Legislative Update

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U.S. FEDERAL LEGISLATION

Mental Health Parity

The congressional battle for mental health parity legislation continues. The White House has been urging Congressional leaders to pass a full parity bill, which the President said he wants to sign this year.

The Mental Health Parity Act of 1996 expired on September 30, 2001. The Mental Health Equitable Treatment Act was introduced in 2001, but failed to pass in the House and Senate. However, in December 2001, an amendment was added to an appropriation bill to extend the 1996 law until December 2002.

A new parity bill has been considered and hearings have been held. The major goal of the bill is to provide parity between mental health benefits and those for medical and surgical care with regard to the level of benefits. The bill covers businesses of 50 or more employees. The bill does not require employers to provide mental health coverage, but if the employer provides medical care, the employer must provide the same level of benefits for mental health as it does for medical care. The bill covers all categories of mental health conditions listed in the DSM-IV.

State Reaction

A majority of the U.S. states have already enacted their own legislation to mandate mental health parity in health insurance for mental illnesses. The difference among the state legislation is what range of mental illness is included. Some states mandate parity for “serious mental illnesses” such as new legislation in **Kansas** and **Illinois**. Whereas some legislation includes all mental illnesses.

Peace Act

The bill entitled “Our Lady of Peace Act” (H.R. 4757), if passed, would require states to collect and submit to the FBI the names and other relevant identification information of people who have histories of mental illness or criminal records. This legislation (and the Senate companion bill, S. 2826) is designed to implement provisions of the Brady Handgun Violence Prevention Act of 1994, which established the National Criminal Instant Background Check System (NCI). The NCI system is intended to serve as a national database for use in conducting required background checks on people who are prohibited from buying firearms.

Mental Health Appropriations

Federal funding for public health programs could be in the spotlight by early September with reports that the House appropriations committee will be taking up the Labor/HHS appropriations bill shortly after the recess. The Senate Appropriations Committee reversed cuts proposed in the Bush administration’s budget for Substance Abuse and Mental Health Services Administration (SAMHSA) programs. The committee’s efforts would increase mental health spending by 1.5

percent. The Senate Labor Health and Human Services Education Subcommittee has allocated $5 million for psychology education and training and $2 million for graduate programs to support geropsychology training.

HIPAA- Health Insurance Portability and Accountability Act

The Department of Health and Human Services (HHS) has released its final changes to the HIPAA privacy regulations. The final version abandoned the prior requirement for patient's prior consent to the disclosure of personal health information. The final rules do restrict the sale of patient information and increased the patient's right to access his or her own medical records. The final regulation also requires specific patient authorization for the release of psychotherapy notes, with limited exceptions. The privacy regulations are scheduled for compliance in April 2003.

CANADIAN LEGISLATION

Personal Information Protection & Electronic Documents Act

Similar to HIPAA, Canadians are protected by two federal privacy laws, the Privacy Act and the Personal Information Protection and Electronic Documents Act. The Privacy Act took effect on July 1, 1983. This Act imposes obligations on some 150 federal government departments and agencies to respect the privacy rights of Canadians by placing limits on the collection, use and disclosure of personal information. The Privacy Act gives Canadians the right to access and correct personal information about them held by federal government organizations.

As of January 1, 2001, individuals are also protected by the Personal Information Protection and Electronic Documents Act which sets out ground rules for how private sector organizations may collect, use or disclose personal information in the course of commercial activities. The law gives individuals the right to see and ask for corrections to information an organization may have collected about them. Since the beginning of this year, the Act applies to personal information about customers or employees that is collected, used or disclosed by the federally regulated sector in the course of commercial activities. It also applies to information sold across provincial and territorial boundaries.

As mentioned above, the Personal Information Protection and Electronic Documents Act applies to the federally regulated sector. In 2004 it will apply to all organizations unless the federal government exempts an organization or unless the activity is in a province that has its own privacy laws.

The Provinces Respond

All but two provinces — **Prince Edward Island** and **Newfoundland** - have privacy legislation governing the collection, use and disclosure of personal information held by government agencies. All jurisdictions with personal data protection legislation provide Canadians with a general right to access and correct their personal information.

