

Agencies Issue FAQs on Required Comparative Analysis of Non-Quantitative Treatment Limitations

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The Consolidated Appropriations Act (CAA), 2021 had far-reaching effects on employee benefit plans. One of the more onerous changes introduced by the CAA relates to the [Mental Health Parity and Addiction Equity Act of 2008](#) (MHPAEA). MHPAEA requires that group health plans offering mental health and substance use disorder benefits (MH/SUD benefits) provide those benefits on no less generous terms than medical and surgical benefits. The rules require various types of comparisons to be made between MH/SUD benefits and medical/surgical benefits to ensure parity within the plan.

The CAA focused on one specific category of comparison: [nonquantitative treatment limitations](#) (NQTLs). NQTLs are treatment limits that are not represented by a numerical value. For example, a preauthorization requirement is a NQTL. Under the CAA, employers that sponsor group health plans must document the plans' compliance with the NQTL provisions of MHPAEA. Although the requirement to offer MH/SUD benefits in parity with medical/surgical benefits is not a new one, the requirement to formally document that compliance is new. In an effort to compel compliance, the CAA requires the U.S. Department of Labor, U.S. Department of Health and Human Services, and U.S. Department of the Treasury to request copies of the formal analyses from at least 20 group health plans and/or health insurance issuers per year. Under the CAA, a formal analysis should have been completed by February 10, 2021, and the departments can request copies of the analysis as of that date.

In an effort to guide employers to meet their obligations under the CAA, the departments issued a set of answers to [frequently asked questions](#) (FAQs). In their answers to the FAQs, the departments provided useful details describing the type of information that should be included in the formal analysis.

Of particular interest to group health plan sponsors, the departments noted that "conclusory or generalized statements" from plan sponsors and/or plan service providers indicating that a plan complies with the requirements of MHPAEA are insufficient. Rather, the departments require employers to perform an in-depth analysis of each NQTL in the plan. To assist employers in performing this analysis, the departments set forth nine elements that they would be looking for when

reviewing such an analysis:

1. A “clear description” of the NQTL, including the specific language of any related plan terms
2. Identification of the specific benefits to which the NQTL applies
3. Identification of “factors, evidentiary standards or sources, or strategies or processes considered” in designing the NQTL, including whether any of those factors are weighted more or less heavily than others
4. Any quantitative definitions that are part of the NQTL
5. An explanation for any variation in the way in which a guideline or standard is applied to MH/SUD versus medical/surgical benefits
6. The identifying information (including qualifications) of any individual who needs to make “specific decisions in administration of the benefits” when applying the NQTL
7. The identifying information (including qualifications) of any expert relied upon in designing the NQTL
8. A “reasoned discussion” of the comparability of the NQTL between MH/SUD benefits and medical/surgical benefits.
9. The identifying information of the person or persons who performed or participated in the analysis

The departments expect plans and issuers to perform an in-depth analysis, meeting all of the above criteria, separately on each NQTL. With such onerous criteria to meet, and a compliance deadline that has already passed, many plan sponsors are reaching out to their service providers (such as third-party administrators and brokers) for direction. While most service providers are willing to provide the information necessary for the plan sponsor to perform the required analysis, many are not performing the analysis itself.

Plan sponsors may want to start compiling the necessary information and performing the required analysis now, before receiving a request for the information as part of the departments’ enforcement efforts.

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