



Deadline 1: Wellstone Act Expands Mental Health Parity

As the first in a series of six articles on looming compliance deadlines, this article reminds you of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (the “Wellstone Act”). The Wellstone Act expands the parity under the prior Mental Health Parity Act to include both mental health and substance use disorder benefits.

The Wellstone Act is effective for plan years beginning one year after the date of enactment. For calendar year plans, this means **January 1, 2010**.

Latest Developments. The IRS recently issued final regulations effective **September 8, 2009** clarifying the rules on reporting and paying excise taxes for failure to comply with certain group health plan mandates, including Wellstone. In addition, on October 2, Secretary Sebelius informed Congress that it is HHS’ goal to issue regulations by **January 2010** (which is, of course, too late for assisting calendar year plans in amending documents in time for open enrollment).

The Wellstone Act requires numerous changes to most plan documents. Below is a checklist of the key provisions of the Wellstone Act:

- **Financial Requirements.** The financial requirements applicable to mental health or substance use disorder benefits may not be more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits. Likewise, a plan may not have separate cost sharing requirements applicable only to mental health and substance use disorder benefits.
- **Treatment Limitations.** The treatment limitations applicable to mental health and substance use disorder benefits may not be more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits. Likewise, a plan may not have separate treatment limitations applicable only to mental health and substance use disorder benefits.

- **Out of Network Providers.** If the plan covers out of network providers for medical and surgical benefits, the plan must cover out of network providers for mental health and substance use disorder benefits.
- **Medical Necessity.** The criteria for medical necessity determinations with respect to mental health and substance use disorder benefits must be made available by the plan administrator or insurer to any current or potential participant, beneficiary or contracting provider upon request. Likewise, the reason for any denial must be made available by the plan administrator or insurer to the participant or beneficiary.
- **Small Employer Exception.** The Wellstone Act changes the definition of small employer (currently defined as 2 to 50 employees) to 1 to 50 employees, where state law permits small groups to include a single individual.
- **Cost Exemption.** If the application of the Wellstone Act results in an increase in the total cost of coverage by more than 2% in the first year, and 1% in each subsequent plan year, the plan may seek a 1-year plan exemption. The determination must be certified by a qualified and licensed actuary.

To Do. Plans must now examine their mental health and substance use disorder benefits closely, and amend their plan documents to comply with the Wellstone Act. Plans should also take this opportunity to review all mental health and substance use benefits to maximize risk management strategies while conforming plans to the newest requirements of the law.

You can find our complete article on the Wellstone Act here:

<http://www.haynesbenefits.com/admin/uploads/10-16-2008Mental%20Health%20Bailout.pdf>

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