



Cincinnati Law Library News

A Monthly Newsletter from the Cincinnati Law Library Association

September 2009

Health Plan Compliance with The New Mental Health Parity And Addiction Equity Act

Written by **Jolie N. Havens, Esq.** Reprinted with permission.

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The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (the Parity Law) was included in the Emergency Economic Stabilization Act of 2008 [Pub. L. 110-343], commonly known as the "Bailout Bill." The Parity Law permanently extends and significantly expands upon existing mental health parity provisions in the Employee Retirement Income Security Act (ERISA), the Public Health Services Act, and the Internal Revenue Code, which were set to expire December 31, 2008.

Effective Date

The Parity Law takes effect January 1, 2010, for group health plans (GHPs) operated on a calendar year basis, and the first plan year starting after October 3, 2009 for other GHPs. The effective date for collectively bargained plans is based on the date of the expiration of the current collective bargaining agreement. The effective date for collectively bargained plans is the later of: (a) the first plan year beginning after October 3, 2009, or (b) the first plan year beginning after expiration of the longest-running collective bargaining agreement ratified by October 3, 2008. This special effective date will give many collectively bargained plans additional time to comply with the Parity Law.

Implementing Regulations

The Parity Law directs the Department of Labor, the Department of Health and Human Services and the Department of the Treasury to promulgate implementing regulations by October 3, 2009. These regulations, if actually promulgated within that time frame, should assist GHPs in carrying out their compliance efforts. However, there is certainly no guarantee that the regulations will be promulgated within the directed time frame. Moreover, because calendar year GHPs will have to comply with the Parity Law as of January 1, 2010, prudence dictates that these GHPs consider the issue of compliance prior to issuance of the regulations.

Application

The Parity Law applies to GHPs that include coverage for medical conditions *and* coverage for mental health conditions *and/or* substance abuse disorders. Federal law currently requires parity between medical benefits and mental health benefits relative to annual and aggregate lifetime dollar limits only. The Parity Law significantly expands existing mandates to provide that:

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Tech Tip: IntelliConnect: CCH's new platform

by Julie Koehne, Assistant Law Librarian

“Welcome to IntelliConnect, the first research platform that automatically searches your entire CCH library and gives you unprecedented access to the industry's best content and tools. IntelliConnect delivers value beyond research. It streamlines your workflow, enhances accuracy and increases your team's productivity. You'll wonder how you ever lived without it.” The following link provides quick and easy how-to guidelines for using IntelliConnect.

<http://tax.cchgroup.com/intelliconnect/user-guides>

When using the Law Library PC's we provide an interactive desktop for quick access to materials we have subscriptions to. Here is a view of what we have to offer on the Topical Database tab.

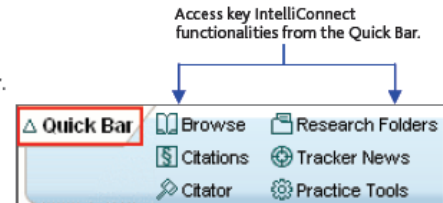
The screenshot shows the 'Topical Databases' tab in the CCH library interface. It features three main columns of database categories. A callout box highlights the 'Employment & Labor Law' section, listing various resources such as 'Americans with Disabilities Act Search and Manual (BNA)', 'Collective Bargaining Negotiations and Contracts (BNA)', and 'Disabilities Management Guide (CCH)'. A speech bubble points to a link in this list, stating: 'Clicking on this link will take you directly to the CCH IntelliConnect platform.'

