



2025 MHPAEA Report to Congress Offers Reminders to Employer Plan Sponsors

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The Department of Labor (DOL) and the Centers for Medicaid and Medicare Services (CMS) recently released the 2025 Mental Health Parity and Addiction Equity Act (MHPAEA) Report to Congress (2025 Report). The 2025 Report breaks down the enforcement work conducted by the DOL enforcement agency, the Employee Benefits Security Administration (EBSA) and CMS, along with the most common compliance failures, and practical considerations employers should take now.

■ Background

MHPAEA requires group health plans and insurers to ensure that financial requirements (e.g., copays, coinsurance) and treatment limitations (e.g., visit limits, prior authorization) applied to mental health and substance use disorder (MH/SUD) benefits are no more restrictive than those applied to medical/surgical (M/S) benefits.

The Consolidated Appropriations Act of 2021 (CAA) strengthened MHPAEA by requiring plans to:

- Perform and document NQTL comparative analyses
- Make those analyses available to federal or state regulators upon request
- Demonstrate compliance with parity requirements in both design and application

MHPAEA applies to employers with 50 more employees that offer MH/SUD benefits and insurance carriers. Employers have a fiduciary responsibility to ensure their vendors (e.g., MH/SUD carveouts vendors, TPAs, etc.) comply with these standards. For fully insured plans, the carrier is typically responsible for the required NQTL comparative analysis. Self-insured and level-funded plans are responsible for ensuring compliance with MHPAEA and comparative analysis requirements.

The 2025 Report covers enforcement activity from August 1, 2023 through July 31, 2025 and reflects the agencies' ongoing efforts despite a temporary non enforcement policy related to the 2024 final rule.

■ EBSA and CMS Enforcement Highlights

The majority of EBSA's enforcement activity focused on participant access to opioid use disorder treatment, autism treatment (ABA therapy), and nutritional counseling for eating disorders.

Over the 2-year period, EBSA and CMS each issued initial requests for comparative analyses to group health plans and carriers. Ultimately, fifteen final determinations of noncompliance were issued due to inadequate comparative analyses. Final determinations of noncompliance were not issued if good faith effort was shown to correct violations.

CMS regulates non-ERISA group health plans and insurers. CMS issued 42 requests for comparative analyses and ultimately issued 10 final determinations of noncompliance.

■ Plans Are Still Falling Short

The 2025 Report confirms that plans continue to struggle with producing complete, statutorily compliant NQTL comparative analyses. Most common deficiencies include failures to define factors used to apply NQTLs. Plans often list factors (e.g., "clinical efficacy," "provider discretion") without explaining what they mean, particularly when comparative analyses were drafted by third parties like consultants that were not familiar with plan operations. Both agencies found that plans could not demonstrate how decisions were actually made.

The Report found that plans often cited standards without providing the underlying data or documentation, and non-comparable application between MH/SUD and M/S benefits. For example:

- Prior authorization applied more stringently to MH/SUD
- Network admission standards that disadvantage MH/SUD providers
- Out of network reimbursement methodologies that differ without justification

Employer plans using separate vendors for MH/SUD and M/S benefits frequently submitted incomplete or inconsistent analyses, because neither vendor had full knowledge into the other's processes. Employers also incorrectly assumed that third parties were responsible for compliance, and thus, plan sponsors incorrectly believed their TPA or carrier would prepare the comparative analysis. Agencies emphasize in the report that the plan – not the vendor – is legally responsible.

■ Corrective Measures Required by Agencies

When violations were found, agencies required plans and insurers to take corrective actions such as:

- Removing impermissible exclusions (e.g., ABA therapy, nutritional counseling, methadone treatment)
- Eliminating or revising prior authorization and concurrent review requirements
- Updating network adequacy monitoring and reimbursement methodologies
- Re adjudicating previously denied claims
- Revising plan documents and template language
- Providing participant notices of violations, as required by statute

In several cases, plans were required to hire external consultants to overhaul their comparative analyses from the ground up.

■ Practical Considerations for Employers

Employers should not rely solely on the carrier or TPA. Even if a vendor administers the benefit, the employer is the fiduciary and is responsible for compliance. Employers must understand how NQTLs are designed and applied. This includes prior authorization, concurrent review, network standards, reimbursement methodologies, and exclusions since agencies expect detailed, evidence based explanations. If MH/SUD and M/S benefits are administered by different vendors, employers must ensure the analysis integrates both sides. Finally, plans that respond promptly and proactively often avoid final determinations of noncompliance.

■ Employer Action

- Employers should obtain and review NQTL comparative analyses to ensure analyses cover all required elements under the CAA.
- Confirm vendor responsibilities in writing and consider including responsibilities in vendor agreements such as who prepares the comparative analysis, who provides underlying data, and who updates the analysis when plan terms change.
- Audit NQTLs for parity risk focusing on prior authorization and concurrent review, network admission standards, out of network reimbursement and benefit exclusions (e.g., ABA, nutritional counseling, etc.)
- Review carve out arrangements to ensure MH/SUD and M/S vendors are sharing data and methodologies.
- Update plan documents and internal procedures to remove outdated exclusions and ensure NQTLs are applied consistently.