

SUMMARY OF PARITY ACT OF 2008 WITH COMMENTARY

Scope of the Parity Act:

The 2008 Parity Act applies to employer-sponsored group health insurance for companies with 50 or more employees and managed care plans under Medicaid and SCHIP (State Children's Health Insurance Programs). The Parity Act also applies to self-funded employer plans for individuals not covered under State parity laws. In another piece of legislation earlier in FY2008, language was inserted into Medicare that equalizes co-pays and deductibles for mental health (including substance abuse) and medical care. The Parity Act will apply to plans beginning on January 1, 2010. Regulations to carry out changes under the Parity Act must be issued one year after the enactment date.

Self-insured state and local government plans may elect to be exempt from parity. The Parity Act does not apply to small employers with less than 50 employees though such firms are not exempt from State parity laws.

- **It is critical that we understand that the Parity Act applies ONLY when insurance plans already contain benefits for mental health and substance use disorders. There is NO requirement in the Parity Act that insurance plans cover mental health and substance abuse treatment services. In other words, the Parity Act does not mandate benefits.**

Requirements of the Parity Act:

- Mental health and substance abuse coverage applies to ALL financial requirements including deductibles, copayments, coinsurance, and out-of-pocket payments; benefits may NOT be more limited than medical/surgical benefits with regard to number of days or visits and annual or lifetime dollar limits.
Comment: In Kaiser's 2006 survey of employer-sponsored health plans, over half of large firms had annual inpatient hospital limits and about 60% had annual outpatient visit limits.
- If a plan has more than one benefit package, the requirements of the Parity Act require that parity be applied to each one separately.
- If a plan has out-of-network coverage for medical/surgical benefits, it must also apply that coverage, AT PARITY, for mental health and substance use disorders

Benefit Management:

- Plans may manage benefits. However, plans are required to make medical necessity criteria for mental health and substance use disorders available to current and potential participants, beneficiaries and providers upon request. Plans must also make available reasons for denial of payment on request.

Comment: While the Act requires that medical necessity criteria be made available upon request (a major advance from previous parity legislation), such criteria have been very difficult to identify. A few plans have identified “clinical necessity criteria” that must be applied before approving services e.g., one plan states, “to be considered clinically necessary, treatment must address a MH/SA disorder as defined by DSM-IV qualified by all five axes” and “services must be expected to improve and/or maintain an individual’s condition or level of functioning” to be considered clinically necessary.

Cost Exemptions:

- If a health plan incurs an increase in real total costs with respect to medical/surgical benefits and mental health/substance use disorder benefits of 1% (2% in the first year after the Act is implemented), the plan can be exempted from the Parity Law.
 - ◇ Employers may elect to continue parity coverage;
 - ◇ Employers can apply for exemption for one plan year at a time;
 - ◇ A qualified actuary must determine and report on a plan’s cost increase and the plan must have complied with all coverage requirements for the first six months of the year involved;
 - ◇ If self-funded the plan must notify the Department of Labor (DOL) or, if fully-insured, a plan must notify the Department of Health and Human Services (DHHS), the appropriate State agencies, participants and beneficiaries if it elects exemption;
 - ◇ DOL and DHHS may audit any plan to determine compliance when a plan chooses to become exempt.

Reports and Studies:

- The Secretary of DOL will report on compliance with the Parity Act in 2012 and every two years thereafter. The report will include results of audits or surveys and underlying reasons for compliance failures.
- Within three years, the GAO will conduct a study and analyze specific patterns, rates, and trends in coverage; exclusions of specific mental health or substance use diagnoses from coverage; and the impact of the Parity Act on coverage and benefit costs to employers, participants, and beneficiaries.

Consumer Assistance:

- The Secretary of DOL (with the Secretaries of HHS and Treasury) will publish and disseminate guidance and information for plans, participants, beneficiaries, State agencies, and the National Association of Insurance Commissioners concerning the requirements of the Parity Act; and how beneficiaries can obtain assistance from State agencies.

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The Treatment Research Institute (TRI) is an independent, non-profit research and development organization specializing in science-driven reform of policy and practice in addiction and substance use. TRI was founded in 1992 by A. Thomas McLellan, Ph.D. and colleagues from the University of Pennsylvania's Center for the Studies of Addiction. To learn more, visit the TRI website at www.tresearch.org or contact Bonnie Catone, Director of Communications, at bcatone@tresearch.org.
