RESOLVED, That the American Bar Association supports the rights of all Americans, and particularly our nation’s veterans, to access adequate mental health and substance use disorder treatment services and coverage as required to be made available under federal and state law.

FURTHER RESOLVED, That the American Bar Association urges the States, in implementing the essential health benefits provisions of the Patient Protection and Affordable Care Act, to fully and adequately provide for mental health and substance use disorder coverage.

FURTHER RESOLVED, That the American Bar Association urges Congress, the federal Departments of Labor, Health and Human Services and the Treasury, and state and territorial legislative, regulatory and administrative bodies, to ensure that, in the implementation of the health insurance parity requirements of the Mental Health Parity and Addiction Equity Act of 2008 and in the essential health benefits provisions of the Patient Protection and Affordable Care Act, a uniform and plain language disclosure of the terms of coverage and criteria used in making coverage decisions is required across all insurance plans and public benefit plans to ensure that all individuals are able to make informed, appropriate choices in accessing coverage of mental health and substance use disorder treatment services at parity with other health benefits coverage.
I. Introduction

The American Bar Association (ABA) has maintained policies for nearly forty years that support access to health care for all Americans. At this time in our nation’s history, the need for access to health care is highlighted by the vast numbers of veterans returning from the wars in Iraq and Afghanistan who manifest post traumatic stress disorder (PTSD), brain trauma and other mental health and substance use disorders. A recent study conducted by Stanford University found that rates of PTSD among service members deployed in Iraq and Afghanistan may be as high as 35 percent.\(^1\) With over two million troops deployed to Iraq and Afghanistan, that number approximates 700,000 veterans who do or will suffer from PTSD. These numbers are double previously projected numbers because, unlike prior projections, this study factors in delayed onset of PTSD, which is common. There has never been a more critical need for supporting the full and adequate provision of mental health and substance use disorder coverage under the Mental Health Parity and Addiction Equity Act of 2008 and in implementing the “essential health benefits” provisions of the Patient Protection and Affordable Care Act, as well as the disclosure of information necessary for all Americans, and pointedly, our nation’s veterans, to make informed, appropriate choices with respect to health care coverage.

II. The Federal Parity Law and ACA

In October 2008, President George W. Bush signed into law the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (the federal parity law). The federal parity law requires group health insurance plans (those with more than 50 insured employees) that offer coverage for mental health and substance use disorders to provide those benefits in a way no more restrictive than all other medical and surgical procedures covered by the plan. The federal parity law does not require group health plans to cover mental health and substance use disorder benefits, but, when plans do cover these benefits, they must be covered at levels that are no lower and with treatment limitations that are no more restrictive than those applicable to the other medical and surgical benefits offered by the plan.

In March 2010, President Obama signed into law the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (together referred to as the ACA), which were intended to make health insurance coverage more affordable for individuals, families, and the owners of small businesses. The ACA is one aspect of a broader movement toward a reformed behavioral health system and will provide one of the largest expansions of mental health and substance use disorder coverage in a generation. Beginning in 2014, all new small group and individual market plans will be required to cover ten “essential health benefit” categories (collectively, Essential Health Benefits, or EHB), including mental health and substance use disorder services, and will be required to cover them at parity with medical and surgical benefits.

In addition, on April 24, 2013, the Office of National Drug Control Policy (ONDCP) released the President’s national blueprint for drug policy, the 2013 National Drug Control Strategy. “This document builds on drug policy reform achieved during the past three years, beginning with the Administration’s inaugural Strategy, released in 2010. This Strategy calls for drug policy reform rooted in scientific research on addiction, evidence-based prevention programs, increased access to treatment, a historic emphasis on recovery, and criminal justice reform.” The Obama Administration’s plan to reduce drug use and its consequences—the National Drug Control Strategy—represents a 21st century approach to drug policy. “This science-based plan, guided by the latest research on substance use, contains more than 100 specific reforms to support [the ONDCP’s] work to protect public health and safety in America.” The current strategy emphasizes prevention, intervention and expanded access to treatment through the ACA and the federal parity law.

