REGENT UNIVERSITY

Key ethical and legal considerations related to the impact of legislative changes managing health insurance access, cost, and behavioral health parity

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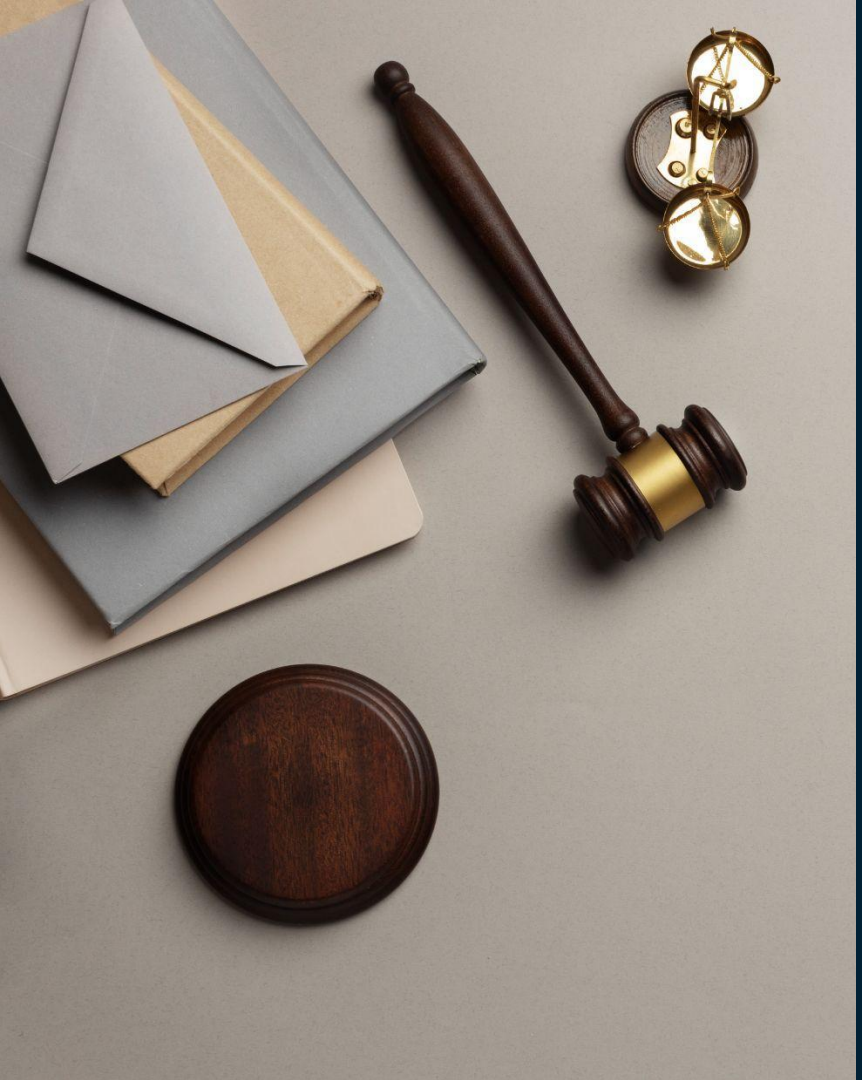
VACP Fall 2025 Conference



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GOALS

To identify and understand historical legislative changes affecting psychological practice in the area of healthcare access, cost, and mental health parity

To identify and understand the impact of state and federal law on ethical obligations and clinical decision making

To identify strategies for adapting practice in response to legislative developments and strategies for engaging in advocacy efforts to influence policy making affecting mental health care

