

SENATE BILL No. 181

By Committee on Public Health and Welfare

2-3

9 AN ACT relating to insurance; concerning mental health parity; amend-
10 ing K.S.A. 2008 Supp. 40-2,105, 40-2,105a and 40-2258 and repealing
11 the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2008 Supp. 40-2,105 is hereby amended to read as
15 follows: 40-2,105. (a) On or after the effective date of this act, every
16 insurer which issues any individual or group policy of accident and sick-
17 ness insurance providing medical, surgical or hospital expense coverage
18 for other than specific diseases or accidents only and which provides for
19 reimbursement or indemnity for services rendered to a person covered
20 by such policy in a medical care facility, must provide for reimbursement
21 or indemnity under such individual policy or under such group policy,
22 except as provided in subsection (d), which shall be limited to not less
23 than 30 days per year when such person is confined for treatment of
24 alcoholism, drug abuse or nervous or mental conditions in a medical care
25 facility licensed under the provisions of K.S.A. 65-429, and amendments
26 thereto, a treatment facility for alcoholics licensed under the provisions
27 of K.S.A. 65-4014, and amendments thereto, a treatment facility for drug
28 abusers licensed under the provisions of K.S.A. 65-4605, and amend-
29 ments thereto, a community mental health center or clinic licensed under
30 the provisions of K.S.A. 75-3307b, and amendments thereto, or a psy-
31 chiatric hospital licensed under the provisions of K.S.A. 75-3307b, and
32 amendments thereto. Such individual policy or such group policy shall
33 also provide for reimbursement or indemnity, except as provided in sub-
34 section (d), of the costs of treatment of such person for alcoholism, drug
35 abuse and nervous or mental conditions, ~~limited to not less than 100% of~~
36 ~~the first \$100, 80% of the next \$100 and 50% of the next \$1,640 in any~~
37 ~~year and limited to not less than \$7,500 in such person's lifetime,~~ in the
38 facilities enumerated when confinement is not necessary for the treat-
39 ment or by a physician licensed or psychologist licensed to practice under
40 the laws of the state of Kansas.

41 (b) For the purposes of this section "nervous or mental conditions"
42 means disorders specified in the diagnostic and statistical manual of men-
43 tal disorders, fourth edition, ~~(DSM-IV, 1994)~~ of the American psychiatric

1 ~~association but shall not include conditions:~~

2 ~~— (1) Not attributable to a mental disorder that are a focus of attention~~
 3 ~~or treatment (DSM-IV, 1994), and~~

4 ~~— (2) defined as a mental illness in K.S.A. 2008 Supp. 40-2,105a and~~
 5 ~~amendments thereto text revision (DSM-IV-TR), of the American psy-~~
 6 ~~chiatric association, as published in May 2000.~~

7 (c) The provisions of this section shall be applicable to health main-
 8 tenance organizations organized under article 32 of chapter 40 of the
 9 Kansas Statutes Annotated.

10 (d) There shall be no coverage under the provisions of this section
 11 for any assessment against any person required by a diversion agreement
 12 or by order of a court to attend an alcohol and drug safety action program
 13 certified pursuant to K.S.A. 8-1008, and amendments thereto, or for eval-
 14 uations and diagnostic tests ordered or requested in connection with
 15 criminal actions, divorce, child custody or child visitation proceedings.

16 (e) The provisions of this section shall not apply to any medicare
 17 supplement policy of insurance, as defined by the commissioner of in-
 18 surance by rule and regulation.

19 (f) The provisions of this section shall be applicable to the Kansas
 20 state employees health care benefits program developed and provided by
 21 the Kansas state employees health care commission.