A. ASPE Office of Health Policy, Research Brief February 2013

A recent Assistant Secretary for Planning and Evaluation (ASPE) Research Brief entitled Affordable Care Act Will Expand Mental Health and Substance Use Disorder Benefits, (ASPE Brief) provides an overview of our nation’s current healthcare reform initiatives. The ASPE Brief explains that, “while almost all large group plans and most small group plans include coverage for some mental health and substance use disorder services, there are gaps in coverage and many people with some coverage of these services do not currently receive the benefit of federal parity protections.” The final rule implementing the Essential Health Benefits provisions directs non-grandfathered health plans in the individual and small group markets to cover mental health and substance use disorder services, as well as to comply with the federal parity law requirements, beginning in 2014.

As the ASPE Research Brief describes:

The Affordable Care Act and its implementing regulations, building on the federal parity law, will expand coverage of mental health and substance use disorder benefits and federal parity protections in three distinct ways: (1) by including mental health and substance use disorder benefits in the Essential Health Benefits; (2) by applying federal parity protections to mental health and substance use disorder benefits in the individual and small group markets; and (3) by providing more Americans with access to quality health care that includes coverage for mental health and substance use disorder services.

http://www.whitehouse.gov/ondcp/drugpolicyreform
Ibid.
Ibid.
ASPE Research Brief, Affordable Care Act Will Expand Mental Health and Substance Use Disorder Benefits, by Kirsten Beronio, Rosa Po, Laura Skopec and Sherry Glied, ASPE Office of Health Policy February 2013 (Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation http://aspe.hhs.gov).
Ibid. “Grandfathered” plans are plans that were in place when the Affordable Care Act was enacted that have not been changed in certain specified ways.
Ibid. The Essential Health Benefits, Actuarial Value, and Accreditation Final Rule was released February 20, 2013.
1. Essential Health Benefits

First, under the statute, treatment for mental health and substance use disorders is a benefit category covered as part of the package of Essential Health Benefits available to all Americans in non-grandfathered plans in the individual and small group markets as of January 1, 2014. The Essential Health Benefits final rule ensures that consumers purchasing insurance can be confident that their health plan will provide the care they need if they get sick. Including mental health and substance use disorder treatment in this package means—

• About 3.9 million people currently covered in the individual market will gain either mental health or substance use disorder coverage or both;9

• Also, we estimate that 1.2 million individuals currently in small group plans will receive mental health and substance use disorder benefits under the Affordable Care Act.10

2. Parity in the Individual and Small Group Markets

Second, HHS finalized regulations that apply federal parity rules to mental health and substance use disorder benefits included in Essential Health Benefits. As a result, Americans accessing coverage through non-grandfathered plans in the individual and small group markets will now be able to count on mental health and substance use disorder coverage that is comparable to their general medical and surgical coverage.

• Under this approach, 7.1 million Americans covered in the individual market who currently have some mental health and substance use disorder benefits will have access to coverage of Essential Health Benefits that conforms to federal parity protections as provided for under the Affordable Care Act and the Mental Health Parity and Addiction Equity Act.11

• In addition, because the application of parity to Essential Health Benefits will also apply to those currently enrolled in non-grandfathered plans in the small group market, 23.3 million current enrollees in small group plans will also receive the benefit of having mental health and substance use disorder benefits that are subject to the federal parity law.12,13

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9Ibid, p. 2, n. 7 “Estimate based on 2011 Medical Loss Ratio filings indicating that 11 million people are covered in the individual market, and 35% lack mental health coverage, substance use coverage, or both. This estimate includes some individuals currently enrolled in grandfathered coverage.”

10 Ibid. n. 8 “Estimate based on the finding that approximately 95% of small group plans cover mental health and substance use disorder services. See Issue Brief, “Essential Health Benefits: Comparing Benefits in the Small Group Products and State and Federal Employee Plans,” ed. U.S. Department of Health and Human Services (2011). This estimate includes some individuals currently enrolled in grandfathered coverage.”

11Ibid, p.3, n. 9. “Estimate based on 2011 Medical Loss Ratio filings indicating that 11 million people are covered in the individual market. This estimate includes some individuals currently enrolled in grandfathered coverage.”

12Ibid. n. 10. “State parity laws often already apply to these small group plans.”

