

State and Federal Parity Legislation in 2019

Below is a brief summary of what has occurred in the states regarding parity-implementation legislation and the bills pending before Congress on parity implementation.

State Legislation

Over the past 14 months, seven states have enacted parity-implementation legislation adapted from a model created by the American Psychiatric Association (APA) and the Kennedy Forum. Those states are [Colorado](#), [Connecticut](#), [Delaware](#), [District of Columbia](#), [Illinois](#), [New Jersey](#), and [Tennessee](#) (the Colorado legislation had additional measures beyond parity implementation). The key provision of each of those bills is a best-practice parity-reporting approach for insurers. This requires insurers to submit comparative analyses to state regulators about the design and application of their managed care practices. Other states that have introduced but not yet passed the model parity-implementation legislation include [California](#), [Florida](#), [Maine](#), [Massachusetts](#), [Minnesota](#), [Mississippi](#), [Missouri](#), [Montana](#), and [Nevada](#). Multiple other states are expected to introduce the model legislation later this year and next. APA has created [drafts for every state](#) that are formatted specifically for each state. The reporting requirement approach is adapted from a [regulatory guide](#) created by the APA, Kennedy Forum, and Parity Implementation Coalition in 2017, which was adopted by the United States Department of Labor in its [Self-Compliance Tool](#) issued in April of 2018.

Federal Legislation

There are three bills before Congress regarding parity implementation and enforcement. Each bill is summarized below and then the political feasibility of the bills is briefly discussed.

The Mental Health Parity Compliance Act (S. 1737/H.R. 3165)

Senators Murphy (D-CT) and Cassidy (R-LA), and Representatives Porter (D-CA), Bilirakis (R-FL), and Norcross (D-NJ) have introduced the Mental Health Parity Compliance Act. This bill would do the following:

- Require group health plans and insurers to perform comparative analyses about the design and application of their managed care practices (**replicates best-practice comparative analysis approach of the state bills and the Department of Labor**)
- Require the federal agencies to request analyses from any plan or insurer about which the agencies receive a complaint concerning mental health or substance use disorder coverage
- Require the federal agencies to request the analyses from 50 plans or insurers selected at random
- Require the federal agencies to specify to a plan or insurer what it must do to come into compliance if found not in compliance
- Require the federal agencies to specify to a plan or insurer what additional information it must submit if it did not submit sufficient information for the agency to determine if there is compliance or not
- Require the federal agencies to submit an annual report to Congress about what they found in the submitted comparative analyses and what their specifications were to plans and insurers

The Behavioral Health Coverage Transparency Act (S. 1576/H.R. 2874)

Senator Warren (D-MA) and Representative Kennedy (D-MA) have again introduced the Behavioral Health Coverage Transparency Act (numerous other Democratic members have signed on as original cosponsors; there are no Republican cosponsors). This same legislation was also introduced in the 114th Congress and 115th Congress. This bill would do the following:

- Require plans and insurers to perform analyses about the design and application of their managed care practices (**this is a different approach than what is in the Mental Health Parity Compliance Act and does not align with what is required by the federal parity law’s regulations; this approach is problematic unless amended**); the analyses will be submitted to plan beneficiaries
- Require the federal agencies to perform random audits of at least 12 health plans and insurers
- Allow the federal agencies to perform additional audits of any plan or insurer that has had a claim filed against it
- Require the federal agencies to collect information from plans and insurers about denial rates for mental health claims, substance use disorder claims, and medical/surgical claims
- Create a “consumer parity unit” within the federal agencies

Parity Enforcement Act (H.R. 2848)

Representatives Norcross (D-NJ), Courtney (D-CT), and Kuster (D-NH) have introduced the Parity Enforcement Act. This bill would authorize the Department of Labor to issue a civil monetary penalty on health plans and insurers for violating the federal parity law. The penalty would be capped at \$500,000 unless it is due to “willful neglect.” If the violation results from willful neglect, the penalty is \$100 per day per affected beneficiary. Currently, the Department of Labor cannot directly issue penalties against group health plans. However, the Department of Treasury currently does have the authority issue this very same penalty in the form of an excise tax against group health plans for violating the federal parity law. None of the federal agencies currently have the authority to issue penalties against health insurers for violating the federal parity law.

Political Outlook

Of the three pieces of legislation, the Mental Health Parity Compliance Act has the greatest potential for movement and even passage. The Behavioral Health Coverage Transparency Act and the Parity Enforcement Act have significant partisan obstacles. The Behavioral Health Coverage Transparency Act has every Democratic senator running for president as an original cosponsor. Additionally, the House version is loaded with 12 democratic original cosponsors. The Parity Enforcement Act is identical to an amendment offered last year to the SUPPORT Act. That amendment fell on a party-line vote, with every Republican member of the HELP Committee voting against it. Senator Cassidy and other Republican senators indicated that the concept of civil monetary penalties is a non-starter for them and will not be considered in the Senate.

Conversely, the Mental Health Parity Compliance Act is the only bill with bipartisan original cosponsors in both the Senate and the House. It has now been included in the *Lower Health Care Costs Act of 2019* (section 310), which came out of the HELP Committee at the end of June. Senator Alexander (R-TN), the Chair of the HELP Committee, hopes that the bill will be brought for a vote in the Senate before August recess. In the House, Democratic leadership has been very supportive of that version of the bill and other Republicans are expected to sign on as cosponsors.