

# ACTION REQUIRED: Mental Health Parity Compliance for Employers/Healthcare Purchasers

*Information and tools to ensure compliance, reduced costs, and a healthier workforce*

Employers/healthcare purchasers have a fiduciary responsibility to participants in their employee benefits plans to require their vendor partners to comply with the [Mental Health Parity and Addiction Equity Act](#) (MHPAEA), *which requires that Mental Health/Substance Use Disorder (MH/SUD) benefits are not more restrictive than Medical/Surgical (M/S) benefits.*

## Key Areas of Focus for Employers/Healthcare Purchasers

1

### Employers/Healthcare Purchasers Need to Take Action NOW

- Employer/healthcare purchaser fiduciary responsibility
- Department of Labor (DOL)/Centers for Medicare and Medicaid Services (CMS) is escalating enforcement
- DOL/CMS report that most employers/healthcare purchasers are noncompliant in the area of Non-Quantitative Treatment Limits (NQTLs)
- Do you know how to comply?



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### Mental Health Parity Requirements

- Three main areas:



**Financial Requirements (FRs)** – e.g., copayments, deductibles...



**Quantitative Treatment Limits (QTLs)** – e.g., # days or visits...



**NQTLs** - e.g., prior authorization, network adequacy, reimbursement rates, exclusions...

***NQTLs are the most complex to analyze and compare.*** *The Employer/Healthcare Purchaser Toolkit contains tools for documenting comparative analyses for the most common NQTLs.*



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### Employer/Healthcare Purchaser Action Checklist

- ✓ Require your TPAs/service providers to complete the [NQTL Multi-Step Comparative Analysis Tools](#) (and embedded MDRF templates) specific to your plan information.
- ✓ Document communications with TPAs/service providers when requiring them to perform comparative analyses.
- ✓ Talk to your broker, consultant, and/or legal counsel about their ability to review the responses you receive from TPAs/service providers.
- ✓ Require TPAs/service providers to correct insufficient responses, noncompliant areas, and disparities in outcomes data.
- ✓ Require TPAs/service providers to update and have available these comparative analyses annually, especially if new or different NQTLs or programs are implemented (e.g., value-based purchasing, narrow networks...)



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**ACKNOWLEDGEMENT:** *This Employer/Purchaser Resource is sponsored by the [National Alliance of Healthcare Purchaser Coalitions](#) and the [Florida Alliance for Healthcare Value](#). Funding for development of the Toolkit was provided to the [Community Coalitions Health Institute](#), which is a 501(c)(3) nonprofit organization, an affiliate of the National Alliance, by the [Mental Health Treatment and Research Institute LLC](#), a tax-exempt subsidiary of The Bowman Family Foundation.*

# ACTION REQUIRED: Mental Health Parity Compliance for Employers/Healthcare Purchasers

1

Employers/Healthcare Purchasers Need to Take Action NOW for Mental Health Parity Compliance



## Employer/Healthcare Purchaser Fiduciary Responsibility

Employers/healthcare purchasers have a fiduciary responsibility to the participants in their employee benefits plans to provide compliant Financial Requirements (FRs), Quantitative Treatment Limits (QTLs), and Non-Quantitative Treatment Limits (NQTLs) comparative analyses to the Department of Labor (DOL)/Centers for Medicare and Medicaid Services (CMS) upon request.

Employers/healthcare purchasers **are liable** for the **accuracy and completeness** of FR, QTL and NQTL comparative analyses. Employee Retirement Income Security Act (ERISA) plans are also required to provide a Fiduciary Certification that they have prudently selected qualified service provider(s) to perform and document NQTL comparative analyses and satisfied their duty to monitor such service provider's performance and documentation.



## DOL/CMS is Escalating Enforcement

Employers/healthcare purchasers have been subject to significant enforcement of mental health parity for the past several years. Beginning January 2025, if DOL requests documentation of your compliance, **you have only 10 business days to respond.**



[Are You Ready?](#)



## DOL Reports Widespread Noncompliance

Over the past 30 months of enforcement work, Employee Benefits Security Administration (EBSA) [has found](#) that comparative analyses in general have not included sufficient information to determine compliance with the substantive requirements of the Mental Health Parity and Addiction Equity Act (MHPAEA).

