

## **BILL ANALYSIS**

Senate Research Center

H.B. 1919  
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State Affairs  
5/18/2007  
Committee Report (Amended)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under current law, insurance companies are prohibited from excluding coverage for medical needs resulting from a traumatic brain injury. However, families caring for a person with a traumatic brain injury are often unaware of the coverage requirement. Additionally, many critical services are often denied despite the requirement.

Chapter 1352, Insurance Code, prohibits insurance companies from excluding brain injuries from coverage. Previously, families dealing with a traumatic brain injury to a family member had the added burden of having to shoulder the financial cost of the injury. Since the implementation of that chapter, the Sunset Commission has released a study citing figures provided by the Texas Department of Insurance (TDI) that demonstrate that the requirement costs insurance companies a minimal amount.

Since the passage of that chapter in 2001 and the release of the Sunset Commission's Study of Health Benefit Plan Coverage for Brain Injuries in November, 2006, it has become clear that some areas of the existing law need improvement.

H.B. 1919 expands the coverage requirement to post-acute care and cognitive rehabilitation for survivors of brain injuries and requires that notice of such coverage be provided.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 3 (Section 1352.0035, Insurance Code), SECTION 4 (Section 1352.004, Insurance Code), and SECTION 5 (Section 1352.005, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 2 (Section 1352.003, Insurance Code), of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1352.001, Insurance Code, as follows:

Sec. 1352.001. **APPLICABILITY OF CHAPTER.** (a) Creates this subsection from existing text. Provides that this chapter (Brain Injury) applies only to a health benefit plan (plan), including, subject to this chapter, a certain small employer plan.

(b) Provides that this chapter applies to a basic coverage plan under Chapter 1551 (Texas Employees Group Benefits Act), a basic plan under Chapter 1575 (Texas Public School Employees Group Benefits Program), a primary care coverage plan under Chapter 1579 (Texas School Employees Uniform Group Health Coverage), and basic coverage under Chapter 1601 (Uniform Insurance Benefits Act for Employees of The University of Texas System and The Texas A&M University System), notwithstanding any provision in those chapters or any other law.

SECTION 2. Amends Section 1352.003, Insurance Code, as follows:

Sec. 1352.003. New heading: **REQUIRED COVERAGES--HEALTH BENEFIT PLANS OTHER THAN SMALL EMPLOYER HEALTH BENEFIT PLANS.** (a) Requires a plan to include coverage for neurobehavioral, neurophysiological,

neuropsychological, and psychophysiological testing and treatment, neurofeedback therapy, and remediation required for and related to treatment of an acquired brain injury. Makes conforming changes.

(b) Redesignated from existing text of Subsection (a). Requires a plan to include coverage for post-acute transition services, community reintegration services, including outpatient day treatment services, or other post-acute care treatment services necessary as a result of and related to an acquired brain injury.

(c) Prohibits a plan from including, in any lifetime limitation on the number of days of acute care treatment covered under the plan, any post-acute care treatment covered under the plan. Requires any limitation imposed under the plan on days of post-acute care treatment to be separately stated in the plan.

(d) Creates this subsection from existing text of Subsection (b). Requires a plan to include the same payment limitations, deductibles, copayments, and coinsurance factors for coverage required under this chapter as applicable to other similar coverage provided under the plan, except as provided by Subsection (c). Deletes existing text providing that coverage may be subject to deductibles, copayments, coinsurance, or annual or maximum payment limits that are consistent with the deductibles, copayments, coinsurance, or annual or maximum payment limits.

(e) Requires a plan, to ensure that appropriate post-acute care treatment is provided, to include coverage for reasonable expenses related to periodic reevaluation of the care of an individual covered under the plan who has incurred an acquired brain injury, has been unresponsive to treatment, and becomes responsive to treatment at a later date.

(f) Provides that a determination of whether expenses, as described by Subsection (e), are reasonable may include consideration of factors including certain factors set forth in this subsection.

(g) Redesignated from Subsection (c). Requires the commissioner of insurance (commissioner) to adopt rules as necessary to implement this chapter, rather than section.

(h) Provides that this section does not apply to a small employer plan.

SECTION 3. Amends Chapter 1352, Insurance Code, by adding Section 1352.0035, as follows:

Sec. 1352.0035. **REQUIRED COVERAGES--SMALL EMPLOYER HEALTH BENEFIT PLANS.** (a) Prohibits a small employer plan from excluding coverage for cognitive rehabilitation therapy, cognitive communication therapy, neurocognitive therapy and rehabilitation, neurobehavioral, neurophysiological, neuropsychological, or psychophysiological testing or treatment, neurofeedback therapy, remediation, post-acute transition services, or community reintegration services necessary as a result of and related to an acquired brain injury.

(b) Provides that coverage required under this section may be subject to deductibles, copayments, coinsurance, or annual or maximum payment limits that are consistent with the deductibles, copayments, coinsurance, or annual or maximum payment limits applicable to other similar coverage provided under the small employer plan.

(c) Requires the commissioner to adopt rules as necessary to implement this section.

SECTION 4. Amends Section 1352.004(b), Insurance Code, to require the commissioner, in consultation with the Texas Traumatic Brain Injury Advisory Council (council), to prescribe by rule the basic requirements for the training described by this subsection.

SECTION 5. Amends Chapter 1352, Insurance Code, by adding Sections 1352.005, 1352.006, 1352.007, and 1352.008, as follows:

Sec. 1352.005. NOTICE TO INSUREDS AND ENROLLEES. (a) Requires a plan issuer subject to this chapter, other than a small employer plan issuer, to notify each insured or enrollee under the plan in writing about the coverages described by Section 1352.003.

(b) Requires the commissioner, in consultation with the council, to prescribe by rule the specific contents and wording of the notice required under this section.

