

104<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4045

To provide for parity in the treatment of mental illness.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 10, 1996

Mr. STARK 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

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## A BILL

To provide for parity in the treatment of mental illness.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Mental  
5 Health Parity Act of 1996”.

6 **TITLE I—PARITY FOR TREAT-**  
7 **MENT OF MENTAL ILLNESS**

8 **SEC. 101. PARITY FOR TREATMENT OF MENTAL ILLNESS.**

9 (a) IN GENERAL.—The Internal Revenue Code of  
10 1986, as amended by section 401 of the Health Care Port-

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1 ability and Accountability Act of 1996 (Public Law 104–  
2 191), is amended by adding at the end the following:

3 **“Subtitle L—Parity For Treatment**  
4 **Of Mental Illness**

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

6 “(a) IMPOSITION OF TAX.—

7 “(1) HEALTH INSURANCE COVERAGE.—

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

15 “(B) LIABILITY FOR TAX.—The tax im-  
16 posed under subparagraph (A) shall be paid by  
17 the health insurance issuer.

18 “(2) GROUP HEALTH PLAN.—

19 “(A) IN GENERAL.—In the case of a group  
20 health plan that fails to meet the standard  
21 under subsection (c) at any time during a cal-  
22 endar year, there is hereby imposed a tax equal  
23 to 25 percent of the health coverage expendi-  
24 tures for such calendar year under such plan.

1           “(B) LIABILITY FOR TAX.—The tax im-  
2           posed under subparagraph (A) shall be paid by  
3           the group health plan.

4           “(C) HEALTH COVERAGE EXPENDI-  
5           TURES.—For purposes of this paragraph, the  
6           health coverage expenditures of any group  
7           health plan for any calendar year are the aggre-  
8           gate expenditures for such year for health cov-  
9           erage provided under such plan.

10          “(b) LIMITATION ON IMPOSITION OF TAX.—

11           “(1) FAILURE NOT DISCOVERED EXERCISING  
12           REASONABLE DILIGENCE.—No tax shall be imposed  
13           under this section on any failure to meet the stand-  
14           ard under subsection (c) for which it is established  
15           to the satisfaction of the Secretary that none of the  
16           persons liable for the tax knew, or exercising reason-  
17           able diligence would have known, that such failure  
18           existed.

19           “(2) CERTAIN FAILURES CORRECTED WITHIN  
20           30 DAYS.—No tax shall be imposed under subsection  
21           (a) on any failure to meet the standard under sub-  
22           section (c) if—

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

1           “(B) such failure is corrected during the  
2           30-day period beginning on the first date any  
3           person liable for the tax knew, or exercising  
4           reasonable diligence would have known, that  
5           such failure existed.

6           “(3) WAIVER BY SECRETARY.—In the case of a  
7           failure to meet the standard under subsection (c)  
8           that is due to reasonable cause and not to willful ne-  
9           glect, the Secretary may waive part or all of the tax  
10          imposed by this section to the extent that the pay-  
11          ment of such tax would be excessive relative to the  
12          failure involved.

13          “(c) STANDARD FOR PARITY FOR TREATMENT OF  
14          MENTAL ILLNESS.—

15                 “(1) IN GENERAL.—A health insurance issuer  
16                 with respect to health insurance coverage that it of-  
17                 fers or a group health plan may not impose limita-  
18                 tions or financial requirements on the coverage of  
19                 benefits provided with respect to mental illness if  
20                 similar limitations or requirements are not imposed  
21                 on coverage for benefits with respect to other condi-  
22                 tions.

23                 “(2) RULE OF CONSTRUCTION.—Nothing in  
24                 paragraph (1) shall be construed as prohibiting a  
25                 health insurance issuer with respect to health insur-

1       ance coverage that it offers or a group health plan  
2       from requiring preadmission screening prior to the  
3       authorization of services covered under the plan or  
4       from applying other limitations that restrict cov-  
5       erage for mental illness to those services that are  
6       medically necessary.

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

8               “(1) MENTAL ILLNESS.—The term ‘mental ill-  
9       ness’ means any of the specific psychiatric conditions  
10       described in the American Psychiatric Association’s  
11       ‘Diagnostic and Statistical Manual—Mental Dis-  
12       orders.’”

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

16              “(3) HEALTH INSURANCE ISSUER.—The term  
17       ‘health insurance issuer’ has the meaning given such  
18       term by section 9805(b)(2).

19              “(4) GROUP HEALTH PLAN.—The term ‘group  
20       health plan’ has the meaning given such term by  
21       section 5000(b)(1).”

