Mental Health Parity Workshop

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Segal

DOL Subregulatory Guidance & Report to Congress

Federal Reports and Tools

- 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
- Fiscal Year 2020 Enforcement Report highlights ongoing oversight https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-and-substance-use-disorder-parity
- DOL published an updated 2020 MHPAEA Self-Compliance Tool https://www.dol.gov/agencies/ebsa/at-a-glance

DOL MHPAEA Report to Congress

The Report emphasizes the Departments' continued focus on ensuring access to MH/SUD benefits and compliance with MHPAEA.

The Departments provided **examples** of the changes their investigations resulted in, including:

- The elimination of exclusions for applied behavioral therapy to treat autism
- The removal of exclusions for medication-assisted treatment for opioid use disorder
- The elimination of certain impermissible nutrition counseling exclusions that were applied more restrictively to MH conditions than to medical/surgical conditions
- The correction of restrictive claims processes related to urine drug testing for SUD
- The removal of blanket prior authorization requirements on outpatient MH and SUD benefits
- The correction of impermissible exclusions and limitations related to residential treatment

DOL MHPAEA Report to Congress

- DOL issued 156 letters requesting comparative analyses for 216 NQTLs
- The Centers for Medicare & Medicaid Services (CMS) issued 15 letters
- The Departments stated that none of the comparative analyses received by the Departments contained sufficient information upon initial receipt.
- The Departments call for Congressional action to enhance MHPAEA and MH/SUD enforcement. Specifically, the Departments request:
  - Civil monetary penalties
  - Direct enforcement authority with respect to third-party benefit administrators
  - Extension of flexibilities that allow for expanded access to telehealth
  - Amendments to MHPAEA to promote uniformity and objectivity in defining MH and SUD benefits

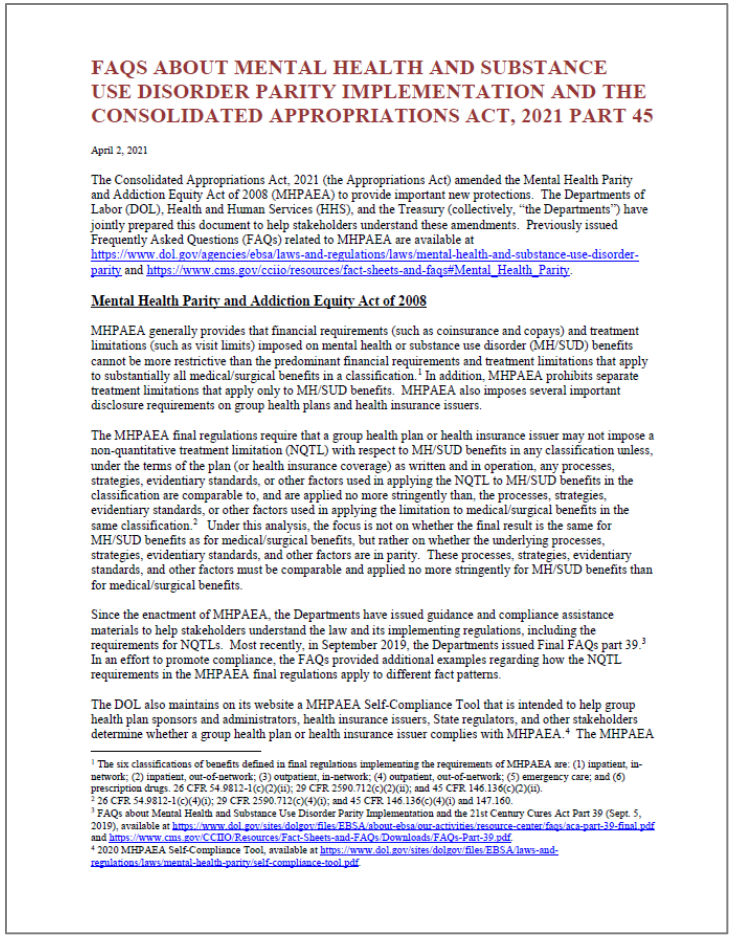
DOL MHPAEA FY 2021 Fact Sheet

EBSA and CMS investigated MHPAEA violations in these categories:

