

Draft Pending Adoption

Attachment XX
Regulatory Framework (B) Task Force
--/--/22

Draft: 4/27/22

Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group
Kansas City, Missouri
April 5, 2022

The MHPAEA (B) Working Group of the Regulatory Framework (B) Task Force met in Kansas City, MO, April 5, 2022. The following Working Group members participated: Erica Weyhenmeyer, Chair (IL); Jane Beyer, Vice Chair, and John Haworth (WA); Damion Hughes (CO); Kurt Swan (CT); Kenneth Scott and Barbara Torkelson (KS); Mary Kwei (MD); Paul Hanson (MN); Cynthia Amann and Carrie Couch (MO); David Dachs (MT); John Arnold and Chrystal Bartuska (ND); Laura Arp (NE); Maureen Belanger (NH); Laura Miller (OH); Landon Hubbart (OK); Shannen Logue and Katie Merritt (PA); Chris Herrick (TX); Ryan Jubber and Tanji J. Northrup (UT); Don Beatty and Julie Fairbanks (VA); Erin K. Hunter (WV); and Bryce Hamilton (WY).

1. Heard a Presentation on the Development of a Designation in Mental Health Parity by the IRES

Ms. Weyhenmeyer and Mr. Haworth presented on a new designation from the Insurance Regulatory Examiners Society (IRES). Ms. Weyhenmeyer provided background on the IRES and said it has a goal of creating a consistent approach in behavioral health parity audits. Mr. Haworth said the IRES plans to develop core classes for the designation. Core 1 would be the history of state and federal laws and regulations on mental health parity. Core 2 would describe the requirements around quantitative treatment limits (QTLs) and non-quantitative treatment limits (NQTLs). Core 3 would look at medical necessity and utilization review. Core 4 would be a catch-all that looks at claims coding, network access and adequacy, and vendor oversight. Mr. Haworth said supplemental courses would examine criteria for treatment from the American Society of Addiction Medicine (ASAM), quality assessments, and newer state laws. Ms. Weyhenmeyer said the current focus is on the initial core courses, and the intent is to offer some of them in the career development seminar in August or September. Mr. Haworth said ASAM criteria is an example, but the designation would include other criteria as well.

2. Heard a Presentation on Mental Health Parity Enforcement by the DOL

Amber Rivers (U.S. Department of Labor Employee Benefits Security Administration—DOL EBSA) presented on activity on mental health parity enforcement on private employment-based health plans. She said enforcement of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and the new provisions under the Consolidated Appropriations Act, 2021 is a top priority for the EBSA. She said plans are now required to document their compliance with mental health parity, and the DOL is required to collect comparative analyses and report its findings to the U.S. Congress (Congress). She said the new tools have been important in encouraging plans to take the requirements seriously. She said the DOL has released guidance and responded to questions before asking for documentations from plans. She said the substance of mental health parity rules has not changed, so all previous guidance from federal agencies is still applicable; what has been added is a requirement to document compliance.

Ms. Rivers said the DOL has released a report to Congress on its enforcement. She said the report shows the actions the DOL has taken and what it has received from plans. She said NQTLs are complex to analyze, and the DOL has highlighted interest in four areas: 1) prior authorization; 2) concurrent review; 3) admission into plan networks; and 4) out-of-network reimbursement rates. She said the report documents 156 letters requesting analyses of 216 NQTLs across 86 investigations. She said many plans and issuers were unprepared to provide analyses. They were missing key information that was outlined in previously published frequently asked questions

(FAQ). Ms. Rivers said the DOL has issued over 30 findings of parity violations. She said plans may submit a corrective action plan when they are found not compliant. She said the next report will come in October. She said the DOL plans a proposed rule on the MHPAEA.

3. Heard a Presentation on Documenting Compliance with NQTLs

Tim Clement (American Psychiatric Association—APA) presented a sample comparative analysis to demonstrate how a health plan could document that one of its NQTLs complies with mental health parity regulations. He said health plans often hear that their analyses did not hit the mark for what is required. He said his example would be a focus on concurrent review.

Mr. Clement said comparative analyses do not need to be lengthy; rather, being concise is a virtue. He said there are five steps in his example based on the provisions of the MHPAEA statute. He said step one includes definitions of terms used. He said step two covers the factors that determine when concurrent review occurs. He described step three as explaining in more detail how each factor is applied, and it could include supporting data to show that the plan has calculated data appropriately. He said the comparative analysis should be self-contained, and attachments should offer verifying proof in support rather than take the place of the analysis itself. He described how the analysis could demonstrate the factors it applies through data or a chosen rationale. He said all factors should be covered in the analysis, as well as all evidence and sources. He said this step should list sources, which should be explained more fully in step four.

Mr. Clement said step four has the most content. He said the analysis must demonstrate that processes and strategies are no more restrictive for mental health and substance use disorder (MU/SUD) benefits than for medical and surgical (M/S) benefits. He said state insurance regulators should not be unsure whether the standard has been met after reading step four. He said the analysis should discuss the plan's utilization management manual in step four. This discussion establishes whether processes and strategies are the same or no more restrictive as written. Mr. Clement said processes in operation must also be analyzed. He said the analyses should describe first and second level utilization reviews rather than appeals. He said analyses should show that some review occurred to demonstrate that processes meet parity in operation. He said the necessary analysis is at the process level and should show how and why processes are comparable. He said step five should review all the previous steps and show how they lead to a conclusion of parity compliance.

Having no further business, the MHPAEA (B) Working Group adjourned into regulator-to-regulator session, pursuant to paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings.

SharePoint/NAIC Support Staff Hub/Member Meetings/2022 Spring National Meeting/Minutes – Final PDF/MHPAEAWG 4-5