

22105029D

SENATE BILL NO. 434

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 24, 2022)

(Patron Prior to Substitute—Senator Barker)

A *BILL to amend and reenact § 38.2-3412.1 of the Code of Virginia, relating to health insurance; coverage for mental health and substance use disorders; report.*

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3412.1 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-3412.1. Coverage for mental health and substance use disorders.

A. As used in this section:

"Adult" means any person who is 19 years of age or older.

"Alcohol or drug rehabilitation facility" means a facility in which a state-approved program for the treatment of alcoholism or drug addiction is provided. The facility shall be either (i) licensed by the State Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or by the Department of Behavioral Health and Developmental Services pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 or (ii) a state agency or institution.

"Child or adolescent" means any person under the age of 19 years.

"Inpatient treatment" means mental health or substance abuse services delivered on a 24-hour per day basis in a hospital, alcohol or drug rehabilitation facility, an intermediate care facility or an inpatient unit of a mental health treatment center.

"Intermediate care facility" means a licensed, residential public or private facility that is not a hospital and that is operated primarily for the purpose of providing a continuous, structured 24-hour per day, state-approved program of inpatient substance abuse services.

"Medication management visit" means a visit no more than 20 minutes in length with a licensed physician or other licensed health care provider with prescriptive authority for the sole purpose of monitoring and adjusting medications prescribed for mental health or substance abuse treatment.

"Mental health services" or "mental health benefits" means benefits with respect to items or services for mental health conditions as defined under the terms of the health benefit plan. Any condition defined by the health benefit plan as being or as not being a mental health condition shall be defined to be consistent with generally recognized independent standards of current medical practice.

"Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written plan approved and monitored by a physician, clinical psychologist, or a psychologist licensed to practice in this Commonwealth. The facility shall be (i) licensed by the Commonwealth, (ii) funded or eligible for funding under federal or state law, or (iii) affiliated with a hospital under a contractual agreement with an established system for patient referral.

"Network adequacy" means access to services by measure of distance, time, and average length of referral to scheduled visit.

"Outpatient treatment" means mental health or substance abuse treatment services rendered to a person as an individual or part of a group while not confined as an inpatient. Such treatment shall not include services delivered through a partial hospitalization or intensive outpatient program as defined herein.

"Partial hospitalization" means a licensed or approved day or evening treatment program that includes the major diagnostic, medical, psychiatric and psychosocial rehabilitation treatment modalities designed for patients with mental, emotional, or nervous disorders, and alcohol or other drug dependence who require coordinated, intensive, comprehensive and multi-disciplinary treatment. Such a program shall provide treatment over a period of six or more continuous hours per day to individuals or groups of individuals who are not admitted as inpatients. Such term shall also include intensive outpatient programs for the treatment of alcohol or other drug dependence which provide treatment over a period of three or more continuous hours per day to individuals or groups of individuals who are not admitted as inpatients.

"Substance abuse services" or "substance use disorder benefits" means benefits with respect to items or services for substance use disorders as defined under the terms of the health benefit plan. Any disorder defined by the health benefit plan as being or as not being a substance use disorder shall be defined to be consistent with generally recognized independent standards of current medical practice.

"Treatment" means services including diagnostic evaluation, medical, psychiatric and psychological care, and psychotherapy for mental, emotional or nervous disorders or alcohol or other drug dependence rendered by a hospital, alcohol or drug rehabilitation facility, intermediate care facility, mental health

60 treatment center, a physician, psychologist, clinical psychologist, licensed clinical social worker, licensed
61 professional counselor, licensed substance abuse treatment practitioner, licensed marriage and family
62 therapist or clinical nurse specialist. Treatment for physiological or psychological dependence on alcohol
63 or other drugs shall also include the services of counseling and rehabilitation as well as services
64 rendered by a state certified alcoholism, drug, or substance abuse counselor or substance abuse
65 counseling assistant, limited to the scope of practice set forth in § 54.1-3507.1 or 54.1-3507.2,
66 respectively, employed by a facility or program licensed to provide such treatment.

67 B. Except as provided in subsections C and D, group and individual health insurance coverage, as
68 defined in § 38.2-3431, shall provide mental health and substance use disorder benefits. Such benefits
69 shall be in parity with the medical and surgical benefits contained in the coverage in accordance with
70 the *federal* Mental Health Parity and Addiction Equity Act of 2008 (*MHPAEA*), P.L. 110-343, even
71 where those requirements would not otherwise apply directly.

