

Benefits BRIEF



Mental Health Parity: NQTL Comparative Analysis Requirements

• January 2022 •

The Consolidated Appropriations Act, 2021 (CAA), enacted in December 2020, amended the Mental Health Parity and Addiction Equity Act of 2008 (MPHAEA) to require employers that sponsor self-funded group health plans that cover mental health or substance use disorder benefits to perform a “comparative analysis” of any non-quantitative treatment limitations (NQTLs) **effective February 10, 2021**. **All group health plans** are subject to the CAA. **Fully insured plans, however, have relief from this requirement** as the insurance carrier has the obligation to perform the comparative analysis, not the employer.

Though the MPHAEA already required group health plans and insurers to perform an analysis of NQTLs, the CAA’s **requirement to produce written documentation of the comparative analysis is new** and bolsters the DOL’s, IRS’s and HHS’s (collectively, the Agencies’) increasing focus and ongoing commitment to MPHAEA enforcement. Due to the time constraints and potential penalties, employer-sponsors of self-insured health plans should focus on understanding this complex new requirement and prioritize their next steps to ensure compliance.

MHPAEA Overview

The MHPAEA requires covered group health plans and insurers that offer mental health or substance use disorder benefits (MH/SUD) to provide parity between those benefits and medical/surgical (M/S) benefits with regards to: **(1) annual and lifetime limits**; **(2) financial requirements** and **quantitative treatment limitations** (QTLs); and **(3) nonquantitative treatment limitations** (NQTLs). In other words, plans that provide MH/SUD benefits cannot impose less favorable benefit limitations on those benefits than on M/S benefits.

Parity is evaluated using **six main classifications of benefits**, including: **(i)** inpatient, in-network; **(ii)** inpatient, out-of-network; **(iii)** outpatient, in-network; **(iv)** outpatient, out-of-network; **(v)** emergency care; and **(vi)** prescription drugs. This means that if a plan provides

MH/SUD benefits in any of the six listed classifications, these benefits must also be provided and compared to the M/S benefits in the same classification. These six classifications are the only main classifications allowed under MHPAEA; however, *there are limited sub-classifications permitted in some cases.*

Parity Requirements

When analyzing the plan, the requirements for determining parity are different for financial and quantitative treatment limits versus non-quantitative treatment limits.

REQUIREMENTS

Financial and Quantitative Treatment Limits

In general, a plan cannot apply a financial requirement or QTL on MH/SUD benefits that is *more restrictive* than the *predominant level* of the financial requirement or quantitative treatment limitation that applies to *substantially all* of the M/S benefits in the *same classification*.

Examples of financial requirements under a plan include deductibles, copayments, coinsurance and out-of-pocket expenses. Quantitative treatment limitations are limits that can be expressed numerically, such as the number of visits that can be covered under the plan.

Although a thorough analysis of this parity requirement is outside the scope of this Brief, the parity of financial requirements and QTLs is generally easier for employers to determine due to the numerical component of the determination.

A NQTL, on the other hand, is any treatment limitation under the plan that **cannot** be expressed in a quantitative measure. Federal MHPAEA regulations contain a non-exhaustive list of NQTLs, including examples such as application of medical management techniques or formulary design for prescription drugs.

Non-Quantitative Treatment Limits

The MHPAEA provides that a plan or issuer may not impose a NQTL on a MH/SUD benefit unless, *under the terms of the plan or coverage (as written and in operation)*, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefits are comparable to and are applied no more stringently than those used in applying the limitation with respect to M/S benefits in the *same classification*.

When determining whether the plan is in parity, the DOL has provided a [useful list](#) of plan provisions that would serve as a “warning signal” to plans that their plan may be imposing an impermissible NQTL.

CAA's Comparative Analysis Documentation Requirement

Beginning February 10, 2021, the insurer or plan must provide the Agencies with a comparative analysis upon request. Specifically, the CAA requires the Agencies to collect a minimum of **twenty analyses per year**. The CAA does not define "comparative analysis" but under jointly released [FAQ guidance](#), issued on April 2, 2021, the Agencies do provide additional guidance on the comparative analysis requirements.

Based on the FAQs, the comparative analysis must include a "robust discussion" of nine specific elements (Q/A-2 of FAQ guidance). The FAQs also make clear that the **analysis should not focus on the final result, but the parity between the underlying processes and strategies used in applying NQTLs**. The FAQs provide a list of documents and other relevant information that insurers and plans should have available to support the comparative analysis. While the DOL did identify four specific NQTLs they intend to focus on, they further confirm that plans and insurers should still perform and document analysis for all NQTLs imposed.

COMPLIANCE ASSISTANCE

The DOL has also released its most recent MHPAEA Self-Compliance Tool to assist plans evaluate compliance with the MHPAEA. The [Self-Compliance Tool](#) includes a section on NQTLs that outlines a process for conducting the comparative analysis. According to the DOL, plans that have carefully applied the guidance in this tool should be in a strong position to submit comparative analysis upon request.

Penalties

If an Agency determines a violation of the parity requirements, the plan will have 45 days to correct the violation, either by providing additional analysis or specifying actions it will take for corrections. If, upon those corrective measures, the Agency still makes a determination of non-compliance, the plan will be required to notify all participants that they failed to comply with MHPAEA. Additionally, the Agency will notify state officials regarding the findings of the plan's noncompliance.

Furthermore, the Agencies must file an annual report to Congress which will be made **publicly available** that includes the **specific identity of insurers or plans determined not to be in compliance** and whether the insurer or plan submitted sufficient information to review the comparative analysis. If not, the report will contain conclusions as to whether and why the insurer or plan was in compliance, what actions the plan or issuers have taken to become compliant, and other information.

Employer Next Steps

Employers should assess their next steps in order to comply with MHPAEA's written comparative analysis requirement. If the employer sponsors a fully insured plan, the

comparative analysis requirements fall on the insurance carrier. Nevertheless, employer-sponsors of fully insured plans should contact their insurance carrier to confirm the carrier has completed the analysis and is able to provide the analysis to the Agencies upon request.

For self-insured health plans, the comparative analysis requirement falls upon the employer. In general, these employer-sponsors most likely do not have access to the scope of information necessary to complete the comparative analysis requirement. Therefore, it is essential for these employers to first contact their TPA **to determine if they can assist with the comparative analysis for their plan**. If they will not assist in this analysis, plan sponsors should ask if they will make the necessary data available, and may wish to engage assistance from outside counsel or an actuarial firm in completing the analysis. Going forward, the responsibility for preparation of this analysis or sharing data related to this analysis should be negotiated and reflected in the written agreement with the TPA.

ADDITIONAL RESOURCES

[Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act \(MHPAEA\)](#)

[FAQs About Mental Health and Substance Use Disorder Parity Implementation and the Consolidated Appropriates Act, 2021 Part 45](#)

[CMS: Non-Federal Governmental Plans & MHPAEA Comparative Analysis Reviews](#)

[Warning Signs - Plan or Policy Non-Quantitative Treatment Limitations \(NQTLs\) that Require Additional Analysis to Determine Mental Health Parity Compliance](#)

[DOL Website: Mental Health and Substance Use Disorder Parity](#)

[CMS Website: The Mental Health Parity and Addiction Equity Act](#)