ABC's Benefit News!
Special Non-Hipaa Double Edition

Heroes earnings assistance and relief tax act (HEART ACT) of 2008
And
Mental Health Parity And Addiction Equity Act of 2008

Heart Act

As reported to clients in June, The Heart Act, or Heroes Earnings Assistance and Relief Tax Act, was signed into law by President Bush on June 18, 2008. This legislation contains many forms of tax relief to military personnel, veterans and public servants, including Peace Corps volunteers and AmeriCorps volunteers, and specifically offers tax-related benefits associated with employer-sponsored retirement plans, IRA's and Coverdell Education Savings Accounts (ESA's). This bill closed the tax loophole that allowed defense contractors to avoid paying it's reportedly fair share of taxes.

The bill was introduced on May 18, passed the House (403 Ayes, 0 Nays, 30 Present/Not Voting) on May 20 and passed the Senate with unanimous consent on May 22. The legislation was sponsored in the House by Rep Charles Rangel (D-NY) and co-sponsored by 28 legislators, and co-sponsored in the Senate by Senators John Kerry and Barack Obama.

The HEART Act amends the IRS Code and the Social Security Act to provide certain tax benefits and incentives to military personnel, including distributions from cafeteria plans and retirement plan provisions.

Funds that will be used to pay for these benefits came from defense contractors that were reportedly not paying Social Security and Medicare Taxes by creating shell companies in the Cayman Islands. The Fair Share Act of 2008, introduced in March, ended the practice of US Government contractors setting up shell companies in foreign jurisdictions to avoid payroll taxes. The HEART Act includes several provisions included in the legislation introduced by Kerry and Senator Gordon Smith (D- Oregon) in January, 2007. The Active Duty Military Tax Relief of 2007's goal was to "bolster military families and small businesses that employ reservists". [1]

Distributions from Cafeteria Plans for Qualified Reservists

Under the HEART ACT, distributions of unused amounts in a Flexible Spending Account (FSA) are allowed to reservists called to active duty (sec 114). "Qualified reservist distributions" can be made from a health FSA *without* subjecting all other amounts in the health FSA to immediate taxation. Distributions under the HEART Act will be taxable to the individual. This provision will allow military personnel called into military service who may not be able to use the entire amount credited to his/her cafeteria plan or health FSA to cash out the unused benefits and not forfeit them under the "use it or lose it" rule.

[1] Senate Passes Kerry-Obama Legislation to Close KBR Tax Loophole, Provide Tax Relief for Troops, Newsroom, May 22, 2008.

A qualified reservist distribution is a distribution of all or a portion of unused amounts in a health FSA belonging to reservists ordered or called to active duty, provided:

a) the order or call to active duty is for a period of over 179 days or for an indefinite period and
b) the distribution is made between the date of the order or call and the last date that reimbursements from the health FSA could otherwise be made for the plan year that includes the date of the order or call to active duty.

This provision will apply to distributions made after the date that the HEART Act is enacted (TBD).

Plan sponsors wishing to allow qualified reservists distributions will need to amend their plan documents accordingly and issue summaries of material modification (SMMs) describing these distributions to all cafeteria plan participants.

Unanswered questions at this time include the effect on a plan's obligations (if any) to provide continuation of coverage under USERRA and COBRA. Guidance is expected on these issues from the IRS.

Retirement Plan Provisions

The HEART Act also includes other provisions applicable to employee benefit/retirement benefit plans.

