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82nd General Assembly

A Bill

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SENATE BILL 329

By: Senators Bradford, Argue, Canada, Edwards, B. Lewellen, Mahony, Roebuck, K. Smith, B. Walker, Ross, Everett

By: Representatives B. Johnson, Angel, Broadway, Ferrell, Hathorn, Judy, Lendall, P. Malone, Pappas, Salmon, Vess, Wilkinson, Creekmore, Gullett, J. Jeffress, Laverty, T. Steele, Wilkins, W. Walker, Cook, Jacobs, White, Willis, Horn, Napper

For An Act To Be Entitled

"AN ACT TO ENACT NON-MANDATED CATASTROPHIC MENTAL
HEALTH PARITY ACT TO SUPERCEDE THE ARKANSAS MENTAL
HEALTH PARITY ACT UNTIL JULY 1, 2005. "

Subtitle

"AN ACT TO ENACT A NON-MANDATED
CATASTROPHIC MENTAL HEALTH PARITY ACT TO
SUPERCEDE THE ARKANSAS MENTAL HEALTH
PARITY ACT UNTIL JULY 1, 2005. "

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

SECTION 1. Legislative findings and intent.

It is the intent of this state that insurance plans that provide for
mental health expenses at least cover mental health expenses on a catastrophic
basis.

SECTION 2. Definitions.

As used in this act:

(1) "Carve-out arrangement" means an arrangement in which a health care
insurer contracts with a separate person or entity to arrange for the delivery
of specific types of health care benefits under a health benefit plan;

(2) "Commissioner" means the Insurance Commissioner of the State of

1 Arkansas:

2 (3) "Health benefit plan" means any group or blanket plan, policy or
3 contract for health care services issued or delivered in this state by health
4 care insurers, including indemnity and managed care plans, except for worker's
5 compensation coverage or self-funded or self-insured plans, unless the plan is
6 established or maintained for employees of a governmental entity;

7 (4) "Health care insurer" means any insurance company, hospital and
8 medical services corporation, or health maintenance organization issuing or
9 delivering health benefit plans in this state and subject to any the following
10 laws:

11 (A) The Arkansas Insurance Code, beginning at Arkansas Code § 23-
12 60-101;

13 (B) Title 23, Chapter 75, Subchapter 1 of the Arkansas Code
14 pertaining to hospital and medical service corporations;

15 (C) Title 23, Chapter 76, Subchapter 1 of the Arkansas Code
16 pertaining to health maintenance organizations; and

17 (D) Any successor law of the foregoing;

18 (5) "Mental Disorder" means serious emotional disturbance in children
19 and serious mental illness in adults as defined as follows, excluding
20 substance abuse:

21 (A) A child with a serious emotional disturbance is a person from
22 birth up to eighteen (18) years of age who has a diagnosable mental,
23 behavioral or emotional disorder of sufficient duration to meet diagnostic
24 criteria specified in the Diagnostic and Statistical Manual of Mental
25 Disorders published by the American Psychiatric Association that results in
26 functional impairment which substantially interferes with or limits the
27 child's role or functioning in family, school or community activities; and

28 (B) An adult with a serious mental illness is a person eighteen
29 (18) years of age or older who has a diagnosable mental, behavioral or
30 emotional disorder of sufficient duration to meet diagnostic criteria
31 specified in the Diagnostic and Statistical Manual Mental of Mental Disorders
32 published by the American Psychiatric Association that results in functional
33 impairment which substantially interferes with or limits one (1) or more of
34 the adult's major life activities;

35 (6) "Person" or "entity" means and includes, individually and
36 collectively, any individual, corporation, partnership, firm, trust,

association, voluntary organization, or any other form of business enterprise or legal entity; and

(7) "Rate, term, or condition" means any lifetime limits, annual payment limits, episodic limits, inpatient or outpatient service limits, and out-of-pocket limits. This definition does not include deductibles, copayments, or coinsurance prior to reaching any maximum, out-of-pocket limit. Any out-of-pocket limit under a plan shall be comprehensive for coverage of mental health and physical health conditions.

SECTION 3. Exclusions.

This act 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; and

(7) Medicare supplement plans, as subject to Section 1882(g)(1) of the federal Social Security Act [42 U.S.C. § 1395ss].

SECTION 4. (a) Nothing in this act shall be construed as requiring the coverage of mental health.

(b) If a health benefit plan does not offer mental health benefits, employees of the plan must be so notified in a form determined as reasonable by the commissioner.

(c) If any mental health benefits are provided by the health benefit plan, the coverage provided shall not establish any rate, term, or condition that places a greater financial burden on an insured for access to evaluation and treatment for mental disorder than for access to evaluation and treatment for a physical condition, generally.

