H. R. 621

To provide for parity in the treatment of mental illness.

IN THE HOUSE OF REPRESENTATIVES

February 5, 1997

Mr. Stark (for himself, Mr. McDermott, and Mr. Frank of Massachusetts) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To provide for parity in the treatment of mental illness.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “National Mental Health Parity Act of 1997”.
TITLE I—PARITY FOR TREATMENT OF MENTAL ILLNESS

SEC. 101. PARITY FOR TREATMENT OF MENTAL ILLNESS.

(a) IN GENERAL.—The Internal Revenue Code of 1986, as amended by section 401 of the Health Care Portability and Accountability Act of 1996 (Public Law 104–191), is amended by adding at the end the following:

“Subtitle L—Parity For Treatment Of Mental Illness

“SEC. 9901. PARITY FOR TREATMENT OF MENTAL ILLNESS.

“(a) IMPOSITION OF TAX.—

“(1) HEALTH INSURANCE COVERAGE.—

“(A) IN GENERAL.—In the case of any health insurance coverage offered by a health insurance issuer that fails to meet the standard under subsection (c) at any time during a calendar year, there is hereby imposed a tax equal to 25 percent of the premiums received under such plan during the calendar year.

“(B) LIABILITY FOR TAX.—The tax imposed under subparagraph (A) shall be paid by the health insurance issuer.

“(2) GROUP HEALTH PLAN.—

“(A) IN GENERAL.—In the case of a group health plan that fails to meet the standard
under subsection (c) at any time during a calendar year, there is hereby imposed a tax equal to 25 percent of the health coverage expenditures for such calendar year under such plan.

“(B) LIABILITY FOR TAX.—The tax imposed under subparagraph (A) shall be paid by the group health plan.

“(C) HEALTH COVERAGE EXPENDITURES.—For purposes of this paragraph, the health coverage expenditures of any group health plan for any calendar year are the aggregate expenditures for such year for health coverage provided under such plan.

“(b) LIMITATION ON IMPOSITION OF TAX.—

“(1) FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed under this section on any failure to meet the standard under subsection (c) for which it is established to the satisfaction of the Secretary that none of the persons liable for the tax knew, or exercising reasonable diligence would have known, that such failure existed.

“(2) CERTAIN FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed under subsection
(a) on any failure to meet the standard under subsection (c) if—

“(A) such failure was due to reasonable cause and not to willful neglect, and

“(B) such failure is corrected during the 30-day period beginning on the first date any person liable for the tax knew, or exercising reasonable diligence would have known, that such failure existed.

“(3) Waiver by Secretary.—In the case of a failure to meet the standard under subsection (c) that is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by this section to the extent that the payment of such tax would be excessive relative to the failure involved.

“(c) Standard for Parity for Treatment of Mental Illness.—

“(1) In general.—A health insurance issuer with respect to health insurance coverage that it offers or a group health plan may not impose limitations or financial requirements on the coverage of benefits provided with respect to mental illness if similar limitations or requirements are not imposed
on coverage for benefits with respect to other conditions.

“(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed as prohibiting a health insurance issuer with respect to health insurance coverage that it offers or a group health plan from requiring preadmission screening prior to the authorization of services covered under the plan or from applying other limitations that restrict coverage for mental illness to those services that are medically necessary.

“(d) DEFINITIONS.—For purposes of this section:

“(1) MENTAL ILLNESS.—The term ‘mental illness’ means any of the specific psychiatric conditions described in the American Psychiatric Association’s ‘Diagnostic and Statistical Manual—Mental Disorders.’

“(2) HEALTH INSURANCE COVERAGE.—The term ‘health insurance coverage’ has the meaning given such term by section 9805(b)(1).

“(3) HEALTH INSURANCE ISSUER.—The term ‘health insurance issuer’ has the meaning given such term by section 9805(b)(2).
“(4) GROUP HEALTH PLAN.—The term ‘group health plan’ has the meaning given such term by section 5000(b)(1).”.

(b) CLERICAL AMENDMENT.—The table of subtitles of such Code is amended by adding at the end the following new item:

“Subtitle L. Parity for treatment of mental illness.”

SEC. 102. EFFECTIVE DATE.

The amendment made by section 101 applies—

(1) with respect to health insurance coverage, to a contract, policy, or certificate initiated or renewed after December 31, 1998; and

(2) with respect to group health plans, to plan years beginning after December 31, 1998.

TITLE II—MEDICARE MENTAL HEALTH IMPROVEMENT

SEC. 201. REFERENCES IN TITLE.

