New Mental Health Parity Requirements For Group Health Plans

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Employers should be aware of a significant statute imposing new mental health parity requirements on group health plans: the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, Pub. Law 110-343 (“MHPAEA”). MHPAEA was signed into law on October 3, 2008, as part of the Emergency Economic Stabilization Act of 2008, effective for plan years beginning one year after enactment.\(^1\) This Client Alert provides a summary of the new requirements of MHPAEA applicable to group health plans that require the immediate attention of employers.

- MHPAEA is effective for plan years beginning after October 3, 2009 (January 1, 2010, for calendar year plans).

MHPAEA amended existing mental health parity law, the Mental Health Parity Act of 1996, by imposing expanded requirements on group health plans relating to mental health and substance use disorder benefits. As under existing law, MHPAEA does not require group health plans to provide mental health and substance use disorder benefits. Group health plans that do provide mental health and substance use disorder benefits, however, must do so on parity with medical and surgical benefits offered under the plan. MHPAEA expanded existing mental health parity law, which only applied to mental health benefits, to include substance use disorder benefits. Mental health and substance use disorder benefits are as defined under the terms of the group health plan and in accordance with applicable Federal and State law.

The significant changes under MHPAEA include the following:

**Financial Requirements**

Group health plans may not impose financial requirements (e.g., deductibles, copayments, coinsurance and out-of-pocket expenses) on mental health or substance use disorder benefits that are more restrictive than the predominant financial requirements applicable to medical and surgical benefits or coverage. These financial requirements do not apply to

\(^1\) The implementing agencies were required to issue regulations by October 3, 2009, but the Secretary of the Department of Health and Human Services has indicated that the department, along with the Department of Labor and the Department of Treasury, are working to issue guidance under MHPAEA by January 2010.
aggregate lifetime limits or annual limits, which are subject to the same rules as under existing mental health parity law.

Treatment Limitations
Group health plans may not impose treatment limitations (e.g., the frequency of treatment, number of visits, days of coverage or other similar limits on the scope or duration of treatment) on mental health or substance use disorder benefits that are more restrictive than the predominant treatment limitations applicable to medical and surgical benefits or coverage.

No Separate Limits
Group health plans may have no separate cost-sharing requirements or treatment limitations applicable only to mental health or substance use disorder benefits.

Out-of-Network Providers
Group health plans must provide coverage for mental health or substance use disorder benefits provided by out-of-network providers consistent with these new rules (if plan provides for out-of-network coverage).

Availability of Plan Information
The criteria for medical necessity determinations made under the plan and the reason for any denial of claims with respect to mental health or substance use disorder benefits must be made available by the plan administrator upon request in accordance with regulations (which have yet to be issued).

Exemption for Small Employers
The revised small employer exemption makes clear that it exempts an employer who employed an average of at least two (or one in certain states), but no more than 50 employees on business days during the preceding calendar year. Employers in the same control group (under certain rules applicable to tax-qualified pension plans) are treated as a single employer.

Exemption for Increased Cost
The existing mental health parity law previously provided an exemption for group health plans that experienced a cost increase of at least 1 percent. Group health plans that have been complying with the new rules for at least the first 6 months of the plan year may apply for a cost exemption if actual total costs of coverage increase by at least 2 percent in the first year in which the new rules apply or at least 1 percent in any subsequent plan year. If approved, group health plans are not required to comply for the following plan year (and for no more than one plan year). If an exemption is sought, the group health plan must obtain a certified actuarial report demonstrating the increased costs. If the group health plan qualifies for the exemption, it must notify plan participants and beneficiaries, as well as Federal and State agencies, that the plan is exempt.

Implications For Employers
Employers with insured plans should review their health insurance policies and related documents, and employers with self-insured plans should immediately review their group health plan documents, summary plan descriptions and employee communications and should make such amendments and revisions as may be advisable to implement the new
requirements under MHPAEA. Particular care should be taken in coordinating with existing State law requirements (e.g., Timothy’s law), which could be more restrictive than MPFAEA or, if less restrictive, will need to comply with MPFAEA.

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