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SENATE BILL 52

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Timothy M. Keller and Elizabeth "Liz" Thomson

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH COVERAGE; ENACTING SECTIONS OF THE HEALTH CARE PURCHASING ACT, THE NEW MEXICO INSURANCE CODE, THE HEALTH MAINTENANCE ORGANIZATION LAW AND THE NONPROFIT HEALTH CARE PLAN LAW TO REQUIRE COVERAGE FOR SERVICES RELATED TO BRAIN INJURY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Health Care Purchasing Act is enacted to read:

"[NEW MATERIAL] BRAIN INJURY TREATMENT AND REHABILITATION.--

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall include coverage for:

(1) cognitive rehabilitation therapy and rehabilitation;

1 (2) neurocognitive therapy and rehabilitation;

2 (3) neurobehavioral, neurophysiological,
3 neuropsychological and psychophysiological testing and
4 treatment;

5 (4) neurofeedback therapy;

6 (5) remediation for treatment of a brain
7 injury; and

8 (6) post-acute transition services and
9 community reintegration services, including outpatient day
10 treatment services or other post-acute care treatment services
11 related to a brain injury.

12 B. Group health coverage, including any form of
13 self-insurance, offered, issued or renewed under the Health
14 Care Purchasing Act shall not set a lifetime limit on post-
15 acute care treatment related to a brain injury.

16 C. To ensure that appropriate post-acute care is
17 provided, group health coverage shall include coverage for
18 reasonable expenses related to periodic reevaluation of the
19 care of an individual covered under a group coverage plan who:

20 (1) has incurred a brain injury;

21 (2) has been unresponsive to treatment
22 provided at a time close to the acquisition of the brain
23 injury; or

24 (3) becomes responsive to treatment at a date
25 remote from the date of acquisition of the brain injury.

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1 D. A determination of whether expenses described in
2 Subsection C of this section are reasonable shall include
3 consideration of the following factors:

- 4 (1) cost;
- 5 (2) the time that has transpired since the
6 previous evaluation of necessity and reasonableness;
- 7 (3) any difference in the expertise of the
8 physician or practitioner performing the evaluation;
- 9 (4) changes in technology; and
- 10 (5) advances in medicine.

11 E. Coverage offered pursuant to this section shall
12 be subject to the payment limitations, deductibles, copayments
13 and coinsurance as other non-preventive benefits and services
14 covered pursuant to the Health Care Purchasing Act.

15 F. A group health plan shall not deny a claim for
16 services or treatment required pursuant to this section on the
17 sole basis that the treatment or services are provided at a
18 facility other than a hospital. A group health plan shall
19 provide coverage for the services described in Subsections A
20 and C of this section at a hospital, including an acute care or
21 rehabilitation hospital, or at an assisted living facility.

22 G. A group health plan shall provide annual notice
23 to each enrollee in writing about the availability of the
24 coverages required pursuant to this section. The notice issued
25 pursuant to this subsection shall include:

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1 (1) a description of the benefits listed in
2 Subsections A and C of this section; and

3 (2) a statement that a brain injury, which
4 does not result in hospitalization or receipt of a specific
5 treatment or service described in Subsection A or C of this
6 section for acute care treatment, does not affect the right of
7 an enrollee to receive benefits described in Subsections A and
8 C of this section commensurate with the condition of the
9 enrollee.

10 H. Each publicly funded health care agency shall
11 prepare information for enrollees regarding the coverages
12 required pursuant to this section. The publicly funded health
13 care agencies shall publish this information in a publicly
14 accessible manner on the web site of the risk management
15 division of the general services department.

16 I. The secretary of general services shall adopt
17 and promulgate rules as necessary for the implementation of
18 this section.

19 J. The provisions of this section shall not apply
20 to group health coverage intended to supplement major medical
21 group-type coverage, such as medicare supplement, long-term
22 care, disability income, specified disease, accident-only,
23 hospital indemnity or any other limited-benefit health
24 insurance policy.

