

## **Achieving Mental Health Parity**

As a child, Senator Paul Wellstone (D-MN) watched his older brother Stephen battle mental illness.<sup>1</sup> For two years, Stephen lived in a psychiatric hospital in a catatonic trance, which is considered a symptom of schizophrenia.<sup>2</sup> With sustained medical treatment, Stephen recovered, but Senator Wellstone remembered his family working for twenty years to pay off the hospital bill from Stephen's stint at the Henry Phipps psychiatric clinic at Johns Hopkins University.<sup>3</sup>

Senator Wellstone's personal experience with the cost of mental illness, both personal and economic, motivated his legislative agenda when Minnesota elected him to the Senate in 1990. Based largely on his personal experience, Senator Wellstone almost immediately began to advocate within Congress for mental health parity, which would require health insurance companies to treat mental illness on par with medical illness, relieving American families of some of the financial burden of mental illness.

### **Insurance Coverage for Mental Illness**

The majority of Americans under the age of sixty-five utilize private health insurance plans as their primary means of health care access and payment, and the majority of private health insurance plans are purchased through employer-provided group health insurance options.<sup>4</sup> Federal regulation of health insurance is relatively limited. Individuals are not required to have health insurance, nor are health insurers required to provide specific benefits for medical-surgical or mental illness. Instead, states have independent authority to regulate private health insurance.

Actual coverage of mental illness by health insurance plans varies extensively, from exclusion of all mental illness to comprehensive mental health coverage on par with comprehensive medical-surgical cov-

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<sup>1</sup> Marilyn Werber Serafini, "When It Hits Home," *National Journal*, April 19, 2002, accessed on December 2, 2009 at <http://www.nationaljournal.com/members/news/2002/04/0419nj2.htm>.

<sup>2</sup> Serafini, April 19, 2002.

<sup>3</sup> Serafini, April 19, 2002.

<sup>4</sup> Kaiser Family Foundation, "Health Insurance Coverage of the NonElderly," *Health Insurance Coverage in America*, 2007, October 2008, accessed on December 2, 2009 at <http://facts.kff.org/chartbooks/Health%20Insurance%20Coverage%20in%20America,%202007.pdf>; Kaiser Commission on Medicaid and the Uninsured, "The Uninsured and the Difference Health Insurance Makes," September 2009, accessed on December 2, 2009 at <http://www.kff.org/uninsured/upload/1420-11-2.pdf>.

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erage. On average, where an insurance plan covers mental illness, those benefits are more limited than those provided for medical-surgical illness.<sup>5</sup>

As medical science more clearly mapped the scientific bases of various illnesses, mental illness was increasingly demystified and its prevailing stereotypes debunked.<sup>6</sup> As the social stigma surrounding mental illness waned, mental health advocates including Mental Health America (MHA) and the National Alliance on Mental Illness (NAMI) sought equal coverage by insurance plans for mental illness and medical-surgical illness (known commonly as mental health parity).

Health insurers resisted mental health parity, arguing that such a mandate would increase health insurance premiums for all insured individuals to cover lengthy and costly mental illness suffered by a few individuals. During the 1990s and 2000s, health care costs increased as a share of the country's Gross Domestic Product, and the average cost of health insurance was increasing faster than the Consumer Price Index.<sup>7</sup> In this environment, insurers feared that additional inclusions in health insurance coverage would force additional Americans to go without insurance. Major employers, as large-scale purchasers of health insurance, agreed.<sup>8</sup>

### **Achieving a Measure of Parity**

In 1992, Senators Pete Domenici (R-NM) and John Danforth (R-MO) introduced the first bill seeking non-discrimination in the health care system against persons with mental illness.<sup>9</sup> Four years later, the Mental Health Parity Act of 1996 became law.

Introduced by Senators Domenici and Wellstone, the Mental Health Parity Act of 1996 (1996 MHPA) sought a small step forward for mental health parity in private insurance plans, creating parity among lifetime and annual coverage limits. The 1996 MHPA would require private health insurance plans that elected to provide mental illness coverage with annual or lifetime benefit limit to have matching annual and lifetime limits for mental illness as for medical-surgical illness. The 1996 MHPA was limited in scope: it did not apply to insurance plans purchased on the individual market, and exempted plans offered by employers with fifty or fewer employees. Notably, the 1996 MHPA did not require insurance companies to cover mental illness. It only applied to those plans that chose to provide such coverage.<sup>10</sup>

After the 1996 MHPA passed, health insurers used other legal mechanisms to limit mental illness coverage. For example, insurance companies covered fewer mental health visits in a given year, imposed higher co-payments for mental health visits and care, and provided more stringent limitations on out-of-

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<sup>5</sup> Ramya Sundararaman and C. Stephen Redhead, "The Mental Health Parity Act: A Legislative History," Congressional Research Service, October 29, 2008.