Whenever in this title an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

SEC. 202. INPATIENT PSYCHIATRIC HOSPITAL SERVICES.

(a) SERVICES COVERED.—Section 1812(a) (42 U.S.C. 1395d(a)) is amended—

(1) by striking “and” at the end of paragraph (3);
(2) by striking the period at the end of paragraph (4) and inserting ‘‘; and’’; and

(3) by adding at the end the following new paragraph:

“(5) inpatient hospital services furnished primarily for the diagnosis or treatment of mental illness or substance abuse for up to 60 days during a year.”.

(b) LIMITATION ON COVERAGE.—Section 1812(b)(3) (42 U.S.C. 1395d(b)) is amended to read as follows:

“(3) inpatient hospital services furnished primarily for the diagnosis or treatment of mental illness or substance abuse that are furnished to the individual during a year after such services have been furnished to the individual for a total of 60 days during the year.”.

(c) CONFORMING AMENDMENTS.—(1) Section 1812(a)(1) (42 U.S.C. 1395d(a)(1)) is amended by inserting “(other than services described in paragraph (5))” after “inpatient hospital services” the first place it appears.

(2) Section 1812(b)(1) (42 U.S.C. 1395d(b)(1)) is amended by inserting “(other than services described in paragraph (3))” after “inpatient hospital services” the first place it appears.
(3) Section 1812 (42 U.S.C. 1395d) is amended by striking subsection (e).

(4) Section 1814(a) (42 U.S.C. 1395f(a)) is amended—

(A) in paragraph (2), by striking subparagraph (A);

(B) in paragraph (3), by striking “(other than inpatient psychiatric hospital services)”;

(C) by striking paragraph (4).

(5) Section 1861 (42 U.S.C. 1395x) is amended by striking subsection (e).

(d) EFFECTIVE DATE; TRANSITION.—The amendments made by this section shall take effect January 1, 1998, except that—

(1) an individual who at any time prior to such date has been furnished inpatient psychiatric hospital services (as defined for purposes of title XVIII of the Social Security Act as of the date of the enactment of this Act) for 190 consecutive days is not entitled to any services under section 1812(a)(5) (as added by subsection (a)(3)); and

(2) in the case of an individual who is not described in paragraph (1) and is receiving inpatient psychiatric hospital services (as defined for purposes of title XVIII of the Social Security Act as of the
date of the enactment of this Act) on December 31, 1997, for which payment may be made under section 1812 of such Act, the number of days of services for which the individual is entitled under section 1812(a)(5) (and the number of days applicable under section 1812(b)(3)) shall be equal to the greater of 60 or the difference between 190 days and the number of days of such inpatient psychiatric hospital services furnished to the individual prior to January 1, 1998.

SEC. 203. INTENSIVE RESIDENTIAL SERVICES.

(a) COVERAGE UNDER PART A.—Section 1812(a) (42 U.S.C. 1395d(a)), as amended by section 202(a), is amended—

(1) by striking “and” at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(6) intensive residential services (as described in section 1861(qq)) furnished to an individual for up to 120 days during any calendar year, except that such services may be furnished to the individual for additional days during the year if necessary for
the individual to complete a course of treatment to
the extent that the number of days of inpatient hos-
pital services described in paragraph (5) that may be
furnished to the individual during the year (as re-
duced under such paragraph) is not less than 15.”.

(b) SERVICES DESCRIBED.—Section 1861 (42 U.S.C.
1395x), as amended by section 146(a) of the Social Secu-
rity Act Amendments of 1994, is amended by adding at
the end the following new subsection:

“Intensive Residential Services

“(mm)(1) Subject to paragraph (2), the term ‘inten-
sive residential services’ means inpatient services provided
in any of the following facilities:

“(A) Residential detoxification centers.

“(B) Crisis residential programs or mental ill-
ness residential treatment programs.

“(C) Therapeutic family or group treatment
homes.

“(D) Residential centers for substance abuse
treatment.

“(2) No service may be treated as an intensive resi-
dential service under paragraph (1) unless the facility at
which the service is provided—
“(A) is legally authorized to provide such service under the law of the State (or under a State regulatory mechanism provided by State law) in which the facility is located or is certified to provide such service by an appropriate accreditation entity approved by the State in consultation with the Secretary; and

“(B) meets such other requirements as the Secretary may impose to assure the quality of the intensive residential services provided.

“(3) No service may be treated as an intensive residential service under paragraph (1) unless the service is furnished in accordance with standards established by the Secretary for the management of such services.”.

