

## **CONSOLIDATED APPROPRIATIONS ACT OF 2021, DIVISION BB, TITLE II, SECTION 203 - MENTAL HEALTH PARITY AND SUBSTANCE USE DISORDER BENEFITS**

### **BACKGROUND**

#### **THE CONSOLIDATED APPROPRIATIONS ACT, 2021 (THE CAA)**

The Consolidated Appropriations Act, 2021 (the "Act") was signed into law on December 27, 2020. The Act combines the \$1.4 trillion omnibus federal spending package for the 2021 fiscal year and a \$900 billion COVID-19 stimulus package.

#### **CURRENT LAWS**

The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) requires that group health plans and issuers that provide Mental Health and Substance Use Disorder (SUDs) benefits maintain parity between medical and surgical (M/S) benefits and mental health and substance use disorders (MH/SUD) benefits. This parity is required for financial and quantitative treatment limitations (QTLs) such as copays, deductibles and visit limits and for non-quantitative treatment limitations (NQTLs). NQTLs are limitations or restrictions on benefits that are not numerically based. Examples of NQTLs include utilization management; prescription drug formulary design; provider network participation, credentialing, and reimbursement rates.

### **DIVISION BB, TITLE II, SECTION 203 MENTAL HEALTH PARITY AND SUBSTANCE USE DISORDER BENEFITS**

#### **EFFECTIVE COMPLIANCE DATES**

Section 203 requires health plans to make available a comparative analysis of nonquantitative treatment limitations (NQTLs), upon request, to state and/or federal regulators. This requirement first became effective on February 10, 2021 (45 days after enactment of the CAA).

#### **REQUIREMENTS**

The Consolidated Appropriations Act of 2021 (Section 203) amends the Mental Health Parity and Addiction Equity Act (MHPAEA) to require group health plans and issuers of individual or group health insurance coverage to perform and document comparative analyses of all NQTLs applicable to their MH/SUD benefits. The MHPAEA previously required that NQTLs applicable to MH/SUD benefits be comparable and applied no more stringently than those applied to M/S benefits, but this comparative analysis requirement for NQTLs is new.

#### **COMPARATIVE ANALYSIS**

The comparative analysis must include definitions of each NQTL and the benefits it applies to, the factors and standards used to determine the application of the NQTL, and the analysis and conclusions showing that the application of any NQTL to MH/SUD benefits complies with MHPAEA. The analysis for utilization management (UM) NQTLs

includes consideration of (a) prior authorization, (b) concurrent review, and (c) retrospective review.

### **CORRECTIVE ACTION PLAN**

If the comparative analysis and information provided by a plan/insurer to state or federal regulators does not comply with the Section 203 comparative analysis requirements, a plan/insurer may be required to submit a corrective action plan within 45 days, and if compliance is still not achieved, a plan/insurer would be required to notify enrollees of failure to comply.

### **COMPLIANCE PROGRAM**

The CAA requires federal regulators to issue a compliance program guidance document to improve compliance with the MHPAEA, and to update this guidance document every two years.

### **OPERATIONAL REQUIREMENTS FOR SECTION 203**

A plan/insurer must develop policies and procedures describing the MHPAEA NQTL comparative analysis process for utilization management (UM) and for NQTLs outside of UM such as credentialing, provider contracting and provider reimbursement.

### **MARKET SEGMENT (LOB)**

**LOB:** IFP, SG, Core, Premier

**GF Status:** Grandfathered, Non-Grandfathered

**Exchange:** On Exchange, Off Exchange

**Medical Plans:** HMO, PPO, EPO, POS, PSP, FEH-BP\*

\* FEH-BP is a federal plan sponsored by OPM. As this is a local plan by design, and benefit administration is similar to commercial HMO, FEH-BP is in-scope for this legislative update.

### **DOES NOT APPLY TO**

Medicare Advantage, Med-Supp, Cal Medi-Connect, Stand-Alone Dental, Stand-Alone Vision or Life.

