

Final Mental Health Parity NQTL Regulations: Executive Summary



I. Key Aspects of the Final Regulations

- *The Departments' Decision NOT to Finalize the Mathematical "Substantially All Test" and "Predominant Test"*
- *Test #1 of the Remaining 2-Part Test: The "Design and Application Requirements"*
- *Test #2 of the Remaining 2-Part Test: The "Relevant Data Evaluation Requirements"*
- *"Network Composition" Requirements*
- *"Meaningful Benefits" Requirement*
- *NQTL Comparative Analysis and Required "Content Elements"*
- *Fiduciary Certification*
- *Timing for Furnishing the Comparative Analysis to the Departments Upon Request and Timing for Notifying Participants for Non-Compliance*
- *Effective Dates*

II. Two Rules Within the Final Rule: (1) The "Benefit Coverage Requirements" and (2) The "NQTL Comparative Analysis Requirements"

It is important to note that the final regulations include two different sets of legal requirements that must be satisfied, with two different sets of consequences for failing to satisfy each of these respective legal requirements.

Rule #1: "Benefit Coverage Requirements"

These final regulations set forth a **2-Part Test** for determining whether greater restrictions (here, **Non-Quantitative Treatment Limitations [NQTLs]**) are being designed and applied to mental health and substance use disorder (MH/SUD) benefits (including NQTLs related to MH/SUD "Network Composition") as compared to NQTLs designed and applied to medical and surgical (M/S) benefits (including NQTLs related to M/S "Network Composition").

Under **Test #1** of this **2-Part Test** (called the "**Design and Application Requirements**"), a plan/carrier must consider whether any "processes," "strategies," "evidentiary standards," or other "factors" used in designing and applying the NQTL to MH/SUD benefits are comparable to, and are applied no more stringently than, those utilized in designing and applying NQTLs to M/S benefits. The "**Design and Application Requirements**" also include a "**prohibition on discriminatory factors and evidentiary standards**" wherein plans/carriers are prohibited from relying upon any "factor" or "evidentiary standard" if the information, evidence, sources, or standards on which the "factor" or "evidentiary standard" are based discriminate against MH/SUD benefits as compared to M/S benefits.

Under **Test #2** of this 2-Part Test (called the "**Relevant Data Evaluation Requirements**"), a plan/carrier must collect and evaluate "relevant data" in a manner reasonably designed to assess the impact of the NQTL on relevant "outcomes" related to access to MH/SUD benefits and M/S benefits. And, to the extent the "relevant data" shows "material differences" in access to MH/SUD benefits as compared to M/S benefits, plans/carriers must take "reasonable action" to address any "material differences" in access as necessary to ensure compliance.

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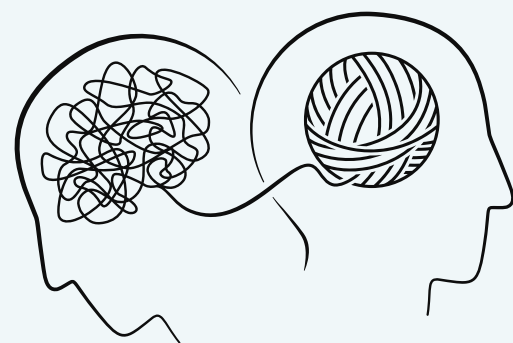
There is also a new standard that requires plans/carriers to provide “**Meaningful Benefits**” for MH/SUD benefits measured by comparing coverage for a “**core treatment**” for MH/SUD benefits relative to a “**core treatment**” for M/S benefits. In general, a “**core treatment**” for a MH/SUD condition or disorder is a standard treatment or course of treatment, therapy, service, or intervention indicated by generally recognized independent standards of current medical practice.

If the Federal Departments determine that a plan/carrier does NOT comply with these “**Benefit Coverage Requirements**,” the Departments can require the plan/carrier to **STOP** imposing the NQTL on MH/SUD benefits (including those NQTLs related to “**Network Composition**”), which could have significant financial consequences for a plan/carrier with respect to the plan’s/carrier’s continued coverage of MH/SUD benefits.

Rule #2: “NQTL Comparative Analysis Requirements”

The other set of legal requirements apply to the NQTL comparative analysis itself. These final regulations add to the 2021 CAA’s existing NQTL comparative analysis provisions by requiring a plan/carrier to explain in excruciating detail – through six “**Content Elements**” – how and why the plan/carrier satisfies the “**Benefit Coverage Requirements**” in their comparative analysis.

More specifically, the plan/carrier must describe in significant detail whether and how the plan/carrier performed – and is complying with – the **2-Part Test**, including descriptions and demonstrations of how “**processes**,” “**strategies**,” “**evidentiary standards**,” and “**factors**” are used in designing and applying NQTLs to the MH/SUD benefits, along with whether there are “**material differences**” in access to MH/SUD benefits compared to M/S benefits; whether and what “**reasonable actions**” the plan/carrier is taking to address the “**material differences**”; and whether and how the plan/carrier is providing “**meaningful benefits**.”



Here, if the Federal Departments ultimately determine that the plan’s/carrier’s NQTL comparative analysis does NOT comply with these “**NQTL Comparative Analysis Requirements**,” the plan/carrier must send a notification to ALL plan participants informing them that the Departments have concluded that the plan’s/carrier’s NQTL comparative analysis did NOT comply with the law, and the plan/carrier must send to the Departments confirmation that this notification was timely sent to participants. The name of the plan/carrier will also be included in the Departments’ Report to Congress on MHPAEA compliance.

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III. DROPPED: The “Substantially All Test” and “Predominant Test”

What Did the Proposed Regulations Say?

According to the proposed regulations (originally issued back in July 2023), plans/carriers were required to conduct mathematical tests called the “**Substantially All Test**” and “**Predominant Test**.”

According to the “**Substantially All Test**,” if an NQTL does not apply to at least two-thirds of all M/S benefits in a classification, then that NQTL would *not* be permitted to be applied to MH/SUD benefits in that classification.

According to the “**Predominant Test**,” plans would be required to determine the predominant variation of the NQTL that is applied to substantially all M/S benefits subject to the NQTL in the classification.

What Did the Final Regulations Say?

IMPORTANTLY, the Departments **DECLINED** to finalize the “**Substantially All Test**” and the “**Predominant Test**.”

INSTEAD, the Departments reiterate the statutory requirement for the “**No More Restrictive Requirement**,” explaining that plans/carriers may not impose any NQTL with respect to MH/SUD benefits in any classification that is more restrictive, as written or in operation, than the predominant NQTL that applies to substantially all M/S benefits in the same classification.

The Departments further explained that to demonstrate compliance with the statutory “**No More Restrictive Requirement**,” a plan/carrier must satisfy the (1) “**Design and Application Requirements**” and (2) “**Relevant Data Evaluation Requirements**” (discussed above).

In other words, to comply with the “**No More Restrictive Requirement**,” the final regulations require plans/carriers to comply with the new 2-Part Test: (1) The “**Design and Application Requirements**” and (2) The “**Relevant Data Evaluation Requirements**.”



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IV. Fiduciary Certification

What Did the Proposed Regulations Say?

The proposed regulations would have required the named fiduciary of a self-insured health plan to include in the plan's NQTL comparative analysis (1) a statement that they have reviewed the comparative analysis and (2) a "certification" that they believe the NQTL analysis complies with the six "**Content Elements**" described in the proposed regulations.

What Did the Final Regulations Say?

The final regulations CONTINUE to require the named fiduciary of a self-insured health plan to include (1) a statement that they have reviewed the comparative analysis. HOWEVER, the fiduciary is NOT required to (2) "certify" that they believe the NQTL analysis complies with the six "**Content Elements**" described in the final regulations.

INSTEAD, the named fiduciary is required to explain that they (a) engaged in a prudent process to select a service provider to perform and document the plan's comparative analysis and (b) are continually monitoring this service provider to ensure that the service provider is developing – and has developed – a compliant NQTL comparative analysis for the plan.

The Departments went so far as to explain what they expect with regard to satisfying this "duty to monitor," noting that – at a minimum – the plan's fiduciary should:

- Review the comparative analysis prepared by the service provider.
- Ask questions and discuss the contents of the comparative analysis with the service provider to understand the findings and conclusions set forth in the analysis.
- Ensure that the service provider gives assurances that – to the best of the service provider's ability – the comparative analysis is compliant with the final regulations.

In our opinion, this last action – *getting assurances from the service provider that the service provider believes that the comparative analysis is compliant* – is critical. It is advisable that plan fiduciaries require that such assurances are memorialized in writing.

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V. Effective Dates for These Final Regulations

The final regulations set forth two different effective dates.

Effective Date #1

The following requirements are effective starting the first day of the first plan year beginning on or after **January 1, 2025**:

- The Definitions for Purposes of Compliance.
- The **“Design and Application Requirements”** (but *not* the **“prohibition on discriminatory factors and evidentiary standards”** [*see more below*]).
- The consequence for failing to comply with the effective **“Design and Application Requirements”** (i.e., the plan/carrier must STOP imposing an NQTL).
- The **“Content Elements”** related to the effective **“Design and Application Requirements.”**
- The Fiduciary Certification related to the NQTL comparative analysis, including compliance with the existing rules and the **“Content Elements”** relating to the effective **“Design and Application Requirements.”**
- The consequence for failing to have a compliant NQTL comparative analysis, including compliance with the existing rules and the **“Content Elements”** relating to the effective **“Design and Application Requirements”** (i.e., notify participants of non-compliance).

Effective Date #2

The following requirements apply on the first day of the first plan year beginning on or after **January 1, 2026**:

- The **“prohibition on discriminatory factors and evidentiary standards”** (which, as noted above, is part of the **“Design and Application Requirements”**).
- The **“Relevant Data Evaluation Requirements.”**
- The **“Meaningful Benefits”** requirement.
- The **“Network Composition”** requirements.
- The consequence for failing to comply with the **“prohibition on discriminatory factors and evidentiary standards,”** the **“Relevant Data Evaluation Requirements,”** the **“Meaningful Benefits”** requirement, and the **“Network Composition”** requirements (i.e., the plan/carrier must STOP imposing an NQTL).
- The **“Content Elements”** related to the **“prohibition on discriminatory factors and evidentiary standards,”** the **“Relevant Data Evaluation Requirements,”** the **“Meaningful Benefits”** requirement, and the **“Network Composition”** requirements.
- The Fiduciary Certification related to the NQTL comparative analysis, including compliance with the **“Contents Elements”** relating to *all of* the requirements of the final regulations.
- The consequence for failing to have a compliant NQTL comparative analysis, including compliance with the **“Contents Elements”** relating to *all of* the requirements of the final regulations (i.e., notify participants of non-compliance).