

October 31, 2008

Mental Health Parity Bill (H.R. 1424)

The Issue:

On October 3, President Bush signed into law a large financial rescue package that included mental health parity legislation (H.R. 1424). This legislation, the *Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008*, ends inequity with respect to all financial requirements, including copayments and deductibles, between health insurance benefits for mental health and substance abuse disorders and benefits for medical and surgical conditions for group health plans with more than 50 employees. More than 113 million people across the country, including 82 million individuals enrolled in self-funded plans who cannot be assisted by state parity laws, are affected. For most health plans, this legislation takes effect January 1, 2010.

Our Take:

We commend Congress for helping ensure adequate access to and affordability of mental health and substance abuse disorder health benefits. Patients who suffer from these disorders are among the most vulnerable Americans.

The new requirements will impact hospitals as providers offering mental health and substance abuse care. Because this bill provides mental health parity with respect to all financial requirements, it removes barriers to care and limitations on coverage that affect many patients suffering from mental health and substance abuse disorders. The requirements also will impact hospitals as employers offering group health plans to their employees. Specifically, there is expected to be a small (less than 1 percent) increase in premiums when mental health and substance abuse and medical and surgical benefits are equalized. Finally, these requirements also impact Medicaid managed care plans.

The legislation will not, however, impact Medicare; compliance with the Medicare program is not required. There is relative parity in Medicare between coverage of mental health and substance abuse disorders and medical and surgical conditions.

Further Questions:

Please contact Joanna Hiatt, senior associate director of policy, at (202) 626- 2340 or jhiatt@aha.org with any questions.

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BACKGROUND

On October 3, President Bush signed into law a large financial rescue package that included mental health parity legislation (H.R. 1424). This legislation, the *Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008*, ends inequity between health insurance benefits for mental health and substance abuse disorders and medical and surgical conditions for group health plans with more than 50 employees. More than 113 million people across the country, including 82 million individuals enrolled in self-funded plans who cannot be assisted by state parity laws, are affected. For most health plans, this legislation takes effect January 1, 2010.

OUR TAKE

We commend Congress for helping ensure adequate access to and the affordability of mental health and substance abuse disorder health benefits. Patients who suffer from these disorders are among the most vulnerable Americans.

The new requirements will impact hospitals as providers offering mental health and substance abuse care. Because this bill provides mental health parity with respect to all financial requirements, it removes barriers to care and limitations on coverage that affect many patients suffering from mental health and substance abuse disorders. These requirements also will impact hospitals as employers offering group health plans to their employees. Specifically, there is expected to be a small (less than 1 percent) increase in premiums when mental health and substance abuse and medical and surgical benefits are equalized. In addition, the requirements will impact Medicaid managed care plans. They will not, however, impact Medicare; compliance is not required for the program. There is relative parity in Medicare between coverage of mental health and substance abuse disorders and medical and surgical conditions. Specifically, because the *Medicare Improvements for Patients and Providers Act of 2008* required the coinsurance for outpatient mental health services to be reduced to the same level as for other outpatient services (20 percent) by 2014, the one difference that

remains is the lifetime limit on days of treatment provided in freestanding psychiatric hospitals.

AS IT STANDS

The Parity Requirement

H.R. 1424 amends the *Mental Health Parity Act of 1996* to require group health plans with 50 or more employees (or coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health or substance abuse benefits to have equal financial requirements and treatment limitations. Specifically, the equity requirements apply to all financial requirements, including deductibles, copayments, coinsurance and out-of-pocket expenses, and to all treatment limitations, including frequency of treatment, number of visits, days of coverage or other similar limits. The 1996 law already required parity for annual and lifetime dollar limits.

Mental health and substance abuse disorder benefits are defined as benefits with respect to services for mental health conditions and substance abuse disorders, as defined under the terms of the plan and in accordance with applicable federal and state law. A plan may not apply separate cost-sharing requirements or treatment limitations to mental health and substance abuse disorder benefits. If a plan offers two or more benefit packages, these requirements will apply separately to each package.