Case Law, Forms, & News	Topical Databases	Quick Links
<p>Antitrust (CCH)</p> <p>Ohio Appellate Practice</p> <p>Bankruptcy</p> <p>Bankruptcy (Aspen)</p> <p>BNA's Bankruptcy Law Reporter</p> <p>Bankruptcy (Natl Consumer Law Center)</p> <p>Banking</p> <p>Banking (Natl Consumer Law Center)</p> <p>Banking Law (CCH) and ABA Compliance Manual</p> <p>Mortgage Compliance (CCH)</p> <p>Business & Corporate</p> <p>Baldwin's Business Organizations</p> <p>Business Practices (Aspen)</p> <p>Health Law & Business Library (BNA)</p> <p>Limited Liability Company Library (Aspen)</p> <p>Corporate Governance (CCH)</p> <p>Corporate Practice Library (BNA)</p> <p>Exchanges & SROs (CCH)</p>	<p>Elder Law (Aspen)</p> <p>Advising the Elderly</p> <p>Employment & Labor Law</p> <p>Americans with Disabilities Act Search and Manual (BNA)</p> <p>Collective Bargaining Negotiations and Contracts (BNA)</p> <p>Disabilities Management Guide (CCH)</p> <p>EEOC Manual (CCH)</p> <p>Employee Benefits (CCH)</p> <p>Employment Discrimination Report (BNA)</p> <p>Employment Law (Aspen)</p> <p>Ohio Employment Practice Series (West)</p> <p>Employment Practices Library (CCH)</p> <p>HR Management (CCH)</p> <p>Labor and Employment Library (BNA)</p> <p>OSHA & Safety (CCH)</p> <p>Payroll (CCH)</p> <p>Pension & Benefits Reporter (BNA)</p> <p>Pension (CCH)</p> <p>Wage and Hour (CCH)</p> <p>Workplace Immigration Report (BNA)</p> <p>Ohio Workers Compensation Law (West)</p>	<p>Intellectual Property, Computer & Internet Law (CCH)</p> <p>Litigation</p> <p>Baldwin's Civil Practice</p> <p>Litigation (Aspen)</p> <p>Personal Injury & Products Liability</p> <p>Consumer Product Safety Guide (CCH)</p> <p>Health Law & Business Library (BNA)</p> <p>National Jury Verdicts (West)</p> <p>Personal Injury (Aspen)</p> <p>Ohio Personal Injury Practice (West)</p> <p>Product Liability (Aspen)</p> <p>Products Liability Reporter (CCH)</p> <p>Product Safety and Liability Report (BNA)</p> <p>Baldwin's Tort Law</p> <p>Probate</p> <p>Merrick-Ripner Probate Law</p> <p>Real Property</p> <p>Baldwin's Landlord / Tenant</p> <p>Baldwin's Real Estate</p> <p>Real Estate Law & Industry Report (BNA)</p> <p>Construction Law (Aspen)</p> <p>Ohio Mechanics and Materials Liens</p> <p>Ohio Planning & Zoning (West)</p> <p>Real Estate (Aspen)</p> <p>School Law (West)</p> <p>Tax</p> <p>U.S. Income Portfolios Library</p> <p>U.S. Income</p> <p>Estate, Gifts and Trusts Portfolios</p> <p>Foreign Income Portfolios</p> <p>Federal TAX forms</p> <p>Tax (CCH Omnitax)</p> <p>Includes state and Federal taxes, sales, property and business taxes, wealth management, payroll tax, and international taxes</p> <p>Financial and Estate Planning (CCH)</p> <p>Transportation Law (CCH)</p> <p>Workers' Compensation</p> <p>Ohio Workers' Compensation</p>



The Quick Bar

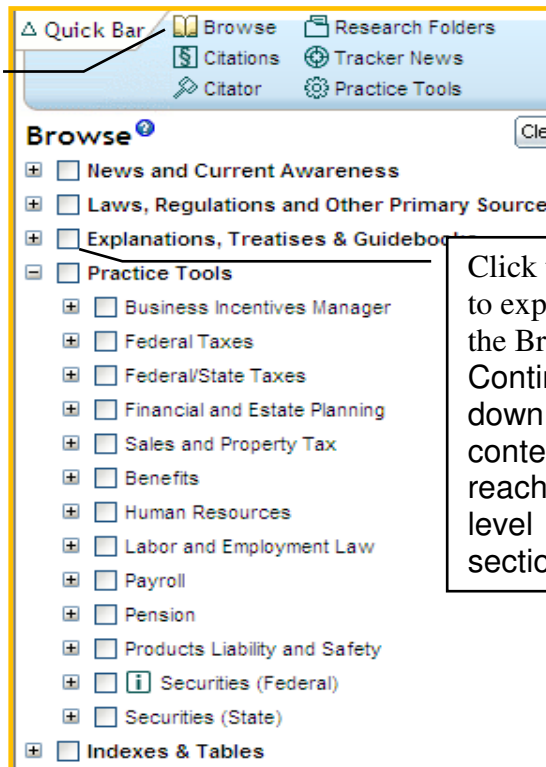
In the top left corner of IntelliConnect is the **Quick Bar**. The Quick Bar contains a host of key functionalities that enable you to perform your research quickly and efficiently.



