

REPORT

# Nondiscrimination, Parity and Benefits





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The National Conference of State Legislatures is the bipartisan organization dedicated to serving the lawmakers and staffs of the nation's 50 states, its commonwealths and territories.

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# Overview

Mental health services are a crucial component of health care, but not everyone has equal access to [mental health benefits](#), [accommodations](#) or [workplace supports](#). These disparities have far-reaching implications for individuals and employers, which may include hindering certain populations from achieving employment success.

This policy brief explores the need to address discrimination and lack of parity in mental health insurance benefits. It reflects intensive deliberation and research conducted by the Mental Health Matters National Task Force, a bipartisan group of policymakers and experts convened by the State Exchange on Employment and Disability (SEED) in collaboration with the National Conference of State Legislatures and The Council of State Governments. The task force explored policy options to address major workforce challenges and barriers to employment for people with mental health conditions. Its [preliminary findings](#) outlined principles and factors policymakers may want to consider when drafting and evaluating related policies.

## About SEED

The State Exchange on Employment and Disability is a unique state-federal collaboration that supports state and local governments in adopting inclusive policies and practices that lead to increased employment opportunities for disabled people, and a stronger, more inclusive American workforce and economy. SEED is funded by the U.S. Department of Labor’s Office of Disability Employment Policy.

## IN THIS REPORT

The policy options presented here were informed by the findings of the task force’s Nondiscrimination, Parity and Benefits Subcommittee; they fall into three broad categories:

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- **Educate Consumers and Employers About Their Rights and Responsibilities** ..... 5

# Understanding the Challenge

State mental health systems must meet certain federal standards, but states also have freedom to offer enhanced services, access and protections for consumers. This translates into wide variations across states and counties related to mental health regulations and services.

From the federal perspective, the [Americans with Disabilities Act](#) (ADA) and [Rehabilitation Act](#) prohibit employers from discriminating against employees or job applicants based on physical or mental disabilities. Under these laws, covered employers must provide nondisabled workers and workers with disabilities equal access to employment-related rights and opportunities. This applies to all aspects of employment, from employee assistance programs (EAP) to health insurance coverage to leave benefits.

These laws also require covered employers to provide reasonable accommodations to qualified individuals with disabilities, when requested, unless doing so would impose undue hardship. Undue hardship is determined on a case-by-case basis but generally considers the nature and cost of the accommodation in relation to the size, resources, nature and structure of the employer’s operation. Failing to provide the requested reasonable accommodation for a person with a physical and/or mental health condition may constitute discrimination.

Mental health parity means treating mental health conditions and substance use disorders (SUDs) as equivalent to physical health conditions in insurance plans. The 2008 [Mental Health Parity and Addiction Equity Act](#) (MHPAEA), as amended by the Affordable Care Act, requires that most group health plans and health insurance issuers cannot impose financial requirements or treatment limitations (such as day or visit limits) on mental health and substance use disorder benefits that are more restrictive than what is generally imposed for medical/surgical benefits. The mental health parity law does not require that all health plans or health insurance companies cover behavioral health care; however, any such coverage





provided must be comparable to that for other medical conditions. It is important to note this law does not guarantee complete parity, as group health plans can choose whether to provide benefits for a specific condition or disorder.

As highlighted in the [“MHPAEA Comparative Analysis Report to Congress, July 2023,”](#) the U.S. Department of Labor requested more than 270 required comparative analyses from group health plans and health insurance issuers during the relevant reporting period. None of the comparative analyses reviewed contained sufficient information upon initial receipt. According to the [National Alliance on Mental Illness](#), the enforcement of mental health parity presents a complex challenge. Columbia University and the Georgetown University Health Policy Institute cite [policy complexity](#), [differing state priorities](#) and [lack of state funding and resources](#) among the factors contributing to enforcement difficulties.

## Strengthen Nondiscrimination and Parity Laws

The ADA provides civil rights protections for people with disabilities in many areas of life, including employment, state and local government activities and services, public accommodations, and transportation. Mental health parity is legislated at the federal level via the [mental health parity law](#) and the [Affordable Care Act](#), which applied mental health parity requirements to a much larger number of health insurance plans. However, states have the power to clarify and/or expand on these federal requirements.

