

New Federal Mental Health Parity Provisions Create Opportunities for States to Promote Uniformity and Improve Care

Americans deserve affordable choices for coverage so they can get the care they need, when they need it. Health insurance providers are committed to covering mental health and substance use disorder benefits on par with medical and surgical care, improving behavioral health care quality and outcomes, and eliminating stigma.

- Section 203 of the Consolidated Appropriations Act of 2021 builds on federal guidance and individual state reporting requirements to establish a new uniform, national parity reporting requirement.
- States can leverage the new law to promote efficiency and uniformity in lieu of costly and duplicative or inconsistent reporting requirements.
- The new law enables state regulators to focus their attention on the broader, systemic challenges facing behavioral health care, such as the shortage of behavioral health care providers and the need for behavioral health care that is integrated and measurement-based.

What Are the New Federal Provisions?

The Consolidated Appropriations Act of 2021 (also known as the No Surprises Act), enacted on December 27, 2020, includes a section entitled Strengthening Parity in Mental Health and Substance Use Disorder Benefits (section 203). This section establishes new reporting and oversight requirements related to mental health and substance use disorder parity compliance. The new requirements are designed to support compliance with existing rules governing non-quantitative treatment limitations (NQTL) under the Mental Health Parity and Addiction Equity Act (MHPAEA), which was passed in 2010.

The new requirements include:

NQTL Comparative Analyses Reporting Requirement

The new law reinforces key elements to ensure parity between physical health care and behavioral health care. It requires a stepwise approach that was previously recommended in voluntary, sub-regulatory guidance (see DOL's [2020 MHPAEA Self Compliance Tool](#)).

The new law requires health insurance providers to conduct and document their analyses comparing the use of NQTLs for mental health and substance use disorder (MH/SUD) benefits and medical and surgical benefits.

Beginning February 10, 2021, health insurance providers must submit to federal regulators (HHS/Labor/Treasury) or the applicable state authority, upon request:

- The specific NQTLs and the MH/SUD and medical/surgical benefits to which they apply.
- The factors used to determine which benefits are subject to the NQTLs.
- The evidentiary standards used to evaluate the factors and any other sources or evidence relied upon to design and apply the NQTLs.
- The comparative analysis demonstrating that the processes, strategies, evidentiary standards, and other factors used, as written and in operation, are comparable and no more stringent across MH/SUD and medical/surgical benefits.
- The specific findings and conclusions by the plan/issuer on whether or not it is in compliance.

Federal Enforcement Through Audits and Corrective Action

The new law strengthens existing oversight activities, requires that any necessary corrective action be taken very quickly, and requires that continued non-compliance be disclosed to enrollees.

The new law requires federal regulators to request comparative analyses of at least 20 health insurance providers per year that involve potential violations of mental health parity, complaints regarding non-compliance with mental health parity, and any other instances in which the regulators determine appropriate.

Federal regulators may request additional information to assess compliance. If a regulator finds that a health insurance provider is out of compliance with the mental health parity law, the regulator must specify corrective actions for the plan to implement within 45 days. If the plan is still not in compliance after those 45 days, the plan is required to notify all individuals enrolled in noncompliant plans within 7 days.

Report to Congress with Findings Shared with States

The new law requires federal regulators to share findings of compliance and non-compliance with states and can help promote consistency in MHPAEA interpretation and enforcement.

The new law requires federal regulators to publish an annual report to Congress that includes a summary of the comparative analyses reviewed, conclusions regarding compliance, and any corrective actions taken. The report must also include the identity of plans that remained non-compliant after the 45-day corrective action period. The findings must be shared with applicable states in which the plans are located or licensed.

The first report is to be published in December 2021, and no later than October of each year that follows.

New Regulations and Updated Guidance

Issuance of federal regulations and updated guidance are opportunities for all stakeholders, including state regulators, to provide input into the implementation of the parity compliance reporting requirements, such as identification of applicable NQTLs, level of reporting detail, and standardization of reporting.

The new law requires federal regulations by June 2022. Federal regulators are also required to update compliance program guidance every 2 years. The guidance must include real world, de-identified examples of compliance and non-compliance and clarify process and timelines for enrollees to file parity compliance complaints.

*Health insurance providers are working hard to ensure that behavioral health treatment is covered at levels that are on par with physical health treatment. **By working together to implement effective solutions to coordinate and integrate behavioral health with medical and physical health care, we can improve both mental and physical health for every American.***