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DOL Issues Field Assistance Bulletin Outlining Mental Health Parity Enforcement Approach

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On September 8, 2026, the Department of Labor's Employee Benefits Security Administration ("EBSA") issued Field Assistance Bulletin No. 2026-03 (the "FAB"), outlining a new set of guiding principles for enforcing the nonquantitative treatment limitation ("NQTL") requirements under the Mental Health Parity and Addiction Equity Act ("MHPAEA"), as amended by the Consolidated Appropriations Act, 2021 ("CAA, 2021"). As described below, the FAB states that EBSA will narrow the focus of its NQTL comparative analysis enforcement efforts to three priority categories: (1) separate treatment limitations, including blanket exclusions of mental health/substance use disorder ("MH/SUD") benefits; (2) medical necessity standards and review processes; and (3) network adequacy standards, including network admission standards and provider reimbursement methodologies. However, the FAB notes that EBSA may still investigate other categories of NQTLs where appropriate.

How Did We Get Here?

MHPAEA generally requires group health plans that provide MH/SUD benefits to ensure that the financial requirements and treatment limitations (including NQTLs) applicable to such benefits are no more restrictive than those applied to medical/surgical benefits. In 2020, Congress enacted CAA, 2021, which added a requirement that group health plans document their comparative analyses of the design and application of NQTLs that are applied to MH/SUD benefits and make those analyses available to regulators upon request.

As we explained in our previous blog, the Departments of Labor, Health and Human Services, and the Treasury issued final regulations in 2024 which would have made significant changes to the content of these comparative analyses.

The 2024 Final Rule faced immediate legal challenge, and on May 15, 2025, the Departments issued a broad non-enforcement policy, stating that they would not enforce the provisions of the 2024 Final Rule that are new relative to the 2013 Final Rule—or otherwise pursue enforcement actions based on a failure to comply—prior to a final decision in the litigation, plus an additional 18 months. Separately, MHPAEA's statutory obligations, including those added by the CAA, 2021, continue to apply.

Accordingly, plans must still comply with the underlying parity requirements, including the obligation to prepare and maintain NQTL comparative analyses and provide them to the Departments within 10 days of a request. The FAB confirms that EBSA will not pursue enforcement of those portions of the 2024 Final Rule that are new relative to the 2013 Final Rule.

The FAB and its Focus Enforcement Areas

The FAB does two principal things. First, it confirms that EBSA will continue not to enforce the portions of the 2024 Final Rule that are new relative to the 2013 Final Rule. Second, it explains how EBSA expects to approach enforcement of the still-existing statutory comparative analysis requirements of MHPAEA as amended by CAA, 2021, as well as the portions of the 2024 Final Rule that are not new relative to the 2013 Final Rule.

In that regard, the FAB announced that EBSA will narrow its NQTL comparative analysis enforcement focus under MHPAEA to three categories that EBSA views as presenting "the highest potential for significant harm to participants and beneficiaries" as follows:

- **Separate Treatment Limitations, Including Exclusions.** EBSA will focus its resources on blanket treatment exclusions applicable only to MH/SUD benefits. The FAB noted that, generally, plans cannot apply blanket exclusions of treatments for covered MH/SUD conditions where similar treatments are covered for medical/surgical conditions (e.g., excluding mental health treatment for a particular condition but covering medical and surgical treatment for the condition).
- **Medical Necessity Standards and Review Processes.** EBSA will focus on prior authorization, concurrent review, and retrospective review. Specifically, it appears that EBSA will be looking at whether the processes, strategies, evidentiary standards, and other factors relied upon to create clinical guidelines used to make medical necessity determinations are comparable to, and applied no more stringently than, those used for medical/surgical benefits.

- **Network Adequacy Standards.** Recognizing that a lack of access to network MH/SUD providers can result in higher costs (or forgoing treatment), the FAB indicates that EBSA will focus on network adequacy parity, including as it relates to network admission standards and provider reimbursement methodologies. Where network adequacy parity issues arise, EBSA will ensure plans consider all available options and assist participants and beneficiaries in accessing covered MH/SUD treatments without exposure to out-of-network costs caused by insufficient in-network availability.

Proskauer's Perspective

The FAB provides helpful guidance as to how group health plans should prioritize their MHPAEA compliance efforts. However, plan sponsors and fiduciaries should keep in mind the following:

- **General compliance obligations remain and should not be ignored.** The FAB makes clear that the MHPAEA/CAA, 2021 requirements remain in effect and that, as part of its commitment to protect MH/SUD benefits, EBSA may investigate other categories of NQTLs "as issues arise, particularly when responding to participant complaints." That being the case, while EBSA's decision to concentrate enforcement on three specific NQTL categories should help plans prioritize compliance resources, plan sponsors and fiduciaries should be careful not to limit their compliance efforts to these three areas. Plans should continue to perform full comparative analyses and be prepared to provide them to regulators within 10 days of a request.
- **Regulatory relief is temporary and conditional.** The non-enforcement of the new provisions in the 2024 Final Rule relative to the 2013 Final Rule is tied to the outcome of the pending litigation. Plan sponsors should continue to monitor both the litigation and any further regulatory developments—including the possibility that the DOL will propose new regulations as early as this year.
- **Additional guidance forthcoming.** EBSA noted that, given the complexity of its enforcement priorities, it will strive to provide additional clarity and guidance as warranted, and it continues to welcome input from stakeholders.

Stay tuned to our Compensation & Benefits Blog as we will continue to monitor developments in this area and provide updates as additional guidance is issued.

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