

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 54**

**[REG-120727-21]**

**RIN 1545-BQ29**

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**29 CFR Part 2590**

**RIN 1210-AC11**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Parts 146 and 147**

**[CMS-9902-P]**

**RIN 0938-AU93**

**Requirements Related to the Mental Health Parity and Addiction Equity Act; Extension of Comment Period**

**AGENCY:** Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Proposed rules; extension of comment period.

**SUMMARY:** This document extends the comment period for the proposed rules entitled “Requirements Related to the Mental Health Parity and Addiction Equity Act” that were published in the August 3, 2023, issue of the **Federal Register**. The comment period for the

proposed rules, which had been scheduled to close on October 2, 2023, is extended 15 days to October 17, 2023.

**DATES:** The comment period for the proposed rules published August 3, 2023, at 88 FR 51552, is extended. To be assured consideration, comments must be received at one of the addresses provided below, no later than October 17, 2023.

**ADDRESSES:** Written comments may be submitted to the addresses specified below. Any comment that is submitted will be shared with the Department of the Treasury (Treasury Department), Internal Revenue Service (IRS), and the Department of Health and Human Services (HHS). Please do not submit duplicates.

Comments will be made available to the public. **Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the internet exactly as received and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

In commenting, please refer to file code 1210-AC11. Because of staff and resource limitations, the Department of Labor (DOL) cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following two ways (please choose only one of the ways listed):

1. Electronically. You may submit electronic comments on this regulation to <https://www.regulations.gov>. Follow the “Submit a comment” instructions.

2. By mail. You may mail written comments to the following address ONLY: Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N-5653, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention: 1210-AC11*.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

**FOR FURTHER INFORMATION, CONTACT:** Shira McKinlay, Internal Revenue Service, Department of the Treasury, at 202-317-5500; Beth Baum or David Sydlik, Employee Benefits Security Administration, Department of Labor, at 202-693-8335; David Mlawsky, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at 410-786-6851.

Customer Service Information:

Individuals interested in obtaining information from DOL concerning private employment-based health coverage laws may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline at 1-866-444-EBSA (3272) or visit the DOL's website ([www.dol.gov/agencies/ebsa](http://www.dol.gov/agencies/ebsa)).

In addition, information from HHS on private health insurance coverage and coverage provided by self-funded, non-Federal governmental group health plans can be found on the Centers for Medicare & Medicaid Services (CMS) website ([www.cms.gov/ccio](http://www.cms.gov/ccio)), and information on health care reform can be found at [www.Healthcare.gov](http://www.Healthcare.gov) or <https://www.hhs.gov/healthcare/index.html>. In addition, information about mental and behavioral health and addiction is available at <https://www.samhsa.gov/mental-health> and <https://www.samhsa.gov/find-support>.

## **SUPPLEMENTARY INFORMATION:**

In the proposed rules, “Requirements Related to the Mental Health Parity and Addiction Equity Act,” released by the Departments of the Treasury, Labor, and HHS (collectively, the Departments) on July 25, 2023, and published in the **Federal Register** on August 3, 2023 (88 FR 51552), the Departments solicited public comments on proposals to amend the regulations that implement the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and establish new regulations for the nonquantitative treatment limitation (NQTL) comparative analyses required under MHPAEA, as amended by the Consolidated Appropriations Act, 2021. The proposed rules would amend the existing NQTL standard to prevent group health plans and health insurance issuers offering group or individual health insurance coverage that provides both medical and surgical benefits and mental health or substance use disorder benefits from using NQTLs to place greater limits on access to mental health and substance use disorder benefits as compared to medical/surgical benefits. As part of these changes, the proposed rules would require plans and issuers to collect and evaluate relevant data in a manner reasonably designed to assess the impact of NQTLs on access to mental health and substance use disorder benefits and medical/surgical benefits, and propose a special rule for NQTLs related to network composition. The proposed rules also would amend existing examples and add new examples on the application of the rules for NQTLs to clarify and illustrate the protections of MHPAEA. In addition, the proposed rules would set forth the content requirements for NQTL comparative analyses and specify how plans and issuers must make these comparative analyses available to the Departments, as well as to an applicable State authority, and participants, beneficiaries, and enrollees. The Departments also solicited comments on whether there are ways to improve the coverage of mental health and substance use

disorder benefits through other provisions of Federal law. Additionally, HHS proposed amendments to implement the sunset provision for self-funded, non-Federal governmental plan elections to opt out of compliance with MHPAEA, as adopted in the Consolidated Appropriations Act, 2023. The comment period for the proposed rules was scheduled to close on October 2, 2023.

Additionally, on July 25, 2023, DOL, in collaboration with HHS and the Treasury Department, issued Technical Release 2023-01P.<sup>1</sup> The Technical Release sets out principles and seeks public comment to inform future guidance with respect to the application of the proposed data collection and evaluation requirements to NQTLs related to network composition and a potential time-limited enforcement safe harbor for plans and issuers that include data in their comparative analyses that demonstrates they meet or exceed all of the thresholds identified in future guidance with respect to NQTLs related to network composition. Specifically, the Technical Release solicits feedback on the type, form, and manner for the data that plans and issuers would be required to include, along with other relevant data as appropriate, as part of their comparative analyses for NQTLs related to network composition which must be submitted to the Departments upon request. The Technical Release also solicits feedback on how to define certain thresholds for required data and a potential time-limited enforcement safe harbor to be specified in future guidance that, if satisfied, would demonstrate to the Departments that a plan or coverage provides comparable access to in-network providers for mental health and substance use disorder benefits as compared to medical/surgical benefits. In turn, if all of these safe harbor

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<sup>1</sup> Department of Labor, Employee Benefits Security Administration, Technical Release 2023-01P: Request for Comment on Proposed Relevant Data Requirements for Nonquantitative Treatment Limitations (NQTLs) Related to Network Composition and Enforcement Safe Harbor for Group Health Plans and Health Insurance Issuers Subject to the Mental Health Parity and Addiction Equity Act (July 25, 2023), available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/technical-releases/23-01>.

thresholds are met or exceeded, the plan or issuer would not be subject to Federal enforcement under MHPAEA with respect to NQTLs related to network composition for a specified period of time. Comments on Technical Release 2023-01P should be sent via email to [mhpaea.rfc.ebsa@dol.gov](mailto:mhpaea.rfc.ebsa@dol.gov). All comments on Technical Release 2023-01P submitted to DOL will be shared with HHS, the IRS, and the Treasury Department and posted on DOL's Employee Benefits Security Administration's (EBSA) website. The comment period for Technical Release 2023-01P was scheduled to close on October 2, 2023.

Since the publication of the proposed rules in the **Federal Register** and the release of Technical Release 2023-01P on EBSA's website, there has been considerable interest expressed in these documents, and some interested parties have requested additional time to review and submit comments. The Departments value public feedback as they consider whether and how to issue final rules and future guidance. In response to these requests, the Departments are extending the period for submitting comments on the proposed rules to October 17, 2023. Additionally, to ensure consistency with the comment period for the proposed rules, DOL is simultaneously extending the comment period for Technical Release 2023-01P to October 17, 2023. To be assured consideration, comments on the proposed rules and Technical Release must be received no later than October 17, 2023.

Dated: September 19, 2023.

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**Douglas W. O'Donnell,**  
*Deputy Commissioner for Services and Enforcement,*  
*Internal Revenue Service.*

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**Lisa M. Gomez,**  
*Assistant Secretary, Employee Benefits*  
*Security Administration, Department of Labor.*

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**Xavier Becerra,**  
*Secretary,*  
*Department of Health and Human Services.*