

Publications

2022 MHPAEA Report to Congress

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Since its enactment in 2008, the Mental Health Parity and Addiction Equity Act (MHPAEA) has prevented group health plans from imposing more restrictive benefit limitations on mental health or substance use disorder benefits compared to limitations on medical or surgical benefits. As previously reported in a Vorys client alert ([available here](#)), the Consolidated Appropriations Act of 2021 (CAA) required plans to perform and document comparative analyses of their non-quantitative treatment limitations (NQTLs) by February 10, 2021. The CAA also gave the Secretaries of the Departments of Treasury, Labor, and Health and Human Services new enforcement tools requiring plans to provide these analyses upon request to determine whether those NQTLs comply with MHPAEA.

Under ERISA, the Department of Labor (DOL) must provide biannual reports to Congress on MHPAEA. Under the CAA, the Secretaries are now required to provide an annual report to Congress on the NQTL comparative analyses. The report submitted on January 25, 2022 (available here: [2022 MHPAEA Report to Congress \(dol.gov\)](#)) is intended to satisfy both these requirements. Most importantly, the 2022 Report made clear the Secretaries' continued commitment to MHPAEA enforcement and the significant resources dedicated to supporting these efforts. It also details various efforts to interpret, implement, and enforce the amendments to MHPAEA made by the CAA.

The 2022 Report provides insight into key interpretations of MHPAEA's parity requirements and related enforcement activities. From February 10, 2021, to October 31, 2021, the Employee Benefits Security Administration (EBSA) commenced 86 investigations covering 156 plans and issuers, while the Centers for Medicare & Medicaid Services (CMS) issued 15 letters to issuers in Missouri, Texas, and Wyoming where CMS has direct enforcement authority over MHPAEA.

Despite the CAA's deadline, many plans stated they were unprepared to respond to EBSA's requests and had not started preparing their comparative analyses. Most health plans requested an extension. Of the responses initially received, the 2022 Report stated that all were insufficient as they were "too broad and lacked meaningful comparison

or analysis.”

Despite the insufficiency within the responses, EBSA was able to make initial determinations of noncompliance and shed light on the impermissible use of NQTLs to restrict mental health/substance use disorder (MH/SUD) benefits. EBSA has issued 80 insufficiency letters addressing over 170 NQTLs, identifying specific deficiencies in comparative analyses and requesting additional information to remediate those deficiencies. The 2022 Report also describes how the CAA provisions have resulted in participants and beneficiaries gaining increased access to MH/SUD benefits, such as to ABA therapy to treat autism spectrum disorder, the use of Medication-Assisted Treatment for Opioid Use Disorder, and nutritional counseling for MH/SUD conditions.

The results described in the 2022 Report confirm that many plan sponsors cannot prove their insurers and TPAs are operating plans in compliance with MHPAEA's parity requirements and there are common areas of non-compliance.

If you want additional information about this topic, including information on performing and documenting your plan's comparative analyses of NQTLs, please contact your Vorys attorney.