UNDERSTANDING THE LEGISLATIVE PROCESS

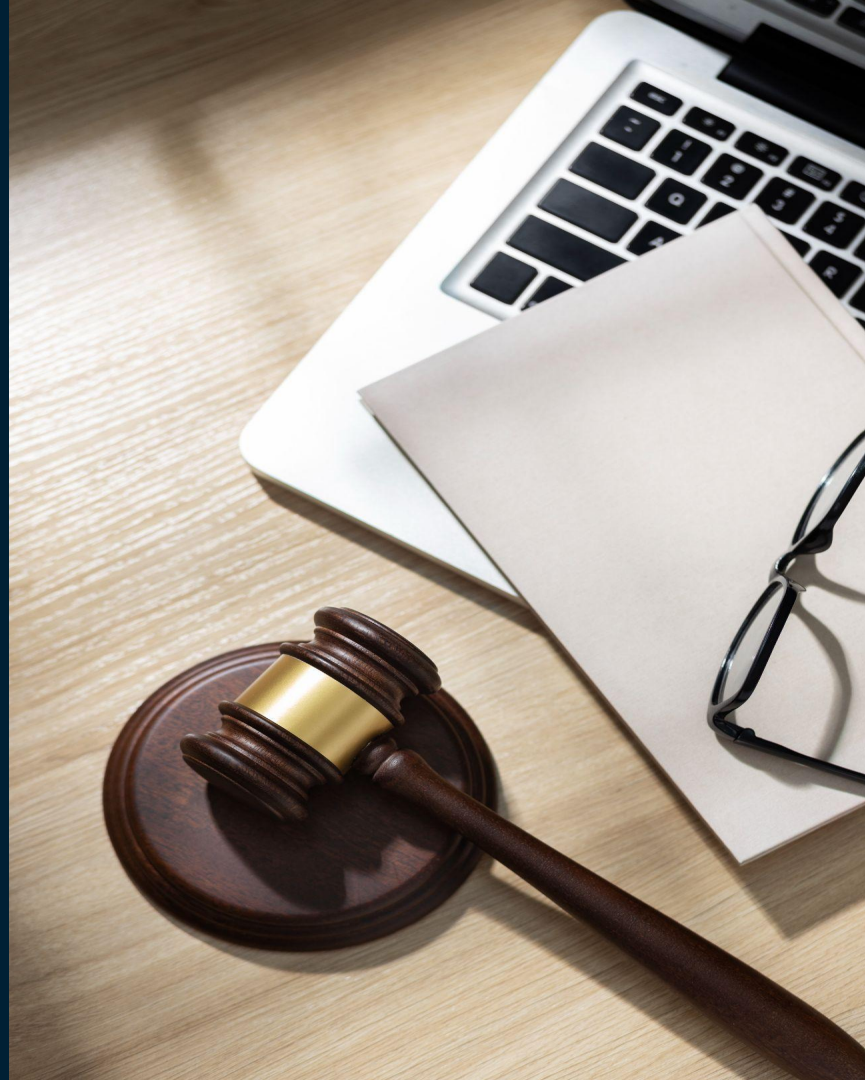
How laws are made:

- Representative sponsors a bill.
  - Can be from either House or Senate
- The bill is assigned to a committee to be studied
- If the committee releases the bill, the body votes on it.
- Passed to the other side of Congress, where it goes through the same process of committee assignment, release, and vote.
- Afterwards, the bill can either be signed into law or vetoed by the President.
  - 10 day period to sign or veto
  - If vetoed, the bill can still be put into law by a 2/3rds vote of both the House and Senate.

Executive orders function differently from legislation and are not considered legislation, despite having the power of law.

BRANCHES OF GOVERNMENT

- Legislative branch
  - Exists both at federal and state level
  - Operates specifically to create statutes
  - All legislation **must** adhere to the Constitution
- Executive branch
  - Operates solely to *execute* the law
  - All operations **must** adhere to the law and to the Constitution
- Judicial branch
  - Operates specifically to *interpret* the law and apply the law to specific scenarios (case law)
  - Decisions **must** adhere to the Constitution



THE SOURCES OF LAW

WRITTEN CONSTITUTIONS

- The most basic framework for the government
- State & federal have their own Constitutions
  - Grants powers to the state and federal government
  - States retain powers not granted to federal government
    - 10th Amendment

STATUTES/LEGISLATION

- "Black letter law"
- Recorded in the U.S. Code (federal law) or in the state's Code (state law)
  - Virginia: https://law.lis.virginia.gov/vacode/
- Interpretation
  - Legislative intent
  - Purpose & history
  - Consistency across provisions

