

## Insurers To White House: Revamp Mental Health Parity Rule Or Delay Enforcement By Two Years

By [Sigi Ris](#) / August 19, 2024 at 4:02 PM

A coalition of key private insurers and employers that provide mental health coverage are pressing the White House to revamp its draft update of the 2008 mental health parity rule, and if not to at least give insurers an extra two years to comply with the rule's tightened requirements that mental health coverage they offer is on par with other health coverage. The insurers and stakeholders, many of whom have met with White House budget officials, argue the tightened requirements could backfire by spurring certain insurers to simply drop mental health coverage, coming as dozens of stakeholders that back the pending rule urge the White House to stand firm.

Key Senate Democrats have also been pressing the Biden administration to quickly finalize the rule, and during the National Association of Insurance Commissioners conference last week in Chicago Ellen Montz, director of CMS' Center for Consumer Information and Insurance Oversight (CCIIO), said the rule would be out soon. Montz told the regulators that she is excited about finalizing the regulation and ensuring that the non-quantified treatment limitations focus on the impact, rather than the process.

The coalition of stakeholders that offer mental health coverage met with White House officials last month and followed up with a July 26 letter outlining their concerns with the pending rule. The stakeholders included top players such as Blue Cross Blue Shield Association, Elevance Health and CVS Health.

They specifically expressed concerns about the rule's "economic analysis, the application of the substantially all/predominant test to Non-Quantitative Treatment Limitations ('NQTs'), the fiduciary certification requirement, and the applicability date."

The coalition argues the additions to the 2008 rule increase the time and resources needed for inserts to meet the NQTL requirements, which they say could take time and resources away from other important services. An NQTL is a type of treatment limitation that is not quantifiable, such as concurrent review. Quantitative treatment limitations (QTLs) are quantifiable, such as visit limits.

In a July 30 post on [McDermott's Employee Benefits blog](#), industry lawyer Alden Bianchi poses multiple issues he has with some of the rule's stipulations.

**"To call the proposed rule contentious is an understatement," Bianchi said in the blog post.**

Bianchi is also concerned about the quantitative testing requirements the proposed rule will place on NQTLs. The existing Mental Health Parity and Addiction Equity Act (MHPAEA) provides that limitations on mental health and substance use disorder (MH/SUD) benefits cannot exceed limitations for substantially all medical and surgical (M/S) benefits in a classification.

According to Bianchi, the rule's added quantitative testing requirements for NQTLs are "at least modestly counterintuitive" and only add to the complexity of the testing rule.

Bianchi also takes issue with the rule's new requirements for NQTLs to be imposed in a classification. The rule says if an MH/SUD NQTL were to be classified, it must be no more restrictive than M/S limitation and meet specified design requirements. Also, the plan or issuer would have to obtain and consider the impact of relevant data on access to MH/SUD benefits compared to M/S benefits and address gaps between the two. Bianchi says these added requirements could make it more expensive for group health plans to utilize. "MH/SUD carve-out" vendor arrangements when using third-party payers that can manage MH/SUD benefits.

These carve-out vendors, also known as managed behavioral health organizations, are payers that specialize in MH/SUD treatment. Bianchi also says the addition of the data collection requirement further complicates the rule.

The proposed version of the rule also included a requirement that health plan fiduciaries annually certify their plan complies with the rule, which Bianchi believes "serves no purpose" and would only increase compliance burdens, costs and risks for plan sponsors.

**Bianchi also argues a strict parity requirement is unreasonable due to a shortage of behavioral health providers.** He says providers need time to adapt to such a requirement and also advocates for an extended compliance period.

"Compliance with the mental health parity rules is complicated and expensive, and if the final regulations look anything like the proposed regulations, compliance will only get more complicated and more expensive," Bianchi concludes.

Spokespeople for a health plan told *Inside Health Policy* they are worried about the lack of definition of "meaningful benefits" in the proposed rule, over which Bianchi also voiced concerns. The proposed rule holds that plans can provide MH/SUD benefits in every classification in which M/S benefits are provided unless the plan provides "meaningful benefits" for treatment of the condition/disorder in each such classification compared to those M/S benefits in each classification. The spokespeople for the health plan told *IHP* the lack of a definition for "meaningful benefits" could be dangerous, as it could lead to virtually any treatment being viewed as "meaningful" -- even treatments that don't work as well.

The same spokespeople told *IHP* the rule's vague language could require that guidance be issued if the same language is used in the final rule. -- *Sigi Ris* ([sris@iwpnews.com](mailto:sris@iwpnews.com))