Health Law and Policy Brief

Volume 2 | Issue 2 Article 9

12-6-2013

Washington Update

Molly Elizabeth Conway
American University Washington College of Law

Kimberly Hodgman
American University Washington College of Law

Aaron Jones Wong
American University Washington College of Law

Washington Update: News From Our Nation's Capital

Equal Coverage for Mental Health and Substance Use Disorders

For decades, insurance companies have denied coverage and payment for equal access to treatment for individuals with mental health or substance use disorders by charging higher co-pays and limiting coverage of treatment.

In October 2008, President George W. Bush signed the Emergency Economic Stabilization Act of 2008 (P.L. 110-374). P.L. 110-374 incorporated the Paul Wellstone (D-MN) and Pete Domenici (R-NM) Mental Health Parity and Addiction Equity Act of 2008, which prohibits inequality in insurance coverage. The House introduced the Mental Health Parity Act earlier this year. The Emergency Economic Stability Act previously failed because the House and the Senate disagreed about specific provisions. The incorporation of the Mental Health Parity Act facilitated the passing of the stabilization package and resulted in the enactment of monumental health insurance reform. The incorporation of the Paul Wellstone Mental Health Parity Act facilitated the passing of the stabilization package and resulted in the enactment of monumental health insurance reform.

P.L. 110-374 mandates improvements in health coverage in four specific areas. First, group health plan co-pays for mental health or substance use disorders may not exceed the plan's co-payments for medical or surgical procedures. Second, group health plans may not limit treatment for mental health or substance use disorder more than the restrictions of the plan's surgical and medical benefits. Third, group health plans that offer out-of-network coverage for medical and surgical procedures must allow out-of-network coverage for both mental health and substance use disorders. Finally, the Act provides transparency in the claims and denials process by requiring insurers to provide a written explanation for denial of coverage.

Employers and insurers will have a year to prepare for the legislative changes. Requirements under the Paul Wellstone and Pete Domenici Mental Health Parity Act will be effective on October 3, 2009.

House of Representatives Passes Legislation to Provide the Food and Drug Administration with Regulation Power of Tobacco Products

On July 30, 2008, the House of Representatives passed the Family Smoking Prevention and Tobacco Control Act (H.R. 1108) by a vote of 326 to 102. This legislation grants the Food and Drug Administration (FDA) regulatory power over tobacco products — including advertising authority and complete product regulation. H.R. 1108 would not allow the FDA to ban cigarettes or nicotine from tobacco products. Supporters are hopeful this regulation will curb smoking in the United States, especially among minors.

The White House issued a Statement of Administrative Policy veto threat of H.R. 1108. The Administration cites concerns about user fees placed upon cigarettes to generate more revenue to fund the FDA's new regulatory power, and refers to the fees as a new tax that would be paid disproportionately by low-income individuals as these individuals are the largest consumers of tobacco products. Further criticism stems from the fact that H.R. 1108 would outlaw the production of many types of flavored cigarettes and tobacco, excluding menthol. This provision, along with advertising provisions, would give Philip Morris USA, a supporter of H.R. 1108, an even greater share of the United States tobacco market. In 2000, the Supreme Court ruled against FDA regulatory power over tobacco. This ruling prompted the creation of H.R. 1108, to clarify powers granted to the FDA.

During the House floor debate, John Boehner (R-OH), House Minority Leader and a smoker, and John Dingell (D-MI), Chairman of the House Committee on Energy and Commerce, engaged

in a heated debate over the regulatory powers of H.R. 1108. Minority Leader Boehner stated, "Most people who smoke in America know that smoking is probably not good for their health. Do we need the federal government to tell us?" Chairman Dingell replied, "This legislation is on the floor because people are killing themselves by smoking these evil cigarettes. The . . . minority leader is going to be amongst the next to die. I am trying to save him . . . because he is committing suicide every time he puffs on one of those things."

Currently, H.R. 1108 is in the Senate Committee on Health, Education, Labor, and Pensions. The Senate companion legislation (S. 625), introduced by Senator Edward Kennedy (D-MA), has 59 co-sponsors. The Senate is scheduled to return for a "lame duck" session on November 17, 2008; however, it is unclear whether this legislation will be brought for a floor vote during this time. If H.R. 1108 does not come before the Senate before the end of the 110th Congress, it will need to be reintroduced in the 111th Congress, to be considered from "square one" of the legislative process.

Legislation Aims to Address Deficiency in Veterans Mental Health and Substance Use Care

On October 10, 2008, President George W. Bush signed the Veterans' Mental Health and Other Care Improvements Act of 2008 (P.L. 110-387) into law. First introduced in October 2007 by Senate Chairman of the Veterans' Affairs Committee Daniel K. Akaka (D-HI), P.L. 110-387 intends "to improve the treatment and services provided by the Department of Veterans Affairs to veterans with post-traumatic stress disorder and substance use disorders, and for other purposes."

P.L. 110-387 originated, in part, from the plight of the family of one Iraq war veteran, Justin Bailey. Bailey was among the first wave of Marines deployed to Iraq in 2003. Seeking treatment for Post Traumatic Stress Disorder (PTSD) and drug abuse, Bailey checked himself into the West Los Angeles Veterans Administration (VA) Hospital in November 2006. Bailey died under VA care on January 26, 2007 at the age of 27. The Bailey family has worked actively towards reform treatment for veterans' mental health. In August 2007, Tony Bailey (Justin Bailey's father) addressed the Senate Veterans' Affairs Committee pleading for evaluation of the current system and implementation of system-wide changes.

The Act sets a standard minimum level of care for substance abuse disorder by providing short- and long-term motivational counseling, detoxification services, relapse prevention, and drug treatment. As well, it improves treatment for veterans with multiple disorders, mandates staffing reviews of residential VA mental health facilities, creates a PTSD and substance use research program, and enables VA to provide mental health services to veterans' families. The broad reaching law provides improvements for veterans' emergency care, veterans' pain care, and rehabilitation for formerly incarcerated veterans, rural veterans, and low-income veterans.

The care mandate is accompanied by authority to construct new facilities, provide long-term caregiver assistance services, correct emergency care reimbursement procedures, and establish six VA Epilepsy Centers of Excellence for research, education, and clinical care.

Molly Elizabeth Conway, Kimberly Hodgman, and Aaron Jones Wong contributed to this column.