

The Urgency of Now: Mental Health Parity and an Ongoing Pandemic

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Mental Health Parity and Addiction Equity Act

If you offer coverage of mental health and substance use disorder benefits they must be “no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits covered by the plan...” and “there are no separate cost sharing requirements than are applicable only with respect to mental health or substance use disorders benefits.”

Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, P.L. 110-343

Mental Health Parity and Addiction Equity Act and State Laws

- MHPAEA is a coverage condition, not a mandate
- 43 state parity laws were in effect in 2008, MHPAEA contains no state preemption
- MHPAEA did not impact existing state mandates to offer or cover behavioral health benefits
- Legislative activity at the state level continues to focus on compliance and enforcement

**Employee Benefits Security
Administration (EBSA)**

**Centers for Medicare & Medicaid
Services (CMS)**

156 letters to plans and issuers requesting comparative analyses for 216 unique NQTLs across 86 investigations

15 * between May and November 2021

80 insufficiency letters for over 170 NQTLs, requesting additional information and identifying specific deficiencies

19 insufficiency letters identifying deficiencies in the comparative analyses

issued 30 initial determination letters finding 48 NQTLs imposed on MH/SUD benefits lacking parity

15 initial determination letters to plans and issuers finding 16 NQTLs out of parity

received corrective action plans from 19 plans

received corrective action plans from 6 plans

2022 MHPAEA Report to Congress

* None of the plans were found sufficient *

2022 MHPAEA Report to Congress

COMMON THEMES IN DEFICIENCIES

- Failure to document comparative analysis before designing and applying the NQTL;
- Conclusory assertions lacking specific supporting evidence
- Lack of meaningful comparison or meaningful analysis;
- Non-responsive comparative analysis;
- Documents provided without adequate explanation;
- Failure to identify the specific MH/SUD and medical/surgical benefits or MHPAEA benefit classification/s affected by an NQTL

Mental Health Impact of the Pandemic

- In recent NWLC polling, 58 percent of women overall—including 75 percent of women who lost or quit a job during the pandemic, and 63 percent of women in low-paid jobs—said that the COVID-19 pandemic had a negative impact on their mental health, compared to 45 percent of men overall. And while reported rates of anxiety and depression have declined from a year ago, many women are still experiencing severe mental health impacts from the pandemic.^{xxxix}
- In December 2021, over 1 in 5 women (20.7 percent) reported being anxious more than half or nearly every day of the past two weeks, compared to 16.6 percent of men.
- In December 2021, about 1 in 7 women (14.2 percent) reported feeling depressed more than half or nearly every day of the past two weeks, compared to 12.3 percent of men.^{xxxix}

PANDEMIC PAIN POINTS: Impact on Emotional Well-Being

Mothers, in particular, describe being taxed emotionally as they needed to juggle work responsibilities and care for their children who could no longer attend in-person schooling. School closures and cancelled after-school programming created challenges for women who worked remotely from home as well as women who continued to work in-person and needed to leave their children at home on their own.

I was actually locking myself in my closet because the closet is in a deep corner of the house where no one can hear me, where I can't hear them and I'd sit there and veg out or watch Netflix for 20 minutes...so I could come back and not go crazy at everybody.

I had to run back and forth between the salon and home and trying to watch [my son]. I literally bought like the Nest cam, so that way I can keep eyes on him while I was not home, making sure that at least he's attending class.

I was getting phone calls—'your children are not completing school, clocking in.' I can't be at work and home. In my job, I couldn't work remotely. I had to work there, so I was stressed out quite a bit. They dropped out [of high school] for a little bit, but they're back in school now.

I struggled, I cried all day, every day. I'm trying to teach the little one how to use a computer...then I have my headset on and I'm like 'guys, I'm on a call' and people on the call are like 'are you there? And I'm like, 'yes, mute, unmute, mute.'

I locked the kids in the garage, in the car, and I'd be like, that's it. If you guys get out of here. You guys are in time out.

I was having to go to the [house] cleanings, then leave early to come pick [my daughter] up and then bring her back to work with me...After a couple of times of being late for picking her up and me explaining what's happening, [the school was] threatening to call child protective services on me because I was late.

