

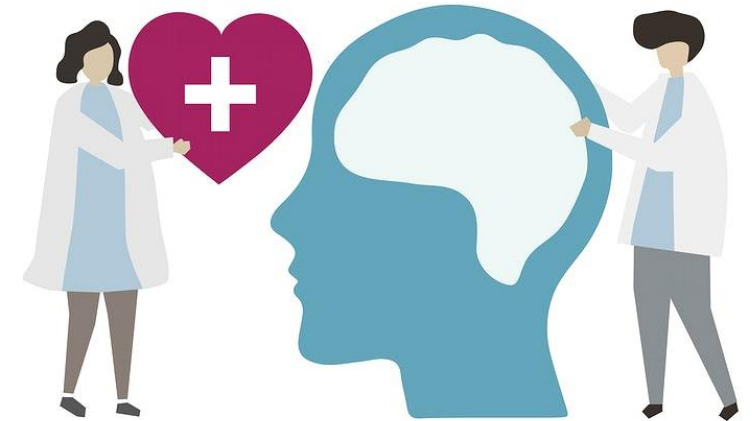
# Compliance Assistance on Mental Health Parity



U.S. DEPARTMENT OF LABOR  
EMPLOYEE BENEFITS SECURITY ADMINISTRATION

# Mental Health Parity – Background

- ▶ A response to inconsistency in insurance coverage
- ▶ Health insurance coverage for **mental health and substance use disorder** benefits should be offered **on par with** covered **medical and surgical benefits**



# Mental Health Parity – Background



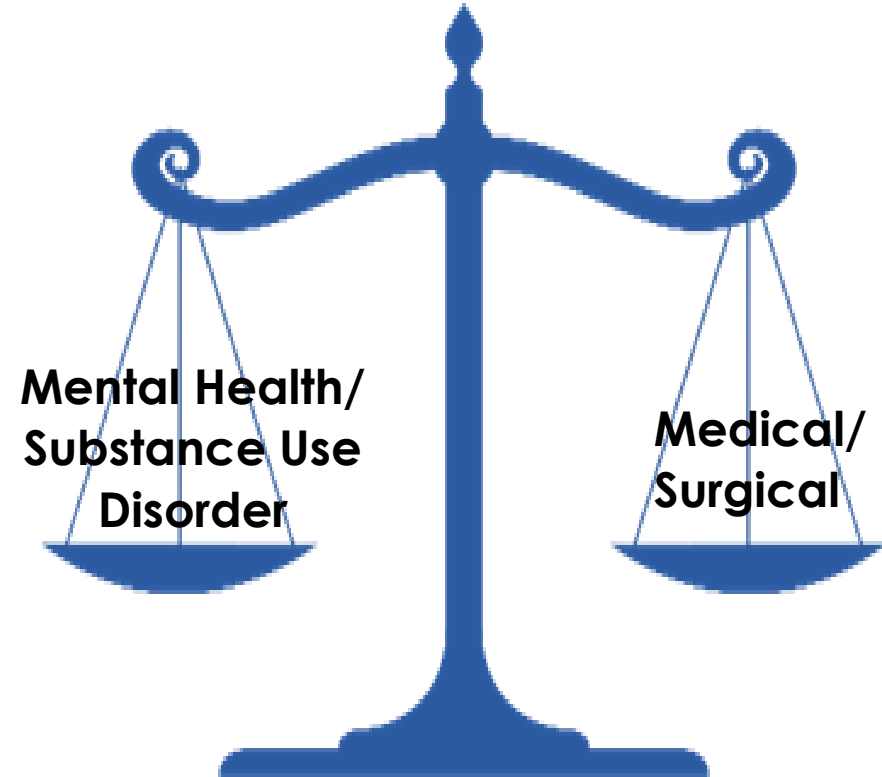
- ▶ Two major mental health parity laws at the federal level
  - ▶ Mental Health Parity Act of 1996 (**MHPA**)
  - ▶ Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (**MHPAEA**)

# Mental Health Parity – Background

- ▶ Mental health parity law protections have recently been expanded
- ▶ Currently working on rules and guidance to implement these changes
- ▶ **This presentation covers only released guidance**

