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What Parity Rule Freeze Means For Plan Sponsors

By **Saghi Fattahian, Lindsay Goodman and Allison Fepelstein** (June 10, 2025, 2:14 PM EDT)


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In a closely watched and significant development, the U.S. Department of Health and Human Services, U.S. Department of Labor, and U.S. Department of the Treasury filed a motion in ERISA Industry Committee vs. HHS to suspend the lawsuit challenging final regulations issued under the Mental Health Parity and Addiction Equity Act.

The U.S. District Court for the District of Columbia granted the motion on May 12 and, three days later, the departments announced that they would not enforce the final MHPAEA regulations published in September 2024,[1] as further discussed below.

Plan sponsors — as well as plan participants — may be grappling with what this means and what they can expect as the case continues.

The Evolution of Mental Health Parity Regulations

The MHPAEA generally requires that group health plans ensure that the financial requirements and treatment limitations imposed on mental health or substance use disorder benefits are no more restrictive than those on medical or surgical benefits.

The MHPAEA has been a national enforcement priority for the Department of Labor's Employee Benefits Security Administration since its enactment, and there has been a series of regulatory and subregulatory guidance issued by the departments since 2008. The first significant piece of guidance under the MHPAEA was the final rules published on Nov. 13, 2013.[2]

2013 Final Rule

The 2013 final rule sets forth the requirements the departments will analyze when determining whether a plan imposes a financial requirement or quantitative treatment limitation applicable to mental health or substance use disorder benefits that are more restrictive than the predominant financial requirement or quantitative treatment limitation of that type applied to substantially all medical or surgical benefits in the same classification — i.e., inpatient in-network, inpatient out-of-network, outpatient in-network, outpatient out-of-network, emergency care and prescription drugs.

While the departments have historically been clear that the MHPAEA is not a benefit mandate, the 2013

final rule provides that if a plan offers mental health or substance use disorder benefits in any classification, the plan must provide benefits in all classifications in which medical or surgical benefits are offered, including out-of-network classifications.

For nonquantitative treatment limitations — e.g., medical management standards, formulary design for prescription drugs, fail-first policies or step therapy protocols — the 2013 final rule provides that the processes, strategies, evidentiary standards or other factors used in applying NQTLs to mental health or substance use disorder benefits must be comparable to, and applied no more stringently than, those used with respect to medical or surgical benefits.

Unlike the predominant test for financial requirements and quantitative treatment limitations, the parity analysis for NQTLs under the 2013 final rule is significantly more flexible. Outcomes are not considered in the 2013 final rule, let alone dispositive, in determining whether an NQTL is in parity or not.

The CAA and the Comparative Analysis Requirement

The Consolidated Appropriations Act was signed into law on Dec. 27, 2020, during President Donald Trump's first administration and includes several requirements to enhance group health plan transparency. One such enhancement requires group health plans to document comparative analyses of the design and application of NQTLs used for the plan's medical or surgical benefits as compared to mental health or substance use disorder benefits.

While documenting NQTL comparative analyses was previously recommended by the departments, it was not required for MHPAEA compliance. The CAA also requires the comparative analyses be made available to the departments upon request, and directs the departments to submit an annual report to Congress detailing the conclusions of the departments' audits of the comparative analyses.

As a result of the requirements under the CAA, the departments strengthened enforcement actions under the MHPAEA, and NQTL audits began in February 2021. In its subsequent 2022 report to Congress, the departments summarized their findings, noting noncompliance with the MHPAEA, particularly concerning NQTL comparative analyses.[3] The departments stated that none of the initial comparative analyses submitted by group health plans met the required standards, and that the analyses lacked sufficient detail and did not adequately compare NQTLs applied to mental health or substance use disorder benefits with those applied to medical or surgical benefits.

In response to the departments' findings resulting from their enforcement actions, the departments published proposed rules aimed at clarifying requirements related to NQTL comparative analyses in 2023. After a comment period, the departments unveiled a final rule, titled Requirements Related to the Mental Health Parity and Addiction Equity Act, published on Sept. 23, 2024.[4]

2024 Final Rule

The 2024 final rule was intended to provide clarity for plan sponsors related to the NQTL comparative analyses and MHPAEA compliance in general. Instead, plan sponsors viewed the 2024 final rule as onerous, and expressed that it created additional complexities without much clarity.

Under the 2024 final rule, if a plan covers mental health or substance use disorder conditions in any of the established six benefit classifications, it must also provide meaningful benefits for those conditions

or disorders in all classifications where it offers meaningful benefits for medical or surgical conditions. To meet this requirement, the plan must cover a core treatment — such as applied behavior analysis therapy to treat autism spectrum disorder, or nutritional counseling to treat eating disorders — for each mental health or substance use disorder condition in each classification where the plan also covers core treatments for medical or surgical conditions.