(3) REDUCTION IN DAYS OF COVERAGE FOR INPATIENT SERVICES.—Section 1812(a)(5) and section 1812(b)(3), as amended by section 202, are each amended by striking the period at the end and inserting the following: “, reduced by a number of days determined by the Secretary so that the actuarial value of providing such number of days of services under this paragraph to the individual is equal to the actuarial value of the days of inpatient residential services furnished to the individual under paragraph (6) during the year after such services
have been furnished to the individual for 120 days
during the year (rounded to the nearest day).”.

(4) AMOUNT OF PAYMENT.—Section 1814 (42
U.S.C. 1395f) is amended—

(A) in subsection (b) in the matter preced-
ing paragraph (1), by inserting “other than in-
tensive residential services,” after “hospice
care,”; and

(B) by adding at the end the following new
subsection:

“Payment for Intensive Residential Services
“(m) The amount of payment under this part for in-
tensive residential services under section 1812(a)(6) shall
be equal to—

“(1) the lesser of—

“(A) the reasonable cost of such services,
as determined under section 1861(v), or

“(B) the customary charges with respect to
such services,

less the amount a provider may charge as described
in clause (ii) of section 1866(a)(2)(A):

“(2) if such services are furnished by a public
provider of services or by another provider which
demonstrates to the satisfaction of the Secretary
that a significant portion of its patients are low-income (and requests that payment be made under this clause), free of charge or at nominal charges to the public, the amount determined in accordance with subsection (b)(2); and

“(3) if (and for so long as) the conditions described in subsection (b)(3) are met, the amounts determined under the reimbursement system described in such section.”.

SEC. 204. LOWERING COINSURANCE FOR CERTAIN OUTPATIENT MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.

(a) In general.—Section 1833(c) (42 U.S.C. 1395l(c)) is amended by striking “mental, psychoneurotic, and personality disorders” and all that follows through “are incurred” and inserting the following: “mental illness or substance abuse of an individual who, at the time such expenses are incurred, is over 18 years of age, is not an inpatient of a hospital, and has received 5 or more sessions of such treatment during the calendar year,”.

(b) Requiring services to be furnished in accordance with management standards.—Section 1862(a) (42 U.S.C. 1395y(a)), as amended by section 156(a)(2)(D) of the Social Security Act Amendments of 1994, is amended—
(1) by striking “or” at the end of paragraph (14);
(2) by striking the period at the end of paragraph (15) and inserting “; or”; and
(3) by inserting after paragraph (15) the following new paragraph:
“(16) in the case of any items or services furnished under part B for the treatment of mental illness or emotional disturbance (including substance abuse), if the services are not furnished in accordance with standards established by the Secretary for the management of such services.”.

SEC. 205. INTENSIVE COMMUNITY-BASED SERVICES.

(a) COVERAGE.—

(1) IN GENERAL.—Section 1832(a)(2)(J) (42 U.S.C. 1395k(a)(2)(J)) is amended to read as follows:
“(J) intensive community-based services (as described in section 1861(ff))—
“(i) for an unlimited number of days during any calendar year, in the case of services described in section 1861(ff)(2)(E) that are furnished to an individual who is a seriously mentally ill adult, a seriously emotionally disturbed child, or an adult or
child with serious substance abuse disorder
(as determined in accordance with criteria
established by the Secretary),

“(ii) in the case of services described
in section 1861(fff)(2)(C), for up to 180
days during any calendar year, except that
such services may be furnished to the indi-
vidual for a number of additional days dur-
ing the year equal to the difference be-
tween the total number of days of intensive
residential services which the individual
may receive during the year under part A
(as determined under section 1812(a)(6))
and the number of days of such services
which the individual has received during
the year, or

“(iii) in the case of any other such
services, for up to 90 days during any cal-
endar year, except that such services may
be furnished to the individual for the num-
ber of additional days during the year de-
scribed in clause (ii).”.

(2) REDUCTION IN NUMBER OF DAYS OF IN-
TENSIVE RESIDENTIAL SERVICES.—Section
1812(a)(6) (42 U.S.C. 1395d(a)(6)), as added by section 203(a), is amended—

(A) by inserting “(A)” before “such services”; and

(B) by striking the period at the end and inserting the following: “, and (B) reduced by a number of days determined by the Secretary so that the actuarial value of providing such number of days of services under this paragraph to the individual is equal to the actuarial value of the days of intensive community-based services furnished to the individual under section 1832(a)(2)(J) during the year after such services have been furnished to the individual for 90 days (or, in the case of services described in section 1832(a)(2)(J)(ii), for 180 days) during the year (rounded to the nearest day).”.

