

## Mental Health Parity Rules

Health insurance issuers and employment-based group health plans face new federal requirements to demonstrate their mental health parity compliance. The Consolidated Appropriations Act, 2021, [Pub. L. No. 116-260](#) (CAA, or the Act), Division BB, Sec. 203 requires plans and issuers to conduct comparative analyses to document their compliance with the existing rules governing nonquantitative treatment limitations (NQTLs) under the [Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008](#) (MHPAEA). Section 203 of the Act parallels compliance requirements that already exist in some states and that have been urged on regulators by several prominent behavioral health advocacy groups. Nonetheless, the fact that states have already tested out these requirements does not mean plans or issuers will be able to comply with the new federal requirements easily.

MHPAEA and its implementing regulations require that, when plans and issuers apply NQTLs to mental health or substance-use disorder benefits, the NQTLs be comparable to and applied no more stringently than the NQTLs that apply to medical or surgical benefits. NQTLs are defined to include nearly all plan design features other than financial requirements (i.e., cost-sharing) or quantitative limits (e.g., numerical benefit limits). These include prospective and retrospective utilization review practices, including prior authorization, step therapy and claims edits, as well as less obvious restrictions on access to care such as provider reimbursement and credentialing practices. While the law does not provide a comprehensive list, organizations that have developed a [compliance framework](#) upon which the CAA requirements are based (the American Psychiatric Association, the Kennedy Forum and the Parity Implementation Coalition) have identified 19 different types of health plan features that could be considered NQTLs and should be evaluated under a comparative analysis.

Some states have already required that state-regulated health insurance issuers perform comparative analyses of their NQTLs in order to demonstrate MHPAEA compliance. Section 203 of the Act now makes this requirement applicable nationwide, including to self-insured group health plans not subject to state regulation. The CAA requires that these analyses be made available to state and federal regulators within 45 days of enactment of the statute (i.e., by approximately February 10, 2021). The plans' and issuers' comparative analyses are required to define each NQTL and the benefit to which it applies; the factors and evidentiary standards used to determine the application of the NQTL; and analyses and conclusions showing that each NQTL, as written and in operation, complies with MHPAEA. Section 203 also requires federal regulators to request that at least 20 plans or issuers submit their comparative analyses for further review each year, and to publish findings of noncompliance in public guidance. Under the CAA, Medicaid managed care entities are not required to perform additional comparative analyses beyond what they are already required to submit under existing Medicaid law.

The experience of trying to comply with similar existing state requirements shows it will be extremely difficult for plans and issuers to complete these analyses by February:

- The **blank** template for completing these analyses proposed by the American Psychiatric Association, the Kennedy Forum and the Parity Implementation Coalition is 134 pages long—before any plan-specific information has been included.
- Successfully completing these templates requires close coordination between a plan’s legal, compliance, clinical, claims and network departments, among others.
- Behavioral health services are often subcontracted or administered by an external vendor. Even where the health plan administers these services in-house, behavioral health is often managed through a separate department from other healthcare. This requires careful coordination to evaluate parity compliance.
- Particular NQTLs, especially those relating to network management, may be especially challenging to document using the method now required by the CAA, because these processes are hard to conceptualize in the six-step method now required.
- Self-insured private-employer group health plans, which are exempt from state regulation, will now have to conduct comparative analyses.

The substantive MHPAEA requirements are not new—the statute is 13 years old and the final implementing rules were published in 2013. Nonetheless, given the expansive range of practices and policies that are subject to MHPAEA, some issuers and plans may have prioritized compliance evaluations for some NQTLs over others. But Section 203 of the Act appears to reject a piecemeal approach, requiring comprehensive NQTL compliance reviews.