LAWS OF DELAWARE
VOLUME 83
CHAPTER 388
FORMERLY
HOUSE BILL NO. 303
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLES 18, 29, AND 31 OF THE DELAWARE CODE RELATING TO MENTAL HEALTH.

WHEREAS, the federal government passed the 2008 Mental Health Parity and Addiction Act effectively making it illegal for health insurance plans to inequitably cover mental health and substance use disorder services compared to that of their physical health services; and

WHEREAS, the State of Delaware is ranked 35th highest in the country for prevalence of mental health illness and substance use disorders; and

WHEREAS, the COVID-19 public health crisis has caused an increase in pediatric psychiatric related emergency room visits in the United States by 51% from 2020 to 2021 while decreasing adult admissions for the treatment of substance use disorders and mental health illness; and

WHEREAS, mental health issues come at a cost of almost $200 billion in lost wages and almost $100 billion in healthcare costs nationally; and

WHEREAS, it is proven that childhood trauma unaddressed via screening and treatment lead to increased mental health disorders, substance use disorders, as well as higher rates of incarceration and negative health behaviors resulting in heightened cost for individuals across their lifespan; and

WHEREAS, a multidiscipline analysis by the National Academies of Sciences, Engineering and Medicine determined that every dollar of investment in mental health and addiction prevention programs yields a 2 to 10 times savings 16 in health care, criminal and juvenile justice and low productivity costs; and

WHEREAS, parity requires health insurance plans that offer annual physical examinations, annual child well visits or annual gynecological exams must then offer annual well visits for behavioral health; and

WHEREAS true parity cannot be achieved until perceptions are changed when those with behavioral health needs can seek and access healthcare without unnecessary barriers that is equal to that of their physical health needs.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter I, Chapter 33, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3370E. Annual behavioral health well check.

(a) As used in this section:

(1) "Behavioral health well check" means a pre-deductible annual visit with a licensed mental health clinician with at minimum a masters level degree. The well check must include but is not limited to a review of medical history, evaluation of adverse childhood experiences, use of a group of developmentally appropriate

mental health screening tools, and may include anticipatory behavioral health guidance congruent with stage of life using the diagnosis of "annual behavioral health well check.".

(2) "Carrier" means any entity that provides health insurance in this State that is subject to the provisions of this chapter. "Carrier" includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any third-party administrator or other entity that adjusts, administers, or settles claims in connection with health benefit plans.

(b) All carriers shall provide coverage of an annual behavioral health well check, which, except as provided in subsection (d) of this section, shall be reimbursed through the following common procedural terminology (CPT) codes at the same rate that such CPT codes are reimbursed for the provision of other medical care, provided that reimbursement may be adjusted for payment of claims that are billed by a non-physician clinician so long as the methodology to determine such adjustments is comparable to and applied no more stringently than the methodology for adjustments made for reimbursement of claims billed by non-physician clinicians for other medical care, in accordance with 45 CFR 146.136(c)(4):

(1) 99381.

(2) 99382.

(3) 99383.

(4) 99384.

(5) 99385.

(6) 99386.

(7) 99387.

(8) 99391.

(9) 99392.

(10) 99393.

(11) 99394.

(12) 99395.

(13) 99396.

(14) 99397.

(c) (1) The Commissioner shall update this list of codes through the promulgation of rules if the CPT codes listed in subsection (b) of this section are altered, amended, changed, deleted, or supplemented.

(2) Reimbursement of any of the CPT codes listed in subsection (b) of this section or promulgated under paragraph (c)(1) of this section for the purpose of covering an annual behavioral health well check may not be denied because such CPT code was already reimbursed for the purpose of covering a service other than an annual behavioral health well check.

(3) Reimbursement of any of the CPT codes listed in subsection (b) of this section or promulgated under paragraph (c)(1) of this section for the purpose of covering a service other than an annual behavioral health well

check may not be denied because such CPT code was already reimbursed for the purpose of covering an annual behavioral health well check.

