Georgia State University Law Review

Volume 39
Issue 1 *Fall 2022*

Article 12

2022

HB 1013: Georgia Mental Health Parity Act

Justin Crozier
jcrozier1@student.gsu.edu

Betsy Hicks
ehicks11@student.gsu.edu

Jordan Kalteux
jkalteux2@student.gsu.edu

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Recommended Citation

Justin Crozier, Betsy Hicks & Jordan Kalteux, *HB 1013: Georgia Mental Health Parity Act*, 39 GA. ST. U. L. REV. 145 (2022).
Available at: https://readingroom.law.gsu.edu/gsulr/vol39/iss1/12

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MENTAL HEALTH

Governing and Regulation of Mental Health: Amend Titles 15, 20, 31, 33, 37, 45, and 49 of the Official Code of Georgia Annotated, Relating to Courts, Education, Health, Insurance, Law Enforcement Officers and Agencies, Mental Health, Public Officers and Employees, and Social Services, Respectively, so as to Implement the Recommendations of the Georgia Behavioral Health Reform and Innovation Commission; Provide for Compliance with Federal Law Regarding Mental Health Parity; Provide for Definitions; Provide for Annual Reports; Provide for Annual Data Calls Regarding Mental Health Care Parity by Private Insurers; Provide for Information Repositories; Require Uniform Reports from Health Insurers Regarding Nonquantitative Treatment Limitations; Provide for Consumer Complaints; Provide for Same-Day Reimbursements; Provide for a Short Title; Provide for Definitions and Applicability of Certain Terms; Revise Provisions Relating to Independent Review Panels; Provide for Annual Parity Compliance Reviews Regarding Mental Health Care Parity by State Health Plans; Provide for Medical Loss Ratio; Revise Provisions Relating to Coverage of Treatment of Mental Health or Substance Use Disorders by Individual and Group Accident and Sickness Policies or Contracts; Define Medical Necessity for Purposes of Appeals by Medicaid Members Relating to Mental Health Services and Treatments; Provide for a State Medicaid Plan Amendment or Waiver Request if Necessary; Provide that No Existing Contracts Shall be Impaired; Provide for Service Cancelable Loans for Mental Health and Substance Use Professionals; Provide for the Establishment of a Behavioral Health Care Workforce Data Base by the Georgia Board of Health Care Workforce; Provide for a Grant Program to Establish Assisted Outpatient Treatment Programs; Provide for Definitions; Provide for Grant Requirements; Provide for Grant Application and Award; Provide for Research and Reporting; Provide for Rules and Regulations; Revise Definitions Relating to Examination and Treatment for Persons who are Mentally Ill or who have Addictive Diseases; Authorize Peace Officers to Take Persons to Emergency Receiving

Facilities Under Certain Circumstances; Provide for a Grant Program for Accountability Courts that Serve the Mental Health and Substance Use Disorder Population; Provide for Powers and Duties of the Office of Health Strategy and Coordination; Provide for Methods to Increase Access to Certified Peer Specialists in Rural and Underserved or Unserved Communities; Provide for Implementing Certain Federal Requirements Regarding the Juvenile Justice System; Provide for Automatic Repeal; Provide for Funds from the County Drug Abuse Treatment and Education Fund for Mental Health Divisions; Provide for Training Requirements for Behavioral Health Co-Responders; Provide for Co-Responder Programs; Provide for Continued Exploration of Strategies for Individuals with Mental Illnesses; Authorize the Behavioral Health Reform and Innovation Commission to Collaborate and Provide Advisement on Certain Programs, Coordinate Certain Initiatives, and Convene Certain Groups and Advisory Committees; Extend the Sunset Date for the Behavioral Health Reform and Innovation Commission; Provide for an Annual Report by the Administrator of the Georgia Data Analytic Center Relating to Complaints Filed for Suspected Violations of Mental Health Parity Laws; Provide Coverage for Medications for the Treatment of Certain Disorders Under Medicaid; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 15-1-23 (new); 15-21-101 (amended); 20-3-374 (amended); 31-2-17 (new); 31-53-3 (amended); 33-1-27 (new); 33-20A-31 (amended); 33-21A-13, -14 (new); 33-24-28.1, -29, -29.1 (amended); 35-5-2, -5 (amended); 35-6A-15 (new); 37-1-7, -20, -114.1, -115.1 (new), -116 (amended), -120, -121, -122, -123, -124, -125 (new); 37-2-4, -6 (amended); 37-3-1, -42, -101 (amended); 37-7-1, -42, -101 (amended); 45-12-154.1 (new); 49-4-152.6

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	(new), -153 (amended); 49-5-24 (amended); 49-10-5 (new)
BILL NUMBER:	HB 1013
ACT NUMBER:	587
GEORGIA LAWS:	2022 Ga. Laws 26
SUMMARY:	The Act overhauls Georgia's mental health system by enforcing compliance with federal mental health parity law. Most notably, the Act requires health insurers to provide coverage for mental health and substance use disorders equitably with physical health and defines generally accepted standards of care. The Act requires insurers to submit annual parity compliance reports and requires the Commissioner to make annual data calls and submit annual reports. The Act requires compliance with a minimum 85% medical loss ratio. The Act provides for cancelable loans to Georgia residents enrolled in related educational programs and creates grant programs for accountability courts. The Act conditionally authorizes peace officers to involuntarily commit persons to emergency receiving facilities. Finally, the Act creates a multi-agency treatment for children team (MATCH) to facilitate collaboration across state agencies.
EFFECTIVE DATE:	July 1, 2022

History

While Georgia ranks as the number one state for business, it ranks last for access to mental health care.[1] Access to mental health care is

1. MADDY REINERT, THERESA NYUYEN & DANIELLE FRITZE, MENTAL HEALTH AM., 2021 THE

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measured by "access to insurance, access to treatment, quality and cost of insurance, access to special education, and mental health workforce availability."[2] Congress tackled this issue in 2008 by passing the Mental Health Parity and Addiction Equity Act (MHPAEA).[3] The MHPAEA, and mental health parity in general, requires health care providers to impose the same benefit limitations for mental health or substance use disorder treatment as for medical or surgical treatment.[4] Although the MHPAEA has been in place since 2008, it took the Georgia legislature fourteen years to enforce parity compliance.[5]

In 2019, the Georgia House of Representatives passed legislation creating the Behavioral Health Reform and Innovation Commission (the Commission).[6] The Commission is comprised of twenty-four members appointed by the Governor, the Lieutenant Governor, the speaker of the House of Representatives, and the Chief Justice of the Georgia Supreme Court.[7] In January 2021, the Commission produced its First Year Report (the Report) on its "comprehensive review of the behavioral health system of care in Georgia."[8] While the Report covered several topics, "[p]arity in insurance coverage for behavioral health treatment, including substance use disorders, [was] central to all

STATE OF MENTAL HEALTH IN AMERICA 13 (2020), https://mhanational.org/sites/default/files/2021%20State%20of%20Mental%20Health%20in%20America_0.pdf [https://perma.cc/Y734-QL6N]; Press Release, Georgia Department of Economic Development, Georgia Earns 'Top State for Doing Business' for 8th Consecutive Year (Oct. 1, 2021), https://www.georgia.org/press-release/georgia-earns-top-state-doing-business-8th-consecutive-year [https://perma.cc/PM76-FBUN].

2. REINERT ET AL., *supra* note 1.

3. Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, Pub. L. No. 110-343, 122 Stat. 3881–93 (codified at 42 U.S.C. § 300gg-26).

4. *The Mental Health Parity and Addiction Equity Act (MHPAEA)*, CTRS. FOR MEDICARE & MEDICAID SERVS., https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/mhpaea_factsheet [https://perma.cc/L7GV-UA94].

5. *See* 2022 Ga. Laws 26.

6. 2019 Ga. Laws 614, § 1, at 614–18 (codified at O.C.G.A. §§ 37-1-111 to -116 (2022)).

7. Behavioral Health Reform and Innovation Commission HR 514, GA. HOUSE OF REPRESENTATIVES, https://www.house.ga.gov/Committees/en-US/BehavioralHealthReformandInnovationCommission.aspx [https://perma.cc/DJB4-ZUHC]; *see* Telephone Interview with Rep. Mary Margaret Oliver (D-82nd) (May 24, 2022) [hereinafter Oliver Interview] (on file with the Georgia State University Law Review). It is worth nothing that "[t]he commission shall be abolished and this article shall stand repealed on June 30, 2025." § 37-1-116.

8. GA. BEHAV. HEALTH REFORM & INNOVATION COMM'N, FIRST YEAR REPORT 2 (2021) [hereinafter COMMISSION REPORT], https://www.house.ga.gov/Documents/CommitteeDocuments/2020/BehavioralHealth/BH_Commission_Report.pdf [https://perma.cc/RAR4-TKTG].

https://readingroom.law.gsu.edu/gsulr/vol39/iss1/12

the issues . . . considered by the [C]ommission."[9] The Commission recommended creating a "working group" of various departments to research other states and consider what legislation Georgia needed for mental health parity.[10] The Commission also recommended that the Georgia Department of Community Health and the Georgia Department of Insurance create annual reports to monitor compliance.[11] Lastly, the Commission recommended a streamlined process for filing complaints and tracking parity violations.[12] The Georgia legislature used the Commission's recommendations to draft House Bill (HB) 1013, the Mental Health Parity Act, bringing Georgia in line with the MHPAEA by providing for mental health parity in the state.[13]

Representative Mary Margaret Oliver (D-82nd), a Commission member, and Representative Todd Jones (R-25th) sponsored the bill in the House.[14] Representative Jones's wife, Tracy Jones, spoke at Committee meetings about the importance of mental health parity in combating mental health and substance use in Georgia.[15] The Joneses' oldest son, Justin, has schizoaffective disorder, suffers from substance use disorders, and has struggled with drug abuse throughout his life causing him to be admitted to substance use and mental health facilities more than thirty times.[16] Because of the lack of mental health parity in Georgia, Justin's insurance severely limited his ability to improve his mental health and receive appropriate treatment.[17] His healthcare providers focused on "acute symptoms" and short-term improvement rather than long-term stability and relapse prevention.[18] As a result,

9. *Id.* at 4.
10. *Id.*
11. *Id.*
12. *Id.* at 4–5.
13. *See id.* 3–8, 12–15, 17–21, 23–25; HB 1013, as introduced, 2022 Ga. Gen. Assemb.; Oliver Interview, *supra* note 7.
14. Georgia General Assembly, HB 1013, Bill Tracking [hereinafter HB 1013, Bill Tracking], https://www.legis.ga.gov/legislation/61365 [https://perma.cc/ZA2W-W9RW]; Oliver Interview, *supra* note 7.
15. Video Recording of House Health and Human Services Committee Meeting at 1 hr., 42 min., 41 sec. (Feb. 16, 2022) [hereinafter Feb. 16 House Committee Video] (remarks by Tracy Jones, mother of Justin Jones and wife of Rep. Todd Jones (R-25th)), https://www.youtube.com/watch?v=HHwa-y8wXvc&t=3005s [https://perma.cc/L59H-C7QR].
16. *Id.* at 1 hr., 44 min., 02 sec.
17. *Id.* at 1 hr., 45 min, 57 sec.
18. *Id.* at 1 hr., 46 min, 10 sec.

Georgians like Justin struggled to get the treatment they deserved. Justin is one of over 300,000 Georgians suffering from "serious mental illness" and one of over 500,000 Georgians over the age of twelve suffering from substance use disorders.[19] Justin's story exemplifies why HB 1013 was necessary.

Before the Mental Health Parity Act, insurance providers were reluctant, or simply refused, to cover treatment for chronic mental health and substance use disorders.[20] Insurers would push a diagnosis of drug-induced hallucinations rather than chronic disorders because it was cheaper to treat.[21] In several situations, "patients would have to be suicidal before the insurance company ha[d] to pay for a visit."[22] Because of the Act, "families will no longer have to pay out of pocket for needed care due to arbitrary coverage limits and denials."[23]

Although HB 1013 enjoyed strong bipartisan support, portions of it were amended.[24] Opponents criticized the involuntary patient provision that allowed peace officers to use a lower standard to involuntarily commit individuals suffering from mental health or substance use disorder episodes.[25] Before HB 1013, officers could

19. *Mental Health in Georgia*, NAT'L ALL. ON MENTAL ILLNESS (Feb. 2021), https://www.nami.org/NAMI/media/NAMI-Media/StateFactSheets/GeorgiaStateFactSheet.pdf [https://perma.cc/YBS5-T9QX]; BEHAVIORAL HEALTH BAROMETER, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. 26 (2020), https://www.samhsa.gov/data/sites/default/files/reports/rpt32827/Georgia-BH-Barometer_Volume6.pdf [https://perma.cc/YS4A-25J2].