ADMINISTRATIVE LAW/REGULATIONS

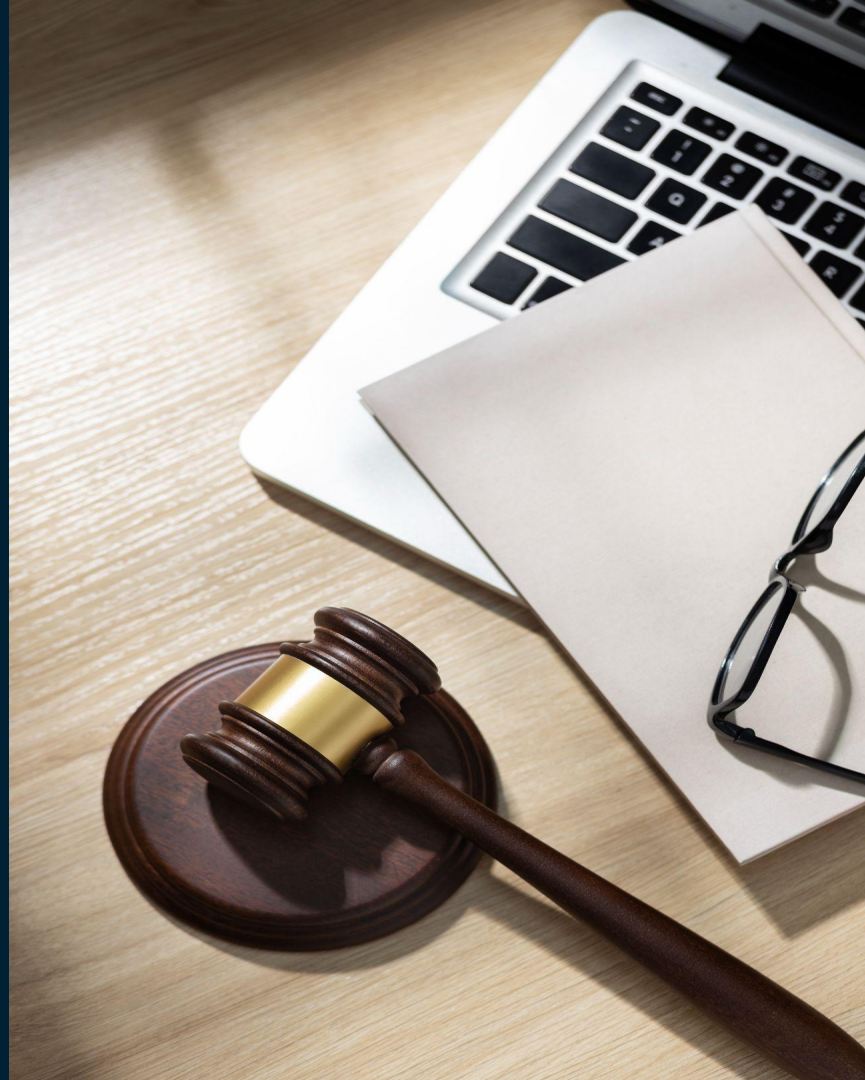
- Final Rule

JUDICIAL DECISIONS

- Also known as "common law"
- Courts can strike down unconstitutional laws
- *Stare decisis*
  - Almost all decisions are based on previous similar cases
- Case specific

ADMINISTRATIVE LAW (REGULATIONS)

- Public law governing agency rules
- Examples:
  - Center for Medicare and Medicaid Services (CMS)
  - Food and Drug Administration (FDA)
  - State licensing boards
- Rules and regulations create the mechanisms by which the statutes are implemented.
- Agencies cannot propose a rule without authority granted by law.
- Process:
  - Proposed rule
  - Posted for public comment in the Federal Register
  - Final rule published and recorded in the Federal Register and codified in the Code of Federal Regulations (CFR)



REGULATORY VS. STATUTORY CHANGES

- Statutory: Created by legislative bodies (state or federal)
  - Broad strokes
  - Create the framework of the law
- Regulatory: Rules created by an executive agency to implement statutes
  - Specific rules/mechanics to enforce statutes
  - Implemented to enforce and make the framework operate

