

May 9, 2010

# Fight Erupts Over Rules Issued for ‘Mental Health Parity’ Insurance Law

By [ROBERT PEAR](#)

WASHINGTON — A huge fight has erupted over rules issued by the Obama administration to enforce a 2008 law that requires equal insurance coverage for the treatment of mental and physical illnesses.

The fight offers a taste of the coming battle over rules to remake the health care system under legislation pushed through Congress by [President Obama](#).

Insurance companies and employer groups are lobbying the White House to delay and rework the rules on “[mental health](#) parity.” Insurers and many employers supported the 2008 law, but they say the rules go far beyond the intent of Congress and would cripple their cost-control techniques while raising out-of-pocket costs for some patients.

Advocates for patients generally support the rules, saying they will eliminate many forms of insurance discrimination against people with mental illness. The rules are also supported by the [American Medical Association](#), the [American Psychiatric Association](#) and House Democrats, most notably Representative [Patrick J. Kennedy](#) of Rhode Island.

The goal of the law is to abolish discriminatory insurance practices frequently applied to coverage for the treatment of mental health disorders and [substance abuse](#). Under the law, insurers cannot set higher co-payments and deductibles or stricter limits on mental health benefits than they set for the treatment of physical illnesses like [cancer](#) and [diabetes](#). For decades, such disparities have been common.

Insurers and employers agree that the law prohibits them from setting numerical limits on hospital inpatient days and outpatient visits for mental health services if they do not impose such limits on other types of medical care.

But insurers say the Obama administration went overboard when it tried to regulate “nonquantitative treatment limits.” These include the techniques used by insurers to manage care, the criteria for selection of health care providers and the rates at which they are paid.

The [Blue Cross and Blue Shield Association](#), [Aetna](#) and other insurers have urged the federal government to drop this aspect of the rules. The purpose of the law was to ensure parity in benefits for patients, not “parity in provider reimbursement,” said Justine Handelman, executive director of the Blue Cross and Blue Shield Association.

But Carol A. McDaid, a lobbyist for a coalition of mental health advocates, said, “Patients are not getting access to mental health care because many insurers are not paying enough to cover the cost of services.”

This may have three consequences for patients and their families, advocates say. Patients may be unable to find mental health experts in their health plan’s network of providers. If they go outside the network, they typically pay more. And if they cannot afford it, they may not receive treatment at all.

The American Psychiatric Association said that nonquantitative treatment limits, though less visible than limits on the number of doctor visits or hospital days, could be more insidious.

Dr. James H. Scully Jr., chief executive of the association, said some insurers had tried to “circumvent the law” by “imposing new requirements for prior authorization and the submission of treatment plans for mental health services where there were no comparable requirements on the medical-surgical side.”

Insurers strenuously object to one provision of the rules that requires them to maintain a single deductible for all medical and mental health services combined. This is a significant departure from the industry’s current practice of separate deductibles.

As a result of the change, insurers say, many mental health patients will face higher out-of-pocket costs because the combined deductible will almost surely be higher than the current one for mental health services alone.

But in a letter to the administration last week, leading House Democrats said Mr. Obama was right to prohibit separate deductibles. The law, they said, was adopted to end such inappropriate distinctions between medical and mental health care services.

A number of companies like Aetna, [Magellan Health Services](#) and [ValueOptions](#) specialize in managing mental health benefits.

In issuing the new rules, the Obama administration praised the work of such companies, saying they increased the use of mental health care while holding down costs.

But Pamela B. Greenberg, president of the [Association for Behavioral Health and Wellness](#), which represents these companies, said the new rules would “hamstring” their ability to use the tools that have proved effective in managing mental health benefits.

In a suit over the rules, Magellan and other companies said the concept of nonquantitative limits was “boundless and ill defined” and would reach virtually every policy and procedure used to manage mental health benefits.

One premise of the law is that mental illnesses often have a biological basis and can be treated as effectively as many physical ailments. But insurers say it is impossible to use the same techniques in managing the treatment of [colon cancer](#) and [schizophrenia](#), or [heart failure](#) and [major depression](#).