



“Enhanced Attestation”: A Simple Tool Regulators Can Use to Help Enforce the Mental Health Parity and Addiction Equity Act

The federal Mental Health Parity and Addiction Equity Act (MHPAEA) was enacted in 2008 on a simple principle: Insurance coverage for mental health and addiction treatment should be no more restrictive than insurance coverage for other medical care. In other words, if a person has comprehensive insurance coverage for a chronic disease (such as hypertension), they should have a similar level of comprehensive coverage for mental health and substance use disorders. If it’s not as comprehensive—or if it’s more restrictive—that’s a parity violation.

How can state departments of insurance know if there’s a parity violation?

Parity implementation requires robust state oversight. The MHPAEA is complicated, and many insurance departments have learned that a thorough review is time consuming and frustrating—particularly when payers provide incomplete and or inconsistent information. One way that insurance departments can better monitor for parity violations is to require payers to demonstrate *in advance* that they are in compliance with the law.

Comparative analysis helps check payers’ parity compliance

The American Medical Association (AMA), American Society of Addiction Medicine (ASAM), and American Psychiatric Association (APA) believe that the obligation of demonstrating compliance with the law is something payers can and should do. Because the MHPAEA is a comparative law—payers should do the comparisons to analyze whether they are in compliance with the law. Requiring prior comparative analysis can help streamline oversight, can help payers identify gaps, and most important—may help ensure patients have the coverage required by the law.

“Enhanced attestation” can help provide streamlined comparative analysis

Fortunately, there is an “Enhanced Attestation” form that can help streamline oversight and, hopefully, increase MHPAEA compliance. The “Enhanced Attestation” guides payers through the necessary analyses to demonstrate compliance with the law, which can then be made available to a state department of insurance upon request for its own regulatory review. An “enhanced attestation” form requires issuers to attest that they have performed analyses in each the categories of compliance covered by the federal parity law:

- Defining mental health and substance use disorder benefits and medical/surgical benefits
- Assigning benefits into classifications
- Financial requirements and quantitative treatment limitations (QTLs)
- Cumulative financial requirements and QTLs
- Nonquantitative treatment limitations (NQTLs)
- Disclosure requirements
- Vendor coordination

“Enhanced Attestation” can provide payers and regulators with a clearer picture for potential next steps. This could lead to market-conduct examinations and streamlined enforcement processes, as well as support improved communication between regulators and payers. But most of all, it may help ensure patients receive the coverage for mental and substance use disorders that they are due.



Types of information that “Enhanced Attestation” would require

“Enhanced Attestation” simply asks that payers provide information about how they are following the law. The form—available at <https://www.end-opioid-epidemic.org/wp-content/uploads/2019/12/Enhanced-Attestation-Dec-2019.pdf>—is based on existing state department of insurance forms and the MHPAEA itself. Everything in the “Enhanced attestation” form is required by federal law. This information includes answering the following questions:

Do medical definitions follow medical standards? The issuer shall attest that it has a description of which independent standards were used to define mental health conditions, substance use disorders, and medical/surgical conditions and how these standards and definitions are consistent with applicable state law.

What are the financial requirements for mental health and substance use disorders? The issuer shall attest that it has a list of all financial requirements and QTLs imposed upon MH/SUD benefits in each classification of benefits and applicable sub-classification. The issuer shall attest that any type of financial requirement or QTL applied to mental health or substance use disorder benefits in a classification (or applicable sub-classification) applies to at least two-thirds of expected plan payments on medical/surgical benefits within that classification (or applicable sub-classification) and that it has the documentation that supports this attestation.

Do mental health and substance use disorders have separate financial requirements? The issuer shall attest that it has performed a thorough review of all policies and contracts and has determined that there are no separate cumulative financial requirements or QTLs for mental health or substance use disorder benefits and that it has documentation to support this attestation.

What types of barriers are used for coverage of mental health and substance use disorders? The issuer shall attest that it maintains a list of all NQTLs imposed upon mental health or substance use disorder benefits and medical/surgical benefits within each classification of benefits (or applicable sub-classification), including the methodology used to identify those NQTLs.

What are the medical necessity criteria for mental health and substance use disorders? The issuer shall attest that it has a description of the method by which it makes available to any current or potential participant, beneficiary, or contracting provider upon request the medical necessity criteria used to make mental health or substance use disorder medical necessity determinations.

Does a payer’s mental/behavioral health organization follow the law? The issuer must attest that it coordinates with its MBHO (if applicable) to ensure that mental health and substance use disorder benefits are designed and applied no more restrictively than how medical/surgical benefits are designed and applied

Resources for more information

- APA Fair Insurance Coverage: It’s the Law: <https://www.psychiatry.org/psychiatrists/practice/parity>
- ASAM parity toolkit: <https://www.asam.org/advocacy/toolkits/parity>
- Comprehensive “Enhanced Attestation” form for state regulators and health insurers: <https://www.end-opioid-epidemic.org/wp-content/uploads/2019/12/Enhanced-Attestation-Dec-2019.pdf>