

~~old language has been struck~~  
*new language inserted in italics* (2008)

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## TITLE 29--LABOR

### CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

#### SUBCHAPTER I--PROTECTION OF EMPLOYEE BENEFIT RIGHTS

##### Subtitle B--Regulatory Provisions

##### part 7--group health plan requirements

##### Subpart B--Other Requirements

#### Sec. 1185a. Parity in application of certain limits to mental health benefits

##### (a) In general

##### (1) Aggregate lifetime limits

In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health benefits--

##### (A) No lifetime limit

If the plan or coverage does not include an aggregate lifetime limit on substantially all medical and surgical benefits, the plan or coverage may not impose any aggregate lifetime limit on ~~mental health benefits~~ *mental health or substance use disorder benefits*.

##### (B) Lifetime limit

If the plan or coverage includes an aggregate lifetime limit on substantially all medical and surgical benefits (in this paragraph referred to as the ``applicable lifetime limit"), the plan or coverage shall either--

(i) apply the applicable lifetime limit both to the medical and surgical benefits to which it otherwise would apply and to ~~mental health benefits~~ **mental health and substance use disorder benefits** and not distinguish in the application of such limit between such medical and surgical benefits and ~~mental health benefits~~ **mental health and substance use disorder benefits**;

or

(ii) not include any aggregate lifetime limit on ~~mental health benefits~~ **mental health or substance use disorder benefits** that is less than the applicable lifetime limit.

(C) Rule in case of different limits

In the case of a plan or coverage that is not described in subparagraph (A) or (B) and that includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan or coverage with respect to ~~mental health benefits~~ **mental health and substance use disorder benefits** by substituting for the applicable lifetime limit an average aggregate lifetime limit that is computed taking into account the weighted average of the aggregate lifetime limits applicable to such categories.

(2) Annual limits

In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and ~~mental health benefits~~ **mental health or substance use disorder benefits--**

(A) No annual limit

If the plan or coverage does not include an annual limit on substantially all medical and surgical benefits, the plan or coverage may not impose any annual limit on ~~mental health benefits~~ **mental health or substance use disorder benefits.**

(B) Annual limit

If the plan or coverage includes an annual limit on substantially all medical and surgical benefits (in this paragraph referred to as the "applicable annual limit"), the plan or coverage shall either--

(i) apply the applicable annual limit both to medical and surgical benefits to which it otherwise would apply and to ~~mental health benefits~~ **mental health and substance use disorder benefits** and not distinguish in the application of such limit between such medical and surgical benefits

and ~~mental health benefits~~ *mental health and substance use disorder benefits*; or

(ii) not include any annual limit on ~~mental health benefits~~ *mental health or substance use disorder benefits* that is less than the applicable annual limit.

(C) Rule in case of different limits

In the case of a plan or coverage that is not described in subparagraph (A) or (B) and that includes no or different annual limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan or coverage with respect to ~~mental health benefits~~ *mental health and substance use disorder benefits* by substituting for the applicable annual limit an average annual limit that is computed taking into account the weighted average of the annual limits applicable to such categories.

***(3) FINANCIAL REQUIREMENTS AND TREATMENT LIMITATIONS-***

***(A) IN GENERAL-***

*In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health or substance use disorder benefits, such plan or coverage shall ensure that—*

*(i) the financial requirements applicable to such mental health or substance use disorder benefits are no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits covered by the plan (or coverage), and there are no separate cost sharing requirements that are applicable only with respect to mental health or substance use disorder benefits; and*

*(ii) the treatment limitations applicable to such mental health or substance use disorder benefits are no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan (or coverage) and there are no separate treatment limitations that are applicable only with respect to mental health or substance use disorder benefits.*

***(B) DEFINITIONS- In this paragraph:***

***(i) FINANCIAL REQUIREMENT-*** *The term 'financial requirement' includes deductibles, copayments, coinsurance, and*

*out-of-pocket expenses, but excludes an aggregate lifetime limit and an annual limit subject to paragraphs (1) and (2),*

*“(ii) PREDOMINANT- A financial requirement or treatment limit is considered to be predominant if it is the most common or frequent of such type of limit or requirement.*

*“(iii) TREATMENT LIMITATION- The term ‘treatment limitation’ includes limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment.*

#### *“(4) AVAILABILITY OF PLAN INFORMATION-*

*The criteria for medical necessity determinations made under the plan with respect to mental health or substance use disorder benefits (or the health insurance coverage offered in connection with the plan with respect to such benefits) shall be made available by the plan administrator (or the health insurance issuer offering such coverage) in accordance with regulations to any current or potential participant, beneficiary, or contracting provider upon request. The reason for any denial under the plan (or coverage) of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary shall, on request or as otherwise required, be made available by the plan administrator (or the health insurance issuer offering such coverage) to the participant or beneficiary in accordance with regulations.*

