

Publications

Departments Pause Enforcement of MHPAEA Final Rule and Reconsider MHPAEA Enforcement Program

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In a widely anticipated and welcome move, the Departments of Health and Human Services (“HHS”), the Treasury, and Labor (“DOL”) (collectively, the “Departments”), sought an abeyance of a lawsuit challenging the Mental Health Parity and Addiction Equity Act (“MHPAEA”) Final Rule (the “Final Rule”). An abeyance is a typical practice for a new administration to use where it is in the position of having to defend a prior administration’s rule in litigation. This is a significant and positive development for plans and issuers as it relates to MHPAEA.

The Final Rule, which was issued on September 9, 2024, imposed new requirements related to parity, including the documentation and justification of nonquantitative treatment limitations (“NQTLs”). Certain of the Final Rule’s requirements became effective January 1, 2025, while other requirements are set to become effective January 1, 2026. We previously summarized key takeaways from the Final Rule [here](#).

As discussed in more detail below, on January 17, 2025, the ERISA Industry Committee (“ERIC”) filed a lawsuit against the Departments alleging that the Final Rule’s requirements were so “burdensome and unworkable” that they will substantially increase administrative costs and discourage plans and issuers from offering mental health and substance use disorder (“MH/SUD”) benefits. In their motion requesting an abeyance of the lawsuit, the Departments represented that they intend to pause enforcement of the Final Rule and reconsider MHPAEA enforcement more generally. While this pause and reconsideration is welcome news for plans and issuers, the longstanding NQTL rule from the 2013 final rules, as well as the provisions of the Consolidated Appropriations Act, 2021 (“CAA”) remain in force. Plans and issuers have invested significant resources in attempting to comply with these requirements since shortly after the CAA’s passage in late 2020. But, doing so has been challenging because the standards necessary for compliance are

vague, and the agencies have created additional standards in the context of their enforcement activities—standards that often cannot be controlled by plans and issuers or quantified in the manner the Departments seek.

Meanwhile, the plaintiffs' bar has seized upon the uncertainty regarding the standards necessary for compliance with MHPAEA. Plans and issuers have been subject to a wave of private plaintiff litigation under MHPAEA, particularly with regard to NQTLs concerning treatment for autism and residential treatment and wilderness therapy facilities. Courts have applied varying pleading standards to such claims and reached disparate results as to whether restrictions on such treatments and facilities violate MHPAEA.

The Departments' reconsideration of MHPAEA enforcement may serve to provide more certainty as to the obligations of plans and issuers with regard to coverage for MH/SUD treatment and tamp down private plaintiff litigation.

ERIC's Complaint

ERIC's lawsuit alleges that multiple provisions in the Final Rule exceed the Departments' authority under the relevant statutes or violate the Administrative Procedure Act ("APA"). The lawsuit seeks to vacate the Final Rule in its entirety, or at a minimum, the following challenged provisions:

- **Meaningful Benefits Requirement:** Under the Final Rule's "meaningful benefits" requirement, if a plan covers a MH/SUD condition in a benefit classification, it must provide "meaningful benefits" for that condition in all classifications for which medical/surgical ("M/S") benefits are covered. A plan or issuer will not provide "meaningful benefits" unless it provides benefits for a "core treatment" for a MH/SUD condition in each classification in which the plan (or coverage) provides benefits for a M/S core treatment.
 - **Challenge:** The lawsuit alleges that the "meaningful benefits" requirement is unlawful because it: (i) exceeds the Departments' statutory authority under MHPAEA in that it "effectively imposes a benefits mandate that the Departments have no power to impose"; (ii) arbitrarily amounts to a change in the agencies' prior position that they do not have the authority to impose a benefits mandate under MHPAEA; and (iii) arbitrarily outsources the definition of "core treatment" to third parties.
- **Material Differences in Access Standard:** The Final Rule requires plans and issuers to take reasonable steps to address material differences in access to MH/SUD benefits resulting from application of NQTLs if relevant data indicates such NQTLs contribute to these differences. The Final Rule provides that a material difference in outcomes data is viewed as a "strong indicator" of noncompliance.
 - **Challenge:** The lawsuit alleges that the "material differences in access" standard is unlawful because it: (i) exceeds the Departments' authority by effectively imposing disparate-impact liability, even though MHPAEA only requires parity in plan terms and the application of such terms; (ii) is ambiguous because the terms "material differences," "access" and "relevant data" are vague and insufficiently defined; and (iii) arbitrarily treats differences in access as indicative of a plan's lack of parity.
- **Comparative Analysis Requirement:** The Final Rule requires plans to prepare a comparative analysis for every NQTL adopted for MH/SUD benefits in order to evaluate their compliance with the "material differences in access" standard and to report these analyses to the Departments. The analysis must include a description of the NQTL, an identification of the factors used to design the limitation, a description of how the factors were used in the design, a demonstration of the comparability to M/S benefits as written, a demonstration of the comparability to M/S benefits in operation, and the conclusions of the analysis.
 - **Challenge:** The lawsuit alleges that the comparative analysis requirement is unlawful because it: (i) arbitrarily fails to sufficiently specify what the comparative analysis must entail and incorporates vague and undefined terms; and (ii) violates the Due Process Clause.
- **Plan Fiduciary Certification Requirement:** The Final Rule provides that the comparative analysis must include a certification that the ERISA plan's fiduciary engaged in a prudent process to select a qualified service provider(s) to perform and document a comparative analysis in connection with the imposition of any NQTLs applied to MH/SUD benefits under the plan and satisfied the duty to monitor the service provider(s).
 - **Challenge:** The lawsuit alleges that the fiduciary certification requirement is unlawful because it (i) exceeds the DOL's statutory authority; (ii) is not a logical outgrowth of the proposed rule; (iii) arbitrarily and capriciously burdens ERISA fiduciaries and fails to give fiduciaries fair notice of what constitutes a "qualified" service provider; and (iv) violates the Due Process Clause.

