

MEMORANDUM

April 28, 2009

TO: Board of Trustees
Assembly Executive Committee
Council on Advocacy and Public Policy and Committees
APAPAC Board
District Branch Leadership
APA-Congressional Action Network

FROM: Jenny Salzberg and Nick Meyers

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

Introduction

This morning, Tuesday April 28, 2008, the Departments of Health and Human Services (HHS), Labor (DoL) and the Treasury released a request for information (RFI) asking for comments on specific issues related to the implementation of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). DGR has heard that following the public comment period, the three departments will release a final rule in mid-summer which will include regulatory guidance for employers and health plans. While the RFI is not the full guidance that we had asked for, it is a good opportunity to make the case for regulations that require broad coverage and ask for clarification where we feel necessary.

You can view the full RFI through the link below
<http://edocket.access.gpo.gov/2009/pdf/E9-9629.pdf>

How to Comment

DGR will be drafting and submitting APA's written comments on the RFI and we would appreciate your input. Please send any comments, suggestions or other information to Jenny Tassler at jtassler@psych.org by **May 11, 2009**.

We apologize for the short turnaround, particularly in light of the upcoming Annual Meeting, but we hope you will understand that we are working within the 30-day comment period set by the Departments.

You may also submit your own comments directly to the Departments by **May 28, 2009**. There are several ways to submit comments, as listed in the Federal Register Notice, but the easiest is by emailing them to the following email address at the Department of Labor: E-OHPSCA.EBSA@dol.gov. If you do submit comments directly, please copy

jtassler@psych.org on the submission. Also, please note that these comments will be published on the Department of Labor's website and on *regulations.gov*, the federal government's regulatory portal.

Background

In lieu of issuing a standard proposed rule, the Departments have released a "request for information" indicating that they require more background information before writing an interim or final rule to implement the law. The RFI asks for comments and input on two separate topics – information regarding the economic impact of the law and information which will shape the regulatory guidelines.

With respect to the economic impact, the Departments are looking for information about the types of policies and procedures will be impacted by the statute and particularly what the burdens will be on certain small employers. They also ask about the experiences small employers of implementing various state parity laws as examples.

The Departments posed a series of questions about the current state of the health care industry and how mental health benefits are handled. Specifically, they ask about the types of financial and treatment limitations imposed on beneficiaries, whether plans offer out-of-network coverage for mental health benefits and how it differs from medical and surgical benefits, and whether there are any other terms or provisions that require clarification. The RFI also asks about information available on the criteria for medical necessity determinations and on the reasons for denial for reimbursement or payment with respect to mental health benefits. The Departments also asked for information about any aspect of the cost exemption that need clarification.

We have repeated the specific questions posed in the RFI below and tried to make them easier to read. We would appreciate input as to which areas we should highlight in our comments, as well as topics that are not covered by the RFI but about which we may wish to seek clarification.

RFI Questions

A. Comments Regarding Economic Analysis, Paperwork Reduction Act, and Regulatory Flexibility Act

- (i) What policies, procedures, or practices of group health plans and health insurance issuers may be impacted by MHPAEA?
- (ii) Are there unique costs and benefits for small entities subject to MHPAEA (that is, employers with greater than 50 employees that maintain plans with fewer than 100 participants)?
 - What special consideration, if any, is needed for these employers or plans?

- What costs and benefits have issuers and small employers experienced in implementing parity under State insurance laws or otherwise?

B. Comments Regarding Regulatory Guidance

Specific Areas in Which the Departments Are Interested Include the Following:

1. Do plans currently impose other types of financial requirements or treatment limitations on benefits? How do plans currently apply financial requirements or treatment limitations to (1) medical and surgical benefits and (2) mental health and substance use disorder benefits? Are these requirements or limitations applied differently to both classes of benefits? Do plans currently vary coverage levels within each class of benefits?

- “financial requirement” includes deductibles, copayments, coinsurance, and out-of-pocket expenses, but excludes an aggregate lifetime limit and an annual limit.
- “treatment limitation” includes limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment.

2. What terms or provisions require additional clarification to facilitate compliance? What specific clarifications would be helpful?

3. What information, if any, regarding the criteria for medical necessity determinations made under the plan (or coverage) with respect to mental health or substance use disorder benefits is currently made available by the plan?

4. What information, if any, regarding the reasons for any denial under the plan (or coverage) of reimbursement or payment for services with respect to mental health or substance use disorder benefits is currently made available by the plan?

5. The Departments are interested in finding out whether plans currently provide out-of-network coverage for mental health and substance use disorder benefits and if so, how is such coverage the same as or different than out-of-network coverage provided for medical and surgical benefits?

6. Which aspects of the increased cost exemption, if any, require additional guidance? Would model notices be helpful to facilitate disclosure?