



Navigating Mental Health Parity Guidance

BLUE VALUE

NATIONAL LABOR OFFICE (NLO)



FOUNDED

1965 to demonstrate
BCBS commitment
to Labor

NLO

DC-Based; 6 FTEs

PLAN GOVERNANCE STRUCTURE

Voluntary Plan membership
(28 Plans & BCBSA)
35 board seats
3 working subcommittees

LABOR

- Taft-Hartley Funds (e.g. Single and Multi-Employer)
- Public Sector

MISSION

To position the Blues®
as Labor's healthcare
partner of choice

CHARGE

To represent the Blue
system with organized
labor for the ultimate
purpose of acquiring
and retaining contracts
for Blue Cross and Blue
Shield Plans

MHPAEA Background

- 2013 final provide requirements regarding parity in quantitative and nonquantitative treatment limitations.
- MHPAEA amended December 27, 2020 through the Strengthening Parity provisions of the Consolidated Appropriations Act of 2021.
- Proposed rules published on August 3, 2023.
- Proposed rules receive over 9,500 comments.
- Final regulations published September 23, 2024. Staggering applicability dates for plan years on or after January 1, 2025 and January 1, 2026.

Examples of NQTLs

- Medical management standards (such as prior authorization) limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative
- Formulary design for prescription drugs
- For plans with multiple network tiers (such as preferred providers and participating providers), network tier design
- Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols)
- Exclusions based on failure to complete a course of treatment
- Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan

Examples of NQTLs

- Network composition NQTLs include but are not limited to:
 - Standards for provider and facility admission to participate in a network or for continued network participation
 - Methods for determining reimbursement rates
 - Credentialing standards
 - Procedures for ensuring the network includes an adequate number of each category of provider and facility to provide covered services under the plan or coverage.

Key Provisions of Final Rule

- **New Meaningful Benefits Requirement**
- **Fiduciary Certification**
- **Documented Comparative Analysis**
 - 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.

Key Provisions of Final Rule

- **New Definitions** differentiate among factors, evidentiary standards, and strategies.
- MH/SUD conditions must be defined 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)**.
- **Data outcomes** collection and evaluation rules pending.

MHPAEA Litigation

- Litigation initiated January 17, 2025
- Filed by the ERISA Industry Committee
- Filed in the United States Court of Appeals for the DC Circuit
- Plaintiffs are the United States Department of Health and Human Services, The United States Department of Labor, and the Department of Treasury
- The Federal Departments have 60 days to file a response and could request an extension

MHPAEA Litigation

- Key Areas Challenged by the Litigation:
 - “Meaningful Benefits” rule
 - Meaningful Differences in Access
 - Fiduciary Certification
 - Comparative Analysis
 - 1/1/25 Applicability Date
- 2021 CAA Statutory Amendments and 2013 Final Regulations will continue to apply even if 2024 regulation is re-visited

NQTL Comparative Analysis

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

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 presents challenges

What's Ahead for MHPAEA?

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- Actions Congress may take as it relates to parity?
 - MHPAEA is a bipartisan issue.
 - Will there be lobbying for new provisions?
 - Budget?
- What to expect under new DOL political leadership?
 - What do we know about the nominee for the Assistant Secretary of EBSA?

What's Ahead for MHPAEA

- How will the Trump Administration respond to the ERIC lawsuit?
 - Response to the Complaint is due by March 18th.
 - How have similar situations played out in the past?
 - ERIC advocacy for a stay of the Final Rule.
- Continued advocacy related to MHPAEA and enforcement?
 - Coalition of employers, multi-employer health and welfare plans, health insurers, and their trade associations.
 - Continued efforts to educate DOL on challenges with MHPAEA NQTL requirements and enforcement.

Recent MHPAEA Reports

- 2024 MHPAEA Report to Congress.
 - Major Takeaway: No ERISA plans identified as noncompliant.
 - Includes examples of corrections to NQTLs, including a sample settlement agreement.
- Department of Labor Office of Inspector General MHPAEA Enforcement Report.



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Lisa provides MHPAEA advice on regulations, compliance, advocacy with federal agencies, and state and federal government enforcement.

Prior to joining Groom, Lisa worked at DOL and HHS on MHPAEA regulations and enforcement.

Lisa speaks regularly on MHPAEA.

Fun Fact: Lisa has a nursing background.