

GBS Compliance

Mental Health Parity Proposed Regulations

Federal regulators (DOL, HHS and Treasury) recently issued proposed regulations that, if finalized, would amend existing Mental Health Parity and Addiction Equity Act (MHPAEA) and would implement new requirements for nonquantitative treatment limitations (NQTLs). The guidance also addresses and clarifies the requirement under the Consolidated Appropriations Act (CAA of 2021) that plans perform and document an analysis on NQTLs imposed by the plan (and if requested, submit a report to federal or state authorities). Finally, the DOL also issued a technical release on NQTLs related to network composition.

Mental Health Parity originated in 1996* but due to overwhelming non-compliance, it has more recently has gained traction and attention at the federal level. The July 2023 proposed regulations are another indication of increasing federal regulatory focus and priority on plan compliance with the parity rules, particularly with respect to the NQTLs.

Background

The MHPAEA prohibits a group health plan from offering mental health and substance use disorder (MH/SUD) benefits and services that are more restrictive than those applied to the plan's medical and surgical benefits. There are three benefits areas that must meet parity rules:

- › Financial requirements
 - Deductibles, co-payments, coinsurance, and out-of-pocket maximums
- › Quantitative treatment limitations (QTLs)
 - Limitations on benefits that can be expressed numerically
 - Examples: Number of treatments, visits, or days of coverage
- › Non-quantitative treatment limitations (NQTLs)
 - Limitations on benefits that are not expressed numerically (usually through scope or duration of benefits)
 - Examples: prior authorization requirements, step therapy requirements (must first try similar acting lower cost drug), standards for provider admission to participate in a network

The first two areas, the **financial requirements** and the **QTLs**, are typically easier to identify and thus easier to determine and meet parity. The third area, the “limitations on benefits that are not expressed numerically” (the **NQTLs**) are more difficult to identify and quantify and thus are a particular compliance pain point. As a result, federal regulators continue to receive complaints that issuers and/or group health plans are failing to comply with NQTLs. In other words, most plans are out of compliance because the built in limitations on benefits that are not expressed numerically (NQTLs) are more onerous and more limiting for MH/SUD than for medical or surgical care. The proposed regulations are an attempt to better clarify and help plans comply.

Proposed Regulations

The proposed rules specifically target NQTLs and would amend the existing NQTL standard to better clarify and more effectively prevent plans and issuers from using NQTLs to place greater limits on access to MH/SUD benefits than on medical/surgical benefits. Specifically, the proposed rule would generally prohibit health plans and issuers from imposing NQTLs on MH/SUD benefits UNLESS:

- The limitation is no more restrictive as applied to MH/SUD benefits than to medical/surgical benefits in the same classification
- The plan or issuer satisfies requirements related to the design and application of the NQTL
- 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 to address any material differences.

Within each of the three categories, the proposed regulations provide extensive guidance, including specific examples to illustrate for insurers/plans how to apply the rules to certain NQTLs. In addition, multiple new definitions, and amendments to existing definitions, would be included in the rules as well.

Comparative Analyses

The proposed rules also address and clarify the requirement under the Consolidated Appropriations Act (CAA of 2021) that insurers/plans perform and document a comparative analysis on the NQTLs that are imposed by the plan. In addition, insurers/plans must, if requested, submit that analyses to federal (or state) regulators and/or participants.

Specifically, the proposed rule provides additional details on the comparative analyses form and content (based on the 2020 MHPAEA self-compliance tool) and in essence must contain a detailed, written and reasoned explanation of the specific plan terms and practices and include the basis that supports the conclusion that the NQTLs comply with MHPAEA. In addition, the proposed rule describes when and how insurers/plans would be required to provide the analyses to participants/beneficiaries and state or federal agencies.

Technical Release

Technical Release 2023-01P issued by the DOL in conjunction with the proposed regulations indicates that NQTLs related to network composition are a particular focus for the agencies.

Specifically, the technical release proposed four specific types of data insurers/plans would collect and evaluate on NQTLs related to network composition:

- › Out-of-network utilization
- › Percentage of in-network providers actively submitting claims
- › Time and distance standards
- › Reimbursement rates

The technical release also proposes a safe harbor to help plans meet certain data metrics relating to network adequacy.

Takeaway

Employers that sponsor a group health plan should be aware of mental health parity rules and make it a priority to ensure the group health plans they sponsor are compliant with mental health parity. Particularly for self/level funded plans, that should include utilizing the [DOL self-compliance tool](#) and [tool preface](#) and communicating with the TPA about MHPAEA compliance, particularly with NQTLs. Note that the information needed to perform the NQTL analysis is typically with insurers (for insured plans) and TPAs (for self/level funded plans) so that means insurers and TPAs should be performing the analyses and employers should be confirming and following up with them to ensure that is happening.

Origins of Mental Health Parity Rules

- › The parity rules originated with the *Mental Health Parity Act of 1996* (MHP)
- › In 2008, it was amended by the *Mental Health Parity and Addiction Equity Act of 2008* (MHPAEA)
- › In 2013, a final regulation that built on and implemented the MHPAEA and provisions in the Affordable Care Act (ACA) was effective as of 2014
- › In 2020, the DOL updated its self-compliance tool to help issuers/plans determine compliance
- › The CAA of 2021 added additional requirements for insurers/plans including conducting an NQTL comparative analyses between MH/SUD and medical/surgical benefits and, if requested, provide same to federal (or state) authorities.
- › The CAA of 2023 authorized \$10 million to fund Mental Health Parity grants to states for state enforcement efforts, particularly surrounding NQTLs.
- › At the end of July 2023 the proposed Rules discussed in this article were released.

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