

# Amendment: D1

**Representative HERBKERSMAN proposes the following amendment:**

## **Section 117 – General Provisions**

Conform to Funding/Amend

**117.153.**(GP: Behavioral Health Capacity) (A) The Department of ~~Mental Health and Human Services~~, in coordination with the Department of Mental Health and Human Services, the Department of Health and Environmental Control, the Department of Alcohol and Other Drug Abuse Services, and all other relevant agencies shall ~~coordinate their efforts to ensure that the statewide system for the delivery of mental health services required by Section 44-9-90(7) of the 1976 Code is~~ examine and analyze the existing statewide system for the delivery of Medicaid and non-Medicaid behavioral health services to assess the system's effectiveness in:

- (1) ~~structured so as to provide~~ providing a range and supply of treatment options and settings that are appropriate to meet the varying needs of individual patients;
- (2) being responsive to changes in federal law, regulation, or policy that improve access to care and/or associated reimbursement, particularly where related to the treatment of patients in Institutions for Mental Disease (IMDs); ~~and~~
- (3) being economical in its approach, so as to obtain the greatest value possible for each state taxpayer dollar; and
- (4) ensuring that the statewide system for the delivery of behavioral health services complies with the requirements of Section 44-9-90(7) of the 1976 Code.

(B) With the ~~funds appropriated for Inpatient Services and/or made available from the COVID-19 Response Reserve account established pursuant to Act 135 of 2020,~~ support of the Department of Mental Health, the Department of Health and Human Services shall undertake an effort to assess existing gaps in coverage for or the supply of inpatient psychiatric care, increase access to crisis stabilization, and other inpatient or outpatient behavioral health services. Based upon this assessment, the Department of Health and Human Services shall establish, or with the full cooperation of any other requested state agency, request the establishment of coverage and reimbursement policies that it deems necessary to address existing deficiencies and bring about a more comprehensive and effective continuum of behavioral health care in South Carolina. Priorities for this effort may be piloted on a regional basis and shall include, but not be limited to:

- (1) increasing the number of beds available to provide inpatient psychiatric care, with emphasis on communities with the greatest current need, and using the appropriate combination

of new construction, augmentation or reconfiguration of existing facilities, or contracting with psychiatric or acute care hospitals to obtain short-term capacity; and

~~(1) (2) The department shall increase the number of operating~~ establishing crisis stabilization beds and services to provide needed short-term medication, counseling, and other support in units and introduce them to previously unserved areas of the state, working toward the goal of having at least one such unit located such services available within a 90-minute drive of each South Carolinian, and with coverage and reimbursement being funded through Medicaid for its beneficiaries or through the Department of Mental Health for indigent care, regardless of the provider of these services; and. ~~In each case, the department may choose to operate the unit independently or through a partnership with one or more partners and/or contractors. The department shall engage with community stakeholders in identifying new host communities and developing referral and discharge strategies.~~

~~(2) The department may also use these funds to expand its program to contract with psychiatric and acute care hospitals to place indigent patients who need hospital-level care in hospitals' general or psychiatric beds on a temporary basis during a crisis.~~

(3) formalizing and expanding the coverage of claims-based mobile crisis stabilization services that offer rapid and intensive interventions intended to stabilize individuals at the sites of behavioral health crises; and

(4) developing one or more regional dedicated psychiatric emergency departments, operating twenty-four hours per day, seven days per week to effectively evaluate and triage patients experiencing acute behavioral health emergencies; and

(5) developing effective referral and discharge strategies and engaging with existing community providers to ensure that sufficient outpatient services, case management services, and standards of care are in place; and

(6) leveraging and building upon existing telehealth capacity to support and extend outpatient services; and

(7) promoting the development of in-state treatment options for specific behavioral health conditions for which patients are routinely placed out-of-state due to an insufficiency of treatment options or settings in South Carolina.

~~(C) After consulting with the Director of the Department of Mental Health, the Director of the Department of Health and Human Services shall establish such coverage and reimbursement policies for mobile crisis stabilization, and/or intensive outpatient services as he deems necessary and appropriate to fulfill the intent of this provision. These policies shall facilitate the claiming of matching funds where feasible. Any state funds saved through this effort shall remain committed to the provision of care to patients with behavioral health needs. With funds available to the department, the Department of Health and Human Services shall be authorized to provide as much as one hundred thousand dollars per bed towards the initial capital costs of establishing crisis stabilization units pursuant to this provision. The Department of Mental Health shall supply information in the format specified by the Department of Health and Human Services for this purpose. The Executive Director of the Public Employee Benefit Authority shall be encouraged to consult with the Director of the Department of Mental Health and Human Services to make appropriate coverage and reimbursement policy changes to ensure proper access to mobile crisis and crisis stabilization~~ behavioral health services for covered beneficiaries.