- Annual dollar limits
- Aggregate lifetime dollar limits
- Benefits in all classifications described in the MHPAEA final regulations
- Financial requirements (i.e., deductibles, copayments, coinsurance or out-of-pocket maximums)
- Quantitative treatment limitations (QTLs) and NQTLs
- Cumulative financial requirements and QTLs

FAQ Set 45 NQTL Comparative Analysis Clarifications

The Departments clarify that a general statement of compliance, coupled with a conclusory reference to broadly stated processes, strategies, evidentiary standards or other factors related to NQTLs is insufficient to fulfill the new comparative analysis requirement.



FAQS ABOUT MENTAL HEALTH AND SUBSTANCE USE DISORDER PARITY IMPLEMENTATION AND THE CONSOLIDATED APPROPRIATIONS ACT, 2021 PART 45

April 2, 2021

The Consolidated Appropriations Act, 2021 (the Appropriations Act) amended the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) to provide important new protections. The Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury (collectively, "the Departments") have jointly prepared this document to help stakeholders understand these amendments. Previously issued Frequently Asked Questions (FAQs) related to MHPAEA are available at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-and-substance-use-disorder-parity and https://www.cms.gov/cciio/resources/fact-sheets-and-faqs#Mental_Health_Parity.

Mental Health Parity and Addiction Equity Act of 2008

MHPAEA generally provides that financial requirements (such as coinsurance and copays) and treatment limitations (such as visit limits) imposed on mental health or substance use disorder (MH/SUD) benefits cannot be more restrictive than the predominant financial requirements and treatment limitations that apply to substantially all medical/surgical benefits in a classification.[1] In addition, MHPAEA prohibits separate treatment limitations that apply only to MH/SUD benefits. MHPAEA also imposes several important disclosure requirements on group health plans and health insurance issuers.

The MHPAEA final regulations require that a group health plan or health insurance issuer may not impose a non-quantitative treatment limitation (NQTL) with respect to MH/SUD benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation to medical/surgical benefits in the same classification.[2] Under this analysis, the focus is not on whether the final result is the same for MH/SUD benefits as for medical/surgical benefits, but rather on whether the underlying processes, strategies, evidentiary standards, and other factors are in parity. These processes, strategies, evidentiary standards, and other factors must be comparable and applied no more stringently for MH/SUD benefits than for medical/surgical benefits.

