

October 2, 2023

Office of Health Plan Standards and Compliance Assistance,  
Employee Benefits Security Administration. Room N-5653  
US Department of Labor  
200 Constitution Avenue, NW.  
Washington, DC 20210

***Attn: File Code 1210-AC11; Requirements Related to the Mental Health Parity and Addiction Equity Act***

Dear Departments:

The Academy of Nutrition and Dietetics (the “Academy”) is pleased to provide comments on File Code 1210-AC11; Requirements Related to the Mental Health Parity and Addiction Equity Act published in the Federal Register on August 3, 2023. Representing more than 112,000 registered dietitian nutritionists (RDNs),<sup>1</sup> nutrition and dietetic technicians, registered (NDTRs), and advanced-degree nutritionists, the Academy is the largest association of nutrition and dietetics practitioners committed to accelerating improvements in global health and well-being through food and nutrition.

RDNs’ extensive formal education and training provides expertise in all aspects of food and nutrition, enabling RDNs to play a key role in improving people’s nutritional status to prevent and treat chronic diseases and conditions, including eating disorders. RDNs are recognized for their unique ability to conduct and translate science and evidence through education, medical nutrition therapy (MNT) and intensive behavior therapy.<sup>2</sup> The National Academies of Sciences, Engineering, and Medicine maintains that “the registered dietitian is currently the single identifiable group of health-care practitioners with standardized education, clinical training, continuing education and national credentialing requirements necessary to be directly reimbursed as a provider of nutrition

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<sup>1</sup> The Academy has approved the optional use of the credential “registered dietitian nutritionist (RDN)” by “registered dietitians (RDs)” to more accurately convey who they are and what they do as the nation’s food and nutrition experts. The RD and RDN credentials have identical meanings and legal trademark definitions.

<sup>2</sup> Medical Nutrition Therapy (MNT) is an evidence-based application of the Nutrition Care Process. The provision of MNT (to a patient/client) may include one or more of the following: nutrition assessment/reassessment, nutrition diagnosis, nutrition intervention and nutrition monitoring and evaluation that typically results in the prevention, delay or management of diseases and/or conditions. Academy of Nutrition and Dietetics’ [Definition of Terms](#) list updated September 2023. Accessed September 18, 2023.

therapy.”<sup>3</sup> RDNs deliver nutrition care services in a variety of settings, including outpatient and inpatient, as well as short and long-term care facilities, providing high quality, evidence-based care generating cost-savings to the health care system.<sup>4</sup> According to John Hopkin’s “*Eating Disorder Facts*,” as many as 30 million American’s suffer from an eating disorder; eating disorders affect all genders, races and ethnic groups and carry the highest risk of death of any mental illness.<sup>5</sup> The American Psychiatric Association (APA) recommends a multidisciplinary approach to the treatment of an eating disorder, incorporating the expertise and collaboration of medical, psychiatric, psychological and nutrition experts.<sup>6</sup> “Treatment plans for eating disorders include psychotherapy, medical care and monitoring, nutritional counseling, medications, or a combination of these approaches.”<sup>7</sup> Nutrition rehabilitation, per the APA, the National Institutes of Health, and the Academy for Eating Disorders includes restoring nutrition status and weight restoration, where appropriate.<sup>8,9,10</sup>

The Academy appreciates the opportunity provided by the Internal Revenue Service; the Department of the Treasury; the Employee Benefits Security Administration; the Department of Labor; the Centers for Medicare & Medicaid Services; and the Department of Health and Human Services, (hereinafter referred to as the “Departments”) to submit comments and offers the following commentary on the proposed rule.

### **Standard of Practice: Nutrition Care in Eating Disorders**

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<sup>3</sup> Committee on Nutrition Services for Medicare Beneficiaries. “The Role of Nutrition in Maintaining Health in the Nation’s Elderly: Evaluating Coverage of Nutrition Services for the Medicare Population.” Washington, DC: Food and Nutrition Board, Institute of Medicine; January 1, 2000 (published).

