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Request for Information Regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008

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General Comment

May 27, 2009
Office of Health Plan Standards and compliance Assistance
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ATTENTION: MHPAEA Comments

To Whom It May Concern:
Harris County Healthcare Alliance appreciates the opportunity to respond to the Request for information regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008 published in the Federal Register on April 28, 2009.

In enacting the MHPAEA, Congress made clear that the goal of this new law was to remedy the long history of employers and insurers not providing comparable coverage for mental health and substance use treatment versus medical and surgical benefits.i In order to achieve this goal the implementing regulations must reflect the patient/consumer focus and protective intent of this law and ensure access to a meaningful range of evidence-based interventions.

An overly strict reading of the MHPAEA could thwart its fundamental purpose and result in a situation similar to the outcome following enactment of the Mental Health Parity Act of 1996 when the vast majority of employers substituted new restrictions on access to mental health benefits, thereby evading the spirit of the law

In light of these issues and concerns, our responses to the Request for Information are as follows:

Questions from the Request for Information:

1. Financial Requirements and Treatment Limitations:
Do plans currently impose other types of financial requirements or treatment limitations on benefits?

The MHPAEA defines the term "financial requirement" as including deductibles, co-payments, coinsurance, and out-of-pocket expenses. The statute likewise defines the term "treatment limitation" as including limits on the frequency of treatment, number of visits, or days of coverage or other similar limits on the scope or duration of treatment."

But the lists of types of limitations and requirements included in these definitions should not be interpreted as the only treatment limitations and financial requirements to which parity applies under the new law. Other examples of treatment limitations that plans disproportionately use to limit the "scope or duration of treatment" for mental health or substance use conditions include the following:

Prior authorization that are applied more frequently and with higher standards for approval; Step therapy requirements that force consumers to try a series of preferred medications or treatments prior to accessing the recommended treatment; Lower provider fees; Limitations on covering specific types of providers; Separate deductibles or lifetime limits.
The MHPAEA regulations should clarify that the parity standard applies to these other types of treatment limitations as well. Plans that manage their mental health and substance use benefits using these techniques must do so in a nondiscriminatory way.

2. Terms/Provisions in the MHEAPA:
What terms or provisions require additional clarification to facilitate compliance? What specific clarifications would be helpful?
The following terms and provisions should be clarified in the regulations:
Parity means equal to or better than—The regulations should emphasize that

financial requirements or treatment limitations for mental health and substance use benefits must be "no more restrictive than" those for medical and surgical benefits as stated in the MHPAEA. Impact on state parity laws—Clarification is needed to emphasize the continued applicability of state laws that provide for greater protection of mental health and substance use benefits. Application of the MHPAEA to Medicaid managed care plans—Since the 1996 parity law applied to to Medicaid managed care plans the regulations should make clear that the new parity law applies to these plans as well. Application of the MHPAEA to CHIP—Since the 1996 parity law applied to the Children's Health Insurance Program, the new parity which amends the old, should also apply to CHIP. The MHPAEA prohibits separate cost sharing and treatment limits—The statute clearly prohibits separate deductibles and other cost sharing and treatment limits but this is not well understood.

3. Denials of Reimbursement/Payment for Services: What information, if any, regarding the reasons for any denial under the plan of reimbursement or payment for services with respect to mental health or substance use disorder benefits is currently made available by the plan? To whom is this information currently made available and how is it made available? Are there industry standards or best practices with respect to this information and communication of this information? The MHPAEA requires plans to provide the reasons for any coverage denials with respect to mental health or substance use benefits to any current or potential enrollee upon request.

The regulations should
specify that consumers may request at no charge copies of the documentation the plan used to make the coverage determination at issue; set timeframes for disclosure of reasons for claims denials; and Outline the process for appealing the determinations, including time frames and enforcement mechanisms.

4. Cost Exemptions: Which aspects of the exemption for increased cost resulting from the parity requirement, if any, require additional guidance? Would model notices be helpful to facilitate disclosure to Federal agencies, State agencies, and participants and beneficiaries regarding a plan's or issuer's election to implement the cost exemption?

MHPAEA provides that plans may be exempt from the law if they can show that the parity requirements result in an increase in total costs of coverage by over 2 percent in the first year and one percent for each subsequent year.
The regulations should clarify that assessment of whether a plan qualifies for a cost exemption must be determined on a retrospective basis and based on real experience with increased costs instead of hypothetical costs.

5. Other issues: The agencies have also stated that they will accept comments on any other issues relevant to the development of the MHPAEA regulations. Another issue to be addressed is whether only covering mental health medications constitutes providing a mental health benefit such that the parity requirements in the MHPAEA are triggered. To exclude medications from consideration as mental health benefits would imply that the new parity requirements do not apply to this essential form of mental health treatment that is one of the therapies most analogous to medical and surgical benefits. This result would be inconsistent with

the intent of the MHPAEA to ensure equity between mental health/substance use benefits and medical/surgical benefits."ii

Thank you for the opportunity to provide comments on this landmark legislation.

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i H.R. REP. NO. 110-374, pt. 1 (2007) (Educ. & Labor Comm).
ii H.R. REP. NO. 110-374, pt. 2, Ways and Means Comm., 2007