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LEGAL ALERT



## Legal Alert: Where 'O Where are the Regulations for the Mental Health Parity Act?

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The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (the "Mental Health Parity Act"), passed last year, requires group health plans for businesses with more than 50 employees to provide any mental health or substance use disorder benefits they offer on par with other medical or surgical benefits. That is, the Mental Health Parity Act prohibits such group health plans from being more restrictive with regard to any mental health and substance use disorder benefits offered than the medical and surgical benefits being offered. Employers are not required to offer mental health or substance use disorder benefits. But if they do, parity among these benefits is required in regard to financial requirements and treatment limitations, annual and lifetime dollar maximums, and out-of-network providers.

The Mental Health Parity Act also requires plan administrators to make available upon request the criteria for medical necessity determinations made under the plan with respect to mental health or substance use disorder benefits. In addition, plan administrators must make available upon request or "as otherwise required" the reason for any denial of coverage or reimbursement under the plan with respect to mental health or substance use disorder benefits.

The Mental Health Parity Act generally became effective for plan years beginning on or after October 4, 2009. This means that plan sponsors with calendar year plans must comply with the requirements under the Mental Health Parity Act by January 1, 2010. However, regulations for the Mental Health Parity Act have not yet been published.

Earlier this week the Departments of Health and Human Services, Labor and Treasury indicated that they are still working to develop regulations for the Mental Health Parity Act. These regulations are now expected by January 2010.

### **The Bottom Line**

Until the regulations are issued, employers must carefully review their plan documents to assess whether the scope of services, medical management, financial and treatment limitations, and deductibles discriminate against any mental health or substance use disorder coverage. At the very least, plans should make reasonable efforts to adhere to the Mental Health Parity Act's intent so that good faith compliance is shown. To the extent that plans decide

now to drop their mental health or substance use disorder coverage, Summaries of Material Reduction must be provided, and revisions will need to be made to the Summary Plan Descriptions, benefit booklets, and other benefit communications.

If you have any questions regarding the Mental Health Parity Act or other employee benefits questions, please contact the author of this Alert, Joelle Sharman, [jsharman@fordharrison.com](mailto:jsharman@fordharrison.com), 404-888-3975 or any member of Ford & Harrison's Employee Benefits practice group.