You can perform the following actions from the **Quick Bar**:

- Browse** — View and walk through your entire subscription.
- Citations** — Locate specific documents using their citations.
- Citator** — Track cases and rulings if available in your subscription.
- Research Folders** — Save important documents for later use.
- Tracker News** — Set up and view the latest tax and business law news.
- Practice Tools** — Access important productivity tools.

“IntelliConnect allows you to browse all your product content, making it easy to find information of interest. You can quickly drill down through a menu tree on the left-hand side of the IntelliConnect interface. As you expand areas of your product content, more focused areas of the content are revealed, allowing you to see the way the content areas are organized.”



Click the + and - icons to expand and collapse the Browse tree. Continue to drill down through the content until you reach the document level for a specific section.

- 1 Parity is required for substance abuse benefits, as well as mental health benefits;
- 2 Limits on inpatient days and outpatient visits for the treatment of covered mental health conditions and substance abuse disorders cannot be more restrictive than those applied to treatment of medical conditions;
- 3 The co-pays, deductibles, coinsurance, annual limits and lifetime limits applied to the treatment of covered mental health conditions and substance abuse disorders cannot be greater than those applied to the treatment of medical conditions; and
If a GHP provides out-of-network coverage for the treatment of medical conditions, it will have to provide a similar level of out-of-network coverage for the treatment of mental health conditions and substance abuse disorders.

Importantly, the Parity Law does not require GHPs to provide any mental health or substance abuse benefits whatsoever and does not apply to GHPs that do not provide such benefits.

Exemptions

The Parity Law retains and revises existing exemptions for small employers (generally defined as those having 2-50 employees during the preceding calendar year, based on controlled group rules) and other employers who experience a 2% increase in actual, total GHP costs due to compliance with the parity requirements in the first plan year in which they apply (1% in subsequent years). Many GHPs will not qualify for the small employer exception due to size. Further, even if a GHP could qualify for the cost exemption, that exemption requires six months of actual compliance in order to even apply, and the exemption is only available every other plan year, both of which significantly decrease this exemption's overall usefulness to GHPs.

Compliance Options

GHPs have two general paths to compliance with the Parity Law:

- 1 Create parity between medical benefits and mental health and substance abuse benefits, or
- 2 Eliminate limited mental health and substance abuse benefits altogether, in which case the Parity Law would not apply.

Each GHP will have to decide whether the elimination of mental health and substance abuse benefits is an attractive or viable compliance option. Nevertheless, if a GHP wants to ensure that the Parity Law would not apply to it, the GHP could eliminate all benefits for mental health conditions and substance abuse disorders. It is possible that such a GHP could retain prescription drug coverage for mental health conditions and substance abuse disorders without having to otherwise comply with the Parity Law (i.e., without also having to provide comprehensive inpatient and outpatient benefits as is done for medical conditions), but this issue is not specifically addressed in the Parity Law.

To the extent a GHP decides to bring its current mental health and substance abuse benefits into parity, it must review each financial requirement and treatment limitation applied to mental health and substance abuse benefits which is not also applied to substantially all medical benefits covered by the GHP. This exercise will be relatively simple for GHPs with consistent medical benefit levels, but it will certainly be more difficult to determine the predominant financial requirements and treatment limitations for medical benefits when the GHP provides multiple benefit levels. Furthermore, because of the outstanding compliance issues discussed below, it is impossible at this time to definitively determine the exact design

Mental Health Parity, continued from page 4

changes that would be required for any GHP to achieve parity.

Outstanding Compliance Issues

The Parity Law fails to meaningfully explain how GHPs are actually supposed to achieve compliance with its mandates. Although the impending regulations should provide guidance on compliance issues, the lack of guidance at this time leaves many open questions for GHPs that are prudently considering compliance and cost issues now.

