

October 17, 2023

Secretary Xavier Becerra
Department of Health and
Human Services
200 Independence Avenue,
S.W.
Washington, D.C. 20201

Secretary Julie Su
Department of Labor
200 Constitution Ave N.W.
Washington, D.C. 20210

Secretary Janet Yellen
Department of Treasury
1500 Pennsylvania Avenue,
N.W.
Washington, D.C. 20220

RE: 1210-AC11; Requirements Related to the Mental Health Parity and Addiction Equity Act: Proposed Rule.

Submitted electronically via regulations.gov.

Dear Secretaries Becerra, Su, and Yellen,

The National Rural Health Association (NRHA) is pleased to offer comments on the Departments of Health and Human Services (HHS), Labor, and Treasury's proposed rule for the Mental Health Parity and Addiction Equity Act (MHPAEA). NRHA supports the aim of the MHPAEA, which is to ensure that individuals seeking mental health and substance use disorder (SUD) care can do so without great barriers to treatment in comparison to those seeing care for physical health, and that the proposed rule seeks to protect this further. We look forward to our continued collaboration to improve health care access throughout rural America.

NRHA is a non-profit membership organization with more than 21,000 members nationwide that provides leadership on rural health issues. Our membership includes nearly every component of rural America's health care, including rural community hospitals, critical access hospitals, long-term care providers, doctors, nurses, and patients. We work to improve rural America's health needs through government advocacy, communications, education, and research.

A. Amendments to Existing Regulations at 26 CFR 54.9812-1, 29 CFR 2590.712, and 45 CFR 146.136

1. Purpose Section—26 CFR 54.9812-1(a)(1), 29 CFR 2590.712(a)(1), and 45 CFR 146.136(a)(1)

NRHA applauds the Departments' choice to add a purpose section to the regulations to further ensure consistent implementation, compliance, and interpretation that align with the purpose of the MHPAEA.

The clarified purpose of MHPAEA, to guarantee that issuers and health plans cover mental health and do not create restrictions to access, benefits specifically the approximately 6.5 million individuals that reside in rural areas in the United States that have a mental illness.¹ These individuals within

1. Morales DA, Barksdale CL, Beckel-Mitchener AC. A call to action to address rural mental health disparities. *J. Clin. Transl. Sci.* 2020 May 4;4(5):463-467. doi: 10.1017/cts.2020.42. PMID: 33244437; PMCID: PMC7681156.

rural areas are known to receive less frequent treatments for mental health issues, including limited access to specialized and trained providers and service availability.¹

The integration of mental health and SUD treatment and coverage is of utmost importance for individuals' health. Separating substance use, mental health, and general physical health is costly to the overall health care system and at the individual level. The presence of substance use disorders doubles the chance that an individual will present with a chronic medical condition or illness.² For individuals living in rural areas, studies show that having adequate health care coverage is a facilitator of rural adults seeking care for substance use disorders and mental health treatment.³ Thus, the broadened list and definition of non-quantitative treatment limitations (NQTLs) therefore will provide greater access to these services, improve network composition, and support rural adults seeking care for these illnesses.

Although these provisions will support mental health care access, **NRHA emphasizes the workforce shortage in rural areas, particularly limited mental health specialists.** NRHA notes that these provisions may worsen the mental health workforce shortages in rural areas as the demands for mental health practitioners grow, but the deficit in workforce does not improve.⁴

2. Meaning of Terms—26 CFR 54.9812-1(a)(2), 29 CFR 2590.712(a)(2), and 45 CFR 146.136(a)(2)

NRHA supports the Departments' revisions of existing definitions of the terms "medical or surgical benefits", "mental health benefits", and "substance use disorder (SUD) benefits". The decision to remove the reference to State guidelines in the definition of "medical and surgical benefits" opens the door to no longer allow plans and issuers to limit mental health or SUD benefits for treatment based on the recognized standards within these guidelines. The Departments' decision to align and clarify the definitions of "mental health benefits" and "SUD benefits" ensures parity between all terms and protects the application of MHPAEA for conditions and disorders recognized under independent standards of current medical practice.

Additionally, **NRHA voices support for the Department's definitions of "processes" and "strategies" to clarify the differences between the terms as they apply and relate to an NQTL.** This offers flexibility of treatment limitations, so plans and issuers can amend the terms of their plan or coverage so that there can be no exclusion of services for mental health and SUD for residents living in rural areas.

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2. Substance Abuse and Mental Health Services Administration (US); Office of the Surgeon General (US). Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health [Internet]. Washington (DC): US Department of Health and Human Services; 2016 Nov. CHAPTER 6, HEALTH CARE SYSTEMS AND SUBSTANCE USE DISORDERS. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK424848/>
 3. Cucciare, M. A., Ounpraseuth, S. T., Curran, G. M., & Booth, B. M. (2019). Predictors of mental health and substance use disorder treatment use over 3 years among rural adults using stimulants. *Substance abuse*, 40(3), 363–370. <https://doi.org/10.1080/08897077.2018.1547809>
 4. Filling the Gaps in the Behavioral Health Workforce | Bipartisan Policy Center. (n.d.). Retrieved October 9, 2023, from <https://bipartisanpolicy.org/report/filling-gaps-in-behavioral-health/>

3. Nonquantitative Treatment Limitations—26 CFR 54.9812-1(c)(4), 29 CFR 2590.712(c)(4), and 45 CFR 146.136(c)(4)

a. Requirement That NQTLs be No More Restrictive for Mental Health and Substance Use Disorder Benefits—26 CFR 54.9812-1(c)(4)(i), 29 CFR 2590.712(c)(4)(i), and 45 CFR 146.136(c)(4)(i)

