FIELD ASSISTANCE BULLETIN NO. 2026-03

DATE: SEPTEMBER 8, 2026

MEMORANDUM FOR: COLLEEN MCKEE, DIRECTOR OF ENFORCEMENT
REGIONAL DIRECTORS
EMPLOYEE BENEFITS SECURITY ADMINISTRATION (EBSA)

FROM: DANIEL ARONOWITZ, ASSISTANT SECRETARY

SUBJECT: **GUIDING PRINCIPLES FOR EBSA'S ENFORCEMENT OF THE MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT'S NONQUANTITATIVE TREATMENT LIMITATION REQUIREMENTS**

On January 15, 2026, the Department of Labor's (the Department's) Employee Benefits Security Administration (EBSA) announced its updated national enforcement priorities for fiscal year 2026, which includes addressing barriers to mental health and substance use disorder (MH/SUD) benefits.[1] As part of this national enforcement priority, this Field Assistance Bulletin announces the Department's enforcement policy regarding the Mental Health Parity and Addiction Equity Act (MHPAEA), as amended by the Consolidated Appropriations Act, 2021 (CAA, 2021), and the final rule entitled "Requirements Related to the Mental Health Parity and Addiction Equity Act" (2024 Final Rule).[2] MHPAEA generally prohibits group health plans and health insurance issuers offering group or individual health insurance coverage from offering health coverage that imposes more restrictive requirements and limitations on MH/SUD benefits than on medical/surgical benefits.

The Department has received significant input from the regulated community that prior enforcement of MHPAEA's nonquantitative treatment limitation (NQTL) comparative analyses requirements created substantial confusion and unnecessary burdens on health plans. Many stakeholders have asked for clear guidance related to MHPAEA's NQTL requirements.

The Department is issuing this Field Assistance Bulletin to provide additional clarity on the Department's approach to enforcing the statutory and regulatory NQTL requirements. In its enforcement of these critical protections, the Department seeks to achieve the right balance to ensure that its enforcement is fair and even-handed, with advance and reasonable notice to interested parties: supporting access to comprehensive MH/SUD benefits but enforcing compliance in a practical and meaningful way that does not unnecessarily drive up compliance costs or discourage sponsors of group health plans from offering MH/SUD benefits. In sum, this updated enforcement guidance is designed to provide a streamlined and practical framework for compliance with MHPAEA's NQTL requirements.

BACKGROUND

On September 9, 2024, the Departments of Labor, Health and Human Services (HHS), and the Treasury (the Departments) issued the 2024 Final Rule. The 2024 Final Rule amended previous

[1] US Department of Labor's Employee Benefits Security Administration Updates National Enforcement Projects for Employee Benefit Plans (Jan. 15, 2026), available at https://www.dol.gov/newsroom/releases/ebsa/ebsa20260115.
[2] 89 FR 77586 (Sept. 23, 2024).

regulations (2013 Final Rule[3]) implementing MHPAEA and added new rules implementing the NQTL comparative analyses requirements under MHPAEA, as amended by the CAA, 2021. The 2024 Final Rule, which became effective on November 22, 2024, has staggered applicability dates, with certain amendments to the 2013 Final Rule applicable to plan years starting on or after January 1, 2025, and all of the amendments applicable to plan years (in the individual market, policy years) starting on or after January 1, 2026.

On January 17, 2025, the ERISA Industry Committee (ERIC) filed suit in the U.S. District Court for the District of Columbia challenging certain provisions of the 2024 Final Rule on multiple grounds, including on the grounds that they are arbitrary and capricious and contrary to law.[4] Additionally, Executive Order 14219, titled "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative,"[5] directs federal agencies to review regulations to identify those that may undermine the national interest, including by imposing undue burdens on small businesses or significant costs upon private parties that are not outweighed by public benefits. In such cases, federal agencies must exercise enforcement discretion to ensure lawful governance.

On May 15, 2025, the Departments issued a nonenforcement policy, stating that:

> The Departments will not enforce the 2024 Final Rule or otherwise pursue enforcement actions, based on a failure to comply that occurs prior to a final decision in the [ERIC] litigation, plus an additional 18 months. This enforcement relief applies only with respect to those portions of the 2024 Final Rule that are new in relation to the 2013 final rule. The Departments note that MHPAEA's statutory obligations, as amended by the CAA, 2021, continue to have effect. HHS encourages states that are the primary enforcers of MHPAEA with respect to issuers to adopt a similar approach to enforcement. HHS will not consider a state to be failing to substantially enforce MHPAEA, as amended, because the state adopts such an approach.[6]

The Departments further indicated that they would undertake a broader reexamination of each Department's respective enforcement approach under MHPAEA, including those provisions amended by the CAA, 2021.[7]

EBSA reviewed its enforcement approach under MHPAEA. To preserve enforcement resources and accord with the Departments' May 2025 nonenforcement policy, EBSA will not pursue enforcement actions of those portions of the 2024 Final Rule that are new in relation to the 2013

