SIDE-BY-SIDE COMPARISON OF THE SENATE AND HOUSE MENTAL HEALTH PARITY BILLS

UPDATED SEPTEMBER 14, 2007

Issue	Senate Bill (S. 558) [August 2, 2007 version]	House Bill (H.R. 1424)	Comments
1. Definition of mental health benefits subject to parity requirement	• Defines mental health benefits to mean "benefits with respect to mental health services (including substance use disorder treatment) as defined under the terms of the plan or coverage, and when applicable as may be defined under State law when applicable to health insurance coverage". • Therefore, the term "mental health" benefits also includes substance abuse benefits for purposes of the legislation and State law may continue to define what benefits a fully insured plan may be required to cover, but not a self-insured plan.	• **Significant difference from Senate bill.** H.R. 1424 requires group health plans or health insurance coverage that provide "any" mental health and substance abuse benefits to provide the same benefits for mental health and substance abuse as the highest average enrollment plan offered to federal employees. • Note: All plans offered to federal employees are required to provide benefits for all mental health and substance abuse disorders which are listed in the diagnostic manual for such conditions, which is currently the DSM-IV manual.	• House bill exceeds the stated objective of achieving "parity" by requiring coverage of all conditions in the diagnostic manual for mental health and substance abuse disorders if a plan decides to cover "any" mental health or substance abuse conditions at all. No similar federal requirement applies to any other category of benefits. • House bill inappropriately requires that all employer-sponsored health plans (except for those with 50 or fewer workers) cover all the same conditions as the federal government covers for its employees.

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2. Parity requirement on financial requirements	• Financial requirements applied to mental health benefits ("including deductibles, copayments, coinsurance, out-of-pocket expenses, and annual and lifetime limits") must be "no more restrictive than" the financial requirements applied to substantially all medical and surgical benefits covered by the plan. • Allows discretion to apply the financial requirements parity rule in a manner that takes into consideration "similar treatment settings or similar treatments".	• Similar to the Senate bill. Financial requirements applied to mental health benefits and substance abuse benefits must be the same as the requirements which apply to substantially all medical and surgical benefits within prescribed categories of coverage. • The prescribed categories of coverage to which the financial parity requirements would apply are: 1. inpatient, in-network, 2. inpatient, out-of-network, 3. outpatient, in-network and 4. outpatient, out-of-network.	• Both bills contain similar parity requirements with respect to financial requirements applied to benefits, although the Senate bill permits more discretion in how similar treatment settings or similar treatments are determined for the purpose of applying the parity rule to covered benefits.
3. Parity requirement on treatment limitations on number of covered days or visits	• Treatment limitations applied to mental health benefits must be "no more restrictive than" day and visit limitations applied to substantially all medical and surgical benefits covered by the plan. • Allows discretion to apply the treatment limitations parity rule in a manner that takes into consideration "similar treatment settings or similar treatments".	• Similar to the Senate bill. Treatment limitation requirements applied to mental health benefits and substance abuse benefits must be the same as the requirements applied to substantially all medical and surgical benefits within prescribed categories of coverage. • The prescribed categories of coverage to which the financial parity requirements would apply are: 1. inpatient, in-network, 2. inpatient, out-of-network, 3. outpatient, in-network and 4. outpatient, out-of-network.	• Same comments as above regarding financial requirements.

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4. Protection of plan medical management practices	• Includes a rule of construction to protect a plan's ability to manage mental health benefits, make medical necessity and appropriateness determinations and the contracting and use of networks of participating providers.	• **Significant difference from Senate bill.** House bill includes no provision to protect plan medical management practices. • Requires plans to make available their criteria for medical necessity determinations and the reason for any denial of any reimbursement or payment for services for mental health or substance abuse benefits.	• House bill fails to protect plan medical management practices which are essential to ensuring that medically necessary services are covered by plans.
5. Out-of-network coverage	• If a plan provides out-of-network coverage, the Senate bill states that parity rules shall apply separately to any in-network and out-of-network benefits.	• **Significant difference from Senate bill.** House bill requires plans to provide out-of-network coverage for mental health and substance abuse benefits if the plan provides out-of-network coverage for medical and surgical benefits in any of three categories: emergency care, inpatient care or outpatient care.	• House bill exceeds its stated objective of achieving "parity" by inappropriately mandating out-of-network coverage *solely* for mental health and substance abuse services when out-of-network coverage is provided for medical and surgical services. No similar requirement applies for plans offered to federal employees.

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6. Cost increase exemption	• Exempts plans where the provisions result in the "total cost of coverage" to increase by more than 2 percent in the first year or more than 1 percent in any subsequent year. • If costs exceed threshold amounts, parity provisions would not apply during the following plan year. • Cost determinations would be made by a qualified actuary and made available to the public. • Cost determinations may be made by a plan after first 6 months of compliance.	• Same provisions as Senate bill.	• Current law exempts the application of the parity requirements if they result in an increase of more than 1 percent in overall plan costs. • Neither bill provides more than a one year exemption from parity requirements, after which the parity rules would once again apply to benefits offered by the plan.
7. Applicability to small groups	• Does not apply to small group health plans with an average of between 2 employees and 50 employees. Also does not apply if states define employer groups to include companies with only one employee.	• Same as Senate bill.	• Consistent with current parity law exemption from applicability to small groups.

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8. Relationship to State Laws	• Applies current law "HIPAA standard" which establishes the federal requirements as a floor and permits states to enact more extensive requirements for insured plans.	• **Significant difference from Senate bill.** House bill permits states to enact "any State law that provides greater consumer protections, benefits, methods of access to benefits, rights or remedies" that are greater than those in H.R. 1424.	• The Supreme Court has consistently concluded that the federal remedies under ERISA are exclusive for all participants in employer-sponsored health plans. • House bill should use the "HIPAA standard" in current law as the Senate bill does to govern what States may enact and not use establish a new preemption provision for this purpose.
9. Issuance of regulations and effective date	• Regulations to be issued within one year after date of enactment. • Provisions would be effective the first plan year beginning on or after January 1 that begins more than one year after the date of enactment.	• **Significant difference from Senate bill.** No provision for the date of issuance of regulatory guidance. All provisions would be effective for plan years beginning on or after January 1, 2008.	• House bill effective date would be unrealistically short because plans will have to be revised following issuance of agency regulations, the time period for which is not specified in H.R. 1424.