20. *See* Eve H. Byrd, *With New Law, 2022 Is the Year for Mental Health in Georgia*, CARTER CTR. (Apr. 7, 2022), https://www.cartercenter.org/news/features/blogs/2022/with-new-law-2022-is-the-year-for-mental-health-in-georgia.html [https://perma.cc/8HU2-6LDD] ("[This] means insurance companies can no longer deny coverage for medically necessary behavioral health treatment, and families will no longer have to pay out of pocket for needed care due to arbitrary coverage limits and denials.").

21. Feb. 16 House Committee Video, *supra* note 15, at 1 hr., 47 min, 10 sec.

22. Laura Nwogu, *'A Great Step in the Right Direction': What New Mental Health Legislation Means for Georgians*, SAVANNAH MORNING NEWS (May 16, 2022, 5:30 AM), https://www.savannahnow.com/story/lifestyle/2022/05/16/georgia-politics-what-know-mental-health-parity-act/9729340002/ [https://perma.cc/PN8D-KZAK].

23. Byrd, *supra* note 20.

24. Telephone Interview with Rep. Philip Singleton (R-71st) (May 16, 2022) [hereinafter Singleton Interview] (on file with the Georgia State University Law Review); Jeff Amy, *Insurance Deal Spurs Georgia Mental Health Bill to Passage*, ASSOCIATED PRESS (Mar. 30, 2022), https://apnews.com/article/business-health-georgia-mental-health-af7785383f80a00142f4741d024e7c57 [https://perma.cc/424C-LAMN].

25. *See* Janice Yu, *State Mental Health Bill Gets Approval of Senate Committee, Sparks Controversy*, FOX5 ATLANTA (Mar. 28, 2022), https://www.fox5atlanta.com/news/state-mental-health-bill-gets-approval-of-senate-committee-sparks-controversy [https://perma.cc/VF4H-B8VM]; *see* HB 1013, as introduced, § 3-3, p. 48, ll. 1208–28, 2022 Ga. Gen. Assemb.

initiate a 1013 hold if they witnessed someone they believed to have mental health issues committing a crime or in imminent risk of harm to themselves or others.[26] Once the hold was initiated, the patient would be detained for up to forty-eight hours while waiting for a mental health evaluation to determine if the person needed to be involuntarily committed for inpatient or outpatient treatment.[27] Because police officers faced difficulties under the "imminent" harm standard, legislators attempted to ease this process.[28] Some critics argued that the provision removed due process protections.[29] Other critics of the bill voiced concerns about the roles and responsibilities of law enforcement, particularly regarding subsequent transfers after an individual is initially transferred for outpatient treatment.[30]

Early opposition to HB 1013 also focused on the definitions of "mental health" and "substance use disorder[s]."[31] To have better control over these definitions, Representative Philip Singleton (R-71st) explained that expert definitions regarding mental health conditions should be set forth within the Code, rather than farming out the definitions to third-party agencies.[32] The Senate and House were successful in addressing many of these concerns through the revision process, and the bill passed unanimously in both chambers.[33]

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26. O.C.G.A. § 37-3-1(12.1)(A) (2021); *see* Singleton Interview, *supra* note 24.

27. Singleton Interview, *supra* note 24. Form 1013 is a legal transport document that allows a law enforcement officer to involuntarily bring a patient who "presents a substantial risk of imminent harm to self or others" or "appears to be so unable to care for his/her own physical health and safety as to create an imminently life endangering crisis" to an "emergency receiving facility." GA. DEP'T OF BEHAV. HEALTH & DEVELOPMENTAL DISABILITIES, FORM 1013—CERTIFICATE AUTHORIZING TRANSPORT TO EMERGENCY RECEIVING FACILITY AND REPORT OF TRANSPORTATION, http://www.djj.state.ga.us/Policies/DJJPolicies/Chapter12/Attachments/DJJ12.23AttachmentA.pdf [https://perma.cc/4HH5-V9VW]. Once the patient is admitted, he or she must be examined by a physician within 48 hours. *Your Rights and Involuntary Mental Health Treatment*, GA. ADVOC. OFF., https://thegao.org/initiatives/olmstead-ada/your-rights-and-involuntary-mental-health-treatment/ [https://perma.cc/3TE2-SMEQ]. The patient also has the right to petition for a writ of habeas corpus or a protective order after he or she arrives at the emergency receiving facility. *Id.* If the licensed professional determines that the patient requires involuntary treatment, the patient must be transferred to an evaluating facility. *Id.*

28. Oliver Interview, *supra* note 7.

29. *See., e.g.*, Singleton Interview, *supra* note 24.

30. Feb. 16 House Committee Video, *supra* note 15, at 1 hr., 37 min., 32 sec. (remarks by Louis Dekmar, Chief of Police, LaGrange Police Department).

31. Singleton Interview, *supra* note 24.

32. *Id.*

33. Byrd, *supra* note 20.

Bill Tracking of HB 1013

Consideration and Passage by the House

Speaker of the House David Ralston (R-7th) sponsored HB 1013 in the House with Representative Todd Jones (R-25th), Representative Mary Margaret Oliver (D-82nd), Representative Don Hogan (R-179th), Representative Sharon Cooper (R-43rd), and Representative James Beverly (D-143rd) cosponsoring.[34] The bill was placed in the House hopper on January 26, 2022, and the House read the bill for the first time on January 27, 2022.[35] The House read the bill for the second time on February 1, 2022, at which time the House assigned it to the House Health and Human Services Committee.[36]

The House Health and Human Services Committee favorably reported the bill by substitute on March 3, 2022.[37] The Committee substitute proposed changes to the definition of "treatment" in Code section 33-20A-31 to include "mental health or substance use disorder."[38] On recommendation of the Georgia Hospital Association, the Committee added a section to "[e]nsure that any subcontractor or affiliate responsible for management of mental health and substance use disorder on behalf of the health care entity complies with the requirements of this Code section."[39] The Committee also added a crucial guarantee that health care entities cannot prohibit same-day reimbursement for a patient who sees more than one health care provider in a single day.[40] The provision specifically protects a patient's ability to see a primary care physician and a mental health provider in the same day.[41] In two sections, the Committee added specific language to provide, "[t]o the extent practicable, . . . culturally

34. HB 1013, Bill Tracking, *supra* note 14.

35. *Id.*; State of Georgia Final Composite Status Sheet, HB 1013, May 19, 2022.

36. State of Georgia Final Composite Status Sheet, HB 1013, May 19, 2022; HB 1013, Bill Tracking, *supra* note 14.

37. State of Georgia Final Composite Status Sheet, HB 1013, May 19, 2022.

38. HB 1013 (HCS), § 1-3, p. 10, ll. 237–38, 2022 Ga Gen. Assemb.

39. *Id.* § 1-2, p. 6, ll. 134–36; *see* House Health and Human Services Committee Meeting at 36 min., 9 sec. (Feb. 23, 2022) [hereinafter Feb. 23 House Committee Video] (remarks by Rep. Mary Margaret Oliver (D-82nd)), https://vimeo.com/showcase/8988912?video=680591850 [https://perma.cc/8W4F-YPRB].

40. HB 1013 (HCS), § 1-2, p. 7, ll. 167–69, 2022 Ga. Gen. Assemb.; *id.* § 1-4, p. 14, ll. 348–50.

41. *Id.* § 1-2, p. 7, ll. 167–69; *id.* § 1-4, p. 14, ll. 348–50.

and linguistically sensitive materials [should be] available for consumers accessing the complaint process" as detailed in the bill.[42]

In Part 2, the substitute added, among other things, a requirement that the Board of Health Care Workforce licensees and applicants complete a survey to obtain a minimum data set that includes whether those surveyed accept Medicare and Medicaid.[43]

In Part 3, the substitute further articulated the definition of a person in need of involuntary inpatient treatment, making clear that it is appropriate for those who (1) are "reasonably likely to realize an improvement in [their] psychiatric symptoms or a reduction in [their] mental health deterioration due to inpatient treatment;" (2) "will not receive adequate benefit from less restrictive alternatives to inpatient treatment;" and (3) have "declined voluntary inpatient treatment."[44] The substitute also added language to allow a "mobile crisis team" to act like law enforcement to determine whether "probable cause" exists "that the person is a mentally ill person requiring involuntary treatment"; where such probable cause exists, the mobile crisis team may take that person "to a physician within the county or an adjoining county for emergency examination."[45]

In Part 4, the Committee added a provision related to the Criminal Justice Coordinating Council, which allowed allocated grant funds to pay for costs associated with transporting individuals to and from emergency care facilities.[46] The Committee also added a survey provision to gain better insights as to the methods of transportation for patients receiving emergency care.[47] Additionally, the substitute added several phrases and provisions which emphasize the Committee's focus on coordinated patient care—particularly for children—as well as the future adoption of uniform standards of care.[48] Finally in Part 4, the Committee expanded the "familiar faces" initiatives to include an analysis on the relationship between mental health care and homelessness.[49]

42. *Id.* § 1-2, p. 8, ll. 176–78; *id.* § 1-4, p. 14, ll. 357–60.
43. *Id.* § 2-2, pp. 35–36, ll. 895–923.
44. *Id.* § 3-2, p. 48, ll. 1233–38.
45. *Id.* § 3-3, pp. 49–50, ll. 1252–70.
46. HB 1013 (HCS), § 4-1, p. 50, ll. 1286–88, 2022 Ga. Gen. Assemb.
47. *Id.* § 4-3, p. 56, ll. 1425–31.
48. *Id.* § 4-3, pp. 52–55, ll. 1318, 1342–44, 1373–82, 1394–1400.
49. *Id.* § 4-4, p. 58, ll. 1476–84.

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In Part 5, the Committee removed a provision that established a statewide registry for pediatric patients who "have had high utilization of crisis services or other high usage of resources for the purposes of optimizing and streamlining care."[50] The Committee removed the provision because setting up a statewide registry is a "heavy lift" and implicates privacy concerns for minors.[51]

In Part 6, the substitute changed what information the department of community health shall study.[52] The department is no longer required to study "[t]he feasibility of implementation of a unified formulary relating to mental health services under Medicaid, PeachCare for Kids, and the state health benefit plan," but now must study "[r]eimbursement for hospitals caring for uninsured patients with mental health and substance [use] disorders in the emergency department for extended periods of time while the patient is waiting on placement and transfer to a behavioral health facility."[53]Finally, the Committee added Section 6-4 to "provide Medicaid coverage for medications prescribed to an adult patient . . . for the treatment and prevention of schizophrenia and schizotypal or delusion disorders" if one of two criteria are met: "(1) [d]uring the preceding year, the patient was prescribed and unsuccessfully treated with a preferred or generic drug; or (2) [t]he patient had previously been prescribed . . . the nonpreferred prescribed drug."[54]

On March 8, 2022, after the House read the bill for the third time, the bill was passed by substitute by a vote of 169 to 3.[55]

50. *Compare* HB 1013, as introduced, § 5-1, p. 67, ll. 1707–20, 2022 Ga. Gen. Assemb., *with* HB 1013 (HCS), § 5-1, p. 69, ll. 1771–78, 2022 Ga. Gen. Assemb.

51. Feb 23. House Committee Video, *supra* note 39, at 44 min., 7 sec.

52. *Compare* HB 1013, as introduced, § 6-1, p. 73, ll. 1852–64, *with* HB 1013 (HCS), § 6-1, p. 75, ll. 1906–20, 2022 Ga. Gen. Assemb.

53. HB 1013, as introduced, § 6-1, p. 73, ll. 1856–58, 2022 Ga. Gen. Assemb.; HB 1013 (HCS), § 6-1, p. 75, ll. 1913–16, 2022 Ga. Gen. Assemb.

54. HB 1013 (HCS), § 6-4, p. 77, ll. 1957–68, 2022 Ga. Gen. Assemb.

55. State of Georgia Final Composite Status Sheet, HB 1013, May 19, 2022; Georgia House of Representatives Voting Record, HB 1013, #625 (Mar. 8, 2022).