a) Tax qualified pension plans, including 401(a), 403(b) and 457 plans are required to provide survivors of plan participants who die while performing military service any additional benefits, such as accelerated vesting or incidental death benefits, that are provided under such plans for active participants who may die while employed (Sec 104). The HEART Act treats the deceased as *returning to employment with the employer first*, and then dying and determining benefits. Under certain retirement plan rules, additional benefit service may be accrued under a retirement plan for those participants who die or become disabled while in military service before returning to the employer. These provisions are effective for deaths and disabilities occurring after January 1, 2007.
b) A tax-free rollover of any military death benefit payment can be made to a survivor's ROTH IRA or to an educational savings account, regardless of the limits on contributions to such accounts (Sec 109). This is generally effective for payments made with respect to deaths occurring on or after the date of enactment or for contributions made within one year of enactment due to deaths occurring on or after October 7, 2001.
c) The exemption from the 10% penalty for the premature withdrawals from retirement plans and the ability to repay such distribution for two years after the end of active duty that expired December 31, 2007 is now made permanent (Sec 107). This provision applies to any individual called or ordered to active military duty on or after December 31, 2007.

Mental Health Parity

In Title IV, The HEART ACT also amends the Internal Revenue Code, ERISA and the Public Health Service Act to extend through 2008 Mental Health Parity requirements applicable to mental health benefits offered by group health plans. This one year extension requires that certain group plans provide the same coverage for mental health benefits that they provide for medical and surgical benefits.

Other Provisions

Other provisions in the Act includes other provisions of interest to the Social Security Administration:

Taxable Wage Exclusions for Volunteer Firefighters and Medical Responders

a) The IRS Code and the Social Security Act would be amended to exclude from FICA taxable wages any property tax rebate or other qualified benefit provided to volunteer firefighters and emergency responders in return for labor services (Sec 115). The IRS has previously ruled that such payments would constitute compensation for services performed. This would be effective as if included in Section 5 of the Mortgage Forgiveness Debt Relief Act of 2007 (ie January 1, 2008).[2]

[2] Social Security Legislative Bulletin, Number 110-23, May 20, 2008

Military and National Service Related Changes to the SSI Program

a) Treats most cash military compensation as earned income for SSI purposes.
b) Codifies SSA's policy regarding consideration of privatized military housing allowances.
c) Excludes state-provided pensions for aged, blind, or disabled veterans (or their spouses) from income consideration for SSI purposes (Sec 202).
d) Would exclude any cash or in-kind benefits provided under an AmeriCorps program from income consideration for SSI purposes (Sec 203).
e) All SSI-related provisions would be effective for benefits payable for months beginning 60 days after enactment.

Title I: Benefits for Military

a) (Sec 101) Exempts married taxpayers who file a joint tax return from the identification requirement for the 2008 recovery tax rebate if at least one of the filers is a current member of the Armed Forces.
b) (Sec 102) Makes permanent the election to treat combat zone compensation as earned income for the purposes of the earned income tax credit.
c) (Sec 103) Makes permanent the exemption from the first-time homebuyer rule for veterans using mortgage revenue bonds to purchase a residence.

Reference Sources:

GovTrack.us, HR 6081: Heroes Earnings Assistance and Relief Tax Act of 2008
Social Security Legislative Bulletin Number 110-23, May 20, 2008
HR 6081 Bill Text
National Association of Health Underwriters Legislative Update, June 5, 2008
"Senate Passes Kerry-Obama Legislation to Close KBR Tax Loophole, Provide Tax Relief for Troops", Senate Newsroom, May 22, 2008
HR 6081 Bill Summary, 5-22-08, THOMAS, Library of Congress

Form 5500 Electronic Filing Final Rules

After close to a year's delay, the U.S. Department of Labor issued final rules for the filing of the Form 5500, the annual report employers must file for employee benefit plans. The final rules were issued and published in the Federal Register on November 16, 2007. This results in a delay of plan sponsors until January 1, 2009 to comply with the new mandatory electronic filing system.

Mental Health Parity And Addiction Equity Act of 2008

The Emergency Economic Stabilization Act of 2008, a $700 billion financial markets rescue package designed to save our economy, herein referred to as HR 1424, included more than bail-out provisions for the financial markets. This new law, signed by President Bush on October 3, 2008, also included provisions for mental health and physical illness equality, or mental health parity.