(d) An annual behavioral health well check may be reimbursed through a value-based arrangement, a capitated arrangement, a bundled payment arrangement, or any other alternative payment arrangement that is not a traditional fee-for service arrangement, provided that a carrier must have documentation demonstrating that within such payment arrangement the annual behavioral health well check is valued commensurate to the value established under subsection (b) of this section.

(e) An annual behavioral health well check may be incorporated into and reimbursed within any type of integrated primary care service delivery method including, but not limited to, the psychiatric collaborative care model, the primary care behavioral health model or behavioral health consultant model, any model that involves co-location of mental health professionals within general medical settings, or any other integrated care model that focuses on the delivery of primary care.

(f) Nothing in this section prevents the operation of policy provisions such as copayments, coinsurance, allowable charge limitations, coordination of benefits, or provisions restricting coverage to services rendered by licensed, certified, or carrier-approved providers or facilities.

Section 2. Amend Chapter 35, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3571Z. Annual behavioral health well check.

(a) As used in this section:

(1) “Behavioral health well check” means a pre-deductible annual visit with a licensed mental health clinician with at minimum a masters level degree. The well check must include but is not limited to a review of medical history, evaluation of adverse childhood experiences, use of a group of developmentally appropriate mental health screening tools, and may include anticipatory behavioral health guidance congruent with stage of life using the diagnosis of “annual behavioral health well check.”

(2) “Carrier” means any entity that provides health insurance in this State that is subject to this subchapter. “Carrier" includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any third-party administrator or other entity that adjusts, administers, or settles claims in connection with health benefit plans.

(b) All carriers shall provide coverage of an annual behavioral health well check, which, except as provided in subsection (d) of this section, shall be reimbursed through the following common procedural terminology (CPT) codes at the same rate that such CPT codes are reimbursed for the provision of other medical care, provided that reimbursement may be adjusted for payment of claims that are billed by a non-physician clinician so long as the methodology to determine such adjustments is comparable to and applied no more stringently than the methodology for adjustments made for reimbursement of claims billed by non-physician clinicians for other medical care, in accordance with 45 CFR 146.136(c)(4):

(1) 99381.

(2) 99382.

(3) 99383.

(4) 99384.

(5) 99385.

(6) 99386.

(7) 99387.

(8) 99391.

(9) 99392.

(10) 99393.

(11) 99394.

(12) 99395.

(13) 99396.

(14) 99397.

(c) (1) The Commissioner shall update this list of codes through the promulgation of rules if the CPT codes listed in subsection (b) of this section are altered, amended, changed, deleted, or supplemented.

(2) Reimbursement of any of the CPT codes listed in subsection (b) of this section or promulgated under paragraph (c)(1) of this section for the purpose of covering an annual behavioral health well check may not be denied because such CPT code was already reimbursed for the purpose of covering a service other than an annual behavioral health well check.

(3) Reimbursement of any of the CPT codes listed in subsection (b) of this section or promulgated under paragraph (c)(1) of this section for the purpose of covering a service other than an annual behavioral health well check may not be denied because such CPT code was already reimbursed for the purpose of covering an annual behavioral health well check.

(d) An annual behavioral health well check may be reimbursed through a value-based arrangement, a capitated arrangement, a bundled payment arrangement, or any other alternative payment arrangement that is not a traditional fee-for service arrangement, provided that a carrier must have documentation demonstrating that within such payment arrangement the annual behavioral health well check is valued commensurate to the value established under subsection (b) of this section.

(e) An annual behavioral health well check may be incorporated into and reimbursed within any type of integrated primary care service delivery method including, but not limited to, the psychiatric collaborative care model, the primary care behavioral health model or behavioral health consultant model, any model that involves co-location of mental health professionals within general medical settings, or any other integrated care model that focuses on the delivery of primary care.

(f) Nothing in this section prevents the operation of policy provisions such as copayments, coinsurance, allowable charge limitations, coordination of benefits, or provisions restricting coverage to services rendered by licensed, certified, or carrier-approved providers or facilities.

Section 3. Amend Chapter 5, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 530. Annual behavioral health well check.

