

The “Meaningful Benefit” Requirement for NQTLs Under the Proposed MHPAEA Regulations

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In previous posts, we [reported](#) on [proposed regulations](#) under the Mental Health Parity and Addiction Equity Act (MHPAEA) issued by the Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments). More recently, we turned our attention to the treatment of non-quantitative treatment limitations (NQTLs), *i.e.*, non-numeric benefit coverage limits that must be no more restrictive for mental health and substance use disorder (MH/SUD) benefits than for medical surgical (M/S) benefits. This blog post focuses on the proposed regulations’ “meaningful benefit” requirement.

Current law contains the now familiar rule that says if a plan (or health insurance issuer) provides MH/SUD benefits in *any* classification, those benefits must be provided in *every* classification in which M/S benefits are provided. (“Classifications” for this purpose include inpatient, out-of-network; inpatient, in-network; outpatient, out-of-network; outpatient, in-network; emergency care and prescription drugs.) But current law says nothing about *which* MH/SUD benefits must be provided in any classification. A plan or issuer might, for example, be able to comply by offering a single limited benefit for MH/SUD disorders or conditions in one or more classifications.

The proposed regulations add a requirement that plans and issuers must provide “meaningful benefits” for the treatment of MH/SUD disorders or conditions. While the term “meaningful benefit” is not defined, the proposed regulations offer two examples:

Autism Spectrum Disorder (ASD)

A plan that covers treatment for ASD, including outpatient, out-of-network developmental evaluations, but excludes all other benefits for outpatient treatment for ASD, including applied behavior analysis (ABA). (ABA therapy is one of the primary treatments for children with ASD.) The plan covers the full range of outpatient treatments and treatment settings for medical conditions and surgical procedures when provided on an out-of-network basis. The failure to cover ABA therapy violates the “meaningful benefits” requirement in the outpatient, out-of-network classification.

Eating Disorders

A plan covers diagnosis and treatment for eating disorders but specifically excludes coverage for

nutrition counseling to treat eating disorders, including in the outpatient, in-network classification. (Nutrition counseling is one of the primary treatments for eating disorders.) The plan generally provides benefits for the primary treatments for medical conditions and surgical procedures in the outpatient, in-network classification. The exclusion of coverage for nutrition counseling results in the failure of the “meaningful benefits” requirement for the treatment of eating disorders in the outpatient, in-network classification.

The Departments invite comments on how to define “meaningful benefits” and on whether there might be other potential alternatives. Would it be more practical, for example, to require plans and issuers to provide “substantial coverage” of MH/SUD benefits or benefits for the “primary or most common or frequent types of treatment for a covered condition or disorder” in each classification in which M/S are provided? Violations of the “meaningful benefits” requirement would, under the proposal, constitute an MHPAEA parity violation, which would allow the Department of Labor to order the plan or issuer not to impose the NQTL unless (and until) the plan or issuer demonstrates compliance.

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