



Mental Health Parity Workshop

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Today's Agenda

- Mental Health Parity and Addiction Equity Act (MHPAEA) Background
- CAA Amendments to MHPAEA
- DOL Enforcement Activity
- Mental Health Parity Coalition
- DOL Subregulatory Guidance and Report to Congress
- Audits: A Closer Look
- Plan Sponsor Considerations

Parity Background

- The Mental Health Parity Act of 1996 prohibited group health plans and issuers from imposing annual and lifetime limits on mental health and substance use benefits unless the same limit applied to two-thirds of medical and surgical benefits.
- The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) was a substantial expansion of the parity law.

MHPAEA Background

- The key provision is the requirement that financial requirements and treatment limits can only apply to mental health and substance use benefits if they apply to the predominant level of substantially all medical and surgical benefits.
- The statute did not include a parity requirement for “non-quantitative treatment limits” (NQTs), like pre-authorization, concurrent review, and network admission standards.
- MHPAEA enjoyed bi-partisan and widespread support from business, insurance, provider, and consumer groups.

Scope of MHPAEA

- ERISA is amended to apply MHPAEA to group health plans (insured and self-insured). *DOL remedies and private enforcement applies.*
- The PHSA is amended to apply to MHPAEA to insured group health plans and individual insurance plans. *But HHS only regulates to the extent that a state does not enforce the law.*
- The Code is amended to apply to group health plans and church plans. *Tax penalties apply for noncompliance.*
- Extended to CHIP and Medicaid managed care plans in 2009 and 2010 (final rulemaking in 2016).

Interim Final Rules

- Interim final rules (IFR) were issued by the agencies in February 2010, effective July 2010.
 - These rules were issued right before the Affordable Care Act (ACA) passed in March 2010 and the initial ACA rules went into effect in Sept. 2010. Obviously, a lot was going on for the agencies and the industry.
- The IFR established six benefit classifications: inpatient (in-network and out-of-network), outpatient (in-network and out-of-network); emergency services; and prescription drugs.

Interim Final Rules — the NQTL Requirement

- The MHPAEA regulation included for the first time an “NQTL requirement.”
 - The NQTL rule provides that non-quantitative treatment limits applied to mental health and substance use disorder benefits must be comparable to, and no more stringent than, the NQTL applied to medical and surgical benefits in the same classification.
 - This is what is called the “comparative analysis” in the Consolidated Appropriations Act, 2021.
- Examples of NQTLs from the regulation are fairly straightforward.
 - However, the examples in the regulation are not exhaustive and there is a “catch all” provision that sweeps in “any limitation on the scope or duration of a benefit.”

The Policy Behind the NQTL Requirement

- There is an important policy basis for NQTL rule.
 - For example, if a plan had *no* pre-authorization for medical and surgical outpatient services, but pre-authorized *all* mental health and substance use disorder benefits, then mental health and substance use disorder coverage would not be offered in parity to medical and surgical coverage.
 - Similarly, if the plan had penalties for failing to preauthorize mental health and substance use disorder benefits, but no penalties for failing to preauthorize medical and surgical benefits, then parity issues would be clear.

The Evolution of NQTLs

The NQTL requirements evolved in application over a 10-year period:

- In 2013, DOL issued a Part 7 Self-Compliance Tool that included a section on MHPAEA NQTL compliance.
- DOL issued the first MHPAEA-specific Self-Compliance Tool in 2018. The MHPAEA Self-Compliance Tool was the first guidance document that began to establish a specific step-by-step analysis for documenting NQTLs.
- The Self-Compliance Tool was further updated in 2020 adding more detail on certain NQTL documentation, such as how to conduct an NQTL analysis for provider reimbursement rates.
- The NQTL analysis documentation requirement has never been binding or a part of any formal guidance until being codified in the CAA. In fact, in the CAA MHPAEA FAQs Part 45, the Departments note that the MHPAEA Self-Compliance Tool “*recommends* that plans and issuers analyze NQTLs and document those analyses as a best practice.”

The CAA's New Requirements

- The CAA established a new requirement that DOL and HHS audit at least 20 group health plans and health insurance issuers for compliance with the NQTL requirements. *This requirement was effective 45 days after the CAA was enacted (February 2021).*
- The CAA adopted a new and very detailed 5 step approach to documentation of NQTL compliance. This was based on the DOL's Self-Compliance Tool.
- The CAA also establishes a new corrective action plan (CAP) process and requirement for remediation if NQTLs are not in parity.

DOL Enforcement Process – MHPAEA

- Departments issue a request for the NQTL analysis and provide a short timeline to respond (typically 10 days)
- Departments request
 - NQTL analysis for the top 4 NQTLs identified in the April 4, 2021 FAQ
 - A summary of compliance efforts with respect to additional NQTLs
 - Policies and procedures related to the NQTLs

DOL Enforcement Process – MHPAEA

- Departments issue an Insufficiency Letter with a series of additional follow-up questions and may request outcomes data (additional Insufficiency Letter may be issued)
- If the Departments issue findings of non-compliance, they will request a Corrective Action Plan
- If Corrective Action Plan is deemed insufficient, the Departments will issue final findings and require that a letter be sent to all participants outlining the MHPAEA compliance failure and the plan/issuer may be named in a report to Congress

Mental Health Parity Coalition

- Broad alliance of stakeholders on both the payor and issuer side that, through its membership, provides MH/SUD benefits to the vast majority of Americans covered by private health insurance
- Joint advocacy effort to educate the Tri-Agencies on the industry impact and challenges related to MHPAEA enforcement under the CAA
- Met with the Tri-Agencies in June 2022 to discuss concerns and challenges with the current enforcement process and to request additional guidance from the Tri-Agencies

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- Submitted a checklist to the Tri-Agencies of common questions asked by the Departments of Labor and Health and Human Services in response to plan's and issuer's submitted NQTL responses
- Suggest that the Tri-Agencies consider the checklist when updating the self-compliance tool and make a similar checklist available for plans and issuers to use on a voluntary basis

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- August 22, 2022 comment letter in response to the Proposed Collection for Notice of Medical Necessity Criteria Under the Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”)
 - Request for a recognition of the **actual burden** associated with the new CAA NQTL analysis and a rigorous economic analysis for the new requirements
 - Request for clarification from the Tri-Agencies **on expectations** related to parity compliance documentation and enforcement process for the NQTL comparative analysis

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- Currently drafting a set of safe harbors or “green lights” that plans and issuers can rely on to demonstrate compliance
 - Failure to meet the “green light” would not be automatically considered non-compliance