B. State Selection of EHB-benchmark plan under ACA

On February 25, 2013, the U.S. Department of Health and Human Services (HHS) issued a final rule setting forth standards for coverage of Essential Health Benefits under the ACA. As of January 1, 2014, non-grandfathered insurance plans in the individual and small group market and those in the health insurance marketplaces will be required to provide coverage of benefits or services in 10 separate categories, including mental health and substance use disorder services, and behavioral health treatment. A qualified health plan (QHP) is one that provides a benefits package that covers EHB, includes cost-sharing limits, and meets minimum value requirements. The scope of EHBs has been delegated to each state, which is permitted to identify a single EHB-benchmark plan (defined as the standardized set of essential health benefits that must be met by a QHP) from four choices. If a state does not make a selection, the default base-benchmark plan will be the first option discussed above. A benchmark plan that does not provide the requisite coverage in each of the 10 categories of EHBs, must be supplemented using the process outlined in the rule. A multi-state plan must meet benchmark standards set by the U.S. Office of Personnel Management (OPM). For state-by-state proposed essential health benefits plans, updated as of Feb. 20, 2013, see http://www.ncsl.org/issues-research/health/state-ins-mandates-and-aca-essential-benefits.aspx

It is, therefore, important that states, in selecting EHB-benchmark plans and in supplementing such plan designs when applicable, fully and adequately provide for mental health and substance use disorder coverage.

III. Current Importance of Federal Parity and ACA’s Essential Health Benefits - Our Nation’s Veterans

A. Context

The behavioral healthcare needs of our nation’s returning veterans is a prime example of the need for full implementation of the federal parity law and the ACA’s EHBs. Since October 2001, over two million U.S. troops have been deployed to support combat operations in Afghanistan and Iraq. Many have been exposed for prolonged periods to combat-related stress or traumatic events. Safeguarding the mental health of these veterans is a vital part of honoring those who have served our nation. Veterans returning from the wars in Iraq and Afghanistan (IAVAs) are manifesting unprecedented levels of PTSD and traumatic brain injury, creating behaviors that, if left untreated, can cause loss of home, employment and lives, as well as triggering involvement with the criminal justice system. These health conditions affect mood, thoughts and behavior, often remaining “invisible” to other service members, family, and society at large. In addition, symptoms of these conditions,
especially PTSD and depression, can have a delayed onset, appearing months (or longer) after exposure to stress.\textsuperscript{17}

In response to the surge of veterans returning with lingering problems, including mental health and substance abuse, Congress required the Department of Defense (DoD) and the Department of Veterans Affairs (VA) to study veterans’ physical and mental health, as well as other readjustment needs. The Institute of Medicine (IOM) conducted a congressionally mandated assessment in two phases. The result of the second phase, published in March 2013, \textit{ Returning Home from Iraq and Afghanistan: Assessment of Readjustment Needs of Veterans, Service Members, and Their Families} (IOM Report Brief), presents the IOM committee’s comprehensive assessment of the physical, psychological, social and economic effects of deployment on service members, their families, and communities.\textsuperscript{18} The IOM Report Brief states:

In the scientific literature, the estimates of the prevalence of those conditions among service members who served in these two conflicts [Iraq and Afghanistan] range from 19.5 to 22.8 percent for mild TBI (commonly known as concussion), 4 to 20 percent for PTSD, 5 to 37 percent for depression, and 4.7 to 39 percent for problematic alcohol use.

These military and veteran personnel often have more than one health condition. The most common overlapping health disorders are PTSD, substance use disorders, depression, and symptoms attributed to mild TBI. In 2010, nearly 300 service members committed suicide, and about half of those suicides involved service members who had deployed to Iraq or Afghanistan.

Further, military sexual trauma has been occurring in high rates throughout the U.S. armed forces, including the Iraq and Afghanistan theaters. Sexual harassment and assaults disproportionately affect women; they have both mental and physical ramifications, and in many cases these victims have a difficult time readjusting.

The depth and breadth of challenges faced by returning military service members varies and are the result of a complex interplay of factors. And today’s challenges are just a prelude to future problems. Previous wars have demonstrated that veterans’ needs peak several decades after their war service, highlighting the necessity of managing current problems and planning for future needs. Moreover, if their readjustment is to be successful, the IOM committee concludes, the difficulties that service members and veterans face must be addressed by primary prevention, diagnostics, treatment, rehabilitation, education, outreach, and community support programs.\textsuperscript{19}

For veterans, PTSD typically manifests itself by forcing the individual to repeatedly relive traumatic combat situations or to remain in a hyper-vigilant, ready-for-battle state of mind. Their military training and skills, once necessary and honorable when in the service of our country overseas, are troubling upon their return stateside. These behaviors, combined with the

\textsuperscript{17} Institute of Medicine, Report Brief, March 2013, \url{http://www.iom.edu/~/media/Files/Report%20Files/2013/Returning-Home-Iraq-Afghanistan/Returning-Home-Iraq-Afghanistan-RB.pdf}

\textsuperscript{18} Ibid.