<sup>4</sup> Dudzik J., Senkus K., Evert A., et al. The effectiveness of medical nutrition therapy provided by a dietitian in adults with prediabetes: a systematic review and meta-analysis. *American Journal of Clinical Nutrition*. (2023) doi: <https://doi.org/10.1016/j.ajcnut.2023.08.022>; Sikand, G., Handu, D., Rozga, M. et al. Medical Nutrition Therapy Provided by Dietitians is Effective and Saves Healthcare Costs in the Management of Adults with Dyslipidemia. *Curr Atheroscler Rep* (2023), doi: <https://doi.org/10.1007/s11883-023-01096-0>; Mohr AE, Hatem C, Sikand G, Rozga M, Moloney L, Sullivan J, De Waal D, Handu D, Effectiveness of medical nutrition therapy in the management of adult dyslipidemia: A systematic review and meta-analysis, *Journal of Clinical Lipidology* (2022), doi: <https://doi.org/10.1016/j.jacl.2022.06.008>; Morgan-Bathke M, Baxter SD, Halliday TM, Lynch A, Malik N, Raynor H, Garay J, Rozga M, Weight Management Interventions Provided by a Dietitian for Adults with Overweight or Obesity: An Evidence Analysis Center Systematic Review and Meta-Analysis, *Journal of the Academy of Nutrition and Dietetics* (2022), doi: <https://doi.org/10.1016/j.jand.2022.03.014>; Franz MJ, MacLeod J, Evert A, Brown C, Gradwell E, Handu D, Reppert A, Robinson M, Academy of Nutrition and Dietetics Nutrition Practice Guideline for Type 1 and Type 2 Diabetes in Adults: Systematic Review of Evidence for Medical Nutrition Therapy Effectiveness and Recommendations for Integration into the Nutrition Care Process, *Journal of the Academy of Nutrition and Dietetics* (2017), doi: <https://doi.org/10.1016/j.jand.2017.03.022>; Bradley DW, Murphy G, Snetselaar LG, Myers EF, Qualls LG. The incremental value of medical nutrition therapy in weight management. *Managed Care*. 2013;22(1):40-5.

<sup>5</sup> *Eating Disorder Facts*, John Hopkins All Children’s Hospital. <https://www.hopkinsallchildrens.org/Services/Pediatric-and-Adolescent-Medicine/Adolescent-and-Young-Adult-Specialty-Clinic/Eating-Disorders/Eating-Disorder-Facts> Accessed, September 18, 2023.

<sup>6</sup> Practice Guideline for the Treatment of Patients with Eating Disorders, 4<sup>th</sup> Edition. The American Psychiatric Association. 2023 p 25.

<sup>7</sup> *Eating Disorders*, National Institutes of Health. <https://www.nimh.nih.gov/health/publications/eating-disorders> Accessed September 18, 2023.

<sup>8</sup> Practice Guideline for the Treatment of Patients with Eating Disorders, 4<sup>th</sup> Edition. The American Psychiatric Association. 2023 p 34.

<sup>9</sup> *Eating Disorders*, National Institutes of Health. <https://www.nimh.nih.gov/health/publications/eating-disorders> Accessed September 18, 2023.

<sup>10</sup> *Eating Disorders: A Guide to Medical Care*, 4<sup>th</sup> Edition. Academy for Eating Disorders. 2021 p 14. [https://higherlogicdownload.s3.amazonaws.com/AEDWEB/27a3b69a-8aae-45b2-a04c-2a078d02145d/UploadedImages/Publications\\_Slider/2120\\_AED\\_Medical\\_Care\\_4th\\_Ed\\_FINAL.pdf](https://higherlogicdownload.s3.amazonaws.com/AEDWEB/27a3b69a-8aae-45b2-a04c-2a078d02145d/UploadedImages/Publications_Slider/2120_AED_Medical_Care_4th_Ed_FINAL.pdf) Accessed: September 19, 2023.

The Academy recognizes that there are many types of eating disorders, each diagnosed by a licensed clinician using clinical symptoms as provided by the *Diagnostic and Statistical Manual of Mental Disorders 5<sup>th</sup> edition*. Treatment of eating disorders requires a high level of individualization and a “person-centered” treatment plan.<sup>11</sup> While eating disorders are a mental health disorder,<sup>12</sup> individuals with eating disorders experience medical and nutrition-related complications. Therefore, eating disorder treatment is most effective when carried out by a team of health professionals working with a coordinated plan of care; strong evidence supports the effectiveness of RDNs providing MNT as part of an eating disorder treatment team.<sup>13</sup>

Common nutrition-related symptoms associated with eating disorders include malnutrition, gastrointestinal disturbances, electrolyte disturbances, vitamin and mineral deficiencies, poor bone density and bone health, amenorrhea, food intolerance, anemia (both micro- and macro-cytic), and when necessary, the need for supplemental or total nutrition support.<sup>14</sup> Given the wide spectrum of nutrition-related issues and the complexity of providing nutrition care to individuals with eating disorders, the Academy has established a detailed Standards of Practice and Standards of Professional Performance<sup>15</sup> for treating disordered eating and eating disorders to ensure that RDNs working in this specialty are sufficiently prepared to provide MNT at various levels of care, across the spectrum of eating disorders.