(c) Requires the notice required under this section to include certain information set forth in this subsection.

(d) Requires the notice described by this section to be provided not later than the 10<sup>th</sup> day after the date on which the plan issuer receives a claim for coverage for treatment that would reasonably indicate that the insured or enrollee has incurred an acquired brain injury.

Sec. 1352.006. DETERMINATION OF MEDICAL NECESSITY; EXTENSION OF COVERAGE. (a) Defines “utilization review.”

(b) Requires a plan to respond to a person requesting utilization review or appealing for an extension of coverage based on an allegation of medical necessity not later than three business days after the date on which the person makes the request or submits the appeal, notwithstanding Chapter 4201 (Utilization Review Agents) or any other law relating to the determination of medical necessity under this code. Requires the person to make the request or submit the appeal in the manner prescribed by the terms of the plan's health insurance policy or agreement, contract, evidence of coverage, or similar coverage document. Requires the plan issuer to respond through a direct telephone contact made by a representative of the issuer to comply with the requirements of this section. Provides that this subsection does not apply to a small employer plan.

(c) Requires a physician or other health care practitioner who determines the medical necessity of a health care service provided under this chapter to a resident of this state to be licensed to practice in this state, notwithstanding Section 4201.152 (Utilization Review Under Direction of Physician) or any other law of this state.

Sec. 1352.007. TREATMENT FACILITIES. Prohibits a plan from denying coverage under this chapter based solely on the fact that the treatment or services are provided at a facility other than a hospital. Authorizes treatment for an acquired brain injury to be provided under the coverage required by this chapter, as appropriate, at a facility at which appropriate services may be provided, including certain facilities set forth in this subsection. Provides that this section does not apply to a small employer health benefit plan.

Sec. 1352.008. CONSUMER INFORMATION. Requires the commissioner to prepare information for use by consumers, purchasers of health benefit plan coverage, and self-insurers regarding coverages recommended for acquired brain injuries. Requires the Texas Department of Insurance (TDI) to publish information prepared under this section on its Internet website.

SECTION 6. Amends Section 1355.001(1), Insurance Code, to redefine “serious mental illness” to include anorexia nervosa and bulimia nervosa.

SECTION 7. Amends Section 1355.007, Insurance Code, as follows:

Sec. 1355.007. SMALL EMPLOYER COVERAGE. (a) Creates this subsection from existing text.

(b) Requires an issuer of a group plan to a small employer to provide the coverage required by Section 1355.004 (Required Coverage for Serious Mental Illness) for persons under the age of 19 years for certain psychiatric illnesses as set forth in this subsection, regardless of whether a small employer accepts the coverage required by Subsection (a).

SECTION 8. (a) Requires the Sunset Advisory Commission (commission) to conduct a study to make certain determinations set forth in this subsection on or before September 1, 2012.

(b) Requires the commission to report its findings under this section to the legislature on or before January 1, 2013.

(c) Requires TDI and any other state agency to cooperate with the commission as necessary to implement this section.

SECTION 9. Makes application of this Act to a plan prospective to January 1, 2008.

SECTION 10. Effective date: September 1, 2007.

### **SUMMARY OF COMMITTEE CHANGES**

#### Committee Amendment No. 1

(1) Amends H.B. 1919 (engrossed version), by striking SECTION 6 of this bill, amending Section 1355.001, Insurance Code (page 8, lines 8-24).

(2) Amends H.B. 1919 (engrossed version), by striking SECTION 7 of this bill, amending Section 1355.007, Insurance Code (page 8, lines 25-27, and page 9, lines 1-13).

(3) Amends H.B. 1919 (engrossed version), by striking SECTION 8 of this bill, directing the Sunset Advisory Commission to conduct a study (page 9, lines 14-27).

(4) Amends H.B. 1919 (engrossed version), by renumbering SECTIONS of the bill accordingly.

#### Committee Amendment No. 2

Amends H.B. No. 1919 (engrossed version), SECTION 1 of this bill, in amended Section 1352.001, Insurance Code, by striking added Subsection (b) (page 2, lines 7-13), and substituting the following:

(b) Provides that notwithstanding any provision in Chapter 1575 (Texas Public School Employees Group Benefits Program), 1579 (Texas School Employees Uniform Group Health Coverage), or 1601 (Uniform Insurance Benefits Act for Employees of The University of Texas System and The Texas A&M University System) or any other law, this chapter applies to a basic plan under Chapter 1575; a primary care coverage plan under chapter 1579; and basic coverage under Chapter 1601.

#### Committee Amendment No. 3

(1) Amends SECTION 5 of this bill, in added Subsection (a), Section 1352.005, Insurance Code (page 5, line 18), between "must" and "notify," by inserting "annually."

(2) Amends SECTION 5 of this bill, Section 1352.005, Insurance Code (page 6, lines 10-14), by striking added Subsection (d).

(3) Amends SECTION 5 of this bill, Section 1352.006, Insurance Code (page 7, lines 5-9), by striking added Subsection (c).

- (4) Amends SECTION 5 of this bill, in added Subdivision (1), Section 1352.007(a), Insurance Code (page 7, line 18), by inserting "or post-acute" between "acute" and "rehabilitation".
- (5) Amends SECTION 5 of this bill, in added Subdivision (1), Section 1352.007(a), Insurance Code (page 7, line 18), following the underlined semicolon, by inserting "and".
- (6) Amends SECTION 5 of this bill, in added Subdivision (2), Section 1352.007(a), Insurance Code (page 7, line 20), by striking the underlined semicolon and substituting an underlined period.
- (7) Amends SECTION 5 of this bill, Section 1352.007(a), Insurance Code (page 7, lines 21-26), by striking added Subdivisions (3)-(6).