(b) SERVICES DESCRIBED.—Section 1861(ff)(2) (42 U.S.C. 1395x(ff)(2)) is amended—

(1) in the matter preceding subparagraph (A), by striking “are—” and inserting “are as follows:”; and

(2) in subparagraph (C)—

(A) by inserting “behavioral aide services,” after “nurses”, and
(B) by adding at the end the following:

“(to the extent authorized under State law)”;

(3) by adding “and” at the end of subparagraph (G);

(4) in subparagraph (H), by striking “, and” and inserting a period;

(5) by redesignating subparagraphs (A) through (H) as clauses (i) through (viii) and moving such subparagraphs 2 ems to the right;

(6) by inserting before clause (i) (as so redesignated) the following:

“(A) Partial hospitalization services consisting of—”;

(7) by inserting after clause (viii) (as so redesignated) the following new subparagraphs:

“(B) Psychiatric rehabilitation services.

“(C) Day treatment services for substance abuse treatment for individuals of any age and for other mental health services for individuals under 19 years of age.

“(D) In-home services.

“(E) Case management services, including collateral services designated as such case management services by the Secretary.

“(F) Ambulatory detoxification services.”; and
(8) in subparagraph (I)—
   (A) by striking “such” and inserting
   “Such”, and
   (B) by redesignating such subparagraph as
   subparagraph (G).

(c) PERMITTING NON-PHYSICIAN PROVIDERS TO SUPERVISE INDIVIDUAL PROGRAM OF TREATMENT.—Section 1861(ff)(1) (42 U.S.C. 1395x(ff)(1)) is amended by inserting after “supervision of a physician” the following: “(or, to the extent permitted under the law of the State in which the services are furnished, a non-physician mental health or substance abuse treatment professional)”.

(d) REQUIRING SERVICES TO MEET MANAGEMENT STANDARDS.—Section 1861(ff)(1) (42 U.S.C. 1395x(ff)(1)) is amended by striking the period at the end and inserting the following: “, but does not include any item or service that is not furnished in accordance with standards established by the Secretary for the management of such services.”.

(e) PROGRAMS ELIGIBLE TO PROVIDE SERVICES.—Section 1861(ff)(3) (42 U.S.C. 1395x(ff)(3)) is amended to read as follows:

“(3) A program described in this paragraph is a program (whether facility-based or freestanding) which is furnished by an entity—
“(A) legally authorized to furnish such a program under State law (or the State regulatory mechanism provided by State law) or certified to furnish such a program by an appropriate accreditation entity approved by the State in consultation with the Secretary; and

“(B) meeting such other requirements as the Secretary may impose to assure the quality of the intensive community-based services provided.”.

(f) WAIVER OF COPAYMENT FOR CASE MANAGEMENT SERVICES FURNISHED TO CERTAIN INDIVIDUALS.—Section 1833(a)(2) (42 U.S.C. 1395l(a)(2)), as amended by section 147(f)(6)(C) of the Social Security Act Amendments of 1994, is amended—

(1) in subparagraph (B), by striking “or (E)” and inserting “(E), or (F)”;

(2) by striking “and” at the end of subparagraph (E);

(3) by adding “and” at the end of subparagraph (F); and

(4) by adding at the end the following new subparagraph:

“(G) with respect to services described in section 1832(a)(2)(J)(i), the amount determined under subparagraph (B), except that
'100 percent' shall be substituted for any reference in such subparagraph to ‘80 percent’;’.

(g) CONFORMING AMENDMENTS.—(1) Section 1835(a)(2)(F) (42 U.S.C. 1395n(a)(2)(F)) is amended—

(A) by striking “partial hospitalization” and inserting “intensive community-based”; and

(B) in clause (ii), by striking “physician” and inserting “physician (or, to the extent permitted under the law of the State in which the services are furnished, a non-physician mental health professional)”.

(2) Section 1861(s)(2)(B) (42 U.S.C. 1395x(s)(2)(B)) is amended by striking “partial hospitalization” and inserting “intensive community-based”.

(3) Section 1861(ff) (42 U.S.C. 1395x(ff)) is amended—

(A) in the heading, by striking “Partial Hospitalization” and inserting “Intensive Community-Based”; and

(B) in paragraph (1), by striking “partial hospitalization” and inserting “intensive community-based”.

(4) Section 1866(e)(2) (42 U.S.C. 1395cc(e)(2)) is amended by striking “partial hospitalization” and inserting “intensive community-based”.
SEC. 206. EFFECTIVE DATE.

The amendments made by this title shall apply to items and services furnished on or after January 1, 1999.