(d) A health benefit plan shall be construed to be in compliance with this section if at least one (1) choice for treatment of mental disorders provided to the insured with the plan has rates, terms, and conditions that place no greater financial burden on the insured than for access to treatment of physical conditions, generally.

1 (e) The commissioner may disapprove any health benefit plan that the
2 commissioner determines to be inconsistent with the purposes of this act.

3 (f) Nothing in this act shall be construed:

4 (1) As requiring equal coverage between treatments for mental
5 disorders with coverage for preventive care;

6 (2) As prohibiting a health care insurer from:

7 (A) Negotiating separate reimbursement rates and service
8 delivery systems, including, but not limited to, a carve-out arrangement;

9 (B) Managing the provision of mental health benefits for
10 mental disorders by common methods used for other medical conditions,
11 including, but not limited to, preadmission screening, prior authorization of
12 services, or other mechanisms designed to limit coverage of services for
13 mental disorders to those that are deemed medically necessary;

14 (C) An insurer may use a case management program for mental
15 illness benefits to evaluate and determine medically necessary and clinically
16 appropriate care and treatment for each patient.

17 (D) Using a single lifetime or annual dollar limit as
18 applicable to other medical illness; or

19 (3) As including a Medicare or Medicaid plan or contract or any
20 privatized risk or demonstration program for Medicare or Medicaid coverage.

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22 SECTION 5. Medical necessity and other exceptions.

23 (a) This act shall not be construed as prohibiting a health benefit
24 plan from limiting or excluding coverage for diagnosis and treatment of mental
25 disorders for:

26 (1) Marital, family or educational services;

27 (2) Services rendered or billed by a school or halfway house or
28 member of its staff;

29 (3) Psychoanalysis or psychotherapy credited toward earning a
30 degree or in furtherance of education or training, regardless of any diagnosis
31 or symptoms that may be present; or

32 (4) Services and supplies that are not medically necessary,
33 provided that the medical necessity determination is made in accordance with
34 generally accepted standards of the medical profession and other applicable
35 laws and regulations.

36 (b) The term "medical necessity" as applied to benefits for mental

1 disorders means:

2 (1) Reasonable and necessary for the diagnosis or treatment of a
3 mental illness, or to improve, maintain, or prevent deterioration of
4 functioning resulting from such mental disorders;

5 (2) Furnished in the most appropriate and least restrictive
6 setting in which services can be safely provided;

7 (3) The most appropriate level or supply of service which can
8 safely be provided; and

9 (4) Could not have been omitted without adversely affecting the
10 individual's mental or physical health or both, or the quality of care
11 rendered.

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13 SECTION 6. Permitted provisions.

14 (a) A health care insurer may at the insurer's option provide coverage
15 for a health service, such as intensive case management, community residential
16 treatment programs, or social rehabilitation programs, which is used in the
17 treatment of mental disorders, but is generally not used for other injuries,
18 illnesses, and conditions, as long as the other requirements of this act are
19 met.

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

23 (c) A health care insurer may provide coverage for a health service,
24 including, but not limited to, physical rehabilitation or durable medical
25 equipment, which generally is not used in the diagnosis or treatment of
26 serious mental illnesses, but is used for other injuries, illnesses, and
27 conditions, as long as the other requirements of this act are met.

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29 SECTION 7. (a) The provisions of this act apply to applications for
30 coverage made on or after January 2, 2000 and to health benefit plans issued
31 or renewed on or after that date to residents of this state.

32 (b) The commissioner shall perform a study to assess the impact of this
33 act on insurers, business interests, providers, and consumers of mental
34 illness treatment services. The commissioner shall report the findings of
35 this study to the House and Senate Interim Committees on Public Health,
36 Welfare, and Labor before July 1, 2003.

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2 SECTION 8. Regulations.

3 The commissioner shall enforce this act and shall promulgate necessary
4 rules and regulations for carrying out this act.

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6 SECTION 9. Enforcement.

7 The commissioner shall have all the powers to enforce this act as are
8 granted to the commissioner elsewhere in the Arkansas Insurance Code,
9 beginning at Arkansas Code § 23-60-101.

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11 SECTION 10. (a) This act supersedes Title 23, Chapter 99, Subchapter 5
12 until July 1, 2005.

13 (b) This act shall expire and be of no effect as of July 1, 2005.

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15 SECTION 11. All provisions of this Act of a general and permanent
16 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
17 Code Revision Commission shall incorporate the same in the Code.

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19 SECTION 12. If any provision of this Act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the Act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 Act are declared to be severable.

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25 SECTION 13. All laws and parts of laws in conflict with this Act are
26 hereby repealed.

27 /s/ Bradford
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