For example, in the absence of additional guidance, we do not know whether “parity” means that: GHPs have the choice of providing mental health and substance abuse benefits by provider type *and* diagnosis/condition (e.g., parity exists when a GHP provides inpatient hospital benefits for depression on the same terms as for medical conditions, but does not provide any outpatient benefits for depression when outpatient benefits are provided for medical conditions) (Alternative A): or

GHPs can only limit mental health and substance abuse benefits by diagnosis/condition, but not provider type (e.g., parity does not exist when a GHP provides inpatient hospital benefits for depression on the same terms as for medical conditions, but the GHP does not provide any outpatient benefits for depression when outpatient benefits are provided for medical conditions because the lack of outpatient benefits is an impermissible treatment limitation) (Alternative B).

Arguably, there is support for both interpretations under the Parity Law. Thus, one cannot definitively state how the government will eventually interpret the parity requirements. Nevertheless, it seems more likely that the government will choose the broader interpretation of “parity,” as expressed in Alternative B above, because the other interpretation could significantly detract from the underlying purpose of the Parity Law. The issue of compliance is further complicated by the fact that the Parity Law injects state law into its definitions of “mental health benefits” and “substance use disorder benefits,” which state:

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Member Benefits

All members have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for **up to 6 weeks** at a time

Access to extensive electronic databases from the Law Library, including **LexisNexis**, **Shepards'**, **CCH Omnitax**, **CCH Human Resources Group**, and **CCH Business Group** resources, **Hein Online** Law Journals and Federal Register, and over 70 **Aspen / LOISLaw** treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom **videoconferencing**

5 **meeting rooms** with speaker phones

Professional **reference service** by our law librarians, available via e-mail, telephone, and in person;

Free **document delivery** by fax or e-mail of print and electronic materials

Inexpensive **CLE seminars** throughout the year, on legal research and substantive topics

In addition, solos and members whose firm has a membership have **24 hour remote access** to Fastcase.com case law and Aspen/LOISLaw treatises

MENTAL HEALTH BENEFITS - The term 'mental health benefits' means benefits with respect to services for mental health conditions, as defined under the terms of the plan and in accordance with *applicable Federal and State law*.

SUBSTANCE USE DISORDER BENEFITS- The term 'substance use disorder benefits' means benefits with respect to services for substance use disorders, as defined under the terms of the plan and in accordance with *applicable Federal and State law*. (emphasis added)

These references to state law raise the question of whether self-insured GHPs covered by ERISA (which are typically exempt from state insurance laws) will now be subject to state mental health and substance abuse parity laws. Based on the language "*applicable ... State law*" in these definitions, there is an argument that ERISA preemption would still apply because these state laws are not otherwise *applicable* to ERISA GHPs now. Again, however, we cannot state whether this will be the government's interpretation of this language.

Compliance Considerations

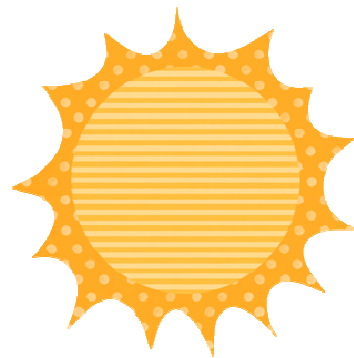
In the near future, all GHPs should determine the date by which they need to comply with the Parity Law, if that task has not already been completed. To the extent an available exemption does not apply, each GHP will then have to consider which path it will choose for compliance. Although a host of considerations will come into play in making this decision, it will surely be driven to some extent by the anticipated cost of achieving parity and the current economic climate. GHPs should discuss potential compliance options with legal counsel, insurers and third-party administrators (TPAs), as applicable. We anticipate that

much of the early compliance analysis will be undertaken at the insurer/TPA level because these entities will have to bring their existing products into legal compliance. As with most other GHP design changes, the design changes necessitated by the Parity Law will likely require updating of the GHP's summary plan description and other participant materials and communications.