Consideration and Passage by the Senate

Senator Brian Strickland (R-17th) sponsored the bill in the Senate.[56] The Senate first read the bill on March 9, 2022, at which time it referred the bill to the Senate Health and Human Services Committee.[57] The Senate read the bill for the second time on March 29, 2022, and proposed numerous changes to the House Committee's substitute.[58]

In Section 1-2, the Senate substitute added definitions for "addictive disease," "health care plan," "health insurer," and "mental illness."[59] Additionally, the substitute removed any reference to the World Health Organization.[60] The Senate Committee substitute limited the House Committee's prohibition on same-day reimbursement for patients seeing multiple providers in one day to only apply in situations where a patient sees a mental health provider and a primary care provider in the same day, rather than seeing any two health care providers in one day.[61]

Additionally, the Senate substitute removed a provision that created a hearing process for medical assistance providers to appeal department of community health reimbursement determinations.[62]

In Section 2-2, the Senate substitute again removed any reference to the American Psychiatric Association's and World Health

56. HB 1013, Bill Tracking, *supra* note 14.

57. *Id.*; State of Georgia Final Composite Status Sheet, HB 1013, May 19, 2022.

58. State of Georgia Final Composite Status Sheet, HB 1013, May 19, 2022. *Compare* HB 1013 (HCS), 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), 2022 Ga. Gen. Assemb.

59. HB 1013 (LC 33 9154S), § 1-2, pp. 3–4, ll. 53, 65–74, 86, 2022 Ga. Gen. Assemb.

60. HB 1013 (LC 33 9154S), § 1-5, p. 16, ll. 396–97, 2022 Ga. Gen. Assemb.; *id.* § 1-6, p. 18, ll. 452–53; *id.* § 1-7, p. 22, ll. 544–45; *see* Video Recording of Senate Health and Human Services Committee Meeting at 12 min., 17 sec. (Mar. 28, 2022) (remarks by Sen. Dean Burke (R-11th)), https://vimeo.com/showcase/9027934?video=693223924 [https://perma.cc/84HE-XLEX]. In the wake of the COVID-19 pandemic, any mention of the World Health Organization can be polarizing. Sarah Kallis, *Lawmakers: Mental Health and Mask Mandates Debated on Day 32*, GPB NEWS (Mar. 21, 2022, 6:44 PM), https://www.gpb.org/news/2022/03/21/lawmakers-mental-health-and-mask-mandates-debated-on-day-32 [https://perma.cc/N3M2-UJXS] (when "most conservative Republications . . . hear the word 'World Health Organization' . . . .[it] is an immediate red flag." (quoting Grant Meadows, a protestor of HB 1013)). Some critics of HB 1013 describe the World Health Organization's definitions of mental illness as "arbitrary" which sparked concern over whether HB 1013 could "arbitrarily infringe on [the] rights" of Georgia citizens. *Id.*

61. *Compare* HB 1013 (HCS), § 1-2, p. 7, ll. 167–69, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), § 1-2, p. 7, ll. 151–52*,* 2022 Ga. Gen. Assemb.

62. *Compare* HB 1013 (HCS) § 1-8, pp. 26–28, ll. 670–722, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), § 1-8, pp. 24–25, ll. 613–43, 2022 Ga. Gen. Assemb.

Organization's definitions of "mental health or substance use disorder" and, instead, defined "mental health or substance use disorder" as "a mental illness or addictive disease," with "mental illness" taking on the same meaning provided in Code section 37-1-1.[63] The section also incorporates the definition of "addictive disease" provided in Code section 37-1-1.[64]

In Section 3-1, the Senate substitute removed the bill's findings on Georgia's need for an effective "outpatient civil commitment" law and research on successful implementation of such laws in other jurisdictions.[65] The substitute also removed a provision establishing "an assisted outpatient treatment unit" responsible for creating and managing a "state-wide repository of information on persons residing in [the] state with behavioral health issues who have high utilization of services" including inpatient care, outpatient care, guardianships, incarcerations, and more.[66]

In Section 3-2, the Senate substitute removed the House substitute's changes to the existing definition for "inpatient" and further revised the definition for "outpatient" under Code section 37-3-1.[67]

In Section 3-3, the Senate substitute removed the term "mobile crisis team" as it pertains to emergency transport of a person in a mental health crisis and created a statutory standard for peace officers to determine if emergency transport is necessary.[68] The new standard allows a peace officer to take a person to the emergency room if

> (i) the peace officer has probable cause to believe that the person is a mentally ill person requiring involuntary treatment; and (ii) the peace officer has consulted either in-person or via telephone or telehealth with a physician, as provided in Code [s]ection 37-3-41, and the physician

63. *Compare* HB 1013 (HCS), § 2-2, p. 34, ll. 875–80, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), § 2-2, p. 31, ll. 796–97, 2022 Ga. Gen. Assemb.

64. HB 1013 (LC 33 9154S), § 2-2, p. 31, l. 785, 2022 Ga. Gen. Assemb.

65. *Compare* HB 1013 (HCS), § 3-1, pp. 36–38, ll. 924–72, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), § 3-1, pp. 33–34, ll. 841–47, 2022 Ga. Gen. Assemb.

66. *Compare* HB 1013 (HCS), § 3-1, pp. 44–46, ll. 1117–79, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), § 3-1, p. 39, ll. 986–98, 2022 Ga. Gen. Assemb.

67. *Compare* HB 1013 (HCS), § 3-2, pp. 48–49, ll. 1226–47, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), § 3-2, pp. 41–42, ll. 1038–53, 2022 Ga. Gen. Assemb.

68. *Compare* HB 1013 (HCS), § 3-3, pp. 49–50, ll. 1252–70, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), § 3-3, pp. 42–43, ll. 1058–78, 2022 Ga. Gen. Assemb.

> authorizes the peace officer to transport the individual for an evaluation.[69]

The substitute also added two additional subsections, 3-4 and 3-5, revising the existing definition of "outpatient" under Code section 37-7-1 and incorporating Section 3-3's new statutory standard for peace officers into Code section 37-7-42, respectively.[70]

Section 4-1 removed the Criminal Justice Coordinating Council's ability to use grant funds to transport individuals to or from treatment facilities.[71]

Section 4-3 of the substitute, among other things, removed the requirement for the Georgia Department of Behavioral Health and Developmental Disabilities to submit an annual report "indicating the changes, trends, improvement, and needs of children's behavioral health."[72] Section 4-3 was further amended to require that the Office of Health Strategy and Coordination (the Office) "[d]evelop solutions to the systemic barriers," "[f]ocus on specific goals designed to resolve [behavioral health services] issues . . . that negatively impact individuals," and to "[e]stablish common outcome measures" to evaluate agencies' progress.[73]

Section 4-4 of the Senate substitute amended Code section 35-5-2 to allow "behavioral health co-responders"—along with "law enforcement officers, firefighters, correctional personnel, [and] emergency medical personnel"—to use the Georgia Public Safety Training Center.[74]

Section 4-8 of the Senate substitute, containing what was formerly Section 4-5 in the House substitute, removed the Commission's Mental Health Courts and Corrections Subcommittee's obligation to "[d]evelop[] new approaches for law enforcement officers to utilize

69. HB 1013 (LC 33 9154S), § 3-3, pp. 42–43, ll. 1067–71, 2022 Ga. Gen. Assemb.

70. *Id.* § 3-4 to 3-5, pp. 43–45, ll. 1079–1128.

71. *Compare* HB 1013 (HCS), § 4-1, p. 50, ll. 1283–88, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), § 4-1, p. 45, ll. 1141–44, 2022 Ga. Gen. Assemb.

72. *Compare* HB 1013 (HCS), § 4-3, p. 54, ll. 1373–82, 2022 Ga. Gen. Assemb, *with* HB 1013 (LC 33 9154S), § 4-3, p. 49, ll. 1239–48, 2022 Ga. Gen. Assemb.

73. HB 1013 (LC 33 9154S), § 4-3, pp. 48–49, ll. 1223–35, 2022 Ga. Gen. Assemb.

74. *Id.* § 4-4, p. 50, ll. 1269–77, 2022 Ga. Gen. Assemb.

nonarrest and noncustodial responses to technical violations for individuals with mental health needs."[75]

Section 4-9 of the Senate substitute, containing what was formerly Section 4-6 of the House substitute, created the "Behavioral Health Coordinating Council" (the Council) that is responsible for developing and monitoring the implementation of goals to improve delivery, access, and outcomes of behavioral health services."[76]

Section 5-1 of the Senate substitute absorbed, as paragraph (28) of Code section 37-1-20, what was formerly subsection (b) of Section 5-5 in the House substitute to create the "Multi-Agency Treatment for Children" (MATCH) team.[77] The Senate substitute moved what was formerly Section 5-4 in the House substitute into Section 5-3 to require various departments to "develop and implement a workable state-wide system for sharing data relating to the care and protection of children between such agencies."[78]

Finally, in Section 6-2, the Senate Committee created Code section 37-1-114.1 to expand the Commission's authority.[79]

On March 30, 2022, the Senate Health and Human Services Committee read the bill for the third time, favorably reported by substitute, and then considered the Senate Rules Committee's substitute, which included two primary changes.[80] First, Section 3-5 of the Rules Committee substitute contains what was in Section 3-4 of the Health and Human Services Committee substitute.[81] Further, the Rules Committee substitute added significant language to Section 3-4 and added Section 3-7 related to the transportation of patients in need of emergency mental health services.[82] This added language directs a receiving facility to "coordinate all subsequent transports" of an

75. *Compare* HB 1013 (HCS), § 4-5, pp. 60–61, ll. 1537–60, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), § 4-8, pp. 53-54, ll. 1340-59, 2022 Ga. Gen. Assemb.

76. *Compare* HB 1013 (HCS), § 4-6, pp. 61–64, ll. 1561–1640, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), § 4-9, pp. 54–57, ll. 1360–1439, 2022 Ga. Gen. Assemb.

77. *Compare* HB 1013 (HCS), § 5-5, p. 74, ll. 1884–1900, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), § 5-1, pp. 62–63, ll. 1578–94, 2022 Ga. Gen. Assemb.

78. *Compare* HB 1013 (HCS), § 5-4, pp. 72–73, ll. 1842–59, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9154S), § 5-3, p. 64, ll.1617–38, 2022 Ga. Gen. Assemb.

79. HB 1013 (LC 33 9154S), § 6-2, pp. 66–67, ll. 1669–1715, 2022 Ga. Gen. Assemb.

80. State of Georgia Final Composite Status Sheet, HB 1013, May 19, 2022.

81. *Compare* HB 1013 (LC 33 9154S), § 3-4, pp. 43–44, ll. 1079–1102, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9160S), § 3-5, p. 45, ll. 1127–50, 2022 Ga. Gen. Assemb.

82. HB 1013 (LC 33 9160S), § 3-4, pp. 43–44, ll. 1088–1126, 2022 Ga. Gen. Assemb.; *id.* § 3-7, pp. 47–48, ll. 1177–1215.

individual with the law enforcement agency responsible for transporting the individual to the receiving facility.[83] Second, the Rules Committee substitute added detail to its "familiar faces" initiative as part of the Commission's authority in Section 6-2.[84] The Senate voted unanimously to pass HB 1013 on March 30, 2022, and immediately transmitted the bill back to the House.[85]

The House agreed to the Senate amendments and substitutions the same day and voted unanimously in favor of the bill.[86] On April 4, 2022, the House sent HB 1013 to Governor Brian Kemp (R), who signed the bill into law as Act 587 on the same day.[87] The Act's effective date is July 1, 2022.[88]

The Act

The Act amends the following portions of the Official Code of Georgia Annotated: "Titles 15, 20, 31, 33, 35, 37, 45, and 49, relating to courts, education, health, insurance, law enforcement officers and agencies, mental health, public officers and employees, and social services, respectively."[89] The overall purpose of the Act is to expand Georgia's mental health and substance use care, require the same level of coverage for mental health and substance use issues as other medical disorders, and match Georgia law with the MHPAEA.[90]

Part I—Hospital and Short-Term Care Facilities

Section 1-1

Section 1-1 titles the Act the Georgia Mental Health Parity Act.[91]

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83. *Id.* § 3-4, p. 44, ll. 1122–26; *id.* § 3-7, p. 48, ll. 1211–15.
84. *Compare* HB 1013 (LC 33 9154S), § 6-2, p. 66, ll. 1682–86, 2022 Ga. Gen. Assemb., *with* HB 1013 (LC 33 9160S), § 6-2, p. 70, ll. 1769–95, 2022 Ga. Gen. Assemb.
85. Georgia Senate Voting Record, HB 1013, #770 (Mar. 30, 2022); State of Georgia Final Composite Status Sheet, HB 1013, May 19, 2022.
86. Georgia House of Representatives Voting Record, HB 1013, #824 (Mar. 30, 2022); State of Georgia Final Composite Status Sheet, HB 1013, May 19, 2022.
87. State of Georgia Final Composite Status Sheet, HB 1013, May 19, 2022.
88. HB 1013, Bill Tracking, *supra* note 14.
89. 2022 Ga. Laws 26.
90. *See id.*
91. 2022 Ga. Laws 26, § 1-1, at 27.

