LEGISLATIVE BILL 355

Approved by the Governor May 25, 1999

Introduced by Robak, 22; Bohlke, 33; Brashear, 4; Brown, 6; Byars, 30; Chambers, 11; Crosby, 29; Cudaback, 36; Dierks, 40; Hartnett, 45; Janssen, 15; Kiel, 9; Lynch, 13; Dw. Pedersen, 39; Preister, 5; Price, 26; Schimek, 27; Schmitt, 41; Suttle, 10; Thompson, 14

AN ACT relating to insurance; to amend section 44-4233, Reissue Revised Statutes of Nebraska; to state intent; to provide requirements for health insurance plans relating to coverage of mental health conditions and serious mental illness; to define terms; to provide duties and limitations; to change assessment provisions relating to the Comprehensive Health Insurance Pool; to provide a duty for the Revisor of Statutes; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature finds that mental health conditions affect a significant number of Nebraskans. Mental health conditions, like severe physical injuries or illness, can be life-altering and debilitating in nature. If properly treated and managed by mental health professionals, persons with mental health conditions can and do lead full and productive lives. However, without such treatment or management, many mental health conditions will progressively deteriorate and negatively impact upon a person's livelihood, social relationships, and physical health.

The Legislature also finds that many persons with mental health conditions either do not seek treatment or do not complete or maintain such treatment programs. Treatment options are not underutilized due to the scarcity of professional resources or the lack of desire on the part of persons with mental health conditions, but rather treatment has become unaffordable as the result of the rising health care costs combined with a lack of insurance coverage for mental health conditions. The associated societal and monetary costs of providing no treatment or untimely treatment to persons with mental health conditions are great. It is the intent of sections 1 to 5 of this act that persons with group health insurance plans providing coverage for mental health conditions be provided with a minimum level of coverage.

Sec. 2. For purposes of sections 1 to 5 of this act:

(1) Health insurance plan means (a) any group sickness and accident insurance policy, group health maintenance organization contract, or group subscriber contract delivered, issued for delivery, or renewed in this state and (b) any self-funded employee benefit plan to the extent not preempted by federal law. Health insurance plan includes any group policy, group contract, or group plan offered or administered by the state or its political subdivisions. Health insurance plan does not include group policies providing coverage for a specified disease, accident-only coverage, hospital indemnity coverage, disability income coverage, medicare supplement coverage, long-term care coverage, or other limited benefit coverage. Health insurance plan does not include any policy, contract, or plan covering an employer group that covers fewer than fifteen employees;

(2) Mental health condition means any condition or disorder involving mental illness that falls under any of the diagnostic categories listed in the Mental Disorders Section of the International Classification of Disease;

(3) Mental health professional means (a) a practicing physician licensed to practice medicine in this state under the provisions of section 71-102, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 71-1,206.14, or (c) a practicing mental health professional licensed or certified in this state as provided in section 71-1,333;

(4) Rate, term, or condition means lifetime limits, annual payment limits, and inpatient or outpatient service limits. Rate, term, or condition does not include any deductibles, copayments, or coinsurance; and

(5)(a) Serious mental illness means, prior to January 1, 2002, (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder; and

(b) Serious mental illness means, on and after January 1, 2002, any mental health condition that current medical science affirms is caused by a

biological disorder of the brain and that substantially limits the life activities of the person with the serious mental illness. Serious mental illness includes, but is not limited to (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder.

Sec. 3. (1) On or after January 1, 2000, notwithstanding section 44-3,131, any health insurance plan delivered, issued, or renewed in this state (a) if coverage is provided for treatment of mental health conditions other than alcohol or substance abuse, (i) shall not establish any rate, term, or condition that places a greater financial burden on an insured for access to treatment for a serious mental illness than for access to treatment for a physical health condition and (ii) if an out-of-pocket limit is established for physical health conditions, shall apply such out-of-pocket limit as a single comprehensive out-of-pocket limit for both physical health conditions and mental health conditions, or (b) if no coverage is to be provided for treatment of mental health conditions, shall provide clear and prominent notice of such noncoverage in the plan.

