National Coordinating Committee for Multiemployer Plans

Strengthening Parity in Mental Health and Substance Use Disorder Benefits

2022 Lawyers and Administrators Meeting
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Behavioral Health at a Glance

Importance of Behavioral Health

According to the CDC, suicide rates have increased 33% in the past 20 years, and affects all ages:

- Individuals **10 – 34 years old**: suicide is the 2nd leading cause of death
- Individuals **34 – 54 years old**: suicide is the 5th leading cause of death

On average, there is **1 death** by suicide every **11 minutes** — an average of 130 deaths per day

40 million people have anxiety disorders, the most prevalent mental condition

Nearly **60%** of adults with mental illness **did not receive mental health services** in the previous year

17 million adults experienced at least one depressive episode in 2019. **Depression ranks #1** among the most common causes of disability.

The CDC reports that over the 12-month period from June 2019 to July 2020, **opioid-related deaths** experienced a near **30% increase** from the prior 12 months.

The **construction** industry has the **2nd highest suicide rate** among all industries (45.3 deaths per 100,000 workers)

"Construction occupations had the highest Proportional Mortality Rate PMR for drug overdose deaths and for both heroin-related and prescription opioid-related overdose deaths."

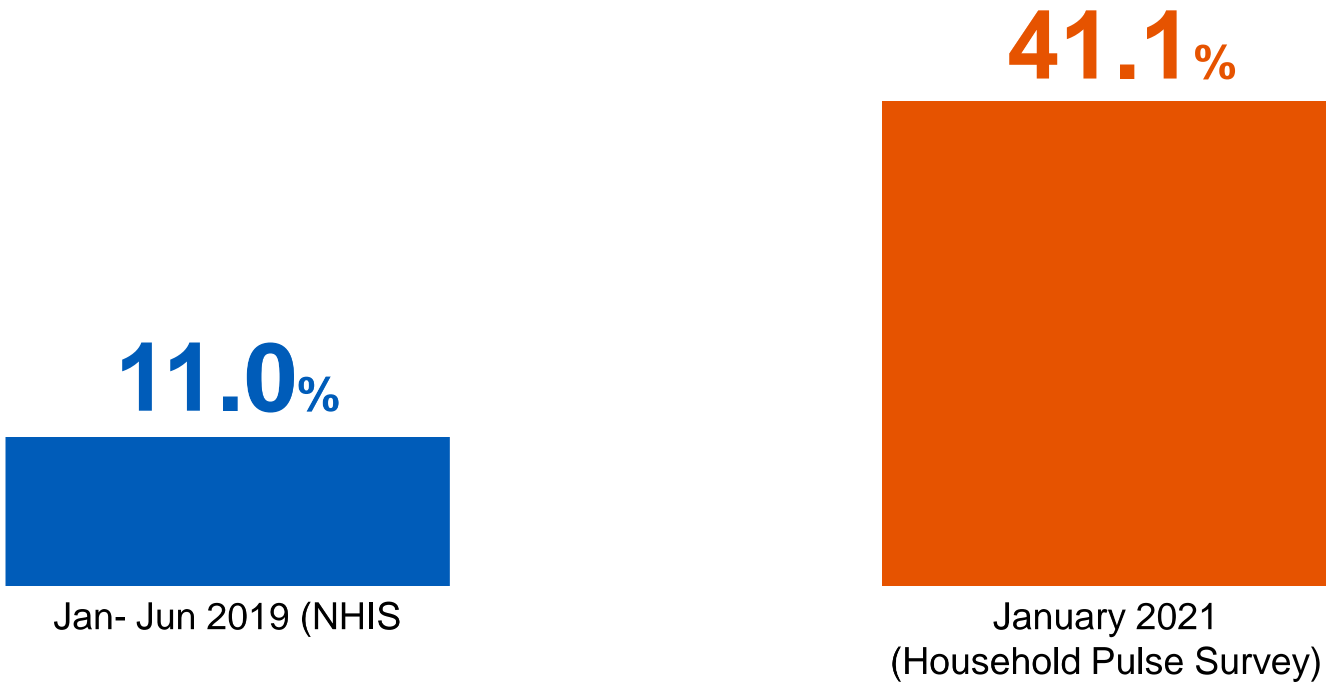
—Occupational Patterns in Unintentional and Undetermined Drug-Involved and Opioid-Involved Overdose Deaths—United States, 2007–2012 CDC, August 24, 2018

$6 Trillion is the projected annual global cost of mental health disorders in 2030 — more than the combined cost of diabetes and cancer.