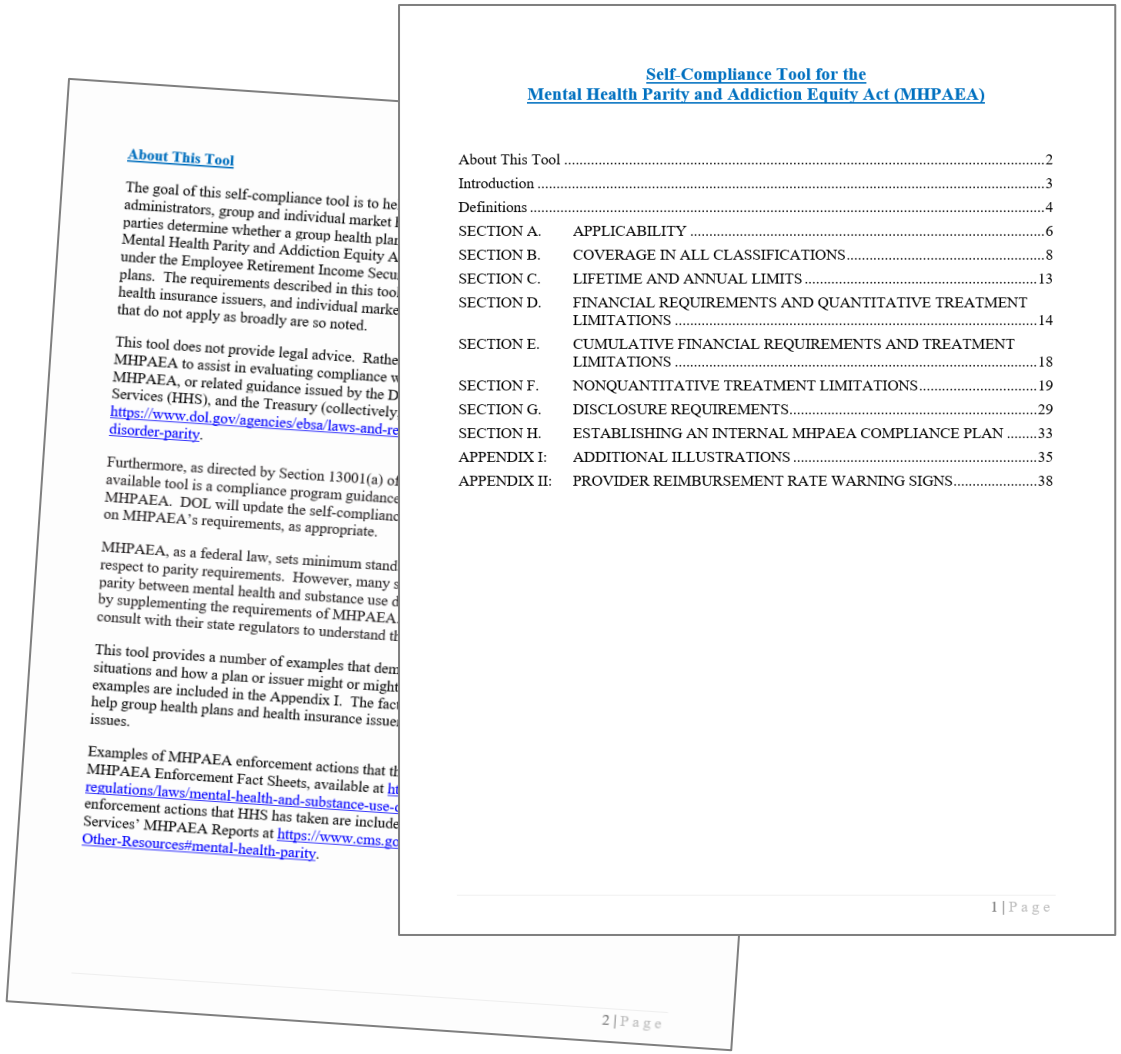
Since the enactment of MHPAEA, the Departments have issued guidance and compliance assistance materials to help stakeholders understand the law and its implementing regulations, including the requirements for NQTLs. Most recently, in September 2019, the Departments issued Final FAQs part 39.[3] In an effort to promote compliance, the FAQs provided additional examples regarding how the NQTL requirements in the MHPAEA final regulations apply to different fact patterns.

The DOL also maintains on its website a MHPAEA Self-Compliance Tool that is intended to help group health plan sponsors and administrators, health insurance issuers, State regulators, and other stakeholders determine whether a group health plan or health insurance issuer complies with MHPAEA.[4] The MHPAEA

[1] The six classifications of benefits defined in final regulations implementing the requirements of MHPAEA are: (1) inpatient, in-network; (2) inpatient, out-of-network; (3) outpatient, in-network; (4) outpatient, out-of-network; (5) emergency care; and (6) prescription drugs. 26 CFR 54.9812-1(c)(2)(ii); 29 CFR 2590.712(c)(2)(ii); and 45 CFR 146.136(c)(2)(ii).
[2] 26 CFR 54.9812-1(c)(4)(i); 29 CFR 2590.712(c)(4)(i); and 45 CFR 146.136(c)(4)(i) and 147.160.
[3] FAQs about Mental Health and Substance Use Disorder Parity Implementation and the 21st Century Cures Act Part 39 (Sept. 5, 2019), available at https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-39-final.pdf and https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs-Downloads/FAQs-Part-39.pdf.
[4] 2020 MHPAEA Self-Compliance Tool, available at https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf.