MENTAL HEALTH PARITY

MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF 2008 (MHPAEA)

- Requires mental health (MH) and substance use disorder (SUD) benefits to be offered **on par with medical/surgical benefits** for group health plans.
- Initially mental health and later expanded to substance use disorders
- **Non Quantitative Treatment Limitations (NQTLs):** prior authorizations, network adequacy, reimbursement rates — must be applied comparably to MH/SUD and medical/surgical benefits
- 2013 Final Rule implementing MHPAEA which took effect January 2014 - Final Rule Federal Register 2013

MENTAL HEALTH PARITY

2024 FINAL RULE

- Released by Departments of Labor, Health and Human Services, and the Treasury
- Statement of U.S. Departments of Labor, Health and Human Services, and the Treasury regarding enforcement of the final rule on requirements related to the Mental Health Parity and Addiction Equity Act
- Modifications in response to Consolidations Appropriations Act of 2021
    - Required parity for individual health insurance
    - Permanent parity for telehealth
    - Medicare patient can permanently receive telehealth at home
    - Must show proof of NQTLs
    - Established “meaningful benefits” and outcomes data requirements

MENTAL HEALTH PARITY

2024 FINAL RULE LITIGATION

- January 17, 2025 ERIC (Employee Retirement Industry Committee) filed lawsuit claiming 2024 Final Rule was arbitrary and capricious and contrary to the law
    - Asking to set aside certain portions of the final rule on the basis that it exceeds the regulatory authority of the Departments
- Executive order 14219 “Ensuring Lawful Governance and Implementing the President’s Department of Government Efficiency’ Deregulatory Initiative - reviews regulations to identify those that may undermine the national interest, including by imposing undue burden on small businesses or significant costs on private parties that are not outweighed by public benefits and exercise enforcement discretion

MENTAL HEALTH PARITY

Virginia Mental Health and Substance Abuse Treatment Parity - Update 2025

38.2-3412.1. Coverage for mental health and substance use disorders. (2025 updated section)

DID MENTAL HEALTH PARITY HAVE A POSITIVE IMPACT?

- Harwood et al. (2017)
  - Optum Behavioral Health participants
  - Increases in monthly per-member total spending, outpatient utilization, intermediate care utilization, and inpatient utilization
- Cook et al. (2020)
  - Looked at Medicare and Medicare Advantage plans
  - Significant increases in use of mental health treatment
- Haffajee et al. (2019)
  - Commercially insured
  - Out of pocket spending decreased but mental health visits increased
- Friedman et al. (2018)
  - Looked at substance use disorder treatment
  - Optum participants
  - Decreases in inpatient and outpatient detox copayments

HEALTHCARE ACCESS

PATIENT PROTECTIONS AND AFFORDABLE CARE ACT (ACA) OF 2010

- Federal Register :: Patient Protection and Affordable Care Act; Exchange Program Integrity
- More of a Social Justice Approach
  - Coverage expansions
  - Insurance market reforms
  - 10 “essential health benefits” Federal Register Final Rule 2013
  - Mandates to participate
  - Public health reforms
  - Workforce improvements
  - No denial of coverage
  - Cannot charge more due to health status or gender
  - Young adults on parents’ plan until 26

(Kinney, 2015; Shi, 2023; Showalter, 2020; Smith, 2023; Howe et al., 2022)

HEALTHCARE ACCESS

ACA POSITIVES

- Number of uninsured has decreased steadily
  - Based on US Census 2010-2018 uninsured rate dropped from 16% (48.6 million) to 8.8% (28.3 million) (Howe et al., 2022)
  - https://www.healthaffairs.org/content/forefront/two-new-federal-surveys-show-stable-uninsured-rate
  - https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-264.pdf
  - As of August 2023 7.7% of US population uninsured

(Smith 2023)

HEALTHCARE ACCESS

ACA LITIGATION

- NFIB v. Sebelius, 567 U. S. 1, 132 S. Ct. 2566 (2012)
  - Upheld most salient provisions of the ACA
- King v. Burwell, 576 U. S. ___, 135 S. Ct. 2480 (2015)
  - Upheld individual mandate
- Additional litigation in February 2018 and August 2018

