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.
• **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