

Year-End Federal Mental Health Legislation

A bill was introduced on November 15, 2022 by Senators Ron Wyden (D-Ore.) and Tina Smith (D-Minn.) that is intended to address inaccurate healthcare provider listings or “ghost networks” and create stronger enforcement standards to protect those seeking mental health care. In addition, there has been a flurry of other mental health-related legislation being introduced for potential consideration in a year-end government funding bill. This Health Policy in Transit focuses on the Wyden-Smith bill, since it would have the most direct impact on employer plan sponsors, and, as described below, we are concerned about the compliance and potential financial burden this would place on employers.

Senators Wyden and Smith’s [Behavioral Health Network and Directory Improvement Act \(S. 5093\)](#) would address these issues by holding health plans to a higher network adequacy standard and requiring health plans to conduct independent audits to ensure their provider networks are up-to-date and accurate.

Specifically, the bill would:

- [Strengthen and enforce directory accuracy standards](#). The bill would require health plans to conduct independent audits and the federal government to conduct separate audits on the accuracy of health plans’ provider networks and to post this information publicly online and authorize civil monetary penalties (CMPs) against health plans for failure to comply with network adequacy and directory accuracy requirements.
- [Ensure providers submit timely information to plans](#). The bill would require providers to regularly update the information they submit to health plans, including timely information on whether they can accept new patients.
- [Hold health plans accountable to higher network adequacy standards](#). The bill would increase the standard for the adequacy of a health plan’s mental health and substance use disorder provider network, including by considering the ratios of behavioral health providers to patients, waiting times for an appointment, and geographic accessibility of providers.
- [Protect the rights of consumers](#). The bill would establish State and Tribal ombudsman programs to educate individuals on their rights under the federal mental health parity law. In addition, the bill requires health plans to inform individuals enrolled in a plan with a ghost network that they may be eligible for a refund if they see a provider incorrectly listed as in-network in the plan.
- [Improve mental health provider network participation](#). The bill would require federal agencies to establish a standard for parity in reimbursement for mental health and physical health services by private health plans.

The National Alliance agrees with the need to focus on improving behavioral health network access and mitigating the issues of network providers not available to see new patients. However, we are seriously concerned that this bill would impose significant burdens and potential penalties on plan sponsors. Whether this legislation may be included in any lame duck packages is unclear.

We believe passage of the previous bi-partisan legislation –Restoring Hope for Mental Health and Wellbeing Act - could constructively help to address a number of measures to improve access, including investing in behavioral health integration into primary care.

Separately, we are also advocating for improved flexibility in the treatment of tele-behavioral health and more flexible treatment of mental health relative to health plan deductibles.

Earlier this year, a separate bill, the Restoring Hope for Mental Health and Well-Being Act (H.R. 7666), passed the U.S. House of Representatives with overwhelming bipartisan support. The legislation, which reauthorizes several federal mental health treatment and recovery programs and promotes the integration of behavioral and primary health care, can provide essential support to bolster the nation’s mental health and substance abuse care system and could be considered in the lame duck session. We signed a letter spearheaded by the American Benefits Council supporting this bill.