



EMPLOYEE BENEFITS BULLETIN

October, 2008

MENTAL HEALTH PARITY BILL BECOMES LAW AS PART OF FINANCIAL BAILOUT LEGISLATION

After years of consideration and debate in the House and Senate, extended mental health parity provisions have been signed into law as part of the recently enacted financial bailout package. The new law, which will become effective as of January 1, 2010 for calendar year plans, will force employers with more than 50 employees to modify current plan designs if they continue to offer mental health and substance abuse benefits.

The bill, entitled the *Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008*, was added to the expanded emergency financial bailout package that was signed by the President on October 3rd. Its provisions will generally become effective for plan years beginning one year after enactment, thus the January 1, 2010 effective date for calendar year plans.

The new law, which amends ERISA and applies to both insured and self-insured plans, will require group health plans that offer mental health and substance abuse benefits to generally provide those benefits on the same basis as the medical/surgical benefits that are offered. The parity required by the new law extends to:

- Co-pays
- Deductibles
- Coinsurance
- Treatment limitations (e.g., limits on the number of treatments, office visits or days of inpatient confinement).

In addition, plans will not be able to limit mental health and substance abuse treatment to in-network providers, unless medical/surgical benefits are also so limited.

The law does not include a provision in earlier House versions of the bill that would have required coverage of any disorder listed in the diagnostic protocols of the American Psychiatric Association, which included some diagnoses that Senate proponents found to be below the threshold of medical necessity. It does, however, contain requirements that criteria for determinations of medical necessity under a plan and the reasons for denials of reimbursement be made available to participants in accordance with regulations to be published.

The law also allows employers to seek an exemption from the parity requirements for a future plan year if they can show that their costs for a current plan year will increase by a specified percentage due to the new requirements. The percentage is 2% for the first year of applicability and decreases to 1% thereafter. Any such exemption will require

an actuarial certification based on at least 6 months of experience in the measuring year and will involve a variety of procedural steps.

It is important to note that the new law does not require employers to offer benefits for mental health or substance abuse. It does, however require employers who do offer such benefits as part of their medical programs to offer them on a comparable basis. This may be a meaningless distinction for many employers, since insured plans are mandated in many States and most self-insured programs include some level of coverage for competitive or other business reasons.

What Should You Do?

While immediate action is not required, employers should begin to assess the current mental health and substance abuse benefits that they offer. Compliance with the new requirements will require clarification and/or guidance that we expect will be provided during the course of the coming year. Given the delayed effective date, we expect there to be much discussion of the impact of these provisions within the business community and amongst insurers and health care professionals. We will be monitoring developments and will continue to provide you with information that will enable you to react to these changes.

The *Employee Benefits Bulletin* is designed to highlight various employee benefit matters of general interest to our readers. It is not intended to interpret laws or regulations or to address specific client situations.