Overview

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 was incorporated into HR1424, leaving in its wake full parity for health/illness plans and mental health disorders. HR 1424 does not mandate group health plans to offer mental health coverage, but if a health plan offers mental health benefits, it must provide equivalent benefits for mental illness and substance abuse. "No longer will we allow mental health to be

treated as a stepchild in the healthcare system," Domenici said recently. "If you have insurance, then your mental health care must be equal to the benefits you get for any other disease."

HR 1424 requires full parity for mental health benefits, including deductibles, co-pays, out-of-pocket maximums, inpatient and outpatient visits, and co-insurance. Employers with less than 50 employees are exempt.

The New York Times (Oct. 6, 2008, A13, Pear) reports "More than one-third of all Americans will soon receive better insurance coverage for mental-health treatments because of a new law that, for the first time, requires equal coverage of mental and physical illnesses." This "requirement, included in the economic bailout bill that President Bush signed on Friday [Oct 3] is the result of 12 years of passionate advocacy by friends and relatives of people with mental illness and addiction disorders. They described the new law as a milestone in the quest for civil rights, an effort to end insurance discrimination, and to reduce the stigma of mental illness." At the present, "most employers and group health plans provide less coverage for metal healthcare than for the treatment of physical conditions like cancer, heart disease, or broken bones. They will need to adjust their benefits to comply with the new law, which requires equivalence, or parity, in the coverage." [3]

According to the Wall Street Journal (10/4/08, Lueck), the bill is named for Senator Pete Domenici (R-N.M), who began work on the bill over a decade ago, "after his daughter Clare…was diagnosed with schizophrenia." The Journal noted that the bill "stalled for years largely because of opposition from Republicans who controlled the House." [4]

The Republican Senator (Domenici) from New Mexico spent 35 years in the Senate, is now 76 years old, and is retiring after being diagnosed with an incurable, degenerative brain disease. His original partner in his mental-health efforts was Senator Paul Wellstone of Minnesota, who you may recall died in a plane crash in 2002. Senator Edward Kennedy of Massachusetts took up the cause after Mr. Wellstone's death. Senator Domenici, after twelve years and numerous setbacks, finally saw success in his quest. "Happy is not quite the word," Domenici stated. "I'm glad we're finished, but it's been such a long ordeal." [5]

Equity in Benefits

The law calls for *complete equity in the financial requirements of plans*, such as deductibles, coinsurance, co-payments and out-of-pocket expenses. This means that if your medical plan has a $10 office co-pay, with 100% coverage thereafter for a medical visit, then your mental health benefits must also have a $10 co-pay with 100% coverage thereafter for an outpatient visit. If there is a medical $250 deductible, the same $250 deductible applies for mental health. If you have a $3,000 out-of-pocket maximum, you can no longer exclude mental health benefits from that $3,000 out-of-pocket maximum.

There is also to be *full equity in treatment limits*. This includes caps on the number and frequency of visits, limits of coverage days, plan limits or other similar limits regarding the scope and duration of mental health treatment. So, if your mental health benefits have a maximum of 20 visits per year outpatient, or a $10,000 annual or $25,000 lifetime maximum, these will no longer be allowed.

Plans must also have *equality in out-of-network coverage*. For example, if you offer a PPO plan, allowing medical benefits to be paid in or out of network, then you must also allow mental health benefits to be paid in or out of network. This may mean that you will want to add mental health providers to your PPO plan…. Not all PPO networks cover mental health providers (although some will likely add them to their contacts soon). Some of our clients' plans had mental health benefits available in network, but excluded them out of network to keep the costs down. You will no longer be allowed to do this. If you offer an EPO (Exclusive Provider Plan) where all benefits must be paid in network, then your mental health benefits must also be in network. Having no out-of-network

[3] New York Times, October 6, 2008, Bailout Provides More Mental Health Coverage, Robert Pear
[4] The Wall Street Journal, October 4, 2008, After 12-Year Quest, Domenici's Mental-Health Bill Succeeds, Sarah Lueck
[5] The Wall Street Journal, October 4, 2008, After 12-Year Quest, Domenici's Mental-Health Bill Succeeds, Sarah Lueck

mental health benefits available in this scenario would be acceptable, since they are not allowed in the medical portion of the plan.

