

## **The Intersection of the Federal Parity Law and Wisconsin Law**

Last October, Congress passed and the President signed the Wellstone-Domenici Mental Health Parity and Addiction Equity Act of 2008. Because the federal government is still working on writing regulations for the federal law and the Wisconsin Office of the Commissioner of Insurance (OCI) is waiting for these to be finalized (which is not anticipated to occur until October), there is no official word on how the federal law will impact Wisconsin companies.

However, the following discussion provides a big picture overview by employer types. Because the federal law and Wisconsin law apply to different types of employers and group sizes, whether and how you will be affected will depend upon your current employment situation. Additionally, the rules are different for people who are in public benefit programs.

### Individual Insurance Market

Neither the state law nor the federal law impact requirements for plans sold in the individual (non-group) insurance market. Therefore, there are no requirements for any minimum level of mental health/substance abuse (MH/SA) coverage for these plans.

### Employers of 50 or fewer employees who self-insure

In general, smaller employers do not self-insure. However, any such employers who do self-insure would be subject to neither the state law nor the federal law. They could choose to offer MH/SA coverage or not and would not have any requirements as to the level of such coverage.

### Employers of 50 or fewer employees who purchase commercial group insurance plans

These employers are not affected by the federal law. They are subject to state law only. They must continue to provide a minimum of \$7000/year in MH/SA inpatient services (if they provide any inpatient services) and outpatient services (if they provide any outpatient services) plus transition treatment benefits. There are “internal” caps on the outpatient benefit (up to \$2000) and the transitional treatment benefit (up to \$3000).

### Employers with more than 50 employees who self-insure

These employers are subject only to the federal law. Therefore, they are not required to offer MH/SA benefits, but if they do they must be offered at parity with coverage of other benefits. The definition of the mental health benefit is defined by the plan; that is, they determine which conditions are covered.

### Employers with more than 50 employees who purchase commercial group insurance plans

These employers are subject to both the federal and state laws. Therefore, the current understanding is that they are required to offer MH/SA inpatient, outpatient and transitional treatment services, as defined under current state law, and do so at parity with coverage of other benefits. Further, the current understanding is that employers would define which conditions are covered in their plan but any MH/SA services employers choose to provide outside the scope of those state law requires, need to be provided at a parity level. There is no current clarification about what would happen if one of these employers received a cost exemption from the federal law but presumably they would still need to comply with state law at that point.

### Public programs

Current analysis suggests that there is nothing in the federal parity bill that affects public health insurance programs such as Medicaid, Medicare and SCHIP. Some people have suggested that if these benefits are provided through commercial insurance carriers that they would be subject to the federal law, but at this point OCI does not understand that this would be the case.

*Medicaid:* Basic Medicaid has parity in the sense that there are no established maximums on covered MH/SA benefits, only prior authorization requirements that might apply after some level of service use. Some of the Medicaid expansion programs do limit MH/SA coverage. Families on the Badger Care Plus Benchmark Plan, who have incomes over 200% of the federal poverty level, will have MH/SA benefits that correspond with the state employee's benefit package, that limits coverage. The Badger Care Plus Core Plan for Childless Adults includes mental health services by a psychiatrist only and does not include inpatient MH/SA services

*Medicare:* While the federal parity bill did not affect Medicare, separate legislation in the last session did phase in a reduction of the higher 50% copay that has applied to mental health services. This copay amount will be reduced to 20% over the next six years. However, Medicare continues to provide fewer inpatient lifetime days for MH services than for other services.

*SCHIP:* Legislation recently passed in Congress and signed by President Obama required parity in the SCHIP program. This can be met if the program incorporates EPSDT benefits, which Wisconsin's program does.