

Achieving Mental Health Parity Compliance

OCTOBER 30, 2024



The Central Florida Health Care Coalition, Incorporated d/b/a Florida Alliance for Healthcare Value is providing this information to you solely in our capacity as a 501c3 nonprofit education organization with knowledge and experience in the industry and not as advice in any capacity.



The ABC's of Mental Health Parity

CAA: Consolidated Appropriations Act

DOL: Department of Labor

MHPAEA: Mental Health Parity and Addiction Equity Act

M/S: Medical/Surgical

MH/SUD: Mental Health/Substance Use Disorder

NQTL: Non-Quantitative Treatment Limit

OON: Out-of-Network

OOP: Out-of-Pocket

QTL: Quantitative Treatment Limit

What will we talk about today?



Why is Mental Health Parity important?



The final rules on Mental Health Parity



What should you be doing now to ensure compliance?



What are you hearing from your health plan partner about your plan's compliance?



Toolkit being developed – to be shared on the December 12 webinar



Volunteers needed to review draft tools

What's the problem?

There is abundant evidence that MH/SUD provider in-network access is worse than M/S in-network access

Narrower networks reduce access to MH/SUD services and increase patients' financial burden

Studies showed that MH/SUD providers receive lower reimbursement rates for in-network care relative to M/S providers, creating a disincentive for in-network participation by MH/SUD providers

Higher levels of OON use for MH/SUD care leads to higher OOP spending for patients, which is a significant barrier to accessing services for most people needing these services

Who is subject to the law and what is expected of them?

- ▶ MHPAEA applies to both self-funded and fully insured employers with more than 50 employees offering group health plan coverage that includes any MH/SUD benefits
- ▶ Self-funded plans must review their SPDs and other disclosures to assure compliance, perform claims audits and utilization reviews, assure that program structures do not violate QTL or NQTL limits, and to assure participant disclosure of all medical necessity determinations and of any supporting information related to the denial of a claim
- ▶ Fully insured plans must assure and document compliance with the substantive requirements of MHPAEA by obtaining carrier compliance certifications (written confirmations are required)

What is the purpose of the law?



Aims to eliminate discriminatory health plan coverage that prevents individuals from receiving effective MH/SUD treatment



Requires that health plans not design or apply financial requirements and treatment limitations that impose a greater burden on access to in-network MH/SUD benefits than imposed on access to comparable M/S benefits



Ensures that people with MH/SUD have access to the same level of care as people seeking treatment for M/S conditions

Common Compliance Misconceptions

- ▶ “I have heard that the law will be thrown out by the courts”
- ▶ “We aren’t a target of the DOL”
- ▶ “We reviewed our SPDs and we didn’t see any compliance issues”
- ▶ “Our health plan partner and our MH/SUD vendor have assured us that we are MHPAEA compliant”
- ▶ “We offer a HDHP and have so much compliance for that plan, so there is no way we could fail our MHPAEA testing”
- ▶ “We charge a lower (or no) copay for MH benefits/coinsurance than for M/S, so we are compliant”

What's different in the final rules?

- Increased scrutiny of network adequacy and the introduction of core treatment coverage requirements to the meaningful benefit standard
- No requirement for mathematical testing of NQTLs, as is required for financial requirements and quantitative treatment limitations
- Requirement to evaluate relevant data regarding NQTLs beginning in 2026 to ensure compliance
- Specific actionable steps for plans that are found noncompliant, including a transparent process for corrective action and participant notification

Meaningful Benefits

Benefits will not be considered “meaningful” unless they cover “core treatment” for that condition, meaning “a standard treatment or course of treatment, therapy, service, or intervention indicated by generally recognized independent standards of current medical practice.”