As such, states have adopted nondiscrimination laws that further protect employees with mental health conditions from employment-related discrimination. These provisions cover all aspects of employment, including recruitment; hiring, pay and compensation; job assignments; promotion consideration; training and other employer-sponsored activities; layoffs; and firing.

States may want to consider the following policy options to strengthen parity and nondiscrimination laws:

- Cover medically necessary treatment for mental, emotional, nervous or substance use disorders in group or individual policies.
- Include preventive, screening and treatment services for mental health and substance use disorder.
- Cover annual mental health wellness examinations in the same way as physical examinations are covered.

## STATE EXAMPLES



[Colorado HB 1068 \(2021\)](#) added a requirement, as part of mandatory health insurance coverage of preventive health care services, that health plans cover an annual mental health wellness examination of up to 60 minutes performed by a qualified mental health care provider. The coverage must:

- Be comparable to the coverage of a physical examination.
- Comply with the requirements of federal mental health parity laws.
- Not require any deductibles, copayments or coinsurance for the mental health wellness examination.



[Illinois HB 2595 \(2021\)](#) stated that during the process of amending, delivering, issuing or renewing a group or individual accident policy or health insurance, every insurance provider is required to offer coverage for essential treatments of mental, emotional, nervous or SUD conditions. This includes qualified health plans available through the health insurance marketplace in the state and Medicaid-managed care organizations.



[Indiana SB 165 \(2016\)](#) required the Healthy Indiana Plan to cover mental health and SUD services. It also stated that the plan cannot use treatment limitations or financial requirements for mental health or SUD if there are no similar limitations or requirements for medical or surgical conditions.



[Massachusetts SB 3097 \(2022\)](#) improved enforcement of parity laws by creating a clear structure for the Division of Insurance to receive and investigate parity complaints to ensure their timely resolution.



[New Jersey Statute § 10:5-12 \(2016\)](#) specified that employees with disabilities, including mental health conditions, cannot be discriminated against in hiring, pay and compensation, promotion consideration, training, layoffs or firing.



[Virginia HB 1848 \(2021\)](#) added discrimination based on disability as an unlawful discriminatory practice under the Virginia Human Rights Act. The bill also required employers to make reasonable accommodations for the known physical and mental impairment of an otherwise qualified person with a disability, if necessary, to assist the person in performing a particular job, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer.



[Washington SB 5313 \(2021\)](#) enacted unfair insurance practice laws related to the cancellation, refusal to issue or refusal to renew insurance to any person because of, among other things, sensory, mental or physical disability.

## Expand Workers' Compensation, Paid Sick Leave and Disability Insurance

The federal [Family and Medical Leave Act \(FMLA\)](#) applies to individuals who have been employed by a covered employer for at least 12 months. It requires covered employers to provide 12 weeks of leave annually, continue employee group health benefits under the same conditions as if the employee had not taken leave, and restore the employee to the same or a comparable position at the end of the leave period.

Employees may take FMLA leave for a number of reasons, among them their own serious health condition, including a mental health condition, or to care for a spouse, child or parent who has one. For FMLA purposes, serious mental health conditions require inpatient care or continuing treatment by a health care provider.

The FMLA also allows states to set more expansive standards than the federal law, and many have chosen to do so. In response to the COVID-19 pandemic, many states permanently enacted or expanded family leave. Some have also addressed issues of discrimination and parity by more closely examining the administration and coverage provisions of employee benefits, such as [workers' compensation](#), [paid sick leave](#) and [disability insurance](#).

While the COVID-19 crisis impacted all workers, it had a particularly significant impact on health care workers and first responders, with increased rates of anxiety, depression and other mental health conditions reported [nationally](#) among these workers. Some states cover mental health-related injuries through workers' compensation, but it can be difficult to prove such an injury or condition is work related. As of 2023, at least [15 states and Washington, D.C.](#), required employers to provide paid sick leave, including for mental health conditions. These states include Arizona, California, Colorado, Connecticut, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont and Washington.

