Department of Labor Issues Guidance on Mental Health Parity Enforcement

By Rebecca Sooter and Kristen Boorman | Compliance & Policy Consulting (CPC)

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Key Takeaways

- The Department of Labor's Employee Benefits Security Administration (EBSA) stated via Field Assistance Bulletin (FAB) 2026-03 that it will narrow its enforcement focus areas relating to requests for non-quantitative treatment limitation (NQTL) comparative analyses under the Mental Health Parity and Addiction Equity Act (MHPAEA).
- EBSA will prioritize and focus NQTL comparative analysis enforcement in three categories where it finds the highest potential for significant harm to participants and beneficiaries. Note that this does not mean EBSA will not investigate other categories of NQTLs as needed.
- EBSA also published an enforcement guidance web page to help plans and issuers identify potential MHPAEA compliance problems and lists best practices for selecting and monitoring health plan service providers.

Background

In September 2024, the Departments of Labor, Health and Human Services, and Treasury (the Departments) issued the 2024 Final Rules, which amended previous regulations and added new rules regarding the implementation of NQTL comparative analyses requirements under MHPAEA. The 2024 Final Rules were challenged in federal court by the ERISA Industry Committee in a case filed in January 2025. Pursuant to that litigation, the Departments elected to put an enforcement hold on the 2024 Final Rules while the litigation is resolved, plus additional time for the Departments to issue new proposed rules.

Although the Departments have taken a non-enforcement stance as to the 2024 Final Rules (which are currently being rewritten), other areas of MHPAEA's statutory obligations are still in effect. Much confusion still lurks around MHPAEA requirements, and many stakeholders have asked for clearer guidance, especially as it relates to NQTL requirements. In response, EBSA has elected to review its enforcement approach to MHPAEA. EBSA has published FAB 2026-03 to announce the agency's intent to prioritize and focus enforcement, as well as provide clear and meaningful assistance to plans regarding MHPAEA compliance.

Details

EBSA states in FAB 2026-03 that in its guiding principles for enforcement of MHPAEA's NQTL requirements, it will prioritize and focus enforcement in three categories where it finds the highest potential for significant harm to plan participants. This focus is designed to help EBSA preserve enforcement resources and reduce compliance burdens for plans and issuers.

The three categories of focus are:

1. Separate treatment limitations, including exclusions — especially blanket exclusions of treatments for covered mental health or substance use disorder conditions where similar treatments are covered for medical/surgical conditions.

2. Medical necessity standards and review processes (such as prior authorization, concurrent review, and retrospective review), looking to ensure the processes, strategies, evidentiary standards, and other factors used to apply these NQTLs are comparable across mental health/substance use disorder benefits and medical/surgical benefits.

3. Network adequacy issues, including standards for determining network adequacy, network admission standards, and provider reimbursement methodologies.

EBSA is careful to call out that though it will focus enforcement in these three areas, it is committed to MHPAEA enforcement and therefore may investigate other categories of NQTLs as questions arise, particularly in the context of participant complaints.

EBSA has also published a web page providing practical information to help plan sponsors and participants identify and resolve potential MHPAEA compliance issues. The web page highlights "red flags" from prior EBSA investigations that may signal compliance concerns. These issues can be found in multiple places, such as plan provisions, applicable policies, and via plan operations.

The page also lists questions about MHPAEA compliance that health plan fiduciaries should consider when selecting and monitoring health plan service providers, as well as best practices for monitoring operational compliance for specific NQTLs (including checklists).

What Employers Should Do Now

Employers should note that MHPAEA still remains an EBSA enforcement priority and should ensure that they continue to collect and review the NQTL comparative analyses from their plan vendors (such as third-party administrators and pharmacy benefit managers). Plan fiduciaries should now evaluate these NQTL comparative analyses with extra consideration for the three areas noted in the FAB. Employers and fiduciaries should also take time to read the information provided on the MHPAEA web page, and compare it against their own plan documents, medical policies, and comparative analyses.

Resources

The FAB can be found here. The additional guidance web page published by EBSA can be found here.

Please contact the CPC team with any questions.

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