



October 16, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Lisa M. Gomez
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20002

The Honorable Douglas W. O'Donnell
Deputy Commissioner for Services and Enforcement
Internal Revenue Service
U.S. Department of the Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

Re: ATA Action Comments on the Requirements Related to the Mental Health Parity and Addiction Equity Act Proposed Rule (1210-AC11)

On behalf of ATA Action, the American Telemedicine Association's trade organization focused on advocacy, thank you for the opportunity to provide feedback in response to this important proposed rule focused on improving access to mental health providers and mental health care services. We appreciate the Administration's continued support for telehealth, especially within this proposed rule.

Telehealth has become an integral part of our health care system and has proven to be an effective, affordable, and safe way to deliver care where and when we need it, especially for those in need of mental health services. During the pandemic, telemental healthcare use soared, approximately 10 times (1,068 percent) higher than pre-pandemic levels.¹ Telehealth utilization for mental health services remains persistent and elevated today.² Therefore, it is important that telehealth be permanently available without any arbitrary barriers such as in-person requirements to ensure those with mental health conditions or any conditions have a wide range of options for care — especially those who have gained access to mental health treatment for the first time only through telehealth. ATA Action provides additional details below in response to the proposals.

List of Non-Quantitative Treatment Limitations Examples: (M) Example 13 (Standards for provider admission to a network)

¹ [JAMA Health Forum – Health Policy, Health Care Reform, Health Affairs | JAMA Health Forum | JAMA Network](#)

² *ibid*

This proposed rule suggests amendments to the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). Specifically, these proposals would amend the existing NQTL standard to prevent plans and issuers 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, these proposals would amend existing examples and add new examples on the application of the rules for NQTLs, which are non-numerical limits on the scope or duration of benefits for treatment.

The Departments added a new example (13) that included expanding the use of telehealth to assist with provider work shortages. Across the U.S., there are 165 million Americans located in mental health professional shortage areas and 8,326 mental health providers needed.³ Telehealth is a modality of care that allows patients located in any geographic location to connect with specialists and physicians who otherwise would be inaccessible. ATA Action commends the Departments for including this example as well as recognizing the importance and benefits of telehealth services. We encourage the Departments to find other ways to incorporate virtual services to meet network standards and expand access to care.

Other Proposed Amendments

Within the proposed rule the Departments explicitly states they “*expect plans and issuers to treat telehealth benefits the same way they treat those benefits when provided in person in determining the classification or sub-classification in which a particular benefit belongs and in ensuring compliance with the requirements of MHPAEA, as required under the 2013 final rules.*” ATA Action strongly supports this statement. It is our top priority to ensure laws and regulations implemented do not hold telehealth to a higher standard than in-person services. Both telehealth and in-person services should be held to the same standard of care and there should be no additional barriers prior to receiving virtual services such as in-person requirements. These are burdensome, outdated, and arbitrary. These types of barriers ultimately defeat the purpose of telehealth and impede access to care.

Request for Information on Using Consumer Protection Laws to Increase MHPAEA Compliance.

During the COVID-19 pandemic, the Departments issued guidance allowing large employers under ERISA to provide telehealth coverage for part-time, seasonal, and contracted employees who would not otherwise be eligible for full health care coverage through that employer. ATA Action applauds the Department for taking swift action and expanding access to care for employees across the United States. We support continuing this critical flexibility and urge the Departments to work alongside Congress to enact the Telehealth Benefit Expansion for Workers Act of 2023 (HR. 824), which would permanently categorize telehealth an excepted benefit. If the Departments and Congress fail to take action by the end of CY2023, many employees will lose access to critical health care services, including mental health services. Employers want to be able to continue to offer this coverage to their employees and employees want the benefit. In a recent study large firms offering health benefits were asked how important they felt telemedicine would be in providing access for their employees to certain types of services in the coming years. Among the firms, thirty-six percent say that telemedicine will be “very important” in providing

³ [Shortage Areas \(hrsa.gov\)](https://www.hrsa.gov/shortage-areas)

access to behavioral health services in the future, and another 31% say that it will be “important” to providing access to these services.⁴

Again, we applaud the Departments for soliciting feedback from stakeholders on this matter. As we all know, there is a mental health crisis in our country and ATA Action strongly believes that telehealth plays a significant role in meeting the need for mental health services. Thank you for your consideration of this information.

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kyle Zebley
Executive Director
ATA Action

⁴ <https://www.kff.org/report-section/ehbs-2022-section-13-employer-practices-telehealth-provider-networks-and-coverage-for-mental-health-services/>