22       (b) CLERICAL AMENDMENT.—The table of subtitles  
23       of such Code is amended by adding at the end the follow-  
24       ing new item:

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

1 **SEC. 102. EFFECTIVE DATE.**

2 The amendment made by section 101 applies—

3 (1) with respect to health insurance coverage,  
4 to a contract, policy, or certificate initiated or re-  
5 newed after December 31, 1997; and

6 (2) with respect to group health plans, to plan  
7 years beginning after December 31, 1997.

8 **TITLE II—MEDICARE MENTAL**  
9 **HEALTH IMPROVEMENT**

10 **SEC. 201. REFERENCES IN TITLE.**

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

15 **SEC. 202. INPATIENT PSYCHIATRIC HOSPITAL SERVICES.**

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

18 (1) by striking “and” at the end of paragraph  
19 (3);

20 (2) by striking the period at the end of para-  
21 graph (4) and inserting “; and”; and

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

24 “(5) inpatient hospital services furnished pri-  
25 marily for the diagnosis or treatment of mental ill-

1       ness or substance abuse for up to 60 days during a  
2       year.”.

3       (b) LIMITATION ON COVERAGE.—Section 1812(b)(3)  
4 (42 U.S.C. 1395d(b)) is amended to read as follows:

5           “(3) inpatient hospital services furnished pri-  
6       marily for the diagnosis or treatment of mental ill-  
7       ness or substance abuse that are furnished to the in-  
8       dividual during a year after such services have been  
9       furnished to the individual for a total of 60 days  
10       during the year.”.

11       (c) CONFORMING AMENDMENTS.—(1) Section  
12 1812(a)(1) (42 U.S.C. 1395d(a)(1)) is amended by insert-  
13 ing “(other than services described in paragraph (5))”  
14 after “inpatient hospital services” the first place it ap-  
15 pears.

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

20       (3) Section 1812 (42 U.S.C. 1395d) is amended by  
21 striking subsection (c).

22       (4) Section 1814(a) (42 U.S.C. 1395f(a)) is amend-  
23 ed—

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

25       (A);

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

3 (C) by striking paragraph (4).

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

6 (d) EFFECTIVE DATE; TRANSITION.—The amend-  
7 ments made by this section shall take effect January 1,  
8 1996, except that—

9 (1) an individual who at any time prior to such  
10 date has been furnished inpatient psychiatric hos-  
11 pital services (as defined for purposes of title XVIII  
12 of the Social Security Act as of the date of the en-  
13 actment of this Act) for 190 consecutive days is not  
14 entitled to any services under section 1812(a)(5) (as  
15 added by subsection (a)(3)); and

16 (2) in the case of an individual who is not de-  
17 scribed in paragraph (1) and is receiving inpatient  
18 psychiatric hospital services (as defined for purposes  
19 of title XVIII of the Social Security Act as of the  
20 date of the enactment of this Act) on December 31,  
21 1995, for which payment may be made under section  
22 1812 of such Act, the number of days of services for  
23 which the individual is entitled under section  
24 1812(a)(5) (and the number of days applicable  
25 under section 1812(b)(3)) shall be equal to the

1 greater of 60 or the difference between 190 days  
2 and the number of days of such inpatient psychiatric  
3 hospital services furnished to the individual prior to  
4 January 1, 1996.

5 **SEC. 203. INTENSIVE RESIDENTIAL SERVICES.**

6 (a) COVERAGE UNDER PART A.—Section 1812(a)  
7 (42 U.S.C. 1395d(a)), as amended by section 202(a), is  
8 amended—

9 (1) by striking “and” at the end of paragraph  
10 (4);

11 (2) by striking the period at the end of para-  
12 graph (5) and inserting “; and”; and

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

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

1 (b) SERVICES DESCRIBED.—Section 1861 (42 U.S.C.  
2 1395x), as amended by section 146(a) of the Social Secu-  
3 rity Act Amendments of 1994, is amended by adding at  
4 the end the following new subsection:

5 “Intensive Residential Services

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

9 “(A) Residential detoxification centers.

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

12 “(C) Therapeutic family or group treatment  
13 homes.

14 “(D) Residential centers for substance abuse  
15 treatment.

16 “(2) No service may be treated as an intensive resi-  
17 dential service under paragraph (1) unless the facility at  
18 which the service is provided—

19 “(A) is legally authorized to provide such serv-  
20 ice under the law of the State (or under a State reg-  
21 ulatory mechanism provided by State law) in which  
22 the facility is located or is certified to provide such  
23 service by an appropriate accreditation entity ap-  
24 proved by the State in consultation with the Sec-  
25 retary; and

1           “(B) meets such other requirements as the Sec-  
2           retary may impose to assure the quality of the inten-  
3           sive residential services provided.

