

To: Our Clients and Friends

February 5, 2010

New Mental Health Parity Rules: What Group Health Plan Sponsors Need to Know Now

On February 2, 2010, the Departments of Labor, Treasury, and Health and Human Services published Interim Final Rules (“Rules”) under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (“Act”). Under the Act and its predecessor, the Mental Health Parity Act of 1996, a group health plan that provides both medical and surgical benefits and mental health and substance use disorder benefits cannot:

- apply financial requirements or treatment limitations to mental health and substance use disorder benefits that are more restrictive than the predominant requirements and limitations applicable to substantially all of the plan’s medical and surgical benefits;
- subject mental health and substance use disorder benefits to separate cost-sharing requirements or treatment limitations applicable only to such benefits; or
- impose annual or aggregate lifetime dollar limits on mental health and substance use disorder benefits that are lower than limits for medical and surgical benefits.

The Rules provide detailed standards for determining whether a plan meets the parity requirements.

Classifications of benefits. In some cases, parity requirements need to be met within each of six “classifications of benefits”: *inpatient/in-network*, *inpatient/out-of-network*, *outpatient/in-network*, *outpatient/out-of-network*, *emergency care* and *prescription drugs*. If a plan provides mental health or substance use disorder benefits, those benefits need to be provided in each classification for which medical and surgical benefits are provided.

Financial requirements and quantitative treatment limitations. Financial requirements include deductibles, copayments, coinsurance, or out-of-pocket maximums. Quantitative treatment limitations include number of visits, days of coverage, or other similar limits. Whether a type of financial requirement or quantitative treatment limitation applies to “substantially all” of the medical and surgical benefits in a classification is calculated based upon the dollar amount of all plan payments for medical and surgical benefits in that classification expected to be paid by the plan during the plan year. Moreover, cumulative financial requirements (such as deductibles) and cumulative treatment

limitations for mental health or substance use disorder benefits must not accumulate separately from such requirements or limitations for medical and surgical benefits in the same classification.

Non-quantitative treatment limitations. Parity requirements also apply to “non-quantitative” treatment limitations, such as preauthorization practices, standards for provider admission, and requiring lower-cost treatments before the plan will cover higher-cost treatments. For example, a plan cannot require participants to exhaust Employee Assistance Program (“EAP”) benefits before they can receive mental health benefits under the group health plan unless a similar gatekeeping process is applied to medical and surgical benefits.

Testing for parity. Parity requirements will need to be applied separately with respect to each combination of medical/surgical coverage and mental health/substance use disorder coverage available to participants from the same employer or employee organization, and each combination must independently satisfy the parity requirements. If a plan sponsor maintains one plan for mental health and substance use disorder benefits and another for medical and surgical benefits, the plans must be tested as a single group health plan. This rule applies even if it is not the intent of the plan sponsor to evade the parity requirements.

Applicability dates. The Rules apply to group health plans for plan years beginning on or after July 1, 2010, which means that calendar year plans must comply beginning with the 2011 plan year. Special dates apply for certain collectively-bargained plans. The preamble to the Rules states that federal government agencies will take into account good-faith efforts to comply with a reasonable interpretation of the Act with respect to violations that occur before then, but this does not prevent participants and beneficiaries from bringing private actions.

Please feel free to contact any member of the Bryan Cave LLP Employee Benefits and Executive Compensation Group listed below if you require assistance or have any questions regarding the information contained in this Bulletin.

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