<sup>6</sup> Sundararaman, October 29, 2008.

<sup>7</sup> Kaiser Family Foundation, "Health Care Costs, A Primer: Key Information on Health Care Costs and Their Impact," August 2007, accessed on December 2, 2009 at <http://www.kff.org/insurance/upload/7670.pdf>.

<sup>8</sup> Sundararaman, October 29, 2008.

<sup>9</sup> Sundararaman, October 29, 2008.

<sup>10</sup> Sundararaman, October 29, 2008.

network mental health care, when compared with plan limitations on medical-surgical illness. Mental health parity had not been achieved, even in those plans covered by the 1996 MHPA.<sup>11</sup>

### **Attempting to Plug the Holes Left by the 1996 MHPA**

In June 1997, Senators Wellstone and Domenici sought to expand mental health parity through an amendment to the Balanced Budget Act of 1997 that would require all State Children's Health Insurance Plan (SCHIP)<sup>12</sup> insurance plans that offered mental health benefits to provide full parity for mental illness (*i.e.*, to provide equal benefits for mental illness as those provided for medical-surgical illness). The amendment passed by a voice vote and was included in the eventual legislation sent to the Conference Committee. In conference, the parity amendment was rejected, and replaced with a requirement that all SCHIP and Medicaid managed care plans that offered mental health benefits meet the requirements of the 1996 MHPA (*i.e.*, only annual or lifetime limits on mental health coverage had to be equal to limits for medical-surgical coverage).<sup>13</sup>

In the next Congressional session, on April 14, 1999, Senators Domenici and Wellstone again sought to move closer to full parity by introducing the Mental Health Equitable Treatment Act of 1999 (MHETA).<sup>14</sup> The MHETA took a twofold approach:

- seeking to prohibit certain relative limitations on mental illness insurance coverage that were not addressed in the 1996 MHPA, including differences between mental and medical-surgical illness with respect to the number of inpatient days and outpatient visits covered by an insurance plan;
- and requiring full parity for a categorical list of severe biological mental illnesses (*e.g.*, schizophrenia, bipolar disorder, manic depression, major depression, obsessive compulsive disorder, post-traumatic stress disorder, and autism).<sup>15</sup>

The Senate and House of Representatives were led by Majority Leader Trent Lott (R-MS) and Speaker Dennis Hastert (R-IL) when the MHETA was introduced. The Senate Health, Education, Labor, and Pension (HELP) Committee – chaired by Senator Jim Jeffords (R-VT) – held a hearing on MHETA, but took no further action on MHETA for the remainder of the session.<sup>16</sup>

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<sup>11</sup> Sundararaman, October 29, 2008.

<sup>12</sup> The State Children's Health Insurance Program (SCHIP) is a federally administered program to combine federal and state funds to provide health insurance to previously uninsured children from families with modest income.

<sup>13</sup> Sundararaman, October 29, 2008.

<sup>14</sup> Sundararaman, October 29, 2008.

<sup>15</sup> House, *Mental Health Equitable Treatment Act of 1999*, 106th Cong., S. 796.

<sup>16</sup> Sundararaman, October 29, 2008.

## Unlikely Senate Allies

The two key advocates for mental health parity during this time – Senators Wellstone and Domenici – were improbable allies. As the *National Journal* described it, “Wellstone is one of the most liberal Democrats in the Senate, while Domenici is a mainstream Republican not known for supporting new government mandates.”<sup>17</sup> Yet the two shared a passion for mental health parity based on their familial experience with mental illness.

Senator Domenici was personally committed to mental health parity because of his experience as a father to a daughter with schizophrenia. After her diagnosis, his family faced numerous frustrations in attempting to secure insurance coverage that included his daughter’s treatment, switching insurance companies, and paying more to get what she needed to care for her illness.<sup>18</sup>

Senators Domenici and Wellstone’s shared experience with the impacts of mental illness forged a lasting partnership on mental health parity. As Senator Wellstone explains, his conversations with Senator Domenici were always on the subject of mental health because “What the hell else do we agree on?”<sup>19</sup>