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The Law Library will be closed for Labor Day

We will be closed on Monday, September 7 for Labor Day. Regular library hours will resume on Tuesday, September 4.



From the Law Librarian: A Quick Glance at Several Current Topics

Mary Jenkins, Law Librarian & Director

Public Records

PACER (Public Access to Court Electronic Records <http://pacer.psc.uscourts.gov/>) is a program of the Administrative Office of the United States Courts, which currently charges 8 cents per page for access to U.S. Appellate, District, and Bankruptcy court records and documents. Many of the Cincinnati Law Library's members and county officials use this service via the Law Library's subscription.

When in Washington, D.C. last month, I met with a legislative aide to Senator Sherrod Brown and with Representative Steve Driehaus and his executive assistant to advocate as a constituent for free access to PACER. The American Association of Law Libraries says, and I agree, "We believe that public information on government Web sites must be available without charge or restriction, and that it must be trustworthy and reliable, comprehensive and complete, and that information of historical value should be preserved for permanent public access."

As your law librarian, I'm interested in bringing you efficient access to the best range of resources I can at an affordable price. If government-produced, government-provided court records were available to you like federal administrative agency and Congressional documents are, either directly or through the law library, at no cost to you or the library, our funding could be applied to other needs and the courts would be addressing the public's right to equal, free access to information. See our recent blogpost on PACER at <http://cincinnatiilaw.blogspot.com/2009/08/federal-court-recordspacerrecap.html> and <http://cincinnatiilaw.blogspot.com/2009/08/pacer-assessmentupdate.html>.

Access to Justice: Self-Represented-Friendly Courts and Opportunities for Attorneys

Attorneys and judges have many legitimate reasons for concern about the uptick in the

number of self-represented litigants in the courts. Richard Zorza, Esq., the founder and force behind the Self-Represented Litigation Network <http://www.srln.org/>, works and writes passionately about access to justice issues, advocating for fundamental changes in the courts' accessibility by pro se litigants, but he also notes some opportunities for attorneys. He describes self-help support opportunities as "lawyer incubators" and he suggests that unbundled services are good for middle-income lawyers and provide opportunities for marketing their services. The ABA's Standing Committee on the Delivery of Legal Services makes available many reports and other resources on unbundling legal services and pro se litigants at <http://www.abanet.org/legalservices/delivery/delunbundbook.html>. A good recent article on unbundled services and limited scope representation is Correy Stephenson's "Unbundled legal services increasingly popular", available at <http://lawyersusaonline.com/blog/2009/05/29/unbundled-legal-services-increasingly-popular/>.

The Future of the Internet -- and How to Stop It

I had the pleasure of hearing Jonathan Zittrain's keynote address at the American Association of Law Libraries meeting in July. Professor Zittrain <http://cyber.law.harvard.edu/people/jzittrain> teaches at Harvard and is the author of [The Future of the Internet -- and How to Stop It](#). He posits that generative technologies (those that encourage, are indeed dependent on, creativity, contributions, and collaboration) will be the salvation of the internet. These applications and approaches include cloud computing, social networking, Wikipedia, and so on. He also finds hope in "ethical moments" on the internet. If this teaser interests you, you should read his book or his blog <http://futureoftheinternet.org/blog>. You might also want to take a look at Charles Leadbeater's book *We-Think* (or the YouTube video that sums it up <http://www.wethinkthebook.net/home.aspx>)

CLLA offers free lunch with Expert Witness Research

Tuesday, September 22 @ Noon

Mary Lynn Wagner, Director of Information Resources at Keating Muething & Klekamp, will present effective strategies for investigating an opposing expert witness. Ms. Wagner writes, "Statistics indicate that over 40% of resumes contain at least one significant inaccuracy relating to the dates of employment, job titles or education. This is one of the most convincing reasons for checking the background of an opposing expert witness or even an expert you plan to retain." Attend this session to learn about FREE and low cost resources for:

- Identity Verification
- Verifying a license
- Verifying education
- Locating testimony, publications, and lawsuits
- Obtaining information from news databases and social networking sites

Please call and reserve your seat @ 513-946-5300 or email gherald@cms.hamilton-co.org

We look forward to seeing you then!

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