The Freedom of Information and Protection of Privacy Act is pending in **Prince Edward Island**. That act gives individuals the right of access to records held by government and protects personal privacy by rules that government must follow in the collection, use, protection, and disclosure of personal information. Unless the Act allows, your personal information cannot be

disclosed to others without your consent. It also gives individuals the right to see their personal information and to request corrections to your personal information if it is not accurate. The Act will be proclaimed in November 2002. It will be in effect at that time.

At present, **Quebec** is the only province with a personal data protection law in effect that applies to the provincially regulated private sector. This law, in addition to regulating the collection, use and disclosure of personal information held by commercial enterprises, also provides individuals with a general right of access to and correction of personal information.

Some jurisdictions have enacted or intend to enact legislation to deal specifically with the collection, use and disclosure of personal health information by provincial health care organizations and other approved individuals and agencies. They include **Alberta, Ontario, Saskatchewan** and **Manitoba**. At the present, only **Manitoba**'s Personal Health Information Act, and **Alberta**'s Health Information Act are in force.

Ontario's Personal Health Information Act is likely to go into force on January 1, 2004 in order to pre-exempt the application of the federal act. The Ontario Act was drafted to meet three requirements: protect personal information, govern collection, use and disclosure of personal information and strike a balance between individual rights and the needs of organizations.

Ontario-Professional Corporations

Recent changes to the Regulated Health Professions Act and the Business Corporations Act now permit members of the **Ontario** College of Psychologists, and members of other professions, to incorporate their practice of the profession. For a corporation to engage in professional practice, it must be issued a Certificate of Authorization from the College. The college requires that the corporation meet several requirements to receive a certificate, such as, all shareholders must hold a license to practice, the name of the corporation must include the last name of one of the shareholders and the practice cannot carry on any business other than the practice of psychology.

STATE LEGISLATION

Ohio- Disciplinary Data on the Internet SB9, effective May 13, 2002, requires the **Ohio** State Board of Psychology to make available on the Internet several formal Board actions taken against licensees. The law requires the Board to provide access to the names of all licensed psychologists and school psychologists who have been reprimanded by the Board, the names of all licensed psychologists and school psychologists who have current licenses but whose licenses are under an active suspension imposed for misconduct, and the names of all former licensees whose licenses have been suspended or revoked for misconduct. The law also requires the Board to provide access to the reason for each reprimand, suspension, or revocation. **California** and **Indiana** are two states that already have such legislation.

Maryland-Administrative Matters

Senate Bill 327/House Bill 686 (both passed), increases the number of days from 60 to 120 within which the **Maryland** Board of Examiners of Psychologists must provide notice to a licensed psychologist if a complaint has been filed against the psychologist. The bills also clarify that a suspension of a psychologist's license for more than one year may not be stayed pending judicial review. Additionally, legislation was passed to extend the sunset termination date for the State Board of Examiners of Psychologists until July 1, 2013.

Delaware-Post Doctoral Experience

An act to amend the **Delaware** code section relating to the required post-doctoral experience for psychology licensure. Currently, two years of post-doctoral experience is required. The amendment brings Delaware in line with most jurisdictions' requirement for only one year of post-doctoral experience.

California-Training in Abuse Treatment

A bill in the **California** legislature, if passed, would require all applicants for licensure as a psychologist and other mental health professional to complete a minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention. This requirement will effect those applicants who began graduate study after January 1, 2004. For those licensees who began their graduate study prior to that date, continuing education courses in spousal or partner abuse would be required.

California-Strengthening Psychologists' Scope of Authority

There are two bills being considered during their 2002 legislative session that expand the role of Psychologists in managing and providing care to patients. The first piece of legislation, gives psychologists the authority to transfer patients to skilled nursing facilities. Currently, when a patient is transferred to a skilled nursing facility, a physician must authorize the transfer. The new legislation would specifically authorize psychologists to sign the mandated summary for patients being transferred to a skilled nursing facility, thus authorizing the transfer. The second piece of legislation would authorize psychologists to release committed patients, when indicated, before the commitment has expired. Currently, California psychologists may commit to inpatient care patients who are a risk to themselves or others or who are gravely disabled, and may release/discharge patients at the expiration of the mandated length of treatment. However, releasing the patient before the commitment has expired requires a psychiatrist.

