

Dominic J. Mancini
Deputy and Acting Administrator
Office of Information and Regulatory Affairs, Office of Management and Budget
725 17th Street, N.W.
Washington, DC 20503

Subject: Request for Emergency Review and Clearance

Dear Mr. Mancini:

The *Consolidated Appropriations Act* (the Act) was signed into law on December 27, 2020. The Departments of Labor, Health and Human Services, and the Treasury share interpretive jurisdiction of the Mental Health Parity and Addiction Equity Act (MHPAEA) and have split enforcement jurisdictions. The Department of Labor is responsible for enforcing MHPAEA with respect to private employer-sponsored group health plans. The Act amended MHPAEA, in part, by expressly requiring group health plans to perform and document a comparative analysis of the design and application of any non-quantitative treatment limitations (NQTLs) that apply to medical/surgical and mental health and substance use disorder benefits. As of 45 days after the date of enactment of the Act (February 10, 2021), group health plans must make their comparative analyses and related information available to the Department, upon request. The Act also provides that the Department shall request comparative analyses from plans that involve a potential violation of MHPAEA, or upon receipt of complaints regarding noncompliance with MHPAEA, and any other instances in which the Department determines appropriate. The Department must also issue an annual report to Congress regarding findings of compliance and noncompliance. The first report is due in December of this year.

The Department, jointly with the Departments of Health and Human Services and the Treasury, is issuing FAQs to provide guidance on how group health plans should prepare comparative analyses of NQTLs in order to avoid a determination of noncompliance. In particular, these FAQs clarify what the analyses must include to be sufficiently specific and detailed. These FAQs also clarify how the Department will evaluate comparative analyses in the course of an investigation, and what steps the Department will take if the plan is found to be noncompliant.

The FAQs contain information collections (ICs) subject to the Paperwork Reduction Act of 1995 (Pub L. 104-13, 44 U.S.C. Chapter 35). The FAQs are needed to inform group health plans of how the Department will enforce MHPAEA and review the comparative analyses prepared by a plan.

The Department is hereby requesting that OMB process a 180-day clearance for the new ICR for the new information collection request created by the *Consolidated Appropriations Act of 2021* and “FAQs About MHPAEA Part 45” (1210-0138) in accordance with the emergency review procedures set forth under 5 CFR 1320.13. The Department is requesting emergency review and clearance, because the statutory effective date has passed and the Department intends to quickly begin requesting NQTL comparative analyses from plans that are under investigation for potential MHPAEA violations. Due to the exigent circumstances, the Department also is requesting OMB to waive the notice requirement set forth in 5 CFR 1320.13(d).

Please provide your approval/disapproval determination of this request by close of business on March 29, 2021.

Respectfully,

Ali Khawar
Principal Deputy Assistant Secretary
Employee Benefits Security Administration
Department of Labor