## Additional Efforts to Achieve Parity Fall Short

On March 15, 2001, Senators Domenici and Wellstone reintroduced the MHETA, seeking to prohibit group insurance plans that elect to provide mental health coverage from imposing mental health treatment limitations or financial requirements unless comparable limitations and requirements were imposed upon medical-surgical benefits. The MHETA was referred to the Senate HELP Committee, on which Senator Wellstone served.<sup>20</sup>

In May 2001, the Senate HELP Committee Chair Senator Jim Jeffords of Vermont switched his party affiliation from Republican to Independent, and announced his intention to caucus with the Democratic Party. Senator Jeffords attributed his sudden change in affiliation to the Senate Republicans’ refusal to fund fully the Individuals with Disabilities Education Act (IDEA), a bill which Senator Jeffords had helped pass twenty-five years before as a member of the House of Representatives.<sup>21</sup> Senator Jeffords’ move shifted the balance in the Senate, providing a majority to the Democratic Party. Despite the change of leadership throughout the Senate, Senator Jeffords remained Chairman of the Senate HELP committee.

In July and August 2001, the Senate HELP Committee held hearings on the MHETA, and negotiated a compromise approach to parity led by Chairman Senator Edward M. Kennedy (D-MA) and Senator Bill Frist (R-TN). The Kennedy-Frist compromise version of the MHETA provided:

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<sup>17</sup> Serafini, April 19, 2002.

<sup>18</sup> Serafini, April 19, 2002.

<sup>19</sup> Serafini, April 19, 2002.

<sup>20</sup> Sundararaman, October 29, 2008.

<sup>21</sup> Timothy Noah, “Did the Democrats Sucker Jim Jeffords’s tiffed by a Republican Senate, and now stiffed by a bipartisan conference committee,” *Slate*, December 12, 2001, accessed on December 2, 2009 at <http://www.slate.com/id/2059706/>.

- Group health insurance plans that provided mental health coverage could not impose treatment or financial limitations on the mental health coverage unless comparable limitations were placed on medical-surgical benefits;
- Health insurers explicitly retained the right to use managed care techniques on mental illness treatment;
- If an insurance plan provided for different coverage on “in-network” and “out-of-network” care, the mental health parity requirements only applied to “in-network” care; and
- Insurance benefits provided by employers with fifty or fewer employees were exempted.<sup>22</sup>

The Senate HELP committee unanimously approved the compromise as a substitute version of the MHETA. However, the MHETA never made it to the Senate floor.<sup>23</sup>

Instead, on October 3, 2001, Senators Domenici and Wellstone offered the amended MHETA as an amendment to the Labor-Health and Human Services Appropriations Bill.<sup>24</sup> During the Senate floor debate, several Senators revealed their personal experiences with mental illness; Senator Debbie Stabenow (D-MI) shared her father’s struggle with bipolar disease, and Senate Majority Whip Harry Reid (D-NV) recalled his father’s suicide.<sup>25</sup> The Senate approved the Domenici-Wellstone amendment on a voice vote.<sup>26</sup>

During the Conference Committee on the Labor-Health and Human Services Appropriations Bill, Representative Patrick Kennedy (D-RI) moved to accept the Domenici-Wellstone amendment, but the amendment was rejected along party lines. As a substitute, the Conference Committee included an extension of the 1996 MHPA through December 31, 2002 in the final appropriations package.<sup>27</sup>

### **President George W. Bush Calls for Mental Health Parity**

President George W. Bush opened a new chapter in mental health parity in April 2002, when he announced the formation of the New Freedom Commission on Mental Health during a speech in New Mexico. President Bush also called upon Congress to enact mental health parity legislation, requiring insurers to treat “serious” mental illnesses “like any other disease,” without “significantly run[ing] up the cost of healthcare.”<sup>28</sup>

<sup>22</sup> House, *Mental Health Equitable Treatment Act of 2001 (Introduced in Senate)*, 107th Cong., S. 543; House, *Mental Health Equitable Treatment Act of 2001 (Reported in Senate)*, 107th Cong., S. 543.

<sup>23</sup> Sundararaman, October 29, 2008.

<sup>24</sup> Sundararaman, October 29, 2008.

<sup>25</sup> David Nather, “Parity for Mental Health Care,” *CQ Weekly*, November 3, 2001.

<sup>26</sup> Sundararaman, October 29, 2008.

<sup>27</sup> Sundararaman, October 29, 2008.