- **January 1, 2025 Applicability Date:** The Final Rule provides that many of its provisions, including the plan fiduciary certification requirement and certain portions of the comparative analysis requirement, apply as of January 1, 2025—less than four months after the Final Rule was issued.
- **Challenge:** The lawsuit alleges that the January 1, 2025 applicability date is arbitrary and capricious because it affords too little time for plans to come into compliance with the Final Rule’s requirements.

The Departments’ Motion to Hold ERIC’s Lawsuit in Abeyance

On May 9, 2025—just days before the Departments’ response to the complaint was due to be filed—the Departments filed a motion to hold the lawsuit in abeyance pending the reconsideration of the Final Rule.

In the motion, the Departments represented that they intend to take three steps:

- *First*, the Departments are going to reconsider the Final Rule, including whether to issue a notice of proposed rulemaking (“NPRM”) rescinding or modifying the regulation.
- *Second*, the Departments are going to issue a non-enforcement policy “in the near future” covering the portions of the Final Rule that are applicable for plan years beginning on or after January 1, 2025 and January 1, 2026.
- *Third*, the Departments represented that they are going to re-examine the Departments’ MHPAEA enforcement program “more broadly.”

The court granted the abeyance on May 12, 2025. The court also ordered the parties to file a joint status report on August 7, 2025 and every 90 days thereafter to report on the progress of the Departments’ reconsideration of the Final Rule.

The Departments’ Statement Regarding Non-Enforcement of the Final Rule

On May 15, 2025, as promised in the motion for abeyance, the Departments issued a statement regarding enforcement of the Final Rule. The statement references the ERIC litigation and the Executive Order 14219, titled “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative.”

The statement provides 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 litigation, plus an additional 18 months.” The Departments make clear that the 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 to maintain an NQTL comparative analysis, as required by the CAA, remains in effect. Finally, HHS encourages states to adopt a similar approach to enforcement with respect to health insurance policies primarily regulated under state law.

The Departments again note that they will undertake a broader reexamination of each Department’s respective enforcement approach under MHPAEA. Plans and issuers may continue to refer to the 2013 final rule, FAQs About Mental Health and Substance Use Disorder Parity Implementation and the Consolidated Appropriations Act, 2021 Part 45, and other subregulatory guidance issued by the Departments under MHPAEA. However, the Departments note that, in connection with the process of reconsidering the Final Rule, they may make updates to the subregulatory guidance implementing MHPAEA, including FAQs Part 45.

The Departments conclude with a statement noting their ongoing commitment to MHPAEA enforcement, however they intend to enforce in a way that is not unduly burdensome for plans and issuers.

This enforcement relief also is welcome news, but for the reasons discussed below, plans and issuers continue to need compliant NQTL comparative analyses, and the scope and nature of revised enforcement is unclear at this point.

What’s Next for Plans and Issuers?

Plans and issuers must continue to maintain NQTL comparative analyses as required under the 2013 final rule, the CAA, and the Part 45 FAQs. As a reminder, the CAA requires the Departments to request at least 20 NQTL comparative analyses annually, and the Departments have used those requests to effectively require plans and issuers to create NQTL comparative analyses that go far beyond

even the most detailed analysis developed prior to the CAA. So, we expect that there will continue to be enforcement of the NQTL requirements in effect prior to the Final Rule, and that much of the lack of regulatory clarity that plagued CAA enforcement will remain in place until the broader review of enforcement signaled by the Departments is complete. Also, participants in ERISA plans have the right to request the NQTL comparative analyses under ERISA 104(b) and receive the analyses within 30-days of the request. These requests can serve as a form of pre-litigation discovery for the plaintiffs' bar, and should be treated as such by plans and issuers. For these reasons, it is important to maintain the NQTL comparative analyses, notwithstanding the change in enforcement with respect to the Final Rule.

As a best practice, plans and issuers should maintain up-to-date, detailed analyses that reflect current: (i) benefit design; (ii) vendors' processes, factors, strategies, and evidentiary standards; and (iii) outcomes data to demonstrate in-operation compliance. Given the non-enforcement position, plans and issuers are not required to comply with the requirements in the Final Rule that are new, such as meaningful benefits, material differences, nondiscrimination in NQTL design, and the fiduciary certification.

States may adopt more consumer protective standards based on state authority and, therefore, issuers may have to comply with certain of the Final Rule requirements based on state law.

As noted in the motion for abeyance and the non-enforcement statement, the Departments may issue additional guidance reflecting their enforcement of MHPAEA more generally and an NPRM rescinding or modifying the regulation. We are continuing to monitor these developments closely.