

Publications

Mental Health Parity: Recently Released Guidance

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On July 25, 2023, the Departments of Health and Human Services, Labor and Treasury (Departments) issued sweeping new guidance on the Mental Health Parity and Addiction Equity Act (MHPAEA), including the 2023 MHPAEA Comparative Analysis Report to Congress (2023 Report to Congress), Proposed Rules, and a Technical Release.

MHPAEA was enacted in 2008. It generally requires that a group health plan's financial requirements and treatment limitations applicable to mental health benefits or substance use disorder benefits be "no more restrictive" (as written in the plan or as applied) than the predominant requirements and limitations applicable to substantially all medical/surgical benefits. The Departments published MHPAEA regulations in 2013. These regulations specify that the parity requirements apply to financial requirements, such as deductibles, copayments, and coinsurance; quantitative treatment limitations that are expressed numerically, such as day or visit limits; and non-quantitative treatment limitations (NQTLs). NQTLs are generally non-numerical requirements that limit the scope or duration of benefits, such as prior authorization requirements, step therapy requirements, and standards for provider admission to participate in a network, including methodologies for determining reimbursement rates.

Beginning February 10, 2021, the Consolidated Appropriations Act, 2021 (CAA 2021) expressly requires group health plans that include both medical/surgical benefits and mental health or substance use disorder benefits and impose NQTLs on mental health or substance use disorder benefits to perform and document their comparative analyses of the design and application of NQTLs. Further, CAA 2021 requires plans to provide their comparative analyses of NQTLs to the Departments. The CAA 2021 also compels the Departments to issue an annual report to Congress concerning MHPAEA enforcement efforts in relation to NQTL comparative analyses.

The Good, the Bad, and the Ugly: the 2023 Report to Congress. The 2023 Report to Congress was the second report required under CAA 2021. The first report was released in January 2022. It is clear from both reports that none of the NQTL comparative analyses initially provided

to the Departments for review were satisfactory. The 2023 Report to Congress also includes the names of insurers and self-insured plans that were issued a final determination letter of non-compliance. For more information about the 2023 Report to Congress, please read our [detailed description](#).

Proposed Rules and Technical Release. The Proposed Rules would substantially change the existing MHPAEA regulations. Most of the proposed changes relate to NQTLs – including prior authorization, concurrent review, provider reimbursement, and network adequacy. Under the Proposed Rules, plans would not be permitted to impose an NQTL unless the NQTL meets each of the following independent requirements: (1) the NQTL is no more restrictive as applied to mental health and substance use disorder benefits than to medical/surgical benefits (the no more restrictive requirement); (2) the plan satisfies requirements related to the design and application of the NQTL (the design and application requirements); and (3) the plan collects, evaluates, and considers the impact of relevant data on access to mental health and substance use disorder benefits relative to access to medical/surgical benefits; and subsequently takes reasonable action as necessary to address any material differences in access shown in the data to ensure compliance with MHPAEA (the relevant data evaluation requirements).

The Proposed Rules, if finalized, would apply on the first day of the first plan year beginning on or after January 1, 2025. Comments on the Proposed Rules and responses to the Technical Release are due October 2. To see our detailed discussion of the Proposed Rules and Technical Release, [click here](#).

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