

# Now & Next

## Employee Benefits Alert

May 19, 2025

### **Mental health parity non-enforcement—What plan sponsors need to know**

By Damian A. Myers and Annie Zhang

Learn which 2024 MHPAEA regulations are on hold, what requirements still apply, and how plan sponsors can minimize risk and ensure ongoing compliance.



#### **What's the impact?**

- Existing MHPAEA requirements on quantitative and non-quantitative treatment limitations and comparative analyses remain fully enforceable.
- Fiduciary certification, meaningful benefits standard, and outcomes data review standards are now subject to the Departments' non-enforcement notice.

In January 2025, the ERISA Industry Committee (ERIC) filed a lawsuit against the Departments<sup>1</sup> charged with enforcing the Mental Health Parity and Addiction Equity Act (MHPAEA) alleging that the 2024 regulations exceed the Departments' statutory authority. Rather than defend the litigation, the Departments requested that the court stay the litigation while the Departments re-

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<sup>1</sup> The Departments of Labor, Treasury, and Health and Human Services (collectively, the "Departments").

evaluate the 2024 regulations (including consideration of new regulations and review of the Department's enforcement program). In connection with the stay, the Departments also issued a notice stating that it will not enforce those provisions of the 2024 regulations that were to be effective in 2025 and 2026.

At first glance, this is welcome relief for plan sponsors that have struggled with MHPAEA compliance given the lack of clear guidance. However, plan sponsors need to keep in mind that the recent relief is limited in scope. The MHPAEA has been around since 2008, and prior regulations issued in 2013 set forth complex requirements related to quantitative and non-quantitative treatment limitations (NQTL). Further, the MHPAEA was amended under the Consolidated Appropriations Act, 2021 (CAA) to require that plan sponsors conduct comparative analyses showing NQTL compliance. Finally, the Departments have issued subregulatory guidance over the years that attempts to further explain requirements under the MHPAEA.

The recent non-enforcement notice applies only to new requirements under the 2024 regulations, and the Departments explicitly stated that requirements set forth in the 2013 regulations, the CAA, and subregulatory guidance (specifically, FAQs Part 45) remain subject to enforcement.

## **What is still required?**

To maintain compliance with the MHPAEA, plan sponsors should address the following:

### **QUANTITATIVE TREATMENT LIMITATIONS OR "QTLs"**

Plan sponsors must ensure that no QTL that is applied to mental health and substance use disorder (MH/SUD) benefits is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical (M/S) benefits in the relevant subclassification (i.e., office visits or non-office visits).

### **NONQUANTITATIVE TREATMENT LIMITATIONS OR "NQTLs"**

Plan sponsors should confirm that their health plans do not impose NQTLs with respect to MH/SUD in any classification (i.e., in-network inpatient, out-of-network inpatient, etc.) unless, under the terms of the plan as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD in the classification are comparable to, and are applied no more stringently than the processes, strategies, evidentiary standards, or other factors used in applying the limitation to M/S benefits in the same classification.

## **COMPARATIVE ANALYSIS**

Plan sponsors are still required to document NQTL compliance by conducting a written comparative analysis and making the analysis available upon request. This is a statutory requirement, and plan sponsors face penalties if they do not produce these analyses when requested. Further, the CAA requires the Departments to request at least 20 comparative analyses per year, so to comply with the statute, the Departments may still conduct investigations notwithstanding the non-enforcement notice.

## **STATE LAW**

Plan sponsors, particularly those sponsoring fully-insured plans, should be aware that state mental health parity laws are not impacted by the Departments' non-enforcement notice. In fact, some states have adopted regulations or statutory requirements that mirror the 2024 federal regulations.

Failure to comply with these requirements could result in fiduciary liability and/or statutory penalties. If a Department investigation determines that a plan has noncompliant QTLs and NQTLs, the plan may be required to re-adjudicate claims to bring the plan into compliance. Further, the Departments have indicated that the comparative analysis is part of the plan document, so failing to have the analysis ready upon request from a participant can result in statutory penalties.

## **What is subject to non-enforcement?**

The 2024 regulations include several new requirements that are now subject to the Departments' non-enforcement notice. These include the fiduciary certification, meaningful benefits standard, and outcomes data review standards.

## **FIDUCIARY CERTIFICATION**

The 2024 regulations require plan fiduciaries to certify that they used a prudent process to select a third-party to conduct the comparative analysis, and that the fiduciary monitored the third-party as required under standard ERISA fiduciary responsibilities. Although the requirement to sign a certification is on hold for now, the certification merely documents the existing ERISA fiduciary standard of care. When hiring third-party service providers to provide services for a plan, fiduciaries are required to exercise care when selecting and monitoring the third-party.

## **MEANINGFUL BENEFITS**

A long-standing MHPAEA requirement is that if benefits for MH/SUD are covered in any benefit classification, MH/SUD benefits must be offered in every benefit classification in which M/S services are also covered. The 2024 regulations took this requirement a step further by stating

that the MH/SUD coverage offered in each benefit classification must be “meaningful.” For this purpose, “meaningful” means that at least one primary treatment for a MH/SUD condition must be covered in each classification. Although the meaningful benefit standard is likely subject to the non-enforcement notice, plan sponsors should be aware that any exclusion of an MH/SUD service in a benefit classification presents a risk of noncompliance because such exclusions are highly scrutinized by the Departments. Thus, plan sponsors should consult with counsel when evaluating MH/SUD exclusions.

## **OUTCOMES DATA REVIEW STANDARDS**

The MHPAEA has long required plan sponsors to ensure NQTL compliance in writing and *in operation*. However, the standards surrounding operational compliance have never been clear. The 2024 regulations attempt to provide some clarity around operational compliance by stating that “material differences in access” between MH/SUD and M/S services could indicate that a NQTL is being applied more stringently to MH/SUD services. If so, corrective action would be needed. Although this requirement is subject to the non-enforcement policy, operational compliance is still statutorily required. Thus, plan sponsors should still evaluate outcomes data to assess compliance. That being said, until new regulations are issued, plan sponsors will generally have broad flexibility in selecting the type of outcomes data used for evaluating compliance.

We expect further guidance from the Departments in the coming months, and Nixon Peabody’s [Health and Welfare Benefits Team](#) will keep clients informed as developments occur. If you have any questions or concerns regarding your mental health parity compliance, please contact your Nixon Peabody attorney or:

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