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

8           (3) REDUCTION IN DAYS OF COVERAGE FOR IN-  
9           PATIENT SERVICES.—Section 1812(a)(5) and section  
10          1812(b)(3), as amended by section 202, are each  
11          amended by striking the period at the end and in-  
12          serting the following: “, reduced by a number of  
13          days determined by the Secretary so that the actuarial  
14          value of providing such number of days of serv-  
15          ices under this paragraph to the individual is equal  
16          to the actuarial value of the days of inpatient resi-  
17          dential services furnished to the individual under  
18          paragraph (6) during the year after such services  
19          have been furnished to the individual for 120 days  
20          during the year (rounded to the nearest day).”.

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

23                  (A) in subsection (b) in the matter preced-  
24                  ing paragraph (1), by inserting “other than in-

1           tensive residential services,” after “hospice  
2           care,”; and

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

5           “Payment for Intensive Residential Services

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

9                   “(1) the lesser of—

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

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

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

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

24                   “(3) if (and for so long as) the conditions de-  
25           scribed in subsection (b)(3) are met, the amounts

1 determined under the reimbursement system de-  
2 scribed in such section.”.

3 **SEC. 204. LOWERING COINSURANCE FOR CERTAIN OUT-**  
4 **PATIENT MENTAL HEALTH AND SUBSTANCE**  
5 **ABUSE SERVICES.**

6 (a) IN GENERAL.—Section 1833(c) (42 U.S.C.  
7 1395l(c)) is amended by striking “mental, psychoneurotic,  
8 and personality disorders” and all that follows through  
9 “are incurred” and inserting the following: “mental illness  
10 or substance abuse of an individual who, at the time such  
11 expenses are incurred, is over 18 years of age, is not an  
12 inpatient of a hospital, and has received 5 or more sessions  
13 of such treatment during the calendar year,”.

14 (b) REQUIRING SERVICES TO BE FURNISHED IN AC-  
15 CORDANCE WITH MANAGEMENT STANDARDS.—Section  
16 1862(a) (42 U.S.C. 1395y(a)), as amended by section  
17 156(a)(2)(D) of the Social Security Act Amendments of  
18 1994, is amended—

19 (1) by striking “or” at the end of paragraph  
20 (14);

21 (2) by striking the period at the end of para-  
22 graph (15) and inserting “; or”; and

23 (3) by inserting after paragraph (15) the fol-  
24 lowing new paragraph:

1           “(16) in the case of any items or services fur-  
2           nished under part B for the treatment of mental ill-  
3           ness or emotional disturbance (including substance  
4           abuse), if the services are not furnished in accord-  
5           ance with standards established by the Secretary for  
6           the management of such services.”.

7 **SEC. 205. INTENSIVE COMMUNITY-BASED SERVICES.**

8           (a) COVERAGE.—

9           (1) IN GENERAL.—Section 1832(a)(2)(J) (42  
10           U.S.C. 1395k(a)(2)(J)) is amended to read as fol-  
11           lows:

12                   “(J) intensive community-based services  
13                   (as described in section 1861(ff))—

14                           “(i) for an unlimited number of days  
15                           during any calendar year, in the case of  
16                           services described in section 1861(ff)(2)(E)  
17                           that are furnished to an individual who is  
18                           a seriously mentally ill adult, a seriously  
19                           emotionally disturbed child, or an adult or  
20                           child with serious substance abuse disorder  
21                           (as determined in accordance with criteria  
22                           established by the Secretary),

23                           “(ii) in the case of services described  
24                           in section 1861(ff)(2)(C), for up to 180  
25                           days during any calendar year, except that

1 such services may be furnished to the indi-  
2 vidual for a number of additional days dur-  
3 ing the year equal to the difference be-  
4 tween the total number of days of intensive  
5 residential services which the individual  
6 may receive during the year under part A  
7 (as determined under section 1812(a)(6))  
8 and the number of days of such services  
9 which the individual has received during  
10 the year, or

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

17 (2) REDUCTION IN NUMBER OF DAYS OF IN-  
18 TENSIVE RESIDENTIAL SERVICES.—Section  
19 1812(a)(6) (42 U.S.C. 1395d(a)(6)), as added by  
20 section 203(a), is amended—

21 (A) by inserting “(A)” before “such serv-  
22 ices”; and

23 (B) by striking the period at the end and  
24 inserting the following: “, and (B) reduced by  
25 a number of days determined by the Secretary

1 so that the actuarial value of providing such  
2 number of days of services under this para-  
3 graph to the individual is equal to the actuarial  
4 value of the days of intensive community-based  
5 services furnished to the individual under sec-  
6 tion 1832(a)(2)(J) during the year after such  
7 services have been furnished to the individual  
8 for 90 days (or, in the case of services described  
9 in section 1832(a)(2)(J)(ii), for 180 days) dur-  
10 ing the year (rounded to the nearest day).”.