Sources: Time Special Edition 9/11/20 citing Anxiety and Depression Association of America; National Institute of Mental Health; World Economic Forum; National Alliance on Mental Illness; www.cdc.gov/suicide/facts

COVID-19 has had a Negative Impact on Mental Well-Being

Average Share of Adults Reporting Symptoms of Anxiety Disorder and/or Depressive Disorder, January-June 2019 vs. Jan 2021



NOTES: Percentages are based on responses to the GAD-2 and PHQ-2 scales. Pulse findings (shown here for January 6 – 18, 2021) have been stable overall since data collection began in April 2020.

SOURCE: NHIS Early Release Program and U.S. Census Bureau Household Pulse Survey. For more detail on methods, see: https://www.cdc.gov/nchs/data/nhis/earlyrelease/ERmentalhealth-508.pdf

Why MH/SUD Benefits Have Long Term Impact

$6 Trillion is the projected annual global cost of mental health disorders in 2030 — **more than the combined cost of diabetes and cancer.**

Key impacts include:

- Higher health care costs associated with increased utilization and poor medication adherence
- Impact on workforce morale and productivity
- Lost earnings
- Higher costs associated with premature death and disability

Source: Time Special Edition 9/11/19 citing Anxiety and Depression Association of America; National Institute of Mental Health; World Economic Forum; National Alliance on Mental Illness

Plan Sponsors Supporting MH/SUD

- Expansion of **telehealth**: Consumer adoption has skyrocketed, from **11%** of U.S. consumers using telehealth in 2019 to **46%** of consumers using telehealth in 2021
- Adoption of **virtual mental health** options including **text-based therapy**: Clients and therapists exchanging text messages via the phone, an online therapy network or an app
- **Enriched plan benefits**, including expanded networks and additions to covered services
- Implementation of **precision mental health** services that supplement health plan and/or EAP benefits. May offer subclinical coaching, lifestyle management skills, ongoing education and tools to explore self-awareness and practice cognitive health
- Targeted **communications** about access to services
- Emphasis on Mental Health Parity **compliance**

Mental Health Parity Enforcement

Pre-CAA
DOL Parity Oversight

- Targeted parity enforcement announced in DOL 2018 and 2020 Reports to Congress
- 127 FY 2020 investigations involved MHPAEA; EBSA obtained corrections impacting 29,000 individuals
- Process was consistent with DOL health plan audits

Sample citations

- Restrictions on residential treatment for substance use disorders
- Impermissible annual limit
- Overly restrictive outpatient visit limits
- More restrictive financial requirements
- Lack of out-of-network coverage for MH/SUD
- Overly stringent precertification requirements
- Autism coverage under review

Federal Enforcement Has Been a Priority

- On January 25, 2022, the Departments issued the *2022 MHPAEA Report to Congress: Realizing Parity, Reducing Stigma, and Raising Awareness* https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf
- Fiscal Year 2021 MHPAEA Enforcement Fact Sheet highlights ongoing oversight https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/mhpaea-enforcement-2021.pdf
- Targeted parity enforcement described in DOL 2020 Report to Congress https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/dol-report-to-congress-parity-partnerships-working-together.pdf
- DOL published an updated 2020 MHPAEA Self-Compliance Tool https://www.dol.gov/agencies/ebsa/at-a-glance

Post-CAA Targeted Enforcement Activities

- Distinct process managed differently than routine audits
- Extremely short timeframes for response (7-14 days)
- Limited time to supplement response
- Requests for extensions at times denied
- Initial findings of noncompliance issued rapidly
- Approach to finding sufficient corrective actions unclear

Strengthening Parity in MH/SUD Benefits

- Plans continue to work with benefit administrators to gather information and documented NQTL comparative analyses.
- While DOL, HHS, and Treasury initial guidance (FAQ Set 45 issued April 2, 2021) is helpful, many questions remain.
- 2022 Report to Congress indicated:

