

CHAPTER 439

INSURANCE

HOUSE BILL 21-1068

BY REPRESENTATIVE(S) Michaelson Jenet and Titone, Weissman, Amabile, Bacon, Benavidez, Bennett, Bird, Bockenfeld, Boesenecker, Caraveo, Carver, Cutter, Duran, Esgar, Exum, Froelich, Gonzales-Gutierrez, Gray, Herod, Hooton, Jackson, Jodeh, Kennedy, Kipp, Lontine, McCluskie, McCormick, McLachlan, Mullica, Ortiz, Ricks, Roberts, Sirota, Snyder, Sullivan, Valdez A., Woodrow, Young, Garnett;
also SENATOR(S) Moreno and Smallwood, Bridges, Buckner, Cooke, Coram, Danielson, Donovan, Fenberg, Gardner, Ginal, Gonzales, Hansen, Hisey, Jaquez Lewis, Kirkmeyer, Kolker, Lee, Liston, Pettersen, Priola, Rankin, Scott, Simpson, Sonnenberg, Story, Winter, Woodward, Zenzinger, Garcia.

AN ACT

CONCERNING HEALTH INSURANCE COVERAGE FOR AN ANNUAL MENTAL HEALTH WELLNESS EXAMINATION PERFORMED BY A QUALIFIED MENTAL HEALTH CARE PROVIDER, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Prevention and early identification of mental health issues can lead to better outcomes for families and all people throughout their lives;

(b) Mental health conditions that occur in youth before the age of six can interfere with emotional, cognitive, and physical development;

(c) The number of aging adults who have a mental health condition is expected to double to fifteen million in the next two decades, leading to increased health care use and higher health care costs;

(d) With an increase in suicide and the number of overdose deaths on the rise, it is imperative for Colorado to increase access to preventive annual mental health wellness examinations;

(e) Annual mental health wellness examinations help identify potential mental

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

health issues early on and allow individuals to be offered services and supports to address their needs before an issue progresses or becomes a crisis;

(f) Primary care providers are important in early detection of mental health issues but often lack the ability to provide adequate education, consultation, and treatment options to clients in need of further mental health support; and

(g) Therefore, it is imperative that our health care system works to integrate and collocate mental health services in primary care settings and opens access to annual mental health wellness examinations for all Coloradans, starting at the prenatal phase through the end of life.

SECTION 2. In Colorado Revised Statutes, 10-16-104, **amend** (18)(a)(I) introductory portion; and **add** (18)(b.7), (18)(c)(III.7), and (18)(c)(III.9) as follows:

10-16-104. Mandatory coverage provisions - definitions - rules.
(18) Preventive health care services. (a) (I) The following policies and contracts that are ~~delivered~~, issued OR renewed ~~or reinstated on or after January 1, 2010~~, IN THIS STATE must provide coverage for the total cost of the preventive health care services specified in ~~paragraph (b) of this subsection (18)~~ SUBSECTIONS (18)(b) AND (18)(b.7) OF THIS SECTION:

(b.7) (I) FOR LARGE EMPLOYER POLICIES AND CONTRACTS ISSUED OR RENEWED ON OR AFTER JANUARY 1, 2022, AND FOR INDIVIDUAL AND SMALL GROUP POLICIES AND CONTRACTS ISSUED OR RENEWED ON OR AFTER JANUARY 1, 2023, THE COVERAGE REQUIRED BY THIS SUBSECTION (18) MUST INCLUDE AN ANNUAL MENTAL HEALTH WELLNESS EXAMINATION OF UP TO SIXTY MINUTES THAT IS PERFORMED BY A QUALIFIED MENTAL HEALTH CARE PROVIDER. THE COVERAGE FOR AN ANNUAL MENTAL HEALTH WELLNESS EXAMINATION MUST BE NO LESS EXTENSIVE THAN THE COVERAGE PROVIDED FOR A PHYSICAL EXAMINATION AND MUST COMPLY WITH THE REQUIREMENTS OF THE MHPAEA.

