

## Mental Health Reform Provisions in H.R. 34, the 21<sup>st</sup> Century Cures Act

In December, the U.S. Congress overwhelmingly passed the 21<sup>st</sup> Century Cures Act (H.R. 34), an end-of-year healthcare package of bills with many mental health, substance use, and criminal justice provisions taken from the Helping Families in Mental Health Crisis Act (H.R. 2646), the Mental Health Reform Act of 2016 (S. 2680), the Mental Health and Safe Communities Act (S. 2002), and the Comprehensive Justice and Mental Health Act (S. 993). The passage of H.R. 34 marks a major first step toward reforming the mental healthcare system in the United States.

**The 21<sup>st</sup> Century Cures Act contains numerous provisions that benefit the practice of psychiatry and the treatment of individuals with serious mental illness:**

- Enhances coordination of fragmented mental health resources across federal departments and agencies through the establishment of an Assistant Secretary for Mental Health and Substance Use (ASMH).** The Assistant Secretary will assume all duties currently vested in the Administrator of the Substance Abuse and Mental Health Services Administration (SAMHSA) with additional responsibilities to incorporate evidence-based research into SAMHSA-administered programs; support activities to recruit and retain a mental health workforce, including psychiatrists; and collaborate with other federal agencies such as the Departments of Veterans Affairs, Labor, Housing & Urban Development, and Defense to improve care for veterans and address chronic homelessness. The ASMH may also appoint a Deputy Assistant Secretary and improve access to information on evidence-based programs for States and other entities. (*Sections 6001, 6002, 7002*)
- Establishes the position of a Chief Medical Officer (CMO) who will provide medical leadership at SAMHSA.** The CMO will work closely with the ASMH and the Assistant Secretary for Planning and Evaluation (ASPE) to evaluate, organize, and integrate SAMHSA programs to promote best practices and evidence-based clinical care. The CMO must have experience in the provision of mental or substance use disorder services. In addition, the CMO will serve as a liaison between SAMHSA and provider organizations as well as participate in SAMHSA's regular strategic planning. (*Section 6003*)
- Requires SAMHSA to develop a strategic plan every four years that identifies strategies to improve the recruitment, training, and retention of a mental health and substance use disorder workforce.** The report must identify initiatives that encourage individuals to pursue careers as psychiatrists or other mental health professionals in rural or underserved areas; improve collaboration with States, municipalities, and tribal organizations; and disseminate promising best practices related to prevention, diagnosis, early intervention, and treatment. Biennially, SAMHSA must also submit a report reviewing progress toward strategic goals and include program improvement recommendations by ASPE and the Inter-Departmental Serious Mental Illness Coordinating Committee. Other important workforce provisions clarify that child and adolescent psychiatrists are eligible for the National Health Services Corps Loan Repayment Program and require SAMHSA and the Health Resources and Services Administration (HRSA) to issue a report on the national- and State-level supply and demand mental health and substance use disorder health workers, including trends within the provider workforce. (*Sections 6005, 6006, 9023, 9026*)
- Reauthorizes grants to support integrated care models for primary care and behavioral healthcare services.** The legislation also broadens the definition of integrated care, which will benefit the collaborative care model. (*Section 9003*)

- **Reauthorizes mental health awareness training grants for evidence-based programs that provide training and education.** The American Psychiatric Association Foundation's *Typical or Troubled* program would potentially benefit. *(Section 9010)*
- **Reauthorizes grants to accredited institutions of higher education or professional training programs to support the establishment or expansion of internships or field placement programs in mental health.** Priority will be given to programs that have demonstrated the ability to train psychiatry professionals to work in integrated care settings. *(Section 9021)*
- **Authorizes the Secretary of Health and Human Services (HHS) to establish a training demonstration program for medical residents and fellows to practice psychiatry and addiction medicine in underserved, community-based settings.** Grants awarded would last for a minimum of five years. Nurse practitioners, physician assistants, health service psychologists, and social workers are also eligible. *(Section 9022)*
- **Codifies the Minority Fellowship Program.** The program enhances capabilities of racial and ethnic minority psychiatry residents to teach, conduct services research, and provide culturally competent, evidence-based mental health services to underserved, minority populations. *(Section 9024)*
- **Establishes a federal Inter-Departmental Serious Mental Illness (SMI) Coordinating Committee that will focus on evaluating the effect federal programs related to SMI have on public health.** The Committee's work will culminate in a report focused on incidence and rates of SMI; rates of suicide; substance use disorders; interaction with the criminal justice system; and emergency room boarding. Additionally, the report must make specific recommendations for actions federal agencies can take to better coordinate mental health services for adults with SMI and children with serious emotional disturbance. The Committee will be comprised of both federal and non-federal members; psychiatrists with experience treating SMI may be appointed to the Committee. *(Section 6031)*
- **Establishes the National Mental Health and Substance Use Policy Laboratory (NMHSUPL) that will carry out authorities of the SAMHSA Office of Policy, Planning, and Innovation.** The laboratory will promote evidence-based practices and service delivery models, including evaluating models that may benefit from further development. *(Section 7001)*
- **Establishes grants to States to establish, improve, or maintain programs for screening, assessment, and treatment services for women who are pregnant, or who have given birth within the preceding twelve months, for maternal depression.** The grants will support training and information for healthcare providers on maternal depression screening, treatment, and follow-up support. *(Section 10005)*
- **Directs a study and report on the Medicaid Emergency Psychiatric Demonstration Project.** *(Section 12004)*
- **Requires new activities to strengthen enforcement of the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA):**
  - ✓ Directs the federal Departments of Labor, Treasury, and HHS to release compliance program guidance, including disclosure requirements and non-quantitative treatment limitations;
  - ✓ Requires HHS to issue new guidance documents for health plans to comply with parity laws;
  - ✓ Requires HHS to open a public comment period focused on ways to improve consumer access to documents about mental health and substance use disorder benefits;
  - ✓ Requires HHS to convene a public meeting to produce an action plan for improved federal/State coordination on parity enforcement (taking into consideration the President's Mental Health and Substance Use Disorder Parity Task Force);
  - ✓ Clarifies the authority of the Departments of Labor, Treasury, and HHS to audit a health plan when a plan has been found to have violated the parity law five times;