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Section 1-2

Section 1-2 adds a new Code section to Chapter 1, Code section 33-1-27, "relating to general provisions of insurance."[92] Code section 33-1-27 provides definitions for various terms related to mental health and substance use treatment.[93] First, the Code section states that "addictive disease" takes on the same definition as in Code section 37-1-1 and defines "generally accepted standards of mental health or substance use disorder care" to mean, in relevant part, "evidence based independent standards of care and clinical practice that are generally recognized by health care providers."[94] The new Code section also defines "health care plan" and "health insurer."[95]

Further, the Code section defines "medically necessary," in relevant part, as treatment necessary for "screening, preventing, diagnosing, managing or treating an illness, injury, condition, or its symptoms."[96] "Mental health or substance use disorder" is defined as "a mental illness or addictive disease," and "mental illness" takes on the same meaning provided in Code section 37-1-1.[97]

Lastly, the Code section defines "nonquantitative treatment limitation" (NQTL) to mean "limitations that are not expressed numerically, but otherwise limit the scope or duration of benefits for treatment."[98] The Code section also includes examples of NQTLs, including

> (A) [m]edical management standards limiting or excluding benefits based on whether the treatment is medically necessary or whether the treatment is experimental or investigative; (B) [f]ormulary design for prescription drugs; (C) [s]tandards for provider admission to participate in a network . . . ; (D) [c]riteria utilized for determining usual, customary, and reasonable charges for out-of-network services . . . ; (E) [r]estrictions based on geographic location,

92. 2022 Ga. Laws 26, § 1-2, at 28–31 (codified at O.C.G.A. § 33-1-27 (2022)).
93. § 33-1-27.
94. § 33-1-27(a)(1)–(2).
95. § 33-1-27(a)(3)–(4).
96. § 33-1-27(a)(5).
97. § 33-1-27(a)(6)–(7).
98. § 33-1-27(a)(8).

> facility type, provider specialty, and other criteria that limit the scope or duration of benefits for in-network and out-of-network services; (F) [s]tandards for providing access to out-of-network providers; (G) [p]rovider reimbursement rates . . . ; and (H) [s]uch other limitations identified by the commissioner. [99]

Code section 33-1-27 further states that all health insurers, subcontractors, or entities "that provide[] coverage for mental health or substance use disorders as part of a health care plan shall provide coverage for the treatment of mental health or substance use disorders in accordance with the [MHPAEA]" and any corresponding regulations "in any such health care plan it offers."[100] The Act requires relevant health insurers to use the definitions provided in the Code section when "making any medical necessity, prior authorization, or utilization review determinations under such coverage."[101] Health insurers must also submit annual reports to the insurance commissioner regarding "designated comparative analyses" and the strategies used to apply the required benefits under the MHPAEA.[102] The commissioner must publish these reports in a prominent location on the department's website.[103]

Section 1-2 also requires the commissioner to conduct annual data calls to verify that health insurers are complying with all mental health parity requirements, including the MHPAEA.[104] If a data call suggests a violation, the department of insurance will conduct a "market conduct examination" to ensure compliance.[105] During the investigation, insurers must "timely respond" to the department and provide all information and data requested.[106] Section 1-2 requires the commissioner to "[s]ubmit an annual report to the Governor, Lieutenant Governor, and [s]peaker of the House of

99. § 33-1-27(a)(8)(A)–(H).
100. § 33-1-27(b).
101. 2022 Ga. Laws 26, § 1-2, at 29 (codified at § 33-1-27(b)(2)).
102. § 33-1-27(b)(4).
103. *Id.*
104. 2022 Ga. Laws 26, § 1-2, at 30 (codified at § 33-1-27(c)(1)(A)).
105. § 33-1-27(c)(1)(A).
106. *Id.*

Representatives . . . regarding the data call conducted."[107] The commissioner is additionally required, beginning January 15, 2024, to submit annual reports to the Georgia Data Analytic Center (GDAC) and the Georgia General Assembly regarding complaints received.[108]

Section 1-2 also lists requirements and prohibitions that health insurers that provide "coverage for mental health or substance use disorders" must follow in implementing their health care plans in accordance with the MHPAEA.[109] First, health insurers cannot prohibit "same-day reimbursement for a patient who sees a mental health provider and a primary care provider in the same day."[110] Insurers must also provide coverage for mental health or substance use disorders to children, adolescents, and adults and "[e]nsure that any subcontractor or affiliate responsible for manag[ing] mental health and substance use disorder care on behalf of the health insurer complies with" all relevant requirements.[111]

Finally, Section 1-2 authorizes the commissioner to appoint a mental health parity officer within the department of insurance and outlines penalties for non-compliant insurers.[112]

Section 1-3

Section 1-3 amends paragraphs (1), (7), and (8), and adds new paragraphs to Code section 33-20A-31, "relating to definitions relative to the 'Patient's Right to Independent Review Act.'"[113] First, the Act amends paragraph (1) to incorporate the definition of "addictive disease" found in Code section 37-1-1.[114] The Act also clarified that "department" means the Georgia Department of Insurance.[115] Additionally, the Act adds the definition of "generally accepted

107. 2022 Ga. Laws 26, § 1-2, at 30 (codified at § 33-1-27(c)(1)(B)).
108. § 33-1-27(g).
109. *See* 2022 Ga. Laws 26, § 1-2, at 29–30 (codified at § 33-1-27(b), -27(d)).
110. § 33-1-27(d).
111. § 33-1-27(b)(1), -27(b)(3).
112. 2022 Ga. Laws 26, § 1-2, at 31 (codified at § 33-1-27(h)–(i)).
113. 2022 Ga. Laws 26, § 1-3, at 31 (codified at § 33-2A-31).
114. *Id.* (codified at § 33-20A-31(1)).
115. *Id.* (codified at § 33-20A-31(1.1)).

standards of mental health or substance use disorder care" to the Code section.[116]

Section 1-3 amends paragraph (7) by expanding the definition of "medical necessity" to include treatment of mental health or substance use disorders.[117] Section 1-3 further defines "mental health or substance use disorder" to mean "a mental illness or addictive disease" and gives "'mental illness' . . . the same meaning as in Code [s]ection 37-1-1."[118] The Act revises paragraph (8) of Code section 33-20A-31 by expanding the definition of "treatment" to include mental health or substance use disorder care.[119]

Section 1-4

Section 1-4 adds Code sections 33-21A-13 and 33-21A-14 to Chapter 21A of Title 33, "relating to the 'Medicaid Care Management Organizations Act.'"[120] Code section 33-21A-13 provides for application of the same definition of "addictive disease" as used in Code section 37-1-1.[121] As seen in Section 1-3, the definition of "generally accepted standards of mental health or substance use disorder care" was added to the Code section.[122] The new Code section also provides a definition of "medically necessary" to be applied to "the treatment of mental health or substance use disorder treatment."[123] This new definition covers services needed to address patient-specific needs for "screening, preventing, diagnosing, managing or treating an illness, injury, condition, or its symptoms."[124] The Code section also provides definitions for "mental health or substance use disorder;" "mental illness;" NQTL; "state health care entity;" and "state health plan."[125]

116. *Id.* (codified at § 33-20A-31(2.1)).
117. 2022 Ga. Laws 26, § 1-3, at 32 (codified at § 33-20A-31(7)).
118. *Id.* (codified at § 33-20A-31(7.1)–(7.2)).
119. *Id.* (codified at § 33-20A-31(8)).
120. 2022 Ga. Laws 26, § 1-4, at 32–36 (codified at §§ 33-21A-13, -14).
121. § 33-21A-13(a)(1).
122. 2022 Ga. Laws 26, § 1-4, at 32–33 (codified at § 33-21A-13(a)(2)).
123. § 33-21A-13(a)(3).
124. *Id.*
125. § 33-21A-13(a)(4)–(8).

NQTLs are "limitations that are not expressed numerically, but otherwise limit the scope or duration of benefits for treatment."[126] NQTLs include

> A) [m]edical management standards limiting or excluding benefits based on whether the treatment is medically necessary or whether the treatment is experimental or investigative; (B) [f]ormulary design for prescription drugs; (C) [s]tandards for provider admission to participate in a network . . . ; (D) [c]riteria utilized for determining usual, customary, and reasonable charges for out-of-network services . . . ; (E) [r]estrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for in-network and out-of-network services; (F) [s]tandards for providing access to out-of-network providers; (G) [p]rovider reimbursement rates . . . ; and (H) [s]uch other limitations identified by the commissioner.[127]

A "'[s]tate health care entity' means any entity that provides or arranges health care for a state health plan on a prepaid, capitated, or fee for service basis to enrollees or recipients of Medicaid or PeachCare for Kids."[128] Under the Act, all state health care entities must provide coverage for mental health and substance use disorder treatment in compliance with the MHPAEA.[129] These entities are also required to submit annual reports to the commissioner of community health with the same comparative analyses required from insurers under the MHPAEA.[130]

Further, Section 1-4 requires the commissioner of community health to perform and publish "parity compliance reviews of all state health care entities to ensure compliance with mental health parity requirements, including, but not limited to, compliance with the

126. § 33-21A-13(a)(6).
127. § 33-21A-13(a)(6)(A)–(G).
128. § 33-21A-13(a)(7).
129. 2022 Ga. Laws 26, § 1-4, at 34 (codified at § 33-21A-13(b)).
130. § 33-21A-13(b)(5).

[MHPAEA]."[131] Specifically, the reviews will focus on the use of NQTLs.[132] State health care entities are under the same prohibition as insurers on same-day reimbursement restrictions.[133] The commissioner of community health is additionally required to create a process for submitting, tracking, and responding to complaints and, beginning January 15, 2024, submit an annual report regarding such to the GDAC and the Georgia General Assembly.[134]

Section 1-4 specifies that it does not "abrogate the protections afforded by federal conscience and antidiscrimination laws" under 45 C.F.R. Part 88, but rather, it implements the state option in subsection (j) of 42 C.F.R. § 438.8.[135] To that end, Section 1-4 uses the same definition of medical loss ratio (MLR) as used in 42 C.F.R. § 438.8[136] Beginning on July 1, 2023, care management organizations will be required to comply with a minimum 85% MLR, which can be raised by contract.[137] Generally, these requirements do "not apply to a health care service plan under a subcontract with a care management organization" providing services to Medicaid and PeachCare for Kids recipients.[138] Lastly, Section 1-4 requires the department of insurance to publish on its website the aggregate and individual MLRs of all care management organizations.[139]

Section 1-5

Section 1-5 amends Code section 33-24-28.1, "relating to coverage of treatment of mental disorders."[140] First, Section 1-5 revises the Code section to remove the definition of "mental disorder" and replace it with "addictive disease."[141] Section 1-5 also adds definitions for

131. 2022 Ga. Laws 26, § 1-4, at 34–35 (codified at § 33-21A-13(c)(1)–(2)).
132. § 33-21A-13(c)(1).
133. § 33-21A-13(d).
134. § 33-21A-13(e), -13(g).
135. 2022 Ga. Laws 26, § 1-4, at 35 (codified at § 33-21A-13(h)); *id.* (codified at § 33-21A-14(a)); *see* 42 C.F.R. § 438.8(j).
136. 2022 Ga. Laws 26, § 1-4, at 35 (codified at § 33-21A-14(b)).
137. § 33-21A-14(c).
138. § 33-21A-14(e).
139. § 33-21A-14(f).
140. 2022 Ga. Laws 26, § 1-5, at 36–37 (codified at § 33-24-28.1).
141. *Compare* O.C.G.A. § 33-24-28.1(a)(2) (2021), *with* 2022 Ga. Laws 26, § 1-5, at 36 (codified at O.C.G.A. § 33-24-28.1(a)(2) (2022)).