# Mental Health Parity – Background

- ▶ MHPAEA **requires** group health plans to provide **mental health and substance use disorder** benefits at parity with (comparably to) **medical and surgical** benefits



# Who is Subject to Mental Health Parity?

- ▶ Employer-sponsored health plans and health insurance issuers offering health insurance coverage for medical/ surgical benefits **AND** mental health/substance use disorder benefits
- ▶ Private employer plans with 51+ workers
- ▶ Most smaller employer plans
- ▶ Health insurance coverage sold to individuals (i.e. Marketplace plans)



# Must A Business Offer These Benefits?

Federal mental health parity does **not require** group health plans or issuers **to** provide **mental health/substance use disorder benefits**, but does require that **when such benefits are offered**, they be offered **in parity**.



# What Protections Does Mental Health Parity Provide?

- ▶ All **financial restrictions** and **treatment limitations** applicable to MH/SUD benefits must be **comparable to** the requirements or limitations applied to medical/surgical benefits

## **Financial requirements**

- copays, deductibles,  
coinsurance, out-of-  
pocket max

**and**



## **Treatment limitations**

- visit/day limits,  
duration of treatment,  
preauthorization reqs



# General Mental Health Parity Requirements

➤ Prohibited:

-  **Lifetime and annual dollar limits** on MH/SUD benefits that are **lower than** those limits imposed on medical/surgical benefits\*
-  **Cumulative financial requirements** or **cumulative quantitative treatment limitations** for MH/SUD benefits **that accumulate separately** from medical/surgical benefits in the same classification

➤ Required

-  Disclosures on **criteria for medical necessity** and **reasons for denial**

# Classification of Benefits

- ▶ Plans must classify mental health and substance use disorder benefits within **six classifications**:
  - ▶ Inpatient, in-network
  - ▶ Inpatient, out-of-network
  - ▶ Outpatient, in-network
  - ▶ Outpatient, out-of-network
  - ▶ Emergency care
  - ▶ Prescription drugs



# Financial Requirements and Quantitative Treatment Limitations

- ▶ If a plan provides MH/SUD benefits in **any** classification, MH/SUD must be provided in **every** classification in which medical/surgical benefits are provided
- ▶ A plan **may not** impose a requirement or limitation to MH/SUD benefits that is **more restrictive** than the **predominant** financial requirement or treatment limitation of that type that is applied to **substantially all** medical/surgical benefits in the same classification.

# Financial Requirements and Quantitative Treatment Limitations - Example

- ▶ Example: Josh is insured by X Health Plan:
  - ▶ **Psychiatrist** (Outpatient, in-network Mental Health) Copay: **\$75**
  - ▶ **Primary Care** (Outpatient, in-network Physical Health) Copay: **\$20**
- ▶ **Impermissible** – the financial requirement applicable to MH/SUD benefits are **not comparable** to the financial requirement applied to medical/surgical benefits in the outpatient, in-network classification.

# Financial Requirements and Quantitative Treatment Limitations - Summary

General Rule Analysis – Need to identify the...

1. **Classification** (outpatient, in-network, etc)
2. **Type** of financial requirement or quantitative treatment limitation
3. **Predominant** level of copay applied to **substantially all** medical/surgical benefits within the classification
4. **RESULT** – This is the **most restrictive copay** that can be applied to MH/SUD benefits

# Financial Requirements and Quantitative Treatment Limitations

## Special Rules

- Multi-Tiered Prescription Drug Benefits
- Multiple Network Tiers
- Sub-classification for office visits, separate from other outpatient services



# Nonquantitative Treatment Limitations (NQTLs)

▶ **Non-quantitative** treatment limitations **also require parity**

▶ General rule:

▶ A plan **may not impose** NQTLs on MH/SUD benefits in any classification **unless** any processes, strategies, evidentiary standards, or other factors used in applying that NQTL are **comparable to** and **apply no more stringently** than other factors that are used in applying that NQTL to Med/Surg benefits in the classification.



