

Mental Health Parity Requirements Made Permanent



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The Emergency Economic Stabilization Act of 2008 included provisions for permanent inclusion of the Mental Health Parity Act (MHPA) as part of ERISA regulations. The Act, which was previously set to expire at the end of this year, will go into effect for plans on October 3, 2009 (or the next plan year following the date: i.e., January 1, 2010 for a January 1 plan year).

The actual regulations have not been sent down by the various agencies associated with the Act, however, the outline and spirit of the law have been determined. These regulations will be issued by the Department of Labor, Health and Human Services and the Treasury. Guidance will be provided as more definitive information becomes available.

The Mental Health Parity Act of 1996 was created to prevent health plans from providing lesser benefits for mental health illnesses versus medical/surgical benefits. This law required that mental health benefits (inpatient, outpatient, co-pay levels and benefit limitations) must be equal to the medical/surgical benefits being provided under the same plan. Parity was necessary to ensure all plan participants were being provided with equal benefits, regardless of the underlying cause.

While ERISA does not require an employer to offer either a group health plan (GHP) or mental health benefits under a health plan, the employer who chooses to offer such benefits must meet the parity requirements. The new legislation does enhance and expand the regulations currently in place and below is a summary of each addition.

Substance Abuse Coverage: Previously, MHPA addressed only mental health illnesses such as depression or bi-polar disorder. The new regulations require the same benefits and maximums be provided for substance abuse.

Limits:

Lifetime Limits: If the underlying health plan imposes separate lifetime maximums for various medical/surgical benefits, the average of those maximums must be provided for mental health and substance abuse. Additionally, if the plan imposes a lifetime limit on substantially all medical/surgical services, either the lifetime limit must apply to medical/surgical benefits and mental health/substance abuse benefits or there must be a separate lifetime maximum for mental health/substance abuse that is equal to the medical/surgical lifetime maximum. Finally, a GHP may not impose a lifetime maximum on mental health/substance abuse benefits if no lifetime limit is present for medical/surgical benefits.

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Annual Limits: Similar to the lifetime limits provisions, mental health and substance abuse annual limits must be equal to or greater than the annual limits provided to medical/surgical benefits.

Treatment Limits: MHP requires plans to offer similar co-pays, number of visits, frequency of visits, etc.

Out of Network Providers: Plans offering coverage for out of network services for medical/surgical benefits must provide the same level of coverage for mental health and substance abuse.

Financial Requirements: Group Health Plans may not have more restrictive financial requirements on mental health/substance abuse benefits versus medical/surgical benefits. Financial requirements are defined as deductibles, co-pays, co-insurance or out of pocket expenses. The requirements may not be more restrictive than those “predominantly” applied to medical/surgical benefits. “Predominant” is defined as most common or most frequent type of requirement assessed to the medical/surgical benefits.

Medical Management: Management techniques such as precertification are allowed; the Act does not prohibit separate medical management techniques between medical/surgical benefits and mental health/substance abuse benefits.

As previously mentioned, a group health plan is not required to offer mental health or substance abuse benefits. Additionally, plans may request a cost exemption if the employer can prove a two percent increase in total health plan costs in the first year and a one percent increase in subsequent years. The cost exemption requires a plan to provide the benefits for at least six months before requesting the exemption.

The Act does waive all the Mental Health Parity requirements for employers with 50 or fewer employees. As a reminder, since this is a Federal regulation, the legislation applies to both fully insured and self funded plans equally.

As more detail becomes available, William Gallagher Associates will provide updates to its clients. In the meantime, if you have any questions or concerns, contact your Account Executive or the WGA Compliance Practice directly at compliance@wgains.com.

