GBS Health Benefits Compliance

Introduction to the Mental Health Parity and Addiction Equity Act (MHPAEA)

The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) is a federal law that generally prevents group health plans and health insurance issuers that provide mental health or substance use disorder (MH/SUD) benefits from applying more stringent benefit limitations on those benefits than on medical/surgical (M/S) benefits.

MHPAEA preserves the protections that were originally imposed under the Mental Health Parity Act of 1996 (MHPA) and adds additional protections, including the application of parity requirements to substance use disorders as well as to mental health. Final regulations implementing MHPAEA were issued in September 2024, but these are currently on hold indefinitely.

This article explains the mental health parity requirements that are currently in effect, and at the end briefly lists the 2024 Final Rule regulatory requirements that are on hold.

Core Mental Health Parity Requirements

Mental Health Parity laws require that mental health and substance use disorder (MH/SUD) benefits be provided on equal footing with medical and surgical (M/S) benefits. These requirements focus on **three core elements** that determine how benefits are structured, limited, and administered under a health plan. These core elements address financial requirements, quantitative treatment limitations, and non-quantitative treatment limitations.

- **Financial Requirements** for MH/SUD cannot be more restrictive than the predominant financial requirements applicable to substantially all medical/surgical benefits in a classification. Financial requirements include deductibles, copayments, coinsurance and out-of-pocket maximums.
    - Example: If a $10 co-pay applies for office visits for medical/surgical benefits, the copay for MH/SUD office visits cannot be more than $10

GBS
A Leavitt Group Company

- **Quantitative Treatment Limitations (QTLs)** for MH/SUD benefits cannot be more restrictive than the predominant treatment limitations applicable to substantially all medical/surgical benefits in a classification. The term "quantitative" refers to treatment limitations that can easily be quantified or counted. QTLs include number of treatments, visits, days of coverage, or days in a waiting period.
    - Example: If a plan does not limit the number of treatments or visits for medical/surgical benefits, it cannot limit the number of treatments or visits for mental health counseling sessions.
- **Nonquantitative Treatment Limitations (NQTLs)** for MH/SUD cannot be more restrictive than the predominant limitations applicable to substantially all medical/surgical benefits. "Non-quantitative" refers to treatment limitations that are not easily quantified or counted. NQTLs include: preauthorization and concurrent review policies, standards for accessing out-of-network providers, guidelines used to determine the medical necessity of mental health claims versus medical claims, and prescription drug formulary design.
    - Example: If a plan requires prior authorization for outpatient mental health services but does not require prior authorization for comparable outpatient medical/surgical services, the plan would not meet mental health parity requirements.

Applicability of MHPAEA

The mental health parity law itself does not require group health plans or insurers to provide any MH/SUD benefits but only requires that if the plan does provide such benefits, the parity requirements apply.

Most plans do provide MH/SUD benefits because they are required to provide them by other laws. State insurance laws, for example, usually require that group health insurance policies issued in the state must provide mental health benefits. And the Affordable Care Act (ACA) requires that small group insurance policies must provide essential health benefits (EHB), which includes mental health benefits.

Before the enactment of the ACA, MHPAEA applied to large group health plans and group health insurance coverage (for employers with more than 50 employees). The ACA amended MHPAEA to also apply mental health parity to individual health insurance coverage. Although MHPAEA does not apply directly to small group health plans, its requirements are applied indirectly because of the ACA requirement that small group health policies must provide EHBs.

Original Parity Tests Applied to Six Classifications of Benefits

The final 2013 MHPAEA regulations, effective for plan years beginning on or after January 1, 2014, require that the "substantially all/predominant" parity standards for financial requirements and QTLs must be applied separately across six classifications of benefits: 1) inpatient in-network; 2) inpatient out-of-network; 3) outpatient in-network; 4) outpatient out-of-network; 5) emergency care; and 6) prescription drugs.

NQTLs must also be applied on a classification-by-classification basis and must be comparable to, and applied no more stringently than, those used for medical/surgical benefits.