(Smith, 2023; Howe et al., 2022)

HEALTHCARE ACCESS

ACA REGULATION CHANGES

- 2016 changes to individual mandate, - made it easier to get an exemption and allowed for policies that did not meet ACA requirements
- More than 60 bills (between 2017-2018) to repeal the law entirely
- 2017 tax reform bill reduced the penalty to 0 - Effectively ending the individual mandate

(Smith, 2023; Howe et al., 2022)

HEALTHCARE ACCESS

ONE BIG BEAUTIFUL BILL

- Kaiser Family Foundation https://www.kff.org/medicaid/how-will-the-2025-reconciliation-law-affect-the-uninsured-rate-in-each-state/
- Changes to Medicaid and that ACA Marketplace and other policies

Not completely clear how this will play out over time.

Now is the time for advocacy

MULTIPLE PRACTICAL PROBLEMS

- Practical aspects - Still have major problems
  - Individuals who qualify for subsidized coverage have not enrolled
  - Confusion and mistrust of the marketplace
  - Affordability is still a barrier
  - Immigrants are not eligible for any subsidized coverage due to undocumented status
  - May not be eligible for subsidized coverage because of their employers plan but it costs more than the Marketplace plans
  - High premiums and premium increases
  - High cost sharing - deductibles, copays, coinsurances even with insurance

(Smith, 2023)

HEALTHCARE COST

CONSOLIDATED APPROPRIATIONS ACT (CAA) OF 2021

- Included the No Surprises Billing Act
- No Surprises: Understand your rights against surprise medical bills | CMS
- cms.gov/nosurprises/consumers

HEALTHCARE COST

Medicare and Medicaid already had protections against surprise billing

- Cannot bill a Medicare Patient more than Medicare would have paid as a participating provider (balance billing)
- If you are a nonparticipating provider there are limits on balance billing - cannot be more than 15% more than what Medicare would have paid
- You can charge what you want only if you have officially opted-out of Medicare with ABN (Advanced Beneficiary Notice
    - Nonparticipating and opt out are two different things
- Cannot bill a dual eligibility individual for anything

(Colby et al., 1995)

HEALTHCARE COST

Federal Register 87(165) Discussion of ACA

- Out of network cost sharing and prohibiting balance billing - particularly for emergency services and nonemergency services provided by nonparticipating providers

July 2021 interim final rules

- Prohibit balance billing; charges to patients have certain regulations; insurance companies have to provide certain information to providers (allow for a 30 day open negotiation and federal government can step in as needed IDR Independent Dispute Resolution)

October 2021 interim final rules

- Federal IDR process

HEALTHCARE COST

VIRGINIA ALSO HAS A NO SURPRISES BILLING ACT

- § 38.2-3445.01. Balance billing for certain services; prohibited.
- Your Rights and Protections Against Surprise Medical Bills https://www.scc.virginia.gov/media/sccvirginiagov-home/consumer-home/insurance/life-amp-health/balance-billing-protection/balance-billing-consumer-rights-(1).pdf
- Can report to federal agencies 1-800-985-3059
- Can file complaint with Virginia State Corporation Commission Bureau of Insurance
  - scc.virginia.gov/pages/File-Complaint-Consumers
  - or call 1-877-310-6560

HEALTHCARE COST

TRUMP EXECUTIVE ORDER FEBRUARY 25, 2025

Making America Healthy Again by Empowering Patients with Clear, Accurate, and Actionable Healthcare Pricing Information, 90 Fed. Reg. 11005 (Feb 28, 2025)

- Radical transparency
- Disclosure of actual prices of items and services (not estimates)
- Standardized and easily comparable across hospitals and health plans
- Enforcement policies

HEALTHCARE COST

VIRGINIA REGULATIONS RELATED TO CLEAN CLAIMS BILLING AND PAYMENTS

38.2-3407.15. Ethics and fairness in carrier business practices. (2025 updated section)

- Timing of payments
- Notification of defects in claims
- Interest on late payments
- Payment methods
- Transparency and Access to Policies
- Authorization protections
- Limits on retroactive denials
- Provider contracts
- Dispute mechanisms
- Non Discrimination due to litigation status
- Electronic contracting
- Provider complaints with the Commissions and no retaliation

WHY SHOULD WE BE CONCERNED?