22 (g) The outpatient coverage provisions of this section shall not apply
 23 to a high deductible health plan as defined in federal law if such plan is
 24 purchased in connection with a medical or health savings account pur-
 25 suant to that federal law, regardless of the effective date of the insurance
 26 policy. After the amount of eligible deductible expenses have been paid
 27 by the insured, the outpatient costs of treatment of the insured for al-
 28 colism, drug abuse and nervous or mental conditions shall be paid on
 29 the same level they are provided for a medical condition, ~~subject to the~~
 30 ~~yearly and lifetime maximums provided in subsection (a).~~

31 (h) *The provisions of K.S.A. 40-2249a, and amendments thereto, shall*
 32 *not apply to this section.*

33 Sec. 2. K.S.A. 2008 Supp. 40-2,105a is hereby amended to read as
 34 follows: 40-2,105a. (a) ~~(1)~~ Any group health insurance policy, medical
 35 service plan, contract, hospital service corporation contract, hospital and
 36 medical service corporation contract, fraternal benefit society or health
 37 maintenance organization which provides coverage for mental health ben-
 38 efits and which is delivered, issued for delivery, amended or renewed on
 39 or after January 1, ~~2002~~ 2010, shall include coverage for diagnosis and
 40 treatment of mental illnesses. ~~Except as provided in paragraph (2),~~ Such
 41 coverage shall be subject to the same deductibles, *copayments*, coinsur-
 42 ance, *out-of-pocket expenses* and other limitations as apply to other cov-
 43 ered services.

1 ~~(2) The coverage required by paragraph (1) shall include annual cov-~~
2 ~~erage for both 45 days of in-patient care for mental illness and for 45~~
3 ~~visits for out-patient care for mental illness.~~

4 (1) *The plan shall ensure that the:*

5 (A) *Financial requirements applicable to coverage for mental health*
6 *benefits are no more restrictive than the financial requirements applied*
7 *to substantially all medical and surgical benefits covered by the plan,*
8 *including deductibles, copayments, coinsurance, out-of-pocket expenses*
9 *and annual and lifetime limits, except that the plan may not establish*
10 *separate cost sharing requirements that are applicable only with respect*
11 *to mental health benefits;*

12 (B) *treatment limitations applicable to such mental health benefits are*
13 *no more restrictive than the treatment limitations applied to substantially*
14 *all medical and surgical benefits covered by the plan, including limits on*
15 *the frequency of treatment, number of visits, days of coverage or other*
16 *similar limits on the scope or duration of treatment;*

17 (C) *treatment for maintenance therapy and support for any recurrent*
18 *nervous or mental condition shall be provided in the same manner as*
19 *maintenance therapy and support is provided for any recurrent physical*
20 *condition; and*

21 (D) *reimbursement for the full continuum of care for the treatment*
22 *of any nervous or mental condition maintenance shall be provided in the*
23 *same manner that full continuum of care for the treatment of any medical*
24 *illness is reimbursed.*

25 (2) (A) *Whenever the plan provides both medical and surgical ben-*
26 *efits and mental health benefits and provides such benefits on both an in-*
27 *network and out-of-network basis pursuant to the terms of the plan, such*
28 *plan shall ensure that the requirements of this section are applied to both*
29 *in-network and out-of-network services by comparing in-network medical*
30 *and surgical benefits to in-network mental health benefits and out-of-*
31 *network medical and surgical benefits to out-of-network mental health*
32 *benefits.*

33 (B) *Nothing in clause (A) shall be construed as requiring that the plan*
34 *eliminate an out-of-network provider option from such plan pursuant to*
35 *the terms thereof.*

36 (b) *Notwithstanding the provisions of K.S.A. 40-2249a, and amend-*
37 *ments thereto, the state insurance department shall deliver to the presi-*
38 *dent of the senate and to the speaker of the house of representatives on*
39 *or before January 1, 2003 2011, a report indicating the impact of providing*
40 *mental illness benefits required by this act. Such report shall include*
41 *information regarding access to and usage of such services and the cost*
42 *of such services.*

