

White House Finalizes New Mental Health Parity Rule

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The White House has finalized the new Mental Health Parity rule, which focuses on increasing access to mental health/substance use disorder treatment through nonquantitative treatment limitations (NQTL) data and reporting, network composition, out-of-network reimbursement rates, prior authorization requirements, and comparative analyses requirements. Specifically, the rule mandates that plans provide significant outcomes data analyses, including all “relevant outcomes data that it knows or reasonably should know suggest that a nonquantitative treatment limitation is associated with material differences in access to mental health or substance use disorder benefits as compared to medical/surgical benefits.” Relevant data includes, but is not limited to, the number and percentage of claims denials, which the prior rules stated were not relevant to a parity analysis.

For network composition, the relevant data includes “in-network and out-of-network utilization rates (including data related to provider claim submissions), network adequacy metrics (including time and distance data, and data on providers accepting new patients), and provider reimbursement rates (for comparable services and as benchmarked to a reference standard).” For medical necessity reviews, the relevant data includes “the number and percentage of claims denials” or “the number and percentage of claims that were approved for a lower level of care than the level requested on the initial claim.”

If a plan’s “relevant data” indicates “material differences” between mental health/substance use disorder and medical/surgical benefits, plans must take “reasonable action ... to address the material differences” to maintain compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA).

The rule also purports to increase transparency, including defining comparative analyses and other information required under CAA, 2021 to be not only instruments under which the plan is established or operated under ERISA section 104, but also relevant documents under 29 C.F.R. 2560.503-1 in the claims and appeals process.

We expect the rule will face immediate legal challenges in the post-*Chevron* era, in part due to the potential significant financial burden on health plan sponsors.

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