

NEW FEDERAL PARITY LAW FOR COVERAGE OF THE TREATMENT OF MENTAL ILLNESS

The Emergency Economic Stabilization Act of 2008 provided \$700 billion in financial assistance for the faltering national economy and included the most comprehensive mental health and substance abuse treatment parity law ever enacted on a federal level. The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act, signed into law on October 3, 2008, sets a new federal “floor” for parity in mental health benefits and also creates new responsibilities for employers with respect to the health coverage they provide to their employees.

The new federal law is not a mental health mandate, but rather a requirement for parity in treatment coverage. It requires all health plans (or health coverage provided in connection with a plan) that cover mental health or substance use disorder benefits to provide full parity with other medical and surgical benefits. The federal law will apply to all group health plans for plan years starting after October 3, 2009.

Overview of the Federal Parity Law

If a plan offers any mental health or substance use disorder benefits:

- Financial requirements applied to mental health or substance use disorder benefits must be no more restrictive than the requirements applied to medical or surgical benefits, including deductibles, co-payments, coinsurance and out-of-pocket expenses.
- Treatment limitations applied to mental health or substance use disorder benefits must be no more restrictive than the limitations applied to medical or surgical benefits, including limits on frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment.
- The plan must cover mental health and substance use disorder benefits provided by an out-of-network provider, if the plan also covers medical and surgical benefits provided by an out-of-network provider.

The federal law applies only to large employers with more than 50 employees. Small employers with 50 employees or less are not covered by the federal parity law, but are covered by New York's Timothy's Law, discussed in greater detail below.

The federal law includes a cost exemption for health plans that are able to demonstrate that compliance will result in a 2% increase in total costs in the first plan year and a 1% increase in subsequent years. A determination of actual cost increases must be made by a licensed actuary and only after the employer has complied with the parity law for at least the first six months of the plan year. If granted, the exemption shall apply for one plan year at a time only, so eligible employers must re-apply every year. Because of these high hurdles, employers seeking to take advantage of the cost exemption may find it a rather unworkable solution.

Overview of New York State Parity Law

Timothy's Law is a New York State law that mandates certain health insurance coverage for the treatment of mental illness. Timothy's Law went into effect on January 1, 2007, and applies to all employers in New York State, except employers that are ERISA-exempt (see page 3 for further discussion of ERISA exemption).

Timothy's Law:

- requires all group health plans to provide coverage for at least 30 inpatient days of treatment and 20 outpatient days of treatment for all mental illnesses. Such coverage must be "at least equal to coverage provided for other health conditions" and deductibles and co-payments must be "consistent with those imposed on other benefits" in the plan.
- applies the 30/20 basic benefit to all mental health diagnoses that are covered by the health plan provided to New York State employees and their families, which covers essentially all mental illnesses.
- applies to both large and small employers, but for employers with 50 or fewer employees, the statute requires the state to pay for the cost of the 30/20 basic benefit.
- requires large employers (with more than 50 employees) only to provide full coverage of the following biologically based mental illnesses: schizophrenia, psychotic disorders, major depression, bipolar disorder, delusional disorders, panic disorder, obsessive compulsive disorder, and bulimia and anorexia. Insurance carriers and HMOs are required to offer small employers the option of purchasing the additional coverage for biologically-based illnesses at their own expense.
- mandates coverage by large employers for treatment of children under age 18 who have one of the following diagnoses: attention deficit disorder, disruptive behavior disorder, or pervasive developmental disorder and where other aggravating factors are present.

Timothy's Law sunsets on December 31, 2009, but we strongly anticipate that the New York State Legislature will move to extend the law in advance of the deadline, either permanently or for at least one or more additional years.

Impact on New York State Law

Although federal regulations implementing the new parity law have not yet been released, it appears that the new federal requirements may work to enhance and amplify the provisions of Timothy's Law by requiring employers with more than 50 employees and that are subject to Timothy's Law to provide full parity coverage for the treatment of mental illnesses.

For example, if a health plan in New York offers unlimited visits per plan year to a participant's primary care physician, the federal requirement for parity in treatment limitations will require the plan to increase its coverage for mental health outpatient visits from 20 visits per plan year to an unlimited number of visits per plan year.

There is an exception under ERISA, the federal law regulating employee benefits, for health plans provided by employers who are self-insured, large plan multi-state employers and labor unions. ERISA-exempt health plans are not subject to state insurance mandates such as Timothy's Law and, therefore, are not required to

cover any specific mental health diagnoses. ERISA-exempts, however, will be subject to the new federal parity law and will be required to provide parity in benefits only with respect to any mental health or substance use disorder benefits offered under their plan.

Although Timothy's Law excludes coverage for alcoholism and substance use disorder benefits, a separate New York State law requires health plans to provide at least 60 days of outpatient treatment for alcoholism and substance use disorders. It remains unclear whether the federal law could be construed to "expand" the state mandate for outpatient care into a federal mandate for both outpatient and inpatient care as well.

Impact on Employers

Employers with more than 50 employees that are not ERISA-exempt can expect changes in their current health plans for new plan years commencing after October 3rd of this year. Limits on outpatient mental health visits will likely disappear and disparate co-payments for out-of-network mental health benefits are likely to be eliminated. In general, we expect that benefits, coverage limitations, deductibles and co-payments (for both in-network and out-of-network services) for mental health will become the same as for all other medical conditions.



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