MNT to treat an eating disorder can include any number of the following actions:

- Eating disorder screening
- Nutrition assessment/reassessment
- Nutrition diagnosis<sup>16</sup>
- Implement and monitor changes in the diet, including but not limited to:
  - Monitor weight fluctuations and weight restoration, when appropriate
  - Restore nutrition status and monitor for refeeding syndrome
  - Correct for malnutrition and hydration
  - Manage vitamin and mineral deficiencies
- Counsel patients to provide them with knowledge and skills to overcome an eating disorder and to develop healthy attitudes and behaviors surrounding food/eating
- Establishing community connections and support systems<sup>17</sup>

### **The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and Nutrition Care**

The passage of MHPAEA held the promise of ensuring individuals living with eating disorders would have access to the appropriate levels of nutrition care necessary to treat their condition. However, that promise has fallen short. The Academy has received reports time and time again from members whose patients have lost access to RDN

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<sup>11</sup> Practice Guideline for the Treatment of Patients with Eating Disorders, 4<sup>th</sup> Edition. The American Psychiatric Association. 2023 p 25.

<sup>12</sup> Eating disorders are classified as mental health conditions, and therefore treatment of an eating disorder is mental health benefit. n FAQs Part 38, Q1. See DSM (5th ed.), section II, Feeding and Eating Disorders.

<sup>13</sup> Issue Brief: Nutrition CARE Act. <https://www.eatrightpro.org/advocacy/public-policy-priorities/all-legislation/nutrition-care-act> Accessed: September 18, 2023

<sup>14</sup> Hackert A, et al. Academy of Nutrition and Dietetics: Revised 2020 Standards of Practice and Standards of Professional Performance for Registered Dietitian Nutritionists (Competent, Proficient, and Expert) in Eating Disorders. *Jour Acad of Nutr.* Nov. 2020 . 120 (11): p 1902-1919

<sup>15</sup> *ibid*

<sup>16</sup> Per the Academy of Nutrition and Dietetics’ [Definition of Terms](#) list, “nutrition diagnosis” is defined as: “a critical component of the NCP. A nutrition diagnosis identifies and describes a specific nutrition problem(s) that can be resolved or improved through nutrition intervention.” Accessed September 27, 2023.

<sup>17</sup> Issue Brief: Nutrition CARE Act. <https://www.eatrightpro.org/advocacy/public-policy-priorities/all-legislation/nutrition-care-act> Accessed: September 18, 2023

provided services due to payers circumventing their obligation to provide fair and equitable benefits and coverage for mental health conditions. The Academy agrees with the Departments' analysis, which Academy members can attest, that nutrition care claims are repeatedly unlawfully being denied.

In response to the Departments' solicitation of comments on potential challenges of applying MHPAEA to all benefits for a mental health condition or substance use disorder, where items and services can be delivered for both medical conditions, the Academy believes that a contributing challenge falls to the lack of definition for the term "nutrition counseling."

### *The Nutrition Care Process:*

RDNs follow the Nutrition Care Process (NCP) Framework to deliver highly individualized care to an individual. The NCP is a systematic method that is comprised of four steps: nutrition assessment and reassessment; nutrition diagnosis; nutrition intervention; and nutrition monitoring and evaluation.

Nutrition assessment and reassessment involves the assessment of dietary intake, anthropometry, physical assessment, and signs or symptoms of nutritional deficiency or excess. RDNs utilize validated tools and/or markers for comprehensive nutrition assessment as they are essential for accurate evaluation of nutrition status and determination of the nutrition diagnosis.<sup>18</sup> Use of the NCP does not mean that all patients follow the same prescriptive care plan, but rather nutrition care is individualized. Use of the NCP leads to more efficient and effective care. It is also a holistic approach and considers the individual's needs and values while using the best evidence available to make decisions.

By definition, medical nutrition therapy is the evidenced based application of the Nutrition Care Process with the intent to prevent, delay or manage disease or conditions.<sup>19</sup>

The Nutrition Intervention step includes five domains:

1. Food and Nutrient Delivery
2. Nutrition Education
3. Nutrition Counseling
4. Coordination of Nutrition Care
5. Population Based Nutrition Action

During this stage, an RDN may apply one or more of the domains depending upon the individual's nutrition needs and the desired outcomes of the patient and medical team. In the context of treatment for an eating disorder, the RDN may provide nutrition counseling, which would be individualized to the patient. In this scenario, nutrition counseling, as a component of MNT, is provided with the **intent to treat the nutrition-related concerns that are directly related to the eating disorder**.

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<sup>18</sup> Per the Academy of Nutrition and Dietetics' [Definition of Terms](#) list, "nutrition diagnosis" is defined as: "a critical component of the NCP. A nutrition diagnosis identifies and describes a specific nutrition problem(s) that can be resolved or improved through nutrition intervention." Accessed September 27, 2023.

<sup>19</sup> Academy of Nutrition and Dietetics' [Definition of Terms](#) list updated September 2023. Accessed September 18, 2023.