Pennsylvania-Hospital Privileges

Legislation was introduced in both the Pennsylvania House and Senate permitting, but not requiring, hospitals to alter their bylaws to expand the privileges afforded psychologists to include diagnosis, treatment planning, and admission and discharge (with medical clearance). Currently, 15 states and the District of Columbia have similar laws. These laws do not expand the scope of practice of psychologists, but would allow psychologists to practice within their scope of practice within a hospital setting.

Prescription Privileges

New Mexico became the first state to have prescription privileges for psychologist. Four other states introduced prescription privileges legislation in 2002: Georgia, Hawaii, Illinois, and Tennessee. The following states plan to re-introduce RxP legislation in 2003: Connecticut, Georgia, Hawaii, Illinois, Louisiana, Tennessee, and Texas. And the following states plan to introduce RxP legislation for the first time: Arizona, Oklahoma, Oregon, and Wyoming.

Indiana- Use of Psychological Tests Restricted

Proposed legislation in Indiana restricts the use of 201 tests and assessment instruments commonly used in mental health, educational, and rehabilitative treatment settings. The legislation provides that only licensed psychologists, physicians, or those individuals under the direct supervision of a licensed psychologist, can use the 201 tests listed. (Members of the clergy were exempted.) The proposed legislation states that these tests and instruments, because of their design or complexity, create a danger to the public by being improperly administered and interpreted by an individual other than a licensed psychologist, physician, or a mental health provider under the direct supervision of a psychologist.
The list of tests and instruments includes intelligence tests, projective tests, neuropsychological assessments, personality tests, Structured clinical DSM interviews, Millon, Draw-a-person, House-Tree-Person, Kinetic Family Drawing, Brown ADD Scales, Eating Disorders Inventory, Trauma Symptom Inventory, Bender Visual Motor Gestalt and inventories and rating scales.

Florida-Psychological Records

Florida Board of Psychology amended its rule regarding releasing psychological records to add that:The psychologist's notes pertaining to psychological services rendered may be considered raw data as provided by subsection 64B19-18.004(3), F.A.C., at the discretion of the psychologist and therefore can be released only (1) to a licensed psychologist or school psychologist licensed pursuant to Chapter 490, F.S., or Florida certified, or (2) when the release of the material is otherwise required by law.

Kentucky-Duty to Warn

SB 90 corrected an earlier piece of legislation (passed in 1992) which requires mental health professionals to exercise the "Duty to Warn" when a client expresses to a therapist an intent to harm someone. Several mental health professional groups had been omitted from the earlier legislation, and the titles for psychology were those which were in effect in 1992. As passed, SB 90 extends the duty and the liability protection under it to all regulated mental health professionals and amends the psychology portion to refer to "psychologists, psychological practitioners and psychological associates." The legislation also gives marriage and family therapists and professional counselors status as Qualified Mental Health Professionals (QMHPs), joining psychiatry, psychology, social work and nursing as professions which can participate in Involuntary Commitment procedures.

Emergency Practice Legislation

In the wake of the September 11th terrorist attacks, considerable attention has been focused on mental health disaster response efforts.

The State Compact

Most state legislatures have adopted as law or authorized the states' Governors to join the Emergency Management Assistance Compact (a.k.a. The Interstate Disaster Compact). The compact provides for states, party to the compact, to assist another compact state during an emergency or disaster situation.

As regards to professionals practicing outside of their home state during an emergency, the compact states:

> Notwithstanding any contrary provision of law, whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, the person is deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such a skill to meet a declared emergency or disaster, subject to the limitations and conditions as the governor of the requesting state may prescribe by proclamation or otherwise.

As of 2002, almost every state has adopted the interstate compact.

