

IMPROVING ACCESS TO MENTAL HEALTH BENEFITS AND SUPPORTING MENTAL HEALTH PARITY



BACKGROUND

The Mental Health Parity and Addiction Equity Act (MHPAEA) requires group health plans and issuers that cover mental health or substance use disorder benefits to ensure that any coverage limitations on those benefits are no more restrictive than those on medical/surgical benefits. This parity applies to quantitative requirements, such as limits on number of visits as well as "non-quantitative treatment limitations" (NQTLs) like pre-authorization requirements and provider admission criteria. The Consolidated Appropriations Act (CAA) of 2021 established a new requirement that plans and issuers perform and make available a comparative analysis of their NQTLs demonstrating that their practices are not more stringent for mental health and substance use disorder benefits than they are for the medical/surgical benefits.

On January 25, the departments of Labor (DOL), Treasury, and Health and Human Services (the Departments) published their annual report to Congress on their enforcement activities related to these new comparative analysis requirements. The report highlighted that of the 156 employers and health plans that submitted analyses, none were sufficient, and more than half have been issued requests for corrective action plans.

THE ISSUE

DOL currently has robust tools for enforcing mental health parity requirements, including requiring retroactive and prospective plan changes, notifying enrollees of a plan or issuer's non-compliance, and pursuing challenges in the courts. And those tools have already been used against various firms and issuers, even as they seek to navigate this broad and extremely technical new reporting regime with limited guidance.

Despite the existing enforcement structure, there have been efforts—mostly recently included in the Build Back Better package—to expand DOL's authority to impose civil monetary penalties on a plan sponsor or administrator of a group health plan that fails to meet parity requirements for mental health and substance use disorder benefits. However, the bigger barriers to access that type of care come from shortages of mental healthcare providers and the subsequent inability to form adequate provider networks for these services. Some proposed civil monetary penalty regimes seek to impose network adequacy requirements by penalizing employers based on the raw number of mental health or substance use disorder providers in a network.

According to the Department of Health & Human Services, close to 130 million Americans live in areas designated as Mental Health Professional Shortage Areas. There are 6,559 additional behavioral healthcare providers needed to fill these provider gaps. Provider shortages, in conjunction with limited in-network providers, make it difficult for patients to find affordable in-network providers.

OUR POSITION

Behavioral healthcare is vital to the health and productivity of the workforce. Employers, in partnership with their employee benefits brokers and consultants, are investing heavily in robust benefit options for mental and substance use disorder coverage. For example, 31% of employers expanded the ways through which enrollees could get mental health or substance abuse services in 2021.¹

However, the subjective nature and lack of clear technical guidance on how to perform these comparative analyses have created significant challenges for plans and issuers seeking to comply with the CAA analysis requirements. We believe the call for new civil monetary penalties is premature and will not solve the underlying shortages at the heart of this problem. Rather than authorizing new enforcement tools, plans and issuers require additional time and support to implement these new obligations. **Therefore, the Council strongly urges lawmakers to work in partnership with employers, providers and health plans to provide additional compliance guidance before implementing new civil monetary penalties around mental health parity.**

OUR ASK

The widespread uncertainty in the employer community regarding how to perform these comparative analyses and what constitutes "sufficient" for DOL, as well as the level of coordination required between plans, insurers and other stakeholders to produce the necessary information, emphasizes the need for additional guidance and compliance support, specifically:

- A sample NQTL comparative analysis
- A clearer list of the NQTLs which the Department of Labor is targeting
- Safe harbors for employers and health plan issuers who are attempting to comply in good faith

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