Sub-classifications are permitted for office visits separate from other outpatient services, as well as for plans that use multiple tiers of in-network providers. The regulations include examples for each classification.

The regulation also requires that all cumulative financial requirements within a classification, including deductibles and out-of-pocket limits, must combine both medical/surgical and MH/SUD benefits in the classification.

- For example, plan participants cannot be required to meet separate deductibles for MH/SUD and medical/surgical benefits.
- The regulations provide examples of permissible and impermissible cumulative financial requirements.

Additional Rules and Requirements Imposed by CAA of 2021

The Consolidated Appropriations Act of 2021 (CAA 2021) added enhanced enforcement, documentation, and disclosure requirements to the Mental Health Parity and Addiction Equity Act (MHPAEA), with a particular focus on nonquantitative treatment limitations (NQTLs), in response to concerns that group health plans were not complying with parity requirements related to NQTLs.

NQTL Comparative Analysis

- Plans that apply NQTLs to MH/SUD benefits must perform and maintain a written comparative analysis demonstrating that the processes, strategies, evidentiary standards, and other factors used to apply NQTLs to MH/SUD benefits are comparable to, and applied no more stringently than, those used for medical/surgical benefits within each classification, both in writing and in operation.

Disclosure Requirements

- MHPAEA also imposes several disclosure requirements on group health plans and health insurance issuers, including
    - providing plan participants, upon request, information regarding MH/SUD and medical/surgical benefits, including the criteria for medical necessity determinations and the reasons for denials of MH/SUD claims; and
    - providing the Departments of Labor, Health and Human Services, or the Treasury, within 10 business days of a request, the NQTL comparative analysis described above, including during audits or investigations.

Annual or Lifetime Limits

- Consistent with existing MHPAEA and ACA requirements, group health plans may not impose annual or lifetime dollar limits on MH/SUD benefits that are more restrictive than those applied to medical/surgical benefits.

September 2024 Final Rule and Aftermath

On September 9, 2024, the DOL, HHS and IRS released final rules (and an associated fact sheet) under the MHPAEA, in part due to widespread compliance gaps that were revealed in the Departments' 2022 and 2023 reports to Congress. These final regulations included tightened standards for NQTLs, new detailed comparative-analysis documentation requirements, and (for ERISA plans) a fiduciary certification tied to a prudent process for selecting and monitoring service providers supporting the comparative analysis.

The final rule was effective November 22, 2024, with staggered applicability dates for plan years starting on or after January 1, 2025 (and, in the individual market, policy years starting on or after January 1, 2026).

In January 2025 the ERISA Industry Committee (ERIC), a trade association representing large employers, filed suit (ERIC v DOL, et al.) challenging several provisions of the September 2024 final regulations as arbitrary and beyond the Departments' statutory authority.

On May 12, 2025, the court granted the parties' joint request to hold the litigation in abeyance while the Departments reconsider whether to modify or rescind the final rule. Shortly thereafter, on May 15, 2025, the Departments announced a temporary non-enforcement policy under which they will not enforce the **new requirements** introduced by the 2024 final rule with respect to violations occurring prior to (1) a final court decision in the litigation and (2) an additional 18 months following that decision.

This enforcement pause applies only to provisions that are new under the 2024 final regulations. All mental health parity requirements that predate the 2024 rule, including statutory MHPAEA obligations and requirements added by the Consolidated Appropriations Act of 2021, remain fully enforceable.

Mental Health Parity Requirements in Effect since May 15, 2025

Employers and insurers are **not currently required to comply** with the following provisions, as they were introduced by the September 2024 MHPAEA Final Rule and are subject to the Departments' temporary non-enforcement policy:

- The six-element NQTL comparative-analysis framework, including the outcomes-data requirement, set forth in the 2024 Final Rule
- The "meaningful benefits" standard requiring MH/SUD benefits to be offered in every classification in which medical/surgical benefits are provided
- The requirement that an ERISA plan's named fiduciary certify a prudent process for selecting and monitoring service providers supporting the NQTL comparative analysis
- The 90-day corrective-action period triggered by a finding of noncompliance under the 2024 Final Rule.

