

Mental Health Parity Enacted as Part of Bailout Package

October 2008

The debate over mental health parity legislation, which has consumed Congress, insurers, employers, and mental health advocates for the last ten years, ended abruptly on October 3, 2008.

President Bush signed into law the Emergency Economic Stabilization Act of 2008 (H.R. 1424), which includes the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (the "Mental Health Parity Act"). The Mental Health Parity Act mandates that insurance policies and employer group health plans that provide mental health coverage must provide parity between coverage of medical and surgical benefits and coverage of mental health and substance use disorder benefits.

The Mental Health Parity Act becomes effective in plan years beginning after December 31, 2009. This Hewitt Consulting bulletin discusses the requirements of the Mental Health Parity Act and its impact on employer group health plans.

Major Provisions of the Mental Health Parity Act

The Mental Health Parity Act provides the following:

- **Original 1996 law is permanent**—The Mental Health Parity Act makes permanent the 1996 law providing that a health care plan or policy may not provide a separate lower annual or lifetime dollar maximum on mental health benefits compared to medical benefits.
- **Substance use disorders**—The Mental Health Parity Act extends its requirements to benefits for substance use disorders, not just mental health disorders.
- **Financial coverage**—The Mental Health Parity Act mandates that the financial coverage for mental health and substance use disorder benefits cannot be more restrictive than the predominant (i.e., the most common or frequent) financial requirements applied for substantially all medical and surgical benefits under the plan. Financial requirements include deductibles, cost-sharing, out-of-pocket limits, and annual and lifetime dollar limits.
- **Treatment limitations**—The Mental Health Parity Act requires that the treatment limitations for mental health benefits cannot be more restrictive than the predominant treatment limitations applied for substantially all medical and surgical inpatient and outpatient benefits under the plan. Treatment limitations include the number of covered office visits, days of inpatient coverage, and other similar limits on duration or scope.
- **Out-of-network coverage**—Group health plans must provide out-of-network benefits for mental health and substance abuse disorders in a manner consistent with parity requirements if out-of-network benefits are provided for medical and surgical services.

- **Defining “Mental Health Conditions” and “Substance Use Disorders”**—Under the Mental Health Parity Act, the terms “mental health conditions” and “substance use disorders” are to be defined by the group health plan, in accordance with any applicable federal and state laws.
- **Effect of State Laws**—The Mental Health Parity Act provides that states may impose additional requirements and consumer remedies relating to coverage of mental health conditions and substance use disorders. Any additional state law requirements, however, will apply to fully insured plans. The Employee Retirement Income Security Act (ERISA) continues to preempt such laws for self-insured plans.
- **Disclosure of medical necessity criteria**—The Mental Health Parity Act requires employer health care plans to disclose to current and potential plan participants and providers the plan’s criteria for determining medical necessity.
- **Cost exemption**—A group health plan can obtain an exemption from the requirements of the Mental Health Parity Act if the plan can establish that application of the Mental Health Parity Act will result in a cost increase of more than two percent in the first year and one percent in the case of each subsequent plan year.
- **Effective dates**—The Mental Health Parity Act takes effect the first plan year that begins on or after one year after the date of enactment—January 1, 2010 for calendar year plans. The provisions concerning substance use disorders in the current parity law for annual and lifetime dollar limits apply effective January 1, 2010. The law instructs the affected agencies, the Departments of Health and Human Services, Labor, and Treasury, to issue joint regulations within one year of enactment. However, any delay in issuing such regulations will not delay the effective date of the new law.

Impact on Employers

Due to the unusual circumstances of the passage of the Mental Health Parity Act, employers will have relatively little time to evaluate and, if necessary, modify their plan designs, assess their medical management strategies, and review plan administration and employment practices.

For more information on the impact of this legislation, contact your local Hewitt Consultant.