

# PUBLIC SUBMISSION

<b>As of:</b> May 22, 2009 <b>Tracking No.</b> 809a1236 <b>Comments Due:</b> May 28, 2009
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**Docket:** [IRS-2009-0008](#)

Request for Information for Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008

**Comment On:** [IRS-2009-0008-0001](#)

Request for Information Regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008

**Document:** [IRS-2009-0008-0006](#)

Comment on FR Doc # E9-09629

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## Submitter Information

**Name:** Stephen Paul Melek

**Address:**

Denver, CO,

**Submitter's Representative:** Stephen P. Melek

**Organization:** Milliman

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## General Comment

See attached letter.

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## Attachments

[IRS-2009-0008-0006.1](#) Comment on FR Doc # E9-09629



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May 19, 2009

Internal Revenue Service, Department of the Treasury  
Centers for Medicare & Medicaid Services, Department of Health and Human Services  
Employee Benefits Security Administration, Department of Labor

Submitted via Federal eRulemaking Portal

Attention: CMS-4137-NC

**Re: Request for Information on the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”)**

Ladies and Gentlemen:

Milliman is pleased to respond to the agencies' request for information regarding issues under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). Milliman is a leader in providing actuarial consulting services to health insurance companies and health plans in the private and public sector, and believe our experience can be helpful as the agencies draft coordinated regulations.

Although your request for information seeks comments on many areas for which health plans and health insurers will want guidance, we also believe there are several other concerns that must be addressed as part of that guidance. To that end, we hereby raise additional specific questions that we hope the agencies will consider when developing MHPAEA regulations:

1. Preemption of State laws - How does MHPAEA affect a state mandated law that requires a specific number of inpatient days for substance use disorder treatment and also prohibits the application of medical necessity criteria during that stay? In this case, a benefit limit is in place for a substance use disorder benefit and no medical necessity criteria are allowed, both of which are contrary to MHPAEA. Does MHPAEA preempt state law here?
2. Similarly, how does MHPAEA affect a state with a mandated benefit for autism, such as a required minimum \$50,000 annual benefit? Is autism considered a disorder covered by MHPAEA? If so, and plans have to cover \$50,000 of annual benefits under state law, this is contrary to the MHPAEA requirement of no treatment limitations for mental health benefits. Does MHPAEA preempt state law here?
3. Are separate but equal deductibles or separate but equal out-of-pocket limits for medical/surgical benefits and for mental health/substance use disorder benefits allowed under MHPAEA?



Internal Revenue Service, Department of the Treasury  
Centers for Medicare & Medicaid Services, Department of HHS  
Employee Benefits Security Administration, Department of Labor  
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4. Can a health plan exclude all mental health and substance use disorders from its benefit plan and provide a separate Integrated EAP-Behavioral Health benefit plan with limits on the mental health and substance use disorder benefits and be considered in compliance under MHPAEA?
5. Can limits exist on mental health and substance use disorder benefits that have no analogous medical-surgical benefit, such as residential treatment services or partial hospital services?
6. Can plans apply medical necessity criteria to residential treatment benefits which become custodial in nature and deny coverage under their criteria?
7. How does MHPAEA affect coverage for drugs that are used to treat mental illnesses and substance use disorders? Can health plans use formularies to help manage these pharmacy benefits? Can different brand-name and generic drugs be placed on different tiers of the pharmacy benefits? Can specific psychotropic drugs be excluded from a formulary?
8. Can plans provide mental health and substance use disorder benefits through a rider instead of the base health plan? If so, do the MHPAEA requirements apply to the rider coverage?

Thank you for the opportunity to submit these questions regarding MHPAEA at this time. We will be pleased to provide you any information that might be helpful as you develop the regulations.

Sincerely,

A handwritten signature in blue ink that reads "Stephen P. Melek".

Stephen P. Melek, FSA, MAAA  
Consulting Actuary