

Mental Health Parity Act and Other Developments

Three recent developments may impact employer health plans.

1. Mental health parity law will require plan redesign.

A new mental health parity law – the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act – was included in the recent Emergency Economic Stabilization Act. There is a small employer exemption for group health plans sponsored by an employer with 50 or fewer employees. The law is effective January 1, 2010 for group health plans operated on a calendar year and the first plan year starting after October 3, 2009 for other group health plans. The effective date for collectively bargained plans is based on the date of the expiration of the current collective bargaining agreement.

The mental health parity law will apply to every group health plan that includes coverage for medical conditions along with any type of coverage for mental health conditions and/or substance abuse disorders. For many companies, compliance will necessitate significant group health plan redesign for 2010. Under the mental health parity law:

- Limits on out-patient visits and in-patient days for the treatment of covered mental health conditions and substance abuse disorders cannot be more restrictive than visit and day limits applied to treatment of medical conditions.
- The co-pays, deductibles, coinsurance, annual limits and lifetime limits applied to the treatment of covered mental health conditions and substance abuse disorders cannot be greater than the co-pays, deductibles, coinsurance, annual limits and lifetime limits applied to the treatment of medical conditions.
- If a group health plan provides out-of-network coverage for the treatment of medical conditions, it will have to provide a similar level of out-of-network coverage for the treatment of mental health conditions and substance abuse disorders.

2. A child who leaves college for medical reasons will retain “full-time student” status.

Michelle’s Law goes into effect January 1, 2010 for group health plans operated on a calendar year

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and the first plan year starting on or after October 9, 2009 for other group health plans. Most group health plans provide that employees' children are eligible for coverage up to: (a) a specified age (e.g., 19) without reference to student status, and (b) an older age (e.g., 23) only if the child is a full-time student. Michelle's Law changes the rule for the second group. If an otherwise eligible child leaves college due to a serious illness or injury, the plan will have to continue to treat the child as a full-time student for up to 12 months.

3. Watch for state and local pay-or-play initiatives.

The Ninth Circuit Court of Appeals recently upheld San Francisco's health care security ordinance. The San Francisco health care security

ordinance generally requires that employers make health care expenditures of \$1.76 per hour for each covered employee. The Ninth Circuit case upholding the ordinance is a concern even for companies that do not have employees in San Francisco. The Ninth Circuit's green light to San Francisco may encourage other cities and states to follow San Francisco's lead in mandating that employers pay a penalty if they fail to provide specified levels of health benefits to employees. The status of such laws will remain murky until the issue reaches the Supreme Court. A 2007 Fourth Circuit decision struck down Maryland's pay-or-play law and pay-or-play laws in Massachusetts and Vermont have yet to be challenged in court.

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