



# COMPLIANCE ALERT



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## Year-End Appropriations Act Details New Requirements Under Mental Health Parity

### Background

The Mental Health Parity and Addiction Equity Act (MHPAE) was enacted in 2008 with final regulations issued in 2013. Under Mental Health Parity rules, a group health plan is not required to cover any mental health (MH) or substance use disorder (SUD) benefits. However, group health plans and health insurance issuers that cover MH/SUD benefits must ensure that any financial requirements (copays, deductibles, etc.), quantitative treatment limits (visit limits), and non-quantitative treatment limits (NQTL) (medical management standards, network access, and formulary design) applicable to MH/SUD benefits are not more restrictive than the requirements or limitations for medical/surgical benefits (MS). Applying parity rules to NQTLs has been challenging because it requires understanding somewhat amorphous plan design limits and ensuring different limits and standards are not applied to MH/SUD benefits. Compliance is further complicated when prescription drug or MH benefits are carved out or administered separately from major medical coverage. Although ensuring parity would generally necessitate testing plans, testing has not been required until now. The year-end Appropriations Act (the Act), now mandates NQTL testing, and requires plans to provide the results of testing on request, in addition to other requirements generally designed to strengthen parity discussed below. For a comprehensive discussion of Mental Health Parity see our Alliant Insight, [Mental Health Parity It's Time for a Checkup](#).

### Mental Health Parity Requirements in the Act

The year-end Appropriations Act (the Act) included several measures to strengthen parity in MH/SUD benefits, specifically with NQTLs. Importantly, if a group health plan that provides both MS benefits and MH/SUD benefits and imposes NQTLs on MH/SUD benefits, the plan has to perform testing and make testing results available to the Departments of Treasury, Labor, and Health and Human Services (the Departments), or any State authority, upon request within 45 days of enactment of the Act (generally, no later than February 2021). Plans must also document and make available the following information:

1. The specific plan or coverage terms or other relevant terms regarding the NQTLs and a description of all MH/SUD and MS benefits to which each such term applies in each respective benefits classification.
2. The factors used to determine that the NQTLs will apply to MH/SUD benefits and MS benefits.

3. The evidentiary standards used for the factors identified in clause (ii), when applicable, provided that every factor shall be defined, and any other source or evidence relied upon to design and apply the NQTLs to MH/SUD benefits and MS benefits.
4. The comparative analyses demonstrating that the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to MH/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 MS benefits in the benefits classification.
5. The specific findings and conclusions reached by the group health plan or health insurance issuer with respect to the health insurance coverage, including any results of the analyses described in this subparagraph that indicate that the plan or coverage is or is not in compliance.

As noted above, the Departments can request that a group health plan or health insurance issuer submit their testing and comparative analyses for review beginning in February 2021. If it is determined that the group health plan or issuer is not in compliance, the plan or issuer must respond and specify the actions they will take to be in compliance not later than 45 days after the initial determination that the plan or issuer was not in compliance. If the applicable Department (DOL for ERISA plans) makes a final determination that the plan or issuer is still not in compliance, it will notify the individuals enrolled in the plan that the plan or issuer has been determined to not be in compliance. The Departments will also submit a report to Congress, made publicly available, no later than 1 year after the date of enactment of the Act and no later than October 1 following, that contains identities of group health plans or issuers that were determined to be in noncompliance.

The Departments also have to develop and issue a compliance program guidance document to help improve mental health compliance. The document will provide illustrative, de-identified examples of previous findings of compliance and noncompliance for NQTLs for both MS benefits and MH/SUD benefits.

## Conclusion

This latest guidance includes important information for employers that sponsor a group health plan that provides both MS benefits and MH/SUD benefits and imposes NQTLs on MH/SUD benefits. Most notable is the requirement to perform and document NQTL testing, the results of which could be requested as soon as February 2021. Although it is unlikely that the Departments will make significant NQTL disclosure requests beginning in February, employers should consider their options and assess the best course of action to complete NQTL testing and ensure compliance. Please contact your Alliant representative with additional questions.

**Compliance Alert is presented by the Compliance Practice Group of Alliant Employee Benefits**

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