(II) THE DIVISION SHALL CONDUCT AN ACTUARIAL STUDY TO DETERMINE THE EFFECT, IF ANY, THE COVERAGE REQUIRED BY THIS SUBSECTION (18)(b.7) HAS ON PREMIUMS.

(III) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (18)(b.7), THE DIVISION SHALL SUBMIT TO THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES:

(A) ITS DETERMINATION AS TO WHETHER THE COVERAGE SPECIFIED IN THIS SUBSECTION (18)(b.7) IS IN ADDITION TO ESSENTIAL HEALTH BENEFITS AND WOULD BE SUBJECT TO DEFAYAL BY THE STATE PURSUANT TO 42 U.S.C. SEC. 18031 (d)(3)(B); AND

(B) A REQUEST THAT THE FEDERAL DEPARTMENT CONFIRM THE DIVISION'S DETERMINATION WITHIN SIXTY DAYS AFTER RECEIPT OF THE DIVISION'S REQUEST AND SUBMISSION OF ITS DETERMINATION.

(IV) THIS SUBSECTION (18)(b.7) APPLIES TO LARGE EMPLOYER POLICIES OR CONTRACTS ISSUED OR RENEWED ON OR AFTER JANUARY 1, 2022, AND TO

INDIVIDUAL AND SMALL GROUP POLICIES AND CONTRACTS ISSUED ON OR AFTER JANUARY 1, 2023, AND THE DIVISION SHALL IMPLEMENT THE REQUIREMENTS OF THIS SUBSECTION (18)(b.7), IF:

(A) THE DIVISION RECEIVES CONFIRMATION FROM THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES THAT THE COVERAGE SPECIFIED IN THIS SUBSECTION (18)(b.7) DOES NOT CONSTITUTE AN ADDITIONAL BENEFIT THAT REQUIRES DEFRAID BY THE STATE PURSUANT TO 42 U.S.C. SEC. 18031 (d)(3)(B);

(B) THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS INFORMED THE DIVISION THAT THE COVERAGE DOES NOT REQUIRE STATE DEFRAID; OR

(C) MORE THAN THREE HUNDRED SIXTY-FIVE DAYS HAVE PASSED SINCE THE DIVISION SUBMITTED ITS DETERMINATION AND REQUEST FOR CONFIRMATION THAT THE COVERAGE SPECIFIED IN THIS SUBSECTION (18)(b.7) IS NOT AN ADDITIONAL BENEFIT THAT REQUIRES STATE DEFRAID PURSUANT TO 42 U.S.C. SEC. 18031 (d)(3)(B), AND THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS FAILED TO RESPOND TO THE REQUEST WITHIN THAT PERIOD, IN WHICH CASE THE DIVISION SHALL CONSIDER THE FEDERAL DEPARTMENT'S UNREASONABLE DELAY A PRECLUSION FROM REQUIRING DEFRAID BY THE STATE.

(c) For purposes of this subsection (18):

(III.7) "MENTAL HEALTH WELLNESS EXAMINATION" MEANS AN EXAMINATION THAT SEEKS TO IDENTIFY ANY BEHAVIORAL OR MENTAL HEALTH NEEDS AND APPROPRIATE RESOURCES FOR TREATMENT. THE EXAMINATION MAY INCLUDE:

(A) OBSERVATION; A BEHAVIORAL HEALTH SCREENING; EDUCATION AND CONSULTATION ON HEALTHY LIFESTYLE CHANGES; REFERRALS TO ONGOING TREATMENT, MENTAL HEALTH SERVICES, AND OTHER NECESSARY SUPPORTS; AND DISCUSSION OF POTENTIAL OPTIONS FOR MEDICATION; AND

(B) AGE-APPROPRIATE SCREENINGS OR OBSERVATIONS TO UNDERSTAND A COVERED PERSON'S MENTAL HEALTH HISTORY, PERSONAL HISTORY, AND MENTAL OR COGNITIVE STATE AND, WHEN APPROPRIATE, RELEVANT ADULT INPUT THROUGH SCREENINGS, INTERVIEWS, AND QUESTIONS.

