

August 22, 2022

Submitted via pra.comments@irs.gov

Andres Garcia
Internal Revenue Service, Room 6526
1111 Constitution Avenue, NW
Washington, DC 20224

Re: OMB Number 1545–2165: Comments on Proposed Collection; Comment Request for Notice of Medical Necessity Criteria Under the Mental Health Parity and Addiction Equity Act of 2008

Dear Andres Garcia:

We write on behalf of the undersigned Coalition to provide comments in response to the Proposed Collection for Notice of Medical Necessity Criteria Under the Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”).¹ The Coalition is a unique and broad alliance of stakeholders; through its membership, the Coalition provides mental health and substance use disorder (“MH/SUD”) benefits to the vast majority of Americans covered by private health insurance plans, both self-insured and insured. As such, Coalition members represent the largest community of MHPAEA-regulated entities who collectively are responsible for providing and paying for vital, comprehensive, and high-quality MH/SUD coverage for many millions of American families.

The “Current Action” stated in the Proposed Collection provides that:

“The Consolidated Appropriation Act (the Act) amended MHPAEA, in part, by expressly requiring group health plans to perform and document a comparative analysis of the design and application of any nonquantitative treatment limitations (NQTLs) that apply to medical/surgical and mental health and substance use disorder benefits. The increase in hour burden is associated with the ICRs related to the comparative analysis that is required to meet the MHPAEA related requirements.”

While we understand this proposed collection is a revision of a previously approved collection under MHPAEA, the “Current Action” noted above suggests this collection is associated with the Information Collection Requests (“ICRs”) related to the comparative analysis requirement under the Consolidated Appropriations Act, 2021 (“CAA”), which is a new requirement.

¹ 87 Fed. Reg. 37557 (June 23, 2022).

The MHPAEA provisions of the CAA became effective February 10, 2021, and added a requirement for group health plans and health insurance issuers to whom MHPAEA applies to *document* comparative analyses of the nonquantitative treatment limitations (“NQTLS”) they impose on MH/SUD benefits to demonstrate parity. The CAA specifically requires the Secretaries of the Departments of Health and Human Services (“HHS”), Labor (“DOL”), and the Treasury (collectively, the “Tri-Agencies”) to request at least 20 analyses per year starting in 2021, and plans and issuers must be prepared to provide those analyses to the Secretaries or applicable state authorities upon request.

On April 2, 2021, the Tri-Agencies issued *FAQs About Mental Health And Substance Use Disorder Parity Implementation And The Consolidated Appropriations Act, 2021, Part 45* and noted that:

“[i]n accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and concurrently with this issuance, DOL and HHS are submitting an emergency request to the Office of Management and Budget (OMB) concerning the collections of information in this document.”²

The Departments of Labor and HHS began requesting these comparative analyses beginning shortly thereafter the issuance of these FAQs. In the FAQs, the Tri-Agencies recognize that the requirement to document the NQTL comparative analyses is a *new* requirement, specifically stating that the “MHPAEA Self-Compliance Tool was last updated in 2020, before the enactment of the Appropriations Act, and it recommends that plans and issuers analyze NQTLS and document those analyses as a best practice. However, the Appropriations Act expressly requires that plans and issuers now conduct and document comparative analyses of the design and application of NQTLS. Therefore, this process is no longer a “best practice;” it is required.”³

It is essential to emphasize that Coalition members understand the value and importance of MH/SUD benefits and are deeply committed to providing robust access to these important benefits. Moreover, Coalition members take compliance with MHPAEA very seriously and have devoted *substantial* ongoing resources to ensure that their plans meet MHPAEA’s requirements. Notwithstanding significant good faith efforts to comply with the new NQTL comparative analyses requirements, the 2022 Report to Congress on MHPAEA (“Parity Report”) indicates a clear disconnect between the Tri-Agencies’ expectations of compliance *documentation* and plans and issuers’ understanding of the standards and requirements necessary to demonstrate compliance. Strikingly, the Parity Report states that of the 171 reviews conducted, *not a single one* of the comparative analyses initially contained information deemed sufficient by DOL and

² FAQs About Mental Health And Substance Use Disorder Parity Implementation And The Consolidated Appropriations Act, 2021, Part 45, p. 8. The emergency requests were granted and requests for extensions until 2024 for the Department of Labor and 2025 for the Department of health and Human Services have been granted. See, HHS Request: View Information Collection Request (ICR) Package ([reginfo.gov](https://www.reginfo.gov)); and DOL Request: View Information Collection Request (ICR) Package ([reginfo.gov](https://www.reginfo.gov)). These requests did not appear to include a request for comments.

³ FAQs About Mental Health And Substance Use Disorder Parity Implementation And The Consolidated Appropriations Act, 2021, Part 45, p. 3.

HHS for documenting parity. This is extraordinary given the *extensive* efforts undertaken by MHPAEA-regulated entities to provide complete documentation of compliance. It is also concerning, as Coalition members do not believe this reflects their commitment to MHPAEA, and the CAA MHPAEA amendments include unique, public-facing penalties for non-compliance with the MHPAEA NQTL comparative analyses requirement.

It is critical that the Tri-Agencies recognize and account for the *actual* burden associated with the new CAA NQTL comparative analyses requirement. We recommend the Tri-agencies publish a rigorous economic analysis for these new requirements so the regulated community has an opportunity to provide comment on the burden associated with the required documentation based on its experience in performing and documenting the comparative analyses. The new CAA requirements substantially increase the time and expenses related to the MHPAEA NQTL documentation requirements, diverting resources which could be better used to improve member-facing resources and services. As noted above, the Coalition members have devoted *substantial* ongoing resources to ensure that their health plans meet MHPAEA's requirements. These resources have come in different forms. For group health plans, the expenses have primarily been associated with hiring consultants and/or law firms to assist with the NQTL analyses documentation. For health insurance issuers, the expenses have been associated with hiring additional staffing to support the documentation requests from DOL and HHS, as well as hiring additional clinical staff, consultants and/or law firms to support the ongoing MHPAEA NQTL analyses requirements. These are teams of individuals that have been retained to support the requests by the DOL and HHS and, based on the requests and ongoing enforcement related to the reviews by the Departments, these costs will be an ongoing expense, at least until there is additional clarity on what is expected as part of the documentation for the NQTL comparative analyses.

Based on our distinctive viewpoint, we can assure you that the insufficiencies noted in the Parity Report are not attributable to a lack of effort or a lack of commitment to MHPAEA compliance. Rather, despite the existing MHPAEA guidance provided by the Tri-Agencies, there are still significant gaps in the guidance informing plans and issuers of the level of detail necessary to demonstrate compliance with the NQTL requirements, particularly in light of the new expectations from the CAA, and ongoing confusion related to the enforcement process.

The regulated community would greatly benefit from important clarifications on the Tri-Agencies' expectations related to parity compliance documentation and the enforcement process for the NQTL comparative analyses requirements under MHPAEA. Additional guidance will support entities who are actively working to comply with the parity requirements and help regulators focus their resources on addressing true violations that impact patients' access to care.

Thank you for the opportunity to provide feedback and we appreciate your consideration of these comments. Please do not hesitate to reach out to Lisa Campbell (lcampbell@groom.com) with questions at any time.

Sincerely,

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AHIP
Blue Cross Blue Shield Association
Business Group on Health
ConnectiCare
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EmblemHealth
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