NQTL Comparative Analysis

- ▶ A plan fiduciary will be required to attest that they have engaged in a prudent process to select a qualified service provider to perform and document the comparative analysis
- ▶ A comparative analysis will have to document the outcomes that resulted from the application of the NQTL to MH/SUD and M/S benefits, including an explanation of why any material differences in access were not caused by the NQTL

NQTL Data Evaluation

- ▶ If relevant data is temporarily unavailable, the plan must explain in its comparative analysis the absence of the data and detail how it will be collected and analyzed in the future
- ▶ Plans will have to provide a “reasoned justification” for the conclusion that there is no data that can reasonably assess the NQTL’s impact, and documentation of any additional safeguards or protocols used to ensure the NQTL complies with MHPAEA
- ▶ The final rules also introduce a facts-and-circumstances test for when relevant data suggests that the NQTL contributes to material differences in access to MH/SUD benefits compared to M/S benefits, resulting in an NQTL testing failure

Network Adequacy

- ▶ Plans are required to collect and evaluate relevant data to assess the aggregate impact of NQTLs on access to MH/SUD benefits
- ▶ Relevant data includes utilization rates, network adequacy metrics, and provider reimbursement rates benchmarked to a reference standard
- ▶ If the data suggests a material difference in access to MH/SUD providers, the plan must take action to comply with parity requirements, including (1) strengthening efforts to recruit MH/SUD providers, (2) expanding telehealth options under the plan, (3) assisting plan enrollees in finding available in-network MH/SUD providers, and (4) ensuring that provider directories are accurate and reliable

Discriminatory Factors

- ▶ The final rules also provide guidance on when factors and evidentiary standards may be discriminatory against MH/SUD benefits
- ▶ Factors and evidentiary standards are discriminatory if, based on all relevant facts and circumstances, they systemically disfavor access or are specifically designed to disfavor access to MH/SUD benefits compared to medical/surgical benefits
- ▶ If a plan takes steps to correct, cure, or supplement the factors or evidentiary standards, the factors or standards will not be considered biased or not objective

Questions for you!

- ▶ Have you requested a comparative analysis on any NQTL from your TPA?
- ▶ Have you been provided a comparative analysis for any NQTL?
- ▶ Has your benefits consultant provided any guidance on NQTL comparative analysis? If so, would you share that with us?
- ▶ Who is providing your organization legal advice on the requirements for comparative analyses?



MHPAEA Guidance – Self- Compliance Tool (2020)

1. Is the plan exempt from MHPAEA?
2. If not exempt, does the plan provide MH/SUD benefits in addition to M/S benefits?
3. Does the plan provide MH/SUD benefits in every classification in which M/S benefits are provided?
4. Does the plan comply with requirements regarding lifetime and annual dollar limits on MH/SUD?
5. Does the plan comply with requirements regarding financial requirements or QTLs on MH/SUD benefits?
6. Does the plan comply regarding cumulative financial requirements or cumulative QTLs?
7. ...regarding NQTLs?
8. ...regarding MHPAEA disclosure requirements?



Under development

- ▶ Because we do not know when the DOL self-compliance tool will be updated and whether it will be user friendly, we have moved forward with MH experts to develop an employer toolkit to assess network adequacy and NQTL parity compliance
- ▶ To include a detailed, multi-step set of instructions for NQTL comparative analyses, including an updated Model Data Request Form template
- ▶ The toolkit is being designed for employers to be able to provide to their TPAs and/or Benefits Consultants for completion
- ▶ **Volunteers needed to review the toolkit before we finalize it!**

Document, document, document!

- ▶ If you are not doing so already, please document every step you take in determining whether your plan is compliance with MHPAEA!
- ▶ Turnaround time is very short if the DOL contacts you
- ▶ Penalties are steep for non-compliance



QUESTIONS?

YOU CAN CHAT YOUR QUESTIONS OR
RAISE YOUR HAND AND WE WILL
CALL ON YOU



The background of the slide is a semi-transparent blue overlay on a photograph of several business professionals in a meeting. They are gathered around a table, looking at documents and laptops. In the top right corner, there is a solid red rectangular block.

Next Meeting is
December 12 from
3PM- 4PM