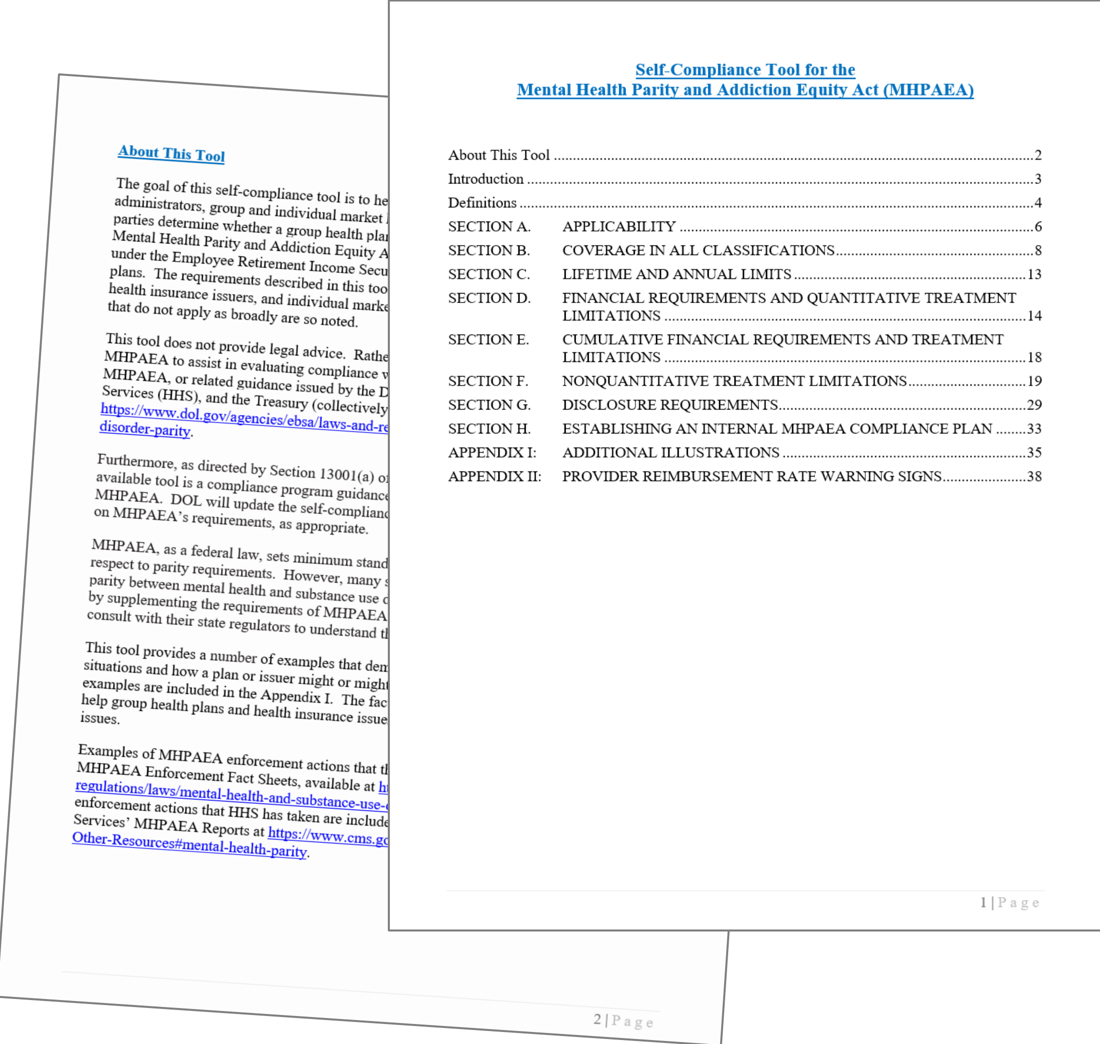
  None of the comparative analyses reviewed to date have contained sufficient information upon initial receipt.

Additional guidance is expected. Once issued, plans and administrators will need time to do work to comply with any specific requirements provided by the agencies.

