

Health Policy in Transit  
**A Purchaser Viewpoint**

## DOL issues additional guidance on Parity Compliance

*The Consolidated Appropriations Act, 2021 (Section 203 of Title II of Division BB) entitled, Strengthening Parity in Mental Health and Substance Use Disorder Benefits, was signed into law on December 27, 2020, and amended the Mental Health Parity and Addiction Equity Act of 2008 (Parity Law) to provide greater requirements for Parity Law compliance and enforcement. On April 2, 2021, the Departments of Labor and Health and Human Services (DOL and HHS, respectively) issued additional regulatory guidance clarifying the impact of this statutory amendment.*

The new statutory language and regulatory guidance make it clear that, **as of February 2021, group health plans and insurance issuers must perform and document the comparative analyses of the design and application of nonquantitative treatment limitations (NQTLs) on benefits and make these analyses available to state or federal authorities upon request.**

An NQTL is any limitation placed on benefits, such as reimbursement rates, provider network admission standards, medical management tools such as pre-authorization and concurrent review, exclusions of levels of care or provider-types, etc.

The Parity Law requires specific comparative analyses for each NQTL that demonstrate how each NQTL is applied comparably and no more stringently to behavioral health benefits than to medical and surgical benefits, both as written and in operation. These analyses can be very detailed and often require quantitative definitions and outcomes data.

While the Parity law and its Final Rules have been in place for almost 8 years, there has been inconsistent compliance and enforcement with respect to this aspect of the law. Federal and state agencies have now escalated their oversight and will be looking to group health plans and insurance issuers to provide these detailed analyses at any time.

DOL and HHS are now required to enforce compliance, and if a health plan or issuer does not provide sufficient comparative analyses as described in statute and regulatory guidance when requested, DOL and HHS are required, upon a final determination of noncompliance, to notify all individuals enrolled in the plan or health insurance coverage that the health plan or issuer is not in compliance with this law.

### Key Areas of Focus & Challenge

Several key areas are of particular concern to DOL and HHS, thus comparative analyses in these areas are especially important:

- Pre-authorization and concurrent review of inpatient and outpatient services, including denial rate disparities
- Network admission standards, including reimbursement rate disparities

Plan sponsors may not easily be able to perform these comparative analyses and will likely be heavily reliant on their vendors to do this on their behalf. This may be particularly burdensome if plan sponsors are relying on multiple or different vendors for behavioral health and medical services.

This burden may be mitigated if health plans have utilized qualified third parties to review and certify parity compliance with NQTLs.