(D) The Data Oversight Council, established pursuant to Section 44-6-170 of the 1976 Code, shall undertake whatever rulemaking is necessary to ensure that the data on the utilization of crisis stabilization units are collected in a manner generally consistent with the requirements for general acute care hospitals and specialized hospitals, so that the effectiveness of these services may be properly evaluated. The Data Oversight Council, Department of Health and Environmental Control, and any other state agency shall, upon the request of and in the format specified by the Department of Health and Human Services, furnish information on behavioral health service demand, utilization, or financing needed to facilitate the implementation of this provision.

(E) With the support of the Director of the Department of Mental Health, the Director of the Department of Alcohol and Other Drug Abuse Services, and any other identified agency head, the Director of the Department of Health and Human Services shall evaluate opportunities to improve and/or coordinate treatment capacity for individuals diagnosed with substance use disorder and/or serious mental illness including, but not limited to, options established pursuant to Sections 1115, 1915(l), and/or 1947 of the Social Security Act or made available to states by the Centers for Medicare and Medicaid Services through State Medicaid Director Letters 17-003, 18-011, or 19-0003. ~~These options shall be evaluated based substantially upon criteria such as their relative abilities to:~~

- ~~—— (1) increase behavioral health treatment capacity at the inpatient, partial hospitalization, intensive outpatient, and/or outpatient levels of care;~~
- ~~—— (2) obtain federal matching funds to help offset the costs of state funded treatment for substance use and/or mental health treatment; and~~
- ~~—— (3) convert indigent care to a sustainable reimbursement model that improves access to behavioral health and/or substance use treatment while potentially alleviating pressure on the state general fund and reducing levels of uncompensated care.~~

~~(F) After or while completing the evaluation required by subsection (E), the Director of the Department of Health and Human Services shall be authorized to apply for a state planning grant pursuant to Section 1947(e) of the Social Security Act and pursue any necessary implementing state plan amendments and/or waivers. Copies of the public notices accompanying these actions shall be furnished to the Chairman of the House Ways and Means Committee and the Chairman of the Senate Finance Committee. In consultation with the Department of Juvenile Justice and the Department of Mental Health, the Department of Health and Human Services shall ensure that access to “no eject, no reject” services is restored for children and adolescents requiring care in a private residential treatment facility.~~

(G) To ensure that individuals requiring behavioral health services are protected from unexpected or excessive billings, the Department of Mental Health shall examine ways to convert state-funded or DSH-funded indigent care to a sustainable reimbursement model that improves access to behavioral health treatment while potentially reducing uncompensated care levels and the department’s reliance on state funds. In the current fiscal year, the department shall report to the Chairman of the Senate Finance Committee and the House Ways and Means Committee on the results of this examination and the actions taken to address any findings. The department shall also:

- (1) contract for an exhaustive independent review of its entire revenue cycle, to eliminate inefficiencies and improve business processes, ensure that bills are produced on a timely and

accurate basis, and assess and maximize the proportion of the time during which the department's clinicians and providers are rendering chargeable treatment services to the state's citizens; and

(2) ensure its immediate and ongoing compliance with the hospital price transparency rules established at 45 CFR Part 180 and also meet its obligation to provide certain patients with good faith estimates as required by the No Surprises Act, P.L. 116-260, and subsequent regulation.

(H) With the support and participation of the Department of Education and the Department of Mental Health, and with the intent of assuring access to behavioral health services to every student in the state through either a public or private provider, the Department of Health and Human Services must lead a comprehensive effort to improve access to and the quality of school-based behavioral health services in South Carolina, while identifying and taking steps to address community-level disparities in the availability of this care. This effort shall include, but not be limited to:

(1) the performance of a comprehensive review of Medicaid and non-Medicaid school-based behavioral health services in South Carolina, including an assessment of the availability of such services and the identification of any barriers to access, such as coverage and reimbursement rules, billing practices, other insurer policies, state agency or school district rules or procedures, or provider shortages; and