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.



About This Tool

The goal of this self-compliance tool is to he
administrators, group and individual market
parties determine whether a group health plan
Mental Health Parity and Addiction Equity A
under the Employee Retirement Income Secu
plans. The requirements described in this too
health insurance issuers, and individual marke
that do not apply as broadly are so noted.

This tool does not provide legal advice. Rathe
MHPAEA to assist in evaluating compliance w
MHPAEA, or related guidance issued by the D
Services (HHS), and the Treasury (collectively
https://www.dol.gov/agencies/ebsa/laws-and-re
disorder-parity.

Furthermore, as directed by Section 13001(a) of
available tool is a compliance program guidance
MHPAEA. DOL will update the self-compliance
on MHPAEA's requirements, as appropriate.

MHPAEA, as a federal law, sets minimum stand
respect to parity requirements. However, many s
parity between mental health and substance use d
by supplementing the requirements of MHPAEA.
consult with their state regulators to understand th

This tool provides a number of examples that dem
situations and how a plan or issuer might or might
examples are included in the Appendix I. The fact
help group health plans and health insurance issue
issues.

Examples of MHPAEA enforcement actions that th
MHPAEA Enforcement Fact Sheets, available at ht
regulations/laws/mental-health-and-substance-use-d
enforcement actions that HHS has taken are include
Services' MHPAEA Reports at https://www.cms.go
Other-Resources#mental-health-parity.

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

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Tips to Avoid as Insufficient Comparative Analysis

The FAQs provide examples of reasons why the Departments might conclude that documentation of comparative analyses of NQTLs is insufficiently specific and detailed.

- Production of a large volume of documents without a clear explanation of how and why each document is relevant to the comparative analysis
- Conclusory or generalized statements, including mere recitations of the legal standard, without specific supporting evidence and detailed explanations
- Identification of processes, strategies, sources and factors without the required or clear and detailed comparative analysis

Tips to Avoid as Insufficient Comparative Analysis

- Reference to factors and evidentiary standards that were defined or applied in a quantitative manner, without the precise definitions, data, and information necessary to assess their development or application
- Analysis that is outdated due to the passage of time, a change in plan structure, or for any other reason

Supporting Information

In addition, the Departments clarify that plan sponsors should be prepared to make available documents that support the analysis and conclusions of their NQTL comparative analyses.

For example, they note:

If comparative analyses reference studies, testing, claims data, reports, or other considerations in defining or applying factors (such as meeting minutes or reports showing how those considerations were applied), then the plan or issuer should be prepared to provide copies of all those items.