25 K. As used in this section, "brain injury" means

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1 brain damage caused by events involving an internal or external
2 source at or after birth that may result in cognitive,
3 physical, emotional or behavioral impairments that lead to
4 permanent or temporary changes in functioning."

5 SECTION 2. A new section of Chapter 59A, Article 22
6 NMSA 1978 is enacted to read:

7 "[NEW MATERIAL] BRAIN INJURY TREATMENT AND
8 REHABILITATION.--

9 A. An individual or group health insurance policy,
10 health care plan or certificate of health insurance that is
11 delivered, issued for delivery or renewed in this state shall
12 include coverage for:

- 13 (1) cognitive rehabilitation therapy and
14 rehabilitation;
15 (2) neurocognitive therapy and rehabilitation;
16 (3) neurobehavioral, neurophysiological,
17 neuropsychological and psychophysiological testing and
18 treatment;
19 (4) neurofeedback therapy;
20 (5) remediation for treatment of a brain
21 injury; and
22 (6) post-acute transition services and
23 community reintegration services, including outpatient day
24 treatment services or other post-acute care treatment services
25 related to a brain injury.

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1 B. An individual or group health insurance policy,
2 health care plan or certificate of health insurance shall not
3 set a lifetime limit on post-acute care treatment related to a
4 brain injury.

5 C. To ensure that appropriate post-acute care is
6 provided, a health insurance policy, health care plan or
7 certificate of health insurance shall include coverage for
8 reasonable expenses related to periodic reevaluation of the
9 care of an individual covered under a health insurance policy,
10 health care plan or certificate of health insurance who:

11 (1) has incurred a brain injury;

12 (2) has been unresponsive to treatment
13 provided at a time close to the acquisition of the brain
14 injury; or

15 (3) becomes responsive to treatment at a date
16 remote from the date of acquisition of the brain injury.

17 D. A determination of whether expenses described in
18 Subsection C of this section are reasonable shall include
19 consideration of the following factors:

20 (1) cost;

21 (2) the time that has transpired since the
22 previous evaluation of necessity and reasonableness;

23 (3) any difference in the expertise of the
24 physician or practitioner performing the evaluation;

25 (4) changes in technology; and

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1 (5) advances in medicine.

2 E. Coverage offered pursuant to this section shall
3 be subject to the payment limitations, deductibles, copayments
4 and coinsurance as other non-preventive benefits and services
5 covered pursuant to Chapter 59A, Article 22 NMSA 1978.

6 F. A carrier shall not deny a claim for services or
7 treatment required pursuant to this section on the sole basis
8 that the treatment or services are provided at a facility other
9 than a hospital. A carrier shall provide coverage for the
10 services described in Subsections A and C of this section at a
11 hospital, including an acute care or rehabilitation hospital,
12 or at an assisted living facility.

13 G. A carrier shall provide annual notice to each
14 enrollee in writing about the availability of the coverages
15 required pursuant to this section. The notice issued pursuant
16 to this subsection shall include:

17 (1) a description of the benefits listed in
18 Subsections A and C of this section; and

19 (2) a statement that a brain injury, which
20 does not result in hospitalization or receipt of a specific
21 treatment or service described in Subsection A or C of this
22 section for acute care treatment, does not affect the right of
23 an insured or beneficiary to receive benefits described in
24 Subsections A and C of this section commensurate with the
25 condition of the insured or beneficiary.

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1 H. A carrier shall prepare information for insureds
2 and beneficiaries regarding the coverages required pursuant to
3 this section. The carrier shall publish this information in a
4 publicly accessible manner on the carrier's web site.

5 I. The superintendent shall adopt and promulgate
6 rules as necessary for the implementation of this section.

7 J. The provisions of this section shall not apply
8 to an individual policy, plan or contract intended to
9 supplement major medical group-type coverage, such as medicare
10 supplement, long-term care, disability income, specified
11 disease, accident-only, hospital indemnity or any other
12 limited-benefit health insurance policy.