(2) a revisitation of existing coverage policies for medically necessary services provided to children, including those with or without a disability determination, and whether those services are or are not required by a child's individualized education plan or individualized family services plan, whether they do or do not arise from a referral under the Early and Periodic Screening, Diagnostic, and Treatment program, and in the context of State Medicaid Director Letter 14-006; and

(3) the rescission of any Medicaid or PEBA policies that deny coverage, solely on the basis that those services are being provided within a school or through a telehealth encounter that originates in a school, of medically necessary outpatient services that have been furnished to eligible children by enrolled and qualified providers; and

(4) the issuance of any new Medicaid policies needed to durably enshrine any appropriate telehealth coverage that had been authorized on a temporary basis during the public health emergency; and

(5) a review of statewide and school district-level policies and practices relating to suicide risk referral protocols and behavioral health training for student-facing personnel in schools; and

(6) reporting to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee on any other relevant potential policy changes that the Director of the Department of Health and Human Services believes would advance the intent of this subsection, but which would have a fiscal impact that is sufficiently substantial to require the General Assembly's direct consideration in the future.

(I) The Department of Health and Human Services is authorized to establish programs and/or fund in whole or in part, including through the potential use of CHIP Health Services Initiatives, various pilot projects or other initiatives that are intended to develop the healthcare workforce in South Carolina. Such efforts must be targeted toward current or future providers who demonstrate, by whatever means is selected by the department, commitments to remaining in-

state and including Medicaid beneficiaries among their patients. The development of the behavioral health workforce shall be prioritized, although the department may also address other provider classes, such as respiratory therapists, for which shortages have been highlighted and/or exacerbated by the public health emergency. Further consideration should also be given to attracting additional qualified preceptors and increasing opportunities for clinical rotations. The department may partner with or enlist the support of the Technical College System, Area Health Education Centers, and/or Student Loan Corporation in designing or administering these programs and, where appropriate, is encouraged to structure them as public-private partnerships in conjunction with the state's hospital and health systems and other key employers of health providers.

~~(G)~~ (J) If either the Director of the Department of Mental Health or the Director of the Department of Health and Human Services finds that state personnel and/or procurement rules are limiting his ability to fulfill the intent of this provision, he shall notify the State Fiscal Accountability Authority of this in writing and request whatever exemptions are necessary to ensure that clinical staff may be recruited, retained, and/or contracted for so as to provide greater access to behavioral health treatment.

~~(H)~~ (K) In consultation with the Department of Mental Health, the Department of Health and Human Services shall assess the feasibility of, and if warranted, take steps to establish or obtain through grant, contract, subscription, or other procurement, a statewide system for the near-real time tracking of inpatient psychiatric hospital beds and crisis stabilization beds. This system should be generally designed to draw data from providers' existing electronic medical record systems and make summary-level data available to authorized users within state agencies, participating provider organizations, and any others to be specified by the Department of Health and Human Services, for the purposes of managing critical resources and ensuring that patients may be promptly treated in the most effective and clinically appropriate setting. To protect patient privacy and ensure HIPAA compliance, the system may only collect information on the types, counts, and availability of beds, or other categorical or aggregated information, as opposed to individually identifying patient details. In partnership with the following named agencies, the Department of Health and Human Services may also explore and pursue the use of such a system:

(1) to meet the emergency preparedness and disaster recovery requirements of the Department of Health and Environmental Control and the Emergency Management Division that are currently met by the Bed Availability Report Tracking system; and/or

(2) to augment or replace the capabilities of the Department on Aging's GetCareSC website.

(L) From the funds appropriated to or otherwise made available to it, the Department of Health and Human Services is authorized to procure, enter into contracts and agreements, offer grants, and otherwise expend funds as well as establish demonstration projects in one or more areas of the state to encourage and promote necessary infrastructure and investment to achieve the objectives set out in this provision. The department shall develop policies and procedures as necessary to assure accountability in the expenditure of these funds and apply for federal matching funds when appropriate and available. The department shall report annually to the Senate Finance Committee and the House Ways and Means Committee on all expenditures made under this provision.

(M) A crisis stabilization unit facility established or funded pursuant to this proviso shall be deemed to have met the operation or partnership terms of Section 101.K. and Section 102.G. of Regulation 61-125. Such a facility and any other facility funded or established pursuant to this proviso is a DMH facility for purposes of Section 44-7-170(B)(2), even if it is constructed and/or operated by one or more private entities.

(N) Funds appropriated for Behavioral Health Capacity may be retained by the Department of Health and Human Services and carried forward to be expended for any purpose specified in this provision.