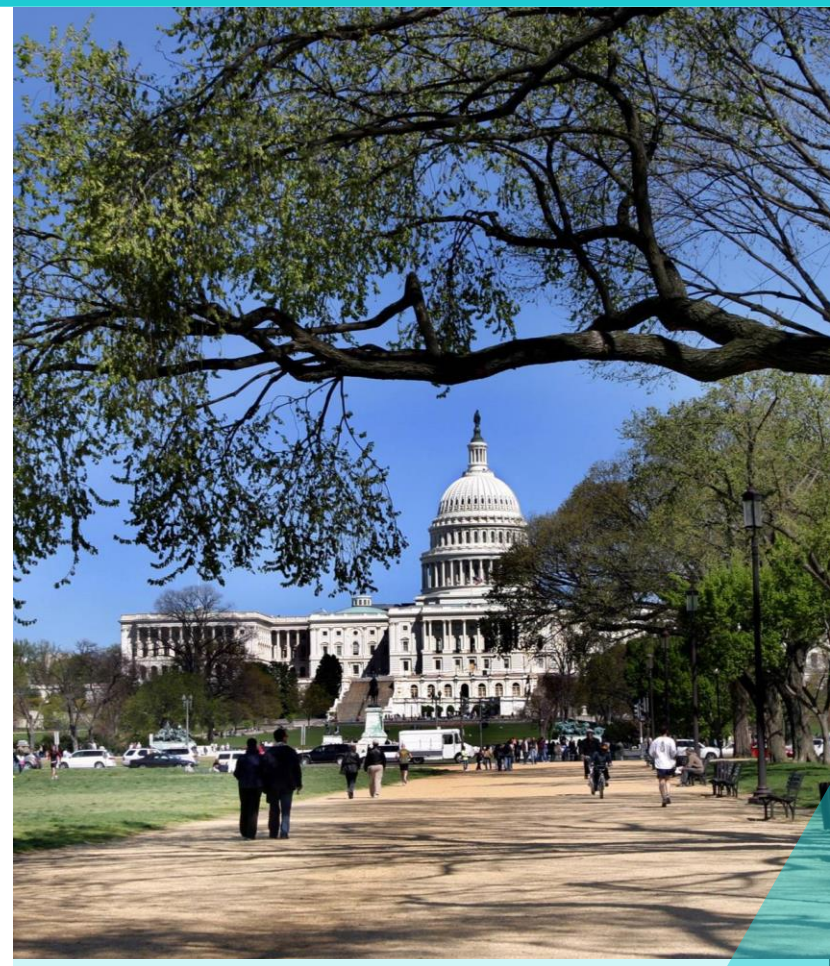
Enforcement Priorities

- The FAQs do not provide an exhaustive list of NQTLs regarding which the Departments may request the comparative analysis and reinforce the need to perform and document comparative analyses for all NQTLs imposed.
- In the near term, the DOL indicates that it expects to focus its enforcement efforts on:
  - Prior authorization requirements
  - Concurrent review requirements
  - Standards for provider admission to participate in a network (including reimbursement rates)
  - Out-of-network reimbursement rates

More Guidance on the Horizon

Congress directs the departments to issue guidance to include:

- Clarifying information and illustrative examples of methods that group health plans may use for disclosing information
- Illustrative examples of methods that plans may use to provide any participants, beneficiaries, contracting providers, or authorized representative, as applicable, with documents containing information that plans are required to disclose



More Guidance on the Horizon

Congress directs the departments to issue guidance to include:

- Information that illustrates the comparative nature of the requirements
- Guidance regarding the process and timeline to file complaints of regarding a plan being in violation MHPAEA.

Audits: A Closer Look

MHPAEA Comparative Analysis Request

Autism Coverage Compliance Challenged

(i) The specific Plan or coverage terms or other relevant terms regarding the NQTLs and a description of all mental health or substance use disorder and medical or surgical benefits to which each such term applies in each respective benefits classification.

(ii) The factors used to determine that the NQTLs will apply to mental health or substance use disorder benefits and medical or surgical benefits.

(iii)The evidentiary standards used for the factors identified in paragraph (ii),when applicable, provided that every factor shall be defined, and any other source or evidence relied upon to design and apply the NQTLs to mental health or substance use disorder benefits and medical or surgical benefits.

MHPAEA Comparative Analysis Request

(iv) The comparative analyses demonstrating that the processes, strategies, evidentiary standards, and other factors used to applythe NQTLs to mental health or substance use disorder benefits, as written and in operation, are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to medical or surgical (Med/Surg) benefits in the benefitsclassification.