#### *“(5) OUT-OF-NETWORK PROVIDERS-*

*In the case of a plan or coverage that provides both medical and surgical benefits and mental health or substance use disorder benefits, if the plan or coverage provides coverage for medical or surgical benefits provided by out-of-network providers, the plan or coverage shall provide coverage for mental health or substance use disorder benefits provided by out-of-network providers in a manner that is consistent with the requirements of this section.’;*

#### (b) Construction

Nothing in this section shall be construed--

1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any ~~mental health benefits~~ **mental health or substance use disorder benefits**; or

~~(2) in the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides mental health benefits, as~~

~~affecting the terms and conditions (including cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity) relating to the amount, duration, or scope of mental health benefits under the plan or coverage, except as specifically provided in subsection (a) of this section (in regard to parity in the imposition of aggregate lifetime limits and annual limits for mental health benefits).~~

*(2) in the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides mental health or substance use disorder benefits, as affecting the terms and conditions of the plan or coverage relating to such benefits under the plan or coverage, except as provided in subsection (a).';*

(c) Exemptions

(1) Small employer exemption

(A) In general

This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

(B) Small employer

For purposes of subparagraph (A), the term "small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 ~~(#3A(i) by~~ *inserting (or 1 in the case of an employer residing in a State that permits small groups to include a single individual)* but not more than 50 employees on business days during the preceding calendar year ~~(#3A(ii) by striking and who employs at least 2 employees on the first day of the plan year.~~

(C) Application of certain rules in determination of employer size

For purposes of this paragraph--

(i) Application of aggregation rule for employers

Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of title 26 shall apply for purposes of treating persons as a single employer.

(ii) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(iii) Predecessors

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

~~(2) Increased cost exemption~~

~~—This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan or for such coverage) of at least 1 percent.~~

***(2) COST EXEMPTION-***

***(A) IN GENERAL-***

***With respect to a group health plan (or health insurance coverage offered in connection with such a plan), if the application of this section to such plan (or coverage) results in an increase for the plan year involved of the actual total costs of coverage with respect to medical and surgical benefits and mental health and substance use disorder benefits under the plan (as determined and certified under subparagraph (C)) by an amount that exceeds the applicable percentage described in subparagraph (B) of the actual total plan costs, the provisions of this section shall not apply to such plan (or coverage) during the following plan year, and such exemption shall apply to the plan (or coverage) for 1 plan year. An employer may elect to continue to apply mental health and substance use disorder parity pursuant to this section with respect to the group health plan (or coverage) involved regardless of any increase in total costs.***

***(B)***

***APPLICABLE PERCENTAGE-*** *With respect to a plan (or coverage), the applicable percentage described in this subparagraph shall be--*

***(i) 2 percent in the case of the first plan year in which this section is applied; and***

***(ii) 1 percent in the case of each subsequent plan year.***

***(C)***

***DETERMINATIONS BY ACTUARIES-*** *Determinations as to increases in actual costs under a plan (or coverage) for purposes of this section shall be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries. All such determinations shall be in a written report prepared by the actuary. The report, and*

*all underlying documentation relied upon by the actuary, shall be maintained by the group health plan or health insurance issuer for a period of 6 years following the notification made under subparagraph (E).*

*“(D) 6-month DETERMINATIONS-*

*If a group health plan (or a health insurance issuer offering coverage in connection with a group health plan) seeks an exemption under this paragraph, determinations under subparagraph (A) shall be made after such plan (or coverage) has complied with this section for the first 6 months of the plan year involved.*

*“(E) NOTIFICATION-*

*“(i) IN GENERAL- A group health plan (or a health insurance issuer offering coverage in connection with a group health plan) that, based upon a certification described under subparagraph (C), qualifies for an exemption under this paragraph, and elects to implement the exemption, shall promptly notify the Secretary, the appropriate State agencies, and participants and beneficiaries in the plan of such election.*

*“(ii) REQUIREMENT- A notification to the Secretary under clause (i) shall include--*

*“(I) a description of the number of covered lives under the plan (or coverage) involved at the time of the notification, and as applicable, at the time of any prior election of the cost-exemption under this paragraph by such plan (or coverage);*

*“(II) for both the plan year upon which a cost exemption is sought and the year prior, a description of the actual total costs of coverage with respect to medical and surgical benefits and mental health and substance use disorder benefits under the plan; and*

*“(III) for both the plan year upon which a cost exemption is sought and the year prior, the actual total costs of coverage with respect to mental health and substance use disorder benefits under the plan.*

