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3 Takeaways From EBSA's New Health Parity Guidance Docs

By **Kellie Mejdrich**

Law360 (September 11, 2026, 5:22 PM EDT) -- The U.S. Department of Labor's recent guidance on how to comply with federal laws requiring parity in health plan coverage between behavioral and physical healthcare provides critical new details on the agency's narrowed set of enforcement priorities.

The DOL's Employee Benefits Security Administration released a **field assistance bulletin** on Tuesday outlining a streamlined approach to enforcing the federal Mental Health Parity and Addiction Equity Act. The act prohibits employer health plans from limiting coverage for mental health and substance use disorder treatment more than for medical or surgical care. The law was passed in 2008, but significant new requirements governing how the coverage analysis plans must be conducted were put in place in 2020, in a fiscal 2021 appropriations bill.

Along with the field assistance bulletin, EBSA released an 11-page document outlining **potential compliance issues** the subagency had recently identified among plans, based on investigations the subagency had conducted on analyses, as part of its beefed-up enforcement obligations under the 2020 law.

Employer-side attorneys say the new guidance provides crucial new detail they've been looking for in the wake of a shift in enforcement on parity, driven in part by litigation against rules further implementing parity laws that were finalized in 2024. EBSA and other federal agencies stopped enforcing those rules last May.

"I think it is much more helpful for plan sponsors than any of the prior guidance … I think these are the most practical examples I have seen of what the DOL actually expects," said Stacy Hooper, a partner with Holland & Knight.

Here are three takeaways from the guidance.

Guidance, Not Rulemaking

Practitioners highlighted how the guidance contained a significant amount of new information but didn't have the force of notice-and-comment rulemaking that they still expect to come on mental health parity.

The field assistance bulletin was highlighted in a press release the DOL also issued on Tuesday that celebrated Labor Day, which characterized the effort as an attempt to focus resources for greater impact. The bulletin highlights a handful of major issues that regulators will focus on when examining employers' coverage analyses for compliance with the law.

Attorneys have been awaiting guidance in the wake of the DOL's May 2025 statement of nonenforcement on the 2024 parity rules that were put in place in the previous administration, which sparked a **legal challenge** in D.C. federal court that's still pending. The DOL and other agencies subject to that suit **told the court** earlier this year that they plan to undertake additional rules on mental health parity.

Broadly, the bulletin says that the DOL will focus its enforcement on three areas of nonquantitative treatment limitations when conducting enforcement of the law's requirement that plans analyze their restrictions. Those areas are blanket coverage exclusions that only apply to behavioral healthcare, medical necessity standards, and network adequacy.

The developments have left many benefits attorneys questioning why some details made it into the guidance released Tuesday instead of rulemaking that's still to come.

"There's a lot in here that I think we would have expected to have gone through notice and comment. And there's a lot in here that in some cases, is consistent with the 2024 final rule," said Lisa Campbell, principal and co-chair of Groom Law Group's health services practice.

Sarah Raaii, a partner at McDermott Will & Schulte who advises on employee benefits and healthcare issues, said the nonenforcement statement from last year in combination with the new priorities outlined in the guidance underscored one of the "confusing aspects" of the mental health parity policy rollout.

"It's important that there is still this actual compliance requirement, regardless of the 2024 rules," Raaii said.

Some plaintiff-side attorneys who have reviewed the guidance were less positive about the potential for the guidance to meaningfully impact parity, including Carl Engstrom, who is co-founder and partner at Engstrom Lee LLC.

"It's difficult to call these enforcement priorities, when two of the three priority areas relate to promulgating standards and regulations along with interpretation of various rules," Engstrom said. "It's not surprising in light of the announcement of nonenforcement, but is disappointing nonetheless."

Specific "Red Flags"

Another major focus for employer-side attorneys was how the document accompanying the field assistance bulletin outlined "red flags" in the eyes of EBSA when it comes to complying with parity, with detailed examples on issues found during investigations.

The guidance document mentioned "red flags" seven times, including in discussions of potential issues with written plan policies and in details on how the DOL expects plans to monitor their own coverage for compliance.

"Red flags are helpful because that's one of the things employers always want, is examples of problematic provisions. You always, historically, had some modicum of this in the congressional report, but those were few and far between, and not that detailed," said Ben Conley, a partner at Seyfarth & Shaw LLP and a member of the firm's employee benefits and executive compensation practice group.

Hooper, with Holland & Knight, said EBSA "red flags" have been mentioned in prior parity guidance, including from 2020.

"The DOL is clear that they're not backing away from enforcement priorities here, but to me, this document reads more like compliance assistance than some of the prior guidance did," Hooper said, when asked about the red flags language.

Emphasis on Service Provider Monitoring

Another major aspect of the release that caught attorneys' attention was language in the bulletin and the potential problems document outlining what regulators expect from service providers to employee benefit plans when it comes to parity.

The compliance document in particular laid out a list of potential questions for plans to ask their third-party administrator, commonly referred to as a TPA, in regard to compliance with parity, and attorneys now expect those questions to become part of negotiations between benefit plans and their TPA. Attorneys representing employee benefit plans have expressed frustration that some of the data needed to analyze compliance with federal parity laws is inaccessible because it's in the possession of a TPA.

Conley, with Seyfarth, specifically complimented the list of questions for a TPA in the guidance as a positive development.

"I think it's helpful for the employer community to uniformly be able to go to service providers and say, 'Look, we are regulated by the Department of Labor. We have fiduciary obligations under ERISA. Here is what the DOL is telling us we should ask you. How are you responding to this?'" Conley said.

Other suggestions in the guidance regarding TPA relationships caught attorneys' interest, such as recommendations for written monitoring policies. Some attorneys warned that plans might want to be careful about policies they put in writing in light of the guidance, particularly when it comes to monitoring their vendors.

"I think we're still evaluating those recommendations and thinking through: Are there additional things we would suggest? Are there things on that list that we would, perhaps, suggest plan sponsors exercise caution around?" said Sarah Bassler Millar, a partner at Faegre Drinker Biddle & Reath LLP, who represents plan sponsors and service providers with a focus on employee benefits and executive compensation.

"We also want to be careful that we don't put a policy in place that we're inadvertently not going to follow. We might have the best intention of having an annual meeting with our vendor to talk specifically about mental health parity. But one thing happens, and all of a sudden, it's 18 months instead of once a year — and then all of a sudden, there is an apparent breach of fiduciary duties because we're not following our own written policy," Millar said.

Even still, Millar said more guidance is better than less, even with those issues still to be worked out.

"I would rather have the guidance than not have the guidance," Millar said.

--Editing by Bruce Goldman and Amy Rowe.