

LEGAL UPDATE



Proposed Rule Issued to Strengthen Mental Health Parity Requirements

On July 25, 2023, the Departments of Labor, Health and Human Services, and the Treasury (Departments) issued a [proposed rule](#) to strengthen the requirements of the Mental Health Parity and Addiction Equity Act (MHPAEA). According to the Departments, the proposed rule is designed to achieve MHPAEA's purpose of ensuring that participants, beneficiaries and enrollees do not face greater restrictions to obtaining mental health and substance use disorder (MH/SUD) benefits than they would face for medical/surgical benefits.

If finalized, the proposed rule would establish new requirements for group health plans and health insurance issuers to collect and evaluate relevant data to assess the impact of a nonquantitative treatment limitation (NQTL) on access to MH/SUD benefits and medical/surgical benefits. Health plans and issuers would be required to consider this impact as part of their analysis of whether the NQTL, in operation, complies with federal parity requirements.

MHPAEA

MHPAEA requires parity between a group health plan's medical/surgical benefits and MH/SUD benefits. [Final rules](#) from 2013 specify that MHPAEA's parity requirements apply to:

- **Financial requirements**, such as deductibles, copayments and coinsurance;
- **Quantitative treatment limitations**, such as day or visit limits; and
- **NQTLs**, which generally 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.

MHPAEA's parity requirements apply to group health plans sponsored by employers with more than 50 employees. However, due to an Affordable Care Act reform, insured health plans in the small group market must also comply with federal parity requirements for MH/SUD benefits.

The Consolidated Appropriations Act of 2021 amended MHPAEA to require health plans and health insurance issuers to conduct **comparative analyses of the NQTLs** used for medical/surgical benefits compared to MH/SUD benefits. These analyses must contain a detailed, written and reasoned explanation of the specific plan terms and practices at issue and include the basis for the plan's or issuer's conclusion that the NQTLs comply with MHPAEA.

Plans and issuers must make their comparative analyses available upon request to the Departments or applicable state authorities. If the Departments find that a plan or issuer is out of compliance, they will specify the corrective actions that must be implemented within 45 days. If the plan or issuer is still not in compliance after those 45 days, they must notify all enrollees of that determination within seven days.

HIGHLIGHTS

- The Departments have released a proposed rule to strengthen MHPAEA's requirements.
- The proposed rule would amend the existing NQTL standard to prevent plans and issuers from using NQTLs to limit access to MH/SUD benefits to a greater extent than medical/surgical benefits.
- The proposed rule would require health plans and issuers to collect and evaluate relevant data to assess the impact of NQTLs.
- The proposed rule would also establish minimum standards for developing NQTL comparative analyses.



Compliance Problems

Since the MHPAEA final rules were issued in 2013, the Departments have continued to receive and investigate complaints that plans and issuers fail to comply with MHPAEA by restricting access to benefits for mental health conditions and substance use disorders in more onerous and limiting ways than those restricting access to medical or surgical care. This noncompliance is especially evident in the design and application of NQTLs that apply to MH/SUD benefits.

According to the Departments, because of these failures, people seeking coverage for MH/SUD care continue to face greater barriers when seeking these benefits than when seeking medical or surgical benefits. The proposed rule is intended to strengthen MHPAEA's requirements and provide guidance to health plans and issuers on how to comply with the law's requirements.

Proposed Changes

The proposed rule would amend existing MHPAEA protections and establish new requirements for health plans and issuers. According to the Departments, these proposed changes would result in more robust MH/SUD provider networks and fewer and less restrictive prior authorization requirements for individuals seeking MH/SUD treatment.

Specifically, the proposed rule would generally prohibit health plans and issuers from imposing NQTLs on MH/SUD benefits unless:

- The NQTL is no more restrictive as applied to MH/SUD benefits in a classification (as written or in operation) than the predominant NQTL that applies to medical/surgical benefits in the same classification;
- The plan or issuer satisfies certain requirements related to the design and application of the NQTL; and
- The plan or issuer collects, evaluates and considers the impact of relevant data on access to MH/SUD benefits relative to access to medical/surgical benefits and takes reasonable action as necessary to address any material differences in access shown in the data to ensure compliance with MHPAEA.

The proposed rule would also impose a special rule for NQTLs related to network composition. The proposed rule would amend existing examples and add new examples on the application of the rules for NQTLs to clarify and illustrate the protections of MHPAEA.

In addition, the proposed rule would establish minimum standards for developing NQTL comparative analyses to assess whether an NQTL, as written and in operation, complies with MHPAEA's requirements. The proposed rule would also specify the content elements of comparative analyses and the time frame for plans and issuers to respond to a request from the Departments to submit their comparative analyses.

Additional Guidance

In addition to the proposed rule, the Departments also released:

- A [technical release](#) that requests public feedback on proposed data requirements for limitations related to the composition of a health plan's or issuer's network;
- The second [MHPAEA comparative analysis report](#) to Congress, as required by federal law; and
- A [fact sheet](#) on MHPAEA enforcement results for cases closed in fiscal year 2022.