

Mental Health Parity Regulations Update

On July 25, the U.S. Departments of Treasury, Labor and Health and Human Services (the “tri-agencies”) released new proposed rules and additional guidance on compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA). The [proposed regulations](#) amend the current MHPAEA final regulations (issued in 2013) and are focused on requirements related to nonquantitative treatment limitations (NQTLs) (e.g., prior authorization) imposed on mental health and substance use disorder benefits, as compared to medical/surgical benefits.

The proposed regulations include several new requirements, including:

- Prohibit NQTLs with respect to mental health and substance use disorder benefits unless (1) the NQTL is no more restrictive than 60% of M/S benefits; (2) the plan or issuer satisfies requirements related to the design and application of the NQTL; and (3) the plan or issuer collects, evaluates, and considers the impact of relevant data on access to MH/SUD benefits relative to access to M/S benefits; *and subsequently takes reasonable action as necessary to address any material differences in access shown in the data to ensure compliance with MHPAEA.*
- Review a modified, non-exhaustive list of NQTLs, including standards related to network composition, such as methods for determining reimbursement rates, standards for provider and facility admission to participate in a network, credentialing standards, and network adequacy procedures.
- Complete a comparative analysis to include: (1) a description of the NQTL; (2) the identification and definition of the factors 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; and (6) findings and conclusions.
- Under the NPRM, no new opt-outs would be permitted on or after June 27, 2023.

Additional guidance comes in three main documents:

- A [technical release](#) that sets out principles and seeks public comment to inform future guidance on the proposed requirements related to the impact of NQTLs on access and parity for mental health and substance use disorder benefits
- The [2023 MHPAEA Report to Congress](#), which describes recent enforcement efforts related to the NQTL comparative analyses required by CAA 2021.
- The [Fiscal Year 2022 MHPAEA Enforcement Fact Sheet](#), which gives a general overview of the tri-agencies’ mental health parity enforcement efforts and findings for the 2022 fiscal year.

The net impact of these proposed MHPAEA regulations on employers:

- Clarifies that lack of parity in mental health and substance use disorder access directly impacts plan sponsor MHPAEA compliance requirements
- Substantially increases and better defines employer compliance requirements
- Significantly restricts NQTL practices (e.g., utilization management, reimbursement) that may directly or indirectly impact access

Plan sponsors will be highly dependent on their TPAs to help them to meet these requirements. Compliance requirements may be even more challenging where different TPAs administer MH/SUD and M/S benefits and where MH/SUD access issues persist.

In support of discussions with MH/SUD TPAs, plan sponsors should consider using the following tools:

[Behavior Health Vendor Engagement Template](#), [Model Data Request Form](#)