



Mental Health and Substance Use Disorder Benefits: Parity Requirements

The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) requires parity between a group health plan's medical and surgical benefits and its mental health or substance use disorder (MH/SUD) benefits. In general, if a health plan provides MH/SUD benefits, MHPAEA requires the plan to:

- Offer the same access to care and patient costs for MH/SUD benefits as those that apply to medical/surgical benefits;
- Treat MH/SUD coverage and medical/surgical coverage equally in terms of out-of-pocket costs, benefit limits and practices such as prior authorization and utilization review; and
- Contain a single combined deductible for MH/SUD coverage and medical/surgical coverage.

MHPAEA's parity requirements apply to group health plans sponsored by employers with more than 50 employees. However, due to an Affordable Care Act (ACA) reform, insured health plans in the small group market must also comply with federal parity requirements for MH/SUD benefits.

LINKS AND RESOURCES

- [Final rule](#) on MHPAEA
- Department of Labor (DOL) [webpage](#) on MHPAEA compliance, including links to frequently asked questions (FAQs)
- DOL's [Fact Sheet](#) on MHPAEA
- [Proposed rule](#) on MHPAEA (Aug. 3, 2023)

Affected Health Plans

MHPAEA generally applies to group health plans sponsored by employers with more than 50 employees, including self-insured plans and fully insured arrangements.

MHPAEA does not require that group health plans cover MH/SUD benefits. MHPAEA's requirements apply only to group health plans that choose to include MH/SUD benefits in their benefit packages. However, other state and federal laws may require a plan to provide these benefits. The ACA builds on MHPAEA and requires some plans to cover MH/SUD services as one of 10 essential health benefits categories. Specifically, non-grandfathered health plans in the individual and small group markets are required to provide essential health benefits (which include MH/SUD services), as well as comply with the federal parity law requirements, effective for 2014 plan years.

Nonfederal governmental plans that are self-funded may elect to opt out of MHPAEA's parity requirements. In order to opt out, the plan must file an election with the Centers for Medicare and Medicaid Services (CMS) prior to the beginning of each plan year and must notify the plan participants of its choice to opt out.

Key Parity Requirements

Financial Requirements and Quantitative Treatment Limitations

KEY POINT: The general parity rule requires that, where MH/SUD benefits and medical/surgical benefits are provided, a group health plan may not apply any financial requirement or quantitative treatment limitation to MH/SUD benefits in any classification that is more restrictive than the predominant **financial requirement or quantitative treatment** limitation that applies to substantially all medical/surgical benefits in the same classification.

Financial requirements include, for example, deductibles, copayments, coinsurance and out-of-pocket limits. Quantitative treatment limitations include, for example, limits on the frequency of treatment, number of visits or days of coverage. Plans must apply parity requirements for financial requirements and treatment limitations based on each “coverage unit” (for example, self-only, family and employee-plus-spouse).

Numerical Standards

MHPAEA’s final rule includes the following numerical standards for the “substantially all” and “predominant” requirements:

Substantially All	A type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification. If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that type cannot be applied to MH/SUD benefits in that classification.
Predominant	If a type of financial requirement or treatment limitation is the most common or frequent of a type of limit or requirement, then it is predominant. The predominant level is the level that applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in that classification.

A plan or issuer is not required to perform the parity analysis each plan year unless there is a change in plan benefit design, cost-sharing structure or utilization that would affect a financial requirement or treatment limitation within a classification.

Intermediate Services

If a plan or issuer provides coverage for MH/SUD benefits in any classification, MH/SUD benefits must be provided in every classification in which medical/surgical benefits are provided. The parity requirements also apply to benefits for intermediate levels of care for MH/SUD (such as residential treatment, partial hospitalization and intensive outpatient treatment).

Under MHPAEA, plans and issuers must assign covered intermediate MH/SUD benefits to the existing six benefit classifications in the same way that they assign comparable intermediate medical/surgical benefits to these classifications. For example, if a plan or issuer classifies care in skilled nursing facilities or rehabilitation hospitals as inpatient benefits, then the plan or issuer must likewise treat any covered care in residential treatment facilities for MH/SUD as an inpatient benefit. In addition, if a plan or issuer treats home health care as an outpatient benefit, then any covered intensive outpatient MH/SUD services and partial hospitalization must be considered outpatient benefits as well.

Cumulative Limits

A plan or issuer may not apply cumulative financial requirements (such as deductibles and out-of-pocket maximums) or cumulative quantitative treatment limitations (such as annual or lifetime day or visit limits) for MH/SUD benefits in a classification that accumulate separately from any cumulative requirement or limitation established for medical/surgical benefits in the same classification.

