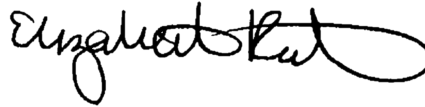


DATE: 03/29/2021

TO: Acting Administrator, OIRA

FROM: Elizabeth Richter
Acting Administrator, CMS



SUBJECT: Request for Emergency Clearance of the Paperwork Reduction Act Package for NQTL Analyses Requirements under the Consolidated Appropriations Act of 2021

Emergency Justification

The Centers for Medicare & Medicaid Services (CMS) is requesting that an information collection request for the provisions in the Consolidated Appropriations Act of 2021 (Appropriations Act) enacted on December 27, 2020, related to comparative analyses with respect to non-quantitative treatment limitations (NQTL) on mental health or substance use disorder (MH/SUD) benefits be processed in accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA) at 5 CFR 1320.13(a)(2)(iii). We believe that if the normal, non-emergency clearance procedures are followed, CMS will be unable to conduct the statutorily required reviews of the NQTL analyses and submit to Congress, and make publicly available, a report on the conclusions of the reviews in 2021 by the statutory deadline of December 27, 2021. CMS is requesting a determination by March 29, 2021. CMS is also requesting waiver of the notice requirement set forth in 5 CFR 1320.13(d).

Specifically, we are requesting emergency approval for the information collection requirements (ICRs) in section 203 of Title II of Division BB of the Appropriations Act requiring group health plans and health insurance issuers offering group or individual health insurance coverage that offer both medical/surgical benefits and MH/SUD benefits and that impose NQTLs on MH/SUD benefits to perform and document their comparative analyses of the design and application of NQTLs, and to make their comparative analyses available to the Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the Departments) or applicable state authorities, upon request. The Departments are required to conduct reviews each year and submit to Congress and make publicly available a report on the conclusions of those reviews.

In order to submit the report to Congress before December 27, 2021, CMS will need to start conducting the reviews no later than May 2021. The normal PRA clearance process will not allow CMS to complete all reviews in time to meet the statutory deadline. The Department of Labor is also seeking emergency review and approval, and waiver of the notice requirement set forth in 5 CFR 1320.13(d), for the PRA package that will account for their reviews.

Background

Section 203 of Title II of Division BB of the Appropriations Act amended the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), in part, by expressly requiring group health plans and health insurance issuers offering group or individual health insurance coverage that offer both medical/surgical benefits and MH/SUD benefits and that impose NQTLs on MH/SUD benefits to perform and document their comparative analyses of the design and application of NQTLs. Further, beginning 45 days after the date of enactment of the Appropriations Act, plans and issuers must make their comparative analyses available to the Departments or applicable state authorities, upon request, including the following information:

1. The specific plan or coverage terms or other relevant terms regarding the NQTLs and a description of all MH/SUD and medical or surgical benefits to which each such term applies in each respective benefits classification;
2. The factors used to determine that the NQTLs will apply to MH/SUD benefits and medical or surgical benefits;
3. The evidentiary standards used for the factors identified, when applicable, provided that every factor shall be defined, and any other source or evidence relied upon to design and apply the NQTLs to MH/SUD benefits and medical or surgical benefits;
4. The comparative analyses demonstrating that the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to MH/SUD benefits, as written and in operation, are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to medical/surgical benefits in the benefits classification; and
5. The specific findings and conclusions reached by the plan or issuer, including any results of the analyses that indicate that the plan or coverage is or is not in compliance with MHPAEA.

The Appropriations Act provides that the Departments shall request that a group health plan or issuer submit the comparative analyses for plans that involve potential violations of MHPAEA or complaints regarding noncompliance with MHPAEA that concern NQTLs, and any other instances in which the Departments determine appropriate. The Appropriations Act further requires the Departments, after review of the comparative analyses, to share information on findings of compliance and noncompliance with the state where the plan is located or the state where the issuer is licensed to do business.

Additionally, not later than one year after enactment of the Appropriations Act and annually by October 1 thereafter, the Secretary of HHS must submit to Congress and make publicly available a report that contains:

1. A summary of the comparative analyses requested, including the identity of each plan or issuer that is determined not to be in compliance after a final determination by the Secretary;

2. The Secretary's conclusions as to whether each plan or issuer submitted sufficient information for the Secretary to review the comparative analyses requested for compliance with MHPAEA;
3. For each plan or issuer that submitted sufficient information the Secretary to review the comparative analyses requested, the Secretary's conclusion as to whether and why the plan or issuer is in compliance with MHPAEA;
4. The Secretary's specifications with respect to the additional information that each plan or issuer that did not submit sufficient information must submit for the Secretary to review the comparative analyses for compliance with MHPAEA; and
5. The Secretary's specifications of the actions each plan or issuer that the Secretary determined is not in compliance must take to be in compliance with MHPAEA, including the reason the Secretary determined the plan or issuer was not in compliance.