"mental health or substance use disorder" and "mental illness" as used throughout the Act.[142]

Section 1-5 removes insurers' ability to refuse coverage for inpatient and outpatient treatment in certain situations.[143] The Code section adds coverage of "mental health or substance use disorder" treatment "for children, adolescents, and adults" to insurers' existing requirements.[144] Lastly, Section 1-5 provides for preemption of this Code section in the event that Code section 33-1-27 and the MHPAEA apply.[145]

Section 1-6

Section 1-6 amends Code section 33-24-29, "relating to coverage for treatment of mental disorders under accident and sickness insurance benefit plans providing major medical benefits covering small groups."[146] The definition of "mental disorder" in subparagraph (2) of paragraph (a) is replaced with definitions of "addictive disease," "mental health or substance use disorder," and "mental illness."[147] Additionally, the Code section adds coverage for mental health and substance use disorder treatment to insurers' existing requirements.[148] Lastly, like Section 1-5, Section 1-6 provides for preemption for this Code section in the event that Code section 33-1-27 and the MHPAEA apply.[149]

Section 1-7

Section 1-7 amends Code section 33-24-29.1, "relating to coverage for treatment of mental disorders under accident and sickness insurance benefit plans providing major medical benefits covering all

142. 2022 Ga. Laws 26, § 1-5, at 36 (codified at O.C.G.A. § 33-24-28.1(a)(3)–(4) (2022)).
143. *Compare* O.C.G.A. § 33-24-28.1(b) (2021), *with* 2022 Ga. Laws 26, § 1-5, at 36–37 (codified at O.C.G.A. § 33-24-28.1(b) (2022)).
144. 2022 Ga. Laws 26, § 1-5, at 37 (codified at O.C.G.A. §§ 33-24-28.1(b)–(c) (2022)).
145. *Id.* (codified at § 33-24-28.1(f)).
146. 2022 Ga. Laws 26, § 1-6, at 37–39 (codified at § 33-24-29).
147. *Compare* O.C.G.A. § 33-24-29(a)(2) (2021), *with* 2022 Ga. Laws 26, § 1-6, at 38 (codified at O.C.G.A. § 33-24-29(a)(2)–(4) (2022)).
148. 2022 Ga. Laws 26, § 1-6, at 38–39 (codified at O.C.G.A. § 33-24-29(c)–(e) (2022)).
149. 2022 Ga. Laws 26, § 1-6, at 39 (codified at § 33-24-29(h)).

groups except small groups."[150] Like Section 1-6, the definition of "mental disorder" is replaced with definitions for "addictive disease," "mental health or substance use disorder," and "mental illness."[151] The Code section adds coverage for mental health and substance use disorder treatment.[152] Section 1-7 specifically amends paragraph (2) of subsection (d), relating to deductibles or coinsurance provisions applicable to the treatment of mental health and substance use disorders, to prohibit insurance providers from applying different deductibles and coinsurance provisions to similar benefits.[153] This allows insurance providers to apply a separate, out-of-pocket limit for treatment of mental disorders.[154]

Section 1-8

Section 1-8 amends Code section 49-4-153, "relating to administrative hearings and appeals under Medicaid, judicial review, and contested cases involving imposition of remedial or punitive measure[s] against a nursing facility."[155] The Code section now requires that when administrative law judges review Medicaid appeals to determine whether treatment for mental health or substance use disorders is medically necessary, they must use the definitions provided in Code section 33-21A-13.[156]

Section 1-9

Section 1-9 requires the department of community health to "submit a Medicaid state plan amendment or waiver request to the United States Department of Health and Human Services" if doing so is necessary to implement Part I of the Act relating to Medicaid.[157]

150. 2022 Ga. Laws. 26, § 1-7, at 40–41 (codified at § 33-24-29.1).
151. *Compare* O.C.G.A. § 33-24-29.1(a)(2) (2021), *with* O.C.G.A. § 33-24-29.1(a)(2)–(4) (2022).
152. 2022 Ga. Laws 26, § 1-7, at 40–41 (codified at O.C.G.A. § 33-24-29.1(c)–(e) (2022)).
153. *Compare* O.C.G.A. § 33-24-29.1(d)(2) (2021), *with* 2022 Ga. Laws 26, § 1-7, at 41 (codified at O.C.G.A. § 33-24-29.1(d)(2) (2022)).
154. *See* O.C.G.A. § 33-24-29.1(d)(2) (2022).
155. 2022 Ga. Laws 26, § 1-8, at 41–42 (codified at § 49-4-153).
156. § 49-4-153(b)(1).
157. 2022 Ga. Laws 26, § 1-9, at 42.

Section 1-10

Section 1-10 specifies that Part I of the Act will not impact any contract already in effect as of June 30, 2022.[158]

Part II—Workforce and System Development

Section 2-1

Section 2-1 amends subsection (b) of Code section 20-3-374, "relating to [the] service cancelable loan fund and authorized types of service cancelable education loans financed by state funds and issued by the Georgia State Finance Authority."[159] First, the practice of primary care medicine is added to the fields of study eligible for service cancelable loans.[160] Second, though the "doctor of medicine" exception is still in place, doctors of medicine specializing in psychiatry or primary care medicine are now eligible for service cancelable loans.[161]

Section 2-1 adds paragraph (3) to subsection (b) entitled "mental health or substance use professionals."[162] This new subsection extends the eligibility for service cancelable educational loans to include Georgia residents enrolled in training or education programs for "mental health and substance use professionals."[163] The subsection prioritizes "(i) [p]rograms and schools with an emphasis and history of providing care to underserved youth[] and (ii) [s]tudents with ties to and agreeing to serve underserved geographic areas or communities which are disproportionately impacted by social determinants of health."[164] In order for students to accept the service cancelable loans provided in this subsection, they must either repay the loan by "(i) [p]racticing as a mental health or substance use professional in a geographic area in the State of Georgia approved by the authority" for

158. 2022 Ga. Laws 26, § 1-10, at 42.
159. 2022 Ga. Laws 26, § 2-1, at 42–45 (codified at § 20-3-374(b)).
160. § 20-3-374(b)(1)(A).
161. *Id.*
162. 2022 Ga. Laws 26, § 2-1, at 45 (codified at § 20-3-374(b)(3)).
163. § 20-3-374(b)(3)(A).
164. *Id.*

the same number of years in service as years of study; "or (ii) [i]n cash repayment with assessed interest."[165]

Under the Code section, "'mental health or substance use professional' means a psychiatrist, psychologist, professional counselor, social worker, marriage and family therapist, clinical nurse specialist in psychiatric/mental health, or other licensed mental or behavioral health clinician or specialist."[166]

Section 2-2

Section 2-2 adds a new Code section to Chapter 10 of Title 49, "relating to the Georgia Board of Health Care Workforce."[167] Code section 49-10-5 provides definitions for "addictive disease," "behavioral health care provider," "licensing board," "mental health or substance use disorder," and "mental illness."[168] "Licensing board" includes the following entities: "(A) Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists; (B) Georgia Board of Nursing; (C) Georgia Composite Medical Board; (D) State Board of Examiners of Psychologists; and (E) State Board of Pharmacy."[169] The Georgia Board of Health Care Workforce is required to create and maintain the Behavioral Health Care Workforce Data Base to collect and analyze "minimum data set surveys for behavioral health care professionals."[170] The Georgia Board of Health Care Workforce is also required to seek necessary funding to maintain the database; "create and maintain an online dashboard accessible to support the creation and maintenance" of the database; and "[e]stablish a minimum data set survey" for licensing boards to use to collect demographic and other data from licensed behavioral health care providers.[171]

Licensing boards, under Section 2-2, require all applicants and licensees to complete the minimum data set survey established by the

165. § 20-3-374(b)(3)(B).
166. § 20-3-374(b)(3)(C).
167. 2022 Ga. Laws 26, § 2-2, at 46–47 (codified at § 49-10-5).
168. § 49-10-5(a).
169. § 49-10-5(a)(3).
170. § 49-10-5(b).
171. *Id.*

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Georgia Board of Health Care Workforce.[172] The data sets must include race and other demographics, status of a provider's practice, education and specialties, average hours worked per week, percentage of the practice devoted to direct patient care, year of expected retirement if within five years, provider's specialized training, acceptance of new patients, accepted insurance (including Medicaid and Medicare), and other data determined by the Georgia Board of Health Care Workforce.[173]

Part III—Involuntary Commitment

Section 3-1

Section 3-1 adds Article 7 to Chapter 1 of Title 37, regarding the governing and regulation of mental health.[174] In the new Article, the Act creates new Code section 37-1-120 to provide definitions for "addictive disease," "assisted outpatient treatment," "mental health or substance use disorder," and "mental illness."[175] "'Assisted outpatient treatment' means involuntary outpatient care . . . provided in the context of a formalized, systematic effort led by a community service board or private provider . . . ."[176] The Code section further provides responsibilities for providers of involuntary outpatient care.[177]

Section 3-1 creates Code section 37-1-121 to require the department of insurance to, no later than January 1, 2023, create a grant program to encourage the implementation of assisted outpatient treatment within the state.[178] The program should provide five grantees with three years of funding, oversight, and support that involves "a collaboration between a community service board or private provider, a probate court . . . , and a sheriff's office."[179] This funding program

172. 2022 Ga. Laws 26, § 2-2, at 46 (codified at § 49-10-5(c)).
173. § 49-10-5(d).
174. 2022 Ga. Laws 26, § 3-1, at 47–52 (codified at §§ 37-1-120 to -125).
175. 2022 Ga. Laws 26, § 3-1, at 47–48 (codified at § 37-1-120(1)–(4)).
176. § 37-1-120(2).
177. *Id.*
178. 2022 Ga. Laws 26, § 3-1, at 48–49 (codified at § 37-1-121).
179. § 37-1-121.

will "terminate on December 31, 2025, or subject to the department's annual review of each grantee, whichever event shall first occur."[180]

Section 3-1 also creates Code section 37-1-122, which requires the department of insurance to issue a funding opportunity announcement by October 1, 2022, to invite community service boards or private providers (in partnership with probate courts) to apply for funding.[181] The announcement must include a scoring rubric for the applications, a formula for determining the funding amount, a minimum and maximum percentage of a grant award, and a minimum percentage of the total budget that the applicant must source independently.[182] Subsection (c) of Code section 37-1-122 lists the required inclusions and qualifications for the funding application.[183] The department of insurance must announce recipients of the funding awards by December 31, 2022.[184]

Additionally, Section 3-1 creates Code section 37-1-123, which requires the department of insurance to contract with an organization specializing in outpatient treatment to serve as the grantees' technical assistance provider.[185] The technical assistant's performance will be reviewed before the end of each of the program's first two years.[186]

The Act also incorporates Code section 37-1-124 in Article 7 to require the department of insurance, before funding begins, to contract with an organization that specializes in assessing community-based mental health programs and policy to evaluate aspects of the program's effectiveness.[187]

Lastly, Section 3-1 creates Code section 37-1-125, which requires the department of insurance to prescribe rules and regulations necessary for successfully administering the grant program.[188]

180. *Id.*
181. 2022 Ga. Laws 26, § 3-1, at 49 (codified at § 37-1-122(a)).
182. § 37-1-122(b).
183. § 37-1-122(c).
184. § 37-1-122(e).
185. 2022 Ga. Laws 26, § 3-1, at 51 (codified at § 37-1-123).
186. § 37-1-123.
187. 2022 Ga. Laws 26, § 3-1, at 51–52 (codified at § 37-1-124(a)).
188. 2022 Ga. Laws 26, § 3-1, at 52 (codified at § 37-1-125).