*“(iii) CONFIDENTIALITY- A notification to the Secretary under clause (i) shall be confidential. The Secretary shall make available, upon request and on not more than an annual basis, an anonymous itemization of such notifications, that includes--*

*“(I) a breakdown of States by the size and type of employers submitting such notification; and  
“(II) a summary of the data received under clause (ii).*

***“(F) AUDITS BY APPROPRIATE AGENCIES-***

*To determine compliance with this paragraph, the Secretary may audit the books and records of a group health plan or health insurance issuer relating to an exemption, including any actuarial reports prepared pursuant to subparagraph (C), during the 6 year period following the notification of such exemption under subparagraph (E). A State agency receiving a notification under subparagraph (E) may also conduct such an audit with respect to an exemption covered by such notification.’;*

(d) Separate application to each option offered

In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

(e) Definitions

For purposes of this section--

(1) Aggregate lifetime limit

The term “aggregate lifetime limit” means, with respect to benefits under a group health plan or health insurance coverage, a dollar limitation on the total amount that may be paid with respect to such benefits under the plan or health insurance coverage with respect to an individual or other coverage unit.

(2) Annual limit

The term “annual limit” means, with respect to benefits under a group health plan or health insurance coverage, a dollar limitation on the total amount of benefits that may be paid with respect to such benefits in a 12-month period under the plan or health insurance coverage with respect to an individual or other coverage unit.

(3) Medical or surgical benefits

The term "medical or surgical benefits" means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include ~~mental health benefits~~ *mental health or substance use disorder benefits.*

~~(4) Mental health benefits~~

~~The term "mental health benefits" means benefits with respect to mental health services, as defined under the terms of the plan or coverage (as the case may be), but does not include benefits with respect to treatment of substance abuse or chemical dependency.~~

*"(4) MENTAL HEALTH BENEFITS.—*

*The term 'mental health benefits' means benefits with respect to services for mental health conditions, as defined under the terms of the plan and in accordance with applicable Federal and State law.*

*"(5) SUBSTANCE USE DISORDER BENEFITS.—*

*The term 'substance use disorder benefits' means benefits with respect to services for substance use disorders, as defined under the terms of the plan and in accordance with applicable Federal and State law.'";*

~~(f) Sunset~~

~~This section shall not apply to benefits for services furnished after December 31, 2006.~~

~~(f) Secretary Report-~~

~~The Secretary shall, by January 1, 2012, and every two years thereafter, submit to the appropriate committees of Congress a report on compliance of group health plans (and health insurance coverage offered in connection with such plans) with the requirements of this section. Such report shall include the results of any surveys or audits on compliance of group health plans (and health insurance coverage offered in connection with such plans) with such requirements and an analysis of the reasons for any failures to comply.~~

~~(g) Notice and Assistance-~~

~~The Secretary, in cooperation with the Secretaries of Health and Human Services and Treasury, as appropriate, shall publish and widely disseminate guidance and information for group health plans, participants and beneficiaries, applicable State and local regulatory bodies, and the National Association of Insurance Commissioners concerning the requirements of this section and shall provide assistance concerning such requirements and the continued operation of applicable State law. Such guidance and information shall inform participants and beneficiaries of how they may obtain assistance~~

*under this section, including, where appropriate, assistance from State consumer and insurance agencies.';*

(Pub. L. 93-406, title I, Sec. 712, as added Pub. L. 104-204, title VII, Sec. 702(a), Sept. 26, 1996, 110 Stat. 2944; amended Pub. L. 107-116, title VII, Sec. 701(a), Jan. 10, 2002, 115 Stat. 2228; Pub. L. 107-313, Sec. 2(a), Dec. 2, 2002, 116 Stat. 2457; Pub. L. 108-197, Sec. 2(a), Dec. 19, 2003, 117 Stat. 2898; Pub. L. 108-311, title III, Sec. 302(b), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 109-151, Sec. 1(a), Dec. 30, 2005, 119 Stat. 2886.)

#### Amendments

2005--Subsec. (f). Pub. L. 109-151 substituted ``December 31, 2006" for ``December 31, 2005".

2004--Subsec. (f). Pub. L. 108-311 substituted ``after December 31, 2005" for ``on or after December 31, 2004".

2003--Subsec. (f). Pub. L. 108-197 substituted ``December 31, 2004" for ``December 31, 2003".

2002--Subsec. (f). Pub. L. 107-313 substituted ``December 31, 2003" for ``December 31, 2002".

Pub. L. 107-116 substituted ``December 31, 2002" for ``September 30, 2001".

#### Effective Date

Section 702(c) of Pub. L. 104-204 provided that: ``The amendments made by this section [enacting this section] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998."