[3] 78 FR 68240 (Nov. 13, 2013).
[4] Complaint, *ERISA Indus. Comm. v. Dep't of Health & Hum. Servs.*, No. 1:25-CV-00136 (D.D.C. Jan. 17, 2025).
[5] 90 FR 10583 (Feb. 25, 2025).
[6] Statement of U.S. Departments of Labor, Health and Human Services, and the Treasury regarding enforcement of the final rule on requirements related to the Mental Health Parity and Addiction Equity Act (May 15, 2025), https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-parity/statement-regarding-enforcement-of-the-final-rule-on-requirements-related-to-mhpaea.
[7] *Id.*

Final Rule.[8] Nevertheless, because MHPAEA's statutory obligations continue to apply, including the requirements added by the CAA, 2021 related to NQTL comparative analyses, EBSA will narrow its enforcement focus areas relating to requests for NQTL comparative analyses under the statute. This approach to enforcement is designed to reduce compliance burdens and to provide clarity for plans and issuers on how to meet the NQTL requirements in a balanced and even-handed manner.

GUIDING PRINCIPLES FOR EBSA'S ENFORCEMENT OF MHPAEA'S NQTL REQUIREMENTS

EBSA will prioritize and focus MHPAEA NQTL comparative analysis enforcement under MHPAEA, as amended by the CAA, 2021, in the following three categories in which there is the highest potential for significant harm to participants and beneficiaries[9]:

1. **Separate treatment limitations, including exclusions.** While plans and issuers can impose NQTLs based on medical necessity or set standards for experimental/investigative treatments, in general they cannot apply blanket exclusions of treatments for covered MH/SUD conditions, where similar treatments are covered for medical/surgical conditions.[10] EBSA will focus its resources on cases involving blanket treatment exclusions applicable only to MH/SUD benefits, but may also address more limited exclusions, especially in response to complaints.
2. **Medical necessity standards and review process.** In this category, EBSA will focus its resources on prior authorization, concurrent review, and retrospective review. Under MHPAEA, nothing specifically prohibits plans and issuers from using proprietary clinical guidelines to help make medical necessity determinations, as long as the processes, strategies, evidentiary standards, and other factors used to apply such NQTLs to MH/SUD benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to medical/surgical benefits. However, plans, issuers, and their health plan service providers must make these guidelines available upon request during EBSA's NQTL investigations and to participants and beneficiaries upon request.[11]
3. **Standards for determining network adequacy with a focus on network admission standards and provider reimbursement methodologies.** When participants and beneficiaries cannot find MH/SUD treatment in-network, they must choose to either go out-of-network for MH/SUD care or forgo MH/SUD treatment altogether. Because out-of-network care typically comes with higher out-of-pocket costs for participants and beneficiaries, an inadequate network can be a significant barrier to obtaining MH/SUD treatment. Where there are network adequacy parity issues, EBSA will ensure that plans

[8] Specifically, the meaningful benefits standard, prohibition on discriminatory factors and evidentiary standards, relevant data evaluation requirements, and the related requirements in the provisions for comparative analyses that apply on the first day of the first plan year beginning on or after January 1, 2026.

[9] The 2025 MHPAEA Report to Congress noted that EBSA continues to focus on limitations that impact access to care. Examples of EBSA's enforcement results included in the Report are consistent with these three categories. *See* 2025 MHPAEA Report to Congress (February 20, 2026), available at https://beta.dol.gov/research-data/surveys-reports-publications/2025-mhpaea-report-congress.

[10] See ERISA section 712(a)(3)(A)(ii), which generally requires a plan or coverage to ensure that no separate treatment limitations are applicable only with respect to mental health or substance use disorder benefits.

[11] See ERISA section 712(a)(4), which generally requires a plan administrator or health insurance issuer to make available the criteria for medical necessity determinations upon request.

and issuers consider all available options and assist participants and beneficiaries seeking covered MH/SUD treatments without exposing such participants and beneficiaries to out-of-network costs due to the lack of availability of a covered MH/SUD service in-network.

While EBSA will focus enforcement in these three areas, EBSA remains committed to protecting MH/SUD benefits for all plan participants and beneficiaries through its MHPAEA enforcement and therefore may need to investigate other categories of NQTLs as issues arise, particularly when responding to participant complaints.

To further increase regulatory and enforcement clarity and implement our guiding enforcement principle of providing advance notice to the regulated community prior to enforcement actions, on September 8, 2026, EBSA issued an enforcement guidance tool to help plans and issuers comply with their obligations under MHPAEA, including the NQTL comparative analyses requirements. Given the complexity of EBSA's national enforcement priority of addressing barriers to MH/SUD benefits, EBSA will strive to provide additional clarity and guidance as warranted. EBSA also continues to welcome input from all interested entities as to what additional guidance from the Department would help plans and issuers meet the statutory and regulatory requirements.

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This memorandum is an internal Department policy directed at EBSA and its employees. As such, it is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter, civil or criminal.

Adhering to the principles and priorities discussed above and focusing on matters evidencing the most harm to participants and beneficiaries, EBSA remains committed to protecting the mental health and substance use disorder benefits of plan participants and beneficiaries. Therefore, the Assistant Secretary (or his designee) may update this document periodically.