Client Alert

Applies To: Self-Funded, Fully-Funded, Large Group, and Small Group

MORETON & COMPANY

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Final Mental Health Parity Rules Released: NQTL Comparative Analysis Required

The Department of Labor (DOL), Department of Health and Human Services (HHS), and Treasury have released final rules under the Mental Health Parity and Addiction Equity Act (MHPAEA), focusing on nonquantitative treatment limitations (NQTLs) and the comparative analysis requirement imposed via the CAA 2021. The final rules reflect some changes in response to 10,000 public comments following the release of last year's proposed rules. The final rules amend existing MHPAEA regulations to incorporate new and revised definitions of key terms and to specify the steps that employer plans (or insurers) must take to comply with MHPAEA. They also include provisions codifying minimum standards for NQTL comparative analyses, applying MHPAEA requirements to individual health insurance arrangements, and reflecting the sunset of the non-federal governmental plan opt-out election. Here are highlights for employer-sponsored plans:

Meaningful Benefit Requirement

Plans that provide any benefits for a mental health (MH) condition or substance use disorder (SUD) must provide "meaningful benefits" for that condition or disorder in every benefit classification in which meaningful medical/surgical benefits are provided. Meaningful benefits require coverage of a core treatment for the condition or disorder in each classification in which the plan covers a core treatment for one or more medical conditions or surgical procedures.

Definition

The definitions of the terms "medical/surgical benefits," "mental health benefits," and "substance use disorder benefits" are amended by removing references to state guidelines. When defining whether conditions or disorders are MH conditions or SUDs, plans must follow the most current version of the International Classification of Diseases (ICD) or the Diagnostic and Statistical Manual of Mental Disorders (DSM).

There are new definitions and examples for the following terms used in evaluating the design and application of NQTLs:

- Evidentiary Standards:
  Any evidence, sources or standards used in designing or applying a factor with respect to an NQTL.
- Processes:
  Actions, steps, or procedures used to apply an NQTL
- Strategies:
  Practices, methods, or internal metrics used to design an NQTL.
- Factors:
  All information, including processes and strategies (but not evidentiary standards), used to design an NQTL or determine whether or how it applies to plan benefits.

Requirements for NQTLs

Plans may not impose NQTLs with respect to MH/SUD benefits in any classification that are more restrictive, as written or in operation, than the predominant NQTL that applies to substantially all medical/surgical benefits in the same classification. Acknowledging commenters' concerns that NQTLs are inherently nonquantifiable, the agencies declined to finalize a proposed mathematical test for defining "substantially all" and "predominant."

Rather, plans must satisfy two sets of requirements for NQTLs:

- Design and Application:
  The plan must examine the processes, strategies, evidentiary standards, and other factors used in designing and applying an NQTL to MH/SUD benefits in the classification to ensure they are comparable to, and applied no more stringently than, those used with respect to medical/surgical benefits in the same classification. In addition, plans may not use discriminatory factors and evidentiary standards in designing an NQTL to be imposed on MH/SUD benefits. Generally recognized independent professional medical or clinical standards are considered nonbiased and objective, as are "carefully circumscribed measures" reasonably designed to detect or prevent and prove fraud and abuse and minimize the negative impact on access to appropriate MH/SUD benefits.

- Relevant Data Evaluation:
  Plans must collect and evaluate relevant data in a manner reasonably designed to assess and consider the impact of the NQTL on relevant outcomes related to access to MH/SUD benefits and medical/surgical benefits. "Relevant data" may vary based on the facts and circumstances; examples are provided of relevant data for all NQTLs, including specific examples related to network composition standards.

Fiduciary Certification

For plans subject to ERISA, one or more named fiduciaries must review and understand any NQTL comparative analysis prepared by or on behalf of the plan and must certify that the fiduciary prudently selected qualified service providers to perform and document the analysis and that the fiduciaries have satisfied their duty to monitor those service providers.

Applicability Date

The final rules generally apply to group health plans for plan years beginning on or after January 1, 2025. However, several provisions— including those implementing the meaningful benefits standard, the prohibition on discriminatory factors and evidentiary standards, required use of outcomes data, and others— will not apply until plan years beginning on or after January 1, 2026.

Comparative Analysis Requirement

Plans must maintain NQTL comparative analyses and submit them to a requesting agency within ten business days of request. The analysis must:

1. Describe the NQTL;
2. Identify and define the factors and evidentiary standards used to design or apply the NQTL;
3. Describe how factors are used in the design or application of the NQTL;
4. Evaluate whether processes, strategies, evidentiary standards, or other factors are comparable to, and applied no more stringently than, those with respect to medical/surgical benefits, as written and as applied; and
5. Address findings and conclusions regarding comparability and relative stringency.

Plans must also make available to the agencies, upon request, a written list of all NQTLs imposed under the plan. The agencies intend to provide additional examples in a future update to the MHPAEA Self-Compliance Tool.

The agencies anticipate that the final rules will result in changes in network composition and medical management techniques related to MH/SUD care, more robust MH/SUD provider networks, and fewer and less restrictive prior authorization requirements for MH/SUD care. But opposition has already been registered by a Congressional committee, and legal challenges seem likely.

This obligation applies to all plans that offer any MH or SUD benefits. If you sponsor a fully-insured plan, your insurance carrier is also subject to the NQTL requirements. You should confirm in writing that the insurer carrier is meeting its responsibilities under the MHPAEA, including preparation of the comparative analysis.

If your plan is self-funded, you should discuss this issue with your third-party administrator (TPA) and other applicable vendors. You may be able to contract with the TPA for this service, but some TPAs, particularly where the plan has carved out pharmacy or other services, may decline full responsibility for the comparative analysis. However, you should be able to require the TPA to provide the data necessary to complete a comparative analysis. After speaking with the TPA, you can then determine if you need to engage a consultant to assist with a comparative analysis. Moreton & Company can assist with referrals to vendors providing this service.

Please visit www.moreton.com/news-events/ for more information and to view other client alerts. This Client Alert was written by Carolyn Cox, who provides our clients with compliance services. For additional questions, please contact Carolyn at 801-715-7110 or ccox@moreton.com.