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Sent: Thursday, May 28, 2009 1:03 PM

To: EBSA, E-OHPSCA - EBSA

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Subject: Comments from NYS Insurance Dept and NYS Office of Mental Health Regarding MHPAEA

To: Internal Revenue Service, Department of the Treasury
Employee Benefits Security Administration, Department of Labor
Centers for Medicare & Medicaid Services, Department of Health and Human Services

Dear Sir or Madam:

In response to the Request for Information Regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA"), published in 74 FR 19155, please consider the comments below submitted on behalf of the New York State Insurance Department and the New York State Office of Mental Health. The comments request that any future rulemaking regarding the MHPAEA clarify the following issues:

1. Clarification as to whether the MHPAEA would require health insurance coverage that provides hospital, surgical and medical coverage and also outpatient substance use disorder benefits (but no inpatient substance use disorder benefits) to include inpatient substance use disorder benefits also. In New York, all health insurance coverage that provides inpatient hospital care must include outpatient substance use disorder benefits but there is no requirement that it includes inpatient substance use disorder benefits. Therefore, there are currently some coverages in the market with no inpatient substance use disorder benefits. We have received questions from insurers asking whether the MHPAEA would now require those coverages to include inpatient substance use disorder benefits.

2. Clarification of the term "substantially all" as used in ERISA §712(a)(3), PHSA §2705(a)(3), and IRS §9812(a)(3) "Financial requirements and treatment limitations." (e.g. "the financial requirements 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)...").

3. Clarification as to the appropriate copayment or coinsurance linkage of the mental health and substance use disorder benefits. Many health insurance coverages provide different copayments or coinsurance for primary care services and specialty care services. In New York, mental health and substance use disorder benefits are often tied to the higher specialty care copayment. Whether or not this remains acceptable in light of MHPAEA is questionable. Guidance in any future regulation would be helpful.

4. Clarification as to how the cost exemption works in a fully insured setting. Although it seems that it would be the employer who gets the exemption, the MHPAEA appears to permit the insurer to also request and

receive an exemption. The MHPAEA provides "If a group health plan (or a health insurance issuer offering coverage in connection with a group health plan) seeks an exemption..." (underlining added).

5. Clarification regarding counting of employees to determine whether the MHPAEA is applicable. In New York, we count the number of employees who are eligible for the health insurance coverage in determining whether a group contains more than 50 employees. The MHPAEA appears to count total number of employees regardless of their eligibility.

6. Clarification as to applicability to Medicaid Managed Care Plans. January 20, 1998 guidance from CMS (formerly HCFA) to State Medicaid Directors requires Medicaid Managed Care plans to be treated like health insurance issuers offering group health plans for the purpose of complying with the Mental Health Parity Act of 1996 (per §1932(b)(8) of the Social Security Act). Does the same guidance apply to the MHPAEA of 2008 (i.e., Does the MHPAEA of 2008 apply to Medicaid Managed Care Plans)?

7. The MHPAEA requires The Comptroller General of the United States to conduct a study that analyzes the specific rates, patterns, and trends in coverage and exclusion of specific mental health and substance use disorder diagnoses by health plans and health insurance. We request that regulations clarify that this study should also include a study of any barriers put in place to deny beneficiaries access to mental health benefits (e.g., inadequate provider panels, excessive use of utilization review, and poor rates paid to providers).

We appreciate the opportunity to provide comments prior to any rulemaking.

Thank you.

Sincerely,

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and

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