



May 28, 2009

(Submitted via the Federal eRulemaking Portal: <http://www.regulations.gov>)

U.S. Department of Labor  
Employee Benefits Security Administration  
Office of Health Plan Standards and Compliance Assistance  
Attention: MHPAEA Comments  
Room N-5653  
200 Constitution Avenue, NW  
Washington, DC 20210

U.S. Department of Health and Human Services  
Centers for Medicare & Medicaid Services  
Attention: CMS-4137-NC  
P.O. Box 8017  
Baltimore, MD 21244-8010

U.S. Department of the Treasury  
Internal Revenue Service  
Attention: CC:PA:LPD:PR (REG – 120692-09)  
Room 5205  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

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

Dear Sir or Madam:

I write on behalf of the National Retail Federation (NRF) in response to the multi-agency Request for Information (RFI) regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ("the Act"). NRF represents the breadth of the retail community and is also a strong advocate of quality and affordable health care and coverage. NRF assembled and chaired a broad coalition of business and insurance interests that helped to negotiate the detailed compromise on parity legislation enacted into the new parity law. We proudly supported its passage.

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The retail industry is very labor dependent and operates on a wafer thin profit margin. Thus, it is vital that we manage health benefits – including mental health and substance use disorder (MHSUD) benefits – carefully and in a cost-effective manner. Therefore, we are determined not only to help make the new parity law work effectively, but also to help make sure that regulations do not stray from the intent of the compromise enacted into law. We are extraordinarily sensitive to factors that increase the cost of care, but will watch the parity law’s implementation even closer because of our intense involvement into its development.

Our comments and request for guidance and clarification will focus on section “B” of the RFI. We appreciate this opportunity to comment.

### **Financial Requirement**

We continue to believe that the most reasonable interpretation of the law is that separate but equal deductible and out-of-pocket maximums are permissible. We also believe that this interpretation would benefit beneficiaries most as a combined deductible and out-of-pocket maximum would necessarily be set higher than the combined separate but equal amounts.

We are also concerned that combining the deductible and out-of-pocket maximums will increase the complexity of benefit administration and make it more difficult for employers to “carve out” MHSUD benefits to a specialized provider. This has been a key avenue to assure better quality and more affordable coverage for MHSUD benefits.

NRF also believes that the comparison in the parity requirement (“applicable to such mental health or substance use disorder benefits are no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits covered by the plan (or coverage).”) should be made to similar levels of care and network status. In other words, inpatient care procedures should be compared to other inpatient procedures and outpatient procedures should be compared to other outpatient procedures. This represents the common benefits practice which the drafters had in mind.

### **Employer Flexibility**

Provision of MHSUD benefits – like other benefits is voluntary for employers. We also enjoy the ability under the Act to determine MHSUD benefits “as defined under the terms of the plan.” Also, the Act kept intact our ability to medically manage all benefits, including MHSUD benefits. All three aspects are critical to our ability as employers to offer a wide array of benefits, including MHSUD benefits. We strongly urge you not to depart from the Act’s protection of all three elements.

## **Employee Assistance Programs**

NRF urges you to clarify that employee assistance programs (EAPs) are not subject to the Act. EAPs are not at all comparable to MHSUD providers but rather occupy a hybrid role bridging from education and wellness to crisis triage. If the unique and flexible role played by EAPs is compromised, we fear that retailers and other employers will no longer provide EAPs as an employee benefit.

## **Multi-Year Plans**

We have been made aware that there may be a mismatch between the Act's effective date and multi-year health plans. We would urge you to take the most reasonable interpretation of the Act and not require multi-year contracts to be reopened and renegotiated. The better approach would apply the Act provisions to the next contract year.

## **Model Notices**

We do think model notices regarding a plan or issuer's election to implement the cost exemption would be helpful – particularly as the Act requires a simultaneous notice to beneficiaries. Additional guidance on the form, format and content of a cost exemption filing would also be welcome.

## **Conclusion**

NRF appreciates the opportunity to comment on the RFI. We would welcome the continued opportunity to work with the applicable agencies during implementation of the Act. Please do not hesitate to contact me (202-626-8170 / [trautweinn@nrf.com](mailto:trautweinn@nrf.com)) if you would like to discuss our comments further.

Sincerely,



E. Neil Trautwein  
Vice President  
Employee Benefits Policy Counsel