

MHPAEA Final Regulations Discussion

Mariah Becker

Director of Research & Education

NCCMP

mbecker@nccmp.org

Elena Lynett

SVP, National Health Compliance Leader

Segal

elynett@segalco.com

Background: MHPAEA 2013 Final Regulations

- MHPAEA requires parity between medical/surgical (med/surg) benefits and mental health (MH) and substance use disorder (SUD) benefits
- 2013 final regulations set out parity standards in the following areas:
 - Quantitative parity analysis (financial requirements & treatment limits)
 - Parity with respect to non-quantitative treatment limits (e.g., medical management)
 - Certain designs specifically prohibited (e.g., separate deductibles or out-of-pocket limits)
- No requirement to provide MH or SUD coverage (but IF covered, must cover in every classifications where med/surg services are provided)

2013 Regulations General Rule for Parity in NQTLs

GHPs (and health insurance issuers) prohibited from:

Imposing **a nonquantitative treatment limit** on mental health/substance use disorder benefits **unless** processes, strategies, evidentiary standards or other factors used to apply it to MH/SUD are **comparable and not more stringently applied** than standards used for med/surg

Compare within each classification.

Strengthening Parity Mental Health/Substance Use Disorder

- Enacted December 27, 2020 through CAA 2021
- Requires group health plans to perform and document comparative analyses of the design and application of nonquantitative treatment limitations (NQTLs)
- Plans were required to be prepared to make these comparative analyses available to the Departments of Labor and/or Health and Human Services upon request beginning 45 days after the date of enactment (February 10, 2021)

Proposed Mental Health Guidance Released

On July 25, 2023, the Departments issued a package of guidance:

- Proposed rules, later formally published in the FR on August 3
- Technical release seeking information and comments with respect to guidance for proposed data collection and evaluation requirements for nonquantitative treatment limitations related to network composition
- The 2023 MHPAEA Comparative Analysis Report to Congress
- Enforcement Fact Sheet regarding fiscal year 2022 enforcement results
- Press Release announcing guidance

Mental Health Parity proposed regulations

- The August 3, 2023, proposed rules revise the 2013 final rules as well as including new, additional requirements related to documented NQTL comparative analyses.
- The Departments received over 9,500 comments in response to the proposed regulations.

Final MHPAEA Regulations Released

- On September 9, 2024 the Departments publicly released final regulations; these were officially published in the Federal Register on September 23, 2024.
- The rules have staggering effective dates with some provisions becoming applicable for plan years on or after January 1, 2025 and others for plan years on or after January 1, 2026.

How the Final Rules Incorporated Key Proposed Requirements

- Application of predominant/substantially all testing to NQTLs
 - Not included in the final regulations. Alternatively the Departments reiterate the standard that factors and evidentiary standards must be comparable and not applied more stringently to MH/SUD as compared to Med/Surg, as written and in operation. The Departments incorporate a prohibition on any discriminatory factors or evidentiary standards. Exceptions related to clinical standards and fraud and abuse have been eliminated, leaving these to be addressed within the NQTL analysis.
- Outcomes data collection and review requirements
 - Included in the final regulations. Plans have a duty to identify and substantiate or remedy “material” differences. More guidance is anticipated regarding the outcomes data requirements. DeFacto noncompliance based on outcomes is not included in the final regulations.

How the Final Rules Incorporated Key Proposed Requirements

- Meaningful benefit requirement
 - Included in the final regulations. This includes the requirement to provide “core treatments” with respect to MH/SUD benefits in classifications where Med/Surg benefits are provided.
- Expanded list of NQTLs
 - The Departments declined to provide an exhaustive list.

How the Final Rules Incorporated Key Proposed Requirements

- Documented comparative analysis content, timing, findings of noncompliance
 - The Departments provide additional detail regarding the comparative analysis content. Plans may be asked to cease unsupported NQTLs in the context of findings of noncompliance. Strict timing expectations were retained.
- Named Fiduciary Certification
 - This has been revised to require prudent selection and monitoring of service providers involved in NQTL compliance.