The example above outlines an evidenced-based, formalized approach to caring for patients with a known diagnosis, in this case eating disorders. There are occasions when nutrition counseling is provided outside of the context of a known disease or condition. Nutrition counseling is often utilized as a component of wellness initiatives and/or preventive care. The difference, however, is that the focus is on prevention and not an “*intent-to-treat*” a disease state or medical condition.

While both scenarios show examples of “nutrition counseling,” **there is stark difference between the level and duration of care when nutrition counseling is provided with the intent to treat a disease or condition, such as an eating disorder, and when nutrition counseling is provided through the context of wellness and disease prevention.** This is an important distinction and one that the Academy believes needs to be clarified in guidance to payers when determining benefits and coverage.

Far too often, the Academy receives reports from members, who are actively providing MNT to patients with eating disorders and are receiving denials from payers. Academy members have reported the reasons for denial, including:

- Vague plan language for “nutrition counseling” and allocating the benefit as supplementary/wellness
- Plans incorrectly claiming that MNT for an eating disorder is not a mental health benefit
- The plan’s visit limitation on Eating Disorder MNT fails MHPAEA’s Quantitative Treatment Limit “QTL” Test.
- The plan’s restrictions on Eating Disorder MNT fails MHPAEA’s Nonquantitative Treatment Limit “NQTL” Test.

Additionally, Academy members have shared responses from a payer who provided a definition for nutrition counseling as the following:

*“Nutrition Counseling is provided as part of treatment for a disease by a licensed health care professional. It is a process where you work with a health care professional...Nutrition Counseling by a registered dieti[t]ian for chronic disease in which a dietary adjustment has a therapeutic role.”*

When claims were submitted under this policy, using MNT CPT® Codes (97802-4), they were denied as a non-covered benefit. This policy definition of nutrition counseling aligns with the definition of medical nutrition therapy provided for the treatment of an eating disorder. The example provided above from Academy members demonstrates the disconnect between the description of the nutrition service in the written policy versus the service delivered and subsequent claim submitted. In similar situations, MNT has been denied with the given reason being, the plan does not cover services and associated expenses for “nutritional-based therapy.”

It is imperative that additional clarification be expressly outlined in guidance so that payers recognize the full scope of nutrition care in the treatment of eating disorders. While MNT may not always be explicitly mentioned in the literature and established guidelines, the principles and practices associated with MNT are integral to the treatment of eating disorders. **“Nutrition counseling” for eating disorders is, by definition, medical nutrition therapy.**

### **Academy Recommendations:**

The Academy supports many of the recommendations outlined in the proposed rule and is in alignment with the Departments’ interpretation that:

*MHPAEA’s fundamental purpose is to ensure that individuals in group health plans or with group or individual health insurance coverage who seek treatment for covered mental health conditions or substance use disorders do not face greater barriers to accessing benefits for such*

*mental health conditions or substance use disorders than they would face when seeking coverage for the treatment of a medical condition or for a surgical procedure.*<sup>20</sup>

The Academy appreciates the Departments' recognition that benefits for the treatment of eating disorders are mental health benefits for purposes of MHPAEA. The Academy supports the utilization of the new *Example 6* throughout the relevant regulations illustrating nutrition counseling is a primary treatment for eating disorders. However, the Academy remains concerned that the term "nutrition counseling" does not accurately in and of itself capture the level of nutrition care that is necessary for the treatment of eating disorders, and potentially leaves the door open for misinterpretation by payers. With the understanding that MNT within the context of treating an eating disorder is the provision of one or more of the following: nutrition assessment/reassessment; nutrition diagnosis; nutrition intervention; and nutrition monitoring and evaluation, **the Academy recommends replacement of the term "nutrition counseling" within this new example with "medical nutrition therapy" to ensure what is intended by the revised regulations, and the MHPAEA itself, is achieved.**

Additionally, the Academy supports stronger enforcement of compliance with the MHPAEA, to include the provision of penalties for those plans that fail to comply with greater transparency and reporting requirements for plans providing mental health and medical/surgical benefits.

Thank you for your careful consideration of the Academy's comments on the Requirements Related to the Mental Health Parity and Addiction Equity Act. Please do not hesitate to contact Jeanne Blankenship by phone at 312-899-1730 or by email at [jblankenship@eatright.org](mailto:jblankenship@eatright.org), Carly Léon at 312-899-1773 or by email at [cleon@eatright.org](mailto:cleon@eatright.org), or Charla Burill by phone at 202-666 5957 or by email at [cburill@eatright.org](mailto:cburill@eatright.org) with any questions or requests for additional information.

Sincerely,



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<sup>20</sup> RIN 0938-AU93