# Nonquantitative Treatment Limitations (NQTLs) - Examples

**EXAMPLE** - Medical management standards that limit benefits based on **medical necessity** or medical appropriateness, or based on whether the treatment is **experimental** or investigative

**EXAMPLE** - **Preauthorization** or concurrent review standards

**EXAMPLE** - Standards for provider admission to participate in a **network**, including reimbursement rates



# Nonquantitative Treatment Limitations (NQTLs) – Examples continued

**EXAMPLE - Plan methods for determining usual, customary and reasonable charges**

**EXAMPLE - Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (i.e. **step-therapy** or **fail-first policies**)**

**EXAMPLE - Restrictions based on **geographic location**, facility type and **provider specialty**, etc that limit the scope or duration of benefits for services**

# Nonquantitative Treatment Limitations (NQTLs)

- ▶ An NQTL is a limitation on the **scope or duration** of benefits for treatment
  - ▶ Such as medical necessity determinations, or fail-first policies
- ▶ Generally not expressed numerically
- ▶ A plan **may not** impose an NQTL that is a separate treatment limitation **applicable only to MH/SUD** benefits



# Nonquantitative Treatment Limitations (NQTLs)



- ▶ Compliance is required as written **and** in operation
- ▶ Plans are allowed to consider **clinically appropriate standards of care**
- ▶ **Do not focus on the results** – outcomes are not necessarily the same.
  - ▶ However, a plan cannot have an NQTL that is applicable **only** to mental health or substance use disorder benefits.

# NQTL Warning Signs



## **Blanket preauthorization requirements**

- ✓ Preauthorization required for all MH/SUD services



## **Treatment facility admission preauthorization**

- ✓ If admitted to a mental health or substance abuse facility for non-emergency treatment without prior authorization, the insured will be responsible for 100% of the cost of services received



## **Prescription Drug Preauthorization**

- ✓ Preauthorization is required every three months for pain medications prescribed in connection with MH/SUD conditions

# NQTL Warning Signs



## **Treatment Attempt Requirements –**

- ✓ For any inpatient MH/SUD services, the plan/insurer requires that an individual first complete a partial hospitalization treatment program



## **Likelihood of Improvement –**

- ✓ For residential treatment of MH/SUD, the plan/insurer requires the likelihood that inpatient treatment will result in improvement



## **Treatment Plan Submission on a Regular Basis –**

- ✓ Plan/insurer requires that an individual-specific treatment plan will be updated and submitted, in general, every 6 months

# NQTLs – Questions to Ask

## Questions you might ask while conducting an NQTL analysis:

- ▶ Does the application of the NQTL include similar requirements for medical/surgical and MH/SUD in writing and in operation?
- ▶ Is the reasoning for applying the NQTL to MH/SUD benefits supported by evidence, and is the evidence being used in a comparable way?
- ▶ Is the process used in applying the NQTL similar or comparable?



# NQTLs – Questions to Ask

- ▶ Are differences arbitrary?
- ▶ Are differences in the application of the NQTL to MH/SUD benefits consistent with practice guidelines?
- ▶ Is it harder to “pass” the NQTL for MH/SUD than it is for medical/surgical?
- ▶ Are the consequences more severe for failing to meet the NQTL requirements as they apply to MH/SUD benefits?



# Increased Enforcement under the Consolidated Appropriations Act

- ▶ Consolidated Appropriations Act, 2021 (the Appropriations Act) added **new enforcement tools** to ensure compliance
- ▶ Requires group health plans and issuers to **perform and document** their **parity comparative analysis** with respect to design and application of NQTLs
- ▶ Plans and issuers must make the comparative analyses available to participants and beneficiaries on request.





# Increased Enforcement under the Consolidated Appropriations Act

- ▶ Also requires the Departments of Labor, Health and Human Services, and Treasury (the Departments) to **request review** of at least 20 of these analyses and to report to Congress on their conclusions.
- ▶ First report issued 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>
- ▶ Common issues:
  - ▶ Many plans and issuers were unprepared to respond to the Departments' requests and had not started preparing their comparative analyses by the deadline.
  - ▶ Many plans submitted comparative analyses that lacked sufficient detail to determine compliance.
  - ▶ Other plans produced analyses that did not address the specific NQTL flagged in the request, were outdated, or were prepared by a service provider to address an entirely different line of business or insurance product.