Section 3-2

Section 3-2 amends paragraph (12.1) of Code section 37-3-1, regarding definitions for "examination" and "treatment for mental illness."[189] The definition of "outpatient" is amended to include persons who are mentally ill but can safely live within the community because of available resources or supervision and whose current illness negates their ability to make informed decisions regarding treatment.[190]

Section 3-3

Section 3-3 amends subsection (a) of Code section 37-3-42, "relating to emergency admission of persons arrested for penal offenses, report by officer, and entry of report into clinical record."[191] Subsection (a) allows peace officers to "take any person to an emergency facility if"(i) the peace officer has probable cause to believe that the person" requires involuntary treatment[] and "(ii) the peace officer has consulted . . . with a physician . . . and the physician authorizes the peace officer to transport the individual for an evaluation."[192]

Section 3-4

Section 3-4 amends subsection (c) of Code section 37-3-101 to state that if a peace officer initiates a patient's transport to an emergency facility, then the emergency facility must coordinate the patient's subsequent transports with the law enforcement agency who employs the peace officer.[193]

189. 2022 Ga. Laws 26, § 3-2, at 52 (codified at § 37-3-1(12.1)).
190. § 37-3-1(12.1).
191. 2022 Ga. Laws 26, § 3-3, at 52–53 (codified at § 37-3-42(a)).
192. § 37-3-42(a)(2).
193. 2022 Ga. Laws 26, § 3-4, at 53–54 (codified at § 37-3-101(c)).

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Section 3-5

Section 3-5 amends paragraph (15.1) of Code section 37-7-1, "relating to definitions relative to hospitalization and treatment of alcoholics, drug dependent individuals, and drug abusers."[194] Similar to Section 3-2, Section 3-5 revises the definition of "outpatient" to include those capable of living safely in the community with available treatment and supervision and whose current illnesses negate their ability to make informed decisions regarding treatment.[195]

Section 3-6

Section 3-6 amends subsection (a) of Code section 37-7-42, "relating to emergency admission of persons arrested for penal offenses, report by officer, and entry of report into clinical record."[196] Similar to Section 3-3, subsection (a) is amended to allow a peace officer to take a person to an emergency facility "if the peace officer has probable cause to believe that the person" has a substance use disorder and needs involuntary treatment and the peace officer consults with a physician who authorizes the peace officer to transport the person to an emergency facility for an evaluation.[197]

Section 3-7

Section 3-7 amends subsection (c) Code section 37-7-101 to require an emergency facility to coordinate all subsequent patient transports with the peace officer's law enforcement agency if the peace officer initiated the patient's initial transport to the emergency facility.[198]

194. 2022 Ga. Laws 26, § 3-5, at 54 (codified at § 37-7-1(15.1)).
195. *Id.*
196. 2022 Ga. Laws 26, § 3-6, at 54–55 (codified at § 37-7-42(a)).
197. *Id.*
198. 2022 Ga. Laws 25, § 3-7, at 55–56 (codified at § 37-7-101(c)).

Part IV—Mental Health Courts and Corrections

Section 4-1

Section 4-1 adds Code section 15-1-23 to Chapter 1 of Title 15.[199] The new Code section gives "accountability court" the same meaning as Code section 15-1-18.[200] Additionally, Code section 15-1-23 requires the Criminal Justice Coordinating Council to "establish a grant program for the provision of funds to accountability courts that serve the mental health and co-occurring substance use disorder population to facilitate the implementation of trauma-informed treatment."[201] The Criminal Justice Coordinating Council is also required to "designate an employee to provide technical assistance to accountability courts."[202]

Section 4-2

Section 4-2 amends subsection (b) of Code section 15-21-101 to add language authorizing money from the "County Drug Abuse Treatment and Education Fund" to be used for treatment and education programs "relating to controlled substances, alcohol, and marijuana for adults and children."[203] Additionally, the funds can be used by mental health court divisions that serve participants who have substance use disorders.[204]

Section 4-3

Section 4-3 amends Article 1 of Chapter 53 of Title 31, related to the Office "by revising Code [s]ection 31-53-3, relating to the establishment of the office and its powers and duties."[205] The Office's objectives are amended to include "overseeing coordination of mental

199. 2022 Ga. Laws 26, § 4-1, at 56 (codified at § 15-1-23).
200. § 15-1-23(a).
201. § 15-1-23(b).
202. § 15-1-23(c).
203. 2022 Ga. Laws 26, § 4-2, at 57 (codified at § 15-21-101(b)(1)).
204. § 15-21-101(b)(5).
205. 2022 Ga. Laws 26, § 4-3, at 57–60 (codified at § 31-53-3).

health policy and behavioral health services across state agencies."[206] Additionally, the Georgia Department of Early Care and Learning, the Georgia Department of Juvenile Justice, the Georgia Department of Corrections, and the Georgia Department of Community Supervision were added to the list of state agencies that will facilitate coordination with the Office.[207]

In addition to its previous obligations, the Office is now required to "create a comprehensive unified formulary for mental health and substance use disorder prescriptions under" Medicaid, PeachCare for Kids, and the state health benefit plan by December 1, 2022.[208] Further, the Office must create solutions addressing barriers to the delivery of behavioral health services by making funding and policy recommendations.[209] As part of the recommendations, the Office is required to develop and implement goals aimed at addressing issues relating to the behavioral health services that are negatively affecting individuals.[210] The Office will partner with various state departments and community service boards to evaluate and provide behavioral health services to children, adolescents, and adults.[211]

The Office will also examine methods for increasing peer specialists in rural areas and will consider implementing requirements stated in the federal SUPPORT for Patients and Communities Act.[212] Lastly, the Office is required to "conduct a survey or study on the transport of individuals to and from emergency receiving, evaluation, and treatment facilities" by January 1, 2023.[213]

Section 4-4

Section 4-4 amends paragraph (1) of subsection (a) of Code section 35-5-2 to allow the Georgia Public Safety Training Center to provide facilities and training for behavioral health co-responders.[214]

206. 2022 Ga. Laws 26, § 4-3, at 57 (codified at § 31-53-3(a)).
207. § 31-53-3(b)(4).
208. § 31-3-53(b)(5).
209. § 31-3-53(b)(16).
210. § 31-3-53(b)(17).
211. § 31-53-3(b)(20)–(22).
212. § 31-53-3(c).
213. § 31-53-3(d)(1).
214. 2022 Ga. Laws 26, § 4-4, at 60 (codified at § 35-5-2(a)(1)).

Section 4-5

Section 4-5 amends subsection (d) of Code section 35-5-5 by adding behavioral health co-responders to the list of public safety officers that the Georgia Public Safety Training Center will train.[215] The amendment also provides for the reimbursement of "certain costs incurred in training active duty, retired, or honorably discharged members of the United States armed forces who are attending basic law enforcement training."[216]

Section 4-6

Section 4-6 adds Code section 35-6A-15 to Chapter 6A of Title 35.[217] The new Code section requires the Criminal Justice Coordinating Council to "establish a grant program for the provision of funds to units of local government to be used for costs associated with transporting individuals to and from emergency receiving, evaluating, and treatment facilities."[218]

Section 4-7

Section 4-7 adds Code section 37-1-7 to require the state to "provide funding for a minimum of five new co-responder programs" with each program having "a minimum of one co-responder team."[219]

Section 4-8

Section 4-8 adds Code section 37-1-115.1 to require the Commission's Mental Health Courts and Corrections Subcommittee to "continue its exploration of community supervision strategies for individuals with mental illnesses."[220] Possible strategies for community supervision include

215. 2022 Ga. Laws 26, § 4-5, at 60–61 (codified at § 35-5-5(d)).
216. *Id.*
217. 2022 Ga. Laws 26, § 4-6, at 61 (codified at § 35-6A-15).
218. § 35-6A-15.
219. 2022 Ga. Laws 26, § 4-7, at 61 (codified at § 37-1-7).
220. 2022 Ga. Laws 26, § 4-8, at 62 (codified at § 37-1-115.1).

> (1) [e]xploring opportunities to expand access to mental health specialized caseloads . . . including prioritizing equitable access to specialized caseloads; (2) [a]ssessing the quality of mental health supervision . . . to determine how mental health supervision could be improved . . . ; (3) [a]ssessing the availability of mental health treatment providers by supervision region . . . ; and (4) [t]racking qualitative and quantitative metrics on the outcomes of any changes made to community supervision strategies for individuals with mental illness to determine the effectiveness of such strategies.[221]

Section 4-9

Section 4-9 amends Code section 37-2-4, relating to the Council's, membership, meetings, and obligations.[222] The amendment adds positions that will serve on the Council, including the following: the commissioner of early care and learning; the commissioner of the Technical College System of Georgia; a University System of Georgia behavioral health expert; the Child Advocate for the Protection of Children; an expert on child and adolescent health; and a pediatrician.[223]

The amendment also adds some requirements to the Council's meeting rules and regulations.[224] Additionally, the amendment provides the Council with new objectives regarding behavioral health services for children, adolescents, and adults.[225] Lastly, the Council must "submit annual reports . . . of its recommendations and evaluation of its implementation and any recommendations for funding to the Office of Health Strategy and Coordination, the Governor, the [s]peaker of the House of Representatives, and the Lieutenant Governor."[226]

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221. § 37-1-115.1.
222. 2022 Ga. Laws 26, § 4-9, at 62–64 (codified at § 37-2-4).
223. 2022 Ga. Laws 26, § 4-9, at 62 (codified at § 37-2-4(a)).
224. 2022 Ga. Laws 26, § 4-9, at 63 (codified at § 37-2-4(b)–(c)).
225. 2022 Ga. Laws 26, § 4-9, at 63 (codified at § 37-2-4(e)).
226. § 37-2-4(h).

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Part V—Child and Adolescent Behavioral Health

Section 5-1

Section 5-1 amends Code section 37-1-20, relating the department of behavioral health and developmental disabilities' obligations.[227] The added language states that the department of behavioral health and developmental disabilities shall "[n]o later than October 1, 2023, and annually thereafter, provide to the Office of Health Strategy and Coordination an annual status report regarding successful housing placements and unmet housing needs for the previous year and anticipated housing needs for the upcoming year."[228] Additionally, the Act expanded the departments with which the department of behavioral health and developmental disabilities shall coordinate to include "the Technical College System of Georgia, the Department of Juvenile Justice, the Department of Early Care and Learning, the Department of Public Health, and community service boards."[229] The department of behavioral health and developmental disabilities is also required to submit a report "regarding the performance and fiscal status of each community service board" to the Office by October 1, 2023, and annually thereafter.[230]

Lastly, the department of behavioral health and developmental disabilities is required to establish a MATCH team.[231] The MATCH team is "composed of representatives from the Division of Family and Children Services of the Department of Human Services" and representatives from other state departments[232] The chairperson of the Council will also be the MATCH team's chairperson.[233] The MATCH team will "facilitate collaboration across state agencies" and "accept referrals from local interagency children's committees."[234]

227. 2022 Ga. Laws 26, § 5-1, at 64–68 (codified at § 37-1-20).
228. § 37-1-20(22)(F).
229. 2022 Ga. Laws 26, § 5-1, at 67 (codified at § 37-1-20(24)).
230. § 37-1-20(26).
231. § 37-1-20(28).
232. § 37-1-120(28).
233. *Id.*
234. *Id.*

Section 5-2

Section 5-2 amends Code section 37-2-6 to add language clarifying that community service boards shall provide addictive disease services and other supportive services for the treatment of children and adults.[235]

Section 5-3

Section 5-3 amends subsection (b) of Code section 49-5-24 to add a deadline of October 1, 2024, for the department of insurance to work with state agencies to develop a statewide data sharing system regarding the care and protection of children.[236]

Part VI—Behavioral Health Reform and Innovation Commission

Section 6-1

Section 6-1 creates Code section 31-2-17, relating to the department of community health.[237] The Code section requires the department of community health to complete a study of the following:

> (1) [c]omparison of reimbursement rates for mental health services under Medicaid, PeachCare for Kids, and the state health benefit plan with other states; (2) [r]eimbursement for health care providers providing mental health care services under Medicaid, PeachCare for Kids, and the state health benefit plan and comparison with other states; (3) [r]eimbursement for hospitals caring for uninsured patients with mental health and substance [use] disorders . . . while the patient is waiting on placement and transfer to a behavioral health facility . . . ; (4) [a]n accurate accounting of mental health fund distribution across state agencies . . . ; (5) [m]edical necessity denials for adolescent mental and

235. 2022 Ga. Laws 26, § 5-2, at 68 (codified at § 37-2-6(a)).
236. 2022 Ga. Laws 26, § 5-3, at 69 (codified at § 49-5-24(b)).
237. 2022 Ga. Laws 26, § 6-1, at 69–70 (codified at § 31-2-17).

