

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

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Mental Health Parity Bills Launched into Spotlight with Clinton Proposal

Mental health issues affect many employees which in turn can impact employers and ultimately productivity. Last week, Democratic presidential nominee Hillary Clinton outlined a comprehensive plan designed to ensure that mental health parity is enforced within our health insurance delivery system. In this issue of *Legislate*, we review current law and Mrs. Clinton’s proposal, and provide a recap of Congress’ recent efforts to tackle the issue.

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Background

The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) generally requires group health plans that offer mental health and substance use disorder benefits to be provided on par with medical and surgical benefits. Essentially, although the MHPAEA does not require group health plans to provide mental health or substance use disorder benefits, plans that do must ensure that they are not provided on a more restrictive basis than other benefits.

Complicating compliance with mental health parity is the somewhat conflicting rules regarding dollar limits set forth in the MHPAEA and the Affordable Care Act (ACA). Although the MHPAEA permits plans to impose annual or aggregate lifetime dollar limits on mental health and substance use disorder benefits, the ACA prohibits plans from imposing any such limits on those mental health and substance use disorder benefits which constitute essential health benefits (EHBs).

Additional Information

Our [January 14, 2014 FYI](#) provides a comprehensive overview of the parity rules, including detailed information about how the 2013 [final rules](#) under the MHPAEA coordinate with those under the ACA. Additional information about mental health parity can be found in the [tri-agency guidance](#) issued in November 2015 and the [DOL guidance](#) issued in December 2015, as well as this [fact sheet](#). (See our [December 15, 2015 FYI](#).)

Clinton’s Plan

Last month, Democratic presidential nominee Hillary Clinton announced a [comprehensive plan](#) that the campaign asserts would “break down the barriers” between medical health care and mental health services, and advance current efforts to enforce mental health parity. Key provisions in Mrs. Clinton’s proposal are:

- Audits: Provide DOL and HHS with authority to perform randomized audits to detect parity violations
- Enforcement: Direct DOL and HHS to bring enforcement actions for violations; create a simple process to report parity complaints and violations
- Disclosure: Increase transparency by public disclosure of violations and corrective actions
- Compliance: Require plans to disclose how their non-quantitative treatment limitations comply with the parity law

Pending Legislation

Providing mental health care for those in need is an issue that has garnered support from both Democrats and Republicans in both the House and Senate. A number of comprehensive bills are pending with provisions designed to strengthen current mental health parity rules, as well as increase compliance and enforcement. These bills include:

- [Helping Families in Mental Health Crisis Act of 2016 \(H.R. 2646\)](#), sponsored by Rep. Tim Murphy, (R-PA), with 147 Republican and 60 Democratic co-sponsors
- [Behavioral Health Coverage Transparency Act of 2016 \(S.2647\)](#), sponsored by Sen. Elizabeth Warren (D-MA), with 4 Democratic co-sponsors
- [Mental Health Reform Act of 2016 \(S. 2680\)](#), sponsored by Sen. Lamar Alexander (R-T), with 7 Republican and 8 Democratic co-sponsors
- [Comprehensive Behavioral Health Reform and Recovery Act of 2016 \(H.R. 4435\)](#), sponsored by Rep. Gene Green (D-TX), with 33 Democratic co-sponsors
- [Heroin and Prescription Drug Abuse Prevention and Reduction Act \(H.R. 4396\)](#), sponsored by Rep. Frank Pallone (D-NJ), with 33 Democratic co-sponsors



Although the bills differ, there are key mental health parity requirements that appear in those noted above. Those that may appear in a consolidated bill are as follows:

- Coverage for eating disorders “in alignment with current mental health parity standards”
- Disclosure of how parity decisions are made, as well as rating and reasoning for denial of mental health claims
- Documentation of compliance with the quantitative financial, treatment limitations and nonquantitative treatment limitations (NQTLs) requirements
- Public disclosure of audits, perhaps random
- Data submissions to state entities coordinating with federal agencies

Comment. Given the bipartisan support for improving compliance with mental health parity, Congress will try to advance these bills before the current session expires on January 3, 2017. Indeed, later this week, the Health Subcommittee of the House Energy and Commerce Committee will hold a hearing to examine current mental health parity laws and regulations. Nevertheless, success for advancing the current slate of bills may

depend on Congress reaching consensus on whether mental health legislation will be coupled with gun control legislation.

Looking Ahead

With the extended summer recess now behind us and September 30 — the last day of the 2016 fiscal year — fast approaching, lawmakers will be focused on finalizing appropriations bills (or continuing resolutions) to fund the federal government and avert a shutdown. In addition, attention will be dedicated to the looming November election, as each party strives for control of one or both chambers.

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