\textsuperscript{19} Ibid, p. 2.
uncertainty of deployment, repeated and extended tours of duty, and the constant peril of facing an unknown enemy, start to explain the difficulties veterans face when the uniform comes off and the normal rigors of civilian life resume.

The trauma from TBI is most pronounced in Iraq and Afghanistan veterans who have survived roadside bomb blasts and the successive shock waves. These explosions literally rattle the service member’s brain. Common symptoms of TBI include difficulty remembering, concentrating or making decisions; slowness in thinking, speaking, acting or reading; getting lost or easily confused; feeling tired all the time; having no energy or motivation; mood changes (feeling sad or angry for no reason); headaches or neck pain that does not go away; blurred vision; light-headedness, dizziness or loss of balance; nausea; changes in sleep patterns; loss of sense of smell or taste; and ringing in the ears. Veterans suffering from PTSD and TBI return from their military tours changed – sometimes temporarily, other times permanently. Sadly, many veterans prefer the diagnosis of TBI over PTSD due to the social stigma and discrimination that may accompany a diagnosis of PTSD, especially in the military milieu.

B. Veterans Healthcare under Private Insurance

Our dynamic veterans struggle for healthcare through a claims backlog at the Department of Veterans Affairs that has exploded by 2,000% since President Obama took office. Importantly, a vast number of our all-volunteer young IAVAs do not qualify for VA care, returning home seeking employment and integration into a civilian life of career and family. In addition, Robert A. Petzel, Undersecretary for Health at the Veterans Health Administration (VHA), said the agency estimates that there are about 8 million veterans who are eligible for VHA coverage, yet who are not enrolled, primarily because they have private health insurance. Of the estimated 8 million veterans not enrolled in the VHA coverage, approximately 1.3 million are uninsured. Robert A. Petzel and Patricia Vandenberg, Assistant Deputy Undersecretary for Health for Policy and Planning at VHA, said officials also believe that many veterans who are, in fact, currently enrolled in the VHA system will drop out in order to be able to access advance tax credits offered in the health insurance exchanges to people earning up to 400 percent of the federal poverty level to facilitate enrollment in private health insurance plans.

In addition, it is important to note that VHA care is not always less expensive. “Some veterans have copays for VHA inpatient and outpatient services, extended care and medication, and they might be able to get a better deal with subsidized care on the exchange, the VHA officials said.

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21 Eligibility for VA health care is dependent upon a number of variables, including the nature of a veteran's discharge from military service, length of service, VA adjudicated disabilities (commonly referred to as service-connected disabilities), income level, and available VA resources, among others. http://www.military.com/benefits/veterans-health-care/va-health-care-eligibility.html
22 CQHEALTHBEAT NEWS, April 24, 2013 – 5:26 p.m., House Members Worry About Flood of New Patients in Veterans Health Care, by Jane Norman, CQ HealthBeat Associate Editor.
23 Ibid.
24 A health insurance exchange, or marketplace, is a set of government-regulated and standardized health care plans in the United States, from which individuals may purchase health insurance eligible for federal subsidies. All exchanges must be fully certified and operational by January 1, 2014, under federal law.
25 CQHEALTHBEAT NEWS, April 24, 2013 – 5:26 p.m., House Members Worry About Flood of New Patients in Veterans Health Care, by Jane Norman, CQ HealthBeat Associate Editor.
Other veterans might live in rural areas far away from VHA clinics or hospitals, and so, depending on their income levels, it’s likely better for them to buy private insurance through the exchange.”26

In light of these factors, millions of veterans are or will be covered by employer sponsored group plans or will access the health insurance exchanges for their healthcare coverage needs. The provision of quality behavioral health benefits and the disclosure of information necessary to make appropriate health care coverage decisions is essential for all Americans, and pointedly, for our veterans.