Medical Necessity or Denial Provisions/Availability of Plan Information

Medical information for the criteria for medical necessity determinations made under the plan for mental health or substance abuse claims must be made available by the plan sponsor or insurer to the plan participant, beneficiary or provider upon request, in accordance with the regulations. If a claim has been denied, the plan sponsor shall provide the participant or beneficiary information on the reason for the denial, upon request.

Who Does It Apply to?

The Mental Health Parity and Addiction Equity Act of 2008 applies to group health plans with 51 or more employees. Small plans of 50 or less are exempt. Both mental health and substance abuse benefits must be available on the same basis as medical benefits for these plans.

ERISA Plans as well as Public Health Service Act Plans are subject to the legislation. Regulations will be promulgated by the United States Department of Labor, and Health and Human Services and the Treasury will issue additional regulations within one year. Plans should not wait for the regulations, however. It is always best to follow the good faith rule, and use the bill text to guide you.

This [federal] legislation will not affect state laws that offer stronger consumer protections on mental health or substance abuse. The federal law will allow the state laws to supersede the federal requirements in that case.

Effective Date

The effective date of the new Mental Health Parity and Addiction Equity Act will be plan years on or after one year after the enactment date. Since this was enacted on October 3, 2008, the **first available plan year that would apply would be November 1, 2009** (since plan years are always on the first of the month). Therefore, ***plans renewing on or after November 1, 2009 should include the new mental health provisions.***

There is a **special rule for collectively bargained plans**. Amendments made by the Act shall not apply to plan years beginning before the later of a) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act, or b) January 1, 2009. So if you have collectively bargained plans that renew or expire shortly, you may have to comply with the new requirements by January 1, 2009.

Increased Costs Exemption

The "old" mental health parity act (MHPA) generally required that group health plans provide parity in the application of dollar limits and contained an exemption for plans from this requirement if such benefits resulted in a substantial increase in cost (at least one percent). Under the new Mental Health Parity and Addiction Equity Act of 2008, *if this benefit results in an increase for the plan year involved in the actual total costs of coverage with respect to medical and surgical benefits and mental health and substance abuse use disorder benefits under the plan, by an amount that exceeds the applicable 2% in the case of the first year and 1% in each subsequent year, the provisions of this section shall not apply to the plan.*

The exemption applies for one plan year. An employer may elect to continue to apply mental health and substance abuse disorder parity pursuant to this section with respect to the group health plan (or coverage) involved regardless of any increase in total costs.

The determination of actual increases in costs under the plan *must be made by a qualified and licensed actuary* who is a member in good standing of the American Academy of Actuaries and must include actual costs for the first 6 months of the plan year involved. A group health plan that qualifies for an exemption must notify plan participants and beneficiaries of their election of the exemption. The actuarial report and all underlying documentation relied on 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.

If you would like to attempt to use the exemption, be advised that there are many requirements for this, and you *must* use an actuary.

No Sunset Provision

Prior (1997) MHPA legislation had an automatic sunset provision, which required annual approval. Enactment of this law will no longer face a sunset provision or require Congress to extend the sunset.

Can We Eliminate Our Mental Health Benefits?