Thus, for example, **combined deductibles are required for MH/SUD benefits and medical/surgical benefits**. Separate deductibles are prohibited. That is, a plan may not apply one deductible to MH/SUD benefits and another deductible to medical/surgical benefits.

Nonquantitative Treatment Limitations

MHPAEA restricts the nonquantitative treatment limitations (NQTLs) that plans may place on MH/SUD benefits. A plan or issuer may not impose an NQTL with respect to MH/SUD benefits in any classification unless any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefits in the classification are comparable to, and are applied no more stringently than those used in applying the limitation with respect to medical/surgical benefits in the same classification.

The final rule includes an illustrative list of NQTLs that plans and issuers commonly use. These NQTLs include:

- Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;
- Formulary design for prescription drugs;
- Standards for provider admission to participate in a network, including provider reimbursement rates;
- Plan methods for determining usual, customary and reasonable charges;
- Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);
- Exclusions based on failure to complete a course of treatment;
- Network tier design; and
- Restrictions based on geographic location, facility type, provider specialty and other criteria that limit the scope or duration of benefits for services provided under the plan (including access to intermediate level services).

The final rule also clarifies that, despite the illustrative list, all NQTLs imposed on MH/SUD benefits by plans and issuers subject to MHPAEA are subject to the law's parity requirements. The DOL has also provided [examples](#) of plan designs that may violate MHPAEA's parity rules for NQTLs. In addition, the DOL maintains a [MHPAEA Self-Compliance Tool](#) that is intended to help group health plan sponsors determine whether a health plan complies with MHPAEA. This tool includes a section on NQTLs that outlines the process for conducting comparative analyses of NQTLs.

Comparative Analysis of NQTLs

The [Consolidated Appropriations Act, 2021, \(CAA\)](#), which was signed into law on Dec. 27, 2020, amended MHPAEA to require group health plans and health insurance issuers to **conduct comparative analyses of the NQTLs** used for medical/surgical benefits as compared to MH/SUD benefits. The comparative analyses, and certain other information, must be made available upon request to applicable agencies beginning Feb. 10, 2021.

If, upon review of the analyses, the Departments of Labor, HHS, and the Treasury (Departments) find that a plan is out of compliance with mental health parity laws, corrective actions will be specified for the plan to come into compliance, which the plan will have 45 days to implement. If the plan is still not in compliance after those 45 days, the plan must notify all individuals enrolled in the noncompliant plan within seven days.

The Departments released [FAQs](#) to clarify the mental health parity amendments made by the CAA. According to these FAQs, health plans and issuers that have carefully applied the NQTL guidance in the DOL's [MHPAEA Self-Compliance Tool](#) should be in a strong position to comply with the CAA's requirement to submit comparative analyses upon request.

Proposed Rule

On July 25, 2023, the Departments released a [proposed rule](#) that would strengthen MHPAEA's parity requirements. Specifically, the proposed rule would generally prohibit health plans and issuers from imposing NQTLs on MH/SUD benefits unless:

- The NQTL is no more restrictive as applied to MH/SUD benefits in a classification (as written or in operation) than the predominant NQTL that applies to medical/surgical benefits in the same classification;
- The plan or issuer satisfies certain requirements related to the design and application of the NQTL; and
- The plan or issuer collects, evaluates and considers the impact of relevant data on access to MH/SUD benefits relative to access to medical/surgical benefits and takes reasonable action as necessary to address any material differences in access shown in the data to ensure compliance with MHPAEA.

The proposed rule would also impose a special rule for NQTLs related to network composition. The proposed rule would amend existing examples and add new examples on the application of the rules for NQTLs to clarify and illustrate the protections of MHPAEA.

In addition, the proposed rule would establish minimum standards for developing NQTL comparative analyses to assess whether an NQTL, as written and in operation, complies with MHPAEA's requirements. The proposed rule would also specify the content elements of comparative analyses and the time frame for plans and issuers to respond to a request from the Departments to submit their comparative analyses.

This rule is only in proposed form and the Departments may make minor or significant changes to it before it is finalized based on the comments they receive from stakeholders.

Classifications of Benefits

The final rule established six classifications of benefits and requires plans to apply MHPAEA's parity requirements on a classification-by-classification basis. The six classifications of benefits are as follows:

Classifications of Benefits		
Inpatient, in-network	Outpatient, in-network	Emergency care
Inpatient, out-of-network	Outpatient, out-of-network	Prescription drugs

The final rule also specifies permissible sub-classifications and provides that the parity analysis be performed within each classification and sub-classification.