NRHA is pleased with the Departments’ decision to require that NQTL classifications be no more restrictive to mental health or SUD benefits than the predominant NQTL for medical or surgical benefits. Clarifying these terms and holding plans accountable for complying with these provisions is essential to promote equitable coverage of mental health and SUD treatment. Historically, the application of NQTLs resulted in beneficiaries seeking out-of-network providers due to coverage issues, thus creating inequities in access, especially for rural areas that already have limited services and providers in and out of network.⁵ This change will help to improve rural access and network standards for mental health and SUD.

b. Requirements Related to Design and Application of the NQTL—26 CFR 54.9812-1(c)(4)(ii), 29 CFR 2590.712(c)(4)(ii), and 45 CFR 146.136(c)(4)(ii)

The Department proposes to ensure that processes, strategies, evidentiary standards, and other factors used in designing and applying NQTLs to mental health or SUD benefits are comparable to medical or surgical benefits. **NRHA reiterates its support of the Departments’ new provisions for designing and applying NQTLs.** NRHA supports using independent professional medical or clinical standards when designing or applying NQTLs to eliminate discrimination against mental health or SUD. NQTLs should always be founded upon evidence-based standards to ensure patients can access medically necessary care, including care for mental health and SUD.

c. Illustrative, Non-Exhaustive List of NQTLs—26 CFR 54.9812-1(c)(4)(iii), 29 CFR 2590.712(c)(4)(iii), and 45 CFR 146.136(c)(4)(iii)

The Departments’ clarification that the list of NQTLs is illustrative and non-exhaustive provides flexibility for plans and issuers to create new NQTLs outside the current list but still be subject to the proposed rules. **NRHA applauds the Departments for retaining a broad definition of NQTL to improve standards for in-network participation of rural providers and covered services.**

d. Required Use of Outcomes Data and Special Rule for NQTLs Related to Network Composition—26 CFR 54.9812-1(c)(4)(iv), 29 CFR 2590.712(c)(4)(iv), and 45 CFR 146.136(c)(4)(iv)

The NRHA supports the Departments’ proposal to require the collection and evaluation of relevant data when designing and applying an NQTL. This requirement ensures that the impact

5. *Mental Health Parity Act: Biden Administration Issues Long-Awaited Rulemaking Cracking Down on Treatment Limitations.* (n.d.). Retrieved October 9, 2023, from <https://www.jdsupra.com/legalnews/mental-health-parity-act-biden-6625886/>

of the NQTL on the use of mental health and SUD benefits is considered when designing and applying NQTLs.

In general, NRHA supports the sentiment behind network adequacy or composition standards in improving access to mental health or SUD providers in rural areas. However, strict standards for network composition may disincentivize plans from operating in certain rural communities because there are not enough providers to meet the standards. This is more likely to happen in rural areas where, as referenced above, there is a dearth of mental health and SUD practitioners. Again, we believe that mental health and SUD networks should be as robust as medical networks in plans, but oftentimes this is a difficult standard for plans offering coverage in rural areas. NRHA is concerned that network composition NQTLs and data collection related to NQTLs may show an outsized number of patients seeking out-of-network mental health or SUD treatment in rural areas. As such, we applaud the Departments for recognizing that provider shortages may impact plans' ability to meet the proposed standards. However, NRHA suggests that the Departments carefully monitor plans cited for noncompliance with the proposed regulations is not due to provider shortages, versus circumventing compliance standards.

f. Effect of Final Determination of Noncompliance—26 CFR 54.9812-1(c)(4)(vii), 29 CFR 2590.712(c)(4)(vii), and 45 CFR 146.136(c)(4)(vii)

The Departments proposed new language to specify that if a plan is told that its proposed NQTL and plan are not compliant with the stated requirements then the plan cannot impose it until it remedies the violation and demonstrates compliance. **The NRHA is pleased with this clarifying language to ensure compliance with the regulations and proposed rules, holding plans and issuers accountable and addressing any compliance issues with parity under the new rules.**

4. Prohibition on Financial Requirements and Treatment Limitations

NRHA is pleased to see that the Departments are amending the general parity requirement. We support clarifying that a plan may not impose financial requirements or treatment limitations only for mental health or substance use disorder benefits that are not issued also to medical or surgical benefits.


Affordability is a known barrier for mental health and substance use disorder treatment, especially in rural areas. Many individuals in rural areas express that lack of coverage from insurance for mental health services makes accessing these services difficult, especially with high out-of-pocket costs.⁶ Additionally, the shortage in the mental health providers workforce greatly impacts access to care in rural areas. Part of this shortage stems from approximately 60% of mental health visits done through primary care provider visits, with many facilities in rural areas not having an integrated mental health and primary care system.⁶ On top of infrastructure, billing restrictions and lack of reimbursement may serve as disincentives for workforce retention in rural areas for mental health services, adding to access challenges.⁶ As a result, the amendment to prohibit financial requirements

6. *Barriers to Mental Health Treatment in Rural Areas – RHHub Toolkit*. (n.d.). Retrieved October 9, 2023, from <https://www.ruralhealthinfo.org/toolkits/mental-health/1/barriers>

and treatment limitations towards mental health or substance use disorder benefits helps to target affordability barriers, especially for individuals in rural areas.

Thank you for the opportunity to comment on this proposed rule. NRHA looks forward to continuing to work with the Departments to ensure access to mental health and SUD services for rural residents. Please contact NRHA's Regulatory Affairs Manager, Alexa McKinley (amckinley@ruralhealth.us) with any questions or for more information.

Sincerely,



Alan Morgan
Chief Executive Officer
National Rural Health Association