

# Publications

## Document Proof of Mental Health Parity Compliance by February 10, 2021

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### CLIENT ALERT | 2.5.2021

As briefly mentioned in a recent [Vorys' client alert](#), the Consolidated Appropriations Act, 2021 (CAA), signed December 27, 2020, requires that a group health plan and issuers that cover mental health/substance abuse disorder (MH/SUD) “perform and document” a comparative analysis of any non-quantitative treatment limitations that apply to the plan.

### Background

The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) generally requires that group health plans and health insurance issuers that provide MH/SUD benefits maintain parity between medical/surgical and MH/SUD benefits. This is required for financial/quantitative treatment limitations such as copays, deductibles and visit limits and for non-quantitative treatment limitations (NQTs). NQTs are limitations or restrictions on benefits that are not numerically based. Examples of NQTs include medical management standards based on medical necessity or medical appropriateness; formulary design for prescription drugs; step-therapy and prior authorization requirements; network tier designs and reimbursement rates.

### New Requirement Imposed by CAA

The CAA amends ERISA to require that group health plans “perform and document comparative analysis of the design and application of NQTs.” Beginning February 10, 2021, group health plans are required to disclose the new comparative analysis upon request from the Secretary of Labor or the Secretary of Health and Human Services (the “Regulators”).

### What Should Plan Sponsors Be Doing Now?

Group health plans should work with their third party administrator or insurer to formally analyze and document compliance with the MHPAEA requirements related to NQTs. The documented analysis should:

- include specific plan terms or other relevant terms regarding the NQTLs and a description of all mental health (MH) and/or substance use disorder (SUD) benefits and medical or surgical benefits to which each such term applies in each respective benefits classification;
- include factors used to determine that the NQTLs will apply to MH or SUD benefits and medical or surgical benefits and the evidentiary standards used for the factors;
- include a demonstration that the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to MH or 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 or surgical benefits in the benefits classification ;
- be retained by the group health plan; and
- be available to Regulators.

Under the CAA, Regulators are required to request a copy of the analysis for group health plans that involve potential violations or complaints regarding non-compliance and any other instances where deemed appropriate by the Regulators. In addition, the Regulators are required to request no fewer than 20 of these comparative analyses per year.

Please contact your Vorys attorney if you have any questions about this requirement.