

August 2, 2023

Newly Proposed Mental Health Parity Regulations Introduced

On Tuesday, July 25th, the federal Departments of Health and Human Services, Labor, and Treasury (“the Departments”) introduced a much-anticipated [update to current regulations](#) dealing with the Mental Health Parity and Addiction Equity Act (MHPAEA).

These newly proposed regulations continue to shine a bright light on the need for parity between medical/surgical (M/S) and mental health/substance use disorder (MH/SUD) benefits in all non-quantitative treatment limitations (NQTLs).

The Consolidated Appropriations Act of 2021 (CAA) established the requirement that plans initiate and maintain an NQTL analysis. These proposed regulations seek to satisfy issuers, plan sponsors, third-party administrators, and other benefits professionals who have been patiently awaiting additional direction and guidance.

So, what do the proposed rules offer in the way of a better understanding of the requirements and how greater parity can be achieved? Here’s just a peek inside the proposed measure:

- It reiterates the overarching goal of the MHPAEA is for individuals to be able to access their MH/SUD benefits in parity with M/S benefits.
- It provides specific examples to clarify that group health plans and health insurance issuers cannot use more restrictive prior authorization and other medical management techniques for MH/SUD benefits and achieve parity. Similar examples show that standards related to network composition for MH/SUD benefits and criteria to determine out-of-network reimbursement rates for MH/SUD providers that result in less access to MH/SUD providers are not permissible.
- It creates a requirement for plans and issuers to collect and evaluate outcomes data and take proper steps to address material differences in access to MH/SUD benefits as compared to M/S benefits.
- It codifies the requirement that plans and issuers conduct meaningful comparative analyses evaluating and measuring the impact of NQTLs. This encompasses evaluating standards related to network composition, out-of-network reimbursement rates, prior authorization NQTLs, and any other NQTLs imposed by a plan.
- It indicates that regarding network composition, there would be an NQTL violation if “the relevant data show material differences in access to in-network MH/SUD benefits as compared to in-network M/S in a classification.”
- It implements the sunset provision for self-funded, non-Federal government plan elections to opt out of compliance with MHPAEA, adopted in the Consolidated Appropriations Act of 2023.



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As with many proposed rules, we see the creation of new definitions which enhance existing ones. Interestingly, this includes more detailed minimum standard definitions of M/S and MH/SUD care for plans subject to the MHPAEA. The proposal also defines factors, evidentiary standards, processes, and strategies, which must be used when crafting, applying, and analyzing NQTLs. Furthermore, it explains that for group health plans subject to ERISA, the NQTL analyses are considered plan documents like summary plan descriptions (SPD), subject to related plan fiduciary review and participant distribution requirements. Previous regulations imposed four enforcement areas, and the new proposed regulations added two new ones.

Notwithstanding the fact that these new proposed NQTL tests, definitions, and other specifics won't be in effect until January 1, 2025, if the measure is finalized as written, the regulation makes it clear that existing MHPAEA compliance rules for health insurance issuers and group health plan sponsors remain unchanged, including the written NQTL analysis requirement. Plan sponsors and issuers must prepare and maintain plan-specific NQTL analyses using existing guidance from the Departments.

These proposed regulations represent a serious effort by the Departments to drive home the need to enforce MHPAEA as it pertains to plans and issuers.

As with most, if not all, proposed rules, there is a 60-day comment period imposed by the Departments. Once completed, a final rule is expected late into 2023 or early 2024.

MZQ is watching the progress of this measure closely, as it will inform how we conduct NQTL analysis for our clients. If you need assistance completing an NQTL analysis, please contact us at engage@mzqconsulting.com.