Vorys Benefits Brief: 2025 MHPAEA Report to Congress: Enforcement Activity Continues and the Need for Comparative Analyses Remains

Related Professionals

Jacquelyn Meng Abbott

Jennifer Bibart Dunsizer

Elizabeth Howard

Christine M. Poth

Wendy M. Swary

Related Services

Employee Benefits and Executive Compensation

Labor and Employment

CLIENT ALERT | 5.11.2026

The United States Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments) recently issued the 2025 MHPAEA Report to Congress (the Report), summarizing enforcement activity related to the Mental Health Parity and Addiction Equity Act (MHPAEA) for the period of August 1, 2023, through July 31, 2025.

As a reminder, in May 2025, the Departments issued a nonenforcement policy for certain portions of the 2024 MHPAEA final rule. However, MHPAEA's statutory obligations remain in effect, including the requirement that plans and issuers perform and document comparative analyses of non-quantitative treatment limitations (NQTLs). The Report reflects enforcement efforts by the Employee Benefits Security Administration (EBSA) and the Center for Medicare and Medicaid Services (CMS), with a focus on prior authorization, medical necessity review, utilization management and exclusions of key mental health and substance use disorder (MH/SUD) treatments.

Background

As noted in our prior client alerts on the 2022 and 2023 Reports to Congress (links here: 2022 and 2023), MHPAEA generally requires group health plans and health insurance issuers that offer MH/SUD benefits to provide those benefits on terms that are no more restrictive than the terms that apply to medical/surgical (M/S) benefits. This parity requirement applies not only to financial requirements and quantitative treatment limitations, but also to NQTLs. The Consolidated Appropriations Act, 2021 (CAA) gave the Departments new enforcement tools requiring plans and issuers to provide comparative analyses of NQTLs upon request. The CAA also requires the Departments to provide regular reports to Congress regarding MHPAEA activity and enforcement.

The 2025 MHPAEA Report provides practical insight into (1) the NQTLs drawing the most scrutiny, (2) the deficiencies regulators continue to identify in comparative analyses, and (3) the corrective actions

regulators expect when noncompliance is identified.

Key Takeaways

During the reporting period, EBSA requested comparative analyses for 77 NQTLs and CMS requested comparative analyses for 43 NQTLs. The percentages in the chart below reflect each category as a share of that agency's total comparative analysis requests, using grouped categories based on the request tables in the Report. On that basis, EBSA appears to be emphasizing network standards and exclusions or limits on key MH/SUD treatments, while CMS emphasizes prior authorization/precertification, medical necessity, and other utilization management controls. NQTL category What this includes % of EBSA total (77) EBSA priority % of CMS total (43) CMS priority

Prior authorization/ precertification Approval requirements in advance of treatment or services 2.6% Low 37.2% High

Medical necessity/ medical management standards

Criteria used to determine whether treatment is clinically appropriate, including experimental or investigational standards 3.9% Low 30.2% High

Concurrent, retrospective, and post-service review / other utilization management

Ongoing or after-the-fact review of treatment, including concurrent review, fail-first, treatment plan requirements, and similar controls 6.5% Low 20.9% Medium

Provider network admission standards / network adequacy

Standards for provider participation in the network and related access concerns 18.2% Medium 4.7% Low

Reimbursement methodologies

In-network and out-of-network reimbursement methods and rate-setting approaches 3.9% Low 4.7% Low

Exclusions or limits affecting key MH/SUD treatments

Exclusions or special limits affecting ABA therapy, autism-related services, residential treatment, partial hospitalization, nutritional counseling, opioid use disorder medications, speech or occupational therapy and similar services 57.1% High 2.3% Low

Other NQTLs

Telehealth exclusions, gatekeeper requirements, educational setting exclusions, chronicity-based limits, and other less common restrictions 7.8% Low — —

The Report makes clear that deficient analyses remain common. In both agencies' view, noncompliance was commonly shown where a plan failed to provide a comparative analysis, omitted required information about factors and evidentiary standards, failed to explain how the NQTLs operated in practice, or could not

show that the NQTLs were comparable to and "applied no more stringently than" the corresponding limitations on M/S benefits. According to the Report, plans and issuers generally must take the following steps upon a finding of noncompliance: s (1) complete or revise their comparative analysis, (2) remove or revise any problematic NQTLs, (3) amend plan documents and procedures, (4) reprocess denied claims, or (5) in some cases, notify participants and prove completed corrective action.

Next Steps for Employers

Based on the Report, employers that sponsor a self-insured plan should take the following steps:

1. **Confirm that each plan option has a written comparative analysis for its NQTLs.** The analysis should be current, plan-specific, and available for production if requested by regulators.
2. **Review existing comparative analyses for substance, not just format.** A generic or high-level analysis is unlikely to be sufficient if it does not identify the specific factors, evidentiary standards and operational processes used to apply the NQTLs and meaningfully compare MH/SUD and M/S benefits.
3. **Prioritize review of the NQTLs drawing the most scrutiny.** Based on the Report, employers should focus first on prior authorization, precertification, medical necessity, utilization management, network admission standards, and exclusions or limits affecting key MH/SUD treatments such as ABA therapy, speech or occupational therapy, Opioid Use Disorder medications, residential treatment, partial hospitalization, and nutritional counseling.
4. **Assess plan operations against written terms and comparative analyses.** Regulators continue to assess NQTLs both as written and in operation, so employers should review actual claims administration, utilization review practices, reimbursement approaches, and denial patterns to confirm they align with the plan's documented parity position.
5. **Do not rely on a service provider alone.** The Report makes clear that even where a third-party administrator or other service provider prepared the comparative analysis or administered the benefit, the plan is still responsible for MHPAEA compliance.
6. **Address potential gaps before a regulator or participant raises them.** If a review identifies problematic NQTLs, employers should consider corrective action promptly, which may include amending plan terms or procedures, reprocessing claims and coordinating any required participant communications.
7. **Collaborate with counsel to assess risk and remediation options.** Because the consequences of noncompliance can include claim reprocessing, participant notices and proof of completed corrective action, employers should consider legal review of high-risk NQTLs and any proposed remediation steps.

These recommendations follow directly from the Report's enforcement trends. Because regulators continue to find that many plans either lack complete analyses or cannot support the analyses with operational evidence, the most effective response is proactive: verify the analysis exists, confirm it is substantively defensible, and ensure vendor administration aligns with the plan's documented parity position.

Contact Legal Counsel

For questions or additional information about this Vorys Benefits Brief and its application, consult with legal counsel.