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**Federal Mental Health Parity Legislation:
Impact on State Laws**

Federal Coverage
The legislation applies to all group health plans with 51 or more employees. It will cover 82 million individuals in self-insured employer health plans that are not governed by state parity laws and another 31 million in plans that are subject to state regulation.

Scope
The legislation imposes no requirement as to what conditions must be covered. But whatever is covered must be at parity with medical coverage (except to the extent that a state parity law requires broader coverage). Specifically, it prohibits group health plans that offer coverage for any mental health or substance-use conditions from imposing treatment limitations and financial requirements on those benefits that are stricter than for medical and surgical benefits.

Out-of-network Coverage
If a plan offers out-of-network benefits for medical/surgical care, it must also offer out-of-network coverage for mental health and addiction treatment and provide services at parity.

State Laws
The legislation preserves strong state parity and consumer laws. State parity laws vary widely.
Impact on State Laws

State Law Coverage
Under applicable law, State mental health parity laws will continue to apply to health plans of employers with 50 or fewer employees and to the individual insurance market. For health plans of 51 or more employees:

Stronger State Laws
Stronger state mental health parity laws are not preempted by the federal law. If, for example, a state law requires parity for all diagnoses listed in the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), this state requirement remains in place as do state laws that require parity for specific diagnoses (usually, a list of severe mental illnesses.) In addition, the bill does not override an obligation created in state law to either cover or offer mental health benefits.

The bill requires disclosure of the criteria for medical necessity determinations (and reasons for denials of coverage) regarding mental health or substance-use disorder benefits. Stronger state consumer protections governing health insurance would not be affected.
Provisions in State Laws That Are Preempted

Treatment Limitations, Financial Requirements
The legislation will preempt state minimum-benefit requirements that establish numerical treatment limitations or financial requirements for behavioral health coverage that are inconsistent with the requirement of parity. For example, state laws that require coverage of a specified number of outpatient mental-health visits or set a maximum on out-of-pocket expenses for behavioral health care that do not apply to substantially all medical and surgical benefits will be preempted.

Out-of-Network Coverage
Under the federal legislation, if a plan offers out-of-network benefits for medical or surgical care, it must also offer out-of-network coverage for mental health and addiction treatment. In addition, there must be parity in these services, meaning that cost sharing and deductibles have to be the same between the two out of network benefits. State parity law provisions that apply only to in-network benefits would be preempted by this more protective federal standard.

Cost-exemption
Health plans whose costs under parity increase by more than 2% in the first year, and by more than 1% in a subsequent year are exempt from the parity requirements for the following year. Provisions of state law that

establish different standards for an exemption based on costs, or a cost-exemption of greater duration would be preempted. A state parity law provision that provides for a permanent exemption from parity requirements on the basis of cost would be preempted.

Substance Use Disorders

The legislation extends the parity requirement to any substance-use disorder covered by a health plan. Thus, a provision of a state parity law that excludes substance use disorders from the parity requirement would be preempted. Accordingly, if a health plan offers benefits for substance use treatment, it must be at parity with medical and surgical benefits.

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