Additional Key Elements of the Final Rules

- New Definitions have been added such as to help differentiate among factors, evidentiary standards, and strategies.
- For purposes of defining MH/SUD conditions the Departments define these according to the most current versions of the Diagnostic and Statistical Manual (currently the DSM-V) and The International Classification of Diseases (currently the ICD-10)

Additional Key Elements of the Final Rules

- Plans must have a list of the NQTLs applicable under the plan.
- The Departments reiterate in the final rules that the comparative analysis is an instrument of the plan.

Examples of Outcomes Data

- Under these final rules, relevant data for the majority of NQTLs could include, as appropriate, but are not limited to, the number and percentage of claims denials in a classification of benefits and any other data relevant to the NQTL required by State law or private accreditation standards.

Examples of Outcomes Data

- For NQTLs such as prior authorization, relevant data could include rates of approvals and denials of prior authorization requests, rates of denials of post-service claims, application of penalties for a failure to obtain prior authorization, and turnaround times for prior authorization requests. Such information could be provided for benefits subject to prior authorization in each benefit classification in which the NQTL is imposed on mental health and substance use disorder benefits and medical/surgical benefits.

Data Outcomes Examples

In-network and out-of-network utilization rates (including data related to provider claim submissions); network adequacy metrics (including time and distance data, and data on providers accepting new patients); and provider reimbursement rates (for comparable services and as benchmarked to a reference standard).

Data Outcomes Examples

- A plan or issuer could look at the turnaround time for applications to be approved for a provider to join the plan's or issuer's network and the approval and denial rates for applications submitted by mental health and substance use disorder providers as compared to medical/surgical providers.

Data Outcomes Examples

- Relevant data could include the percentage of participants and beneficiaries who can access, within a specified time and distance by county-type designation, one (or more) in-network providers who are available to accept new patients for mental health and substance use disorder and medical/surgical provider categories.

Data Outcomes Examples

- Relevant data for NQTLs related to network composition could also include median in-network reimbursement rates for services with the same CPT codes, as well as median in-network reimbursement rates for inpatient mental health and substance use disorder benefits and medical/ surgical benefits, as compared to Medicare rates; and median in-network reimbursement rates for outpatient mental health and substance use disorder.

Final Rule Suggest Steps Plans Might Take to Address Differences in Network Composition

- (1) Strengthening efforts to recruit and encourage a broad range of available mental health and substance use disorder providers and facilities to join the plan's network of providers, including taking actions to increase compensation or other inducements, streamline credentialing processes, or contact providers reimbursed for items and services provided on an out-of-network basis to offer participation in the network;
- (2) Expanding the availability of telehealth arrangements to mitigate any overall mental health and substance use disorder provider shortages in a geographic area;

Final Rule Suggest Steps Plans Might Take to Address Differences in Network Composition

- (3) Providing additional outreach and assistance to participants and beneficiaries enrolled in the plan to assist them in finding available in-network mental health and substance use disorder providers and facilities; and
- (4) Ensuring that provider directories are accurate and reliable

Content Requirements for NQTL Comparative Analyses Reports

Six Step Analysis for each NQTL:

A description of the NQTL

Identification and definition of the factors used to design or apply the NQTL

Description of how factors are used in the design and application of the NQTL

Demonstration of comparability and stringency as written

Demonstration of comparability and stringency in operation

Findings and conclusions

There are additional, extensively detailed requirements regarding the specifics for the contents required under each step

Requests and Findings of Noncompliance

10 business days to respond to an initial request

10 business days when an initial response is found insufficient and DOL or HHS requests supplemental information

7 days to notify participants and beneficiaries when a final determination of noncompliance is issued.

Significant enforcement is anticipated once rules are finalized.

Key Concerns Persist

- Continued subjectivity in the general standards as well as in the new “meaningful benefits” rule
- Reasonable timing to allow for implementation
- Network composition standards
- Data collection and evaluation standards
- Cost estimates
- Named fiduciary certification though revised may present challenges

Key Takeaways

Read the final regulations and watch for additional guidance

Contact vendors to ascertain their capabilities to support compliance efforts

Consider revising agreements, such as adding details to administrative service agreements related to expected obligations under MHPAEA

Share your concerns with the Federal Departments and/or the NCCMP

Resolve complaints. As always, plans should work diligently to investigate and resolve any parity compliance complaint to help avoid it advancing to a complaint to DOL or HHS

Questions??

