

# NQTL Comparative Analysis: Do You Know What You're Getting?

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**PRACTICES** Employee Benefits and Executive Compensation

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As of February 10, 2021, each group health plan has been required to perform and document a comparative analysis of the design and application of non-quantitative treatment limitations (“**NQTLs**”) under the plan. This comparative analysis must include specific findings and conclusions reached by the plan and any results of the analysis that indicate the plan is or is not in compliance with the mental health parity rules. Prior to February 2021, this analysis was required, but there was no specific requirement to document the analysis. As of January 1, 2025, a named fiduciary of the plan must certify that the fiduciary has (i) engaged in a prudent process to select one or more qualified service providers to perform and document the NQTL comparative analysis in accordance with applicable law and regulations, and (ii) satisfied the duty to monitor such service providers as required under ERISA with respect to the performance and documentation of the comparative analysis. As part of this process, the DOL has stated that it expects the fiduciary to: (i) review the NQTL comparative analysis; (ii) ask questions about the analysis and discuss it with service providers, as necessary, to understand the findings and conclusions documented in the analysis; and (iii) ensure that a service provider responsible (in whole or in part) for performing and documenting the comparative analysis provides assurance that, to the best of its ability, the NQTLs and associated comparative analysis comply with the requirements of the mental health parity rules and implementing regulations.

Although many third party administrators (“**TPAs**”) have agreed to provide data needed to conduct the analysis of NQTLs and may label such data as the “comparative analysis,” it is common for the data and/or analysis to not meet applicable requirements. In particular, these documents frequently do not contain the findings and conclusions regarding the plan’s compliance with the NQTL requirements under the mental health parity rules. Employers should thus understand whether performing and documenting the NQTL comparative analysis is part of the scope of the service agreement with the TPA. If so, such agreement should state that the TPA, to the best of its ability, will ensure that the NQTL and associated comparative analysis complies with the requirements of mental health parity rules and implementing regulations. An employer may need to engage another vendor to perform and document the comparative analysis for compliance with the rules. We are aware that some vendors will agree to review the comparative analysis provided by a TPA, but note in its report that the vendor is not actually opining that the comparative analysis is legally compliant. Employers should review the scope of services to be provided by such vendors and include contract provisions to ensure compliance of the comparative analysis and report with the mental health parity rules.