

# Employee Benefits & Executive Compensation Update

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## New Mental Health Coverage Requirement

### Requirements of the Wellstone Act

On October 3, 2008, President Bush signed into law the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ("Wellstone Act"), as part of the Emergency Economic Stabilization Act of 2008. The Wellstone Act amends ERISA and the Public Health Services Act to require that if a group health plan provides mental health or substance-use-disorder coverage, such coverage must be provided at the same level as the coverage level for medical and surgical benefits. A group health plan is a welfare benefit plan to the extent such plan provides medical care to employees and dependents directly or through insurance, reimbursement, or otherwise. The Wellstone Act defines mental health benefits as those services provided for mental health conditions, and substance-use-disorder benefits as those services provided for substance use disorders, as each is defined under the plan and in accordance with applicable federal and state law. With respect to mental health or substance-use-disorder coverage, the group health plan may not:

- require that the participant pay more with

respect to co-payments, deductibles, or out-of-pocket expenses; or

- impose more restrictive limitations as to the number or frequency of visits or days of coverage.

In addition, the group health plan must provide the same out-of-network coverage for mental health and substance-use-disorder coverage that is available for out-of-network medical and surgical benefits.

*Comment: The Wellstone Act prohibits a group health plan, whether insured or self-funded, from imposing limits on mental health and substance-use-disorder benefits that are stricter than the limits imposed on surgical and medical benefits for both in-network and out-of-network coverage. All plans will need to be reviewed and possibly redesigned to accommodate the new requirements.*

### Effective Date

The Wellstone Act is generally effective as of the first plan year that begins after October 3, 2009. In the case of a group health plan that is maintained pursuant to a collective bargaining agreement, the Wellstone Act becomes effective as of the first plan year that begins after the later of: (1) the termination of the last collective bargaining agreement without

regard to any extension agreed to after October 3, 2008, or (2) January 1, 2009.

***Comments:** If a collective bargaining agreement is not currently in place, the Wellstone Act becomes effective with the first plan year beginning after January 1, 2009, a shorter implementation period than the general effective date.*

### Exemption from Application of Provisions

An employer may seek an exemption from the requirements of the Wellstone Act with respect to a group health plan. A group health plan may be exempt from providing the benefits required by the Wellstone Act for the following plan year if:

- the actual total cost of providing medical, surgical, mental health, and substance-use-disorder benefits at the levels required by the Wellstone Act increase the cost of such benefits by a specific percentage;
- an actuary certifies that the actual total costs for the current plan year increased by the specified percentage; and
- the group health plan has implemented the requirements of the Wellstone Act for at least six months before seeking an exemption.

***Comments:** The Wellstone Act will require an employer to live with the costs of the increased benefit before electing the exemption. As drafted, the exemption is optional and would apply for the year following the determination that the actual total costs increase by the applicable percentage and would only apply for a one-year period. Until regulations are issued, it is unclear how the exemption will work. For example, it is uncertain what information the actuary will need under an insured arrangement where the increase to cost would be shown through the increase to the premium charged to the employer. In addition, the specified percentage is set very low (1 or 2% depending on the circumstances), making the exemption feasible for many employers.*

### Required Notice

In the event a group health plan seeks an exemption from the application of the Wellstone Act, the group health plan must notify the Department of Labor, applicable state agencies, and all participants.

The notice to the Department of Labor will be held confidential and must include the following:

- description of the number of covered lives at the time of the exemption and during any other period for which an exemption was sought;
- for the year of and the year prior to the year of exemption, a description of the actual total costs of coverage for all benefits (medical, surgical, mental health, and substance-use disorder); and
- for the year of and year prior to the year of exemption, a description of the actual total costs for coverage for mental health and substance-use-disorder benefits.

Group health plans are required to maintain the actuarial certification that supports the exemption for six years following the year of the exemption. In addition, the Department of Labor is authorized to audit a group health plan that has filed an exemption request.

***Comments:** Until regulations are issued, it is unclear if additional information or supporting documentation will be required in connection with the notice of exemption that must be provided to the Department of Labor. ■*

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