13 K. As used in this section, "brain injury" means
14 brain damage caused by events involving an internal or external
15 source at or after birth that may result in cognitive,
16 physical, emotional or behavioral impairments that lead to
17 permanent or temporary changes in functioning."

18 **SECTION 3.** A new section of Chapter 59A, Article 23
19 NMSA 1978 is enacted to read:

20 "[NEW MATERIAL] BRAIN INJURY TREATMENT AND
21 REHABILITATION.--

22 A. A blanket or group health insurance policy that
23 is delivered, issued for delivery or renewed in this state
24 shall include coverage for:

25 (1) cognitive rehabilitation therapy and

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1 rehabilitation;

2 (2) neurocognitive therapy and rehabilitation;

3 (3) neurobehavioral, neurophysiological,
4 neuropsychological and psychophysiological testing and
5 treatment;

6 (4) neurofeedback therapy;

7 (5) remediation for treatment of a brain
8 injury; and

9 (6) post-acute transition services and
10 community reintegration services, including outpatient day
11 treatment services or other post-acute care treatment services
12 related to a brain injury.

13 B. A blanket or group health insurance policy shall
14 not set a lifetime limit on post-acute care treatment related
15 to a brain injury.

16 C. To ensure that appropriate post-acute care is
17 provided, a blanket or group health insurance policy shall
18 include coverage for reasonable expenses related to periodic
19 reevaluation of the care of an individual covered under a
20 blanket or group health insurance policy who:

21 (1) has incurred a brain injury;

22 (2) has been unresponsive to treatment
23 provided at a time close to the acquisition of the brain
24 injury; or

25 (3) becomes responsive to treatment at a date

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1 remote from the date of acquisition of the brain injury.

2 D. A determination of whether expenses described in
3 Subsection C of this section are reasonable shall include
4 consideration of the following factors:

5 (1) cost;

6 (2) the time that has transpired since the
7 previous evaluation of necessity and reasonableness;

8 (3) any difference in the expertise of the
9 physician or practitioner performing the evaluation;

10 (4) changes in technology; and

11 (5) advances in medicine.

12 E. Coverage offered pursuant to this section shall
13 be subject to the payment limitations, deductibles, copayments
14 and coinsurance as other non-preventive benefits and services
15 covered pursuant to Chapter 59A, Article 23 NMSA 1978.

16 F. A carrier shall not deny a claim for services or
17 treatment required pursuant to this section on the sole basis
18 that the treatment or services are provided at a facility other
19 than a hospital. A carrier shall provide coverage for the
20 services described in Subsections A and C of this section at a
21 hospital, including an acute care or rehabilitation hospital,
22 or at an assisted living facility.

23 G. A carrier shall provide annual notice to each
24 enrollee in writing about the availability of the coverages
25 required pursuant to this section. The notice issued pursuant

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1 to this subsection shall include:

2 (1) a description of the benefits listed in
3 Subsections A and C of this section; and

4 (2) a statement that a brain injury, which
5 does not result in hospitalization or receipt of a specific
6 treatment or service described in Subsection A or C of this
7 section for acute care treatment, does not affect the right of
8 an insured or beneficiary to receive benefits described in
9 Subsections A and C of this section commensurate with the
10 condition of the insured or beneficiary.

11 H. A carrier shall prepare information for insureds
12 and beneficiaries regarding the coverages required pursuant to
13 this section. The carrier shall publish this information in a
14 publicly accessible manner on the carrier's web site.

15 I. The superintendent shall adopt and promulgate
16 rules as necessary for the implementation of this section.

17 J. The provisions of this section shall not apply
18 to a group or blanket policy, plan or contract intended to
19 supplement major medical group-type coverage, such as medicare
20 supplement, long-term care, disability income, specified
21 disease, accident-only, hospital indemnity or any other
22 limited-benefit health insurance policy.