<sup>28</sup> “Bush Endorses Mental Parity, But Offers No Specifics,” *Congress Daily*, April 29, 2002, accessed on December 2, 2009 at [http://www.nationaljournal.com.ezp-prod1.hul.harvard.edu/congressdaily/dj\\_20020429\\_1.php](http://www.nationaljournal.com.ezp-prod1.hul.harvard.edu/congressdaily/dj_20020429_1.php).

Delivered in Senator Domenici's home state, Bush's speech called attention to parity and spurred media attention to the issue. For example, the *National Journal* ran a series of articles in April 2002 related to mental health parity and its advocates, including profiles of Senators Wellstone and Domenici's personal connection to mental illness and a feature on the inadequate mental illness insurance coverage of the mentally ill.<sup>29</sup>

President Bush's speech came as several state legislatures and governors were actively debating state mental health parity legislation. By April 2002, twenty-three states mandated full mental health parity, varying in scope from creating parity only for state employees to full parity on the individual and group insurance markets.<sup>30</sup> States ranging from West Virginia to Wisconsin were considering state mental health parity legislation in early 2002, while in-depth coverage of the debate on mental health parity appeared in publications ranging from *Forbes* magazine to the *Omaha World Herald*.<sup>31</sup>

Despite this increased media focus and President Bush's call to action and increased media focus, neither the House nor the Senate held a single hearing or vote on mental health parity in 2002.<sup>32</sup>

### **A Champion of Parity Lost**

Tragedy struck on October 25, 2002, when Senator Paul Wellstone died in a plane crash in northern Minnesota. Senator Wellstone was in the midst of his reelection campaign when he flew with his wife, daughter, and five others to a funeral in Eveleth, Minnesota. Due to a stalled engine, Senator Wellstone's plane crashed into a forest just two miles from their eventual destination, killing all eight people onboard.<sup>33</sup>

After his death, Senator Wellstone's name was stricken from the Minnesota ballot, and replaced by former Vice President Walter Mondale according to the Minnesota election rules. Republican challenger Norm Coleman won a narrow 2% victory over Mondale, which provided the one vote margin necessary to provide Republicans with a Senate majority for the Congressional term beginning in 2003.<sup>34</sup>

### **Mental Health Parity Gains Advocates in the House**

With the White House and both houses of Congress controlled by the Republican Party, mental health parity appeared to have little chance of success in the 108th Congress due to the entrenched opposition from the insurance industry and the business community. However, on February 27, 2003, a bipartisan team of supporters introduced the Senator Paul Wellstone Mental Health Equitable Treatment Act of 2003,

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<sup>29</sup> See Marilyn Werber Serafini, "When It Hits Home," *National Journal*, April 19, 2002; Marilyn Werber Serafini, "Through the Cracks," *National Journal*, April 20, 2002.

<sup>30</sup> Sundararaman, October 29, 2008.

<sup>31</sup> Joy Davia, "Gov. Wise backs mental health parity," *The Charleston Gazette*, January 10, 2002; Ira Carnahan, "Asylum for the Insane," *Forbes Magazine*, January 21, 2002; Jeremy Olson and Joe Kolman, "Insurance often shuts out mentally ill," *Omaha World Herald*, January 14, 2002.

<sup>32</sup> Sundararaman, October 29, 2008.

<sup>33</sup> Jessica Reaves, "Paul Wellstone: 1944-2002," *Time*, October 25, 2002.

<sup>34</sup> Jodi Wilgoren, "From Big Disadvantage, Republican Gains Victory," *New York Times*, November 7, 2002.

which duplicated the MHETA as amended and unanimously passed by the Senate HELP Committee in 2001. Senators Domenici and Kennedy introduced the bill in the Senate, while Representatives Patrick Kennedy (D-RI) and Jim Ramstad (R-MN) introduced it in the House of Representatives. But neither the Senate nor House of Representatives held a hearing or voted on the bills.<sup>35</sup>

After Senator Wellstone's unforeseen death, mental health parity lost a key and staunch advocate. In his stead arose the bipartisan, bicameral advocacy team that introduced the parity legislation in his name. Senator Domenici continued his leadership for parity, and was joined in the Senate by Senator Kennedy, who likewise had a personal connection to mental illness. Senator Kennedy had already served more than forty years in the Senate, building a reputation as a health care reform advocate and a backroom political compromiser. Mental health parity was of particular importance to Senator Kennedy because his sister Rosemary is believed to have suffered from "mild mental retardation," which was treated by a lobotomy when she was twenty-three years old, leaving her mentally incapacitated for the remainder of her life.<sup>36</sup> In 2003, Senator Kennedy served as the Ranking Minority Member on the Senate HELP Committee.