With respect to NQTLs, the 2024 final rule would require plans to collect and assess relevant data and evaluate their impact on participant access to mental health or substance use disorder benefits and medical or surgical benefits. If material differences in access to mental health or substance use disorder benefits as compared to medical or surgical benefits are identified, plans must take appropriate steps to address them.

The NQTL comparative analyses must provide justifications for any observed differences in access, explaining whether they are due to the NQTL itself or other factors beyond the plan's control. Furthermore, the NQTL comparative analyses must demonstrate compliance through operations data. These requirements — and the requirement that plan fiduciaries certify that they have carefully selected qualified service providers to conduct and document the NQTL comparative analyses, and have satisfied their duty to monitor these service providers — are significant changes from the comparative analysis content requirements set forth in prior guidance.

Litigation and the Departments' Nonenforcement Statement

In response to the 2024 final rule, the ERISA Industry Committee, or ERIC, filed a complaint against the departments in January 2025 seeking to invalidate the 2024 final rule. ERIC's lawsuit alleges that the several provisions of the 2024 final rule exceed the departments' authority under the MHPAEA and the CAA, and violate the Administrative Procedure Act.

On May 9, the departments filed a motion to suspend the litigation proceedings in the ERIC lawsuit while the government reconsidered the 2024 final rule. U.S. District Judge Timothy J. Kelly granted the stay on May 12. Three days later, the departments announced that they would not enforce the 2024 final rule until 18 months after the court issues a final ruling in the ERIC lawsuit.

The departments' nonenforcement statement and reconsideration of the 2024 final rule provide welcome relief for plan sponsors given the additional complexities created by the 2024 final rule. This, however, does not mean that the departments will be pausing all enforcement actions under the MHPAEA.

In their nonenforcement statement, the departments were clear that they remain committed to ensuring individuals receive protections under the law. The departments also clarified that the provisions of the final 2013 final rule remain in effect, and plan sponsors still have an obligation to produce NQTL comparative analyses as required under the CAA.

Conclusion

The 2024 final rule created confusion for plan sponsors, and the departments' nonenforcement statement is undoubtedly welcome news for many plan sponsors struggling to comply with the 2024 final rule. However, plan sponsors should not interpret this development to avoid ensuring NQTLs are in parity as written and in operation.

Until the ERIC case is settled, plan sponsors will need to continue monitoring their plan design to ensure compliance with the 2013 final rule. This includes analyzing NQTLs and drafting comparative analyses that reflect the CAA statutory requirements.

The analyses should demonstrate that the processes, strategies, evidentiary standards and other factors the plan uses in applying NQTLs to mental health and substance use disorder benefits are comparable to and applied no more stringently than those used with respect to medical or surgical benefits. Plan sponsors may consider reviewing the DOL's MHPAEA self-compliance tool[5] to ensure that their plans are complying with the law and 2013 final rule.

Furthermore, one of the benefits of the 2024 final rule was the additional clarity it provided with respect to the departments' expectations on the content requirements of the NQTL comparative analysis. As noted earlier, the departments' 2022 report to Congress indicated that none of the initial comparative analyses reviewed (i.e., before the 2024 final rule was issued) were sufficient, so in addition to following the subregulatory guidance issued under the CAA,[6] plan sponsors may consider voluntarily relying on at least certain portions of the 2024 final rule when drafting their comparative analyses.

It is expected that the departments will continue enforcement of the MHPAEA's NQTL comparative analyses by requesting at least 20 plans' analyses annually. Plans covered by the Employee Retirement Income Security Act must also provide a copy of the NQTL comparative analysis upon request to any participant or beneficiary, or their authorized representative. Failure to do so could subject the plan to risk of potential penalties or lawsuits. For these reasons, a plan sponsor should continue drafting and refreshing NQTL comparative analyses as part of its MHPAEA compliance.

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[1] 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.

[2] https://www.federalregister.gov/documents/2013/11/13/2013-27086/final-rules-under-the-paul-wellstone-and-pete-domenici-mental-health-parity-and-addiction-equity-act.

[3] https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf.

[4] https://www.federalregister.gov/documents/2024/09/23/2024-20612/requirements-related-to-the-mental-health-parity-and-addiction-equity-act.

[5] https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.

[6] https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/faqs-about-mental-health-parity-implementation-and-consolidated-appropriations-act-2021-part-45.pdf.