23 K. As used in this section, "brain injury" means
24 brain damage caused by events involving an internal or external
25 source at or after birth that may result in cognitive,

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1 physical, emotional or behavioral impairments that lead to
2 permanent or temporary changes in functioning."

3 SECTION 4. A new section of the Health Maintenance
4 Organization Law is enacted to read:

5 "[NEW MATERIAL] BRAIN INJURY TREATMENT AND
6 REHABILITATION.--

7 A. An individual or group health maintenance
8 organization contract that is delivered, issued for delivery or
9 renewed in this state shall include coverage for:

10 (1) cognitive rehabilitation therapy and
11 rehabilitation;

12 (2) neurocognitive therapy and rehabilitation;

13 (3) neurobehavioral, neurophysiological,
14 neuropsychological and psychophysiological testing and
15 treatment;

16 (4) neurofeedback therapy;

17 (5) remediation for treatment of a brain
18 injury; and

19 (6) post-acute transition services and
20 community reintegration services, including outpatient day
21 treatment services or other post-acute care treatment services
22 related to a brain injury.

23 B. A health maintenance organization contract shall
24 not set a lifetime limit on post-acute care treatment related
25 to a brain injury.

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1 C. To ensure that appropriate post-acute care is
2 provided, a health maintenance organization contract shall
3 include coverage for reasonable expenses related to periodic
4 reevaluation of the care of an individual covered under a
5 health maintenance organization contract who:

6 (1) has incurred a brain injury;

7 (2) has been unresponsive to treatment
8 provided at a time close to the acquisition of the brain
9 injury; or

10 (3) becomes responsive to treatment at a date
11 remote from the date of acquisition of the brain injury.

12 D. A determination of whether expenses described in
13 Subsection C of this section are reasonable shall include
14 consideration of the following factors:

15 (1) cost;

16 (2) the time that has transpired since the
17 previous evaluation of necessity and reasonableness;

18 (3) any difference in the expertise of the
19 physician or practitioner performing the evaluation;

20 (4) changes in technology; and

21 (5) advances in medicine.

22 E. Coverage offered pursuant to this section shall
23 be subject to the payment limitations, deductibles, copayments
24 and coinsurance as other non-preventive benefits and services
25 covered pursuant to the Health Maintenance Organization Law.

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1 F. A health maintenance organization shall not deny
2 a claim for services or treatment required pursuant to this
3 section on the sole basis that the treatment or services are
4 provided at a facility other than a hospital. A health
5 maintenance organization shall provide coverage for the
6 services described in Subsections A and C of this section at a
7 hospital, including an acute care or rehabilitation hospital,
8 or at an assisted living facility.

9 G. A health maintenance organization shall provide
10 annual notice to each subscriber in writing about the
11 availability of the coverages required pursuant to this
12 section. The notice issued pursuant to this subsection shall
13 include:

14 (1) a description of the benefits listed in
15 Subsections A and C of this section; and

16 (2) a statement that a brain injury, which
17 does not result in hospitalization or receipt of a specific
18 treatment or service described in Subsection A or C of this
19 section for acute care treatment, does not affect the right of
20 a subscriber to receive benefits described in Subsections A and
21 C of this section commensurate with the condition of the
22 subscriber.

23 H. A health maintenance organization shall prepare
24 information for subscribers regarding the coverages required
25 pursuant to this section. The health maintenance organization

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1 shall publish this information in a publicly accessible manner
2 on the health maintenance organization's web site.

3 I. The superintendent shall adopt and promulgate
4 rules as necessary for the implementation of this section.

5 J. The provisions of this section shall not apply
6 to an individual or group health maintenance organization
7 contract intended to supplement major medical group-type
8 coverage, such as medicare supplement, long-term care,
9 disability income, specified disease, accident-only, hospital
10 indemnity or any other limited-benefit health insurance policy.