43 (c) *For the purposes of this section;*

- 1 (1) “Mental illness” means the following: Schizophrenia, schizoaffec-
2 tive disorder, schizophreniform disorder, brief reactive psychosis, para-
3 noid or delusional disorder, atypical psychosis, major affective disorders
4 (bipolar and major depression), cyclothymic and dysthymic disorders, ob-
5 sessive compulsive disorder, panic disorder, pervasive developmental dis-
6 order, including autism, attention deficit disorder and attention deficit
7 hyperactive *any* disorder as such terms are defined in the diagnostic and
8 statistical manual of mental disorders, fourth edition, (DSM-IV, 1994) of
9 the American psychiatric association but shall not include conditions not
10 attributable to a mental disorder that are a focus of attention or treatment.
11 *text revision (DSM-IV-TR) of the American psychiatric association, as*
12 *published in May 2000;*
- 13 (2) “full continuum of care” includes outpatient treatment, intensive
14 outpatient treatment, partial and day hospital treatment, residential treat-
15 ment and inpatient treatment for any individual or dependent covered by
16 the plan;
- 17 (3) “plan” means any group health insurance policy, medical service
18 plan, contract, hospital service corporation contract, hospital and medical
19 service corporation contract, fraternal benefit society or health mainte-
20 nance organization which provides coverage for mental health benefits.
- 21 (d) The provisions of this section shall be applicable to health main-
22 tenance organizations organized under article 32 of chapter 40 of the
23 Kansas Statutes Annotated.
- 24 (e) The provisions of this section shall not apply to any medicare
25 supplement policy of insurance, as defined by the commissioner of in-
26 surance by rule and regulation.
- 27 (f) The provisions of this section shall be applicable to the Kansas
28 state employees health care benefits program and municipal funded
29 pools.
- 30 (g) The provisions of this section shall not apply to any policy or cer-
31 tificate which provides coverage for any specified disease, specified ac-
32 cident or accident only coverage, credit, dental, disability income, hospital
33 indemnity, long-term care insurance as defined by K.S.A. 40-2227, and
34 amendments thereto, vision care or any other limited supplemental ben-
35 efit nor to any medicare supplement policy of insurance as defined by
36 the commissioner of insurance by rule and regulation, any coverage issued
37 as a supplement to liability insurance, workers compensation or similar
38 insurance, automobile medical-payment insurance or any insurance un-
39 der which benefits are payable with or without regard to fault, whether
40 written on a group, blanket or individual basis.
- 41 (h) From and after January 1, 2002, the provisions of K.S.A. 40-2,105,
42 and amendments thereto, shall not apply to mental illnesses as defined
43 in this act.

- 1 (i) There shall be no coverage under this section for evaluations and
2 diagnostic tests ordered or requested in connection with criminal actions,
3 divorce, child custody or child visitation proceedings.
- 4 Sec. 3. On and after November 1, 2009, K.S.A. 2008 Supp. 40-2258
5 is hereby amended to read as follows: 40-2258. (a) An accident and sick-
6 ness insurer which offers coverage through a group policy *or certificate*
7 *of coverage* providing hospital, medical or surgical expense benefits pur-
8 suant to K.S.A. 40-2209, and amendments thereto, which includes mental
9 health *or alcoholism, drug abuse or other substance use disorder* benefits
10 shall be subject to the following requirements:
- 11 (1) If the policy does not include an aggregate lifetime limit on sub-
12 stantially all hospital, medical and surgical expense benefits, the policy
13 may not impose any aggregate lifetime limit on mental health *or alco-*
14 *holism, drug abuse or other substance use disorder* benefits;
- 15 (2) if the policy includes an aggregate lifetime limit on substantially
16 all hospital, medical and surgical expense benefits the plan shall either:
17 (A) Apply the applicable lifetime limit both to the hospital, medical and
18 surgical expense benefits to which it otherwise would apply and to mental
19 health *or alcoholism, drug abuse or other substance use disorder* benefits
20 and not distinguished in the application of such limit between such hos-
21 pital, medical and surgical expense benefits and mental health *or alco-*
22 *holism, drug abuse or other substance use disorder* benefits; or (B) not
23 include any aggregate lifetime limit on mental health *or alcoholism, drug*
24 *abuse or other substance use disorder* benefits that is less than the appli-
25 cable lifetime limit on hospital, medical and surgical expense benefits;
- 26 (3) if the policy does not include an annual limit on substantially all
27 hospital, medical and surgical expense benefits, the plan or coverage may
28 not impose any annual limit on mental health *or alcoholism, drug abuse*
29 *or other substance use disorder* benefits; and
- 30 (4) if the policy includes an annual limit on substantially all hospital,
31 medical and surgical expense benefits the policy shall either: (A) Apply
32 the applicable annual limit both to hospital, medical and surgical expense
33 benefits to which it otherwise would apply and to mental health *or al-*
34 *coholism, drug abuse or other substance use disorder* benefits and not
35 distinguish in the application of such limit between such hospital, medical
36 and surgical expense benefits and mental health *or alcoholism, drug abuse*
37 *or other substance use disorder* benefits; or (B) not include any annual
38 limit on mental health *or alcoholism, drug abuse or other substance use*
39 *disorder* benefits that is less than the applicable annual limit.
- 40 (b) If the group policy providing hospital, medical or surgical expense
41 benefits is not otherwise covered by subsection (a) and either does not
42 apply a lifetime or annual benefit or applies different lifetime or annual
43 benefits to different categories of hospital, medical and surgical expense