### **FUNDING TYPES**

Fully Insured, Flex Funded, Self-Funded.

## **CONSOLIDATED APPROPRIATIONS ACT OF 2021, DIVISION BB, TITLE II, SECTION 203 - MENTAL HEALTH PARITY AND SUBSTANCE USE DISORDER BENEFITS**

### **FREQUENTLY ASKED QUESTIONS**

#### **What is The Consolidated Appropriations Act, 2021 (the “Act”)?**

The Consolidated Appropriations Act, 2021 (the “Act”) was signed into law on December 27, 2020. The Act combines the \$1.4 trillion omnibus federal spending package for the 2021 fiscal year and a \$900 billion COVID-19 stimulus package.

#### **What is the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)?**

The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) is federal law that requires group health plans and issuers that provide mental health and substance use disorder (MH/SUD) benefits to provide those benefits in parity with medical and surgical (M/S) benefits. Parity is required for financial and quantitative treatment limitations (QTLs) such as copays, deductibles and visit limits and for non-quantitative treatment limitations (NQTLs). NQTLs are limitations or restrictions on benefits that are not numerically based. Examples of NQTLs include utilization management; prescription drug formulary design; provider network participation, credentialing, and reimbursement rates.

#### **What are the requirements of Section 203 - Mental Health and Substance Use Disorder (SUDs) benefits?**

Section 203 amends the Mental Health Parity and Addiction Equity Act (MHPAEA) to require group health plans and issuers of individual or group health insurance coverage to perform and document comparative analyses of all of the NQTLs applicable to their MH/SUD benefits.

#### **For Section 203 requirements, how do plans and issuers demonstrate parity in the application of NQTLs to mental health and substance use disorder (MH/SUD) benefits and medical and surgical (M/S) benefits?**

Group health plans and issuers of individual or group health insurance coverage must perform and document comparative analyses of all NQTLs applicable to their MH/SUD benefits. The MHPAEA previously required that NQTLs applicable to MH/SUD benefits be comparable and applied no more stringently than those applied to M/S benefits, but the detailed written comparisons and data analytics outlined in Section 203 are new requirements for the demonstration of NQTL parity.

#### **What are Nonquantitative Treatment Limitations (NQTLs)?**

Nonquantitative Treatment Limitations (NQTLs) are non-financial treatment limitations, such as prior authorization, concurrent/ retrospective review, provider credentialing, network participation, and provider reimbursement that may limit the scope or duration of a benefit, or access to the benefit.

**When must plans make comparative analyses available to state and/or federal regulators?**

Comparative analyses must be made available to state and/or federal regulators, upon request, within 45 days of enactment of the CAA.

**What must the comparative analyses include?**

The comparative analysis must include definitions of each NQTL and the benefits it applies to, the factors and standards used to determine the application of the NQTL, and applicable data analytics demonstrating that the application of any NQTL to MH/SUD benefits complies with MHPAEA.

**Will Blue Shield provide conduct comparative analysis for its employer group customers?**

Blue Shield will respond to state regulators as required to demonstrate that the design and operation of fully insured plans filed with the DMHC and CDI are compliant with Section 203.

Blue Shield will not manage all aspects of Section 203 compliance for employer group plans. Blue Shield will provide a Section 203 process document which defines the non-quantitative treatment limitations (NQTLs) and the comparative analysis required to support the application of those NQTLs to MH/SUD benefits.

**Will the Section 203 process document be available for all Blue Shield employer groups?**

No. The Blue Shield Section 203 process document will only be applicable for groups for which we administer both medical and surgical (M/S) and mental health and substance use disorder (MH/SUD) benefits – including both fully-insured and self-funded plans – and only available upon request for groups under audit for MHPAEA compliance.

**If a Blue Shield employer group is audited for Section 203 compliance, how will they receive the Section 203 process document?**

If an employer group is requested to demonstrate MHPAEA compliance, they should contact their Blue Shield representative who will be able to provide the most recent process document.