- ✓ Requires the Centers for Medicare & Medicaid Services to release an annual report in each of the next five years summarizing results of closed federal investigations in the preceding year concerning serious violations of compliance with existing parity requirements;
  - ✓ Requires the Government Accountability Office (GAO) to conduct a study on parity enforcement including compliance with non-quantitative treatment limitations, a review of how federal and State agencies have improved enforcement, and recommendations for additional enforcement, education, and coordination activities that could ensure further compliance with existing parity requirements; and
  - ✓ Clarifies coverage of eating disorder benefits under parity law and allows HHS to disseminate resources on eating disorders, including through model programs. (*Sections 13001-13007*)
- **Provides \$4.8 billion over ten years to the National Institutes of Health, including \$1.5 billion for the Brain Research Through Advancing Neurotechnologies (BRAIN) Initiative.** The BRAIN Initiative is a revolutionary collaborative project that is pioneering new research to find cures for disorders of the brain, including schizophrenia, epilepsy, autism, and Alzheimer's through the development and application of innovative technologies. (*Section 1001*)

Additional provisions affecting access to and delivery of evidence-based mental health and substance use disorder treatment services:

- **Provides \$1 billion over two years to combat the opioid epidemic.** Grants made available to States will be used to improve prescription drug monitoring programs, implement prevention activities, provide training for healthcare providers, and expand access to opioid treatment programs. (*Section 1003*)
- **Modifications to SAMHSA Centers.** Codifies the Center for Behavioral Health Statistics and Quality and requires that the Center coordinate with ASMH, ASPE, and the CMO to improve quality of services and programs carried out by the agency. Updates nomenclature in statute of the Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP), and Center for Substance Abuse Treatment (CSAT) and requires the Director of CMHS to collaborate with the National Institutes of Mental Health to ensure programs reflect the best available science and evidence-based practices. (*Sections 6004, 6007*)
- **Requirements for SAMHSA grant peer review and advisory councils.** Ensures at least half of appointed advisory council members for CMHS have a medical degree, doctoral degree in psychology, or advanced degree in nursing or social work. In addition, ensures at least half of appointed advisory council members for CSAP and CSAT have a similar educational background and experience. Furthermore, at least half of the members of a peer review group must have similar educational background and experience. The advisory councils would also include the CMO and the Directors of the National Institute of Mental Health, National Institute on Drug Abuse, and National Institute on Alcohol Abuse and Alcoholism. (*Sections 6008-6009*)
- **Outlines responsibilities for the Assistant Secretary of Planning and Evaluation in improving oversight of mental health and substance use disorder programs.** Requires ASPE to provide recommendations to the Secretary of HHS, ASMH, and the Congress to improve mental and substance use disorder prevention and treatment programs, including development of a strategy for conducting evaluations of key programs. (*Section 6021*)
- **Updates programs of regional and national significance.** Reauthorizes the Priority Mental Health Needs, Substance Use Disorder Treatment Needs, and Mental Health Needs of Regional and National Significance Programs to better target program responses. (*Sections 7003-7005*)
- **Takes steps to address criminalization of individuals with mental illness and continues support for mental health courts and crisis intervention teams.** The legislation incorporates many key provisions of the Mental Health and Safe Communities Act (S. 2002) and Comprehensive Justice and Mental Health Act (S. 993) for

the purposes of preventing unnecessary incarceration of individuals with mental illnesses through enhanced treatment services while individuals are incarcerated, as well as following release. Provisions include supporting crisis intervention training for law enforcement; promoting mental health and substance use disorder diversion program efforts; allowing federal mental health court grant funds to be used for the creation of court-ordered outpatient treatment programs; supporting the development of curricula for police academies and orientations; and supporting programs to train federal law enforcement officers in how to respond appropriately to incidents involving an individual with mental illness. (Sections 14001-14029)

- **Modifies the Community Mental Health Services (CMHS) Block Grant and Substance Abuse Prevention and Treatment Block Grant and clarifies existing practices regarding State grant applications.** Provides for new explicit purpose of the CMHS block grant that would provide community mental health services for adults with SMI and children with serious emotional disturbance. In addition, revises criteria for State plans of comprehensive community mental health services by requiring that the plan identify the State agency responsible for administration of the program under the grant and provide for an organized community-based system of care. Under the Block Grant for the Prevention and Treatment of Substance Use Disorders, mental health nomenclature is updated. In addition, a funding agreement for a grant would require the State to offer ongoing professional development on evidence-based practices, data collection requirements, among other training. Additionally, a State plan under this block grant must describe the existing substance use disorders workforce and workforce trained in treating co-occurring substance use and mental health disorders. Separately, the Secretary of HHS, acting through the ASMH, shall conduct a study on the distribution of funds under the block grants and evaluate whether such distributions accurately reflect State needs. The legislation also codifies the ability of States to submit a joint application for both block grants. (Sections 8001-8004)
- **Directs the Secretary of HHS to establish/maintain a National Treatment Referral Routing Service to assist individuals and families in locating mental health or substance use disorder providers.** (Section 9006)
- **Provides clarity on HIPAA disclosure in the following ways:**
  - ✓ Expresses sense of Congress that revisions are needed to current HIPAA regulation;
  - ✓ Directs HHS to promulgate final regulations clarifying the circumstances under which a healthcare provider may disclose protected health information;
  - ✓ Codifies the sub-regulatory guidance issued by the HHS Office of Civil Rights in 2013; and
  - ✓ Requires the development and dissemination of model training programs for clinicians, regulatory compliance staff, and others regarding the circumstances under which protected health information may be disclosed. (Sections 11001-11004)
- **Authorizes or reauthorizes numerous grant programs:<sup>1</sup>**
  - ✓ Reauthorizes grants for treatment and recovery of homeless individuals;
  - ✓ Reauthorizes grants for jail diversion programs;
  - ✓ Reauthorizes and updates grants for States to provide services to homeless individuals who are suffering from serious mental illness, including co-occurring substance use disorders;
  - ✓ Reauthorizes the National Suicide Prevention Lifeline Program;
  - ✓ Authorizes grants to State and local governments and tribal organizations to strengthen community-based crisis response systems;
  - ✓ Reauthorizes the Garrett Lee Smith Memorial Act;
  - ✓ Authorizes suicide prevention and intervention program grants for individuals aged 25 years or older to raise awareness of suicide, improve care, and establish referral processes;
  - ✓ Extends and increases existing authorization for grants for Assisted Outpatient Treatment;
  - ✓ Authorizes grants to establish, maintain, or expand assertive community treatment programs for adults with serious mental illness;

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<sup>1</sup> Sections: 9001, 9002, 9004, 9005, 9007, 9008, 9009, 9014, 9015, 9016, 9031, 10001, 10002, 10003, 10004, and 10006

- ✓ Reauthorizes the National Media Campaign to Prevent Underage Drinking;
- ✓ Reauthorizes the Mental Health and Substance Use Disorder Services on Campuses grant program;
- ✓ Reauthorizes grants for programs to provide comprehensive community mental health services to children with serious emotional disturbance;
- ✓ Authorizes grants to promote behavioral health integration in pediatric primary care;
- ✓ Reauthorizes grants for substance use disorder treatment and early intervention for children and adolescents;
- ✓ Reauthorizes the National Child Traumatic Stress Initiative; and
- ✓ Authorizes grants for infant and early childhood mental health promotion, intervention, and treatment.

Other notable provisions:

- Clarifies that nothing in the Medicaid statute should be construed as prohibiting separate payment for the provision of mental health and primary care services provided on the same day (*Section 12001*)
- Codifies Medicaid managed care regulation change related to the IMD exclusion (*Section 12002*)
- Modifies the Protection and Advocacy for Individuals with Mental Illness (PAIMI) program and requires a GAO study on programs funded under the Protection and Advocacy for Individuals with Mental Illness Act (*Sections 6022, 6023*)
- Expresses sense of Congress on prioritizing Native American youth and suicide prevention programs (*Section 9011*)
- Requires HHS to disseminate information on evidence-based practices for mental health and substance use disorders in older adults (*Section 9012*)
- Encourages improvements to the National Violent Death Reporting System (*Section 9013*)
- Strikes handful of SAMHSA authorizations that have not received appropriations in several years (*Section 9017*)
- Adds liability protections similar to those provided for Public Health Service employees for healthcare professionals who volunteer at community health centers (*Section 9025*)
- Addresses improvements in mental health on campuses (*Sections 9032, 9033*)
- Directs the Centers for Medicare and Medicaid Services to issue a State Medicaid Director letter on opportunities to design innovative service delivery systems (*Section 12003*)
- Requires States to provide the full range of Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services to Medicaid children receiving inpatient psychiatric care at IMDs (*Section 12005*)
- Reduces FMAP percentages for those States that do not require the use of electronic visit verification systems for personal care or home health care services under Medicaid (*Section 12006*)