Senators Domenici and Kennedy were joined by two members of the House of Representatives with great commitment to achieving parity: Representatives Kennedy and Ramstad. Representative Kennedy, Senator Kennedy's youngest son, was a recovering alcoholic and addict who also suffered from bipolar disorder. While Representative Kennedy began his public leadership for achieving parity in 2003, his commitment was reinvigorated by a personal incident some years later. On May 4, 2006, Representative Kennedy drove his Ford Mustang convertible head on into a Capitol Hill road barrier, while high on various prescription drugs.<sup>37</sup> Representative Kennedy described the crash as motivating him to work harder to "measure up" to his family's legacy. "The ultimate sign of my not measuring up was that next day after that car crash, when I thought I really typified the ultimate of not being able to cut it in my family."<sup>38</sup> Motivated by his failure, Representative Kennedy dove headlong into the fight to pass mental health parity.

Representative Ramstad also became a leader on mental health parity based on personal experience. Representative Ramstad had served the third district of Minnesota since 1991 in the House as a moderate Republican with conservative economic stances and relatively progressive stances on social issues. As a recovering alcoholic and Representative Kennedy's sponsor in Alcoholics Anonymous,<sup>39</sup> Representative Ramstad was open about his personal battles with addiction:

...on July 31, 1981, I woke up to my last alcoholic blackout under arrest for a variety of offenses in Sioux Falls, South Dakota, the city jail. I am alive and sober today only because of the access I had to treatment,

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<sup>35</sup> Sundararaman, October 29, 2008.

<sup>36</sup> Kevin Cullen, "Agree with him or not, you had to like Ted," *The Boston Globe*, August 27, 2009; Martin Weil, "Rosemary Kennedy, 86; President's Disabled Sister," *The Washington Post*, January 8, 2005.

<sup>37</sup> Drew Armstrong, "Under a Legacy's Weight, Kennedy Fights for Parity," *CQ Weekly*, November 12, 2007.

<sup>38</sup> Drew Armstrong, "Under a Legacy's Weight, Kennedy Fights for Parity," *CQ Weekly*, November 12, 2007.

<sup>39</sup> Mark Leibovich, "Democrat, Republican and a Bond of Addiction," *New York Times*, September 19, 2006.

along with the grace of God and the support and fellowship of other recovering people over the last twenty-five years, eleven months.<sup>40</sup>

### **Legislative Advocacy Turns to Coalition Building**

During the Republican-controlled 109<sup>th</sup> Congress, mental health parity made no visible legislative progress. Only one bill was introduced in the House (Representatives Kennedy and Ramstad introduced the Paul Wellstone Mental Health Equitable Treatment Act of 2005), no bill was introduced in the Senate, no hearings were held, and no votes were held.<sup>41</sup>

However, despite the apparent dearth of Congressional action on parity, Senator Kennedy and Senator Michael Enzi (R-WY) convened non-legislative negotiations joined by the NAMI, the National Retail Federation, the U.S. Chamber of Commerce, and various health insurance companies. The negotiations sought a compromise position that would satisfy each major constituency.<sup>42</sup>

Senator Enzi (then Chair of the Senate HELP Committee) sought to negotiate to overcome what he identified as repeated failures to achieve parity under the Republican-controlled Congress, even after an amended MHETA was reported to the Senate floor with a unanimous committee vote in 2001. Senator Enzi saw parity as being impeded by the “80% rule” where “all parties agree on 80% of the bill and may become stuck fighting over the other 20%, you've got to decide whether to take the 80% or get nothing.”<sup>43</sup> He viewed the multilateral negotiations as a tool to determine and solidify the 80% upon which stakeholders agreed.

### **Congressional Shifts Spur Legislative Action on Parity**

After the 2006 elections, Democrats assumed control of both the Senate and the House of Representatives, and the houses were led by Senator Harry Reid (D-NV) and Representative Nancy Pelosi (D-CA) respectively.

On February 12, 2007, Senator Domenici introduced the Mental Health Parity Act of 2007 (MHPA), a parity measure supported by the coalition of interests that had engaged in negotiations with Senators Kennedy and Enzi. The MHPA provided that:

- Group health insurers providing mental health coverage were required to meet parity between medical-surgical and mental illness coverage in both financial and treatment limitations on both “in-network” and “out-of-network” care;
- Health insurers could use managed care techniques on mental illness treatment;

<sup>40</sup> U.S. House of Representatives, Subcommittee on Health Employment, Labor and Pensions Committee on Education and Labor Hearing Transcript, “Statement of Hon. Jam Ramstad, A Representative in Congress from the State of Minnesota,” July 10, 2007, Serial No. 11-53.