In anticipation of this question, I received a legal opinion on this topic. I assumed some of our clients would ask the following: "If we have to offer equal benefits for Mental Health as Medical, can we simply eliminate the mental health benefits all together?" The new legislation states that you aren't required to offer mental health benefits, but if you do, they must be equitable with medical benefits. My initial concern in cancelling the benefit had to do with the HIPAA non-discrimination rules, which stated that you cannot reduce or eliminate a benefit AFTER a claim was received on an individual; it would be considered discriminatory. So, my question to the law firm was "If a clients wants to eliminate their mental health benefits, can they, and should we assume that the HIPAA non-discrimination rules would have application here? Would it be best to do so PRIOR to the enactment of this legislation, before there is a large claim?" Our legal opinion came back saying that yes, a benefit such as mental health can be dropped at any time, but there are potential problems. "You raise an excellent point, however, that dropping coverage at the point where the new rules kick in might cause some – if they have mental health claims - to question whether the plan is in violation of the HIPAA nondiscrimination rules. If the employer can establish that the decision was not made to target a particular health factor, the employer may be able to defend its position. But, as you pointed out, dropping the coverage prior to the effective date might lessen the chance that a participant would raise such an argument." [6] Therefore, if you are considering eliminating the mental health benefits, decide now! Definitely do it prior to your plan renewal date on or after November 1, 2009. If you'd like to discuss this with me in detail, please call me, so we can assess your plan, look at options and begin to move toward a decision in this area.

Mixed Feelings

As a health benefits consultant, I have mixed feelings on this. On one hand, I realize that some people may utilize, or even abuse, this benefit, and the parity here could truly increase self-funded plan costs considerably. I always look at cost savings for our clients…*That is my job*. On the other hand, the "human side," there is a real need for mental health benefits in so many cases….It's unfortunate that people have not treated those with mental health disorders fairly, and so many have not had the treatment they need due to the cost, and due to limited benefits offered by group health plans in the past. I see many people who may benefit greatly from this…. So I offer this information to you with the intent of full disclosure. Understand that there will be two sides to this coin as we try to figure out what you'd like to do about this law; cost vs. benefit, and morality vs. corporate decision-making. I anticipate this will be a tougher decision than some may initially think….

Client Considerations

Each of our self-insured clients will need to amend their plan on or before the effective date of Mental Health Parity. This will require a detailed review of your health benefits plan, to assure complete parity in all financial requirements, treatment limits and out-of-network coverage. We may also need to look at further network options if your current network has no or limited mental health providers, as it is always best to use preferred providers to keep costs down, especially if we can't put maximums on the benefits any longer.

Again, the majority of the cost burden of this new law applies to self-insured plans. Fully insured plans will be at the mercy of the insurers, as they will likely increase limits or drop the mental health options all together (although they will likely offer a rider, or add-on option, for mental health plans with complete parity). Small employers, once again, of 50 or fewer participants, will be exempt.

So, bottom line, we have some work to do! I suggest you look deeply into your plan benefits, your budget, and your heart, and decide what you'd like to do. Which will win out? Morality or budget? I cannot decide that. That is up

[6] Legal opinion of Marilyn Monohan, Emmer & Graeber Law Corporation, October 10, 2008

to each of you… I'll be contacting each self-insured client over the next few months to make an appointment to sit down and discuss your mental health options. In the meantime, if you have any questions, please do not hesitate to call me. I can be reached at the Orange County office (714) 693-9754 X 3#.

References:

HR 1424 Bill Text, final version, enacted October 3, 2008, Emergency Economic Stabilization Act of 2008, Subtitle B: Mental Health Parity and Addiction Equity Act of 2008 (inserted, page 117)

New York Times, October 6, 2008, Bailout Provides More Mental Health Coverage, Robert Pear

The Wall Street Journal, October 4, 2008, After 12-Year Quest, Domenici's Mental-Health Bill Succeeds, Sarah Lueck

Legal Opinion of Emmer & Graeber Law Corporation, Los Angeles, CA, Marilyn Monohan

Client Lead/Referral Program Reminder!

Advanced Benefit Consulting is proud of the high level of service, compliance assistance, and educational value we offer our clients. Due to the unfavorable economy, our client base is decreasing in size, and we are looking to expand our client base in the coming months. We'd like your help, and have put together an exciting new client lead and referral program, with a variety of benefits available to you!

Many of you know other firms who offer benefits to their employees. If you do, we are hoping that you feel strongly enough about our services to recommend us to your friends, business associates and others. If you do, and we end up getting the group, we will reward you!

Program Highlights!

