

American Medical Association Issue Brief: 2022 MHPAEA Report to Congress

A joint report from the Secretaries of the DOL, HHS, and Treasury
January 25, 2022

<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>

AMA summary of the key facts and findings:

- **Every DOL report since 2012 has found widespread violations by numerous health insurers. This report is particularly shocking in the breadth, scope and prevalence of insurers' violations. The 2022 report shows that insurers' policies and practices have become more egregious than ever.** The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) requires the Secretary of Labor to submit a report to Congress on compliance by group health plans (and health insurance coverage offered in connection with such plans) with MHPAEA's requirements. The first report was required in January 2012, and additional reports have been delivered every two years since.
- **The MHPAEA report found that "None of the comparative analyses EBSA or CMS have initially reviewed to date contained sufficient information upon initial receipt."** The 2022 report shows results from 156 plans and issuers who received letters from EBSA to provide a required-by-law comparative analysis showing compliance with MHPAEA. EBSA has primary enforcement jurisdiction over MHPAEA for approximately 2 million group health plans covering roughly 136.5 million Americans. The parity analyses requirements do not cover Medicaid managed care plans.
- **Of the 216 unique NQTLs investigated, more than 170 were found insufficient across 80 plans. Every NQTL violation means a limitation, delay or denial of care for a mental illness or substance use disorder—putting every patient at risk of increased suffering and death.** The report thoroughly investigated "non-quantitative treatment limitations" (NQTL) that insurers use to limit, delay or deny care for MH/SUD. An NQTL is not prohibited on its own, but MHPAEA requires that MH/SUD coverage and benefits be in parity with NQTLs for medical surgical benefits. [Examples of NQTLs](#) include prior authorization, formulary design for prescription drugs, network tier design, standards for provider admission to participate in a network, including reimbursement rates, fail-first policies or step therapy protocols, and restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage.
- **The report's findings are consistent with widespread, consistent violations in the states.** EBSA also said that these findings "was EBSA's experience with plans and issuers before the enactment of the CAA, and this continues to be true now, despite the CAA's new compliance requirements." Insurers' failures were rampant across plans in many ways:
 - Failed to identify the benefits, classifications, or plan terms to which the NQTL applies;
 - Failed to describe in sufficient detail how the NQTL was designed or how it is applied in practice to MH/SUD benefits and medical/surgical benefits;
 - Failed to identify or define in sufficient detail the factors, sources, and evidentiary standards used in designing and applying the NQTL to MH/SUD and medical/surgical benefits;

- Failed to analyze in sufficient detail the stringency with which factors, sources, and evidentiary standards are applied; and/or
- Failed to demonstrate parity compliance of NQTLs as written and in operation.
- **The report identifies life-threatening policies by large insurers across all regions of the country—and why enforcement makes all the difference.**
 - Exclusions of evidence-based care for autism. EBSA discovered that a large service provider was administering claims for hundreds of self-funded plans across the country to exclude applied behavior analysis (ABA) therapy to treat autism spectrum disorder (ASD), potentially affecting more than 500,000 enrollees. Despite the fact that “research shows that early intervention and access to treatments like ABA therapy can improve the trajectory of a child’s development. so delays or limits on access to treatments like ABA therapy are especially harmful for children with ASD,” the service provider “wishes to contend that the exclusion is compliant with MHPAEA.” The service provider said it would provide ABA therapy, however, if a plan requested it.
 - Exclusions of evidence-based medications to treat opioid use disorder (MOUD). A large self-funded plan in the Boston area excluded methadone and naltrexone for the treatment of opioid use disorder. Only after EBSA stepped in did the plan agree to cover these evidence-based MOUD.
 - Exclusions of evidence-based care for eating-use disorders. More than 1.2 million enrollees were denied benefits for nutritional counseling for mental health conditions like anorexia nervosa, bulimia nervosa, and binge-eating disorder while the plans in the New York region covered such counseling for medical/surgical conditions like diabetes. Only after EBSA stepped in did the plans change course.
 - Requiring pre-certification for all MH/SUD outpatient services. A large plan in the Philadelphia region required pre-certification (also called prior authorization) for all outpatient MH/SUD services but did not have the same policy for medical/surgical services. Only after EBSA stepped in did the plan realize its policy was in violation of the law.
- **Increased transparency would help enforcement actions in the states. The need for increased enforcement and accountability is greater than ever.** While the report does not name names, EBSA has issued 80 insufficiency letters for over 170 NQTLs, requesting additional information and identifying specific deficiencies. CMS has issued 19 insufficiency letters identifying deficiencies in the comparative analyses and requested additional information to address these deficiencies. EBSA has so far issued 30 initial determination letters finding 48 NQTLs imposed on MH/SUD benefits violate parity (36 unique NQTLs). CMS has so far issued 15 initial determination letters to plans and issuers finding 16 NQTLs violate parity. **It is highly likely that these self-funded plan violators also have plans in the commercial market. It is essential to know who the violators are to help state departments of insurance and attorneys general take similar, state-based enforcement actions.**

The report's recommendations

- EBSA believes that authority for DOL to assess civil monetary penalties for parity violations has the potential to greatly strengthen the protections of MHPAEA.
- DOL recommends that Congress amend ERISA to expressly provide the agency with the authority to directly pursue parity violations by entities that provide administrative services to ERISA group health plans (including health insurance issuers that provide administrative services to ERISA plans and TPAs).
- To ensure that participants and beneficiaries receive coverage of their benefits, DOL recommends that Congress amend ERISA to expressly provide that participants and beneficiaries, as well as DOL on their behalf, may recover amounts lost by participants and beneficiaries who wrongly had their claims denied in violation of MHPAEA, ensuring that participants and beneficiaries are made whole.
- The Departments recommend that Congress consider ways to permanently expand access to telehealth and remote care services
- The Departments recommend that Congress consider amending MHPAEA to ensure that MH/SUD benefits are defined in an objective and uniform manner pursuant to external benchmarks that are based in nationally recognized standards.

Select AMA resources

- AMA letter to Senator Ron Wyden, Chairman, Committee on Finance with recommendations on improving access to health services for individuals with mental health and substance use disorders (SUD). Available at <https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2021-11-15-Letter-to-Wyden-and-Crapo-re-RFI-v3.pdf> (November 15, 2021)
- AMA Issue Brief: States must take action to enforce mental health and substance use disorder parity. Available at <https://end-overdose-epidemic.org/wp-content/uploads/2020/12/ARC-Issue-Brief-States-Must-Take-Parity-Action-FINAL-Jan-2020.pdf> (December 2020)