



November 8, 2024

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**RE: Mental Health Parity and Addiction Equity Act (“MHPAEA”) Final Rule - Good Faith Compliance Request & Updated Self-Compliance Tool for Public Comment**

Dear Assistant Secretary Gomez, Deputy Director Wu, Director Rivers, and Ms. Morrison:

The Association for Behavioral Health and Wellness (ABHW) and the Alliance of Community Health Plans (ACHP) are grateful to the U.S. Department of Health and Human Services (HHS), the U.S. Department of Labor (DOL), and the U.S. Department of Treasury (Collectively the Tri-Departments) for your willingness to engage in dialogue and listen to stakeholders regarding the issuance of the Final Rule “Requirements Related to the Mental Health Parity and Addiction Equity Act, (MHPAEA)” published on September 23, 2024 (89 Fed. Reg. 77586). We also appreciate the important changes to the Final Rule, including eliminating the substantially all/ predominant tests and the special rule for network composition proposals. We are committed to working with the Tri-Departments to ensure that MHPAEA implementation is operationally feasible and not overly burdensome.

The Tri-Departments staggered the applicability dates in the Final Rule, establishing a compliance date of January 1, 2026, for the meaningful benefits standard, the prohibition on discriminatory factors, evidentiary standards, relevant data evaluation requirements, and related provisions for comparative analyses. However, all additional provisions will take effect on January 1, 2025, which is in just 53 days. This means that health plans and issuers must immediately comply with changes to the definitions of mental health and substance use disorder (MH/SUD) and medical/surgical (M/S) services; the new definitions for evidentiary standards, factors, processes, and strategies; requirements for the design and application of Non

Quantitative Treatment Limitations (NQTLs); procedures for responding to regulatory requests for NQTL comparative analyses and notices of noncompliance; as well as disclosure and comparative analysis content requirements that are not linked to the new relevant data evaluation standard.

We request that the Tri-Departments apply a good faith compliance standard for the newly finalized requirements effective January 1, 2025. As an example of what a good faith compliance standard would entail, in December 2021, the DOL issued a temporary enforcement policy under which it used a good faith standard to determine compensation disclosure compliance for service providers and plan sponsors.<sup>1</sup> Additionally, the U.S. Department of Occupational Safety and Health Administration (OSHA) used a good faith standard to evaluate an employer's good faith efforts to comply with safety and health standards during the coronavirus pandemic. The agency could issue a citation if it found that an employer could not demonstrate any efforts to comply.<sup>2</sup>

We believe the current timeline for these requirements presents compliance challenges, especially without an updated and finalized Self-Compliance Tool. Health plans are working tirelessly to implement the Final Rule. However, below are some examples of why a good faith compliance standard will be necessary for the provisions effective January 1, 2025:

- Changes to the Definitions of “Mental Health Benefits:”
  - Many health plans have not applied cost-sharing across diagnosis codes. Health plans with more complex cost-sharing must implement new procedures that apply cost-sharing to diagnosis codes for the first time, and many systems have already been set up and filed for the coming year.
  - Additionally, prior to the Final Rule, coding was not necessarily set up to determine projections based on whether a service was provided for a mental health diagnosis in circumstances in which a service can be for both M/S diagnoses and MH diagnoses (e.g., physical therapy, occupational therapy); such services traditionally have been considered medical services.
  
- NQTL Comparative Analyses:
  - The new definitions for comparative analyses, such as evidentiary standards, factors, processes, and strategies, will require a likely revision of current NQTL comparative analyses to implement these new definitions.
  - Health plans will need to have a significant body of new documentation for the six steps of the NQTL comparative analyses ready to provide to regulators, beneficiaries, and their authorized representatives. The writing of comparative

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<sup>1</sup> <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-03> ; <https://bimgroup.us/dol-announces-good-faith-enforcement-standard-provides-guidance-on-compensation-disclosures/>

<sup>2</sup> <https://www.osha.gov/news/newsreleases/national/04162020-0>

analyses has significantly changed, and health plans will have to undertake substantial revisions to their existing documentation.

- Almost all NQTLs, along with many financial testing and Qualified Treatment Limits (QTLs), must be redone at an accelerated pace. This highly technical work cannot be finished in just over two months, especially given the intricate details outlined in the Final Rule.

**For these reasons, ABHW and ACHP request that the Tri-Departments implement at least a one-year good faith compliance period for all updated MHPAEA provisions that are effective January 1, 2025.** Health plans need a good faith compliance period, at the very least, until the Self-Compliance Tool is finalized, as it will inform so much of the new NQTL comparative analyses documentation in the 2025 and 2026 requirements. Many plans rely on this tool to comply with MHPAEA reporting requirements, and the current version is not aligned with the new rule. As such, we hope the updated Self-Compliance Tool will be released for public comment as soon as possible.

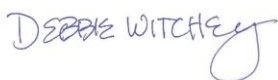
**Lastly, we ask that the Tri-Departments work to educate the public and Congress about how investigations are an iterative process.** The Tri-Departments should clarify that initial findings for NQTL reviews do not mean that health plans are not compliant, as NQTL reviews take an incremental “back and forth” approach. Throughout MHPAEA’s history, regulators have acknowledged the uniqueness of NQTL investigations. It has been publicly stated that discussions related to initial findings between auditors and health plans are an intended aspect of the process.

Thank you for considering our feedback regarding the Final Rule. We hope to continue collaborating with the Tri-Departments to enhance MHPAEA compliance. If you have any questions please reach out to Kathryn Cohen, Senior Director of Regulatory Affairs at [cohen@abhw.org](mailto:cohen@abhw.org).

Sincerely,



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