IV. Health Insurance Disclosure and Transparency under the Federal Parity Law and the ACA

A. The Federal Parity Law

On February 2, 2010, an interim final rule was issued implementing certain provisions of the federal parity law.27 A final rule is expected to be issued by the end of 2013. The interim final rule provides that, upon request: (1) plan administrators must make the criteria for medical necessity determinations available to any plan beneficiary, participant or contracting provider as required under existing federal and state laws; and (2) plan administrators or health insurance issuers must provide the reason for any denial of reimbursement or payment for services to the participant or beneficiary.28 In addition, Frequently Asked Questions released by the Department of Labor (DOL) in December 2010, state that under ERISA, documents with information on the medical necessity criteria for both medical/surgical benefits and mental health/substance use disorder benefits are plan documents, and copies of plan documents must be furnished within 30 days of a beneficiary’s request.29 Additionally, if a provider or other individual is acting as a patient’s authorized representative in accordance with the DOL’s claims procedure regulations at 29 C.F.R. § 2560.503-1, the provider or other authorized representative may request these documents.30

B. The ACA

On February 14, 2012, a final rule was issued implementing the Affordable Care Act (ACA) requirement that all health plans provide a uniform summary of coverage for all enrollees and applicants.31 The idea of providing easy-to-understand summaries of coverage is, in fact, the most popular provision in the ACA, according to a recent Kaiser Family Foundation tracking poll.32 That finding suggests prevailing consumer frustration over the complexity of health insurance and the difficulty people face when trying to evaluate health insurance choices and

26 Ibid.
29 29 C.F.R. § 2520.104b-1.
32 http://www.kff.org/kaiserpolls/8259.cfm
understanding how coverage works.\footnote{Health Insurance Transparency under the Affordable Care Act, Kaiser Family Foundation, March 8, 2012, http://policyinsights.kff.org/2012/march/health-insurance-transparency-under-the-affordable-care-act.aspx} Starting in the fall of 2012, as health plans and health insurance policies are offered or renewed, insurers and plan sponsors will have to provide enrollees and applicants with a uniform summary of benefits and coverage (SBC). All individual health insurance policies and group health plans must provide this summary. The SBC is intended to give consumers consistent information about what health plans cover and what limits, exclusions and cost-sharing requirements apply. The final rule requires two illustrations of typical patient out-of-pocket costs for common medical events (routine maternity care and management of diabetes).\footnote{77 Fed. Reg. 8698.} Other care scenarios illustrating how coverage works for a broader set of benefits (such as expensive outpatient medical therapies, surgery, and mental health care) will be required at some time in the future. Non-grandfathered plans must also disclose other information that would help consumers understand how reliably the plan reimburses claims for covered services, whether the provider network is adequate to assure access to covered services, and other practical information.\footnote{Ibid.}

V. RELATED ABA POLICY

The ABA has long history of policies that oppose any form of discrimination against persons seeking to recover from mental health and/or substance abuse conditions. The ABA also has a history of policies that address the special needs of veterans relating to service-related injuries, disorders and mental health and substance abuse needs.

At the 1972 Midyear Meeting, the House of Delegates approved the Uniform Alcoholism and Intoxication Treatment Act, which provides for treatment of alcoholics and intoxicated persons instead of subjecting such persons to criminal penalties, establishes facilities and machinery for treatment of such persons, and provides for voluntary commitment to a treatment facility or involuntary commitment by court order.

At the 1975 Midyear Meeting, the ABA reaffirmed its support for the Uniform Alcoholism and Intoxication Treatment Act drafted by the National Conference of Commissioners on Uniform State Laws and urged states that had not already done so to utilize the newly available federal funding (P. L. No. 93-282) to implement its provisions. The ABA also generally reaffirmed its support for the principle of decriminalization of alcoholism.

At the 1994 Midyear Meeting, the House of Delegates approved a policy supporting development of a comprehensive, systemic approach to addressing the needs of defendants with drug and alcohol problems through multidisciplinary strategies that include coordination among the criminal justice, health, social service and education systems and the community; urged the courts to adopt certain treatment-oriented, diversionary drug court programs as one component of a comprehensive approach. The policy urges bar associations to facilitate the development of such programs that result in dismissal of drug-related charges upon the completion of drug rehabilitation.
At the 1995 Annual Meeting, the House of Delegates endorsed the U. S. Sentencing Commission’s proposal to amend federal sentencing guidelines to eliminate differences in sentences based on drug quantity for offenses involving crack verses powder cocaine, and assign greater weight in drug offense sentencing to other factors that may be involved in the offense, such as weapons used, violence, or injury to another person.

At the 1995 Annual Meeting, the House of Delegates approved a policy urging bar associations to join the ABA in developing and encouraging initiatives aimed at preventing inhalant abuse.

