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Docket: [IRS-2009-0008](#)

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

Comment On: [IRS-2009-0008-0001](#)

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

Document: [IRS-2009-0008-0076](#)

Comment on FR Doc # E9-09629

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General Comment

1. Clarify that Medical Management of MH/SA can be handled differently than medical/surgical benefits. Most psychiatric disorders have a low inter-rater reliability with many subjective symptoms and there are wide variations in the way psychiatric patients manifest their symptoms leading to different diagnoses, prognoses, and treatments. A diagnosis only will not determine the type, frequency, or intensity of treatment needed, therefore, concurrent management of individual cases is warranted to ensure optimal and appropriate care. One cannot run a diagnostic test or x-ray for a mental health problem. Furthermore, the appropriate course of treatment for two different patients with the same diagnosis may vary greatly. This is why there are not DRGs for mental health diagnoses. Need clarification in the law to state that medical management for MH/SA benefits can be done separately without regard to parity for the medical management of medical/surgical benefits. It needs to be clearly stated that certain requirements such as precertification or concurrent review can be utilized for MH/SA medical management even if the plan does not require the same for medical/surgical benefits. Again, the treatment of these conditions is very different and the management of the care must also be handled differently. No language in the parity law states that medical management provisions must be applied the same as for medical/surgical benefits.

2. Clarify whether EAPs are included in the entities that are required to comply with parity. EAPs address many personal issues for employees and help

improve productivity for employers. Some are related to mental health issues but many are related to legal, financial, work/life, etc. If EAPs were somehow required to comply with the parity mandates, it would end the vital role that EAPs play today for employers and their employees.

3. Clarify whether separate, but equal deductibles and out-of-pocket maximums for MH/SA and medical/surgical benefits can be applied. It is understood that the MH/SA benefit cannot have a higher deductible or any limitations more restrictive than those on the medical/surgical benefit. It is not clear whether each benefit could have separate deductibles and out-of-pocket maximums that are equal or must only one deductible and out-of-pocket maximum be applied to both benefits.

4. Clarify HIPAA preemption standard. Local governmental entities must comply with the state laws regarding MH/SA. How will it be determined whether the state law preempts the federal law? Will the state law be preempted if it has limitations within their regulations?

5. Clarify that employer health plans can choose which, if any, MH/SA conditions they want to cover. Nowhere in the parity law does it state that any MH/SA benefits must be provided by a health plan. Furthermore, the parity law does not state that certain MH/SA conditions must be covered if the health plan does opt to cover any MH/SA conditions.

6. Clarify “no more restrictive than the predominant financial requirement (or treatment limitation) applied to substantially all medical and surgical benefits.” Does this mean that outpatient MH/SA must be in parity with the outpatient medical/surgical portion of the benefit or to the complete medical/surgical benefit? How are the Out-of-Network benefits for MH/SA to be compared to the Out-of-Network medical/surgical benefits?

7. Clarify the disclosure of medical necessity criteria requirement. Can this be regulated in the same way as current state laws and DOL requirements?

8. Clarify the employer cost exemption process. We are not recommending this to any of our groups, but this will be examined as a possibility by groups. What is the process the employer would need to apply for the cost exemption? Where would they apply? What time frames would be involved?

9. Clarify that employers who act in good faith with this new legislation will not be penalized if the law is later clarified that would require the employer to modify their plan to be in compliance. Also, state that health plans may wait until their next annual renewal to make any changes required after the Regulatory Guidance is issued if the initial plan renewal was before the Regulatory Guidance was issued.

10. Clarify coverage of evidence-based treatments. Current medical/surgical benefits do not require that all evidence-based treatments be covered per medical condition and that the plan may specify which evidence-based treatments will be covered. The same should be clarified for MH/SA under parity. The cost impact to plans would be significant if all evidence-based treatments are

mandated to have coverage, for medical/surgical and/or MH/SA.