Hall of the House of Representatives

87th General Assembly - Regular Session, 2009

Amendment Form

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Subtitle of House Bill No. 2195

"TO AMEND THE ARKANSAS MENTAL HEALTH PARITY ACT, § 23-99-501 ET SEQ. AND TO MAKE CERTAIN AMENDMENTS TO THE ACT CONSISTENT WITH FEDERAL LAW."

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Amendment No. 1 to House Bill No. 2195.

Amend House Bill No. 2195 as originally introduced:

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 23-99-501 is amended to read as follows:

23-99-501. Short title.

This subchapter shall be known and may be cited as the "Arkansas Mental Health Parity Act of 2009".

SECTION 2. Arkansas Code § 23-99-502 is amended to read as follows:

23-99-502. Legislative findings and intent.

It is the intent of this state that if a health benefit plan provides insurance coverage for a mental ~~illnesses~~ illness or substance abuse disorder, ~~and~~ the ~~mental health~~ treatment of ~~those with developmental disorders~~ the mental illness or substance abuse disorder shall be as available as and at parity with that for other medical illnesses.

SECTION 3. Arkansas Code § 23-99-503(4), concerning the definition of a "health benefit plan", is amended to read as follows:

(4) "Health benefit plan" means any group or blanket plan, policy, or contract for health care services issued or delivered in this state by health care insurers, including indemnity and managed care plans and the plans providing health benefits to state and public school employees pursuant to § 21-5-401 et seq., but excluding plans providing health care services ~~to state employees or~~ pursuant to Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

SECTION 4. Arkansas Code § 23-99-503(6), concerning the definition of "mental illnesses", is amended to read as follows:

(6)(A) "Mental illnesses" and ~~"developmental disorders"~~ "substance use disorders" mean those illnesses and disorders that are covered by a health benefit plan listed in the International Classification of

Diseases Manual and the Diagnostic and Statistical Manual of Mental Disorders.

(B) Unless specifically otherwise stated, "mental illness" includes substance use disorders;

SECTION 5. Arkansas Code § 23-99-504 is amended to read as follows:

23-99-504. Exclusions.

This subchapter ~~shall~~ does not apply to:

(1) Dental insurance plans;

(2) Vision insurance plans;

(3) Specified-disease insurance plans;

(4) Accidental injury insurance plans;

(5) Long-term care plans;

(6) Disability income plans;

(7) Individual health benefit plans~~, provided that~~ if the health care insurers ~~shall~~ offer ~~those~~ individuals who satisfy the health care insurer's underwriting standards the option of purchasing a plan that, other than being optional, meets the other requirements of this subchapter;

(8) Health benefit plans for small employers~~, provided that~~ if the health care insurers ~~shall~~ offer purchasers the option of purchasing a plan that, other than being optional, meets all the other requirements of this subchapter; and

(9) Medicare supplement plans, as subject to section 1882(g)(1) of the Social Security Act.

SECTION 6. Arkansas Code § 23-99-505 is amended to read as follows:

23-99-505. Increased cost exemption.

(a)(1) This subchapter ~~shall~~ does not apply ~~with respect~~ to a health benefit plan during the health benefit plan's following health benefit plan year if the application of this subchapter to the health benefit plan ~~will result~~ in a health benefit plan year resulted in an increase in the ~~cost under the plan of at least one and one half percent (1.5%)~~ actual costs of coverage with respect to medical and surgical benefits and mental illness benefits under the health benefit plan as determined and certified under subsection (b) of this section by an amount that exceeds:

(A) Two percent (2%) for the first health benefit plan year in which this section is applied; or

(B) One percent (1%) for each subsequent health benefit plan year.

(2) The exemption provided by subdivision (a)(1) of this section applies to a health benefit plan for one (1) year.

(3) A health care insurer may elect to continue to apply mental health parity under this subchapter to its health benefit plans regardless of any increase in its total costs of coverage.

(b)(1) A determination under this section of increases to the actual costs of coverage of a health benefit plan shall be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries.

(2) The determination shall be in a written report prepared by the actuary.

(3) The report and all underlying documentation relied upon by the actuary shall be maintained by the health care insurer for a period of

six (6) years following the notification required by subsection (d) of this section.

(c) To obtain an exemption under this section, a health care insurer shall make the increased cost determination required by this section after the health benefit plan has complied with this section for the first six (6) months of the health benefit plan year.

(d)(1) A health care insurer that elects to claim an exemption for a qualifying health benefit plan under this section based upon a certification under subsection (b) of this section shall promptly notify the Insurance Commissioner, the policyholder or contract holder, and the certificate holders, subscribers, and enrollees covered by the health benefit plan of its election.

(2) The notification to the commissioner under subdivision (d)(1) of this section shall include:

(A) A description of the number of covered lives under the health benefit plan at the time of the notification, and if applicable, at the time of any prior election of the increased cost exemption under this section; and

(B) For the current and previous health benefit plan year:

(i) A description of the actual total costs of coverage for medical and surgical benefits and mental illness benefits under the health benefit plan; and

(ii) The actual total costs of coverage with respect to mental illness benefits under the health benefit plan.

(3)(A) A notification under this subsection is confidential.

(B) The commissioner shall make available upon request but not more than annually an anonymous itemization of notifications under this section that includes a summary of the data received under subdivision (d)(2) of this section.

(e) To determine compliance with this section, the commissioner may audit the books and records of a health care insurer relating to an exemption, including without limitation any actuarial reports prepared pursuant to subsection (b) of this section during the six-year period following the notification required by subsection (d) of this section.

(f) The commissioner may promulgate rules to implement this section.

SECTION 7. Arkansas Code § 23-99-506 is amended to read as follows:

23-99-506. Parity requirements.

