

## **Bailout Legislation Contains Key Mental Health Parity and Addiction Equity Act**

**October 9, 2008**

In addition to providing \$700 billion to bail out Wall Street, the Emergency Economic Stabilization Act of 2008 contains the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (the "Act"), which, for the first time, requires equal coverage of mental and physical illnesses in an employer's group health plan. The Act has been over a decade in the making and marks a significant shift in the coverage requirements for group health plans that offer coverage for mental health or substance use disorders.

### **Overview**

The Act amends Section 712 of the Economic Retirement Income Security Act of 1974, Section 2705 of the Public Health Service Act and Section 9812 of the Internal Revenue Code of 1986 in the following areas.

### **Financial Requirements and Treatment Limitations**

Group health plans that provide both (1) medical and surgical benefits and (2) mental health or substance use disorder benefits must ensure that the financial requirements and treatment limitations applicable to such mental health or substance use disorder benefits are no more restrictive than the predominant financial requirements and treatment limitations applied to substantially all medical and surgical benefits covered by the plan, and that there are no separate cost-sharing requirements or treatment limitations that are applicable only with respect to mental health or substance use disorder benefits.

The Act defines "financial requirement" to include deductibles, co-payments, coinsurance and out-of-pocket expenses, but excludes an aggregate lifetime limit and an annual limit. "Treatment limitation" is defined to include limits on the frequency of visits, days of coverage or other similar limits on the scope or duration of treatment.

### **Availability of Plan Information**

The Act mandates that the criteria for medical necessity determinations made under the plan with respect to mental health or substance use disorder benefits must be made available to any current or potential recipient, beneficiary or contracting provider upon request. In addition, the reason for any denial of reimbursement or payment for services with respect to mental health or substance use disorders benefits must be made available.

### **Out-of-Network Providers**

For plans that provide both (1) medical and surgical benefits and (2) mental health or substance use disorder benefits, if the plan provides coverage for medical or surgical benefits provided by out-of-network providers, the plan must provide coverage for mental health or substance use disorder benefits provided by out-of-network providers.

### **Exceptions**

The Act applies only to employers who employed an average of more than 50 employees on business days during the preceding calendar year. It does not apply to small employers with fewer than 50 employees.

The Act also imposes a cost exception whereby the Act is not applicable if its application would result in an increase of the actual total costs of coverage with respect to medical and surgical benefits and mental health and substance use disorder benefits by an amount which exceeds 2% of the actual total plan costs (this figure is lowered to 1% in the case of each subsequent plan year).

### **Regulations**

Not later than October 3, 2009, the secretaries of the U.S. Departments of Labor, Health and Human Services, and the Treasury shall issue regulations. To the extent that such regulations expand on the rules contained in the Act, we will provide an updated Alert.

### **Effective Date**

In general, the Act will apply for plan years beginning after October 3, 2009. Therefore, the Act will apply to most employers beginning on January 1, 2010. Special rules exist for collective bargaining agreements whereby the Act shall be effective for plan years beginning before the later of (1) the date on which the last of the collective bargaining agreements relating to the plan terminates, or (2) January 1, 2009.

## **Conclusion**

Employers that provide coverage for mental health and substance use disorder benefits will no longer be able to provide less coverage for these benefits than they do for the treatment of medical and surgical benefits. The Act will make it easier for plan participants to obtain treatment for a wide range of conditions, including depression, autism, schizophrenia, eating disorders and alcohol and drug abuse. Only small employers and employers with group health plans that satisfy the cost exception shall be excluded from the Act's coverage. Therefore, employers may have to adjust their benefits to comply with the Act. Fortunately, employers will have more than 12 months to fully comply with the sweeping changes required by the Act.

## **For Further Information**

If you have a question about this Alert or would like more information, please contact group chair [W. Michael Gradisek](#), [John A. Reade, Jr.](#), [Lawrence I. Davidson](#), any of the other [attorneys](#) in the [Employee Benefits and Executive Compensation Practice Group](#), or the attorney in the firm with whom you are regularly in contact.