<sup>41</sup> Sundararaman, October 29, 2008.

<sup>42</sup> Drew Armstrong and David Nather, “Mental Health Parity Moving Forward,” *CQ Weekly*, September 24, 2007.

<sup>43</sup> Drew Armstrong and David Nather, “Mental Health Parity Moving Forward,” *CQ Weekly*, September 24, 2007.

- Insurance offered on the individual market and provided by employers with less than fifty employees was exempted from the provisions of the bill;
- Employers could be exempted from complying for one year where complying with parity would increase the costs to an employer of providing health insurance coverage by 2% or more in the first year or 1% or more in subsequent years; and
- State mental health parity laws would be preempted.<sup>44</sup>

The MHPA was referred to the Senate HELP Committee, chaired by Senator Kennedy. Two days later, the HELP committee approved the measure with nominal amendments.<sup>45</sup>

The MHPA was scheduled for a floor vote after the August break. On the floor, the Senate adopted a manager's amendment by voice vote that added a specific articulation that the MHPA would not preempt more restrictive state insurance laws. Business and insurance interests, including those joining the coalition to pass the MHPA, opposed the amendment, seeking a fifty-state standard on mental health parity through the federal legislation. Nonetheless, the MHPA as amended passed the Senate by unanimous consent.<sup>46</sup>

### **House of Representatives Seeks More Comprehensive Parity Legislation**

In March 2007, Representatives Kennedy and Ramstad introduced H.R.1424 in the House of Representatives, which included the Senate coalition mental health parity language and a requirement that covered private health insurance plans cover all mental illnesses. H.R.1424 was referred to three committees: Ways and Means, Energy and Commerce, and Education and Labor.<sup>47</sup>

By July 2007, all three committees had held hearing on H.R. 1424. On July 18, 2007, the House Education and Labor Committee approved H.R. 1424 with an amendment. Following the August break, both the House Ways and Means Committee and the House Energy and Commerce Committee passed the bill as previously amended.<sup>48</sup> In committee, the provisions of H.R. 1424 not contained in the Senate bill, that required insurance coverage of mental illness were expanded from required coverage of only those mental illnesses already covered by the most popular health insurance plan offered to federal employees to required coverage for all illnesses listed in Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.<sup>49</sup> Throughout the committee process, Republican representatives introduced amendments to H.R. 1424 that would have conformed H.R. 1424 with the pending Senate legislation. Each of these proposed amendments failed.<sup>50</sup>

<sup>44</sup> Senate, *Mental Health Parity Act of 2007 (Introduced in Senate)*, 110<sup>th</sup> Cong., S. 558.

<sup>45</sup> Sundararaman, October 29, 2008.

<sup>46</sup> Drew Armstrong and David Nather, "Mental Health Parity Moving Forward," *CQ Weekly*, September 24, 2007.

<sup>47</sup> Sundararaman, October 29, 2008.

<sup>48</sup> Sundararaman, October 29, 2008.

<sup>49</sup> House, *Paul Wellstone Mental Health and Addiction Equity Act of 2007 (Introduced in House)*, 110<sup>th</sup> Cong., H. 1424; House, *Paul Wellstone Mental Health and Addiction Equity Act of 2007 (Reported in House)*, 110<sup>th</sup> Cong., H. 1424.

<sup>50</sup> Drew Armstrong, "Final House Panel Approves Measure On Mental Health Parity; Floor Next," *CQ Weekly*, October 22, 2007.

Committee approval of H.R. 1424 sparked vocal opposition by members of the Senate coalition. The Director of Legislative Advocacy for NAMI, Andrew Sperling, expressed concern that the House inclusion of mandatory mental illness coverage would be nearly impossible to pass in the Senate and could result in another failure to achieve mental health parity.<sup>51</sup> Fellow coalition member, the National Retail Federation, articulated the tenuous nature of their support for mental health parity outside the specific provision of MHPA: "We badly want to cement what we have been able to negotiate, but if it goes in a bad direction, we will abandon it in a heartbeat."<sup>52</sup> Despite these concerns, Representative Kennedy expressed confidence that H.R. 1424's additional provisions would force compromise between MHPA and H.R. 1424, resulting in better parity legislation for consumers.<sup>53</sup>

