

FINAL 2020 MHPAEA SELF-COMPLIANCE TOOL:

Furthering Mental Health and Substance Use Disorder Parity

Compliance Assistance Webcast



U.S. Department of Labor
Employee Benefits Security
Administration

MHPAEA Overview

- Mental Health Parity and Addiction Equity Act of 2008 enacted October 3, 2008
- Requires that *financial requirements* and *treatment limitations* on mental health or substance use disorder benefits are no more restrictive than those on medical or surgical benefits.
- Facilitates access to mental health and addiction treatment by eliminating *discriminatory restrictions* on mental health or substance use disorder coverage and other barriers placed on treatment.
- Applies to benefits to treat *opioid use disorder* and helps to protect access to treatment during the opioid crisis.

Financial Requirements (FR) and Quantitative Treatment Limitations (QTLs)

- Financial requirements (*such as copays, deductibles, and out-of-pocket maximums*) or quantitative treatment limitations (*such as day or visit limits*) applicable to mental health or substance use disorder (MH/SUD) benefits can be no more restrictive than the **predominant** financial requirements or quantitative treatment limitations applied to **substantially all** medical/surgical (med/surg) benefits covered by the plan.
- General rule is applied within each of **six classifications** of benefits:
 - Inpatient, in-network
 - Inpatient, out-of-network
 - Outpatient, in-network
 - Outpatient, out-of-network
 - Emergency care
 - Prescription drugs

Nonquantitative Treatment Limitations (NQTLs)

- In general: NQTLs are limitations on the **scope or duration** of benefits for treatment (*such as medical necessity determinations or preauthorization requirements, fail-first policies*).
- General rule: Processes, strategies, evidentiary standards, or other factors used in applying a NQTL to MH/SUD benefits must be **comparable to, and applied no more stringently than**, those used with respect to med/surg benefits in the same classification.
- Note: MHPAEA requires compliance as written and in operation.

Additional MHPAEA Requirements

- If MH/SUD benefits are provided in any classification, MH/SUD benefits must be provided in every classification in which med/surg benefits are provided.
- Prohibit lifetime and annual dollar limits on MH/SUD benefits that are lower than those limits imposed on med/surg benefits.
- Prohibit cumulative financial requirements or cumulative QTLs for MH/SUD benefits that accumulates separately from any cumulative financial requirement or QTL established for med/surg benefits in the same classification.
- Disclosure requirements regarding criteria for medical necessity criteria and reasons for denial.

MHPAEA Self-Compliance Tool - Background

- Designed to help evaluate a group health plan or health insurance issuer's compliance with MHPAEA
- Updated biennially to provide additional guidance to improve MHPAEA compliance
- Fulfills requirement to issue a publicly available compliance program guidance document as directed by the 21st Century Cures Act

2020 MHPAEA Self-Compliance Tool

- Proposed on June 19, 2020, with a request for comments
- Updates generally fall into four categories:
 - 1) Integration of recent MHPAEA guidance;
 - 2) Revised examples to illustrate compliance;
 - 3) Inclusion of provisions or plan practices that serve as “warning signs” that may indicate a potential violation;
 - 4) Best practices for establishing an internal compliance plan.
- Final 2020 MHPAEA Self-Compliance Tool published on October 23, 2020

Integration of Recent Guidance

➤ FAQs About Mental Health And Substance Use Disorder Parity Implementation And The 21st Century Cures Act Part 39 (Issued September 2019)

➤ Examples

➤ *“A limitation providing that coverage of medication for the treatment of opioid use disorder is contingent upon the availability of behavioral or psychosocial therapies or services or upon the patient’s acceptance of such services would generally not be permissible unless a comparable process was used to determine limitations for the coverage of medications for the treatment of medical/surgical conditions.” (See FAQs Part 39, Question 6)*

Integration of Recent Guidance

- **“ILLUSTRATION:** *A plan uses nationally recognized clinical standards to determine coverage for prescription drugs to treat medical/surgical benefits based on the recommendations of a Pharmacy and Therapeutics (P&T) committee. However, the plan deviates from such standards for buprenorphine/naloxone to treat opioid use disorder based on the P&T committee’s recommendations.”*

(See FAQs Part 39, Question 3)

- Whether this deviation complies with the NQTL standard in practice, includes determination of:
 - (1) whether the committee has comparable expertise in MH/SUD conditions as it has in medical/surgical conditions, and
 - (2) whether the committee’s evaluation of the nationally-recognized clinical standards and decision processes to deviate from those standards for MH/SUD conditions is comparable to and no more stringent than the processes it follows for medical/surgical conditions.

