



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2008

The Honorable Rodney Ellis
Chair, Committee on Government Organization
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. GA-0674

Re: Whether section 1355.004(b)(2) of the Insurance Code requires group health plans that provide more than 60 outpatient visits for physical illnesses to provide the same number of visits for serious mental illnesses (RQ-0695-GA)

Dear Senator Ellis:

You ask whether a group health plan must provide the same number of outpatient visits for serious mental illnesses as it does for physical illnesses.¹ Your question relates specifically to Insurance Code section 1355.004.

Chapter 1355, subchapter A addresses group health benefit plan coverage for serious mental illnesses and certain other disorders as defined in section 1355.001. *See* TEX. INS. CODE ANN. § 1355.001 (Vernon 2008). It “applies only to a group health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including [a list of group health benefit plans].” *Id.* § 1355.002; *see id.* §§ 1355.001–.015 (subchapter A of chapter 1355), 1355.003 (exception). Section 1355.004 provides as follows:

(a) A group health benefit plan:

(1) must provide coverage, based on medical necessity, for not less than the following treatments of serious mental illness in each calendar year:

(A) 45 days of inpatient treatment; and

(B) 60 visits for outpatient treatment, including group and individual outpatient treatment;

¹Letter from Honorable Rodney Ellis, Chair, Committee on Government Organization, Texas State Senate, to Honorable Greg Abbott, Attorney General of Texas, at 1 (Mar. 25, 2008) (on file with the Opinion Committee, *also available at* <http://www.texasattorneygeneral.gov>) [hereinafter Request Letter].

(2) may not include a lifetime limitation on the number of days of inpatient treatment or the number of visits for outpatient treatment covered under the plan; and

(3) must include the same amount limitations, deductibles, copayments, and coinsurance factors for serious mental illness as the plan includes for physical illness.

(b) A group health benefit plan issuer:

(1) may not count an outpatient visit for medication management against the number of outpatient visits required to be covered under Subsection (a)(1)(B); and

(2) must provide coverage for an outpatient visit described by Subsection (a)(1)(B) under the same terms as the coverage the issuer provides for an outpatient visit for the treatment of physical illness.

Id. § 1355.004; *see id.* § 1355.001(1) (defining “[s]erious mental illness”).²

You state that section 1355.004(b)(2) “clarifies that mental health outpatient visits must be covered ‘under the same terms’ as outpatient visits for physical illnesses” and that it “require[s] group health plans that provide more than 60 outpatient visits for physical illnesses to provide the same number of visits for serious mental illnesses.” Request Letter, *supra* note 1, at 1. You also inform us that the Texas Department of Insurance (the “Department”) does not employ this interpretation. *See id.*³

Section 1355.004(a)(1)(B) requires coverage for “not less than” 60 visits for outpatient treatment, thus establishing a floor for the number of outpatient visits. TEX. INS. CODE ANN. § 1355.004(a)(1)(B) (Vernon 2008). Section 1355.004(b)(2) requires coverage for an outpatient visit described in section 1355.004(a)(1)(B) “under *the same terms* as the coverage the issuer provides for an outpatient visit for the treatment of physical illness.” *Id.* § 1355.004(b)(2) (emphasis added). A “term” is a provision, clause, or condition in a contract. *See* BLACK’S LAW DICTIONARY 312–13, 1509 (8th ed. 2004) (defining “condition” and “term”).

²*See* Mental Health Parity and Addiction Equity Act of 2008, Pub. L. No. 110-343, tit. V, subtit. B, § 512, 122 Stat. 3765, 3881 (2008) (providing for parity in treatment of mental illness with medical and surgical benefits in insurance plans).


³We have found no rule incorporating the Department’s construction of Insurance Code section 1355.004, but information posted on its internet site states that a group policy subject to section 1355.004 “must provide coverage for 45 days of inpatient treatment, and 60 visits for outpatient treatment . . . for serious mental illness in each calendar year.” TEXAS DEPARTMENT OF INSURANCE, ACCIDENT & HEALTH INSURANCE, TEXAS MANDATED BENEFITS/OFFERS/COVERAGES, INCLUDING CHANGES MADE BY THE 80TH LEGISLATURE at 10 (Sept. 2008), *available at* <http://www.tdi.state.tx.us/hmo/documents/lhmanben.pdf> (last visited Oct. 23, 2008).

Section 1355.004(b)(2) expressly requires coverage for an outpatient visit described in subsection (a)(1)(B) on the same terms as for physical illness, and subsection (a)(1)(B) establishes a minimum but not a maximum. We accordingly conclude that section 1355.004(b)(2) requires group health plans that provide more than 60 outpatient visits for physical illnesses to provide the same number of visits for serious mental illnesses.

S U M M A R Y

Section 1355.004(a)(1)(B) of the Insurance Code requires a group health benefit plan to provide coverage, based on medical necessity, for not less than 60 visits per year for outpatient treatment of serious mental illness. Section 1355.004(b)(2) requires coverage for an outpatient visit described in subsection (a)(1)(B) on the same terms as for physical illness. Group health plans that provide more than 60 outpatient visits for physical illnesses must accordingly provide the same number of visits for serious mental illnesses.

Very truly yours,


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