11 K. As used in this section, "brain injury" means
12 brain damage caused by events involving an internal or external
13 source at or after birth that may result in cognitive,
14 physical, emotional or behavioral impairments that lead to
15 permanent or temporary changes in functioning."

16 SECTION 5. A new section of the Nonprofit Health Care
17 Plan Law is enacted to read:

18 "[NEW MATERIAL] BRAIN INJURY TREATMENT AND
19 REHABILITATION.--

20 A. An individual or group health care plan that is
21 delivered, issued for delivery or renewed in this state shall
22 include coverage for:

- 23 (1) cognitive rehabilitation therapy and
24 rehabilitation;
- 25 (2) neurocognitive therapy and rehabilitation;

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1 (3) neurobehavioral, neurophysiological,
2 neuropsychological and psychophysiological testing and
3 treatment;

4 (4) neurofeedback therapy;

5 (5) remediation for treatment of a brain
6 injury; and

7 (6) post-acute transition services and
8 community reintegration services, including outpatient day
9 treatment services or other post-acute care treatment services
10 related to a brain injury.

11 B. A health care plan shall not set a lifetime
12 limit on post-acute care treatment related to a brain injury.

13 C. To ensure that appropriate post-acute care is
14 provided, a health care plan shall include coverage for
15 reasonable expenses related to periodic reevaluation of the
16 care of an individual covered under a health care plan who:

17 (1) has incurred a brain injury;

18 (2) has been unresponsive to treatment
19 provided at a time close to the acquisition of the brain
20 injury; or

21 (3) becomes responsive to treatment at a date
22 remote from the date of acquisition of the brain injury.

23 D. A determination of whether expenses described in
24 Subsection C of this section are reasonable shall include
25 consideration of the following factors:

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- 1 (1) cost;
- 2 (2) the time that has transpired since the
- 3 previous evaluation of necessity and reasonableness;
- 4 (3) any difference in the expertise of the
- 5 physician or practitioner performing the evaluation;
- 6 (4) changes in technology; and
- 7 (5) advances in medicine.

8 E. Coverage offered pursuant to this section shall

9 be subject to the payment limitations, deductibles, copayments

10 and coinsurance as other non-preventive benefits and services

11 covered pursuant to the Nonprofit Health Care Plan Law.

12 F. A health care plan shall not deny a claim for

13 services or treatment required pursuant to this section on the

14 sole basis that the treatment or services are provided at a

15 facility other than a hospital. A health care plan shall

16 provide coverage for the services described in Subsections A

17 and C of this section at a hospital, including an acute care or

18 rehabilitation hospital, or at an assisted living facility.

19 G. A health care plan shall provide annual notice

20 to each subscriber in writing about the availability of the

21 coverages required pursuant to this section. The notice issued

22 pursuant to this subsection shall include:

- 23 (1) a description of the benefits listed in
- 24 Subsections A and C of this section; and
- 25 (2) a statement that a brain injury, which

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1 does not result in hospitalization or receipt of a specific
2 treatment or service described in Subsection A or C of this
3 section for acute care treatment, does not affect the right of
4 a subscriber to receive benefits described in Subsections A and
5 C of this section commensurate with the condition of the
6 subscriber.

7 H. A health care plan shall prepare information for
8 subscribers regarding the coverages required pursuant to this
9 section. The health care plan shall publish this information
10 in a publicly accessible manner on the health care plan's web
11 site.

12 I. The superintendent shall adopt and promulgate
13 rules as necessary for the implementation of this section.

14 J. The provisions of this section shall not apply
15 to an individual or group health care plan intended to
16 supplement major medical group-type coverage, such as medicare
17 supplement, long-term care, disability income, specified
18 disease, accident-only, hospital indemnity or any other
19 limited-benefit health insurance policy.

20 K. As used in this section, "brain injury" means
21 brain damage caused by events involving an internal or external
22 source at or after birth that may result in cognitive,
23 physical, emotional or behavioral impairments that lead to
24 permanent or temporary changes in functioning."

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