States may want to consider the following policy options to expand workers' compensation and short- and long-term disability insurance:

- Add mental and emotional conditions to workers' compensation statutes.
- Expand workers' compensation coverage to certain situations that commonly result in mental health conditions or emotional impairment.
- Establish visual or audible exposure to the serious bodily injury or death of one or more persons as a psychologically traumatic event when determining eligibility for workers' compensation benefits.
- Expand the definition of compensable personal injury to include mental health-related injuries resulting from physical injury, emotional shock or a series of traumatic work-related events, and specify that post-traumatic stress disorder may qualify for workers' compensation if the diagnosis can be connected to workplace events.

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[Alabama HB 141 \(2023\)](#) authorized mental or physical disability insurers to offer paid family leave benefit policies.



[Colorado SB 26 \(2020\)](#) established that visual or audible exposure to serious bodily injury or death (or the immediate aftermath of serious bodily injury or death) of one or more people as the result of a violent event, intentional act of another person, or accident is a psychologically traumatic event to determine eligibility for workers' compensation benefits.



[Connecticut SB 164 \(2019\)](#) included certain mental or emotional impairments within the definition of personal injury under the workers' compensation statutes. It expanded workers' compensation coverage in certain situations that result in mental or emotional impairment. Connecticut also enacted [SB 660 \(2021\)](#), which expanded workers' compensation benefits for certain mental or emotional impairments experienced by health care providers in connection with COVID-19.



[Kansas SB 193 \(2021\)](#) expanded the definition of compensable personal injury in workers' compensation law to include mental injuries resulting from physical injury or emotional shock or after a series of work-related events.



[Maine LD 369 \(2019\)](#) allowed employees to use earned paid sick leave for mental or physical illness, injury or health conditions; medical diagnosis, care or treatment of the employee's mental or physical illness, injury or health condition; or preventive medical care.



[Michigan SB 1175 \(2018\)](#) allowed for an employee to use paid medical leave for the treatment of mental or physical illness, injury or health conditions of the employee and the employee's family members; medical diagnosis, care or treatment of the employee's mental or physical illness, injury or health condition; or preventive medical care.





## Educate Consumers and Employers About Their Rights and Responsibilities

While the ADA offers broad coverage for people with disabilities, many may be unaware of their rights and protections under the law, particularly related to mental health conditions. For example, while the ADA does protect individuals from having to disclose a mental health condition, protections available to individuals with SUD may not always be clear. Individuals with SUD would have the same protections, unless actively engaged in illegal substance use. In such instances, they would not be entitled to the same protections based on that substance use.

Policymakers have a role to play in helping employers and workers understand their rights and responsibilities under nondiscrimination and mental health parity laws. Various policies can help raise awareness and communicate a clear message.

States may want to consider the following policy options to inform workers and employers about their rights and responsibilities:

- Educate employers on parity and how to ensure their sponsored insurance plans offer mental health parity.
- Incentivize employers to provide and promote preventive mental health care.
- Educate employees on their rights to take leave, access benefits and/or request accommodations.
- Promote the availability of employer-sponsored low- and no-cost counseling.
- Encourage employers to adopt, develop and improve self-identification practices.
- Remind employers that they are prohibited from taking adverse action against employees who seek services through an EAP, as any such services are confidential.
- Encourage employers to offer employees who fail drug screenings an opportunity to retain employment if they participate in drug education and addiction treatment programs.

## STATE EXAMPLES



[Connecticut Public Act 99-284 \(1999\)](#) created the Office of the Healthcare Advocate to help consumers understand their rights and responsibilities related to their health care plans and aid with inquiries regarding health care insurance enrollment, coverage, billing, claim denials, and pre-authorization.



[Indiana Public Law 195 \(2018\)](#) permitted (but did not require) employers to offer employees who fail drug screenings an opportunity to retain employment if they participate in drug education and addiction treatment programs. If the employees stay in the treatment program and test negative, they can keep their jobs. In addition, if the employer complies with the requirements in the legislation, the employer is not liable for a civil action alleging negligent hiring by the employee due to the employee's drug addiction in the scope of employment. Further, the employee's participation in a drug education or addiction treatment program is not admissible as evidence in a civil action.



[Iowa Code Section 730.5](#) required that any employer in Iowa that chooses to test its employees must provide written policy requirements to the employee for what disciplinary or rehabilitative actions the employer shall take upon receipt of a confirmed positive drug test result. The policy also requires that if rehabilitation is required, the employer shall not take adverse employment action against the employee as long as the employee complies with the requirements.



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