

May 3, 2010

DEPARTMENT OF LABOR  
Employee Benefits Security Administration  
29 CFR Part 2590  
RIN 1210-AB30

DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
26 CFR Part 54  
[TD 9479]  
RIN 1545-BJ05

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
[CMS-4140-IFC]  
45 CFR Part 146  
RIN 0938-AP65

Re: Comments to Interim Final Rules under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008

Dear Departments:

NCADD-New Jersey appreciates the opportunity to submit comments to the Interim Final Rules regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). The National Council on Alcoholism and Drug Dependence-New Jersey, a private, nonprofit public health organization, works in partnership with and on behalf of thousands of individuals, families, and communities affected by substance use disorders to promote recovery through excellence in prevention, treatment, and recovery initiatives. NCADD-New Jersey supports the establishment and enforcement of laws and public policies that promote recovery, eliminate discrimination, and underscore the public health approach to addiction.

Upon careful review of the Interim Final Rules pertaining to the MHPAEA, NCADD-NJ is focusing on one area of great concern. There is a tremendous need for the rules to provide guidance on the opt-out

provisions for government-sponsored plans.

- Additional guidance is needed on the MHPAEA provision allowing non-federal employer group health plans sponsored by State and local governments to opt out of the MHPAEA.
- Regulatory guidance should be given on the process non-federal government employers should follow in determining whether they choose to comply with the MHPAEA.
- The Departments should require that there be:
  - A certain period of time during which these plans must deliberate whether to opt out of the requirements of the MHPAEA;
  - A transparent process where plan beneficiaries are notified of the possibility of the plan opting out of the MHPAEA and an opportunity to be heard and present information;
  - A process for those government-sponsored plans that have opted out to require that plans reexamine whether to comply with the MHPAEA after a certain amount of time. Guidance should also be given to inform plans that have opted out that they can later decide to comply with the MHPAEA.

Without these rules, thousands of individuals will be subject to discriminatory policies without ever having notice or an opportunity to be heard. In addition the decision to opt out, which affects thousands of individuals, will be made without having critical information.

This is the case in New Jersey. On December 9, 2009, in a 3 to 2 vote, the State Health Benefits Commission voted to opt out of the requirements of the MHPAEA. This decision was made without notice that such a vote was to take place, an opportunity to be heard by those affected by the waiver, or an opportunity to present information. This uninformed decision will result in over 800,000 individuals being deprived of the protections in the MHPAEA and is contrary to previous determinations regarding a comprehensive state parity law made by all of the New Jersey panels and commissions that had a transparent process and considered all of relevant information and testimony before it.

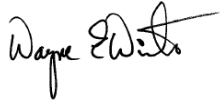
In determining whether to enact a more comprehensive state parity law in New Jersey, after notice, public hearings and the opportunity of interested parties to present information, the Governor's Human Services Transition Policy Group, the Pension and Health Benefits Review Commission<sup>i</sup>, the Mandated Health Benefits Advisory Commission<sup>ii</sup>, the Governor's Mental Health Task Force and the New Jersey Substance Abuse Prevention & Treatment Advisory Task Force, NJDHSS, all recommended the enactment of mental health and addiction parity as a wise investment for New Jersey. These groups all cited the savings the state would realize if parity were provided for mental health and addiction treatment. The consensus was that mental health and addiction parity would produce savings to society that would far outweigh the very slight impact it might initially have had on health insurance premiums.

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act requires the Departments of Labor, Health and Human Services and Treasury to develop and issue regulations to ensure that the intent of Congress is carried out and mental health and addiction treatment services really do achieve parity and equality in health insurance. Allowing states to opt out of the requirements of the MHPAEA without the above stated protections is not in line with the congressional intent of this law to ensure that critical mental health and addiction services are available to those who need them.

The federal government has taken a huge step forward in recognizing the importance of mental health and substance abuse treatment by passing the MHPA. Don't let three individuals erase these gains for so many in New Jersey!

Thank you for your time and attention on this very important matter.

Respectfully,



Wayne Wirta  
President/CEO

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<sup>i</sup> The Pension and Health Benefits Review Commission was created in 1991 by the New Jersey Legislature. See P.L.1991, c.382, [N.J.S.A. 52:9HH-1 et seq.](#) The Commission was given the responsibility to review any bill, joint resolution or concurrent resolution introduced in either House of the Legislature which establishes or modifies pension benefits or health benefits for public employees in this State. Such a review shall include, but not be limited to, an analysis of the bill's or resolution's fiscal impact on the retirement system and on the public employer, any comments upon or recommendations concerning the legislation, and any alternatives to the legislation which the commission may wish to suggest. The commission consists of 10 members: the State Treasurer and three other members of the Executive Branch appointed by the Governor; two public members appointed by the Governor; two public members appointed by the President of the Senate; and two public members appointed by the Speaker of the General Assembly

<sup>ii</sup> Although the state law was not a mandate, the legislature requested a review of the mental health and addiction parity legislation. [N.J.S.A. 17B:27D-1](#) (Mandated Health Benefits Advisory Commission Act) established the MHBAC in 2004. The New Jersey Mandated Health Benefits Advisory Commission responds to requests from the State Legislature, providing an objective, independent analysis of the medical, financial and social impacts of proposed health insurance benefit mandates