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# Mental Health Parity and Addiction Equity Act (MHPAEA) Updates: What Plan Sponsors and Health Insurance Issuers Should Know

On September 9, 2024, the U.S. Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments) released new final rules updating the Mental Health Parity and Addiction Equity Act (MHPAEA). The final rules prohibit health insurance policies and group health plans from placing greater restrictions on access to mental health and substance use disorder (MH/SUD) benefits as compared to medical/surgical (M/S) benefits.

This article summarizes changes to the MHPAEA as a result of the final rules.

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# Mental Health Parity and Addiction Equity Act (MHPAEA) Updates: What Plan Sponsors and Health Insurance Issuers Should Know

## Use of NQTLs and Comparative Analysis Requirements Heightened

Plans must ensure that nonquantitative treatment limitations (NQTLs) applicable to MH/SUD benefits in any one of the pre-existing six classifications of benefits (i.e., prior authorization requirements; standards related to network composition; methodologies to determine out-of-network reimbursement rates; emergency care; prescription drugs) are no more restrictive than the predominant NQTLs applied to substantially all M/S benefits in the same classification. Pursuant to this requirement, plans and issuers must satisfy two sets of requirements: (1) design and application requirements; and (2) relevant data evaluation requirements.

NQTLs that have no discriminatory intent can still violate the MHPAEA if a review, as outlined below, reveals and confirms that the coverage for MH/SUD care is more restrictive than M/S care that is in the same classification.

### *Design and Application Requirements*

First, plans and issuers must examine the processes, strategies, evidentiary standards, and other factors used in designing and applying an NQTL to MH/SUD benefits in the classification to ensure they are comparable to, and no more restrictive than, those used in designing and applying the limitation with respect to M/S benefits in the same classification. The final rules prohibit the use of discriminatory factors and evidentiary standards when designing an NQTL. A factor or evidentiary standard is discriminatory if the information, evidence, sources, or standards on which it is based are biased or not objective in a manner that discriminates against MH/SUD benefits as compared to M/S benefits.

### *Relevant Data Evaluation Requirements*

Second, plans and issuers are required to collect and evaluate relevant data in a manner reasonably designed to assess the impact of all NQTLs on access to MH/SUD benefits as compared to M/S benefits to determine if there is a material difference in access. If the evaluated data indicates that the NQTL contributes to material differences in access to MH/SUD benefits as compared to M/S benefits, the Departments consider that a strong indicator of a MHPAEA violation and the plan or issuer must take reasonable action to address the material differences and ensure compliance.

- ***Relevant data:*** Examples of relevant data for all NQTLs include, but are not limited to, the number and percentage of claims denials and any other data relevant to the NQTL as required by State law or private accreditation standards. The final rules also include additional examples of relevant data for network composition NQTLs.
- ***Material differences in access:*** The final rules provide a material difference in access exists when relevant data suggests that the NQTL is likely to have a negative impact on access to mental health or substance use disorder benefits as compared to medical/surgical benefits. Differences in access are not considered material when the differences are attributable to generally recognized independent medical or clinical standards (i.e., the International Classification of Diseases and Diagnostic and Statistic Manual of Mental Disorders qualify as standards of current medical practice) or carefully circumscribed measures reasonably and appropriately designed to detect, prevent, or prove fraud and abuse.
- ***Reasonable action:*** Examples of reasonable action in the final rules include increasing spending and raising reimbursement rates for MH/SUD services, investment in programs to help members identify MH/SUD care needs and connect them to appropriate services early on, and MH/SUD screening tools. However, the Departments place the onus on plans and issuers to assess the nature of the material difference in access to determine what reasonable action is necessary to close that access gap.

### *NQTL Comparative Analysis*

In addition, plans and issuers that impose NQTLs on MH/SUD benefits must now perform and document a comparative analysis of the design and application of each applicable NQTL the plan imposes. The comparative analysis must contain the following six elements:\

1. description of the NQTL, including identification of benefits subject to the NQTL;
2. identification and definition of the factors and evidentiary standards used to design or apply the NQTL;
3. description of how factors are used in the design or application of the NQTL;
4. demonstration of comparability and stringency, as written;
5. demonstration of comparability and stringency, in operation, including the required data, evaluation of that data, explanation of any material differences in access, and description of reasonable actions taken to address such differences; and
6. findings and conclusions.

