

## **Behavioral Health Law Ledger | March 2022**



### **Welcome to the Ledger**

Welcome to the third edition of Greenberg Traurig’s Behavioral Health Law Ledger! The Ledger is for behavioral health and integrated health providers interested in staying abreast of behavioral health law legal and regulatory developments. Each quarter, we anticipate releasing a new edition of the Ledger to highlight new legal developments, including but not limited to audit risks, important litigation developments, enforcement actions, and changes to behavioral-health-related laws or regulations such as health privacy, confidentiality, and/or security issues, consent issues, data sharing allowances, and other cutting-edge arrangements and issues facing behavioral and integrated healthcare providers.

#### **New York Expands Funding for Mobile SUD Treatment Services**

On Feb. 25, 2022, New York Gov. Kathy Hochul **announced** that the state would make available up to \$1,000,000 for Opioid Treatment Program (OTP) providers to establish mobile medication units (MMUs) to provide medications such as methadone and buprenorphine, to treat substance use disorders (SUD). The MMUs will offer services including admission assessments, medication induction, medication administration and observation, toxicology tests, and other SUD-related medical services. Notably, the National Institutes of Health (amongst others) has been funding a **clinical research trial** in five major U.S. cities since June 2021 to evaluate the effectiveness of MMU use in treating patients who inject opioids.

The goals of the MMUs are to remove transportation and geographic-proximity barriers to SUD treatment faced by many SUD patients, and to increase the availability of medications for patients suffering from an opioid use disorder. The MMUs will supplement existing mobile service offerings from providers certified by the New York State Office of Addiction Services and Supports (OASAS). Ultimately, the MMU initiative seeks to make one-time awards of up to \$200,000 to an OTP provider in each of the five boroughs of New York City; however, OASAS may award more than one MMU per borough depending on the applicants.

MMU development is made possible by the Drug Enforcement Authority (DEA)'s release of the [Final Rule](#) on MMUs and is in response to the state's need for increasing OTP services availability. Previously, mobile clinics had to be registered separately, which kept some clinicians from providing such services. The federal funding is being provided to the state of New York through the federal State Opioid Response grant, and is being awarded through a Request for Applications administered by OASAS and its fiscal agent, the Research Foundation for Mental Hygiene. New York OTP providers can [click here to access OASAS's Request for Applications](#). The application deadline is currently set for March 25, 2022.

States that lack accessible OTPs throughout the state would be well-served to consider using State Opioid Response funding for MMUs, similar to New York state, to work to combat the opioid crisis and provide more patients with access to SUD treatment services. Medicaid can help support the treatment provided in MMUs, as many of the people served by MMUs may be Medicaid enrollees, and states can bill for services provided.

### **Tri-Agency Report on Mental Health Parity Compliance and Enforcement**

On Jan. 25, 2022, the U.S. Departments of Labor, Health and Human Services, and Treasury released their 2022 annual report to Congress on the Mental Health Parity and Addiction Equity Act (MHPAEA), *"Realizing Parity, Reducing Stigma, and Raising Awareness: Increasing Access to Mental Health and Substance Use Disorder Coverage"* (the Report). The Report is an assessment of current issues in compliance and enforcement under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, the federal law that requires equity in medical/surgical and mental health/substance use disorder benefits.

The goal of MHPAEA is to promote access to mental health and substance use disorder treatment by prohibiting coverage limitations that may deny or significantly limit covered benefits. MHPAEA requires that the financial requirements (such as copayments) and treatment limitations (such as prior authorization requirements and other medical management tools) that apply to mental health and substance use disorder benefits cannot be more restrictive than the predominant financial requirements and treatment limitations that apply to substantially all medical and surgical benefits. The Department of Labor's Employee Benefits Security Administration (EBSA) and the Centers for Medicare and Medicaid Services (CMS) have primary enforcement authority for MHPAEA, with enforcement jurisdiction divided by plan or issuer type.

To better facilitate enforcement, in the Consolidated Appropriations Act of 2021 (CAA), Congress amended MHPAEA to require plans and issuers to complete comparative analyses of their non-quantitative treatment limitations. The Report indicates that many plans and issuers were unprepared to perform and document the required comparative analyses, and that most analyses reviewed contained insufficient information.

According to the Report, health plans and health insurance issuers are also failing to meet parity coverage requirements, a potentially concerning trend given the rise in mental health and substance use disorder issues related to the ongoing COVID-19 pandemic. Examples of non-compliance cited in the Report include multiple plans that excluded applied behavior analysis to treat autism spectrum disorder, a large health plan that excluded methadone and naltrexone for treatment for substance use disorder conditions, and two large plans that covered nutritional counseling for medical/surgical conditions like diabetes but did not cover comparable counseling for mental health conditions including eating disorders.

In response to the Report's findings, EBSA and CMS intend to increase MHPAEA enforcement by continuing to request and review disclosure requirements, investigate plans and issuers, issue corrective action plans, recruit and train additional staff, and provide technical assistance as needed.

### Let's Stay in Touch

We want to stay in touch with you. Through this newsletter, we will share tips and updates we have learned in the course of our services to clients, and we will do our best to facilitate an interactive dialogue with behavioral and integrated health providers and the issues they are facing in their businesses. If you know someone who would appreciate receiving GT's Behavioral Health Law Ledger, please forward this email to them, or they can [subscribe here](#).



## Contributors

**Julie A. Sullivan**  
Shareholder  
+1 303.685.7412  
[sullivanjul@gtlaw.com](mailto:sullivanjul@gtlaw.com)

**Nancy E. Taylor**  
Shareholder  
+1 202.331.3133  
[taylornt@gtlaw.com](mailto:taylornt@gtlaw.com)

**Tess Dillon Meyer**  
Associate  
+1 202.533.2319  
[meyert@gtlaw.com](mailto:meyert@gtlaw.com)

Albany. Amsterdam. Atlanta. Austin. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.~ Houston. Las Vegas. London.\* Long Island. Los Angeles. Mexico City.+ Miami. Milan.\* Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.\* Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. \*Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. #Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojijimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2022 Greenberg Traurig, LLP. All rights reserved.*