

Benefits BULLETIN



Mental Health Parity: NQTL Comparative Analysis Requirements

• Updated May 2025 •

Important Update: On May 15, 2025, the Agencies released a [formal nonenforcement position](#) with respect to the 2024 MHPAEA final rules and encourages states to adopt a similar approach. The Agencies will undertake a reconsideration of the 2024 final rules and a reexamination of their broader MHPAEA enforcement approach. During this time, the Agencies nevertheless remain committed to effectuating the participant protections of the MHPAEA. As such, plan sponsors should continue to adhere to the 2013 MHPAEA guidance (and the 2021 amendment), which includes the requirement to prepare a written NQTL analysis but excludes the more burdensome components added by the 2024 rules.

The Consolidated Appropriations Act, 2021 (CAA), amended the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) to require group health plans that cover mental health or substance use disorder benefits to perform a “comparative analysis” of any non-quantitative treatment limitations (NQTLs) **effective February 10, 2021**. Though the MHPAEA already required group health plans and insurers to perform an analysis of NQTLs, the CAA’s **requirement to produce written documentation of the comparative analysis is new** and bolsters the DOL’s, IRS’s and HHS’s (collectively, the Agencies’) increasing focus on MHPAEA enforcement.

In September 2024, the Agencies released final rules implementing the comparative analysis requirement. These final rules provide detailed guidance regarding administration of NQTLs and the specific contents that must be included in a written comparative analysis.

MHPAEA Overview

The MHPAEA requires covered group health plans and insurers that offer mental health or substance use disorder benefits (MH/SUD) to provide parity between those benefits and medical/surgical (M/S) benefits with regards to: **(1) annual and lifetime limits; (2) financial requirements** and **quantitative treatment limitations** (QTLs); and **(3) nonquantitative treatment limitations** (NQTLs). In other words, plans that provide MH/SUD

benefits cannot impose less favorable benefit limitations on those benefits than on M/S benefits.

Parity is evaluated using **six main classifications of benefits**, including: **(i)** inpatient, in-network; **(ii)** inpatient, out-of-network; **(iii)** outpatient, in-network; **(iv)** outpatient, out-of-network; **(v)** emergency care; and **(vi)** prescription drugs. This means that if a plan provides MH/SUD benefits in any of the six listed classifications, these benefits must also be provided and compared to the M/S benefits in the same classification.

Parity Requirements

When analyzing the plan, the requirements for determining parity are different for financial and quantitative treatment limits versus non-quantitative treatment limits.

REQUIREMENTS	
Financial and Quantitative Treatment Limits	<p>In general, a plan cannot apply a financial requirement or QTL on MH/SUD benefits that is <i>more restrictive</i> than the <i>predominant level</i> of the financial requirement or quantitative treatment limitation that applies to <i>substantially all</i> of the M/S benefits in the <i>same classification</i>.</p> <p>Examples of financial requirements under a plan include deductibles, copayments, coinsurance and out-of-pocket expenses. Quantitative treatment limitations are limits that can be expressed numerically, such as the number of visits that can be covered under the plan.</p> <p>Although a thorough analysis of this parity requirement is outside the scope of this Brief, the parity of financial requirements and QTLs is generally easier for employers to determine due to the numerical component of the determination.</p>
Non-Quantitative Treatment Limits	<p>An NQTL, is any treatment limitation under the plan that cannot be expressed in a quantitative measure. Federal MHPAEA regulations contain a non-exhaustive list of NQTLs, including examples such as application of medical management techniques or formulary design for prescription drugs.</p> <p>The MHPAEA provides that a plan or issuer may not impose an NQTL on a MH/SUD benefit unless, <i>under the terms of the plan or coverage (as written and in operation)</i>, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefits are comparable to and are applied no more stringently than those used in applying the limitation with respect to M/S benefits in the <i>same classification</i>.</p>

When determining whether the plan is in parity, the DOL has provided a [useful list](#) of plan provisions that would serve as a “warning signal” to plans that their plan may be imposing an impermissible NQTL.

CAA’s Comparative Analysis Documentation Requirement

Beginning February 10, 2021, the insurer or plan must provide the Agencies with a comparative analysis within ten days of a request. The CAA requires the Agencies to collect a minimum of twenty analyses per year.

With respect to each NQTL imposed under the plan, the final rules require a written comparative analysis to include the following six items: **(1)** A description of the NQTL and the benefits subject to it; **(2)** Identification of the factors and standards used in designing or applying the NQTL; **(3)** An explanation of how factors are used in the design or application of the NQTL; **(4)** A demonstration of comparability in the plan’s written terms; **(5)** A demonstration of comparability in the plan’s operation; and **(6)** Findings and conclusions, which includes certification by a plan fiduciary.

Penalties

If an Agency determines a violation of the parity requirements, the plan will have 45 days to correct the violation, either by providing additional analysis or specifying actions it will take for corrections. If the Agency still makes a determination of non-compliance, the plan will be required to notify all participants that they failed to comply with MHPAEA and the Agency will notify state officials regarding the findings of the plan’s noncompliance.

Furthermore, the Agencies must file an annual report to Congress which will be made **publicly available** that includes the **specific identity of insurers or plans determined not to be in compliance** and whether the insurer or plan submitted sufficient information to review the comparative analysis.

COMPLIANCE ASSISTANCE

The DOL has also released its most recent MHPAEA Self-Compliance Tool to assist plans evaluate compliance with the MHPAEA. **The Self-Compliance Tool** includes a section on NQTLs that outlines a process for conducting the comparative analysis. According to the DOL, plans that have carefully applied the guidance in this tool should be in a strong position to submit comparative analysis upon request.

Employer Next Steps

Employers should assess their next steps in order to comply with MHPAEA's written comparative analysis requirement. The final rules generally apply as of the first day of the plan year beginning on or after January 1, 2025, but the provisions specific to the required contents of the comparative analysis apply as of the first day of the plan year beginning on or after January 1, 2026.

If the employer sponsors a fully insured plan, the comparative analysis requirements fall on the insurance carrier. Nevertheless, employer-sponsors of fully insured plans should contact their insurance carrier to confirm the carrier has completed the analysis and is able to provide the analysis to the Agencies upon request.

For self-insured health plans, the comparative analysis requirement falls upon the employer-sponsor. In general, these employer-sponsors most likely do not have access to the scope of information necessary to complete the comparative analysis. Therefore, it is essential for these employers to first **contact the plan's TPA to determine if they can assist with the comparative analysis.** If they will not assist in this analysis, plan sponsors should ask if they will make the necessary data available, and may wish to engage assistance from outside counsel or an actuarial firm in completing the analysis. Going forward, the responsibility for preparation of this analysis or providing data related to this analysis should be negotiated and reflected in the written agreement with the TPA.

ADDITIONAL RESOURCES

Fact Sheet: Final Rules under the Mental Health Parity and Addiction Equity Act (MHPAEA)

Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act (MHPAEA)

FAQs About Mental Health and Substance Use Disorder Parity Implementation and the Consolidated Appropriates Act, 2021 Part 45

CMS: Non-Federal Governmental Plans & MHPAEA Comparative Analysis Reviews

Warning Signs - Plan or Policy Non-Quantitative Treatment Limitations (NQTLS) that Require Additional Analysis to Determine Mental Health Parity Compliance

DOL Website: Mental Health and Substance Use Disorder Parity

CMS Website: The Mental Health Parity and Addiction Equity Act