(v) The specific findings and conclusions reached by the Plan, including any results of the comparative analyses that indicate that the Plan or coverage is or is not in compliance with MHPAEA

Audits Probing Autism

Autism Coverage Compliance Challenged

- More restrictive prior authorization under the plan's written terms required revision
- Misleading plan language regarding comprehensive assessment prerequisite to prior authorization flagged
- Potentially restrictive treatment plan reviews questioned
- Expectation of significant improvement required for ongoing coverage approval reviewed

Audits Probing Autism

Autism Coverage Compliance Challenged

- ABA exclusion questions
- Comparative analysis supporting ABA exclusion requested
- Limits or restrictions related to ABA coverage present risk; Plans can expect requests for comparative analysis information related to any limits or restrictions that may apply to ABA therapy

More Audit Examples

MHPAEA enforcement requests:

- Claims information to support specialist rate charged for mental health office visits
- Claims reports to support an assertion that benefits were not denied under a certain plan provision
- Exclusion for residential treatment for MH/SUD challenged
- Exclusions or limitation on nutritional counseling, including for treatment of eating disorders being challenged

Audit Probing Nutrition Counseling

Claims Denial

Details Requested:

Health Claims Data Attributes:

Attribute	Description
Plan ID	Unique identifier for enrollment in the Plan.
Coverage Option ID	Unique identifier for enrollment in a coverage option.
Member ID	Unique identifier for each policy holder.
Patient ID	Unique identifier for the patient/individual incurring the claim.
Patient Birthdate	Birthdate of the patient.
Patient Sex	Sex of the patient.
Unique claim number	Unique identifier for a claim within the claims systems.
Unique line number	Unique identifier for a line of service within the claim.
Service start date	Beginning date of service.
Service end date	End date of service.
Received date	Date the payer received the claim.
Processed date	Date the payer adjudicated the claim.
Paid date	Date the claim was paid.
Diagnosis Code (primary, secondary, tertiary)	What the patient is diagnosed with at the visit (include all codes present for each claim).
Diagnosis Code description	Description of each listed diagnosis code.
Procedure Code	Code representing the procedure provided to the patient during the visit, **including all modifiers**.
Procedure Code description	Description of the procedure provided to the patient during the visit.
Type of Service	Category of provider services (e.g. surgical, behavioral, preventive, emergency, specialist, etc.).
Place of Service Code	The type of location or entity where the services were rendered.
Inpatient/Outpatient Indicator	Claim classification as inpatient or outpatient.
Provider Network Status	Provider is in-network or out-of-network.
Pricing schedule	Indicate the pricing schedule that was used to price the claim, if out of network (e.g. based on % of Medicare)

Plan Sponsors Considerations

What can plans do now?

- Develop an approach to good faith compliance with the statute.
  - Determine a plan to begin to collect and document relevant information. This will most commonly include coordination with benefit administrators (both medical and pharmacy) to help review the plan's NQTL compliance as written and in operation.
  - Plan sponsors should anticipate that some compliance issues may be identified and need to be resolved.
- 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.

What can plans do now?

- Ensure outdated plans terms are eliminated in writing and operation.
- Incorporate benefit improvements, including updating medical management practices according to current industry standards.
- Assess the compliance capabilities of existing administrators. Are your plan adminsitrators providing information in a format consistent with DOL's approach?
- Probe compliance support capabilities in the selection process. Identify the new service provider and begin compliance efforts as part of the implementation process.

Requests and Complaints

A participant, beneficiary or enrollee (or their authorized representative) or a state regulator, may request an NQTL comparative analysis.

The Departments note that in the instance of a specific complaint, they may request information related to the NQTL in question, such as the comparative analysis related to prior authorization. However, the Departments remind plan sponsors that, under the amendments to MHPAEA, the DOL or HHS may also request NQTL comparative analyses in any instance deemed appropriate.

What can plans do now?

Plans that receive participant complaints should work diligently to resolve those complaints.

- Complaints may trigger a request for the NQTL comparative analysis
- Complaints may trigger a comprehensive Federal audit for parity compliance OR a comprehensive audit for health plan compliance with applicable Federal law under ERISA or the Public Health Service Act, including compliance with the ACA and other applicable laws

Thank You!

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