Integration of Recent Guidance

- *“To comply with MHPAEA, a plan or issuer must be able to demonstrate that it follows a comparable process in determining reimbursement rates for in-network and out-of-network providers for both medical/surgical and MH/SUD benefits.”*
 - For example, if reimbursement rates for medical/surgical benefits are determined by reference to the Medicare Physician Fee Schedule, reimbursement rates for MH/SUD benefits must also be determined comparably by reference to such Fee Schedule and applied no more stringently in practice.
 - Any variance in rates to account for factors such as the nature of the service, provider type, or market dynamics must be comparable and applied no more stringently to MH/SUD benefits than medical/surgical benefits.” (See FAQs Part 39, Question 6)

Revised Compliance Examples

- The 21st Century Cures Act emphasizes the need for examples of compliance with the law.
- Final 2020 MHPAEA Self-Compliance Tool contains:
 - Updated examples that demonstrate how plans and issuers can correct certain parity violations
 - A new Appendix I with additional examples and illustrations of compliance

Revised Compliance Examples

- Plan covers intermediate levels of care, such as skilled nursing care and residential treatment, as inpatient benefits, and covers room and board for all inpatient medical/surgical care, but imposes a restriction on room and board for MH/SUD residential care.
- The plan imposes an impermissible restriction only on MH/SUD benefits.
- The plan could come into compliance by covering room and board for intermediate levels of care for MH/SUD benefits comparably with medical/surgical inpatient treatment.

Additional Warning Signs

- EBSA's original MHPAEA Warning Signs publication regarding NQTL compliance was issued in May of 2016.
- The 2020 update to the MHPAEA Self-Compliance Tool incorporates further examples of plan provisions and practices that may be warning signs of potential parity violations.
- Not determinative of a MHPAEA violation but can often serve as red flags to potential impermissible treatment limitations, warranting further review.

Additional Warning Signs

➤ Examples

- *Prior authorization for medication for opioid use disorder:* A plan or issuer imposes prior authorization for medications for opioid use disorder but does not require prior authorization for comparable medications for medical/surgical conditions.
- *Different medical necessity review requirements:* A plan or issuer imposes medical necessity review requirements on outpatient MH/SUD benefits after a certain number of visits, despite permitting a greater number of visits before requiring any such review for outpatient medical/surgical benefits.

Additional Warning Signs

- **Examples – Plan provisions related to provider reimbursement rates**
- *Inequitable reimbursement rates established via a comparison to Medicare:* A plan or issuer generally pays at or near Medicare reimbursement rates for MH/SUD benefits, while paying much more than Medicare reimbursement rates for medical/surgical benefits.
- *Lesser reimbursement for MH/SUD physicians for the same evaluation and management (E&M) codes:* A plan or issuer reimburses psychiatrists, on average, less than medical/surgical physicians for the same E&M codes.
- *Consideration of different sets of factors to establish reimbursement rates:* A plan or issuer generally considers market dynamics, supply and demand, and geographic location to set reimbursement rates for medical/surgical benefits, but considers only quality measures and treatment outcomes in setting reimbursement rates for MH/SUD benefits.

Appendix II: Provider Reimbursement Rate Warning Signs

- Provides a chart that may serve as a framework for comparing reimbursement rates for certain MH/SUD and medical/surgical services based on Current Procedural Terminology (CPT) codes
- Not the only framework for analyzing provider reimbursement rates
- Not determinative of compliance

Best Practices for Establishing an Internal Compliance Plan

➤ 21st Century Cures Act

- Directs the Departments to include recommendations to advance compliance with MHPAEA, and encourage the development of internal controls

➤ New Section H

- Addresses best practices for establishing an internal MHPAEA compliance plan to promote the prevention, detection, and resolution of potential MHPAEA violations
- Provides examples of the types of records that a plan or issuer should be prepared to provide in the event of a DOL investigation

Best Practices for Establishing an Internal Compliance Plan

- *Conducting Effective Training and Education*
 - Includes individuals making decisions on behalf of the plan or issuer
- *Ensuring retention of records and information*
 - Requirements under ERISA section 107
- *Conducting internal monitoring and regular compliance reviews*
 - Auditing samples of adverse benefit determinations
 - Clear protocols in delegating management of benefits to another entity
- *Responding promptly to detected offenses and developing corrective action plans*
 - Includes retroactive relief and notice to potentially affected participants

Best Practices for Establishing an Internal Compliance Plan

➤ DOL investigations for MHPAEA compliance

- Records documenting NQTL processes and application for both MH/SUD and med/surg benefits
 - Include materials that may have been prepared to show compliance with applicable reporting requirements under state law
- Documentation including any guidelines, claims processing policies and procedures or other standards the plan or issuer has relied upon
- Samples of covered and denied claims
- Any applicable MHPAEA testing the plan or issuer completed

Other DOL Publications and Resources

- Frequently Asked Questions Mental Health Parity Implementation
- Biennial DOL Reports to Congress on MHPAEA Implementation and Enforcement
- MHPAEA Enforcement Fact Sheets (Fiscal Years 2015-2019)
- Warning Signs - Plan or Policy Non-Quantitative Treatment Limitations (NQTLs) that Require Additional Analysis to Determine Mental Health Parity Compliance
- Know Your Rights: Parity for Mental Health and Substance Use Disorder Benefits

Where to Find Information and Assistance

- U.S. Department of Labor Employee Benefits Security Administration (EBSA) website <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-and-substance-use-disorder-parity>
- U.S. Department of Health and Human Services website <https://www.hhs.gov/programs/topic-sites/mental-health-parity/index.html>
- Your state's department of insurance website and contact information, which can be found on the National Association of Insurance Commissioners website: https://content.naic.org/cmte_b_mhpaea_wg.htm
- The Substance Abuse and Mental Health Services Administration (SAMHSA) Implementation of the Mental Health Parity and Addiction Equity Act (MHPAEA) page www.samhsa.gov

Questions?