Mental health parity **requirements that remain fully enforceable include**:

- The 2013 MHPAEA regulations, including parity testing for financial requirements and quantitative treatment limitations, NQTL comparability standards, and disclosure of medical-necessity criteria and reasons for claim denials;
- The Consolidated Appropriations Act of 2021 requirement to prepare and maintain a written NQTL comparative analysis and to furnish that analysis to the DOL, HHS, or IRS within 10 business days of a request, without regard to the enhanced documentation standards introduced in the 2024 Final Rule.

Some employers may wish to comply with all or part of the 2024 requirements even though they are not currently being enforced, for various reasons such as:

- to demonstrate proactive fiduciary diligence and make it easier to "flip the switch" if the 2024 rule is reinstated
- to limit enforcement and class-action exposure by showing regulators and plaintiffs that the employer made good-faith efforts to meet the highest-available benchmark, and
- to strengthen recruitment, retention and productivity by signaling to employees, and their families, that their mental-health care is valued as much as their medical care.

Enforcement, Penalties and Financial Exposure for Non-Compliance

Non-compliance with currently enforceable MHPAEA requirements may result in several adverse consequences, including:

- The IRS may impose an excise tax of $100 per day per affected individual for each day the violation continues, until the failure is corrected.
- The Department of Labor (DOL) may investigate alleged MHPAEA violations and may refer matters to the IRS for excise tax assessment. While the DOL does not assess civil monetary penalties for MHPAEA violations, it may seek equitable relief under ERISA, including corrective action and reprocessing of claims.
- The Centers for Medicare & Medicaid Services (CMS) may assess a civil monetary penalty of up to $100 per day per affected individual if a state fails to substantially enforce MHPAEA requirements, in which case CMS may directly enforce MHPAEA against issuers (insurers) in that state.
- Plan participants may file lawsuits against employers or insurers to recover benefits due under the plan, enforce their rights under the plan, or clarify rights to future benefits.
- State insurance departments may also enforce MHPAEA compliance with respect to fully insured health plans.

While enforcement of the 2024 Final Rule is paused, employers still face meaningful regulatory and litigation risks for MHPAEA violations, especially if they cannot quickly produce a defensible NQTL analysis.

To mitigate risk, an employer should:

- **Confirm** a current written NQTL comparative analysis exists that meets CAA 2021 requirements and can be produced within 10 business days of a request from the DOL, HHS, or IRS.
    - **GBS Resource: Step-by-Step Checklist**
      https://gbsbenefits.com/compliance/checklist-mental-health-parity-comparative-analysis/
- **Validate** operational consistency, ensuring NQTLs are applied in practice the same way they are described in plan documents and vendor materials.
- **Document** employer actions for vendor oversight, including how the employer selects, monitors, and relies on TPAs, PBMs, and other service providers for parity compliance, even though the 2024 fiduciary certification requirement is not currently enforced.
- **Inventory** NQTLs across all six classifications, prioritizing high-risk areas such as prior authorization, concurrent review, medical-necessity criteria, and out-of-network access.
- **Monitor** regulatory developments related to the 2024 Final Rule litigation so the plan can quickly adapt if enforcement resumes.

Additional GBS Resources

- *Mental Health Parity: Enforcement temporarily paused for Mental Health Parity "2024 Final Rule"*
  May 2025
- *Mental Health Parity: Final Rules Expand Group Health Plan Compliance Requirements*
  February 2025
- *Step by Step Checklist: Mental Health Parity Comparative Analysis of NQTLs*
  November 2024
- *Mental Health Parity Requirements and Recent Changes in Final Rule*
  October 2024

This document is not intended to be exhaustive, nor should any information be construed as tax or legal advice.

GBS
A Leavitt Group Company