(2) If a health insurance plan provides coverage for serious mental illness, the health insurance plan shall cover health care rendered for treatment of serious mental illness (a) by a mental health professional, (b) by a person authorized by the rules and regulations of the Department of Health and Human Services Regulation and Licensure to provide treatment for mental illness, (c) in a mental health center as defined in section 71-2017.01, or (d) in any other licensed institution or facility authorized in section 71-2017.01 that provides a program for the treatment of a mental health condition pursuant to a written plan. The issuer of a health insurance plan may require a health care provider under this subsection to enter into a contract as a condition of providing benefits.

(3) The Director of Insurance may disapprove any plan that the director determines to be inconsistent with the purposes of this section.

Sec. 4. (1) Sections 1 to 5 of this act shall not be construed to:

(a) Require a health insurance plan to provide coverage for mental health conditions or serious mental illnesses;

(b) Require a health insurance plan to provide the same rates, terms, or conditions between treatments for serious mental illnesses and preventative care;

(c) Prohibit a health insurance plan from providing separate reimbursement rates and service delivery systems, including, but not limited to, mental health carve-out programs even if the plan does not provide similar options for the treatment of physical health conditions. A health insurance plan provided in compliance with section 3 of this act shall not be construed to violate the Managed Care Plan Network Adequacy Act; or

(d) Prohibit a health insurance plan from managing the provision of benefits through common methods, including, but not limited to, preadmission screening, prior authorization of services, or other mechanisms designed to limit coverage to services for mental health conditions that are deemed to be medically necessary and clinically appropriate.

(2) A health insurance plan does not violate section 3 of this act if the plan applies different rates, terms, and conditions or excludes entirely from coverage the following:

(a) Marital, family, educational, developmental, or training services;

(b) Care that is substantially custodial in nature;

(c) Services and supplies that are not medically necessary or clinically appropriate; or

(d) Experimental treatments.

(3) A health insurance plan may use a case management program or managed care organization to evaluate, determine, and provide or arrange for medically necessary and clinically appropriate care and treatment of each person with a mental health condition or serious mental illness who is covered by the plan.

(4) A health insurance plan shall not be required to offer coverage for nonemergency services rendered outside its network of contracted providers.

Sec. 5. The Director of Insurance may adopt and promulgate rules and regulations to carry out sections 1 to 5 of this act.

Sec. 6. Section 44-4233, Reissue Revised Statutes of Nebraska, is amended to read:

44-4233. (1) Any member subject to premium and related retaliatory tax liability imposed by section 44-150 or 77-908 may offset assessments paid to the pool by such member against its tax liability in the year of payment or subsequent years. For tax years commencing on or after January 1, 1992, the

member may offset such paid assessments against (a) subsequent premium tax prepayments imposed by section 77-918, (b) subsequent premium tax payments imposed by section 77-908, and (c) related retaliatory tax liability imposed by section 44-150. Prior to January 1, ~~2000~~ 2002, no individual member shall be subject to any liability of the pool in excess of its premium and related retaliatory tax liability which may be offset under this section.

(2) Commencing with assessments imposed or paid in 1991 and for all subsequent years prior to January 1, ~~2000~~ 2002, whenever it reasonably appears to the satisfaction of the board that a member has during a calendar year paid assessments that exceed that member's premium and related retaliatory tax liability for that calendar year, the board shall, upon request from such member, order the refund to that member of the amount of the assessment that exceeded that member's premium and related retaliatory tax liability. A member's request for a refund shall be filed with the board not later than thirty days after the due date of the member's premium tax return filed with the department. If the refund is not made by the board within thirty days after receipt of the refund request, the member may within thirty days thereafter initiate a suit in district court for the amount claimed. The suit shall be heard by the district court de novo. In the event that an assessment against a member is limited by reason of that member's premium and related retaliatory tax liability, the amount by which the assessment is limited may be assessed against the other members in a manner consistent with the basis for assessments specified in subsection (3) of section 44-4225.

Sec. 7. The Revisor of Statutes shall assign sections 1 to 5 of this act to Chapter 44, article 7.

Sec. 8. Original section 44-4233, Reissue Revised Statutes of Nebraska, is repealed.