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Mental Health Parity Regulations Issued

DOL, HHS, and the Treasury recently issued final regulations to the Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (the "MHPA"), which clarify previously issued regulations. The new rules are generally effective for plan years beginning on or after July 1, 2014 (e.g., January 1, 2015 for calendar year plans).

Background. As a general rule, the MHPA does not require group health plans to offer mental health or substance abuse disorder benefits ("MHSA Benefits"). If a plan does offer MHSA Benefits, the MHPA requires the plan to provide "parity" between MHSA Benefits and medical and surgical benefits ("Medical Benefits").

Changes. Below is a brief overview of the important changes in the final regulations:

Coordination with Health Care Reform is Circular and Requires Clarification.

- MHPA permits group health plans to provide annual and lifetime limits on MHSA Benefits so long as the parity requirements are satisfied.
- However, Health Care Reform restricts plans from imposing annual and lifetime limits for "essential health benefits."
- Even though large group health plans are not required to offer essential health benefits, HHS has stated that large group health plans that do offer essential health benefits may not impose lifetime or annual limits for these benefits.
- To reconcile the MHPA with Health Care Reform, the final regulations permit dollar limits for MHSA Benefits only if these benefits do not qualify as essential health benefits.
- Because the final regulations give no examples of which MHSA benefits may or may not be essential health benefits, the coordination of the MHPA and Health Care Reform requires additional clarification.

Limitations by Classification. Certain limitations on MHSA Benefits cannot be more restrictive than the limitations placed on Medical Benefits in the same classification. Traditionally, there were six classifications for these purposes:

- Inpatient, In-network;
- Inpatient, Out-of-network;
- Outpatient, In-network;
- Outpatient, Out-of-network;
- Emergency Care; and
- Prescription Drugs.

The final regulations provide that plans may utilize further sub-classifications such as (i) dividing outpatient benefits into office visits and all other outpatient services; or (ii) use of two or more tiers of in-network providers. Plans may not, however, use separate sub-classifications for generalists and specialists.

Special Rule for Preventive Care. The final regulations clarify that plans providing only preventive MHSA Benefits in order to comply with the preventive care requirements are not required by MHPA to provide additional MHSA Benefits.

Guidance on EAPs. The final regulations exempt Employee Assistance Plans (“EAPs”) from the MHPA, unless the EAP provides significant benefits in the nature of medical care or treatment. The final regulations indicate that more guidance will be issued on EAPs, and, through 2014, plans may use a reasonable, good faith interpretation to determine whether an EAP is exempt.

FURTHER CLARITY NEEDED. The final regulations do not explicitly define which mental health conditions are subject to the MHPA. Instead, the regulations provide that plans may make this determination based on generally recognized independent standards of current medical practice, such as state guidelines and the most current version of the Diagnostic and Statistical Manual of Mental Disorders. As a result, it is still unclear whether some conditions, such as autism, are subject to the MHPA.

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