Plans and issuers must provide the Department of Labor (DOL) with a copy of their NQTL comparative analysis within ***10 business days*** of an initial request. There is a review process that follows if the DOL deems the comparative analysis insufficient. The Departments note in the final rules, "[w]hile these final rules specify content elements that comparative analyses must contain, the Departments have expected, and will continue to expect, that plans and issuers perform and document their NQTL comparative analyses without waiting for a request from the Departments or an applicable State authority." Given the short turnaround time and stated expectation, it is important that plans and issuers conduct these analyses in real time to ensure compliance with the MHPAEA and before a request from the DOL.

The final rules provide that plans and issuers must also provide the NQTL comparative analysis to the "applicable State authority." The NYS Department of Financial Services and the other related agencies that oversee mental health parity in NYS—Office of Mental Health, Department of Health, and the NYS Office of Addiction Services and Supports—have not issued updated parity guidance since the release of the final rules as of the date of this publication.

## Meaningful Benefits

The final rules require that plans and issuers which provide coverage for a MH/SUD condition in ***any*** benefits classification must now provide meaningful benefits coverage for that condition or disorder in every classification in which meaningful M/S benefits are provided. "Meaningful benefits" is determined in comparison to the benefits provided for M/S conditions and procedures in the specific classification requiring, at a minimum, coverage of benefits for that condition or disorder in ***each*** classification in which the plan provides benefits for one or more M/S condition or procedure. Meaningful benefits requires that the plan must provide at least one core treatment for each covered condition or procedure. The final rules describe a core treatment as a standard treatment or course of treatment, therapy, service, or intervention indicated by generally recognized independent standards of current medical practice.

## Applicability Dates

The new rules come into effect for plan years beginning on or after January 1, 2025, with a few important exceptions. The rules relating to the prohibition on discriminatory factors and evidentiary standards, relevant data evaluation requirements, heightened comparative analyses, and meaningful benefits standard are effective for plan years beginning on or after January 1, 2026. The rules also go into effect on January 1, 2026 for health insurance issuers offering individual health insurance coverage.

## Self-Funded Plans

The final rules now confirm that self-funded, non-federal governmental plans may no longer opt out of the MHPAEA and its requirements. This change was made as part of the Consolidated Appropriations Act (2023), which provided that as of December 29, 2022, no new MHPAEA opt-out elections may be made by self-funded, non-federal governmental health plans, and elections that expired on or after June 27, 2023 may not be renewed. As a result of the sunset of this opt-out provision, self-funded plans should review their benefit packages prior to the January 1, 2026 deadline to ensure compliance with the updated requirements outlined above.

## Current Pending Challenge to the Final Rules

On January 17, 2025, the ERISA Industry Committee (ERIC) filed a lawsuit in the U.S. District Court for the District of Columbia challenging the Departments' MHPAEA final rule, arguing that the agencies exceeded statutory authority in issuing the final rule and the final rule is arbitrary and capricious and violates due process. Two key components of ERIC's challenge to the final rule revolve around (1) the "meaningful benefits" requirement; and (2) the "material differences in access" standard discussed in this article. ERIC maintains that the MHPAEA final rules will actually decrease access to MH/SUD benefits, due to the burdensome costs arising from implementation of the requirements of the final rules. ERIC's challenge to the final rules comes in the wake of the Supreme Court's June 2024 decision in *Loper Bright Enterprises v. Raimondo*, which overruled the longstanding "Chevron deference" standard—requiring courts to defer to an administrative agency's reasonable interpretation of an ambiguity in a statute that the agency enforces. This pending litigation challenging the scope and breadth of the final rules will be a test on the degree of weight courts give to agency interpretation of laws—here the Departments' interpretation of the Mental Health Parity and Addiction Equity Act—in a post-*Loper* world where the *Chevron* deference is no longer.

A copy of the complaint and ERIC's statement on their lawsuit can be found here.

If you have any questions regarding the impact of the MHPAEA changes, please contact Jennie Shufelt or Elizabeth O'Reilly.

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## About Meliora Law

Meliora Law is a women-owned boutique firm located in New York's Capital District. Our attorneys are experienced in corporate law, transactions, tax, health care, trusts and estates, and not-for-profit law, and are committed to providing exceptional legal services to clients through practical and innovative solutions.

Meliora Law was founded as a response to the changing legal environment and the needs and desires of our clients. Our goal is to build lasting relationships with our clients and deliver services that are reflective of and responsive to client needs and practicalities. Intentionally nimble, we are constantly innovating new ways to better serve clients, including streamlined mechanisms for client communication and project management, the development of alternative fee arrangements and flexible payment models, and a growing array of flat fee packages for legal services.

## About the Authors

Jennie Shufelt is a Founding Member of Meliora Law and a member of the firm's Health Care practice group. Jennie counsels health plans and providers on a range of regulatory, compliance and audit matters, as well as transactional and general corporate matters.

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