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SENATE BILL 52

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

INTRODUCED BY

Timothy M. Keller

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;

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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."