

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 588

Introduced by Kruse, 13; Byars, 30; Combs, 32; Schrock, 38;
Stuhr, 24

Read first time January 21, 2003

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 44-791 to
2 44-795, Revised Statutes Supplement, 2002; to change
3 provisions relating to coverage for mental health
4 conditions; to provide a penalty; to provide duties for
5 the Director of Insurance; to harmonize provisions; to
6 provide an operative date; and to repeal the original
7 sections.

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

1 Section 1. Section 44-791, Revised Statutes Supplement,
2 2002, is amended to read:

3 44-791. The Legislature finds that mental health
4 conditions affect a significant number of Nebraskans. Mental
5 health conditions, like severe physical injuries or illness, can be
6 life-altering and debilitating in nature. If properly treated and
7 managed by mental health professionals, persons with mental health
8 conditions can and do lead full and productive lives. However,
9 without such treatment or management, many mental health conditions
10 will progressively deteriorate and negatively impact upon a
11 person's livelihood, social relationships, and physical health.

12 The Legislature also finds that many persons with mental
13 health conditions either do not seek treatment or do not complete
14 or maintain such treatment programs. Treatment options are not
15 underutilized due to the scarcity of professional resources or the
16 lack of desire on the part of persons with mental health
17 conditions, but rather treatment has become ~~unaffordable~~
18 inaccessible as the result of the rising health care costs combined
19 with a ~~lack~~ disparate level of insurance coverage for mental health
20 conditions. The associated societal and monetary costs of
21 providing no treatment or untimely treatment to persons with mental
22 health conditions are great. It is the intent of sections 44-791
23 to 44-795 and sections 5 and 6 of this act that persons with ~~group~~
24 health insurance plans ~~providing coverage for mental health~~
25 ~~conditions~~ be provided with a ~~minimum~~ nondiscriminatory level of
26 coverage.

27 Sec. 2. Section 44-792, Revised Statutes Supplement,
28 2002, is amended to read:

1 44-792. For purposes of sections 44-791 to 44-795 and
2 sections 5 and 6 of this act:

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

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

22 (3) Mental health professional means (a) a practicing
23 physician licensed to practice medicine in this state under the
24 provisions of section 71-102, (b) a practicing psychologist
25 licensed to engage in the practice of psychology in this state as
26 provided in section 71-1,206.14, ~~or~~ (c) a practicing mental health
27 professional licensed or certified in this state as provided in
28 section 71-1,333, or (d) a practicing advanced practice registered

1 nurse licensed to practice nursing in this state under the Advanced
 2 Practice Registered Nurse Act; and +

3 (4) Rate, term, or condition means lifetime limits,
 4 annual payment limits, and deductibles, copayment levels,
 5 coinsurance levels, inpatient or outpatient service limits,
 6 medication management, and other financial components or treatment
 7 limits of the insurance coverage. Rate, term, or condition does
 8 not include any deductibles, copayments, or coinsurance, and

9 ~~(5)(a) Serious mental illness means, prior to January 1,~~
 10 ~~2002, (i) schizophrenia, (ii) schizoaffective disorder, (iii)~~
 11 ~~delusional disorder, (iv) bipolar affective disorder, (v) major~~
 12 ~~depression, and (vi) obsessive compulsive disorder, and~~

13 ~~(b) Serious mental illness means, on and after January 1,~~
 14 ~~2002, any mental health condition that current medical science~~
 15 ~~affirms is caused by a biological disorder of the brain and that~~
 16 ~~substantially limits the life activities of the person with the~~
 17 ~~serious mental illness. Serious mental illness includes, but is~~
 18 ~~not limited to (i) schizophrenia, (ii) schizoaffective disorder,~~
 19 ~~(iii) delusional disorder, (iv) bipolar affective disorder, (v)~~
 20 ~~major depression, and (vi) obsessive compulsive disorder.~~

21 Sec. 3. Section 44-793, Revised Statutes Supplement,
 22 2002, is amended to read:

23 44-793. (1) On or after January 1, ~~2000~~ 2004,
 24 notwithstanding section 44-3,131, any health insurance plan
 25 delivered, issued, or renewed in this state (a) ~~if coverage is~~
 26 ~~provided for treatment of mental health conditions other than~~
 27 ~~alcohol or substance abuse, (i) shall not establish utilize any~~
 28 ~~rate, term, or condition that places a greater financial burden on~~

1 an insured for access to evaluation or treatment for a ~~serious~~
 2 ~~mental illness~~ mental health condition than for access to
 3 evaluation or treatment for a physical health condition and ~~(ii)~~
 4 (b) if an out-of-pocket limit is ~~established~~ utilized for physical
 5 health conditions, shall apply such out-of-pocket limit as a single
 6 comprehensive out-of-pocket limit for both physical health
 7 conditions and mental health conditions. No limit except an
 8 out-of-pocket limit shall be utilized for either physical health
 9 conditions or mental health conditions. ~~or (b) if no coverage is~~
 10 ~~to be provided for treatment of mental health conditions, shall~~
 11 ~~provide clear and prominent notice of such noncoverage in the plan.~~

12 (2) ~~If a health insurance plan provides coverage for~~
 13 ~~serious mental illness, the~~ Notwithstanding section 44-3,131, all
 14 health insurance plans shall include coverage for mental health
 15 conditions.