At the 1997 Annual Meeting, the House of Delegates approved a policy supporting the removal of legal barriers to the establishment and operation of approved needle exchange programs that include drug counseling and drug treatment referrals in order to further scientifically-based public health objectives to reduce HIV infection and other blood-borne diseases and in support of the ABA’s long-standing opposition to substance abuse.

At the 2004 Annual Meeting, the House of Delegates approved a policy urging federal, state, territorial and local governments to eliminate policies that sanction discrimination against people seeking treatment or recovery from alcohol or other disease, including specific recommendations in the area of public benefits.

At the 2005 Annual Meeting, the House of Delegates approved a policy urging all state, territorial and local legislative bodies and governmental officials to repeals laws and discontinue practices that permit insurers to deny coverage for alcohol or drug related injuries or losses covered by accident and sickness insurance policies that provide hospital, medical and surgical expense coverage. The policy also supports the 2001 Amendment by the National Association of Insurance Commissioners to its model law, the Uniform Accident and Sickness Policy Provision law, for injuries involving alcohol or drugs, permitting coverage in accident and sickness.

At the 2006 Annual Meeting, the House of Delegates approved a policy urging all federal, state, territorial and local legislative bodies and governmental agencies to adopt laws and policies that require health and disability insurers who provide coverage for the treatment of both abuse of and dependence on drugs and alcohol to do so in a manner that is based on the most current scientific protocols and standards of care, so as significantly to enhance the likelihood of successful recovery for each patient.

At the 2007 Annual Meeting, the House of Delegates affirmed the principle that dependence on alcohol or other drugs is a disease, supported the principle that insurance coverage for the treatment of alcohol and drug disorders should be at parity with that for other diseases, and urged that: (1) all federal, state, territorial, tribal and local legislative bodies and governmental agencies repeal laws and discontinue policies and practices that allow health and disability insurers to provide coverage for the treatment of such disorders that is not at parity with coverage for other diseases; (2) states with mandated benefit laws that do provide coverage for the treatment of such disorders that is at parity with coverage for other diseases should establish policies and practices that ensure that such laws are enforced; and (3) the federal government should require health and disability insurers regulated under ERISA to provide coverage for the treatment of such disorders.
in a manner that is at parity with coverage for other diseases and which preserves state laws without limiting the scope of their coverage.

At the 2009 Annual Meeting, the House of Delegates approved a policy supporting federal legislation that would ensure every American access to quality health care regardless of the person's income, and without regard to the payor system, eliminating the specific payor system characteristics embodied in the recommendations adopted by the House of Delegates in 1990 and 1994.

At the 2010 Midyear Meeting, the House of Delegates approved a policy that supports the development of comprehensive, systemic approaches to address the special needs of veterans within civil and criminal court contexts, including but not limited to proceedings involving veterans service-related injuries, disorders, mental health and substance abuse needs, through programs that connect veterans to appropriate housing, treatment and services through partnerships with the local Veterans Affairs Medical Centers, community-based services and housing providers. The policy urges state, local, and territorial courts to facilitate the development of Veterans Treatment Courts, including but not limited to, specialized court calendars or the expansion of available resources within existing civil and criminal court models focused on treatment-oriented proceedings.

At the 2011 Annual Meeting, the House of Delegates approved a resolution that the American Bar Association urge Congress to amend the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA” or “the Act”), 38 U.S.C. §§ 4301–4335, by adding provisions to require employers to provide certain reasonable accommodations for returning veterans with combat injuries that may not manifest themselves until after a return to work. The policy urges Congress to: 1) amend the USERRA to provide authority for the award of comprehensive attorney’s fees, costs, and damages to redress violations of the Act; 2) amend the USERRA to make unenforceable any clause of any agreement between an employer and an employee that requires arbitration of a dispute under the Act; and 3) authorize the U.S. Department of Labor to initiate investigation and prosecution of appropriate claims to address patterns and practices of USERRA violations that rise to the level of a nationally compelling interest.

