



## New Mental Health Parity Guidance for Plan Sponsors

Regulators have recently released a significant amount of information related to group health plan compliance with the Mental Health Parity and Equity Addiction Act of 2008, as amended (MHPAEA). The new guidance includes proposed regulations regarding the non-quantitative treatment limitation (NQTL) comparative analysis requirement added by the Consolidated Appropriations Act, 2021, as well as updates on recent enforcement efforts.

The following is a brief overview and key takeaways that employers and plan sponsors should understand in their continued MHPAEA compliance efforts.

On July 25, the Department of Labor (DOL) released the following:

**Proposed Regulations.**<sup>1</sup> The proposed regulations are complex and would impose significant additional requirements on plans to collect and evaluate certain plan-specific data to determine NQTL compliance (in a similar manner to the way plans evaluate quantitative treatment limitation, or QTL compliance). Plans would be required to address any potential violations identified in the evaluation and would be required to include certain related information in the comparative analysis. Compliance with the rules as proposed would involve a major undertaking and would require close cooperation between plans and their third-party administrators and other plan professionals.

- **Key Takeaway:** Employers and plan sponsors should closely monitor developments related to the proposed rules and should consider whether to comment on the proposals.

**Technical Release 2023-01P.**<sup>2</sup> The Technical Release outlines the types of data the Departments of Labor, Health and Human Services, and Treasury (the Departments) may require plans to collect and evaluate as part of the NQTL comparative analysis.

This includes data related to network composition as well as data used to demonstrate compliance with a potential network composition enforcement safe harbor. The Departments request comments in response to detailed questions intended to assist in the implementation of a data driven approach with respect to network composition.

- **Key Takeaways:** Employers and plan sponsors should closely monitor the developments related to the potential network composition rules and should consider whether to comment on the issues raised in the Technical Release.

**Fact Sheet FY 2022 MHPAEA Enforcement.**<sup>3</sup> This report highlights DOL and CMS enforcement efforts and investigations of MHPAEA compliance (other than NQTL comparative analysis compliance), including some non-MHPAEA investigations that ultimately impacted mental health and substance use disorder benefits. In conjunction with the Fact Sheet, the Departments also issued a MHPAEA Guidance Compendium which includes links to guidance applicable to the categories of violations discussed in the Fact Sheet.

- **Key Takeaway:** This is a good reminder that plans should not limit their compliance efforts to the NQTL comparative analysis and need to comply with all MHPAEA rules. For example, plan sponsors should continue to periodically review their plans to ensure they are covering benefits in all classifications and to ensure that any financial or treatment limitations satisfy the QTL rules.

**MHPAEA Comparative Analysis Report to Congress, July 2023.**<sup>5</sup> The Departments are still finding the NQTL comparative analyses that they have reviewed during the course of plan audits to be insufficient and continue to focus enforcement efforts on plan service providers to reach as many plans and participants as possible. The Departments have also expanded their NQTL enforcement priorities from four areas to six.<sup>6</sup>

- **Key Takeaway:** Employers and plan sponsors should continue to work with legal counsel and plan providers to review their plans for potential NQTL violations, guided by insights included in the Report. (It is particularly helpful to review the specific examples of impermissible exclusions and other violations set forth in the Report.) Plan sponsors also should update their NQTL comparative analyses (to

the best of their ability based on current guidance) to address any potential deficiencies identified in the Report.

*This blog was drafted by Natalie Miller, an attorney in the Spencer Fane Overland Park, Kansas office. For more information, visit [www.spencerfane.com](http://www.spencerfane.com).*

---

1  
The proposed regulations (issued jointly with the Departments of Health and Human Services and the Treasury) were announced on July 25, 2023 and published in the federal register on August 3, 2023, and are available online [here](#). The comment period is open until October 2, 2023, and if finalized, the regulations would be effective for the first plan year beginning on or after January 1, 2025.

2  
The Technical Release (developed in collaboration with the Departments of Health and Human Services and Treasury) is available online [here](#).

3  
The Fact Sheet (issued jointly with Health and Human Services' Centers for Medicare and Medicaid Services) is available online [here](#).

4  
The Guidance Compendium is available online [here](#).

5  
The Report (issued jointly with the Departments of Health and Human Services and the Treasury) is the second report to Congress the Departments have published since enactment of the NQTL comparative analysis requirement and is available online [here](#).

6  
Priorities include: (1) prior authorization requirements for in-network and out-of-network inpatient and outpatient services; (2) concurrent care review for in-network and out-of-network and inpatient and outpatient services; (3) standards for provider admission to participate in a network, including reimbursement rates; (4) out-of-network reimbursement rates; (5) impermissible exclusions of key treatments for mental health conditions and substance use disorders (new); and (6) adequacy standards for mental health and substance use disorder provider networks (new).