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LEGAL UPDATE

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Final Rule Makes Extensive Changes to Mental Health Parity Requirements

On Sept. 9, 2024, the Departments of Labor, Health and Human Services, and the Treasury (Departments) released a final rule to strengthen the requirements of the Mental Health Parity and Addiction Equity Act (MHPAEA). According to the Departments, the final rule is designed to achieve MHPAEA's purpose of ensuring individuals with private health coverage do not face greater restrictions to obtaining mental health and substance use disorder (MH/SUD) benefits than they would face for medical/surgical (M/S) benefits.

Significantly, the final rule **adds protections against more restrictive nonquantitative treatment limitations (NQTLs).** For example, the final rule requires group health plans and health insurance issuers to collect and evaluate data related to the NQTLs they place on MH/SUD care and make changes if the data shows they are providing insufficient access.

The final rule generally applies to health plans and issuers for plan years beginning on or after Jan. 1, 2025; however, certain key requirements, such as NQTL data evaluation requirements, apply for plan years beginning on or after Jan. 1, 2026.

HIGHLIGHTS

- The Departments have released a final rule to strengthen MHPAEA's requirements.
- The final rule makes changes to the existing NQTL standard to prevent plans and issuers from using NQTLs to limit access to MH/SUD benefits to a greater extent than M/S benefits.
- The final rule requires health plans and issuers to collect and evaluate relevant data to assess the impact of NQTLs.
- The final rule also establishes new minimum standards for developing NQTL comparative analyses.

MHPAEA

MHPAEA requires parity between a group health plan's M/S benefits and MH/SUD benefits. MHPAEA's parity requirements apply to:

- **Financial requirements**, such as deductibles, copayments and coinsurance;
- **Quantitative treatment limitations**, such as day or visit limits; and
- **NQTLs,** which generally limit the scope or duration of benefits, such as prior authorization requirements, step therapy requirements and standards for provider admission to participate in a network.

MHPAEA's parity requirements apply to group health plans sponsored by employers with more than 50 employees. However, due to an Affordable Care Act reform, insured health plans in the small group market must also comply with federal parity requirements for MH/SUD benefits.

The Consolidated Appropriations Act of 2021 amended MHPAEA to require health plans and health insurance issuers to conduct **comparative analyses of the NQTLs** used for M/S benefits compared to MH/SUD benefits. These analyses must contain a detailed, written and reasoned explanation of the specific plan terms and practices at issue and include the basis for the plan's or issuer's conclusion that the NQTLs comply with MHPAEA.

Compliance Problems

The Departments have continued to receive and investigate complaints that health plans and issuers fail to comply with MHPAEA by restricting access to benefits for mental health conditions and substance use disorders in more onerous and limiting ways than those restricting access to medical or surgical care. This noncompliance is especially evident in the design and application of NQTLs that apply to MH/SUD benefits.

According to the Departments, because of these failures, people seeking coverage for MH/SUD care continue to face greater barriers when seeking these benefits than when seeking M/S benefits. The final rule's changes are intended to strengthen MHPAEA's requirements and provide guidance to health plans and issuers on how to comply with the law's requirements.

Final Rule's Changes

To comply with the final rule's requirements, health plans and issuers must:

- Define whether a condition or disorder is a MH condition or SUD in a manner that is consistent with the most current version of the International Classification of Diseases or Diagnostic and Statistical Manual of Mental Disorders;
- Offer meaningful benefits (including a core treatment) for each covered MH condition or SUD in every classification in which M/S benefits (a core treatment) are offered;
- Not use factors and evidentiary standards to design NQTLs that discriminate against MH conditions and SUDs;
- Collect and evaluate relevant outcomes data and take reasonable action, as necessary, to address material differences in access to MH/SUD benefits as compared to M/S benefits; and
- Include specific elements in documented comparative analyses and make them available to the Departments, an applicable state authority, or individuals upon request.

NQTL Data Requirements

Under the final rule, a plan or issuer may not impose any NQTL with respect to MH/SUD benefits in any classification that is more restrictive, as written or in operation, than the predominant NQTL that applies to substantially all M/S benefits in the same classification. To ensure that an NQTL is not more restrictive in operation, the final rule requires plans and issuers to collect and evaluate relevant data in a manner reasonably designed to assess the impact of the NQTL on relevant outcomes related to access to MH/SUD benefits and M/S benefits.

If the relevant data suggests that the NQTL contributes to material differences in access to MH/SUD benefits as compared to M/S benefits, that will be considered a strong indicator of an MHPAEA violation. Differences in access are material if, based on all relevant facts and circumstances, the difference in the data suggests that the NQTL is likely to have a negative impact on access to MH/SUD benefits as compared to M/S benefits. If material differences in access exist, the plan or issuer must take reasonable action, as necessary, to address them to ensure compliance with MHPAEA in operation.

Comparative Analysis of NQTLs

The final rule establishes minimum standards for developing comparative analyses to assess whether an NQTL, as written and in operation, complies with MHPAEA's requirements. Plans and issuers that cover both M/S benefits and MH/SUD benefits and impose NQTLs on MH/SUD

benefits must perform and document a comparative analysis of the design and application of each applicable NQTL.

The final rule requires the comparative analysis to contain, at a minimum, six content elements:

1. A description of the NQTL, including identification of benefits subject to the NQTL;
2. Identification and definition of the factors and evidentiary standards used to design or apply the NQTL;
3. A description of how factors are used in the design or application of the NQTL;
4. A demonstration of comparability and stringency, as written;
5. A demonstration of comparability and stringency in operation, including the required data, evaluation of that data, explanation of any material differences in access and description of reasonable actions taken to address such differences; and
6. Findings and conclusions.

In most cases, issuers and third-party administrators will prepare comparative analyses for employer-sponsored health plans. However, the final rule requires the comparative analyses for ERISA-covered plans to also include a **plan fiduciary's certification that they have engaged in a prudent process and monitored their service providers**.

Effective Date

The final rule generally applies to group health plans and group health insurance coverage for plan years beginning on or after Jan. 1, 2025. However, the provisions implementing the meaningful benefits standard, the prohibition on discriminatory factors and evidentiary standards, required use of outcomes data, and certain related comparative analysis requirements apply for plan years beginning on or after Jan. 1, 2026.