VI. RESOLUTION

The proposed resolution supports the rights of all Americans, and particularly our nation’s veterans, to access adequate mental health and substance use disorder treatment services and coverage as required to be made available under federal and state law. The ABA thereby should urge the States, in establishing the essential health benefits provisions of the ACA, to fully and adequately provide for mental health and substance use disorder coverage. The ABA should further urge Congress, the federal Departments of Labor, Health and Human Services and the Treasury, and state and territorial legislative, regulatory and administrative bodies, to ensure that, in the implementation of the health insurance parity requirements of the federal parity law and in the essential health benefits provisions of the ACA, a uniform and plain language disclosure of the terms of coverage and criteria used in making coverage decisions is required across all insurance plans and public benefit plans. This aims to ensure that all individuals are
able to make informed appropriate choices in accessing coverage of mental health and substance use disorder treatment services at parity with other health benefits coverage.

VII. CONCLUSION

All Americans, and markedly, our nation’s veterans, who suffer from mental health conditions or addictive disorders, have long since faced public and private policies and prejudices that have restricted their access to appropriate health care, thus discouraging them from seeking treatment, robbing them of hope for recovery and costing the U. S. economy billions of dollars. The American Bar Association’s mission is "To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession." The resolution promotes the goals and objectives of the American Bar Association, including Goal III, to eliminate bias and enhance diversity (objectives: promote full and equal participation in the association, our profession, and the justice system by all persons; eliminate bias in the legal profession and the justice system); and Goal IV, to advance the rule of law (objectives: increase public understanding of and respect for the rule of law, the legal process, and the role of the legal profession at home and throughout the world; hold governments accountable under law; work for just laws, including human rights, and a fair legal process; assure meaningful access to justice for all persons…). Adoption of the resolution with its report will enhance the American Bar Association’s ability to encourage the full and fair implementation of the ACA and federal parity laws to ensure that our nation’s veterans and all Americans are able to make informed and appropriate health care choices and obtain adequate coverage for mental health and substance use disorders.

Respectfully submitted,
David L. Douglass, Chair
Health Law Section
August 2013
1. **Summary of Resolution.**

The Resolution seeks to expand upon the American Bar Association’s policy in support of the rights of all Americans, and particularly, our nation’s veterans, to access adequate mental health and substance use disorder treatment services and coverage as required to be made available under federal and state law, and specifically to:

- urge the States, in establishing the essential health benefits provisions of the Patient Protection and Affordable Care Act, to fully and adequately provide for mental health and substance use disorder coverage; and
- urge Congress, the federal Departments of Labor, Health and Human Services and the Treasury, and state and territorial legislative, regulatory and administrative bodies, to ensure that, in the implementation of the health insurance parity requirements of the Mental Health Parity and Addiction Equity Act of 2008 and in the essential health benefits provisions of the Patient Protection and Affordable Care Act, a uniform and plain language disclosure of the terms of coverage and criteria used in making coverage decisions, is required across all insurance plans and public benefit plans to ensure that all individuals are able to make appropriate choices in accessing coverage of mental health and substance use disorder treatment services at parity with other health benefits coverage.

2. **Approval by submitting Entity.**

Approved by the Health Law Section Council on May 1, 2013.

3. **Has this or a similar resolution been submitted to the House or board previously?**

No.

4. **What existing Association policies are relevant to this resolution and how would they be affected by its adoption?**

This Resolution is consistent with the Association’s long-standing policies that sanction any form of discrimination against persons seeking to recover from mental health and/or substance use conditions, as well as history of policies that address the special needs of veterans relating to service-related injuries, disorders and mental health and substance abuse needs. This Resolution will enable these long-standing policies to be furthered in accordance with current federal legislation, i.e., the Patient Protection and Affordable Care Act and the Mental Health Parity Addiction and Equity Act of 2008.
5. **What urgency exists which requires action at this meeting of the House?**

This Resolution addresses needed access to and coverage for mental health and substance use disorder treatment services by over two million veterans who have returned and are returning from the Iraq and Afghanistan wars.

6. **Status of Legislation.** (If applicable)

Not applicable.

7. **Cost to the Association.**

Cost to the Association will entail advocacy efforts at all levels of federal, state and local government and administrative agencies.

8. **Disclosure of Interest.** (If applicable)

Not applicable.

9. **Referrals.**

The Health Law Section has begun distribution of the Resolution and Report to all interested entities, including, without limitation, the Standing Committee on Bioethics and the Law, Section on Administrative Law and Regulatory Practice, Section on Individual Rights and Responsibilities, Standing Committee on Legal Assistance for Military Personnel, Standing Committee on Armed Forces Law, Section on Labor and Employment Law, Commission on Law and Aging, Solo, Small Firm and General Practice Division, Section of Tort Trial and Insurance Practice, Young Lawyers Division, the Joint Committee on Employee Benefits, and Section of Real Property, Probate and Trust Law, the Judicial Center, the Section of State and Local Government Law, the Section of Criminal Justice, the Commission on Disability Rights, the Center for Human Rights, and the Government and Public Sector Lawyers Division.