16 (3) A health insurance plan shall cover health care
 17 rendered for treatment of ~~serious mental illness~~ mental health
 18 conditions (a) by a mental health professional, (b) by a person
 19 authorized by the rules and regulations of the Department of Health
 20 and Human Services Regulation and Licensure to provide treatment
 21 for ~~mental illness~~ health conditions, (c) in a mental health center
 22 as defined in section 71-423, ~~or~~ (d) in any other health care
 23 facility licensed under the Health Care Facility Licensure Act that
 24 provides a program for the treatment of a mental health condition
 25 pursuant to a written plan, (e) by a practicing physician assistant
 26 licensed to perform medical services in this state as provided in
 27 section 71-1,107.19, or (f) by a practicing alcohol, drug abuse, or
 28 compulsive gambling counselor certified by the Department of Health

1 and Human Services. The issuer of a health insurance plan may
 2 require a health care provider under this subsection to enter into
 3 a contract as a condition of providing benefits.

4 (4) The coverage requirements described in subsections
 5 (1) through (3) of this section shall also apply to the spouse and
 6 the dependents of the insured if the insured's spouse and
 7 dependents are covered under such health insurance plan. Any such
 8 health insurance plan shall also provide benefits on a
 9 nondiscriminatory basis for children and adolescents for the
 10 diagnosis and treatment of mental, behavioral, or emotional
 11 disorders as described in the International Classification of
 12 Disease as periodically revised.

13 ~~(3)~~ (5) The Director of Insurance may disapprove any plan
 14 that the director determines to be inconsistent with the purposes
 15 of this section.

16 Sec. 4. Section 44-794, Revised Statutes Supplement,
 17 2002, is amended to read:

18 44-794. (1) Sections 44-791 to 44-795 and sections 5 and
 19 6 of this act shall not be construed to:

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

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

25 ~~(c) Prohibit a health insurance plan from providing~~
 26 ~~separate reimbursement rates and service delivery systems,~~
 27 ~~including, but not limited to, mental health carve-out programs~~
 28 ~~even if the plan does not provide similar options for the treatment~~

1 of physical health conditions. A health insurance plan provided in
 2 compliance with section 44-793 shall not be construed to violate
 3 the Managed Care Plan Network Adequacy Act; or

4 ~~(d)~~ (b) Prohibit a health insurance plan from managing
 5 the provision of benefits through common methods, including, but
 6 not limited to, preadmission screening, prior authorization of
 7 services, or other mechanisms designed to limit coverage to
 8 services for mental health conditions that are deemed to be
 9 medically necessary and clinically appropriate. When making the
 10 determination of whether the treatment is medically necessary and
 11 appropriate, the health insurance plan shall use the same criteria
 12 for medical treatment of mental health conditions as for physical
 13 health conditions under the health insurance plan.

14 (2) A health insurance plan does not violate section
 15 44-793 if the plan applies different rates, terms, and conditions
 16 or excludes entirely from coverage the following:

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

19 (b) Care that is substantially custodial in nature; or

20 (c) Services and supplies that are not medically
 21 necessary or clinically appropriate. ~~or~~

22 ~~(d) Experimental treatments.~~

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

28 ~~(4) A health insurance plan shall not be required to~~

1 ~~offer coverage for nonemergency services rendered outside its~~
2 ~~network of contracted providers.~~

3 Sec. 5. An issuer of any health insurance plan violating
4 sections 44-791 to 44-795 and sections 5 and 6 of this act shall be
5 subject to a fine of ten thousand dollars. The Director of
6 Insurance may, after notice and hearing, revoke the license of an
7 insurer for any willful violation of such sections.

8 Sec. 6. On January 1, 2005, and January 1 of each
9 subsequent year, the Director of Insurance shall submit a report to
10 the Legislature and the Governor regarding the state of mental and
11 physical health insurance coverage in the state. Such report shall
12 include:

13 (1) Any reported violations of sections 44-791 to 44-795
14 and sections 5 and 6 of this act, the nature of such violations,
15 and the status of resolution of such violations;

16 (2) Number, description, and resolution status of any
17 complaints brought to the Department of Insurance regarding
18 coverage of mental health conditions under such sections;

19 (3) Number, description, and status of appeals related to
20 coverage of mental health conditions;

21 (4) An estimate of the impact of the changes made by this
22 legislative bill on health insurance costs;

23 (5) Actions taken by the department to ensure that health
24 insurance plans are in compliance with sections 44-791 to 44-795
25 and sections 5 and 6 of this act and that quality of and access to
26 treatment for mental health conditions provided by the health
27 insurance plans are not compromised by providing financial parity
28 for such coverage; and

1 (6) Number and types of services covered by the five
2 major insurers offering health insurance coverage in Nebraska.

3 Sec. 7. Section 44-795, Revised Statutes Supplement,
4 2002, is amended to read:

5 44-795. The Director of Insurance may adopt and
6 promulgate rules and regulations to carry out sections 44-791 to
7 44-795 and sections 5 and 6 of this act.

8 Sec. 8. This act becomes operative on January 1, 2004.

9 Sec. 9. Original sections 44-791 to 44-795, Revised
10 Statutes Supplement, 2002, are repealed.