General Principles

- Justice and Social Justice
  - Empowerment of people who are vulnerable
    - Distributive justice - concerns the criteria people and organization use to allocate limited or scarce resources
    - Equity - Access to health insurance often determines access to care
      - Already a problem with too few providers and long waitlists

- Beneficence and Nonmaleficence
  - Protection of the wellbeing of others
  - Avoid or minimize harm

- Human and Civil Rights
  - Inherent and fundamental rights, freedoms, and protections foundational to all humankind

(Showalter, 2020)

WHY SHOULD WE BE CONCERNED?

Specific codes:

- Informed consent
  - Costs
    - Good Faith Estimate (GFE)
    - Advanced Beneficiary Notice
    - Gather as much information as possible related to what the services will cost for the patient
    - Collections policies
  - Setting fees
    - Sliding scale/Reduced rate?
    - Cash discount?
    - Ignore copays/deductibles/coinsurance?

(Koocher & Keith-Speigel, 2016; Fisher, 2021)

Advocacy

- Policy Engagement
  - Participate in VACP and APA to monitor regulatory updates
  - Submit public comments when available
  - Join coalitions with other healthcare providers to push back against unfair practices
- Legislative Influence
  - Educate lawmakers on how insurance issues affect patients
  - Advocate for clearer timelines, parity enforcement, and reduced administrative burden
- Professional Voice
  - Share stories (de-identified) with policymakers to illustrate the real personal impact of unfair practices
  - Encourage APA and state associations to push for fair reimbursement and systems that are practical for smaller practices
- Patient Advocacy
  - Empower patients to understand their rights
  - Advocate for policies that protect patients from unexpected costs and coverage denials

NATIONAL AGENCIES RELEVANT TO PSYCHOLOGY PRACTICE

HHS - HEALTH AND HUMAN SERVICES

"to enhance and protect the health and wellbeing of all Americans by providing for effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services"

HEALTH RESOURCES AND SERVICES ADMINISTRATION

"primary federal agency for improving healthcare to people who are geographically isolated, economically or medically vulnerable. HRSA works to improve health through access to quality services, a skilled health workforce and innovative programs

CMS - CENTER FOR MEDICARE AND MEDICAID SERVICES

"supports innovative approaches to improve quality, accessibility, and affordability"

APA AND SPECIALIST ORGANIZATIONS

APA for national issues;
Specialist organizations may also be helpful

(Howe et al., 2022)

STATE AGENCIES RELEVANT TO PSYCHOLOGY PRACTICE

VIRGINIA DEPARTMENT OF HEALTH PROFESSIONALS

Statutory authority and Chapter 36 of Title 54.1 of the Code of Virginia

https://www.dhp.virginia.gov/media/dhpweb/docs/psych/leg/Psychology.pdf

STATE CORPORATION COMMISSION (SCC)

strive to apply law and regulation to balance the interests of citizens, businesses, and customers in regulating Virginia's business and economic concerns and work continually to improve the regulatory and administrative processes

https://www.scc.virginia.gov/

VACP (VIRGINIA ACADEMY OF CLINICAL PSYCHOLOGISTS)

"the advancement of Clinical Psychology as a science, as a profession, and as a means of promoting human welfare by developing and encouraging high standards of ethics and training; by providing the opportunity for the exchange of experience and research through discussions, presentation and publications; and by educating the public in the purposes and goals of the art and science of the practice of clinical psychology for the promotion of the public welfare."

https://www.vapsych.org/

WHERE TO FIND STATE AND FEDERAL REGULATIONS

APA	For national issues
VACP	For national and state issues
Organizational list serves	I.e. VACP listserv
Federal register (National Archives)	FederalRegister.Gov Subscribe for daily email or RSS feeds
National Archives' GovInfo website	https://www.govinfo.gov/app/collection/fr/
Regulations.Gov	Search for regulations, read daily Public Inspection, monitor public comment periods

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THANKS

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