, is amended by  
8 amending Subsection (a) and adding Subsections (c) and (d) to read  
9 as follows:

10 (a) This subchapter applies only to a [~~group~~] health benefit  
11 plan that provides benefits for medical or surgical expenses  
12 incurred as a result of a health condition, accident, or sickness,  
13 including:

14 (1) an individual, [~~a~~] group, blanket, or franchise  
15 insurance policy or [~~group~~] insurance agreement, a group hospital  
16 service contract, [~~or~~] an individual or group evidence of coverage,  
17 or a similar coverage document, that is offered by:

18 (A) an insurance company;

19 (B) a group hospital service corporation  
20 operating under Chapter 842;

21 (C) a fraternal benefit society operating under  
22 Chapter 885;

23 (D) a stipulated premium company operating under  
24 Chapter 884; [~~or~~]

25 (E) a health maintenance organization operating  
26 under Chapter 843; [~~and~~]

27 (F) a reciprocal exchange operating under

1 Chapter 942;

2 (G) a Lloyd's plan operating under Chapter 941;

3 (H) an approved nonprofit health corporation  
4 that holds a certificate of authority under Chapter 844; or

5 (I) a multiple employer welfare arrangement that  
6 holds a certificate of authority under Chapter 846; and

7 (2) to the extent permitted by the Employee Retirement  
8 Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a plan  
9 offered under:

10 (A) a multiple employer welfare arrangement as  
11 defined by Section 3 of that Act; or

12 (B) another analogous benefit arrangement.

13 (c) Notwithstanding Section 1501.251 or any other law, this  
14 subchapter applies to coverage under a small employer health  
15 benefit plan subject to Chapter 1501.

16 (d) This subchapter applies to a standard health benefit  
17 plan issued under Chapter 1507.

18 SECTION 4. The heading to Section 1355.003, Insurance Code,  
19 is amended to read as follows:

20 Sec. 1355.003. EXCEPTIONS [~~EXCEPTION~~].

21 SECTION 5. Section 1355.003, Insurance Code, is amended by  
22 amending Subsection (a) and adding Subsection (c) to read as  
23 follows:

24 (a) This subchapter does not apply to coverage under:

25 (1) [~~a blanket accident and health insurance policy,~~  
26 ~~as described by Chapter 1251,~~

27 [~~2~~] a short-term travel policy;

1           (2) [~~(3)~~] an accident-only policy;

2           (3) [~~(4)~~] a limited or specified-disease policy that  
3 does not provide benefits for mental health care or similar  
4 services;

5           (4) [~~(5)~~] except as provided by Subsection (b), a plan  
6 offered under Chapter 1551 or Chapter 1601;

7           (5) [~~(6)~~] a plan offered in accordance with Section  
8 1355.151; or

9           (6) [~~(7)~~] a Medicare supplement benefit plan, as  
10 defined by Section 1652.002.

11           (c) To the extent that this section would otherwise require  
12 this state to make a payment under 42 U.S.C. Section  
13 18031(d)(3)(B)(ii), a qualified health plan, as defined by 45  
14 C.F.R. Section 155.20, is not required to provide a benefit under  
15 this subchapter that exceeds the specified essential health  
16 benefits required under 42 U.S.C. Section 18022(b).

17           SECTION 6. Section 1355.004, Insurance Code, is amended to  
18 read as follows:

19           Sec. 1355.004. REQUIRED COVERAGE FOR SERIOUS EMOTIONAL  
20 DISTURBANCE OF A CHILD AND SERIOUS MENTAL ILLNESS. (a) A [~~group~~]  
21 health benefit plan:

22           (1) must provide coverage for serious emotional  
23 disturbance of a child diagnosed as described by Section 1355.001  
24 and coverage, based on medical necessity, for serious mental  
25 illness for not less than the following treatments [~~of serious~~  
26 ~~mental illness~~] in each calendar year:

27           (A) 45 days of inpatient treatment; and

1 (B) 60 visits for outpatient treatment,  
2 including group and individual outpatient treatment;

3 (2) may not include a lifetime limitation on the  
4 number of days of inpatient treatment or the number of visits for  
5 outpatient treatment covered under the plan; and

6 (3) must include the same amount limitations,  
7 deductibles, copayments, and coinsurance factors for serious  
8 emotional disturbance of a child and serious mental illness as the  
9 plan includes for physical illness.

