



**BlueCross BlueShield  
Association**

**An Association of Independent  
Blue Cross and Blue Shield Plans**

# Mental Health Parity: Overview of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008

**October 15, 2008**

**Office of Policy and Representation**

# Purpose/Agenda

**Purpose: Review key provisions of new parity law**

## **Agenda**

- **What the new law does *not* do**
- **Overview of major provisions**

## What the new law does *not* do

- It is *not* a mandate to provide mental health or substance use disorder benefits
- It does *not* mandate coverage of all conditions/ disorders in the DSM-IV
- It does *not* undermine the ability to use medical management
- It does *not* establish new state remedies for mental health benefits provided under employer plans
- It does *not* apply to small employers (50 or fewer employees) or the individual market

# Overview of major provisions

- **Expands 1996 federal Mental Health Parity Act**
  - Limited to parity in lifetime and annual limits
  - Limited to mental health (substance use disorders not addressed)
- **New parity requirements:**
  - **Key change:** Expands parity to financial limitations (e.g., deductibles, copayments, coinsurance) and treatment limitations (e.g., day/visit limits)
  - Prohibits **financial requirements** or **treatment limitations** for mental health or substance use disorder benefits that are more restrictive than the **predominant** financial requirements or treatment limitations applied to **substantially all** medical and surgical benefits.
    - ✓ Predominant = most common or frequent
    - ✓ Substantially all = Not defined; regs for 1996 law used benefits accounting for 2/3 of plan payments
  - Prohibits separate cost-sharing requirements or treatment limitations that apply only to mental health/substance use disorder benefits.



# Overview of major provisions (continued)

- **Definition of mental health and substance use disorder benefits**
  - Maintains flexibility for plans to define covered services
  - Subject to applicable state and federal law (39 states have parity laws)
- **Medical management**
  - Protected by a “rule of construction” that preserves ability of plans to define terms and conditions
  - Plans must disclose:
    - ✓ Medical necessity criteria, on request, to participants beneficiaries or contracting providers
    - ✓ Reasons for any denials, on request or “as otherwise required”

# Overview of major provisions (continued)

- **Out-of-network coverage:** required for mental health and substance use disorder benefits if provided for medical/surgical benefits
- **Cost exemption:** Similar to 1996 law, but harder to qualify
  - Applies if parity requirements cause total health plan costs to increase by 2% in first year (1% in later years)
    - 1996 law was 1% for all years
  - Must have 6 months of actual experience to qualify for exemption for following plan year; actuarial certification required
  - Notices / audits / reports
    - Requires prompt notice to participants, Secretary and appropriate state agencies;
    - Secretary (and states) may audit for 6 years
    - Anonymous reports to Congress with breakdown on notifications

# Timeframe

- **Effective date**

- Generally effective for plan years beginning on or after October 3, 2009 (for calendar year plans = Jan 1, 2010)
- Special rule for collectively bargained plans (intended to generally allow more time for plans subject to a CBA to comply)

- **Regulations**

- Instructs DOL, HHS and Treasury to issue regulations within one year
- Plans may need to implement before regulations are issued; numerous implementation issues may not be resolved

# Relation to State Law

- **Application of Federal and State Law**
  - *Self-Funded ERISA Plans:* Maintains exemption from state insurance laws
  - *Insured arrangements: uses HIPPA floor model* (federal standards are a floor, state laws may apply to the extent they do not prevent the application of the federal law).
    - Insured arrangements will need to evaluate state parity laws to determine which provisions will continue to apply



# Enforcement/Penalties

- **Enforcement**

- DOL to enforce requirements for self-funded plans
- *State enforcement* for insured plans
  - ✓ HHS to be the fall-back federal regulator for states that do not adopt laws meeting the new federal requirements (same as HIPPA)

- **Penalties**

- Retains existing penalties, including the \$100 per member per occurrence penalty under the Internal Revenue Code and Public Health Service Act