The classifications and sub-classifications are intended to be comprehensive and cover the complete range of medical/surgical benefits and MH/SUD benefits offered by health plans and issuers. Health plans and issuers cannot avoid the parity analysis by categorizing medical/surgical benefits and MH/SUD benefits outside of these classifications.

Prescription Drug Tiers

Health plans may divide prescription drug coverage into tiers and apply the parity requirements separately to each tier of drug coverage based upon reasonable factors and without regard to whether the drug is generally prescribed with respect to medical/surgical benefits or with respect to MH/SUD benefits. Reasonable factors include cost, efficacy, generic versus brand name, and mail order versus pharmacy pick up.

Outpatient Benefits

Outpatient benefits can be divided into office visits and all other outpatient items and services for purposes of applying MHPAEA's financial requirement and treatment limitation rules. This means that a plan can apply the "substantially all" test separately for physician office visits that have copayments and for outpatient benefits that may be subject to other financial requirements.

Multiple Provider Tiers

If a plan provides in-network benefits through multiple tiers of in-network providers (such as an in-network tier of preferred providers with more generous cost sharing to participants than a separate in-network tier of participating providers), the plan may divide its benefits furnished on an in-network basis into sub-classifications that reflect those network tiers. To classify benefits based on multiple tiers of in-network providers, the tiering must be based on reasonable factors and without regard to whether a provider is an MH/SUD provider or a medical/surgical provider.

Some plans may have an uneven number of tiers between medical/surgical providers and MH/SUD providers (for example, three tiers of medical/surgical providers and two tiers for MH/SUD providers). Until the issuance of further guidance, the Departments will consider a plan or issuer to comply with the financial requirement and quantitative treatment limitation rules under MHPAEA if a plan or issuer treats the least restrictive level of the financial requirement or quantitative treatment limitation that applies to at least two-thirds of medical/surgical benefits across all provider tiers in a classification as the predominant level that it may apply to MH/SUD benefits in the same classification.

Other Classifications

Other sub-classifications, such as separate sub-classifications for generalists and specialists, may not be used for purposes of determining parity.

Defining MH/SUD Benefits

MH/SUD benefits mean benefits with respect to items or services for mental health conditions or substance use disorders, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law.

[The 21st Century Cures Act](#), which was signed into law on Dec. 13, 2016, clarifies that if a group health plan or issuer provides coverage for eating disorder benefits, including residential treatment, the coverage must comply with the federal parity requirements for MH/SUD benefits.

Also, so that benefits are not misclassified, plans and issuers must use generally recognized independent standards of current medical practice in defining whether benefits are MH/SUD benefits (for example, the most current version of the Diagnostic and Statistical Manual of Mental Disorders, the most current version of the International Classification of Diseases or state guidelines).

Disclosures

Under MHPAEA, the **criteria for medical necessity determinations** with respect to MH/SUD benefits must be made available by plans and issuers to any participant, beneficiary or contracting provider upon request. Also, plans must provide information about the reason for any denial of reimbursement or payment for services with respect to MH/SUD benefits to the participant or beneficiary.

Model Form for Mental Health Parity Requests: To help improve these disclosures, federal agencies have provided a [model form](#) that participants, enrollees or their authorized representatives may use to obtain information on their plan's coverage of MH/SUD benefits. Plan participants are not required to use the draft model form to request information about their MH/SUD benefits; health plan sponsors and issuers must respond to participant requests for this information even if the model form is not used. The availability of the model form, however, may make it more likely that health plan sponsors will receive participant requests for information on MH/SUD benefits.

In addition to MHPAEA's disclosure requirements, other laws require plans and issuers to disclosure of information relevant to medical/surgical and MH/SUD benefits. For example, the DOL's claims procedure regulations for ERISA plans, as well as the claims and appeals regulations under the ACA (applicable to all non-grandfathered plans and issuers), include the right of claimants to be provided by the plan or issuer, upon request and free of charge, reasonable access to and copies of all documents records, and other information relevant to the claimant's claim for benefits. According to the DOL, this includes documents with information on medical necessity criteria for both medical/surgical benefits and MH/SUD benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply a NQTL with respect to medical/surgical benefits and MH/SUD benefits under the plan.

