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Statewide Parent Advocacy Network, Inc.

May 28, 2009

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

To Whom it May Concern:

Thank you for the opportunity to comment on issues surrounding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). The attached document represents the comments from the Statewide Parent Advocacy Network of New Jersey, New Jersey's Parent Training and Information Center, Family to Family Health Information Center, Statewide Parent to Parent, and Federation of Families for Children's Mental Health Chapter.

In the document, we have addressed many of the specific areas for which comments were solicited. We hope you will take our recommendations under careful consideration as regulations are developed.

Thank you again for this opportunity to comment.

Sincerely,

Diana MTK Autin

Diana MTK Autin, Esq.
Executive Co-Director

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

Submitted by the Statewide Parent Advocacy Network of New Jersey (SPAN)

The Statewide Parent Advocacy Network of New Jersey (SPAN) is New Jersey's Parent Training and Information Center for families of infants, toddlers, children and youth with disabilities; the Family to Family Health Information Center for families of children with special healthcare needs; and houses Family Voices-NJ, NJ Statewide Parent to Parent, and a chapter of the Federation of Families for Children's Mental Health. We provide information, training, technical assistance, advocacy and support for families of children birth to 26 on all of the issues that impact their children, including access to quality, family-centered, mental health services for their children and youth. We speak to thousands of parents each year whose children suffer due to the lack of true mental health parity in New Jersey and in our nation. Thus, we have long endorsed, and continue to strongly support, treating mental health coverage and care as a health issue, including requiring true mental health parity by public and private insurers.

Our comments are based both on our own experiences working with families, and on the comments of the Bazelon Center for Mental Health Law.

A. Comments Regarding Economic Analysis, Paperwork Reduction Act and Regulatory Flexibility Act

1. *Do plans currently impose other types of financial requirements or treatment limitations on benefits? How do plans currently apply financial requirements or treatment limitations to (1) medical and surgical benefits and (2) mental health and substance use disorder benefits? Are these requirements or limitations applied differently to both classes of benefits? Do plans currently vary coverage levels within each class of benefits?*

The primary goals of parity legislation are to prohibit discriminatory insurance practices and affirm that mental health and substance use disorder treatments are appropriate and required components of comprehensive health care. Thus, SPAN supports one single, inclusive deductible for physical health care and mental health services. "Separate but equal" deductibles for these services would continue the illogical and inappropriate distinction between physical and mental health care services and likely lead to continued discrimination.

2. *Are there unique costs and benefits for small entities subject to MHPAEA (that is, employers with greater than 50 employees that maintain plans with fewer than 100 participants)? What special consideration, if any, is needed for these employers or plans? What costs and benefits have issuers and small employers experienced in implementing parity under State insurance laws or otherwise?*

SPAN strongly believes that the law should not permit "special considerations" for small entities that have greater than 50 employees that maintain plans with fewer than 100 participants.

3. *Are there additional paperwork burdens related to MHPAEA compared to those related to MHPA 1996, and, if so, what estimated hours and costs are associated with those additional burdens?*

SPAN agrees that MHPAEA may create additional paperwork hours and costs; however, we oppose any consideration being given to any additional burden on plans associated with the costs of making a request to the federal government for exclusion from the parity requirements.

B. Comments Regarding Regulatory Guidance

2. *What terms or provisions require additional clarification to facilitate compliance? What specific clarifications would be helpful?*

Although there is statutory language and references in Medicaid to the 1996 Parity Act, there is a need for clarification regarding the application of the parity law to Medicaid managed care plans and affirmation that parity applies to SCHIP plans. We also agree with the Bazelon Center for Mental Health Law that "clear explanations indicating how to compare mental health to health with regard to limits on a benefit package and cost-sharing requirements are also necessary." There needs to be explanation of provisions such as Section 512(a)(3)(A)(i) which states that financial requirements for mental health benefits "should be no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits covered by the plan." The regulations must provide clarity and guidance to ensure that any limits on mental health services are appropriate given the overall coverage (including limits and financial obligations of the insured) in a particular plan.

Further, "no more restrictive than" must also be interpreted to mean that coverage and cost sharing are equal even when a mental health services is not strictly identification to a medical-surgical services. In addition, intensive outpatient mental health treatment should be compared with a standard medical-surgical visit for purposes of out-of-pocket costs or limits on number of visits, while the residential treatment service should be considered analogous to inpatient hospitalizations.

The regulations should allow for plan provisions that encourage individuals to participate in needed mental health treatment, such as those that may waive cost-sharing for the first few visits or those that provide residential treatment with lower cost-sharing than hospital care.

Finally, SPAN supports clarification and examples that illustrate how states may maintain broader mandates to cover mental health services that may not be required under the federal law, while ensuring that the federal law would pre-empt any inappropriate limits on those services. Additionally, statements that explain how a mandated minimum benefit becomes a parity benefit and how mandated coverage of serious mental illness remains in effect and becomes mandate for parity for serious mental illness are necessary.

4. What information, if any, regarding the reasons for any denial under the plan (or coverage) 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?

SPAN's Family to Family Health Information Center helps thousands of families understand their children's public and/or private health insurance plans, as well as critical terms such as "medical necessity." Based on our experience, we strongly support regulations that would require that parents be provided with more information than is now typically received when a service is denied based upon "medical necessity." The regulations must require the use of plain language explaining why a particular service is not appropriate at this particular time for their child or family – and in the language of the family if it is not English.

6. *Which aspects of the increased cost exemption, 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?*

SPAN supports restrictions on the use of the exemption for a plan based on their documentation of increased costs, and urge the adoption of language identical to the regulation on the 1996 law. We also recommend the use of model notices, developed with input from consumers including parents and particularly parents of children with special healthcare needs, which will assist with disclosure to participants and beneficiaries regarding a plan's or issuer's election to implement the cost exemption.

Conclusion

SPAN and Family Voices of NJ welcome mental health parity legislation and urge the adoption of regulations that ensure that such legislation's full benefits are realized for children and youth, particularly children and youth with special mental health needs, and their families. Thank you for this opportunity to submit comments for your consideration.