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

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

15 (2) in subparagraph (C)—

16 (A) by inserting “behavioral aide services,”  
17 after “nurses”, and

18 (B) by adding at the end the following:

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

20 (3) by adding “and” at the end of subpara-  
21 graph (G);

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

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

4 (6) by inserting before clause (i) (as so redesign-  
5 nated) the following:

6 “(A) Partial hospitalization services con-  
7 sisting of—”;

8 (7) by inserting after clause (viii) (as so redesi-  
9 gnated) the following new subparagraphs:

10 “(B) Psychiatric rehabilitation services.

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

15 “(D) In-home services.

16 “(E) Case management services, including col-  
17 lateral services designated as such case management  
18 services by the Secretary.

19 “(F) Ambulatory detoxification services.”; and

20 (8) in subparagraph (I)—

21 (A) by striking “such” and inserting

22 “Such”, and

23 (B) by redesignating such subparagraph as  
24 subparagraph (G).

1           (c) PERMITTING NON-PHYSICIAN PROVIDERS TO SU-  
2 PERVISE INDIVIDUAL PROGRAM OF TREATMENT.—Sec-  
3 tion 1861(ff)(1) (42 U.S.C. 1395x(ff)(1)) is amended by  
4 inserting after “supervision of a physician” the following:  
5 “(or, to the extent permitted under the law of the State  
6 in which the services are furnished, a non-physician men-  
7 tal health or substance abuse treatment professional)”.

8           (d) REQUIRING SERVICES TO MEET MANAGEMENT  
9 STANDARDS.—Section 1861(ff)(1) (42 U.S.C.  
10 1395x(ff)(1)) is amended by striking the period at the end  
11 and inserting the following: “, but does not include any  
12 item or service that is not furnished in accordance with  
13 standards established by the Secretary for the manage-  
14 ment of such services.”.

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

18           “(3) A program described in this paragraph is a pro-  
19 gram (whether facility-based or freestanding) which is fur-  
20 nished by an entity—

21                   “(A) legally authorized to furnish such a pro-  
22 gram under State law (or the State regulatory mech-  
23 anism provided by State law) or certified to furnish  
24 such a program by an appropriate accreditation en-

1       tity approved by the State in consultation with the  
2       Secretary; and

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

6       (f) WAIVER OF COPAYMENT FOR CASE MANAGE-  
7       MENT SERVICES FURNISHED TO CERTAIN INDIVID-  
8       UALS.—Section 1833(a)(2) (42 U.S.C. 1395l(a)(2)), as  
9       amended by section 147(f)(6)(C) of the Social Security  
10      Act Amendments of 1994, is amended—

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

13             (2) by striking “and” at the end of subpara-  
14      graph (E);

15             (3) by adding “and” at the end of subpara-  
16      graph (F); and

17             (4) by adding at the end the following new sub-  
18      paragraph:

19               “(G) with respect to services described in  
20      section 1832(a)(2)(J)(i), the amount deter-  
21      mined under subparagraph (B), except that  
22      ‘100 percent’ shall be substituted for any ref-  
23      erence in such subparagraph to ‘80 percent’;”.

24       (g) CONFORMING AMENDMENTS.—(1) Section  
25      1835(a)(2)(F) (42 U.S.C. 1395n(a)(2)(F)) is amended—

1 (A) by striking “partial hospitalization” and in-  
2 sserting “intensive community-based”; and

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

8 (2) Section 1861(s)(2)(B) (42 U.S.C.  
9 1395x(s)(2)(B)) is amended by striking “partial hos-  
10 pitalization” and inserting “intensive community-based”.

11 (3) Section 1861(ff) (42 U.S.C. 1395x(ff)) is amend-  
12 ed—

13 (A) in the heading, by striking “Partial Hos-  
14 pitalization” and inserting “Intensive Community-  
15 Based”; and

16 (B) in paragraph (1), by striking “partial hos-  
17 pitalization” and inserting “intensive community-  
18 based”.

19 (4) Section 1866(e)(2) (42 U.S.C. 1395cc(e)(2)) is  
20 amended by striking “partial hospitalization” and insert-  
21 ing “intensive community-based”.

22 **SEC. 206. EFFECTIVE DATE.**

23 The amendments made by this title shall apply to  
24 items and services furnished on or after January 1, 1998.

○