Per the 2024 DOL Report to Congress **"noncompliance remains widespread"... "analyses in general have not included sufficient information."**

***"EBSA is determined to continue aggressive enforcement of MHPAEA's parity requirements."*** [1,2,3](#)



## Do You Know How to Comply?

Most employers/healthcare purchasers typically rely on their third-party administrators (TPAs)/service providers for the administration and management of their employee benefit health plans.

Employers/healthcare purchasers typically do not know how to prepare or assess comparative analyses for NQTLs because of the complexity of the analysis and the fact that they typically don't have the data that is needed to conduct the analysis.

Nonetheless, **employers/healthcare purchasers with self-funded plans are plan sponsors and have significant liability.**



[View the Scenarios](#)



### Key Requirements and Audit Tools

There has generally been plan compliance with Financial Requirements (FRs) and Quantitative Treatment Limits (QTLs) as these limits are typically identified on the face of the benefit plan.

Employers/healthcare purchasers should use the guidance developed by Department of Labor (DOL)/Centers for Medicare and Medicaid Services (CMS) for FR and QTL compliance, found in the parity regulations and the DOL [2020 Self-Compliance Tool](#).



NQTLs are more complex to analyze. The NQTL Multi-Step Comparative Analysis Audit Tools provide detailed instructions for how to provide sufficient NQTL comparative analyses and also highlight common areas of non-compliance. **View details on the [next page](#).**

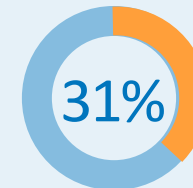
### **PRO TIP:**

*Require carriers, TPAs, and other partners to complete NQTLs **BEFORE** a complaint or regulatory demand.*



### NQTLs are the Most Complex to Analyze and Compare

NQTLs are generally used to *manage* and *administer* the benefits, such as utilization review, exclusions, network access, reimbursement rates, and more. Most of the enforcement issues, lawsuits, and complaints by patients and providers relate to lack of parity compliance for NQTLs. **The most used and problematic NQTLs include prior authorization; network access and adequacy; and reimbursement rates.**



The 2023 *Voice of the Purchaser* survey of 220 employers conducted by the National Alliance of Healthcare Purchaser Coalitions and the HR Policy Association found that only **31% of employers were satisfied** with their members' access to in-network behavioral health providers. This survey finding signals an ongoing lack of parity between M/S and MH/SUD access.

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## The Employer/Healthcare Purchaser Multi-Step Audit Tools for NQTL Compliance *(to be shared with vendor partners)*



The National Alliance and the Florida Alliance for Healthcare Value recommend that **employers/healthcare purchasers require their carriers/TPAs and/or Managed Behavioral Health Organization (MBHOs), if applicable, to complete the NQTL Multi-Step Comparative Analysis Audit Tools**

### NQTL Multi-Step Comparative Analysis Audit Tools

This includes an Introduction and [Multi-Step Comparative Analysis Audit Tools](#) for Utilization Management Protocols and Network Composition/Adequacy and In-Network (INN) Reimbursements, with Model Data Request Form (MDRF) quantitative data templates embedded. These are detailed instructions for how to provide sufficient NQTL comparative analyses. These instructions (developed by Henry Harbin, MD, and Beth Ann Middlebrook, JD), include specific quotes to the Mental Health Parity and Addiction Equity Act (MHPAEA) statutory and regulatory guidance, with examples for compliant responses.

The instructions also highlight common non-compliant responses identified in the 2023 Report to Congress and provide guidance on how to correct these types of deficiencies. The Multi-Step Comparative Analysis Audit Tools include both narrative multi-step comparative analyses, and the quantitative outcomes data templates for a complete analysis.

