VENABLE LLP

employee benefits & executive compensation alert

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Mental Health Benefits: More Changes Needed to Your Health Plan

Plan design changes for the 2011 plan year will not be limited to those required under the new health care reform rules that will be explored in our upcoming webinar **Health Care Reform: What It Means for Employers and the Health Plans They Sponsor**. Plan sponsors will also need to reevaluate, and most likely redesign, the mental health and substance abuse benefits offered by their group health plans as a result of the interim final regulations issued earlier this year under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

The Act and the subsequent regulations overhaul the previously existing mental health parity rules in three principal ways.

First, the Act broadens these rules to apply to both mental health and substance abuse benefits, and mandates that the predominate "financial requirements" that apply to these benefits be no more restrictive than those that apply to substantially all medical and surgical benefits available under a plan. "Financial requirements" include deductibles, co-payments, co-insurance, and out-of-pocket maximums. Most plan sponsors have already made changes to their plans to comply with these rules, which became effective January 1, 2010 for calendar year plans.

Second, the interim final regulations under the Act further expand the protections for mental health and substance abuse benefits and set out new requirements for determining permissible annual and lifetime limits. [1] The regulations also set out complicated criteria, based on mathematical determinations, for determining if any financial restrictions on mental health and substance abuse benefits will be permitted. In addition, the new rules require the cross-accumulation of financial requirements and treatment limitations. This means that plans may no longer have separate deductibles for mental health and/or substance abuse benefits than for medical and/or surgical benefits.

Third, the regulations prohibit certain "non-quantitative treatment limitations." This notable change requires that plans begin applying the same medical management standards, formulary designs, and methods for determining usual and customary benefits to mental health and substance abuse benefits that are otherwise applied to medical and surgical benefits. Thus, for example, a plan that does not otherwise require preauthorization for medical office visits will no longer be permitted to require preauthorization for psychiatric office visits.

In light of these changes, plan sponsors should begin discussions with their insurers and third-party administrators—particularly those responsible for administering mental health and substance abuse benefits—about implementing revised administrative procedures. Significantly, failure to comply with the parity rules triggers excise tax liability. Plan sponsors are required to voluntarily report any such liability directly to the Internal Revenue Service on IRS Form 8928.

Though a few limited exceptions to these new rules exist, most plan sponsors will have to be in full compliance with them by the start of their first plan year beginning on or after July 1, 2010. This leaves plan sponsors with little time to wait in making the necessary changes to their plans. In particular, before open enrollment materials for 2011 are finalized, plan sponsors will need to (1) evaluate their current plan structure and determine any necessary changes (both those required by the mental health and substance abuse parity rules and those required under health care reform), and (2) redesign and re-price their plans accordingly.

The lawyers in Venable's Employee Benefits and Executive Compensation group are happy to assist you in identifying and implementing the necessary changes to your plan benefit structure.

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[1] As of now, however, it is unclear what the impact of health care reform's restrictions on lifetime and annual limits will be on these provisions.