10 (b) A [~~group~~] health benefit plan issuer:

11 (1) may not count an outpatient visit for medication  
12 management against the number of outpatient visits required to be  
13 covered under Subsection (a)(1)(B); and

14 (2) must provide coverage for an outpatient visit  
15 described by Subsection (a)(1)(B) under the same terms as the  
16 coverage the issuer provides for an outpatient visit for the  
17 treatment of physical illness.

18 SECTION 7. Section 1355.005, Insurance Code, is amended to  
19 read as follows:

20 Sec. 1355.005. MANAGED CARE PLAN AUTHORIZED. A [~~group~~]  
21 health benefit plan issuer may provide or offer coverage required  
22 by Section 1355.004 through a managed care plan.

23 SECTION 8. Section 1355.006(b), Insurance Code, is amended  
24 to read as follows:

25 (b) This subchapter does not require a [~~group~~] health  
26 benefit plan to provide coverage for the treatment of:

27 (1) addiction to a controlled substance or marihuana

1 that is used in violation of law; or

2 (2) mental illness that results from the use of a  
3 controlled substance or marihuana in violation of law.

4 SECTION 9. Subchapter A, Chapter 1355, Insurance Code, is  
5 amended by adding Section 1355.008 to read as follows:

6 Sec. 1355.008. REQUIRED COVERAGE FOR EATING DISORDERS. (a)  
7 A health benefit plan must provide coverage, based on medical  
8 necessity, for the diagnosis and treatment of an eating disorder.

9 (b) Coverage required under Subsection (a) is limited to a  
10 service or medication, to the extent the service or medication is  
11 covered by the health benefit plan, ordered by a licensed  
12 physician, psychiatrist, psychologist, or therapist within the  
13 scope of the practitioner's license and in accordance with a  
14 treatment plan.

15 (c) On request from the health benefit plan issuer, an  
16 eating disorder treatment plan must include all elements necessary  
17 for the issuer to pay a claim under the health benefit plan, which  
18 may include a diagnosis, goals, and proposed treatment by type,  
19 frequency, and duration.

20 (d) Coverage required under Subsection (a) is not subject to  
21 a limit on the number of days of medically necessary treatment  
22 except as provided by the treatment plan.

23 (e) A health benefit plan issuer may conduct a utilization  
24 review of an eating disorder treatment plan not more than once each  
25 six months unless the physician, psychiatrist, psychologist, or  
26 therapist treating the enrollee under the treatment plan agrees  
27 that a more frequent review is necessary. An agreement to conduct



1 more frequent review under this subsection applies only to the  
2 enrollee who is the subject of the agreement.

3 (f) A health benefit plan issuer shall pay any costs of  
4 conducting a utilization review of coverage required under  
5 Subsection (a) or obtaining a treatment plan.

6 (g) In conducting a utilization review of treatment for an  
7 eating disorder, including review of medical necessity or the  
8 treatment plan, a utilization review agent shall consider:

9 (1) the overall medical and mental health needs of the  
10 individual with the eating disorder;

11 (2) factors in addition to weight; and

12 (3) the most recent Practice Guideline for the  
13 Treatment of Patients with Eating Disorders adopted by the American  
14 Psychiatric Association.

15 SECTION 10. Section 1355.054(a), Insurance Code, is amended  
16 to read as follows:

17 (a) Benefits of coverage provided under this subchapter may  
18 be used only in a situation in which:

19 (1) the covered individual has a serious mental  
20 illness or serious emotional disturbance of a child that requires  
21 confinement of the individual in a hospital unless treatment is  
22 available through a residential treatment center for children and  
23 adolescents or a crisis stabilization unit; and

24 (2) the covered individual's mental illness or  
25 emotional disturbance:

26 (A) substantially impairs the individual's  
27 thought, perception of reality, emotional process, or judgment; or

1 (B) as manifested by the individual's recent  
2 disturbed behavior, grossly impairs the individual's behavior.

3 SECTION 11. Section 1368.002, Insurance Code, is amended to  
4 read as follows:

5 Sec. 1368.002. APPLICABILITY OF CHAPTER. (a) This chapter  
6 applies only to a [~~group~~] health benefit plan that provides  
7 hospital and medical coverage or services on an expense incurred,  
8 service, or prepaid basis, including an individual, [a] group,  
9 blanket, or franchise insurance policy or insurance agreement, a  
10 group hospital service contract, an individual or group evidence of  
11 coverage, or a similar coverage document, or self-funded or  
12 self-insured plan or arrangement, that is offered in this state by:

13 (1) an insurer;

14 (2) a group hospital service corporation operating  
15 under Chapter 842;

16 (3) a health maintenance organization operating under  
17 Chapter 843; [~~or~~]

18 (4) an employer, trustee, or other self-funded or  
19 self-insured plan or arrangement;

20 (5) a fraternal benefit society operating under  
21 Chapter 885;

22 (6) a stipulated premium company operating under  
23 Chapter 884;

24 (7) a reciprocal exchange operating under Chapter 942;

25 (8) a Lloyd's plan operating under Chapter 941;

26 (9) an approved nonprofit health corporation that  
27 holds a certificate of authority under Chapter 844; or

1           (10) a multiple employer welfare arrangement that  
2 holds a certificate of authority under Chapter 846.

