



October 2, 2023

The Honorable Lisa Gomez
Assistant Secretary
U.S. Department of Labor
500 C St. NW
Washington, D.C. 20001

Submitted electronically to: <https://www.regulations.gov>

Re: Requirements Related to the Mental Health Parity and Addiction Equity Act

Dear Assistant Secretary Gomez:

AARP, which advocates for the more than 100 million Americans age 50 and older, appreciates the opportunity to comment on the proposed Requirements Related to the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).

The MHPAEA's fundamental purpose is to ensure that individuals in group health plans or with group or individual health insurance coverage who seek treatment for covered mental health conditions or substance abuse disorder (SUD) do not face greater barriers to accessing benefits for such conditions than they would face when seeking coverage for the treatment of a medical condition or for a surgical procedure.

With rising rates of mental health and SUD conditions, it is imperative that patients and beneficiaries are able to access treatment and that plans and issuers cover treatment on par with medical and surgical treatments. Enforcement of MHPAEA has been a challenging process, and AARP is encouraged to see the Departments of Labor, Treasury, and Health and Human Services issuing these regulations to assist plans and issuers in improving accessibility and availability of mental health and SUD care.

NQTL Comparative Analysis Requirements

Under the 2021 Consolidated Appropriations Act (CAA), group health plans and health insurance issuers offering insurance coverage that includes mental health, SUD benefits, medical/surgical benefits, and imposes non-quantitative treatment limitations (NQTLs) on mental health and SUD benefits, must document and perform annual comparative analyses on the design and application of NQTLs. These comparative analyses allow the Departments of Labor and HHS and the IRS to examine the processes, standards, evidentiary standards, and other factors used to apply NQTLs to mental health/SUD coverage to ensure these NQTLs are applied no more restrictively to mental health and SUD benefits compared to medical/surgical benefits.

Based on the evidence noted in this proposed rule, these NQTL comparative analyses are often not adequately performed or documented. The 2023 Report to Congress on MHPAEA comparative analyses implementation revealed that nearly all the comparative analyses submitted by plans and issuers to demonstrate efforts to ensure parity between mental health and SUD benefits and medical/surgical benefits contained insufficient information. AARP supports establishing and clarifying the standard requirements for comparative analyses, which will strengthen oversight on NQTLs and improve transparency for patients and beneficiaries regarding their rights to access mental health and SUD benefits.

AARP also appreciates efforts by the Departments to address NQTLs in the form of inadequate provider networks, which is often cited as a barrier to accessing treatment. Under these new rules, network composition, provider reimbursement, credentialing standards, and provider directories must not result in stricter NQTLs for mental health and SUD treatment coverage. We support steps to prevent plans and issuers from failing to provide an adequate and accurate provider network for patients seeking care. The wider use and expansion of telehealth services can aid plans and issuers in supplementing their network providers in areas where in-person shortages persist, so long as issuers and plans treat telehealth benefits the same way they treat those benefits when provided in-person to ensure compliance with MHPAEA.

Data Collection and Evaluation

An essential aspect of ensuring compliance with MHPAEA is data collection and outcome evaluation to determine if NQTLs applied to mental health and SUD benefits are at the same level as medical/surgical benefits, both in writing and in operation. The proposed regulations require data to be collected on out-of-network utilization, percentage of in-network providers actively submitting claims, time and distance to provider standards, and reimbursement rates.

AARP supports this requirement in the proposed regulations. Plans and issuers will be unable to effectively evaluate and correct any differences in NQTL application unless timely and relative data is collected and studied. This type of data collection requires plans and issuers to complete comprehensive and thorough comparative analyses of NQTLs. Data collection pertaining to provider networks will additionally improve network composition and reveal material differences in access to treatment for patients and beneficiaries.

Thank you for the opportunity to comment on the proposed rule. If you have any questions about our comments or need more information, please feel free to contact me or Emily Hetherington of our Government Affairs team at ehetherington@aarp.org.

Sincerely,



David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs