



Employee Benefit Management Services, Inc.

May 27, 2009

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

Attn: MHPAEA Comments

Dear Sir or Madam:

Employee Benefit Management Services, Inc. (EBMS) is the Third Party Administrator for self-funded ERISA employee welfare benefit plans. On behalf of its employer clients, EBMS submits the following comments regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

The majority of EBMS' employer clients offer mental health and substance abuse benefits through their employee welfare benefit plans. Benefits are typically available for both eligible employees and eligible dependents, but may have certain limitations on treatment as has been permitted by the Mental Health Parity Act of 1996. Plans have limited mental health treatments to a certain number of outpatient visits or inpatient days per benefit year. While not subject to the Mental Health Parity Act of 1996, benefits for chemical abuse treatment programs have been similarly limited.

As EBMS assists its employer clients with a review of their employee welfare benefit plans for compliance with MHPAEA, EBMS notes the following area where additional clarifying guidance is requested:

Under Section 1185a(a)(2)(A) of Title 29, Chapter 18, Part 7, the plan may not impose an annual limit on mental health or substance use disorder benefits, if the plan does not have an annual limit on substantially all medical and surgical benefits. Or in the alternative under Section 1185a(a)(2)(B), if the plan does have an annual limit on substantially all medical and surgical benefits, the plan can impose that same limit upon mental health and substance use disorder benefits. Under Section 1185a(a)(2)(C), the Secretary is granted authority to establish rules to address situations in which (A) or (B) do not describe the plans or where the plans may have different limits on different categories of medical and surgical benefits.

EBMS suggests that the Department of Labor issue additional guidance defining the term "substantially all medical and surgical benefits". Employee welfare benefit plans may impose limits on certain treatments and remain in compliance with ERISA Section 702 (a)(2). Accordingly, nothing should prevent a plan from establishing limits or restrictions on the

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amount, level, extent, or nature of the benefit, if done so for all similarly situated individuals enrolled in the plan, and not based upon a health status-related factor of an individual. To that end, annual monetary limits are frequently imposed upon such treatments as inpatient and outpatient therapy and rehabilitation benefits, skilled nursing care, home health care, hospice care, and chiropractic care. These treatments are typically provided for longer periods of time to treat a chronic condition or injury. Annual monetary limits on these treatments can give discretion to a treating provider to manage resources for his/her patient without the extra step of worrying what "criteria" may be applied to determine "medical necessity". Mental health and substance use disorder treatments are analogous in that treatment is often recommended for a longer period of time in order to adequately treat the participant's underlying condition.

A reasonable interpretation of the phrase "substantially all medical and surgical benefits" is to consider only those treatment categories that are analogous to treatments for mental health and substance use disorders. Treatment categories that could be considered analogous to treatments for mental health and substance use disorders would be other therapies or inpatient rehabilitation programs. These treatments may be longer in duration and are often measured by progress made towards stated goals. We think it reasonable that if the plan imposes annual limits on treatment categories similar to treatments for mental health and substance use disorders, the plan may impose annual benefit limits no less restrictive on treatments for mental health and substance use disorders.

Similarly, the plan should be able to impose the predominant treatment limit on mental health or substance use disorder benefits if it imposes the same limit on substantially all medical and surgical benefits, as permitted under Section 1185a(a)(3)(A) of Title 29, Chapter 18, Part 7. This assumes that the phrase "substantially all medical and surgical benefits" is defined as suggested above. For example, in lieu of imposing an annual monetary limit on certain treatments, a plan may choose to impose limits such as a certain number of visits per benefit year (ex: chiropractic care) or a certain number of days or months per year or lifetime (ex: home health care or skilled nursing care). We think it reasonable for a plan to continue to impose limits on treatments for mental health and substance use disorders as long as they are no more restrictive than limits imposed on other analogous treatment categories.

On behalf of its employer clients, EBMS appreciates the opportunity to submit comments to the Department of Labor.

Sincerely,



Terri Hogan, JD, MBA

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