### **Circumstances Change for Key Sponsors**

As mental health parity was progressing, two of its most strident Congressional advocates announced their retirement. On September 22, 2007, Representative Ramstad announced that he would not be seeking a tenth term in Congress in the 2008 elections. Representative Ramstad cited fatigue and political isolation as motivations for retirement, referring to himself as one of the last of a "dying breed of Republican moderates."<sup>54</sup>

On October 3, 2007, Senator Domenici announced his retirement (effective at the end of 2008) after thirty-six years in the Senate. Senator Domenici revealed that he had recently been diagnosed with a progression in a form of dementia known to cause dysfunction in the portions of the brain vital to organization, decision making, and control of mood and behavior. Despite his diagnosis, Senator Domenici expressed his confidence that he would be healthy enough to finish his current term.<sup>55</sup>

### **House Bill Stalls Amid Active External Opposition**

Despite industry support for the MHPA in the Senate, the House's refusal to tailor its bill to the coalition-approved Senate version incited the formation of a coalition to oppose H.R. 1424. The Ad Hoc Coalition on Mental Health Parity, including Aetna, the American Benefits Council, and the National Association of Health Underwriters, combined resources to oppose H.R. 1424 and its mandatory insurance coverage of mental illness. In addition, even business interests represented within the Senate coalition, the National Retail Federation and the U.S. Chamber of Commerce, opposed H.R. 1424, placing the H.R. 1424 floor vote on the list used to measure whether a representative has voted in a business-friendly manner.<sup>56</sup>

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<sup>51</sup> Fawn Johnson, "Advocates Fear Senate Mental Parity Bill Being Blocked Out," *Congress Daily*, October 16, 2007.

<sup>52</sup> Johnson, October 16, 2007.

<sup>53</sup> Armstrong, October 22, 2007.

<sup>54</sup> "Ramstad Bids Farewell To Politics," *National Journal Hotline*, September 18, 2007, accessed on December 2, 2009 at [http://www.nationaljournal.com.ezp-prod1.hul.harvard.edu/hotline/hr\\_20070918\\_3.php](http://www.nationaljournal.com.ezp-prod1.hul.harvard.edu/hotline/hr_20070918_3.php).

<sup>55</sup> Marie Horrigan, "Domenici's Leaving Means a Fifth Open Senate Seat," *CQ Weekly*, October 8, 2007.

<sup>56</sup> "Mental Health Parity Bill On Track for Key Vote in House," *CongressDailyPM*, February 29, 2008.

Senators Domenici and Kennedy added their voices to the H.R. 1424 opposition. Senator Domenici explained that H.R. 1424's overreaching could destroy existing parity coalitions and doom chances of achieving mental health parity legislation during the term, while Senator Kennedy expressed doubt that H.R. 1424 would even make it to a conference committee.<sup>57</sup>

On March 5, 2008, the House passed H.R. 1424 with a 268-148 vote.<sup>58</sup> Instead of being sent to conference, the measure was diverted to private negotiations with the Senate.

### **Key Parity Sponsor Suffers Setback, and Fiscal Concerns Continue to Stall Parity**

On May 17, 2008, Senator Kennedy suffered a seizure while at his vacation home in Hyannisport, Massachusetts. Within days, doctors announced that Senator Kennedy had a cancerous brain tumor. Within a month, Senator Kennedy underwent brain surgery and began courses of chemotherapy and radiation, but his prognosis remained poor.<sup>59</sup>

Within the next month, H.R. 1424 and the MHPA had been referred to a conference committee, where many of the substantive differences between the bills were resolved. In principle, the conference committee agreed that:

- Mental illness coverage would not be mandatory;
- Group health insurance plans choosing to offer mental illness coverage were required to meet parity between medical-surgical and mental illness coverage in both financial and treatment limitations on both "in-network" and "out-of-network" care;
- Exempted parties included individual market health insurance, small employer insurance, and any employer for whom parity would increase health insurance costs more than 2% the first year or 1% any subsequent year; and
- The Government Accountability Office would commission a study on various parity related subjects, including whether specific conditions were not being adequately covered by insurance companies.

However, legislators were deadlocked on how to comply with existing PAYGO provisions, which required the bill to include offsets for the estimated cost over ten years. The Congressional Budget Office estimated that the compromise parity legislation would cost the federal government \$3.4 billion over ten years in lost tax revenue because the increased cost of health insurance provided by employers would increase the amount of benefits provided to employees that would fall within existing tax exemptions. The legislators disagreed on how to finance these costs. Negotiations continued after the August recess, with Senate Fi-

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<sup>57</sup> Drew Armstrong, "Mental Health Parity Bill Lacks Backing," *CQ Weekly*, March 10, 2008.