- Give us a lead, including a company name, contact person and phone/fax/email, and a bit about the size of the firm, what they do or what they might be looking for or need help with…
- If that lead results in an appointment with them, you will be rewarded with the following:
  - ***$50 Gift cards for Restaurants, Movies, or Retail Stores***
- If that lead results in them allowing us to bid on their health plan, you will be rewarded with the following:
  - ***$100 travel-related gift cards (gift cards from retail gas stations, hotel or airlines)***
- If we end up selling that case, you will be rewarded with the following:
  - ***Groups 25-50: A finders fee equal to ½ of the first month's commission, payable after the receipt of the first month's commission by ABC.***
  - ***Groups 51-100: A finders fee equal to 100% of the first month's commission, 50% payable after receipt of first month's commission and 50% payable after the receipt of the second month's commission by ABC.***
  - ***Groups 101+: A finders fee equal to 100% of the first month's commission and/or broker fees, 50% payable upon receipt of the first month's commission and/or fees by ABC, and 50% payable after the receipt of the second month's commission and/or fees by ABC, plus a $500 Marriott Gift Card, payable at the time of the sale.***

There is no limit to the number of groups or referrals you can make, and the benefits go directly to you, not your employer!

Obviously, our goal is to bring on new groups. Therefore, if you have leads you'd like to give us, and you'd like to benefit from them, a call to your referrals, telling them about us, and a brief intro and recommendation would give the highest opportunity for us to sell the group, and to give you the rewards above!

ABC Upcoming Seminar Series, Winter, 2009

HIPAA Privacy Training, Full Day

Holiday Inn Orange County Airport
Tuesday, January 13, 2009, 8 am to 4 pm
Includes Continental Breakfast and Lunch

New Client Educational Series

In the Alternate Funding Marketplace - Data Matters!

A Full-Day training on the latest self-insured topics, plus hands-on training on new online system capabilities… Today, Technology is a Must if you are or are considering self-insured! Build plans, build comparisons, analyze your self-insured plan like never before! A MUST for all clients! You'll see how in today's world, ***DATA MATTERS!*** Whether you are currently self-insured or have been wondering whether you should look at it seriously, this special educational series is for you! Includes Ask the Experts Panels. *Bring your real-world case studies! We'll address them hands-on, targeting problems and finding solutions! You will walk out with reports, analysis and information that will WOW you!*

Topics Include:

Session One: Today's Self-Funding

The latest information on how you can self-insure successfully. Good for the beginner or for the long-time self-funded employer. Hear the Real Deal on self-insuring, and what you can do to make it work for you! Ends with Ask the Expert Panel.

Session Two: Pharmacy Benefit Networks (PBMs)

Industry Updates, RX Plan Design in Today's Economy, Update on AWP Legal Matters, Client Strategies on Plan Design, Utilization Management Programs, Direct Marketing and Communication to Insureds and Results, PBM Contracting. Bottom Line: Is your RX Plan working for you, or against you? Ends with Ask the Expert Panel.

Session Three: Real World Work Session – Analyze Plans, What Works, What Doesn't, How to Make Your Plan the Most Cost-Effective, Competitive Plan Possible!

In this session, we'll address the new administrative technologies available, including live plan building, plan comparisons, load a benefit and see what savings you would have had in the past year or what this benefit would have cost, compare your plan to others in your industry, area or other parameters, and more! See what great renewal tools you have available to you! We promise, you'll be wowed! The entire presentation is panel-driven, with necessary audience participation!

Speakers include Dorothy Cociu, President, Advanced Benefit Consulting, Mary Ann Wessel, Vice President, EBA&M Corporation, plus presenters from the Burchfield Group (RX Consultants) and Benefit Informatics (new system experts/trainers).

Mark your calendars! More Info To Follow!

Wednesday, January 14, Holiday Inn Orange County Airport
Thursday, January 15, Ontario Airport Marriott
Wednesday, February 11, Torrance Marriott

A Must for Clients Currently Self-Insured, and Very Helpful to Those Who Have Been Considering It!