# Guidance on the Appropriations Act – Mental Health Parity Requirements

- ▶ Frequently Asked Questions (**FAQs Part 45**)
  - ▶ Explains plans' and issuers' **responsibilities** under the Appropriations Act and intended **enforcement**
- ▶ Special focus on these NQTLs:
  - ▶ **Prior authorization** requirements
  - ▶ **Concurrent review** requirements
  - ▶ Standards for provider admission to **participate in a network** (including reimbursement rates)
  - ▶ Out-of-network **reimbursement rates**
  - ▶ Other NQTLs identified in written provisions or plan/issuer practices

# Increased Enforcement under the Consolidated Appropriations Act

- ▶ Plans and issuers must make available the **comparative analyses** with respect to each plan or coverage:
  - ▶ **Parity comparative analyses** – that the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to MH/SUD benefits are comparable to and no more stringently applied than those for medical/surgical benefits, **as written and in operation**; and
  - ▶ **Specific findings and conclusions** – including any results of the analyses that indicate that the plan or coverage is or is not in compliance with mental health parity.

# Increased Enforcement under the Consolidated Appropriations Act

## ▶ Initial finding of noncompliance

- ▶ Plan or issuer takes corrective actions and provides the Departments additional comparative analyses **within 45 days**.

## ▶ Final determination of noncompliance

- ▶ Plan or issuer notifies all covered individuals **within 7 days**,
- ▶ Departments **share findings** with the State and **notify Congress** in a publicly-available annual report.

# Guidance on the Appropriations Act – Mental Health Parity Requirements

## Comparative Analysis - NQTL Element

**Clear description** of specific NQTL, plan terms, and policies at issue

## Example of Insufficient NQTL Comparative Analysis

Conclusory or **generalized statements**, including mere recitations of the legal standard, **without specific supporting evidence** and detailed explanations

# Guidance on the Appropriations Act – Mental Health Parity Requirements

Comparative Analysis - NQTL Element	Example of Insufficient NQTL Comparative Analysis
<p><b>Identify factors</b>, evidentiary standards or sources, or strategies or processes considered in the design or application of the NQTL, and in <b>determining which MH/SUD benefits</b> and medical/surgical benefits are subject to the NQTL</p>	<p>Production of large volume of documents <b>without a clear explanation</b> of their relevance to the comparative analysis</p>

# Guidance on the Appropriations Act – Mental Health Parity Requirements

Comparative Analysis - NQTL Element	Example of Insufficient NQTL Comparative Analysis
Analyses should explain if there is <b>any variation</b> in the application of a guideline or standard used by the plan or issuer between MH/SUD and medical/surgical benefits	Identification of processes, strategies, sources, and factors <b>without clear and detailed analysis</b> or explanation of how they were defined and applied

# Guidance on the Appropriations Act – Mental Health Parity Requirements

## Comparative Analysis - NQTL Element

Discussion of the findings/conclusions as to the **comparability** of the processes, strategies, evidentiary standards, factors, and sources within each affected classification, and their relative stringency, **both as written and as applied**

## Example of Insufficient NQTL 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



# Guidance on the Appropriations Act – Mental Health Parity Requirements

- ▶ The plan or issuer should have available documentation on:
  - NQTL **processes and application** to ensure it can demonstrate compliance with the law
  - Anything it has relied on to determine that the NQTLs apply **no more stringently** to MH/SUD benefits
  - Samples of **covered and denied** MH/SUD and medical/surgical benefit claims
  - Documents related to parity compliance with respect to **service providers**
- Participants and beneficiaries can request the comparative analyses and other applicable information from their plan

# The 21<sup>st</sup> Century Cures Act (Cures Act)

- ▶ The Cures Act directed the Departments to release **additional guidance** to **ensure parity compliance**, and encourage the development of **internal controls**
  - ▶ Compliance program guidance document to improve compliance with mental health parity (i.e. **Self-Compliance Tool**)
  - ▶ New disclosure and NQTL guidance
  - ▶ Availability of plan information
  - ▶ Increased enforcement, plan auditing, and reporting



