HUNTON& WILLIAMS

CLIENT ALERT

July 2009

Contacts

L. Scott Austin
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
(214) 979-3002

Bank of America Plaza, Suite 4100
600 Peachtree Street, NE
Atlanta, Georgia 30308
(404) 888-4088
saustin@hunton.com

David Albert Mustone
1751 Pinnacle Drive, Suite 1700
McLean, Virginia 22102
(703) 714-7509
dmustone@hunton.com

Christina M. Crockett
1751 Pinnacle Drive, Suite 1700
McLean, Virginia 22102
(703) 714-7514
ccrockett@hunton.com

Congress Extends and Expands the Mental Health Parity Rules for Group Health Plans

In October of 2008, Congress amended the Mental Health Parity Act of 1997 ("MHPA") to make the law permanent. It also significantly expanded the law to:

- apply to substance abuse benefits,
- add additional parity requirements for group health plans,
- require disclosure of a plan's "medical necessity" requirements in certain circumstances, and
- substantially narrow the "cost" exemption.

Group health plans offered by "small" employers — defined as an employer who employed no more than 50 employees in the previous calendar year — continue to be exempt from the MHPA. However, for the plans of larger employers (generally, those with 51 or more employees in the prior year), the new rules will generally apply in full as of the plan's applicable effective date (described below).

Inclusion of Substance Abuse Benefits

In general, the MHPA does *not* require plan sponsors to provide mental health benefits. But, if a group health plan provides such coverage, the law generally requires that these benefits be provided on par with the plan's medical/surgical benefits. As originally enacted, the parity rules did not apply to substance abuse disorders. However, as amended, substance abuse benefits will now be subject to the parity rules.

Expanded Parity Requirements

Previously, the MHPA required parity only in the application of a covered plan's aggregate lifetime and annual dollar limits. Under the new rules, group health plans that provide mental health and/or substance abuse benefits will now be required to meet the following requirements:

Financial Requirements

The financial requirements (i.e., deductibles, copayments, coinsurance and maximum out-of-pocket expense requirements) applicable to mental health or substance abuse benefits cannot be any more restrictive than the "predominant" financial requirements that apply to "substantially all" medical/surgical benefits under the plan.

Treatment Limitations

The treatment limitations (including limits on the frequency of treatment, number of visits, days of coverage or other similar limits on the scope or duration

of treatment) applicable to mental health or substance abuse benefits cannot be any more restrictive than the "predominant" treatment limits that apply to "substantially all" medical/surgical benefits under the plan.

Out-of-Network Providers

If a group health plan covers medical/surgical benefits provided by out-of-network providers, the plan must also cover mental health or substance abuse benefits provided by out-of-network providers consistent with the other parity requirements.

Disclosure of "Medical Necessity" Criteria

A group health plan's medical necessity guidelines for mental health and/or substance abuse benefits must be made available, upon request, to any participant, beneficiary, or service provider (in accordance with soon-to-be-issued regulations). In addition, the reasoning for any denial of mental health or substance abuse benefits must be made available to the affected participant or beneficiary upon request (or as otherwise required by the regulations).

Cost Exemption

As originally enacted, the MHPA generally exempted any group health plan whose costs would increase at least one percent as a result of complying with the parity rules. This exemption has been substantially narrowed. First, the exemption will now be available only if the new parity requirements result in a cost increase of more than two percent for the first plan year that the new rules apply (one percent for each subsequent year). Second, the exemption goes into effect in the following plan year and applies for **only one** year. Lastly, any cost determinations must be made by a duly-qualified actuary, and notice of the exemption generally must be given to both the government and plan participants.

Effective Date/Regulations

In general, the 2008 changes to the MHPA are effective for plan years beginning on or after October 3, 2009. Thus, for calendar year plans, the new rules will go into effect on January 1, 2010. Note, though, that collectively bargained plans have until the first day of the plan year that begins on or after the later of: (i) the date on which the last of the collective bargaining agreements relating to the plan terminates (without regard to extensions), or (ii) January 1, 2010.

There are a number of aspects of the new rules on which government guidance is needed or would be helpful. The MHPA directs that regulations addressing the new rules be issued by October 3, 2009 — which, for many employers, may be too late to consider in making and implementing any needed design decisions.

We welcome the opportunity to assist you in assessing your options for complying with the new MHPA rules.