

LEGAL SERVICES

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MEMORANDUM

September 10, 2010

SUBJECT: Mental Health Parity (Work Order No. 27-LS0081\A)

TO: Senator Bettye Davis
Chair of the Senate Health and Social Services Committee
Attn: Thomas Obermeyer

FROM: Dennis C. Bailey *DCB*
Legislative Counsel

This memorandum accompanies the draft bill relating to mental health parity that you requested. Please note the following issues that have come to my attention during drafting.

In 2009, the legislature repealed and reenacted AS 21.54.151 to require a health care insurer that offers a health care insurance plan in the group market to comply with the mental health or substance abuse benefit requirements established under 42 U.S.C. 300gg-5. Sec. 6, ch. 55, SLA 2009. However, 42 U.S.C. 300gg¹ of the Public Health Service Act, including 42 U.S.C. 300gg-5, which addresses mental health parity, was significantly amended and rearranged by the Patient Protection and Affordable Care Act.² 42 U.S.C. 300gg-5 was re-designated as 42 U.S.C. 300gg-26.³ Copy enclosed. The Patient Protection and Affordable Care Act also amended former sec. 300gg-26 to include individual health insurance coverage under the policies.⁴ The changes to 42 U.S.C. 300gg, et seq. are effective for plan years beginning on or after September 23, 2010.⁵

¹ Part A of Title XXVII of the Public Health Service Act (42 U.S.C. 300gg, et seq.) [see note preceding 42 U.S.C. 300gg].

² P.L. 111-148, Title 1, Subtitle A, Sec. 1001, 124 Stat. 130, March 23, 2010. It is not entirely clear whether this effective date was intended to apply to the amendments to sec. 300gg-26.

³ See Explanatory note to current 42 U.S.C. 300gg-5.

⁴ See Amendment note to 42 U.S.C. 300gg-26.

⁵ P.L. 111-148, sec. 1004(a), 42 U.S.C. 300gg-11 note.

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The current draft of the bill repeals and replaces AS 21.54.151. It removes the current reference adopting 42 U.S.C. 300gg-5 (the current reference) and eliminates the need to refer to 42 U.S.C. 300gg-26, the new reference as of September 23, 2010. However, the federal standards for parity for the treatment of mental health conditions under these federal statute sections remain effective. Subject to certain exceptions, the provisions of 42 U.S.C. 300gg et seq. do not supersede state law relating to health insurance issuers except to the extent that a state standard or requirement prevents the application of a requirement under 42 U.S.C. 300gg et seq. See 42 U.S.C. 300gg-23. Preemption; State flexibility; construction. Copy enclosed.

Note that the parity requirements for mental health benefits set out in AS 21.54.151(b), as repealed and reenacted by bill sec. 2, refer to "a mental health condition" but do not specifically refer to treatment for alcoholism or substance abuse. "Mental health condition" is defined in AS 21.54.151(c)(3) by reference to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. You should confirm that the designated manual adequately defines alcoholism or substance abuse as a mental health condition so that the parity provisions apply as you intend.

If I may be of further assistance, please advise.

DCB:ljw:plm
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Enclosures