Also, for plans subject to ERISA, instruments under which the plan is established or operated must generally be furnished to plan participants within 30 days of request. If an ERISA plan or administrator fails to provide these documents, a court may hold it liable for up to \$110 a day from the date of failure to provide these documents. Instruments under which the plan is established or operated include documents with comparative information on medical necessity criteria for both medical/surgical benefits and MH/SUD benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply an NQTL with respect to medical/surgical benefits and MH/SUD benefits under the plan.

Cost Exemption

MHPAEA includes an exemption for increased costs that is available for plans and issuers that make changes to comply with the law and incur an increased cost of at least 2% in the first year that MHPAEA applied to the plan or coverage or at least 1% in any subsequent year. The cost exemption may only be claimed for alternating plan years.

The final rule includes standards and procedures for claiming an increased cost exemption under MHPAEA. The test for an exemption must be based on the estimated increase in actual costs incurred by the plan or issuer that is directly attributable to expansion of coverage due to MHPAEA's requirements and not otherwise due to occurring trends in utilization and prices, a random change in claims experience that is unlikely to persist, or seasonal variation commonly experienced in claims submission and payment patterns.

Interaction with State Parity Laws

The final rule addresses how MHPAEA interacts with state insurance laws regarding MH/SUD benefits. A state law, for example, may mandate that an issuer offer coverage for a particular condition or require that an issuer offer a minimum dollar amount of MH/SUD benefits. According to the DOL, these state law provisions do not prevent the application of MHPAEA, and, thus, would not be pre-empted.

To the extent the state law mandates that an issuer provide some coverage for any mental health condition or substance use disorder, benefits for that condition or disorder must be provided in parity with medical/surgical benefits under MHPAEA. This means that an issuer subject to MHPAEA may be required to provide MH/SUD benefits beyond the state law minimum in order to comply with MHPAEA.

ACA Changes

Annual and Lifetime Limits

The ACA prohibits group health plans and issuers from placing lifetime limits on the dollar value of essential health benefits (EHB). EHB includes MH/SUD services, including behavioral health treatment. The final rule clarifies that the parity requirements regarding annual and lifetime limits only apply to the provision of MH/SUD benefits that are not EHB.

Preventive Services

Also, as a general parity rule, if a plan or issuer provides MH/SUD benefits in any classification, MH/SUD benefits must be provided in every classification in which medical/surgical benefits are provided. Under the ACA, non-grandfathered group health plans and issuers offering non-grandfathered group and individual coverage are required to provide coverage for certain preventive services without cost-sharing. These preventive services presently include, among other things, alcohol misuse screening and counseling, depression counseling, and tobacco use screening as provided for in the guidelines issued by the United States Preventive Services Task Force.

The final rule clarifies that MHPAEA does not require a group health plan or issuer that provides MH/SUD benefits only to the extent required under the ACA's preventive services mandate to provide additional MH/SUD benefits in any classification.

EHB Requirement

On Feb. 25, 2013, the Department of Health and Human Services (HHS) issued a [final rule](#) that requires issuers of non-grandfathered plans in the individual and small group markets to ensure that these plans provide all EHB, including MH/SUD benefits. The extent of the coverage of EHB is determined based on the benchmark plans that are selected at the state level. The final rule also requires issuers providing EHB to provide MH/SUD benefits in compliance with MHPAEA, even where those requirements would not otherwise apply. Thus, all insured, non-grandfathered, small group plans must cover EHB in compliance with MHPAEA, regardless of MHPAEA's small employer exception.

Enforcement

MHPAEA's provisions are included under ERISA. The DOL and the Internal Revenue Service (IRS) generally have enforcement authority over private sector employment-based plans that are subject to ERISA.

While ERISA does not contain a specific penalty for violations of MHPAEA, plan participants and beneficiaries and the DOL may use ERISA's civil enforcement provisions to enforce MHPAEA. Also, when the DOL audits an ERISA-covered health plan, it will often investigate the plan's compliance with federal mental health parity requirements. Vigorous enforcement of MHPAEA has been one of the DOL's top enforcement priorities. When the DOL identifies MHPAEA violations in a specific group health plan, it asks the plan to make necessary changes to any noncompliant plan provision and to re-adjudicate any improperly denied benefit claims.

In addition, employers that violate MHPAEA may be subject to an IRS excise tax. Generally, an excise tax of \$100 per individual, per day will apply to MHPAEA violations, unless an exception applies. Any applicable excise taxes must be reported on [IRS Form 8928](#), "Return of Certain Excise Taxes under Chapter 43 of the Internal Revenue Code."

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