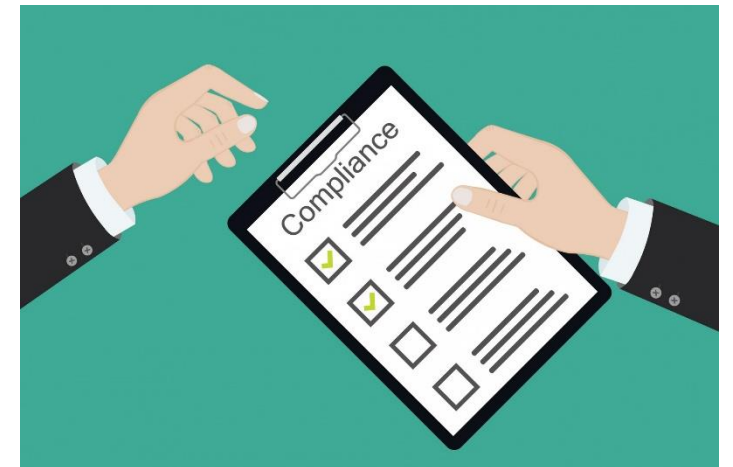
# Mental Health Self-Compliance Tool

## ▶ Who is it for?

- ▶ Group health plan sponsors and administrators, health insurance issuers, State regulators, and other stakeholders

## ▶ What does it do?

- ▶ Helps determine whether a group health plan or health insurance issuer complies with the mental health parity laws
- ▶ Updated every **two years** (most recently 2020)



# Mental Health Self-Compliance Tool

- ▶ The Tool contains:
  - ▶ **Updated examples** that demonstrate how plans and issuers can correct certain parity violations
  - ▶ Practices that may be **warning signs** of potential parity violations
  - ▶ **Best practices** for establishing an internal mental health compliance plan
  - ▶ Appendix I – **additional examples** and illustrations of compliance
  - ▶ Appendix II – Provider Reimbursement Rate Warning Signs

# Mental Health Self-Compliance Tool

- ▶ **Appendix II – Provider Reimbursement Rate Warning Signs**
  - ▶ Provides a **chart** that may serve as a **framework** for comparing reimbursement rates based on Current Procedural Terminology codes
  - ▶ Not the only framework for analyzing provider reimbursement rates
  - ▶ Not determinative of compliance

# Best Practices for Establishing an Internal Compliance Plan

## ✓ **Conducting Effective Training and Education**

- ▶ Includes individuals making decisions on behalf of the plan or issuer

## ✓ **Ensuring retention of records and information**

- ▶ Requirements under ERISA section 107 (i.e. retention period, types of records, etc.)
- ▶ Comparative analyses that involve potential mental health parity violations or complaints

# Best Practices for Establishing an Internal Compliance Plan Continued

- ✓ **Conducting internal monitoring and regular compliance reviews**
  - ▶ Auditing samples of adverse benefit determinations
  - ▶ Clear protocols in delegating management of benefits to another entity
- ✓ **Responding promptly to detected offenses and developing corrective action plans**
  - ▶ Includes retroactive relief and notice to potentially affected participants

# Other Mental Health Parity Guidance and Publications

## ▶ **FAQs**

- ▶ Guidance is released on an ongoing basis to help stakeholders understand the law, including 66 frequently asked questions (as of August 2021).
- ▶ Biennial DOL **reports to Congress** on mental health parity implementation and enforcement
- ▶ Mental health parity enforcement **fact sheets** (fiscal years 2015-2020)
- ▶ Other **publications** on mental health benefits



# U.S. Department of Labor Mental Health Parity Resources

- ▶ For more information about the federal mental health and substance use disorder law:
  - ▶ EBSA's dedicated Mental Health Parity page - <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-and-substance-use-disorder-parity>
  - ▶ Your state's department of insurance website and contact information, which can be found on the National Association of Insurance Commissioners website – [https://content.naic.org/cmte\\_b\\_mhpaea\\_wg.htm](https://content.naic.org/cmte_b_mhpaea_wg.htm)
  - ▶ The Substance Abuse and Mental Health Services Administration (SAMHSA) Implementation of the Mental Health Parity and Addiction Equity Act (MHPAEA) website: [www.samhsa.gov](http://www.samhsa.gov)
  - ▶ For more specific questions you can also contact a benefits advisor by visiting [askebsa.dol.gov](http://askebsa.dol.gov) or calling 1-866-444-3272

# Questions?