Regardless of parental status, many women describe experiencing persistent depression, anxiety and sleep difficulties since the onset of the pandemic, yet few report having sought formal mental health support due to:

• **Lack of, or poor access, to available mental health resources**

I would have to go to my car and talk to my therapist because I felt like I could not get a break from the house, from the kids, and everything. So while my mom was here, I would kind of schedule my therapy sessions during that time.

There's short-term and long-term disability available [through my employer] but they're very strict when it comes to mental as opposed to physical condition.

• **High cost of mental health services particularly in the face of already tight budgets**

I reached out to try to go to a domestic violence shelter. During the pandemic there was not beds anywhere.

I thought about [seeking formal help], but it's so expensive. How am I going to afford that?...I didn't even look into it, because I was like 'ugh, another thing to pay for.'

I would like to be less paranoid, less anxious...I haven't sought out a professional counselor or anything...Mostly because of money. I don't really wanna pay. And I know they cost a lot. I don't really have the budget for it.

PANDEMIC PAIN POINTS: Impact on Emotional Well-Being [cont.]

- **In addition to parenting stress, women describe facing a wide range of mental health challenges during the pandemic including:**
 - General anxiety and fear related to avoiding and contracting COVID, for themselves and their loved ones
 - Grief and lingering trauma from the loss of family members, friends, and patients due to COVID
 - Maintaining social isolation and not being able to see family members and friends
 - Escaping domestic violence situations with an abusive partner
 - Anxiety around lack of workplace precautions
 - Concerns related to poor child and family adjustment to COVID

- **Women who work remotely cite stressors from blurred work-home boundaries with no clear end to the workday.**
- **Black and Asian women specifically describe emotional stressors related to the consequences of turbulent race relations, racial injustice, health disparity and xenophobia (e.g., anti-Asian hate) during the pandemic.**

My biggest challenges are just functioning...Getting beyond the guilt I have with my brother [who passed from COVID]. I beat myself up, 'you were talking to him, why didn't you know?'

I left healthcare in May, and went to Wal-Mart to work in the bakery, because it was just so awful, because you see all those people and they all start dying, one by one, it seemed like every couple days we would lose a person.

I was in a domestic violence relationship during the pandemic, and I actually couldn't take it anymore...He was an alcoholic and I just took a stand on my life. I called the police and had him removed.

It was very stressful having to go back [to work]. And it continues to be because just based on where I'm located, there's no mask requirement, there's no vaccine requirement.

My children were home. One got severely depressed, and they had to go into a hospital for a little bit.

My family, they have mental health issues, and I think the pandemic exacerbated that a lot.

Because I'm teleworking, I find myself working more hours than I would normally if I was working from the office, and I hate it.

During the summer of last year, we also had what people are calling a racial pandemic. All this stuff being thrown on top, and then hearing how African-Americans are being affected more by the virus. - Black woman

Experiencing xenophobia and just the anxiety of leaving the house by myself...I did experience several incidents, especially at the height of COVID. I've had people threaten me. I've had people try to run me over with my dogs. It still occurs. It's not that I didn't experience racism prior to COVID, it's just that I think it was more intensified.

- Woman of East Asian descent

State Efforts in Improving MHPAEA Compliance

MHPAEA Compliance – State and Federal Laws

Consolidated Appropriations Act – Feb 10, 2021 – Plans must make comparative analyses of design and application of NQTLs available to state DOIs upon request

State Legislation - Legal Action Center Report – As of July 2020

- 15 states + DC – require plans to submit compliance reports and/or quantitative data to DOIs
- 9 states + DC – require plans to conduct parity compliance analysis modeled after the Kennedy Forum’s six-step analysis and to report findings to DOI
- 6 states + DC – require health plans to report on quantitative data needed for an “in operation” analysis of parity compliance

Assessing Quantitative Treatment Limits

Pennsylvania QTL Tool

Recommendations:

- Need for granularity
- Use of tool during product development

Assessing Non-Quantitative Treatment Limits

Finding the right tool

Issues with NQTL compliance

- Large amounts of data
- Consistency across carriers

Recommendations:

- Reaching out to providers
 - NM – Provider Survey
 - NE – Presentations for providers
- Using claims review

Looking Forward

Requiring submission of compliance reports and/or quantitative data to monitor MHPAEA compliance

- Leveraging federal law

Adopting/developing the right tool for QTL and NQTL compliance data submission

Ensuring high quality submissions by carriers

Identifying issues in submitted information