

**Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Act of 2008**

President George W. Bush signed the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Act of 2008 (Wellstone/Domenici Act) into law on October 3, 2008. The Wellstone/Domenici Act preserves the restrictions on annual and lifetime maximums for mental health benefits imposed by the Mental Health Parity Act of 1996 (MHPA). It also extends parity to substance abuse disorder benefits. *The Wellstone/Domenici Act does not require a plan to cover mental health and/or substance abuse disorder benefits.* However, if the plan covers such benefits, then it may not impose more restrictive financial requirements (cost-sharing) and treatment limitations (number of visits or days of coverage) on mental health and substance abuse disorder benefits than the predominant financial and treatment requirements applicable to all medical/surgical benefits.

The Wellstone/Domenici Act is generally effective for plan years beginning after October 3, 2009. For calendar year plans, the effective date is January 1, 2010. Certain employers/groups are exempt from compliance. These include small employers with an average of at least two but not more than fifty employees during the preceding calendar year (definition of small employer may pertain to one employee depending on the state in which the employer is domiciled) and union plans whose collective bargaining agreements have not terminated as of the enactment of the Wellstone/Domenici Act or January 1, 2009, discounting any bargaining agreement extension. An exemption also exists for employers whose claim costs increase by two percent in the first year of adoption of the Wellstone/Domenici Act (one percent for subsequent years), provided that the cost calculation is based on six months of actual claims data with parity in place. The cost exemption for those employers who qualify is effective in the following plan year and it is a one-year exemption. Employers must apply each year for future exemptions. In addition, employers must notify participants, beneficiaries and the government of the election to use the exemption.

**How does the Wellstone/Domenici Act differ from the MHPA?**

Provision	MHPA	Wellstone/Domenici Act
Effective date	Plan years beginning on or after January 1, 1998	First day of the plan year following one year after the enactment (October 3, 2009). This means <b>January 1, 2010</b> for calendar year plan years. Special rule applies to plans subject to collective bargaining agreements.
Sunset date	Originally September 30, 2001. Date was extended many times and the Wellstone/Domenici Act eliminates the sunset provision.	Not applicable

Provision	MHPA	Wellstone/Domenici Act
Requires health plans to include mental health or substance abuse/chemical dependency benefits?	No	No
Applies to substance abuse and chemical dependency?	No	Yes
Annual or lifetime dollar limits	If plan provides a separate annual or lifetime dollar limit for mental health benefits, such limits cannot be lower than dollar limits for medical and surgical benefits. If mental health claims accumulate to the plan's overall lifetime maximum benefit or if plan does not impose an annual or lifetime dollar limit on medical and surgical benefits, then plan may not impose a separate annual or lifetime dollar limit for mental health benefits.	Preserves MHPA requirements for mental health benefits and extends the requirements to substance abuse/chemical dependency disorder benefits
Okay to impose other restrictions such as cost-sharing provisions and treatment limits?	Yes	Yes, provided cost-sharing and treatment limits are the same or better than those for medical and surgical benefits under the plan
Requires benefits for use of out-of-network providers?	No	Yes, if the plan provides out-of-network coverage for medical/surgical benefits

Provision	MHPA	Wellstone/Domenici Act
Size exemption	Employers with an average of at least two (or one in the case of an employer located in a state that permits a small employer to include a single individual) but not more than fifty employees during the preceding calendar year	Same as MPHA
Cost exemption	One-percent increase in claim costs attributable to the MHPA requirements	Two-per cent increase in claim costs in the first plan year that the Act is applicable, thereafter one-percent
Cost exemption requirement	MPHA provisions must be implemented for at least six months and the calculation of the one-percent cost exemption and calculation must be based on at least six months of actual claims data with parity in place	Same as MPHA
Disclosure of medical necessity criteria with respect to mental health or substance use disorder benefits	Not applicable	Must be made available to participants free of charge upon written request

## What it means to plan sponsors

A plan sponsor needs to determine if its benefits for mental health and substance abuse disorders are more restrictive than benefits for most physical conditions. If so, the plan sponsor must adjust benefits for mental health and substance abuse disorders to comply with the Wellstone/Domenici Act. Compliance date is January 1, 2010 for calendar year plans.

Compliance checklist:

1. Compare financial limits for mental health and substance abuse disorder benefits with limits for all other medical and surgical benefits to ensure parity. For example, a plan that imposes a \$250 hospital admission copayment for treatment of substance abuse disorders and no hospital admission copayment for treatment of other medical conditions is not in compliance with the Wellstone/Domenici Act.
2. Compare treatment limits for mental health and substance abuse disorder benefits with limits for all other medical and surgical benefits to ensure parity. For example, a plan that limits outpatient mental health treatment to 60 days or visits in a calendar year but does not impose such a limit on outpatient services for other medical conditions is not in compliance with the Wellstone/Domenici Act.
3. Review the criteria for determining medical necessity of mental health and substance abuse treatment from your plan administrator and ensure that your plan administrator is ready to provide criteria upon request from a participant or provider.
4. If your plan provides out-of-network benefits for medical and surgical benefits, ensure that out-of-network benefits are available for the treatment of mental health/substance abuse disorders.
5. Provide employees with a summary of material modifications to the plan so that they are informed of your efforts to comply with the Act.

Disclaimer: This material is for the sole purpose of providing general information and does not under any circumstances constitute legal advice and should not be used as a substitute for legal advice. You should seek the advice of counsel when applying the requirements to your plan. For more information on this ErisaALERT contact us by phone at 773-857-1137 and ask for Leanne Fosbre or 610-524-5351 and ask for Mary Andersen or 973-994-7539 and ask for Theresa Borzelli.

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