



Legislative Update

October 6, 2009

Substance Use Disorder Benefits Now Included Under Mental Health Parity and Addiction Equity Act of 2008

Background:

On October 3, 2008, President Bush signed into law the Emergency Economic Stabilization Act of 2008. Contained within this important but unrelated piece of emergency legislation is the Mental Health Parity and Addiction Equity Act of 2008 (the "Act"), which requires group health plans to apply the same treatment limits on mental health or substance-related disorder benefits as they do for medical and surgical benefits. The Act also extends this parity requirement to inpatient and outpatient services, whether in-network or out-of-network, and to emergency care services.

Notably, the Act revised the definition of "mental health benefits" to now include substance use disorder benefits. The Act also requires group health plans to apply the same beneficiary financial requirements to mental health or substance use disorder benefits as they apply for medical and surgical benefits, including limits on deductibles, copayments and out-of-pocket expenses. Plan administrators are further required to make the criteria for "medical necessity" determinations with respect to mental health and substance use disorder benefits available to plan participants, beneficiaries or providers upon request.

Accordingly, if plans have limits on hospital inpatient days and/or outpatient visits for mental health treatments, but not for other treatments, they will be required to change their current plan design to comply with the new requirements of the Act.

The Act does not require plans to cover mental health or substance abuse benefits. However, if a plan offers mental health or substance abuse benefits, the Act prohibits imposing more restrictive financial requirements (such as co-pays or deductibles) or treatment limitations (such as day or visit limits) on mental health or substance abuse benefits than those applied to medical or surgical benefits.

The Act is applicable to plan years beginning after October 3, 2009 (for calendar year plans, the effective date is January 1, 2010) and to group health plans under a collective bargaining agreement the later of (1) plan years starting on or after Jan. 1, 2010, or (2) the termination date of the last collective bargaining agreement relating to the plan.

There are exemptions to the mandatory compliance of the Act:

1) **Small employer exemption** - Any employer that has on average between two and fifty employees during the preceding calendar year is classified as a small employer and is not subject to the law.

2) **Cost-based exemption** - If the parity provisions increase the total costs of any group health plan by 2% or more in the first year and 1% in subsequent years, the plan may seek an exemption for one year. This exemption is based on actual (not projected) claims data and administrative expenses during the base period. The base period must begin on the first day in any plan year that the plan complies with the Act and must extend for a period of at least 6 consecutive calendar months.

3) **Self-funded Non-Federal Government Employers** - A non-federal government employer that provides self-funded group health plan coverage to its employees may elect an exemption.

Action Steps:

We realize that complying with the requirements of such a change in the law can be an overwhelming experience for our clients. At Conner Strong, we are here to help you. To ensure that you comply with the requirements of this Act, it would be advisable to:

- Call your insurance professional at Conner Strong at 1-877-861-3220. We can help you review your current insurance program to ensure your business needs are met and your questions are answered.
- Amend affected plan documents or manuals, summary plan descriptions and benefit summaries to incorporate the changes with respect to employee benefits and policies.
- Call your legal professional to have them partner with us to review your plan documents and ensure that they are consistent with your insurance program amendments.

Please contact your Conner Strong representative with any questions, toll-free at 1-877-861-3220.

This Legislative Update is provided for general informational purposes only and is not intended to be legal advice. Readers are urged to contact an attorney for legal advice or assistance.