

SHOW YOUR WORK: FAQs ON NON-QUANTITATIVE TREATMENT LIMITATION COMPARATIVE ANALYSES

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Among the requirements under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (the “MHPAEA”) group health plans and health insurance issuers must apply any processes, strategies, evidentiary standards or other factors underlying non-quantitative treatment limitations (“NQTLs”) to mental health or substance use disorder (“MH/SUD”) benefits comparably and no more stringently than to medical/surgical benefits.

The Consolidated Appropriations Act, 2021 (“CAA”) included provisions designed to enhance transparency with respect to compliance with the MHPAEA, including a requirement that group health plans and health insurance issuers perform and document comprehensive NQTL comparability analyses. We previously summarized the CAA’s requirements in our Q1 2021 Newsletter, available by [clicking here](#).

On April 2, 2021, the Department of Labor (“DOL”) issued [answers to frequently asked questions \(“FAQs”\)](#) prepared jointly with Treasury and the Department of Health and Human Services (collectively, the “Departments”) concerning the CAA’s requirements. The key takeaways from the FAQs include:

- No Delay in Compliance. The Departments are not providing a delay in the compliance requirements under the CAA and stated that group health plans and health insurance issuers should now be prepared to make their NQTL comparative analyses available upon request by the Departments or a state authority.
- Comparative Analyses Must Include Detailed Supporting Evidence and Discussion. The Departments will not consider a NQTL comparative analysis which includes only general, conclusory statements regarding compliance to meet the requirements of the MHPAEA and CAA. Instead, detailed written explanations of specific plan terms and practices at issue and the basis for the conclusion that the plan or issuer’s NQTLs comply with MHPAEA must be provided. In an effort to support compliance, the FAQs set forth specific, minimum information that the Departments will look for in a comparability analysis, and direct group health plans and health insurance issuers to refer to its [MHPAEA Self-Compliance Tool](#), which outlines a

process for conducting comparative analyses of NQTLs and provides guidance on documents to support the analysis and conclusions.

- Practices and Procedures to Avoid. The Departments provided a list of practices and procedures which should be avoided in responding to requests from the Departments and state authorities. Generally, these include providing large volumes of documents without a clear explanation of their relevance or identifying or referencing processes, strategies, evidentiary standards and factors without clear and detailed analysis and discussions of how they were defined or applied. Of particular note, the Departments included in this list the failure to update an analysis that has become stale due to the passage of time, a change in plan structure, or for other reasons, which highlights the need for plans and issuers to actively monitor MHPAEA compliance and update their comparative analyses as circumstances and plan terms change.
- Other Required Disclosures. Consistent with previous MHPAEA guidance, the Departments confirmed that plans subject to ERISA must make its NQTL comparative analyses and other relevant information available plan participants, beneficiaries and enrollees upon request. Further, NQTL analyses fall within the scope of a claimant's right to reasonable access to documents and information relevant to a claim for benefits under ERISA.
- Near Term Enforcement Priorities. The DOL's near term enforcement focus for NQTLs includes:
 - Prior authorization requirements for in-network and out-of-network inpatient services;
 - Concurrent review for in-network and out-of-network inpatient and outpatient services;
 - Standards for provider admission to participate in a network, including reimbursement rates; and
 - Out-of-network reimbursement rates (i.e., a plan or issuer's methods for determining the usual, customary, and reasonable charge).

RELATED PRACTICE AREAS

- Employee Benefits & Executive Compensation

MEET THE TEAM



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