

Mental Health Parity Compliance Returns to Forefront for Group Health Plan Sponsors

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The Consolidated Appropriations Act, 2021 (CAA) amended the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) to include substantial new compliance requirements. The Department of Labor (DOL), Health and Human Services, and the Treasury (collectively, the Departments) have released [much-anticipated guidance](#) for group health plans necessitating action from plan sponsors.

Background on MHPAEA

Since its inception, the main objectives of the MHPAEA have remained the same: to ensure the financial requirements and treatment limitations applied to mental health and substance use disorder (MH/SUD) benefits and services are no more restrictive than for medical or surgical benefits and services. Over the years, the rules and guidelines have evolved, with modifications from the Affordable Care Act of 2010 (ACA), the Cures Act in 2016, and, most recently, the CAA.

The Departments have periodically issued guidance and clarification to refine these rules through various FAQs. The Part 45 FAQs issued on April 2, 2021, resolve many open questions resulting from the modifications made to the MHPAEA by the CAA and sets forth stringent deadlines for compliance.

New Comparative Analysis Requirement

Although compliance with the MHPAEA has been required for many years, the latest set of FAQs escalates this compliance responsibility. Effective as of February 10, 2021, group health plans must conduct a comparative analysis showing that the plan complies with MHPAEA. For the first time, employers must be ready to prove their compliance with MHPAEA standards, particularly for “non-quantitative treatment limitations” (NQTL). NQTL can include medical management standards that limit or exclude coverage based on medical necessity, prior authorization, or other bases. These standards used for MH/SUD benefits must be comparable to and applied no more stringently than standards used for medical and surgical benefits.

The analysis must show that all NQTL conditions are compliant through detailed supporting evidence. This information needs to be available to the DOL on short notice (within 45 days) if a written request is made. More important, the analysis must be more detailed than conclusory statements about the plan’s compliance. The guidance clarifies that participants and beneficiaries can make similar requests to which the plan sponsor must respond within the normal 30-day document disclosure timeframes. State regulators also have authority to make similar requests. The consequences of failing to respond to each request promptly can be significant.

The challenge is that not only do these deadlines call for immediate action but, realistically many plan sponsors have largely relied on their insurance carriers and third-party administrator partners to develop plan designs that comply with MHPAEA standards. While plans may comply with MHPAEA, most have never conducted the detailed comparative

analysis now required.

What Should Employers Do Now?

Unless the plan sponsor's third-party administrator has already prepared necessary documentation to create the required comparative analysis, the plan sponsor needs to formulate a strategy for immediate compliance. Fortunately, the DOL has created a [Self-Compliance Tool](#) for plan sponsors and administrators to use as a roadmap to determine whether their plans comply with MHPAEA.

The DOL last updated the Self-Compliance Tool in 2020 and the most recent FAQs suggest that a plan sponsor's use of the Self-Compliance Tool will put the plan in a strong position to comply with the most recent comparative analysis mandate. The Self-Compliance Tool not only contains detailed step-by-step processes for compliance, it also includes many examples and "Compliance Tips" that help the plan sponsor understand the DOL's approach toward various MHPAEA compliance items.

Within the NQTL section of the comparative analysis mandate, the Self-Compliance Tool identifies four steps that plans should take to assess compliance with the MHPAEA standards:

1. Identify in the plan documents, internal guidelines, service provider agreements, and other relevant documents all services (including both MH/SUD and medical/surgical) to which the NQTL applies — such documents should evidence that each NQTL applies on a comparable basis to MH/SUD and medical/surgical services.
2. Identify the factors considered in the design of the NQTL, such as excessive utilization, recent medical cost escalation, or lack of clinical efficiency in treatment or service. These factors need to be established and justified for each NQTL separately.
3. Identify the sources used to define the factors, including any processes, strategies, or evidentiary standards using internal claims analysis, medical expert reviews, and national accreditation standards. Again, these sources must be applied comparably to MH/SUD *and* medical/surgical benefits to evidence compliance.
4. Demonstrate that all processes, strategies, and evidentiary standards applicable to NQTL conditions are no more stringently applied to MH/SUD benefits than to medical/surgical benefits through written documentation and in operation through established examples and case studies. Evaluation of actual results from claim denials and appeal overturn rates for MH/SUD and medical/surgical claims are strong indicators of operational compliance/noncompliance with MHPAEA standards.

Plan sponsors are urged to work with their health plan consultants and employee benefits counsel to use the DOL's Self-Compliance Tool as a starting point for working through these four steps. Plan sponsors also should prepare an immediate game plan for developing the comparative analysis required under the new MHPAEA guidelines. Engaging outside advisors also will help demonstrate compliance.

As to the comparative analysis itself, employers with fully insured health plans may obtain the necessary data and resources from their insurance carrier. At a minimum, they may obtain written certification from the carrier that it has the comparative analysis available to evidence compliance with NQTL mandates. The Self-Compliance Tool indicates that any DOL audit would evaluate documentation of MHPAEA compliance supplied by other service providers if the plan delegates MH/SUD benefits to another entity, such as a fully insured carrier. Self-insured plans should be working with their third-party administrators or any

other engaged service provider who manages the MH/SUD process to obtain the necessary data that consultants and advisors may use to help develop the comparative analysis.

Internal Guidelines

While having a properly documented comparative analysis of MHPAEA compliance is needed to meet current disclosure guidelines, to satisfy ongoing MHPAEA compliance each plan sponsor should establish an ongoing, internal compliance plan.

The internal compliance plan should include regular training on MHPAEA compliance obligations, an established document retention program for NQTL factors, periodic monitoring of claim denials and appeals, and other relevant data. The DOL Self-Compliance Tool provides good tips for managing these processes and identifying other information the DOL typically would ask for in any audit for MHPAEA compliance. Now is not too soon to establish and implement these internal procedural processes.

We are available to help plan sponsors understand and implement these new required compliance responsibilities. Please contact the Jackson Lewis attorney with whom you regularly work if you have questions or need assistance.

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