

July 10, 2007

PR-07/17

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## **Council to House Education and Labor Committee: H.R. 1424 threatens critical federal preemption law**

*Only Senate mental health parity bill supports employer-sponsored health coverage*

WASHINGTON, D.C. - "Employers appreciate how vitally important effective behavioral health care is for millions of Americans," said Jon Breyfogle, executive principal with Groom Law Group, testifying before the House of Representatives Education and Labor Committee today on behalf of the American Benefits Council. "Because of the importance Council members place on *all* employee health benefits, we have repeatedly urged Congress not to expand the current federal parity requirements in a way that would add to plan costs or increase the complexity of plan administration."

The Council was privileged to help develop the Senate's Mental Health Parity Act (S. 558), a balanced legislative approach that has gained the support of mental health parity proponents as well as organizations representing employers and insurers. "The Senate bill is unique," Breyfogle said. "We hope this good faith effort sends an important message that employers will support legislation where their priority concerns are addressed in a thoughtful manner and with careful attention to details." S. 558 allows employers the flexibility to design plans; makes clear that medical management of these important benefits may not be prohibited; and ensures uniformity between federal and state parity requirements while maintaining states' current authority to regulate insurance.

"Unfortunately, The Paul Wellstone Mental Health and Addiction Equity Act (H.R. 1424) does not address the issues of key concern to employers in the same balanced fashion as the Senate bill," Breyfogle said. The Council's testimony addresses the key areas of concern for health plan sponsors:

**Flexibility Needed in Covered Benefits:** The House bill dictates the use of the DSM-IV diagnostic manual to determine insurance coverage. "Such a requirement would send an immediate message to employers that they no longer have any discretion over decisions about what benefits they cover for their employees in this area of their plan, except the decision to provide no coverage for these conditions at all," Breyfogle said.

**Protection Required for Medical Management Practices:** Even more important than what conditions should be covered, the House bill does not protect medical management practices to ensure that patients are receiving appropriate care. "We believe that employers should be able to design plans so that proposed treatments for these conditions are, whenever possible, consistent with standards for evidence-based care. Indeed, in our view, the Senate bill's

protection for medical management does not go far enough – we would have greatly preferred that the Senate bill preempt State insurance laws that limit the ability of insurers to manage mental health benefits for fully insured plans,” Breyfogle said.

**Discretion Needed for Out-of-Network Coverage:** The House bill mandates coverage for mental health and substance-related disorders by so-called “out of network” providers if the plan does so for certain categories of medical and surgical services. “This *exceeds* what is required under the Federal Employee Health Benefits Program where parity is required only for services provided on an in-network basis,” Breyfogle said.

**Changes Needed to Provisions Related to State Laws:** The House bill would authorize states to enact enforcement and remedy schemes beyond what federal law prescribes. “This provision in the House bill opens the door for greater State law remedies for disputes involving mental health benefits. The debate over ERISA’s remedies should not be an adjunct to a bill whose purpose is to address mental health parity,” Breyfogle said.

“Furthermore, both the House and Senate parity bills fail to extend the same parity requirements to the mental health benefits provided to millions of elderly and low-income Americans who are covered under Medicare and Medicaid,” Breyfogle said. “While separate legislation has been introduced that would partially address this situation, nearly all of the debate and focus concerning mental health parity over the past decade in Congress has been around employer-sponsored health coverage. We believe it is indefensible for Congress to impose parity requirements on employer-sponsored health coverage, for both private sector employers and state and local government health plans, while ignoring the same issues in the programs that the Federal government sponsors,” noted Breyfogle.

Breyfogle concluded, “Employers understand the importance of quality mental health coverage for their employees and to maintaining a productive, healthy workforce. The American Benefits Council has played a constructive and active role in the negotiations that have helped shape the Senate mental health parity bill, and we are prepared to do the same with the House bill if a similar approach is taken to ensure a more balanced proposal.”

To arrange an interview with Breyfogle or with Council President James Klein, who previously testified on this issue before the House Energy and Commerce Committee Subcommittee on Health, please contact Jason Hammersla, Council director of communications, at [jhammersla@abcstaff.org](mailto:jhammersla@abcstaff.org) or by phone at (202) 289-6700.

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*The American Benefits Council is the national trade association for companies concerned about federal legislation and regulations affecting all aspects of the employee benefits system. The Council’s members represent the entire spectrum of the private employee benefits community and either sponsor directly or administer retirement and health plans covering more than 100 million Americans.*