

CAA Enforcement Results Fast Facts:

The following is an overview of the key enforcement results under section 203 of Title II of Division BB of the CAA, which are explained more fully in Section II.B below:

- The Employee Benefits Security Administration (EBSA) has issued 156 letters to plans and issuers requesting comparative analyses for 216 unique NQTLs across 86 investigations.²
- The Centers for Medicare & Medicaid Services (CMS) issued 15 letters between May and November 2021 to issuers in states where CMS has direct enforcement authority over MHPAEA (Texas, Missouri, and Wyoming) and to non-Federal governmental plan sponsors in those and other states.
- None of the comparative analyses reviewed to date have contained sufficient information upon initial receipt. EBSA observed several common themes in deficiencies:
 - Failure to document comparative analysis before designing and applying the NQTL;
 - Conclusory assertions lacking specific supporting evidence or detailed explanation;
 - Lack of meaningful comparison or meaningful analysis;
 - Non-responsive comparative analysis;
 - Documents provided without adequate explanation;
 - Failure to identify the specific MH/SUD and medical/surgical benefits or MHPAEA benefit classification/s affected by an NQTL;
 - Limiting scope of analysis to only a portion of the NQTL at issue;
 - Failure to identify all factors;
 - Lack of sufficient detail about identified factors;
 - Failure to demonstrate the application of identified factors in the design of an NQTL; and
 - Failure to demonstrate compliance of an NQTL as applied.
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- EBSA has issued 80 insufficiency letters for over 170 NQTLs, requesting additional information and identifying specific deficiencies.
- CMS has issued 19 insufficiency letters identifying deficiencies in the comparative analyses and requested additional information to address these deficiencies.
- EBSA has so far issued 30 initial determination letters finding 48 NQTLs imposed on MH/SUD benefits lacking parity with medical/surgical benefits (36 unique NQTLs).

¹ Pub. L. 115-271 (Oct. 24, 2018).

² This count of “unique” NQTLs only includes limitations that the Department has identified under a plan or health coverage that the plan or issuer has defined using different factors or evidentiary standards than other NQTLs, regardless of whether it is applied to different classifications, or to different plans (in cases where a request was made to a health insurance issuer). Counting each NQTL separately by benefit classification, plan, and product, the number of NQTLs for which EBSA requested a comparative analysis would be 1,112.

- CMS has so far issued 15 initial determination letters to plans and issuers finding 16 NQTLs out of parity with medical/surgical benefits. Two NQTLs were found to be impermissible separate treatment limitations in effect and 14 comparative analyses remained insufficient.
- EBSA received corrective action plans from 19 plans in response to initial determination letters. These corrective action plans address 36 NQTLs (30 unique NQTLs).
- CMS received corrective action plans from 6 plans and issuers in response to initial determination letters. These corrective action plans address 13 NQTLs.
- 26 plans and issuers so far have agreed to make prospective changes to their plans.