The American Red Cross Exemption

Some states also have a law that allows emergency professionals working with the American Red Cross to practice in that state during a disaster. For example, **Oklahoma** provides that a person must be licensed in the state to render psychological services, however, the following is exempted:

> The activities and services of a nonresident of this state who renders consulting or other psychological services if such activities and services are rendered in cooperation with the American Red Cross or as a member of the Disaster Response Network of the American Psychological Association. The Board shall be informed prior to initiation of services.

The Disaster Response Network (DRN) is a joint project between APA and the American Red Cross. In the time of an emergency or disaster, the DRN, works with the state associations, mobilizing professionals to work with victims, family members and rescue workers on the scene of the event, within the first few hours of its aftermath. The response network has been activated in 41 states.

State Legislation Addresses Liability

A current bill in **Connecticut** allows the public health commissioner to order a temporary suspension of state licensure, certification, or registration requirements for certain health-related practitioners from other states providing temporary assistance in Connecticut during an emergency or disaster. The out-of-state practitioner must be appropriately credentialed in another state or U. S. territory. The temporary assistance period cannot exceed 60 days. The emergency situation must be due to natural disaster; technological hazard; man-made disaster; and civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.

The bill also provides protection from civil liability for personal injuries resulting from acts or omissions of such practitioners providing in-state assistance at an emergency scene that might be ordinary negligence. This immunity does not apply to gross, willful, or wanton negligence. Also, the bill specifies that it does not protect a licensed practitioner from liability for damages for injuries or death caused by his act or omission while providing professional services in the normal course of his practice. The bill applies to the following health-related practitioners: emergency medical service personnel, physicians and surgeons, physical therapists, radiographers and radiologic technologists, nurses, nurse's aides, respiratory care practitioners, psychologists, marital and family therapists, clinical social workers, professional counselors, and others.

Telehealth Legislation

The current psychologist licensing state based system only allows a psychologist licensed in one state to practice in that state. A psychologist wishing to practice across state lines must be licensed in the second state to practice in that state. Thus, the practice of psychology via the Internet presents a unique difficulty to the state based licensing system. One might ask if telehealth practice can be regulated within our current system.

Psychology Board

South Carolina has a rule that addresses the practice of psychology via the Internet. The rule provides that a person is considered to be practicing as a psychologist in that state if the person engages in an activity considered to be the practice of psychology electronically within the state including, but not limited to, by means of the Internet, phone lines, and personal computer modems.

Other Professions

Other professions have been faced with the same licensing dilemmas. In **Mississippi**, the attorney general has issued an official opinion that out-of-state telemedicine physicians treating patients in Mississippi are not subject to the state licensing requirements. Although the Mississippi State Board of Medical Licensure believes that out-of-state telemedicine doctors ought to be licensed in Mississippi, the attorney general felt that the state definition of "practicing medicine" does not include an out-of-state physician practicing telemedicine across state lines.

Unlike Mississippi, **Oklahoma** has amended its definition of "practice of medicine" to include "diagnostic or treatment procedures done via electronic communication on a

patient inside the state by someone outside the state." This modification requires a practitioner of telemedicine who regularly diagnoses or treats Oklahoma patients to be licensed by the state of Oklahoma.

Tennessee has expanded its medical licensure law to include the issuance of a "special license" for the purpose of practicing telemedicine across state lines. In order to qualify for this "special license," a physician must first be state licensed.

Pennsylvania Telemedicine Act amends the medical practice code to require a full license for telemedicine practice by out of state physicians.

Nursing regulators have taken an approach to authority to practice across state lines by devising a model called mutual recognition. Several states have adopted the interstate compact that allows a nurse, licensed in the home state, to practice in any compact state.

An amendment to the **South Carolina** Code regulates the practice of veterinary medicine to include telemedicine in the practice of veterinary medicine.

Disciplinary Acts

Some boards have disciplined individuals for their practice via the Internet. The **Ontario** College of Pharmacists recently filed charges against an unaccredited Canadian drug company that was operating, via the Internet, without being registered through the College. The **California** Medical Board suspended a doctor's license for prescribing drugs via the Internet without an examination of the patients.