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Insights

MENTAL HEALTH PARITY FINAL RULE IMPOSES YEAR-END ACTION ITEMS ON GROUP HEALTH PLAN SPONSORS

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On September 9th, the Department of Health and Human Services, the Department of Labor, and the Department of the Treasury (collectively, the "Departments") issued the much anticipated final rule under the Mental Health Parity and Addiction Equity Act (the "MHPAEA"). The MHPAEA prohibits health plans and insurers from imposing barriers on access to mental health or substance use disorder benefits ("MH/SUD benefits") that do not apply to medical and surgical benefits ("M/S benefits"). The Consolidated Appropriations Act, 2021 amended the MHPAEA to require plans that impose nonquantitative treatment limitations ("NQTLs") on MH/SUD benefits to perform and document a comparative analysis beginning in 2021. The final rule provides much-needed guidance for plan sponsors and insurers regarding implementation of these requirements.

In many ways, the final rule is similar to the proposed rule with some key changes. This blog post is not intended to provide a comprehensive review of the differences between the proposed and final rule. At a very high level, the final rule does the following:

- Updates and revises certain definitions pertaining to MH/SUD benefits.
- Establishes a "meaningful benefits standard" under which a plan providing MH/SUD benefits for a specific disorder must offer meaningful benefits for that condition in every classification in which M/S benefits are provided.
- Requires plans to conduct comparative analysis of NQTLs to ensure MHPAEA compliance.
- Requires collection and evaluation of data pertaining to MH/SUD benefits.
- Increases scrutiny of the adequacy of the network for MH/SUD benefits.
- Requires certification by plan fiduciaries that they are using prudent processes to follow the requirements of the MHPAEA.

This blog post will focus on action items arising from requirements under the final rule that become effective for plan years starting on or after January 1, 2025, as plan sponsors are on a tight timeline

to make sure their group health plans comply. Additional requirements will go into effect for plan years starting on or after January 1, 2026.

REVISED DEFINITIONS

The final rule revises the definitions of "Medical/Surgical Benefits", "Mental Health Benefits" and "Substance Abuse Disorder Benefits." In order to comply with the MHPAEA, the plan definitions for these terms must be consistent with generally recognized independent standards of current medical practice. The final rule clarifies that, for this purpose, the definitions must follow the most current definition of the International Classification of Diseases (published by the World Health Organization) and/or the Diagnostic and Statistical Manual of Mental Disorders (published by the American Psychiatric Association). In addition, the final rule eliminates references to state guidelines in those definitions. Finally, the final rule also provides definitions for certain other terms. Plan sponsors should ensure that their plan incorporates these definitions in plan documents and in operation prior to year-end.

FIDUCIARY CERTIFICATION

The proposed rule would have required one or more named fiduciaries to certify that the comparative analysis of NQTLs complied with all applicable content requirements, which would have required specialized technical expertise that most plan fiduciaries do not have. In response to the concerns of plan fiduciaries, that requirement was dropped from the final rule. Instead, the final rule requires that plan fiduciaries certify: (1) that they have engaged in a prudent process to select one or more qualified service providers to perform and document the comparative analysis, and (2) that they have satisfied their duty to monitor the service providers. This requirement under the final rule is consistent with the general fiduciary duty of prudence in hiring service providers under the Employee Retirement Income Security Act of 1974 ("ERISA") and most plan fiduciaries should already be familiar with how to implement and document prudence procedures. Some additional guidance on this is provided in the preamble to the final rule which indicates that it is expected that plan fiduciaries making this certification will, at a minimum: (1) review the comparative analysis, (2) discuss any questions with the service provider in order to understand the findings and conclusions, and (3) ensure that the service provider provides assurance that, to the best of its ability, the NQTL and associated comparative analysis complies with the requirements of MHPAEA and its implementing regulations. To the extent that group health plan sponsors have not yet engaged a service provider to perform the required comparative analysis they should develop, implement, and document a prudent process to do so at this time. If a service provider has already been engaged, fiduciaries should review their records to confirm that their prudent processes are properly documented. In addition, they should obtain assurances that any existing comparative analysis will be updated, as needed, for compliance with the final rule. We also recommend reviewing existing service agreements to determine if any amendments are needed in order to require appropriate assurances from the service provider regarding compliance of the comparative analysis.

COMPARATIVE ANALYSIS REQUIREMENTS

Under the final rule, the comparative analysis of any NQTL for any MH/SUD benefit covered by the plan must include six minimum content elements that are generally consistent with those required under the proposed rule:

- A description of the NQTL,
- The identification and definition of the factors used to design or apply the NQTL,
- A description of how factors are used to design or apply the NQTL,
- A demonstration of comparability and stringency, as written,
- A demonstration of comparability and stringency, in operation, and
- Findings and conclusions.

The final rule requires that any comparative analysis be made available to the Departments and plan participants upon request within certain specified timeframes. The timelines for responding to any such requirements are tight so group health plans should not wait for a request from the Departments or a participant before preparing their NQTL analyses. Plans must respond to participant requests within 30 days, and they must respond to requests from the Departments within 10 business days. If further information is requested by the Departments, a deadline of 10 business days will apply. The final rule also provides that plans will have 45 days to address an initial determination of noncompliance, and 7 business days to notify all plan participants if there is a final determination of noncompliance by the Departments.

If a group health plan has not already initiated this process, it should move forward at this time. MHPAEA audits have already begun and will only increase now that the final rule has been issued. According to the final rule, cessation of an NQTL may be required, depending on the facts and circumstances, if a final determination is made that there is a violation of the comparative analysis requirement.

Plan sponsors should also be aware that any material change to the benefits under a group health plan should trigger an updated analysis which should be completed as soon as possible in order to ensure that any future requests can be responded to in a timely manner.

CONCLUSION

This blog post focuses on requirements under the MHPAEA final rule that must be implemented for plan years starting on or after January 1, 2025 because that deadline is fast approaching. As noted above, the final rule includes additional requirements that will kick in for plan years on or after January 1, 2026. In addition to implementing the more immediate requirements discussed in this

blog post as soon as possible, group health plan sponsors should also begin familiarizing themselves with the other requirements and begin taking steps to comply. Please contact our team with any questions.

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