APA Practice Organization

AMERICAN PSYCHOLOGICAL ASSOCIATION PRACTICE ORGANIZATION

Summary of the Wellstone-Domenici Mental Health Parity and Addiction Equity Act of 2008

Purpose. The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (The Wellstone-Domenici Parity Act), enacted into law on October 3, 2008, will end health insurance benefits inequity between mental health/substance use disorders and medical/surgical benefits for group health plans with more than 50 employees. The law becomes effective on January 1st, 2010. Under this new law, 113 million people across the country will have the right to non-discriminatory mental health coverage, including 82 million individuals enrolled in self-funded plans (regulated under ERISA), who cannot be assisted by State parity laws.

The Parity Requirement. The new law amends the Mental Health Parity Act of 1996 to require that a group health plan of 50 or more employees (or coverage offered in connection with such a plan)—that provides both medical and surgical benefits and mental health or substance use benefits—to ensure that financial requirements and treatment limitations applicable to mental health/substance use disorder benefits are no more restrictive than those requirements and limitations placed on medical/surgical benefits.

- Equity coverage will apply to all financial requirements, including deductibles, copayments, coinsurance, and out-of-pocket expenses, and to all treatment limitations, including frequency of treatment, number of visits, days of coverage, or other similar limits.
- This new law builds on the current 1996 parity law, which already requires parity coverage for annual and lifetime dollar limits.
- Mental health and substance use disorder benefits are defined broadly to mean benefits with respect to services for mental health conditions and substance use disorders, as defined under the terms of the plan and in accordance with applicable Federal and State law.
- A plan may not apply separate cost sharing requirements or treatment limitations to mental health and substance use disorder benefits.
- If a plan offers two or more benefit packages, the requirements of this Act will be applied separately to each package.
- As under the current federal parity law, mental health or substance use benefit coverage is not mandated. However, if a plan offers such coverage, it must be provided at parity in accordance with this Act.

Out-Of-Network Benefits. A group health plan (or coverage) that provides out-of-network coverage for medical/surgical benefits must also provide out-of-network coverage, at parity, for mental health/substance use disorder benefits.

Benefits Management and Transparency. As under the 1996 Mental Health Parity Act, a group health plan (or coverage) may manage the benefits under the terms and conditions of the plan. A plan will make mental health/substance use disorder medical necessity criteria available to current or potential participants, beneficiaries or providers upon request. A plan must also make reasons for payment denials available to participants or beneficiaries on request or as otherwise required.

Preservation of State Law. The current Health Insurance Portability and Accountability Act (HIPAA) preemption standard applies. This standard is extremely protective of State law. Only a State law that "prevents the application" of this Act will be preempted which means that stronger State parity and other consumer protection laws remain in place.

Small Employer Exemption. As with the current 1996 Federal parity law, small employers of 50 or fewer employees are exempt from the requirements of the Act. State parity laws will continue to apply to these employers, as well as to individual plans.

Cost Exemption. If a group health plan (or coverage) experiences an increase in actual total costs with respect to medical/surgical and mental health/substance use benefits of 1 percent (2 percent in the first plan year that this Act is applicable), the plan can be exempted from the law.

- An employer may elect to continue parity coverage regardless of this cost increase.
- The exemption shall apply for one plan year.
- A qualified actuary (member of American Academy of Actuaries) shall determine and prepare a written report regarding a plan's cost increase after a plan has complied with the Act for the first six months of the plan year involved.
- A plan shall promptly and timely notify the Department of Labor (if self-funded) or the Department of Health and Human Services (if fully-insured), the appropriate State agencies, and participants and beneficiaries when it elects an exemption. Plan notification to Labor or HHS is confidential and will provide a description of covered lives in the plan and the actual costs for which the exemption is sought.
- Labor or HHS (as appropriate) and State agencies may audit a plan to determine compliance with the Act when the plan has elected an exemption.

Compliance Report. By 2012 and every two years after, the Labor Secretary shall submit to Congress a report on group health plan (or coverage) compliance with this Act. The report will include the results of any compliance audits or surveys, and if necessary, an analysis of reasons for any failures to comply with the law.

GAO Study. GAO will conduct a study that analyzes the specific rates, patterns and trends in coverage, any exclusion of specific mental health and substance use diagnoses by health plans, and the impact of this Act on such coverage and costs. GAO will provide a report to Congress within three years (and an additional report after five years) on the results of the study.

Consumer Assistance. The Labor Secretary, in cooperation with the HHS and Treasury Secretaries, shall publish and disseminate guidance and information for plans, participants and beneficiaries, applicable State agencies, and the National Association of Insurance Commissioners concerning the requirements of this Act. This information will include assistance with questions and how participants and beneficiaries can obtain assistance from State consumer and insurance agencies.

Enforcement. As under the 1996 law, Labor, HHS, and Treasury will continue to coordinate enforcement of the Federal mental health parity requirements and are required to issue regulations to carry out changes made in this Act not later then one year after the enactment date. Treasury may continue to impose an excise tax on any plan for failure to comply with the requirements of the Act.

Effective Date. The Act will apply to plans beginning in the first plan coverage year that is one year after the date of enactment. For most plans, this will mean the effective date begins on January 1, 2010. Plans maintained under collective bargaining agreements ratified before the enactment date are not subject to the Act until they terminate (or until January 1, 2009, if this is a later date). The current 1996 parity act requirements for annual and lifetime dollar limits remain in effect for all plans, while the annual sunset in the 1996 parity act is eliminated, effective January 1, 2009.

APA Practice Organization
Government Relations Office
October 2008