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> behavioral health services; and (6) [i]mplementation of coordinated health care for any child who enters foster care such that Medicaid claims data shall be shared immediately with the Division of Family and Children Services of the Department of Human Services."[238]

The department of community health must complete the study by December 31, 2022, and submit it to the Governor, General Assembly, the Office, and the Commission.[239] Lastly, the new Code section will be repealed on December 31, 2022, by operation of law.[240]

Section 6-2

Section 6-2 adds Code section 37-1-114.1, relating to the Commission.[241] The new Code section authorizes the Commission to work with the department of behavioral health and developmental disabilities "regarding the assisted outpatient program to develop fidelity protocols for grantees and a training and education program for use by the grantees."[242] The Commission is also authorized to "[c]oordinate initiatives to assist local communities in keeping people with serious mental illness out of" a detention facility.[243] Further, the Commission may assemble care management representatives to examine implementation and maintenance of the new mental health programs and may create advisory committees to evaluate relevant issues.[244]

Section 6-3

Section 6-3 amends Code section 37-1-116 to state that the Commission and all of Article 6 will be abolished and repealed on June 30, 2025.[245]

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238. § 31-2-17(a).
239. § 31-2-17(b).
240. § 31-2-17(c).
241. 2022 Ga. Laws 26, § 6-2, at 70–72 (codified at § 37-1-114.1).
242. § 37-1-114.1(1).
243. § 37-1-114.1(2).
244. § 37-1-114.1(3)–(4).
245. 2022 Ga. Laws 26, § 6-3, at 72 (codified at § 37-1-116).

Section 6-4

Section 6-4 adds Code section 45-12-154.1 to require the GDAC project administrator to prepare an annual report "regarding complaints filed for suspected violations of mental health parity laws."[246] The report must include data from the department of insurance and the department of community health and be made available to the public by April 1, 2024.[247]

Section 6-5

Section 6-5 adds Code section 49-4-152.6 to require the department of insurance to "provide Medicaid coverage for any prescription drug prescribed to an adult patient and determined . . . to be medically necessary for the treatment and prevention of mood disorders with psychotic symptoms."[248] Such disorders include "bipolar disorders, schizophrenia and schizotypal, or delusion disorders."[249] To qualify for Medicaid coverage, the patient must either have been "unsuccessfully treated with a preferred or generic drug" in the previous year or "previously been prescribed and obtained prior approval for the nonpreferred prescription drug."[250] Lastly, the Code section requires the department of insurance to "submit a Medicaid state plan amendment or waiver request to the United States Department of Health and Human Services" if necessary to carry out this Code Section.[251]

Analysis

"2022 is the Year for Mental Health in Georgia."[252] The Mental Health Parity Act expands access to affordable mental health and substance use disorder treatment for Georgians by making significant

246. 2022 Ga. Laws 26, § 6-4, at 72 (codified at § 45-12-154.1).
247. § 45-12-154.1.
248. 2022 Ga. Laws 26, § 6-5, at 72 (codified at § 49-4-152.6(a)).
249. § 49-4-152.6(a).
250. *Id.*
251. § 49-4-152.6(b).
252. Byrd, *supra* note 20.

changes to the state's mental healthcare system.[253] The Act substantially impacts insurance providers, families in Georgia, the mental health workforce, and law enforcement officers.[254]

Medical Loss Ratio and Funding for the Act

For decades, failure to comply with federal parity law has enabled insurance providers to save hundreds of millions of dollars by denying medically necessary treatment to people suffering from behavioral disorders throughout Georgia.[255] By enforcing parity, HB 1013 places most of the financial burden for mental health and substance use disorder treatment on the insurance providers that were previously responsible for denying coverage or charging higher co-pays, creating a major shift in the affordability of health care in the state.[256] The Act requires insurance companies to comply with a minimum 85% medical loss ratio (MLR), which lifts the burden on families paying out-of-pocket for medically necessary treatments.[257] The 85% MLR means that insurance companies must spend at least 85% of their collected premium dollars on medical care, as opposed to marketing, salaries, or other overhead expenses.[258] Although surrounding states have set MLR minimums as high as almost 90%, Georgia legislators believed a lack of pushback from insurance companies indicated a recognition of their noncompliance with federally mandated requirements, which were enacted over ten years ago.[259] Increasing the MLR ultimately means increasing the money spent on care.[260] Although concerns exist

253. Jess Mador, *Passed Georgia Mental Health Parity Bill Aims to Improve Care and Access*, WABE (Mar. 30, 2022), https://www.wabe.org/georgia-mental-health-parity-bill-aims-to-improve-care-and-access/ [https://perma.cc/54HK-AWSM].

254. Kathleen Bowen, Todd Edwards, Gabriel Carter, Eric Lopez & Clint Mueller, *Preliminary Final Legislative Report*, ASS'N CNTY. COMM'RS. GA. LEGIS. UPDATE, Apr. 29, 2022, at 1, 11, https://www.accg.org/docs/2022%20Preliminary%20Final%20Legislative%20Report.pdf [https://perma.cc/4DD4-9ULF].

255. *See* Oliver Interview, *supra* note 7.

256. Byrd, *supra* note 20 (discussing how insurance companies "can no longer deny coverage for medically necessary behavioral health treatment, and families will no longer have to pay out of pocket for needed care").

257. Oliver Interview, *supra* note 7.

258. *See Medical Loss Ratio (MLR)*, HEALTHCARE.GOV, https://www.healthcare.gov/glossary/medical-loss-ratio-mlr/ [https://perma.cc/G9Z6-QBXY].

259. Oliver Interview, *supra* note 7.

260. *Id.*

regarding potential complacency once insurers achieve the 85% minimum, satisfying the minimum will ensure that insurance companies provide a substantial amount of services to Georgians across the state.[261] The difference between a single percentage point is worth more than a hundred million dollars of direct services to Georgians in need.[262]

The overhaul of Georgia's mental health system comes with a high price tag.[263] The Act creates various grant programs designed to improve care for mental health patients and those with substance use disorders.[264] First, the Act establishes a grant program for assisted outpatient treatment and provides three years of funding to five grantees to better serve those in need of involuntary outpatient treatment.[265] The Act also creates a grant program to provide funds to accountability courts "that serve the mental health and co-occurring substance use disorder population."[266] The Act seeks to provide treatment and social services for people suffering from mental health disorders or substance use disorders to reduce recidivism.[267]

By providing additional funding for accountability courts, transportation to outpatient centers, and five new co-responder teams, the Act is estimated to cost Georgia $30 million.[268] Although initial plans to fund the Act predominantly focused on general revenue funds, Governor Brian Kemp (R) vetoed several budgetary issues and wanted a majority of the Act to be funded by the recent payout from the nationwide opioid settlement.[269] Georgia is expected to receive $686 million of the $26 billion total settlement resulting from the opioid

261. *Id.*
262. *Id.*
263. Maya T. Prabhu, *'A Defining Issue': Georgia House Approves Measure Overhauling Mental Health Care*, ATLANTA J.-CONST. (Mar. 8, 2022), https://www.ajc.com/politics/a-defining-issue-georgia-house-approves-measure-overhauling-mental-health-care/KMU7PRXJQJGQ7CSAHITXQFLW54/ [https://perma.cc/H7ZJ-TFXX] ("In all, the bill's cost to the state would be nearly $30 million a year.").
264. *Id.*
265. O.C.G.A. § 37-1-121 (2022).
266. § 15-1-23(b).
267. *See* Maya T. Prabhu, *Wide-Ranging Mental Health Bill Aims to Increase Access to Services in Georgia*, ATLANTA J.-CONST. (Jan. 26, 2022), https://www.ajc.com/politics/wide-ranging-mental-health-bill-aims-to-increase-access-to-services-in-georgia/S3N2A2PVAVHNBKVJLXRZAVYKLY/ [https://perma.cc/U3PV-F786].
268. Prabhu, *supra* note 263.
269. Oliver Interview, *supra* note 7.

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crisis and subsequent settlement agreements.[270] Estimated to be around $450 million after attorneys' fees, the private companies that courts determined to have contributed to health and substance use disorders across the nation will be funding the Act.[271]

Workforce Initiatives and System Development

Georgia's healthcare system is plagued with a workforce shortage.[272] "Georgia, like other states, is facing a shortage of healthcare workers, including nurses, physicians[,] and emergency medical personnel" that has only been exacerbated by the COVID-19 pandemic.[273] Since October 2021, the healthcare personnel shortage forced "the Northeast Georgia Health System [to spend] $80 million on contracted nurses."[274]

A major directive aimed at addressing these problems is the addition of "service cancelable educational loans to residents of the State of Georgia enrolled in educational programs, training programs, or courses of study for mental health or substance use professionals."[275] The loans will first go to programs emphasizing providing care to underserved youth and "[s]tudents with ties to and agreeing to serve underserved geographic areas."[276] Legislators emphasized the importance of addressing the workforce shortage as a condition for securing medical services throughout Georgia.[277] Representative Don

270. *Id.*; Brian Mann, *4 U.S. Companies Will Pay $26 Billion to Settle Claims They Fueled the Opioid Crisis*, NPR (Feb. 25, 2022, 7:39 AM), https://www.npr.org/2022/02/25/1082901958/opioid-settlement-johnson-26-billion [https://perma.cc/8LFW-WES6].

271. Oliver Interview, *supra* note 7.

272. Dave Williams, *Here's What Georgia Is Doing About the Health Care Worker Shortage*, GA. SUN (Apr. 21, 2022), https://thegeorgiasun.com/2022/04/21/heres-what-georgia-is-doing-about-the-health-care-worker-shortage/ [https://perma.cc/KS5A-QJFJ].

273. T.A. DeFeo, *Kemp Creates Commission to Find Solutions to Georgia's Healthcare Worker Shortage*, CTR. SQUARE (Apr. 21, 2022), https://www.thecentersquare.com/georgia/kemp-creates-commission-to-find-solutions-to-georgias-healthcare-worker-shortage/article_74509538-c1b3-11ec-adaf-07de1cab99af.html [https://perma.cc/5D8Z-JQZ6].

274. Riley Bunch, *Georgia Hospitals Are Relying on Travel Nurses to Survive. But They Can't Afford It Forever*, GPB NEWS (Mar. 25, 2022, 9:00 AM), https://www.gpb.org/news/2022/03/25/georgia-hospitals-are-relying-on-travel-nurses-survive-they-cant-afford-it-forever [https://perma.cc/4BUG-MBXU].

275. O.C.G.A. § 20-3-374(b)(3)(A) (2022).

276. *Id.*

277. Telephone Interview with Rep. Don Hogan (R-179th) (May 24, 2022) [hereinafter Hogan Interview] (on file with the Georgia State University Law Review).

Hogan (R-179th) noted that "even if we had the best mental health legislation, we don't have enough staff to carry it out."[278] Although loan forgiveness may be a viable option to help manage workforce shortages, it is not a guarantee.[279] Moreover, Dr. Terri McFadden, a pediatrician and chair of the Georgia Board of Health Care Workforce, expressed concerns that providers will be hesitant to put down their "long-term roots" in favor of new entrants.[280]

The Act also aims to strengthen the workforce by creating the Behavioral Health Care Workforce Data Base to collect and analyze data set surveys for behavioral health care professionals.[281] Prior to the Act's passage, Georgia did not have any workforce data analysis that provided policymakers with important information regarding where licensed physicians practice, whether they are still in practice, and whether they accept Medicaid.[282] Dr. Lisa Eichelberger, former Clayton State University professor, spoke to the Senate Subcommittee on Health and Human Services about the need to collect nurse workforce data.[283] Dr. Eichelberger stated that capturing this data has the power to "change the future of healthcare workforce planning."[284] Currently, there are more than 218,000 nurses in Georgia, but the state cannot determine where exactly those nurses are working.[285] The new workforce database will allow the board to collect demographics on behavioral health care providers, including their practice status, their education and training, the average hours worked per week, whether the licensee has specialized training in treating children, and other pertinent information.[286]

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278. *Id.*

279. Stanley S. Jones, Jr., Helen L. Sloat & George S. Ray, *Gold Dome Report – Legislative Day 30*, NAT'L L. REV. (Mar. 17, 2022), https://www.natlawreview.com/article/gold-dome-report-legislative-day-30 [https://perma.cc/JMT6-RHAD].