We have thus far received cosponsorships of the Resolution and Report from the Commission on Disability Rights, the Solo, Small Firm and General Practice Division, the Government and Public Sector Lawyers Division and the Standing Committee on Legal Assistance for Military Personnel. We await further responses, but so far have received no negative response to the Resolution.
10. Contact Name and Address Information. (Prior to the meeting)

David Douglass (Health Law Section, Chair)
Partner
Sheppard Mullin
1300 I Street, N.W.
11th Floor East
Washington, DC20005
Ph: 202-469-4909
E-mail: ddouglass@sheppardmullin.com

J.A. Tony Patterson
310 Sunnyview Lane
Kalispell, MT59901-3129
Ph: 406-249-5671
E-mail: tpatterson@krmc.org

Gregory L Pemberton
Partner
Ice Miller, LLP
One American Square
Suite 2900
Indianapolis, IN46282-0200
Ph: (317)236-2313
E-mail: gregory.pemberton@icemiller.com

11. Contact Name and Address Information. (Who will present the report to the House?)

J.A. Tony Patterson
310 Sunnyview Lane
Kalispell, MT59901-3129
Ph: 406-249-5671
E-mail: tpatterson@krmc.org

Gregory L Pemberton
Partner
Ice Miller, LLP
One American Square
Suite 2900
Indianapolis, IN46282-0200
Ph: (317)236-2313
E-mail: gregory.pemberton@icemiller.com
EXECUTIVE SUMMARY

1. Summary of Resolution

The Resolution seeks to expand upon the American Bar Association’s policy in support of the rights of all Americans, and particularly, our nation’s veterans, to access adequate mental health and substance use disorder treatment services and coverage as required to be made available under federal and state law, and specifically to:

- urge the States, in implementing the essential health benefits provisions of the Patient Protection and Affordable Care Act, to fully and adequately provide for mental health and substance use disorder coverage; and
- urge Congress, the federal Departments of Labor, Health and Human Services and the Treasury, and state and territorial legislative, regulatory and administrative bodies to ensure that, in the implementation of the health insurance parity requirements of the Mental Health Parity and Addiction Equity Act of 2008 and in the essential health benefits provisions of the Patient Protection and Affordable Care Act, a uniform and plain language disclosure of the terms of coverage and criteria used in making coverage decisions is required across all insurance plans and public benefit plans to ensure that all individuals are able to make appropriate choices in accessing coverage of mental health and substance use disorder treatment services at parity with other health benefits coverage.

2. Summary of the Issue that the Resolution Addresses

It is vital to support the rights of all Americans to access adequate mental health and substance use disorder treatment services and coverage as required to be made available under federal and state law. As a prime example, over two million veterans have returned and continue to return from the Iraq and Afghanistan wars, a large percentage of which manifest or will manifest post traumatic stress disorder (PTSD), brain trauma and other mental health and substance use disorders. Thus, there has never been a more critical need for supporting the full and adequate provision of mental health and substance use disorder coverage under the Mental Health Parity and Addiction Equity Act of 2008 (federal parity law) and in implementing the “essential health benefits” provisions of the Affordable Care Act (ACA). In so doing, it is vital that the disclosure of information necessary for our nation’s veterans and all Americans to make appropriate choices with respect to health care coverage is made, to ensure that all Americans, and markedly, our nation’s veterans, are able to make appropriate health care choices and obtain adequate coverage for mental health and substance use disorders.

3. Please Explain How the Proposed Policy Position will Address the Issue

The proposed Resolution urges the States, Congress, federal regulatory agencies, and state and territorial legislative, regulatory and administrative bodies to ensure full implementation of the federal parity law and essential health benefits provisions of the ACA, and disclosure of terms of coverage and criteria used in making coverage decisions...
across all public and private plans, to enable veterans and all Americans to make informed, appropriate health care choices.

4. **Summary of Minority Views**

None have yet been expressed, though the Health Law Section continues to reach out to interested constituent groups to solicit input and feedback on the proposed Resolution.