(a) As used in this section:

(1) "Behavioral health well check" means a pre-deductible annual visit with a licensed mental health clinician with at minimum a masters level degree. The well check must include but is not limited to a review of medical history, evaluation of adverse childhood experiences, use of a group of developmentally appropriate mental health screening tools, and may include anticipatory behavioral health guidance congruent with stage of life using the diagnosis of "annual behavioral health well check."

(2) "Carrier" means any entity that provides health insurance under § 505(3) of this title.

(b) All carriers shall provide coverage of an annual behavioral health well check, which, except as provided in subsection (d) of this section, shall be reimbursed through the following common procedural terminology (CPT) codes at the same rate that such CPT codes are reimbursed for the provision of other medical care, provided that reimbursement may be adjusted for payment of claims that are billed by a non-physician clinician so long as the methodology to determine such adjustments is comparable to and applied no more stringently than the methodology for adjustments made for reimbursement of claims billed by non-physician clinicians for other medical care, in accordance with 42 CFR 438.910(d)(1):

(1) 99381.

(2) 99382.

(3) 99383.

(4) 99384.

(5) 99385.

(6) 99386.

(7) 99387.

(8) 99391.

(9) 99392.

(10) 99393.

(11) 99394.

(12) 99395.

(13) 99396.

(14) 99397.

(c) (1) The Director of the Division of Medicaid and Medical Assistance shall update this list of codes through the promulgation of rules if the CPT codes listed in subsection (b) of this section are altered, amended, changed, deleted, or supplemented.

(2) Reimbursement of any of the CPT codes listed in subsection (b) of this section or promulgated under paragraph (c)(1) of this section for the purpose of covering an annual behavioral health well check may not be denied because such CPT code was already reimbursed for the purpose of covering a service other than an annual behavioral health well check.

(3) Reimbursement of any of the CPT codes listed in subsection (b) of this section or promulgated under paragraph (c)(1) of this section for the purpose of covering a service other than an annual behavioral health well check may not be denied because such CPT code was already reimbursed for the purpose of covering an annual behavioral health well check.

(d) An annual behavioral health well check may be reimbursed through a value-based arrangement, a capitated arrangement, a bundled payment arrangement, or any other alternative payment arrangement that is not a traditional fee-for service arrangement, provided that a carrier must have documentation demonstrating that within such payment arrangement the annual behavioral health well check is valued commensurate to the value established under subsection (b) of this section.

(e) An annual behavioral health well check may be incorporated into and reimbursed within any type of integrated primary care service delivery method including, but not limited to, the psychiatric collaborative care model, the primary care behavioral health model or behavioral health consultant model, any model that involves co-location of mental health professionals within general medical settings, or any other integrated care model that focuses on the delivery of primary care.

(f) Nothing in this section prevents the operation of policy provisions such as copayments, coinsurance, allowable charge limitations, coordination of benefits, or provisions restricting coverage to services rendered by licensed, certified, or carrier-approved providers or facilities.

Section 4. Amend Chapter 52, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5215. Annual behavioral health well check.

(a) As used in this section "Behavioral health well check" means a pre-deductible annual visit with a licensed mental health clinician with at minimum a masters level degree. The well check must include but is not limited to a review of medical history, evaluation of adverse childhood experiences, use of a group of developmentally appropriate mental health screening tools, and may include anticipatory behavioral health guidance congruent with stage of life using the diagnosis of "annual behavioral health well check."

(b) The plan shall provide coverage of an annual behavioral health well check, which , except as provided in subsection (d) of this section, shall be reimbursed through the following common procedural terminology (CPT) codes at the same rate that such CPT codes are reimbursed for the provision of other medical care, provided that reimbursement may be adjusted for payment of claims that are billed by a non-physician clinician so long as the

methodology to determine such adjustments is comparable to and applied no more stringently than the methodology for adjustments made for reimbursement of claims billed by non-physician clinicians for other medical care, in accordance with 45 CFR 146.136(c)(4):

(1) 99381.

(2) 99382.

(3) 99383.

(4) 99384.

(5) 99385.

(6) 99386.

(7) 99387.

(8) 99391.

(9) 99392.

(10) 99393.

(11) 99394.

(12) 99395.

(13) 99396.