(a) Except as provided in § 23-99-504, ~~every~~ a health benefit plan ~~shall provide medical coverage for the diagnosis and mental health treatment of mental illnesses and the mental health treatment of those with developmental disorders .~~

~~(b) A health benefit plan shall provide~~ that provides benefits for the diagnosis and ~~mental health~~ treatment of mental illnesses ~~and developmental disorders~~ shall provide the benefits under the same terms and conditions as provided for covered benefits offered under the health benefit plan for the treatment of other medical illnesses and conditions,~~. There shall be no differences in the health benefit plan in regard to any of the following~~ including without limitation:

(1) The duration or frequency of coverage;

(2) The dollar amount of coverage; or

(3) Financial requirements.

~~(c)~~(b) ~~Nothing in this subchapter shall be construed~~ This subchapter does not:

(1) ~~As requiring~~ Require equal coverage between treatments for a mental illness ~~or a developmental disorder~~ with coverage for preventive care;

(2) ~~As prohibited~~ Prohibit a health care insurer from:

(A) Negotiating separate reimbursement rates and service delivery systems, including~~, but not limited to,~~ without limitation a carve-out arrangement;

(B) Managing the provision of mental health benefits for mental illnesses ~~and the mental health treatment of those with developmental disorders~~ by common methods used for other medical conditions, including~~, but not limited to,~~ without limitation preadmission screening, prior authorization of services, or other mechanisms designed to limit coverage of services or mental illnesses ~~and developmental disorders~~ to ~~those~~ mental illnesses that are deemed medically necessary;

(C) Limiting covered services to ~~those~~ covered services authorized by the health ~~insurance policy~~ benefit plan ~~provided that such~~ if the limitations are made in accordance with this subchapter;

(D) Using separate but equal cost-sharing features for mental illness; or

(E) Using a single lifetime or annual dollar limit as applicable to other medical illness; and

(3) ~~As including~~ Include a medicare or medicaid plan or contract or any privatized risk or demonstration program for medicare or medicaid coverage.

SECTION 8. Arkansas Code § 23-99-507 is amended to read as follows:

23-99-507. Medical necessity.

(a) ~~This subchapter shall not be construed as prohibiting a health benefit plan from excluding coverage for diagnosis and treatment of mental illnesses and developmental disorders when the diagnosis and treatment are medically unnecessary, provided that the medical necessity determination is made in accordance with generally accepted standards of the medical profession and other applicable laws and regulations.~~

~~(b) "Medical necessity" as applied to benefits for mental illnesses and developmental disorders means:~~

~~(1) Reasonable and necessary for the diagnosis or treatment pf a mental illness or to improve or to maintain or to preserve deterioration of functioning resulting from the illness or developmental disorder;~~

~~(2) Furnished in the most appropriate and least expensive setting in whivh the services can be safely provided;~~

~~(3) The most appropriate level or supply of services which can safely be provided; and~~

~~(4) Could not have been omitted without adversely affecting the individual's mental or physical health, or both, or the quality of care rendered.~~ The criteria for medical necessity determinations for mental illness made under a health benefit plan shall be made available by the health care insurer in accordance with rules established by the Insurance Commissioner to any current or potential covered individual or contracting provider upon request.

(b) On request, the reason for a denial of reimbursement or payment for services to diagnose or treat mental illness under a health benefit plan

shall be made available by the health care insurer to a covered individual in accordance with the rules of the commissioner.

SECTION 9. Arkansas Code § 23-99-508 is amended to read as follows:

23-99-508. Permitted provisions.

(a) A health care insurer may at the insurers's option provide coverage for a health service, such as intensive care management, community residential treatment programs, or social rehabilitation programs, ~~which~~ that is used in the treatment of mental illnesses ~~or developmental disorders,~~ but is generally not used for other injuries, illnesses, and conditions~~, as long as~~ if the other requirements of this subchapter are met.

(b) Health care insurers providing ~~chemical dependency treatment or~~ educational remediation may, but are not required to, comply with the terms of this subchapter in regard to the treatment or remediation.

(c) A health care insurer may provide coverage for a health service, including~~, but not limited to,~~ without limitation physical rehabilitation or durable medical equipment, which generally is not used in the diagnosis or treatment of serious mental illnesses~~,~~ but is used for other injuries, illnesses, and conditions~~, as long as~~ if the other requirements of this subchapter are met.

(d) A health care insurer may utilize common utilization management protocols, including without limitation preadmission screening, prior authorization of service, or other mechanisms designed to limit coverage of service for mental illness to individuals whose diagnosis or treatment coverage is considered medically necessary although the protocols are not used in conjunction with other medical illnesses or conditions covered by the health benefit plan.

SECTION 10. Arkansas Code § 23-99-509 is amended to read as follows:

23-99-509. Applicability.

(a) On or after ~~August 1, 1997~~ October 3, 2009, this subchapter shall apply to health benefit plans on the health benefit plans' anniversaries or start dates but in no event later than one (1) year after ~~August 1, 1997~~ October 3, 2009.

(b) If a health benefit plan provides coverage or benefits to an Arkansas resident, the health benefit plan shall be deemed to be delivered in this state within the meaning of this subchapter, regardless of whether the health care insurer or other entity that provides the coverage is located within or outside Arkansas.

SECTION 11. Arkansas Code Title 23, Chapter 99, is amended to add an additional section to read as follows:

23-99-512. Out-of-network providers.

In the case of a health benefit plan that provides both medical benefits and mental illness benefits, if the health benefit plan provides coverage for medical benefits provided by out-of-network providers, the health benefit plan shall provide coverage for mental illness benefits provided by out-of-network providers pursuant to this subchapter."

The Amendment was read _____

By: Representative Pennartz

DLP/LHA - 03-23-2009 11:11 **_____**

DLP340 **Chief Clerk**