1 benefits, the commissioner may adopt rules and regulations under which
2 subsections (a)(2) and (a)(4) are applied to such policies with respect to
3 mental health *or alcoholism, drug abuse or other substance use disorder*
4 benefits by substituting for the applicable lifetime or annual limits an
5 average limit that is computed taking into account the weighted average
6 of the lifetime or annual limits applicable to such categories.

7 (c) Nothing in this section shall be construed as either:

8 (1) Requiring an accident and sickness policy to offer mental health
9 *or alcoholism, drug abuse or other substance use disorder* benefits except
10 as otherwise required by K.S.A. 40-2,105, and amendments thereto; or

11 (2) affecting any terms and conditions of a policy which does include
12 mental health *or alcoholism, drug abuse or other substance use disorder*
13 benefits including provisions regarding cost sharing, limits on the number
14 of visits or days of coverage, requirements relating to medical necessity,
15 requirements relating to the amount, duration or scope of mental health
16 *or alcoholism, drug abuse or other substance use disorder* benefits under
17 the plan or coverage, except as specifically provided in subsection (a).

18 (d) This section shall not apply to any group accident and health in-
19 surance policy which is sold to a small employer as defined in K.S.A. 40-
20 2209, and amendments thereto.

21 (e) This section shall not apply with respect to a group policy provid-
22 ing hospital, medical or surgical expense benefits if the application of this
23 section will result in an increase in the cost under the plan of at least ~~4%~~
24 *2% in the case of the first plan year in which this section is applied and*
25 *1% in the case of each subsequent plan year.*

26 (f) In the case of a group policy providing hospital, medical or surgical
27 expense benefits that offers an eligible employee, member or dependent
28 two or more benefit package options under the policy, subsections (a)
29 and (b) shall be applied separately with respect to each such option.

30 (g) As used in this section:

31 (1) "Aggregate lifetime limit" means, with respect to benefits under
32 a group policy providing hospital, medical or surgical expense benefits, a
33 dollar limitation on the total amount that may be paid with respect to
34 such benefits under the policy with respect to an eligible employee, mem-
35 ber or dependent;

36 (2) "annual limit" means, with respect to benefits under a group pol-
37 icy providing hospital, medical or surgical expense benefits, a dollar lim-
38 itation on the total amount of benefits that may be paid with respect to
39 such benefits in a 12-month period under the policy with respect to an
40 eligible employee, member or dependent;

41 (3) "hospital, medical or surgical expense benefits" means benefits
42 with respect to hospital, medical or surgical services, as defined under
43 the terms of the policy, but does not include mental health benefits;

- 1 (4) “mental health benefits” means benefits with respect to mental
2 health services, as defined under the terms of the policy, ~~but does not~~
3 ~~include benefits with respect to treatment of substance abuse or chemical~~
4 ~~dependency;~~
- 5 (5) “*Alcoholism, drug abuse or substance use disorder benefits*”
6 *means benefits with respect to services for treatment of alcoholism, drug*
7 *abuse or other substance abuse disorders, as defined under terms of the*
8 *policy.*
- 9 (h) This section shall be effective for group policies providing hos-
10 pital, medical or surgical expense benefits which are entered into or re-
11 newed after January 1, 1998. ~~This section shall not apply to benefits for~~
12 ~~services furnished on or after December 31, 2008.~~
- 13 (i) The commissioner is hereby authorized to adopt such rules and
14 regulations as may be necessary to carry out the provisions of this section.
- 15 Sec. 4. K.S.A. 2008 Supp. 40-2,105 and 40-2,105a are hereby
16 repealed.
- 17 Sec. 5. On and after November 1, 2009, K.S.A. 2008 Supp. 40-2258
18 is hereby repealed.
- 19 Sec. 6. This act shall take effect and be in force from and after its
20 publication in the statute book.