As under the 1996 federal parity law, mental health or substance abuse benefit coverage is not mandated. However, if a plan offers such coverage, it must be provided at parity.

Effective Date

H.R. 1424 takes effect with the first plan coverage year that falls one year after the date of enactment. For most plans, this means the requirements will take effect January 1, 2010. Plans maintained under collective bargaining agreements ratified before the enactment date are not subject to the statute until the agreement terminates. If the agreement terminates prior to January 1, 2009, however, it is subject to the statute beginning on January 1, 2009. The 1996 federal parity act requirements for annual and lifetime dollar limits remain in effect for all plans, while the sunset in the 1996 federal parity act is eliminated, effective January 1, 2009.

Out-of-Network Benefits

A group health plan (or coverage) that provides out-of-network coverage for medical and surgical benefits also must provide out-of-network coverage, at parity, for mental health and substance abuse disorder benefits.

Benefits Management and Transparency

As under the 1996 parity law, a group health plan (or coverage) may manage the benefits under the terms and conditions of the plan. A plan will make mental health and substance abuse disorder medical necessity criteria available to current or potential participants, beneficiaries or providers upon request. A plan also must make the reasons for payment denials available to participants or beneficiaries upon request, or as otherwise required.

Preservation of State Law

The current *Health Insurance Portability and Accountability Act of 1996* pre-emption standard will still apply. This standard is extremely protective of state law. Only a state law that “prevents the application” of H.R. 1424 will be pre-empted, which means that stronger state parity and other consumer protection laws remain in place.

Small Employer Exemption

As with the 1996 federal parity law, employers with 50 or fewer employees are exempt from these requirements. State parity laws will continue to apply to these employers, as well as to individual plans.

Cost Exemption

If a group health plan (or coverage) experiences an increase in actual total costs with respect to medical and surgical and mental health and substance abuse benefits of 1 percent (2 percent in the first plan year that this legislation is applicable), the plan or its issuer can seek an exemption from the law. In addition:

- An employer may elect to continue parity coverage, regardless of this cost increase.
- The exemption shall apply for one plan year.
- A qualified actuary (a member of American Academy of Actuaries) shall determine and prepare a written report regarding a plan’s cost increase after a plan has complied with the requirements for the first six months of the plan year.
- A plan shall promptly notify the Department of Labor, if self-funded, or the Department of Health and Human Services (HHS), if fully-insured, the appropriate state agencies, and participants and beneficiaries when it elects an exemption. Plan notification to Labor or HHS is confidential and will provide a description of covered lives in the plan and the actual costs for which the exemption is sought.

- The Department of Labor or HHS (as appropriate) and state agencies may audit a plan to determine compliance with the requirements when the plan has elected an exemption. The audit may occur during the six-year period following the notification of the exemption.

Consumer Assistance

The Labor Secretary, in cooperation with the HHS and Treasury Secretaries, shall publish and disseminate guidance and information for plans, participants and beneficiaries, applicable state agencies, and the National Association of Insurance Commissioners concerning the requirements of H.R. 1424. This information will include assistance with questions and how participants and beneficiaries can obtain assistance from state consumer and insurance agencies.

Compliance Report

By 2012 and every two years thereafter, the Labor Secretary shall submit to Congress a report on group health plan (or coverage) compliance with these requirements. The report will include the results of any compliance audits or surveys and, if necessary, an analysis of reasons for any failures to comply with the law.

GAO Study

The Government Accountability Office (GAO) will conduct a study that analyzes the specific rates, patterns and trends in coverage, any exclusion of specific mental health and substance abuse diagnoses by health plans, and the impact of this legislation on such coverage and costs. GAO will provide a report to Congress within three years (and an additional report after five years) on the results of the study.

NEXT STEPS

As under the 1996 federal law, the departments of Labor, HHS and Treasury will continue to coordinate enforcement of the federal mental health parity requirements and are required to issue regulations to carry out changes made in this act no later than one year after the enactment date. Treasury may continue to impose an excise tax on any plan for failure to comply with the requirements. The AHA will monitor regulatory activity and notify hospitals when action is taken.

Further Questions

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