72 C. Any grandfathered plan as defined in § 38.2-3438 in the small group market shall either continue
73 to provide benefits in accordance with subsection B or continue to provide coverage for inpatient and
74 partial hospitalization mental health and substance abuse services as follows:

75 1. Treatment for an adult as an inpatient at a hospital, inpatient unit of a mental health treatment
76 center, alcohol or drug rehabilitation facility or intermediate care facility for a minimum period of 20
77 days per policy or contract year.

78 2. Treatment for a child or adolescent as an inpatient at a hospital, inpatient unit of a mental health
79 treatment center, alcohol or drug rehabilitation facility or intermediate care facility for a minimum period
80 of 25 days per policy or contract year.

81 3. Up to 10 days of the inpatient benefit set forth in subdivisions 1 and 2 of this subsection may be
82 converted when medically necessary at the option of the person or the parent, as defined in § 16.1-336,
83 of a child or adolescent receiving such treatment to a partial hospitalization benefit applying a formula
84 which shall be no less favorable than an exchange of 1.5 days of partial hospitalization coverage for
85 each inpatient day of coverage. An insurance policy or subscription contract described herein that
86 provides inpatient benefits in excess of 20 days per policy or contract year for adults or 25 days per
87 policy or contract year for a child or adolescent may provide for the conversion of such excess days on
88 the terms set forth in this subdivision.

89 4. The limits of the benefits set forth in this subsection shall not be more restrictive than for any
90 other illness, except that the benefits may be limited as set out in this subsection.

91 5. This subsection shall not apply to any excepted benefits policy as defined in § 38.2-3431, nor to
92 policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the
93 Social Security Act, known as Medicare, or any other similar coverage under state or federal
94 governmental plans.

95 D. Any grandfathered plan as defined in § 38.2-3438 in the small group market shall also either
96 continue to provide benefits in accordance with subsection B or continue to provide coverage for
97 outpatient mental health and substance abuse services as follows:

98 1. A minimum of 20 visits for outpatient treatment of an adult, child or adolescent shall be provided
99 in each policy or contract year.

100 2. The limits of the benefits set forth in this subsection shall be no more restrictive than the limits of
101 benefits applicable to physical illness; however, the coinsurance factor applicable to any outpatient visit
102 beyond the first five of such visits covered in any policy or contract year shall be at least 50 percent.

103 3. For the purpose of this section, medication management visits shall be covered in the same
104 manner as a medication management visit for the treatment of physical illness and shall not be counted
105 as an outpatient treatment visit in the calculation of the benefit set forth herein.

106 4. For the purpose of this subsection, if all covered expenses for a visit for outpatient mental health
107 or substance abuse treatment apply toward any deductible required by a policy or contract, such visit
108 shall not count toward the outpatient visit benefit maximum set forth in the policy or contract.

109 5. This subsection shall not apply to any excepted benefits policy as defined in § 38.2-3431, nor to
110 policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the
111 Social Security Act, known as Medicare, or any other similar coverage under state or federal
112 governmental plans.

113 E. The requirements of this section shall apply to all insurance policies and subscription contracts
114 delivered, issued for delivery, reissued, renewed, or extended, or at any time when any term of the
115 policy or contract is changed or any premium adjustment made.

116 F. The provisions of this section shall not apply in any instance in which the provisions of this
117 section are inconsistent or in conflict with a provision of Article 6 (§ 38.2-3438 et seq.) of Chapter 34.

118 G. The Bureau of Insurance (~~the Bureau~~), in consultation with health carriers providing coverage for
119 mental health and substance use disorder benefits pursuant to this section, shall develop reporting
120 requirements regarding denied claims, complaints, appeals, and network adequacy involving such
121 coverage set forth in this section. By ~~September~~ November 1 of each year, the Bureau shall (+) compile

122 the information for the preceding year into a report that ensures the confidentiality of individuals whose
123 information has been reported and is written in nontechnical, readily understandable language; ~~(ii)~~. *The*
124 *Bureau shall include in the report a summary of all comparative analyses prepared by health carriers*
125 *pursuant to 42 U.S.C. § 300gg-26(a)(8) that the Bureau requested during the reporting period. This*
126 *summary shall include the Bureau's explanation of whether the analyses were accepted as compliant,*
127 *rejected as noncompliant, or are in process of review. For analyses that were noncompliant, the report*
128 *shall include the corrective actions that the Bureau required the health carrier to take to come into*
129 *compliance. The Bureau shall make the report available to the public by, among such other means as*
130 *the Bureau finds appropriate, posting the reports on the Bureau's website; and ~~(iii)~~ submit the report to*
131 *the House Committee on Labor and Commerce and Energy and the Senate Committee on Commerce*
132 *and Labor.*