3           (b) Notwithstanding Section 1501.251 or any other law, this  
4 chapter applies to coverage under a small employer health benefit  
5 plan subject to Chapter 1501.

6           (c) This chapter applies to a standard health benefit plan  
7 issued under Chapter 1507.

8           SECTION 12. Section 1368.003, Insurance Code, is amended to  
9 read as follows:

10           Sec. 1368.003. EXCEPTIONS [~~EXCEPTION~~]. (a) This chapter  
11 does not apply to:

12           (1) an employer, trustee, or other self-funded or  
13 self-insured plan or arrangement with 250 or fewer employees or  
14 members;

15           (2) [~~an individual insurance policy;~~  
16 [~~(3) an individual evidence of coverage issued by a~~  
17 ~~health maintenance organization;~~

18           [~~(4)~~] a health insurance policy that provides only:

19           (A) cash indemnity for hospital or other  
20 confinement benefits;

21           (B) supplemental or limited benefit coverage;

22           (C) coverage for specified diseases or  
23 accidents;

24           (D) disability income coverage; or

25           (E) any combination of those benefits or  
26 coverages;

27           (3) [~~(5) a blanket insurance policy;~~

- 1           ~~[(6)]~~ a short-term travel insurance policy;
- 2           (4) ~~[(7)]~~ an accident-only insurance policy;
- 3           (5) ~~[(8)]~~ a limited or specified disease insurance
- 4 policy;
- 5           (6) ~~[(9)] an individual conversion insurance policy or~~
- 6 ~~contract;~~
- 7           ~~[(10)]~~ a policy or contract designed for issuance to a
- 8 person eligible for Medicare coverage or other similar coverage
- 9 under a state or federal government plan; or
- 10           (7) ~~[(11)]~~ an evidence of coverage provided by a
- 11 health maintenance organization if the plan holder is the subject
- 12 of a collective bargaining agreement that was in effect on January
- 13 1, 1982, and that has not expired since that date.

14           (b) To the extent that this section would otherwise require

15 this state to make a payment under 42 U.S.C. Section

16 18031(d)(3)(B)(ii), a qualified health plan, as defined by 45

17 C.F.R. Section 155.20, is not required to provide a benefit under

18 this chapter that exceeds the specified essential health benefits

19 required under 42 U.S.C. Section 18022(b).

20           SECTION 13. Section [1368.004](#), Insurance Code, is amended to

21 read as follows:

22           Sec. 1368.004. COVERAGE REQUIRED. (a) A ~~[group]~~ health

23 benefit plan shall provide coverage for the necessary care and

24 treatment of chemical dependency.

25           (b) Coverage required under this section may be provided:

26           (1) directly by the ~~[group]~~ health benefit plan

27 issuer; or

1           (2) by another entity, including a single service  
2 health maintenance organization, under contract with the [~~group~~]  
3 health benefit plan issuer.

4           SECTION 14. Section 1368.005(b), Insurance Code, is amended  
5 to read as follows:

6           (b) A [~~group~~] health benefit plan may set dollar or  
7 durational limits for coverage required under this chapter that are  
8 less favorable than for coverage provided for physical illness  
9 generally under the plan if those limits are sufficient to provide  
10 appropriate care and treatment under the guidelines and standards  
11 adopted under Section 1368.007. If guidelines and standards  
12 adopted under Section 1368.007 are not in effect, the dollar and  
13 durational limits may not be less favorable than for physical  
14 illness generally.

15           SECTION 15. Section 1355.007, Insurance Code, is repealed.

16           SECTION 16. The changes in law made by this Act apply only  
17 to a health benefit plan that is delivered, issued for delivery, or  
18 renewed on or after January 1, 2018. A health benefit plan that is  
19 delivered, issued for delivery, or renewed before January 1, 2018,  
20 is governed by the law as it existed immediately before the  
21 effective date of this Act, and that law is continued in effect for  
22 that purpose.

23           SECTION 17. This Act takes effect September 1, 2017.