<sup>58</sup> Sundararaman, October 29, 2008.

<sup>59</sup> Michael Powell, "For Some, Echoes of a Distant Past," *New York Times*, August 25, 2008.

nance Committee staff meeting with principle House and Senate staffers and House Speaker Pelosi meeting with Senate Majority Leader Reid to discuss potential offsets. But no resolution was reached.<sup>60</sup>

### **Political Maneuvering Accelerates**

With the legislative session rapidly coming to an end, parity advocates sought avenues to ensure passage before session end. On September 23, 2008, the House of Representatives, operating under a suspension of rules, introduced and passed H.R. 6983, a parity bill that included the substantive provisions agreed to in the conference committee and satisfied PAYGO provisions with deferred tax breaks on worldwide income taxes. The Senate took no action on the bill.<sup>61</sup>

Then, the Senate passed a compromise mental health parity bill by bundling it with other legislation and without providing any offset for the legislation. The House took no action on this bill.<sup>62</sup>

### **Economic Emergency Shifts National Focus, and Provides Political Opportunity**

On September 15, 2008, the already lagging American economy plunged when Lehman Brothers, a leading financial services firm, declared bankruptcy. Lehman Brothers' inability to secure a buyer or temporary financing to continue operating sent a shock wave through the American public and banking sector, causing a lending and liquidity crisis and drop in consumer confidence. With the presidential election less than two months away, Republican nominee Senator John McCain (R-AZ) announced that he was suspending his campaign to return to Washington D.C. to work on a Congressional response to the crisis.

Coordinated action by congressional leadership in both houses created a bill aimed at purchasing bad assets from troubled banks in order to stabilize bank balance sheets and reduce uncertainty regarding the worth of remaining bank assets, and restoring confidence in the credit markets. This legislative package was offered as an amendment to the already pending H.R. 3997, the Heroes Earnings Assistance and Tax Relief Act of 2007, which sought to provide tax relief to members of the armed services and emergency volunteers. The House of Representatives rejected the amendment by a 205-228 vote on September 29, 2008.<sup>63</sup>

Spurred by a desire to pass economic stabilization legislation before the end of the term and the upcoming election, House leadership sought to bolster support for the economic stabilization package and determine an appropriate vehicle for passage of the package. Sensing an opportunity to achieve mental

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<sup>60</sup> "Finance Staff, Leaders Prep Push on Mental Health Parity," *CongressDailyAM*, September 10, 2008; "Pay-For Might Doom Mental Health Parity Bill in Senate," *CongressDailyAM*, September 19, 2008.

<sup>61</sup> Sundararaman, October 29, 2008.

<sup>62</sup> Sundararaman, October 29, 2008.; "Votes Set Up Game of Chicken on Mental Health Parity," *CongressDailyAM*, September 24, 2008.

<sup>63</sup> House, *Heroes Earnings Assistance and Relief Tax Act of 2007 – Legislative History*, 110<sup>th</sup> Cong., H.R. 3997, accessed on December 2, 2009 at <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR03997:@@S>; Carl Hulse and David M. Herszenhorn, "Defiant House Rejects Huge Bailout; Next Step Is Uncertain," *New York Times*, September 29, 2008.

health parity, Representatives Kennedy and Ramstad began maneuvering for H.R. 1424 to be selected as the bailout vehicle bill.

Representative Kennedy met with his ailing father Senator Kennedy to consolidate Senate support for the compromise legislation. Representative Ramstad worked to gather support for H.R. 1424 as a vehicle for the bailout by rallying potential additional votes for the bailout package if it was attached to H.R. 1424. Representative Ramstad himself had voted against the original bailout package. The remaining disagreements over how to finance the offsets needed to comply with the PAYGO provisions would be resolved by including mental health parity in the larger economic stabilization act, where overarching fiscal offsets would compensate for parity.

Armed with a powerful alliance in both the House and Senate, H.R. 1424 was selected as the vehicle bill for an expanded and compromised Emergency Economic Stabilization Act of 2008. The Emergency Economic Stabilization Act of 2008 passed the Senate on October 1, 2008 and the House of Representatives on October 3, 2008 with the support of Representatives Ramstad and Kennedy. Just hours later, President George W. Bush signed H.R. 1424 – including its mental health parity provisions – into law.<sup>64</sup>

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<sup>64</sup> Sundararaman, October 29, 2008; Drew Armstrong, "Bailout Buys Mental Health Parity Bill," *CQ Weekly*, October 6, 2008.