



Employee Benefits Update

August 2023

New MHPAEA Guidance Released

On July 25 the U.S. Departments of Treasury, Labor and Health and Human Services (“tri-agencies”) released guidance related to the Mental Health Parity and Addiction Equity Act (MHPAEA). Among other documents, the guidance includes a proposed update to the MHPAEA regulations and a report to Congress summarizing the tri-agencies’ enforcement efforts related to group health plans’ obligations to perform and document non-quantitative treatment limitation (NQTL) analyses.

Although new requirements described in the proposed regulations will not take effect unless and until regulations are finalized, the MHPAEA guidance as a whole provides a wealth of information that employers can and should be addressing now.

Key Takeaways

- The DOL expects plans to have already performed and documented NQTL analyses. Even if the plan otherwise complies with MHPAEA in design and operation, failure to have sufficiently documented NQTL analyses could violate MHPAEA.
- Sponsors of self-insured health plans have been attempting to comply with this requirement by obtaining standard NQTL analyses prepared by their medical and prescription drug third-party administrators and care coordinators (TPAs). It is clear from this guidance that most (if not all) of these standard documents do not satisfy the DOL’s expectations for an NQTL analysis. Employers should ask their TPAs whether they will be updating their analysis documents in response to this guidance and consider whether to hire a vendor to independently conduct and document the required analyses.
- The DOL expects group health plan sponsors to obtain information from their TPAs. If the regulations are finalized as proposed, plans will be required to obtain and evaluate a significant amount of operational information. Employers should confirm now whether their TPA contracts require the TPA to provide the data the employer may need to comply with or verify compliance with MHPAEA. If not, employers should negotiate with the TPA to include this requirement in an amendment or as part of a renewal.
- Plan fiduciaries have a duty to ensure that the plan complies with MHPAEA. If the regulations are finalized as proposed, named fiduciaries will have a new express obligation to review completed NQTL analyses and certify that they are compliant. Employers should review their plan governance now to ensure that appropriate delegations are in place and that the health plan’s fiduciaries understand and have appropriate processes to carry out their fiduciary duties.
- Plan exclusions may violate multiple provisions of MHPAEA. The DOL is particularly focusing on exclusions relating to ABA therapy, eating disorders, and opioid treatments (and in fact has confirmed that benefits for treatment of autism or eating disorders should be considered mental health benefits rather than medical/surgical benefits). Employers should review their SPDs for **any** exclusions that apply to mental health or substance use disorder treatments and ask the TPA for enough information to determine whether such exclusions are permissible.
- Network adequacy is important. Although plan sponsors usually do not have control over the composition of the plan’s network, employers should work with their TPAs to ensure that the plan’s network allows for sufficient access to mental health and substance use disorder providers.

Learn More at Our Webinar

On August 23 at 1:00 p.m. ET we will host a complimentary webinar to discuss the guidance in more detail and review practical considerations related to MHPAEA compliance. Click [here](#) for more information and to register.

FOR MORE INFORMATION

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