



Proposed Guidance for Mental Health Parity Regulations

Oct. 16, 2023

On July 25, 2023, the Departments of Treasury, Labor, and Health and Human Services (the “Departments”) released [proposed rules](#) on the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and published in the Federal Register on August 3, 2023. These proposed regulations would update the MHPAEA, building upon amendments to the law enacted by the Consolidated Appropriations Act of 2021 as well as interim final regulations, final regulations, and related guidance issued in 2012 and 2014.

Initially, the comment period for these proposed rules was scheduled to close on October 2, 2023, but was extended an additional 15 days to October 17, 2023.

If the regulations are finalized, the new MHPAEA rules are expected to take effect on January 1, 2025, for group health plans.

Review of the July MHPAEA Proposed Regulations

The proposed regulations intend to ensure that health plans provide coverage for mental health and substance use disorder treatments (such as those for anxiety) at the same level as physical health care coverage (such as medical and surgical benefits related to heart disease or diabetes).

Specifically, the proposed regulations:

- Propose new standards for determining network composition and out-of-network reimbursement rates
- Sunset the ability for non-federal government plans to opt out of federal parity requirements
- Codify standards for non-quantitative treatment limitations (NQTL) requirements such as medical management techniques like prior authorizations

- Require that health plans acknowledge and address any differences in access to mental health and substance use disorder benefits from medical or surgical benefits
- Request feedback on proposed data requirements related to a health plan's NQTLs and network composition

Additionally, when MHPAEA was amended by the Consolidated Appropriations Act, 2021 (CAA), a provision was added to the law requiring health plans and issuers to document comparative analyses of both the design and application of their NQTLs. Subsequently, health plans and issuers must provide these analyses to the Departments and any applicable state agency upon request.

Further, the Secretaries of the Departments must then report these results to Congress annually, known as the MHPAEA Comparative Analysis Report to Congress (Report). A Report has been submitted for both 2022 and 2023, satisfying the CCA's requirements.

Which Plans Must Comply with the MHPAEA Proposed Regulations?

The federal MHPAEA rules apply to health plans covering more than 50 employees. The rules do not apply to private employers with 50 or fewer employees, group health plans incurring a minimum cost when implementing MHPAEA standards, and non-governmental plans with 50 or fewer employees.

Increased Enforcement Planned for Mental Health Parity

The Reports also address MHPAEA enforcement priorities and activities. Most recently, the [2023 Report](#) explicitly stated that mental health parity enforcement is a top priority for the Employee Benefits Security Administration (EBSA), the employee benefits enforcement arm of the U.S. Department of Labor (DOL). Specifically, in its 2023 Report, the EBSA has announced that it will devote almost 25 percent of its enforcement work to MHPAEA NQTLs.

Over the past year, the EBSA increased staff specialization in its dedicated NQTL Task Force, developed new investigative tools specifically for MHPAEA investigations as well as hired and consulted with subject matter experts on mental health and substance use disorder (MH/SUD) diagnoses, treatments, review processes, and certain types of NQTLs.

Employer Best Practices for Mental Health Parity Compliance

Bracing for yet another regulatory responsibility, employers offering group health plans are responsible for ensuring that their health plan complies with MHPAEA, including these newly proposed regulations.

Employers should keep these best practices in mind:

- Review the [MHPAEA Self-Compliance Tool](#) from the DOL annually, for help navigating your legal responsibilities.
- Discuss the proposed regulations with your employee benefits broker and third-party administrator, to ensure compliance with the MHPAEA comparative analyses rules.

- Consider whether you need to hire a qualified consultant to prepare your comparative analyses if your third-party administrator does not prepare the report (or only prepares part of the report).
- Consult with legal counsel if you've identified any MHPAEA concerns that may lead to non-compliance.

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