

ATTACHMENT: Public Comment Summary of the Proposed Regulation “Requirements Related to the Mental Health Parity and Addiction Equity Act” Published in the Federal Register on August 3, 2023 (88 FR 51552)

The Departments received more than 9,500 comments in response to the Proposed Regulation “Requirements Related to the Mental Health Parity and Addiction Equity Act” published in the Federal Register on August 3, 2023 (88 FR 51552, proposed rules). The comment summaries and responses are included in the 2024 final rules.

The Departments received comments that specifically addressed this ICR. Some commenters suggested that the Departments underestimated the burden of collecting the required data, the burden required in conducting the substantially all and predominant mathematical analysis, the number of NQTLs that would need to be analyzed for each plan and issuer, and the amount of time that it would take to conduct those analyses.

Specifically, several commenters questioned the Departments’ assumptions related to the number of NQTLs for which plans and issuers would need to produce comparative analyses. While the Departments assumed that issuers would impose twice as many NQTLs as plans, several commenters did not think the number of NQTLs would vary between plans and issuers. Commenters also argued the number of NQTLs that plans and issuers would need to analyze would be roughly twice the Departments’ proposed assumption for issuers, 16 NQTLs rather than 8, based on the Departments’ descriptions of types of NQTLs listed in the proposed rule. The Departments note that they do not intend to provide an exhaustive list of NQTLs and plans and issuers may analyze fewer or a greater number of NQTLs than those listed in the illustrative, non-exhaustive list provided in the proposed and final rules. Based on information received from commenters, the Departments chose to use an average number of 10 for the number of NQTLs that plans and issuers would analyze.

Commenters also questioned the amount of time that it would take plans and issuers to conduct the NQTL comparative analyses under the proposal. While the Departments assumed that the plans and issuers preparing their own comparative analyses would incur an incremental burden of 10 hours per NQTL in the first year and 4 hours per NQTL in subsequent years, several commenters thought this was an underestimate. For instance, one commenter stated that it currently takes a team of subject matter experts, compliance officials, a project manager, and lawyers or consultants 60 hours in the first year and 12 hours in subsequent years to produce NQTL comparative analyses as required under the CAA, 2021 and current guidance. The commenter suggested that the added requirements for the comparative analysis under the proposed rules, including the quantitative analysis testing, would require at least an additional 60 hours per NQTL.

Another commenter estimated that the cost to issuers of fully insured plans to conduct the comparative analyses for all NQTLs is approximately between \$200,000 and \$300,000. The commenter also reported that for large, self-funded plans, while issuers and TPAs prepare and distribute baseline comparative analyses, plans would still need to customize the comparative analyses. The commenter estimated that the cost to customize the comparative analysis and request additional information and data for all NQTLs is between \$50,000 and \$150,000.

In preparing the 2024 final rules, the Departments have considered these comments and have clarified the requirements and reevaluated their estimates as appropriate. The Departments have also revised their assumptions related to NQTLs for both plans and issuers.¹

¹ See the 2024 final rules for specific adjustments to the estimates.