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# REQUIRED COMPARATIVE ANALYSES OF NON-QUANTITATIVE TREATMENT LIMITATIONS ON MENTAL HEALTH/SUBSTANCE USE DISORDER BENEFITS

The Mental Health Parity and Addiction Act of 2008 (MHPA) has historically required that group health plans not impose non-quantitative treatment limits (NQTLs) on mental health and substance abuse disorder (MH/SUD) benefits that are more stringent than it applies to other medical and surgical benefits. Enacted in December 2020, the Consolidated Appropriations Act, 2021 (CAA) amended the Mental Health Parity and Addiction Act (MHPA) to require group health plans to perform and document comparative analyses of their design and application of NQTLs on MH/SUD benefits.

The Department of Labor, Department of Health and Human Services, and the Treasury Department (the Departments) were authorized under the CAA to request analyses documentation from group health plan sponsors beginning February 10, 2021. Therefore, group health plan sponsors should ensure that they are in a position to properly respond to such a request if made by the Departments.

This client advisory briefly describes the existing MHPA and new CAA requirements:

## Existing MHPA Requirements

The MHPA generally requires group health plans to provide the same level of benefits for MH/SUD benefits as they provide for other medical and surgical benefits. In particular, the financial requirements and treatment limitations on MH/SUD benefits cannot be more restrictive than the requirements and limitations that apply to substantially all medical and surgical benefits in the same classification. The MHPA defines six classifications: (1) inpatient, in-network; (2) inpatient, out-of-network; (3) outpatient, in-network, (4) outpatient,

out-of-network; (5) emergency care; and (6) prescription drugs. Additionally, a group health plan may not impose a NQTL on MH/SUD benefits in any classification unless, under the terms of the group health plan and in plan operation, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefits in that classification are comparable to, and are applied no more stringently than, the factors used in applying the limitations to medical and surgical benefits in the same classification.

### New Requirements Under the CAA

The CAA amended the MHPA to expressly require that group health plan sponsors perform and document the analyses required by the MHPA. The comparative analysis of NQTLs required by the CAA must include the following information:

- The specific plan or coverage terms or other relevant terms regarding the NQTLs and a description of all MH/SUD and medical/surgical benefits to which each such term applies in each respective benefits classification;
- The factors used to determine that the NQTLs will apply to MH/SUD benefits and medical or surgical benefits;
- The evidentiary standards used for the factors identified, when applicable, provided that every factor shall be defined, and any other source or evidence relied upon to design and apply the NQTLs to MH/SUD benefits and medical or surgical benefits;
- The comparative analyses demonstrating that the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to MH/SUD benefits, as written and in operation, are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to medical/surgical benefits in the benefits classification; and
- The specific findings and conclusions reached by the plan or issuer, including any results of the analyses that indicate that the plan or coverage is or is not in compliance with the MHPAEA requirements.

As previously noted, group health plans must make their comparative analyses available to the Departments upon request. The CAA instructs the Departments to request the comparative analyses from group health plans that involve potential MHPA violations or complaints of noncompliance with the MHPA that concern NQTLs, and any other instance in which the Departments determine appropriate. The DOL has indicated that, at least initially, it expects to focus on the following NQTLs in its enforcement efforts: (1) Prior authorization requirements for inpatient services; (2) Concurrent review for inpatient and outpatient services; (3) Standards for provider admission to participate in a network, including reimbursement rates; and (4) Out-of-network reimbursement rates (plan methods for determining usual, customary, and reasonable charges).

Group health plan sponsors should ensure that their analyses are completed and properly documented to allow them to respond to a request by the Departments in a timely manner. To assist group health plan sponsors in determining whether their plans satisfy the MHPA obligations, the DOL has made available a Self-Compliance Tool through its website. (https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf). Additionally, the DOL has provided FAQs that go into great detail on what a plan sponsor should provide to show compliance. These FAQs are a helpful tool for plan sponsors in performing and documenting the analyses required by the MHPA and CAA (https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-45.pdf).

**If you have any questions or would like additional information, please contact a member of our Employee Benefits & Executive Compensation Team below.**

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