(III.9) "QUALIFIED MENTAL HEALTH CARE PROVIDER" MEANS:

(A) A PHYSICIAN LICENSED TO PRACTICE MEDICINE PURSUANT TO ARTICLE 240 OF TITLE 12 WHO HAS SPECIFIC BOARD CERTIFICATION OR TRAINING IN PSYCHIATRY OR OTHER MENTAL OR BEHAVIORAL HEALTH CARE AREAS;

(B) A PHYSICIAN ASSISTANT LICENSED PURSUANT TO ARTICLE 240 OF TITLE 12 WHO HAS TRAINING IN PSYCHIATRY OR MENTAL HEALTH;

(C) A PSYCHOLOGIST LICENSED PURSUANT TO PART 3 OF ARTICLE 245 OF TITLE 12;

(D) A CLINICAL SOCIAL WORKER LICENSED PURSUANT TO PART 4 OF ARTICLE 245 OF TITLE 12;

(E) A MARRIAGE AND FAMILY THERAPIST LICENSED PURSUANT TO PART 5 OF ARTICLE 245 OF TITLE 12;

(F) A PROFESSIONAL COUNSELOR LICENSED PURSUANT TO PART 6 OF ARTICLE 245 OF TITLE 12;

(G) AN ADDICTION COUNSELOR LICENSED PURSUANT TO PART 8 OF ARTICLE 245 OF TITLE 12; OR

(H) AN ADVANCED PRACTICE REGISTERED NURSE, AS DEFINED IN SECTION 12-255-104 (1), WITH SPECIFIC TRAINING IN PSYCHIATRIC NURSING.

SECTION 3. In Colorado Revised Statutes, 10-16-102, **add** (40.5) as follows:

10-16-102. Definitions. As used in this article 16, unless the context otherwise requires:

(40.5) (a) "LARGE EMPLOYER" MEANS ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, OR ASSOCIATION THAT:

(I) IS ACTIVELY ENGAGED IN BUSINESS;

(II) EMPLOYED AN AVERAGE OF MORE THAN ONE HUNDRED ELIGIBLE EMPLOYEES ON BUSINESS DAYS DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR, EXCEPT AS PROVIDED IN SUBSECTION (40.5)(c) OF THIS SECTION; AND

(III) WAS NOT FORMED PRIMARILY FOR THE PURPOSE OF PURCHASING INSURANCE.

(b) FOR PURPOSES OF DETERMINING WHETHER AN EMPLOYER IS A "LARGE EMPLOYER", THE NUMBER OF ELIGIBLE EMPLOYEES IS CALCULATED USING THE METHOD SET FORTH IN 26 U.S.C. SEC. 4980H (c)(2)(E).

(c) IN THE CASE OF AN EMPLOYER THAT WAS NOT IN EXISTENCE THROUGHOUT THE PRECEDING CALENDAR QUARTER, THE DETERMINATION OF WHETHER THE EMPLOYER IS A LARGE EMPLOYER IS BASED ON THE AVERAGE NUMBER OF EMPLOYEES THAT THE EMPLOYER IS REASONABLY EXPECTED TO EMPLOY ON BUSINESS DAYS IN THE CURRENT CALENDAR YEAR.

(d) THE FOLLOWING EMPLOYERS ARE SINGLE EMPLOYERS FOR PURPOSES OF DETERMINING THE NUMBER OF EMPLOYEES:

(I) A PERSON OR ENTITY THAT IS A SINGLE EMPLOYER PURSUANT TO 26 U.S.C. SEC. 414 (b), (c), (m), OR (o); AND

(II) AN EMPLOYER AND ANY PREDECESSOR EMPLOYER.

SECTION 4. Appropriation. For the 2021-22 state fiscal year, \$26,353 is appropriated to the department of regulatory agencies for use by the division of insurance. This appropriation is from the division of insurance cash fund created in section 10-1-103 (3), C.R.S., and is based on an assumption that the division will require an additional 0.2 FTE. To implement this act, the division may use this

appropriation for personal services.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: July 6, 2021