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Request for Information Regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008

Comment On: CMS-2009-0040-0001

Request for Information Regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008

Document: CMS-2009-0040-0005

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General Comment

Please see the attached comment letter.

Attachments

CMS-2009-0040-0005.1: DC



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May 6, 2009

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Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Attention: MHPAEA Comments

Dear Sir or Madam:

We appreciate the opportunity to submit the following comments, regarding specific issues under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”). We respectfully submit these comments on behalf of a Fortune 100 technology company with a workforce of approximately 35,000 employees (“the company”).

The company currently offers a wide variety of group health plans, as well as a behavioral health program (“BHP”) that provides mental health and substance use disorder benefits. Although the BHP is maintained separately, once an individual enrolls in one of the company’s various group health plans, he or she is automatically enrolled in the BHP. The BHP and the company’s other health plans are coordinated in some respects, consistent with the requirements of MHPAEA and the Mental Health Parity Act of 1996 (“MHPA”).

When determining certain aspects of the BHP, in compliance with MHPAEA, the company is currently examining corresponding aspects of its other health plans and using the terms of such other plans that are most favorable to the employee. For example, if the applicable copayment amounts under three different company health plans are \$50, \$75 and \$100, respectively, per hospital admittance, the BHP copayment amount will be \$50 per hospital admittance. This will be true regardless of the health plan in which a specific employee is enrolled.

We have identified three issues and recommended approaches, with respect to the company’s compliance with MHPAEA, in operating the BHP.



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First, under MHPAEA, since the company provides medical and surgical benefits under each of its group health plans, as well as mental health and substance use disorder benefits under the BHP, the financial requirements applicable to the BHP, including copayments, must be no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits provided by the corresponding health plan. The medical and surgical benefits against which the BHP must be compared for this purpose are not entirely clear, however. The issue, essentially, is whether copayments under the BHP must be no more restrictive than the predominant copayments that are applied with respect to all categories of benefits under the other health plans, or whether they may be determined on the basis of a narrower, but more relevant, category of benefits, e.g., benefits provided by specialists under the corresponding health plan.

We respectfully submit that the better approach, in satisfying this rule, is that copayments under the BHP need only be no more restrictive than the predominant copayments applied with respect to substantially all specialist-provided benefits that are covered by the corresponding health plan. The services of a mental health therapist are more akin to the services of a specialist, as opposed to a general provider. Further, under most health maintenance organizations, a plan participant must see a primary care physician before being referred to a mental health therapy specialist. Accordingly, we believe that this approach reflects a reasonable reading of the applicable requirements under MHPAEA.

Second, under MHPAEA, the treatment limitations (including limits on the frequency of treatment, number of visits, days of coverage, etc.) applicable to mental health and substance use disorder benefits provided under the BHP must be no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the corresponding health plan. While most benefits under the other health plans do not contain any treatment limitations, some limits apply to therapy-related treatment. For example, under the company's other health plans, an employee may be limited to a specified number of physical or occupational therapy visits in a year.

Mental health benefits, such as those provided under the BHP, are in the nature of therapy, as they generally involve ongoing, post-diagnostic treatment. Thus, if the company's other health plans contain limits with respect to all other types of therapy-based treatment, we believe it is reasonable for the BHP to contain similar mental health treatment limits without running afoul of the requirements of MHPAEA.

Finally, there is an issue with respect to pre-authorization requirements under MHPAEA. The company's health plans generally require pre-authorization for in-patient hospital visits and certain other items, such as durable equipment costs in excess of a specified amount. We



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respectfully request that future guidance clarify that such pre-authorization requirements, if applied with respect to medical and surgical benefits under a group health plan, may also apply with respect to mental health and substance use disorder benefits without running afoul of MHPAEA. We believe that a reasonable reading of the statute allows the BHP, for example, to impose pre-authorization requirements with respect to in-patient hospital visits for mental health issues, given that such requirements would simply mirror the corresponding benefit provisions under the company's other health plans.

Again, we appreciate the opportunity to comment on the implementation of the new requirements under MHPAEA, and would be happy to discuss these issues in further detail. If additional information from us would be helpful, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Susan Relland".

Susan Relland

SAR:rw