FAQ Set 45 NQTL Comparative Analysis Clarifications

The Departments point to the DOL's MHPAEA Self-Compliance Tool as a source of guidance related to requirements for NQTLs, including a process for analyzing whether a particular NQTL meets those requirements.

While helpful as a high-level series of compliance questions, continued updates to this tool would not seem to be a useful format for plan sponsors given the volume and complex nature of the NQTL review component



Self-Compliance Tool for the
Mental Health Parity and Addiction Equity Act (MHPAEA)

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About This Tool

DOL/HHS Collection of NQTL Analyses

- The CAA permits the DOL and HHS to request these analyses in any circumstances the Department finds appropriate
- It requires the Departments to collect them in instances of potential noncompliance or complaints regarding noncompliance
- The Departments are required to collect at least 20 NQTL analyses per year

Failure to Comply

The FAQs emphasize the consequences of failure to satisfy the comparative analysis requirements.

- The plan or issuer must submit additional comparative analyses that demonstrate compliance not later than 45 days after the **initial determination of noncompliance**.
- Following the 45-day corrective action period, if the Departments make a **final determination** that the plan or issuer is still not in compliance, the plan will then have seven days to notify covered individuals that the plan is not in compliance.

Failure to Comply

In Federal enforcement activities, NQTLs seem to raise complex questions and plans are receiving:

- Insufficiency Finding
- Second Insufficiency Finding
- Notices of Noncompliance
- Requests for Supplemental Information

Plans are Seeking a Streamlined Enforcement Approach Coupled with Clear Guidance

- An approach to **stakeholder collaboration**, such as an advisory council, that allows for consistent and balanced representation from stakeholders in informing the development of NQTL implementation guidance
- Considerations of **safe harbors** that prioritize the avoidance of discrimination in MH/SUD benefit delivery in reality, including minimalization of documentation (and related penalties) in the absence of substantive noncompliance
- **Appeals rights** should exist for findings on noncompliance given the complex nature of NQTLs and the subjectivity of review

Plans are Seeking a Streamlined Enforcement Approach Coupled with Clear Guidance

- While the step approach in the Tool may have been helpful to assist plans in thinking through NQTL application, it does not align seamlessly with plan design and operation in practice. Federal guidance should focus less on this framework of questions and more on **substantive compliance** with the intent of MHPAEA
- As with all Tri-agency requirements, clarified interpretations of compliance identified through enforcement should be **consistent** across departments, made public, and implemented prospectively

Plans are Seeking a Streamlined Enforcement Approach Coupled with Clear Guidance

- Requests to plan sponsors during an audit need to **align response deadlines** with the amount and complexity of information being requested
- Plans continue to seek a **model** for compliant comparative analysis, even if it is one NQTL at a time

Next Steps for Plan Sponsors

Keep Informed

- Segal has posted information about the MHPAEA amendments and related FAQs and Reports. As new guidance is issued Segal will release updated information.

  https://www.segalco.com/consulting-insights/new-law-strengthens-parity-for-mental-health-and-sud

  https://www.segalco.com/consulting-insights/feds-emphasize-new-mhpaea-compliance-expectations

  https://www.segalco.com/consulting-insights/dol-releases-mhpaea-enforcement-reports

Best in Class Benefits

Consider and implement any desired MH/SUD benefit design changes:

- When appropriate, solicit and review bids for a replacement network provider or benefits administrator. Probe compliance support capabilities in the selection process. Identify the new service provider and begin compliance efforts as part of the implementation process
- Ensure outdated plan terms are eliminated in writing and operation
- Incorporate benefit improvements, including updating medical management practices according to current industry standards

Ongoing Compliance Efforts

- Ensure good faith compliance with the statute.
  - Make sure to coordinate with all relevant benefit administrators (which will include medical, MH, SUD and pharmacy benefit administrators as well as those providing utilization management and claims payment services)
  - Remember to ensure compliance with the law in operation as well as in written documents
  - Anticipate the need to update (or verify there are no changes in) analysis information annually
- Watch for forthcoming guidance.
  - This may include additional FAQs, regulatory guidance, updates to the DOL self-compliance tool, and/or other clarifying information that may be published by the Departments

Thank You!

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