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New Mental Health Parity Rules Require Plans and Employer to Take Action

On September 9, 2024, the U.S. Departments of Health and Human Services, Labor, and the Treasury (collectively, the “Departments”) released new final rules implementing the Mental Health Parity and Addiction Equity Act (“MHPAEA”), as amended by the Consolidated Appropriations Act, 2021. These final rules clarify certain existing MHPAEA regulations, add new rules related to comparative analyses requirements, and eliminate non-Federal governmental plans’ ability to opt out of MHPAEA compliance.

Plans and plan fiduciaries should take particular note of the shortened timeframe to provide information and the fiduciary certification requirement. Plans must provide documents very quickly after request by the Departments or participants, which will be nearly impossible to do if not prepared. Failure to timely provide information can result in \$110 per day penalties per affected individual, possible general ERISA penalties, and civil litigation. Plan fiduciaries can be held personally liable for failing to prudently prepare each comparative analysis.

Our [prior publication](#) provides background and additional context regarding these final rules and the MHPAEA, including a review of the proposed rules.

Amendments to Existing Regulations

The new rules provide that a group health plan may not impose any financial requirement or non-quantitative treatment limitation (“NQTL”) that is applicable only with respect to mental health or substance use disorder (“MH/SUD”) benefits and not to any medical or surgical (“M/S”) benefits in the same classification. Additionally, a plan must define M/S and MH/SUD conditions, procedures, and disorders consistent with generally recognized independent standards of current medical practice. A plan’s definition of “mental health benefits” and “substance use disorder benefits” must include all conditions covered under the plan that fall into each category.

New Requirements

Comparative Analysis Requirements

The new rules codify the requirement that plans perform and document a comparative analysis of the design and application of each NQTL. The rules specify the content of the analysis. Additionally, a plan must prepare and make available to the Secretary, upon request, a written list of all NQTLs imposed under the plan.

For ERISA plans, the written list must be provided to the named fiduciaries of the plan who are required to include a **fiduciary certification** to certify a prudent process was undertaken in preparation of each comparative analysis.

Requirements to Provide Information and Notices

ERISA plans generally must furnish the comparative analysis to plan participants and beneficiaries upon request within 30 days, as required under ERISA.

Plans must submit a comparative analysis to the Departments within 10 business days of receipt of a request and furnish additional information requested within 10 business days after such a request for additional information.

If the Secretary makes an initial determination of noncompliance, the plan has 45 calendar days to specify the actions it will take to comply. If the plan fails to comply, the Secretary may make a final determination of noncompliance.

Upon notice of a final determination of noncompliance, a plan must notify all participants and beneficiaries enrolled in the plan or coverage, within seven business days, that the plan has been determined to not be in compliance with the requirements of MHPAEA.

Meaningful Benefits

If a plan provides any benefits for a mental health condition or substance use disorder in any classification of benefits, it must provide meaningful benefits for that mental health condition or substance use disorder in every classification in which M/S benefits are provided. Meaningful benefits require coverage of a core treatment for that condition or disorder in each classification. A core treatment for a condition or disorder is a standard treatment or course of treatment, therapy, service, or intervention indicated by generally recognized independent standards of current medical practice.

Requirements for Non-quantitative Treatment Limitations ("NQTLs")

A plan may not impose an NQTL on MH/SUD benefits unless: (1) the NQTL is no more restrictive as applied to MH/SUD benefits than to M/S benefits; (2) the plan satisfies NQTL design and application requirements; and (3) the plan collects and evaluates relevant data on access to MH/SUD benefits relative to access to M/S benefits and takes reasonable action necessary to address any material differences in access revealed by the relevant data.

No More Restrictive Requirement

Consistent with the fundamental purpose of MHPAEA, a plan 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.

Design and Application Requirement

A plan must examine the processes, strategies, evidentiary standards, and other factors used in designing and applying an NQTL to MH/SUD benefits to ensure they are applied no more stringently than those designed and applied to M/S benefits in the same classification.

A plan may not rely upon discriminatory factors and evidentiary standards to design an NQTL to be imposed on MH/SUD benefits unless the plan takes steps to correct, cure, or supplement the information, evidence, sources, and standards to address the bias or lack of objectivity.

Relevant Data Evaluation Requirement for Accessing Benefits

A plan must collect and evaluate relevant outcomes data and take reasonable action to address material differences in access between MH/SUD benefits and M/S benefits as necessary to ensure

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compliance, in operation, with MHPAEA. The Departments intend to issue future guidance with the type, form, and manner of collection and evaluation for the data required and a list of examples of data that are relevant across the majority of NQTLs as well as additional relevant data for NQTLs related to network composition. The Departments intend to update the MHPAEA Self-Compliance Tool to assist plans with these requirements.

Material Difference in Access

To the extent the relevant data evaluated show material differences in access to MH/SUD benefits as compared to M/S benefits, plans must take reasonable actions to address the material differences in access and document the action that has been or is being taken by the plan.

Reasonable action would be determined based on the relevant facts and circumstances, including the NQTL itself, the relevant data, the extent of the material differences, and the impact of the material differences in access on participants and beneficiaries.

Applicability

The final rules apply on the first day of the first plan year beginning on or after January 1, 2025, except for the meaningful benefits standard, the prohibition on discriminatory factors and evidentiary standards, the relevant data evaluation requirements, and the related requirements in the provisions for comparative analyses, which apply on the first day of the first plan year beginning on or after January 1, 2026.

What Should Employers Do Now?

Employers should take necessary measures to comply with new MHPAEA rules by the applicable effective dates. Plans must continue to prepare comparative analyses, update them to satisfy these new requirements, and be ready to provide them to regulators or participants quickly upon request.

Employers should also ensure they have processes in place to review the written list of all NQTLs imposed under the plan and certify that a prudent process was undertaken in preparation of each comparative analysis.

If a comparative analysis raises concerns over MHPAEA compliance, particularly revealing any material differences in access to MH/SUD benefits as compared to M/S benefits, employers should take reasonable steps to address those issues. For example, if the comparative analyses show problems with access or network composition, plans should take steps to ensure a broad range of mental health and substance use disorder providers are available and assist participants in connecting with providers.

Plans should be prepared to document the actions they have taken and demonstrate why any material differences between MH/SUD and M/S benefits are attributable to generally excusable factors rather than their NQTLs.

If you have questions or need assistance with MHPAEA compliance, please contact a member of Kutak Rock's [Employee Benefits and Executive Compensation practice group](#).