(14) 99397.

(c) (1) The State Employee Benefits Committee shall administratively update this list of codes if the CPT codes listed in subsection (b) of this section are altered, amended, changed, deleted, or supplemented.

(2) Reimbursement of any of the CPT codes listed in subsection (b) of this section or updated under paragraph (c)(1) of this section for the purpose of covering an annual behavioral health well check may not be denied because such CPT code was already reimbursed for the purpose of covering a service other than an annual behavioral health well check.

(3) Reimbursement of any of the CPT codes listed in subsection (b) of this section or updated under paragraph (c)(1) of this section for the purpose of covering a service other than an annual behavioral health well check may not be denied because such CPT code was already reimbursed for the purpose of covering an annual behavioral health well check.

(d) An annual behavioral health well check may be reimbursed through a value-based arrangement, a capitated arrangement, a bundled payment arrangement, or any other alternative payment arrangement that is not a traditional fee-for service arrangement, provided that a carrier must have documentation demonstrating that within such payment arrangement the annual behavioral health well check is valued commensurate to the value established under subsection (b) of this section.

(e) An annual behavioral health well check may be incorporated into and reimbursed within any type of integrated primary care service delivery method including, but not limited to, the psychiatric collaborative care model, the primary care behavioral health model or behavioral health consultant model, any model that involves co-location

of mental health professionals within general medical settings, or any other integrated care model that focuses on the delivery of primary care.

(f) Nothing in this section prevents the operation of policy provisions such as copayments, coinsurance, allowable charge limitations, coordination of benefits, or provisions restricting coverage to services rendered by licensed, certified, or carrier-approved providers or facilities.

Section 5. For the purposes of this implementing this Act, there is created an advisory committee whose mandate is to create a developmentally appropriate design for the annual behavioral health well check established under this legislation. The advisory committee shall commence work as soon as practicable after the enactment of this Act and shall hold its first meeting within 90 days of the enactment of this Act. The advisory committee shall finalize all work within six months of the enactment of this legislation, and deliver its recommendations to the Secretary of the Department of Health and Human Services, as well as the chairperson of the House Health and Human Development Committee and the Senate Health and Social Services Committee. The advisory committee shall seek to design the annual behavioral health well check in a manner that is reflective of existing annual physical health well checks and include questions and anticipatory guidance specific to each respective age group. The advisory committee shall include all of the following members:

(1) Two actively practicing pediatric behavioral health clinicians, one of whom shall specialize in the treatment of adolescents, appointed by the Speaker of the House.

(2) Two actively practicing adult behavioral health clinicians, one of whom shall specialize in the treatment of geriatric populations, appointed by the Speaker of the House.

(3) One actively practicing women's behavioral health clinician, appointed by the Senate President Pro Tempore.

(4) Two behavioral health policy advocates, one of whom is a specialist in behavioral health policy advocacy at the national level and one of whom is a specialist in behavioral health policy advocacy at the local level, appointed by the Speaker of the House.

(5) Two actively practicing primary care physicians, appointed by Senate President Pro Tempore.

(6) The President of the Delaware Healthcare Association, or the President's designee.

(7) The Secretary of the Department of Health and Social Services, or the Secretary's designee, in an ex officio capacity.

(8) The Insurance Commissioner, or the Commissioner's designee, in an ex officio capacity.

The advisory council may call upon any state agency for assistance, information, or data that may be necessary to carry out the purposes for which it is established. For administrative and budgetary

purposes only, the advisory council shall be placed within the Department of Health and Social Services, Office of the Secretary. For the purposes of convening an organizational meeting, the behavioral health policy advocate who specializes in local advocacy shall serve as chair of the advisory council. A permanent chair and vice chair shall be elected by the members from those among those appointed to serve. In making appointments, the Speaker and President Pro Tempore, shall attempt to include in the appointed members of the advisory committee at least one

psychiatrist, one clinical psychologist, one psychiatric nurse practitioner, one licensed clinical social worker, and one additional physician or nurse practitioner.

Section 6. Sections 1 through 4 of this Act take effect on January 1, 2024.

Approved August 3, 2022