280. *Id.*

281. *See* Feb. 16 House Committee Video, *supra* note 15, at 1 hr., 23 min., 34 sec. (remarks by Rep. Mary Margaret Oliver (D-82nd)).

282. Jones et al., *supra* note 279.

283. *Id.*

284. *Id.*

285. *Id.*; Feb. 16 House Committee Video, *supra* note 15, at 1 hr., 23 min., 43 sec. (remarks by Rep. Mary Margaret Oliver (D-82nd)).

286. Melissa Haberlen DeWolf & Polly McKinney, *Behavioral Health Care Workforce Data Base (BHCWDB): System of Care, History, Process*, VOICES FOR GA.'S CHILD. (July 7, 2022), https://www.house.ga.gov/Documents/CommitteeDocuments/2022/Behavioral_Health/BHRIC-MDSS_Final.pdf [https://perma.cc/ZJ9J-ADSA].

Effect on Law Enforcement

The Act's changes to the Georgia Code affect law enforcement officers in various ways. Throughout committee hearings and debates, legislators frequently discussed removing the Code section's previous language and lowering the standard required to involuntarily commit an individual to an emergency receiving facility.[287] The previous standard for a peace officer to commit an individual without consent required a peace officer to witness the commission of a crime and required a peace officer to have "probable cause for believing that the person is a mentally ill person requiring involuntary treatment."[288] After passing through the Senate, the previous standard was removed and replaced with a new standard: "A peace officer may take any person to an emergency receiving facility if (i) the peace officer has probable cause to believe that the person is a mentally ill person requiring involuntary treatment; and (ii) the peace officer has consulted with a physician . . . ."[289] Opponents of lowering the standard voiced due process concerns because officers could potentially detain an individual for up to 48 hours despite the fact that the individual never committed a crime.[290] Proponents of the lower standard recognized the national trend moving away from the "imminent" standard in favor of more flexible, broader standards for involuntary commitment.[291] Further, those in favor of the change believed that harm would be averted if police officers did not have to wait until a crime was committed to intervene.[292] This would reduce the likelihood of direct harm and allow police officers to de-escalate situations and avoid tendering charges.[293]

Committee debates also discussed who should initiate subsequent transfers after an individual is involuntarily committed.[294] Early

287. *See* Oliver Interview, *supra* note 7.

288. O.C.G.A. § 37-3-42 (2021).

289. § 37-3-42(a)(2); Singleton Interview, *supra* note 24.

290. Singleton Interview, *supra* note 24.

291. House Health and Human Services Committee Meeting at 39 min., 10 sec. (Mar. 2, 2022) (remarks by Rep. Mary Margaret Oliver (D-82nd)), https://www.youtube.com/watch?v=JEaJrc0HLRg&t=1606s [https://perma.cc/86KF-KYBS].

292. Oliver Interview, *supra* note 7.

293. *See* Feb. 23 House Committee Video, *supra* note 39, at 1 hr., 25 min., 30 sec. (remarks by Trey Norris, Executive Director of the Georgia Sheriffs' Association).

294. Feb. 16 House Committee Video, *supra* note 15, at 1 hr., 37 min., 30 sec. (remarks by Louis

versions of HB 1013 made law enforcement officers responsible for subsequent transports, raising many concerns about placing new duties upon county police.[295] Opponents of the earlier versions acknowledged that this new responsibility would take police officers away from serving their communities and increase the risk of re-escalation and use of force.[296] Louis Dekmar, chief of police for the City of LaGrange, spoke to the House Committee on Health and Human Services on February 16, 2022, arguing in favor of removing this obligation from law enforcement.[297] Chief Dekmar believed that police involvement should end once an officer takes an individual to a treatment center.[298] He also voiced concerns regarding the risk of reintroducing an individual to law enforcement when that individual was previously stabilized at a facility.[299] Chief Dekmar stressed the significant time commitment that would be necessary for transporting individuals to treatment centers daily.[300]

Those who wished to minimize the role of law enforcement ultimately prevailed because the primary responsibility for subsequent transportation has shifted to the county where the initial emergency transport was conducted.[301] Code section 37-3-101 states that "[t]he governing authority of the county of the patient's residence shall arrange for all required transportation for mental health purposes subsequent to the initial transport."[302] However, the codified language does allow for courts, "upon the request of the community mental health center," to order law enforcement "to transport the patient in such manner as the patient's condition demands."[303] Instead of placing the sole responsibility on county law enforcement officials, the language further alleviates officers' duties by allowing the community

Dekmar, Chief of Police, LaGrange Police Dept.).

295. *Id.*; HB 1013, as introduced, § 3-3, p. 48, ll. 1223–228, 2022 Ga. Gen. Assemb.

296. Feb. 16 House Committee Video, *supra* note 15, at 1 hr., 38 min., 10 sec. (remarks by Louis Dekmar, Chief of Police, LaGrange Police Dept.); Feb. 23 House Committee Video, *supra* note 39, at 1 hr., 24 min., 40 sec. (remarks by Trey Norris, Executive Director of the Georgia Sheriffs' Association).

297. Feb. 16 House Committee Video, *supra* note 15, at 1 hr., 38 min., 10 sec. (remarks by Louis Dekmar, Chief of Police, LaGrange Police Dept.).

298. *Id.*

299. *Id.*

300. *Id.*

301. *See* O.C.G.A. § 37-3-101(a) (2022).

302. *Id.*

303. *Id.*

mental health center, at any time, to permit family members or friends to transfer individuals.[304]

Other Health Reform Passed This Legislative Session

Along with HB 1013, Governor Kemp signed several bills aimed at benefitting Georgia's mental health patients and improving the state's healthcare system overall.[305] Redefining the mental health system became a focal point for advocates and legislators who worked together to pass various bills in the House and Senate.[306] Senate Bill (SB) 403, now Act 857 or the Georgia Behavioral Health and Peace Officer Co-Responder Act, requires "[e]ach community service board [to] establish a co-responder program to offer assistance or consultation to peace officers responding to emergency calls involving individuals with behavioral health crises."[307] Although not required to partner with community service boards, if a law enforcement agency chooses to do so, "a community service board team member shall be available to accompany the officer team member in person or via virtual means or shall be available for consultation via telephone or telehealth during such emergency call."[308] The Act intends to "de-escalate behavioral health crises" in order to prevent "unnecessary incarceration of individuals with a mental or emotional illness, developmental disability, or addictive disease."[309]

SB 340, now Act 831, also passed during the 2022 legislative session, aims to grow an "in-demand workforce so that more doctors, nurses, and healthcare professionals are able to provide quality care to sick or hurt Georgians."[310] This legislation "removes the 50-resident

304. *Id.*

305. *Kemp Signs Number of Health-Related Bills Into Law*, WALB NEWS 10 (May 6, 2022, 3:46 PM), https://www.walb.com/2022/05/06/kemp-signs-number-health-related-bills-into-law/ [https://perma.cc/BV7G-DSTP].

306. *See* Caitlin Highland, *Sine Die 2022: Improvements to Health and Education Affordability Are Coming, But Risky Tax Legislation Passes, Too*, GA. BUDGET & POL'Y INST. (Apr. 5, 2022), https://gbpi.org/sine-die-2022-improvements-to-health-and-education-affordability-are-coming-but-risky-tax-legislation-passes-too/ [https://perma.cc/39YX-D3UF].

307. 2022 Ga. Laws 722, § 5, at 725 (codified at O.C.G.A. § 37-11-2(a) (2022)).

308. § 37-11-2(b).

309. 2022 Ga. Laws 722, § 2, at 723.

310. Press Release, Office of the Governor, Gov. Kemp Signs Legislation for a Healthier Georgia (May 6, 2022), https://gov.georgia.gov/press-releases/2022-05-06/gov-kemp-signs-legislation-healthier-georgia [https://perma.cc/73WL-EC9B]; 2022 Ga. Laws 596 at 596–97.

cap on designated teaching hospitals, [which] strengthen[s] and expand[s] the workforce pipeline for healthcare workers."[311]

HB 752, now Act 836 or the Georgia Psychiatric Advance Directive Act, complements the Mental Health Parity Act by allowing those diagnosed with mental health disorders to choose a plan and select a representative to access their mental health information in the event of a crisis.[312] Psychiatrist Dr. Peter Ash testified before lawmakers that the Georgia Psychiatric Advance Directive Act will significantly benefit those who suffer from manic-depressive disorder or bipolar disorder.[313] Dr. Ash stated that the typical course involves individuals experiencing cycles of normal periods, periods of depression, and periods of mania.[314] This Act allows those individuals, while in the "normal" period, to acquire information and make informed decisions about what should be done during a "manic" period.[315]

SB 566, now Act 867, updates the Surprise Billing and Consumer Protection Act to prevent individuals receiving treatment in emergency rooms for mental health or substance use disorders from getting "surprise" out-of-network bills, even if visiting an out-of-network facility.[316]

In 2020, then President Donald Trump (R) signed into law an Act making "988" the universal telephone number to reach the suicide prevention hotline, to be implemented in 2022.[317] This new hotline, live as of July 16, 2022, allows for an individual suffering from a crisis to access help in the easiest way possible.[318] Georgia's previous system

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311. Press Release, *supra* note 310; 2022 Ga. Laws 596.

312. Byrd, *supra* note 20; 2022 Ga. Laws 611.

313. Ambria Burton, *Advanced Directives for Mental Health Could Give Those in Crisis More Options*, FRESH TAKE GA. (Feb. 11, 2022), https://freshtakegeorgia.org/advanced-directives-for-mental-health-could-give-those-in-crisis-more-options/ [https://perma.cc/FL4X-59GV].

314. *Id.*

315. *Id.*

316. 2022 Ga. Laws 750, § 1, at 751 (codified at O.C.G.A. § 33-20E-2(b)(5) (2022)); *Legislative Update: Week 12 – Part 2*, GEORGIANS FOR HEALTHY FUTURE: GHF BLOG (Mar. 31, 2022, 2:00 PM), https://healthyfuturega.org/2022/03/31/legislative-update-action-alert-call-your-senators-about-hb-1013-final-countdown-legislation-on-the-move-advocacy-events-coming-up-and-more-2/#:~:text=SB%20566%2C%20introduced%20by%20Senators,Surprise%20Billing%20%26%20Consumer%20Protection%20Act [https://perma.cc/7CJP-F8F8].

317. Rhitu Chatterjee, *The New 988 Mental Health Hotline Is Live. Here's What to Know*, NPR, https://www.npr.org/sections/health-shots/2022/07/15/1111316589/988-suicide-hotline-number [https://perma.cc/49NF-EE2D] (July 16, 2022, 12:02 AM).

318. *Id.*

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directed calls from the National Suicide Hotline Prevention and routed them to the Georgia Crisis and Access Line (G-CAL), which received "an estimated 700 to 800 calls each day."[319] Now, "[c]alls to the . . . 988 hotline will automatically route through G-CAL. When people call, text, or chat 988, they will be connected to trained counselors who are part of the existing National Suicide Prevention Lifeline network."[320] Although the "988" hotline has already launched, the existing G-CAL lifeline will still be available.[321] Judy Fitzgerald, the commissioner of the department of behavioral health and developmental disabilities, has called the rollout of the hotline "one of the largest and most transformative initiatives" in Georgia's behavioral health crisis response.[322]

Conclusion

The Mental Health Parity Act is landmark legislation that dramatically improves mental health care's accessibility and affordability in Georgia. Moreover, beyond the immediate changes to Georgia's healthcare system created and provided in the Act, it is a reflection of the Legislature's commitment to transforming and improving mental healthcare in the state.

Justin Crozier, Betsy Hicks & Jordan Kalteux

319. Ellen Eldridge & Sofi Gratas, *988 – The National Mental Health Crisis Line – Is Live July 16*, GPB NEWS (July 15, 2022, 10:27 AM), https://www.gpb.org/news/2022/07/15/988-the-national-mental-health-crisis-line-live-july-16 [https://perma.cc/N4KY-SE6B].

320. *Id.*

321. *Id.*

322. Ellen Eldridge, *988 Will Be the '911' for Mental Health/Addiction Crisis Calls. Georgia Preps for the Extra Load*, GPB NEWS, https://www.gpb.org/news/2021/12/07/988-will-be-the-911-for-mental-healthaddiction-crisis-calls-georgia-preps-for-the [https://perma.cc/2U2B-KDD4] (Dec. 7, 2021, 3:56 PM).