The MDRF quantitative data templates include detailed instructions and Excel templates for measuring quantitative outcomes data. The five (5) key quantitative measures that are embedded in the Multi-Step Audit Tools are ([view the MDRF stand-alone document here](#)):

1

**Out-of-Network Use**  
*(claims data)*

2

**In-Network Reimbursement Rates for Office Visits**  
*(claims data)*

3

**Network Provider Actual Participation**  
*(claims data and provider directory data)*

4

**Denial Rates**  
*(utilization review and claims data)*

5

**Utilization Review Frequency/Proportion**  
*(utilization review and claims data)*

Quantitative data measures have been required for several years. The [2023 Report to Congress](#) identified deficiencies in submitted quantitative outcomes data, including: “[Plans] **often failed to explain numerical inputs, underlying methodologies, or calculations behind summary data that were presented as evidence of a comparable application.**” The MDRF, developed as a public service by the Mental Health Treatment and Research Institute LLC (a tax-exempt subsidiary of the Bowman Family Foundation), is intended to provide employers/healthcare purchasers with consistent and reliable methods for measuring NQTL outcomes data.

## 4 Mental Health Parity Compliance Reporting Scenarios



### Mental and Behavioral Health Organization (MBHO) Carve-Out

- If **your TPA** carves out behavioral health benefits management to an MBHO, **your third-party administrator (TPA)** is responsible for providing comprehensive comparative analyses for both itself and the managed behavioral MBHO.
- If **you – the employer/purchaser** – carve out behavioral health benefits management to an MBHO, then **you** are responsible for ensuring that your TPA and MBHO collaborate to provide a comprehensive comparative analysis.

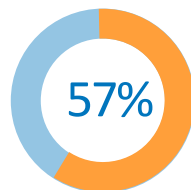
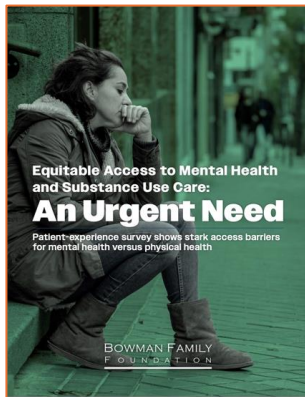
### Employee Assistance Program (EAP)<sup>3</sup>

- Exempt from MHPAEA regulations IF **all** the following four conditions are met:
  1. It does not provide “significant benefits in the nature of medical care”
  2. It cannot be coordinated with benefits under another group health plan
  3. Premiums or contributions are not required to participate
  4. There is no cost-sharing as part of the EAP

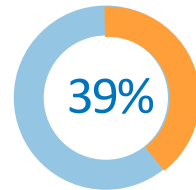
### Self-Insured vs. Fully Insured Purchasers/Employers

- Self-Insured employers/ healthcare purchasers are liable for the **accuracy and completeness** of Non-Quantitative Treatment Limits (NQTL), Financial Requirements (FR), and Quantitative Treatment Limits (QTL) comparative analyses. That is why it is essential for self-insured employers/healthcare purchasers to require their TPAs/service providers to provide the comparative analyses and outcomes data to them.
- For fully insured employers/healthcare purchasers, generally speaking, the carrier is primarily liable and responsible for the accuracy and completeness of the comparative analyses. **However, fully insured employers/healthcare purchasers may also have liability to the extent that they participate in directing the plan design and/or influence its administration.**

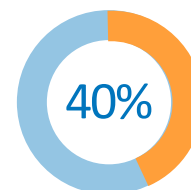
Supplemental Reading (Click on the image below to view the report)



of those seeking MH/SUD care were unable to access treatment at least once compared to just 20% for physical health care. Rates were even higher in adolescents (70%).



of people with employer-sponsored health insurance used out-of-network providers for MH/SUD outpatient care, compared to 15% for physical healthcare.



Nearly half of those finding in-network MH/SUD care had to contact four or more providers to secure an appointment.

### References/Resources

1. 2024 MHPAEA Report to Congress, January 2025  
<https://www.cms.gov/files/document/2024-mhpaea-report-congress.pdf>
2. MHPAEA Comparative Analysis Report to Congress, July 2023  
<https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-parity/report-to-congress-2023-mhpaea-comparative-analysis>
3. Requirements Related to the Mental Health Parity and Addiction Equity Act  
<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/final-rules-under-the-mental-health-parity-and-addiction-equity-act-mhpaea>
4. McGriff Compliance Q & A  
<https://www.mcgriff.com/siteassets/insights-assets/pdfs/compliance-qa-excepted-benefit-status2.pdf>