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Mental Health Parity Continues to Be a Top Enforcement Priority

The Employee Benefits Security Administration (EBSA) recently released its annual enforcement report on the Mental Health Parity and Addiction Equity Act (MHPAEA). EBSA is an agency within the U.S. Department of Labor (DOL). According to EBSA, MHPAEA compliance remains one of its top enforcement priorities.

MHPAEA is a federal law that prevents group health plans and health insurance issuers that provide mental health or substance use disorder (MH/SUD) benefits from imposing less favorable benefit limitations on those benefits than medical and surgical benefits. EBSA's enforcement efforts have focused on detecting and eliminating nonquantitative treatment limitations (NQTLs) that block parity for MH/SUD benefits.

According to EBSA's report, it has **devoted nearly 25% of its enforcement program work to focusing on NQTLs**. Generally, if violations are found by an EBSA investigator, the health plan must remove any noncompliant plan provisions and pay any improperly denied benefits. However, the future of EBSA's vigorous enforcement of MHPAEA is somewhat uncertain due to a few factors, including budget restraints and a new presidential administration.

Action Items

Employers should consider taking the following steps to help ensure their MHPAEA compliance:

- Reach out to their issuers or third-party administrators to confirm that a comparative analysis has been completed for their health plan's NQTLs;
- Watch for warning signs of problematic NQTLs, such as fail-first protocols or written treatment plan requirements; and
- Consider MHPAEA's parity requirements before making any changes to the plan's coverage of medical and surgical benefits or MH/SUD benefits.

Mental Health Parity

MHPAEA requires parity between a group health plan's medical and surgical benefits and MH/SUD benefits. MHPAEA's parity requirements apply to:

- **Financial requirements**, such as deductibles, copayments and coinsurance;
- **Quantitative treatment limitations**, such as day or visit limits; and
- **NQTLs**, which generally limit the scope or duration of benefits, such as network composition, out-of-network reimbursement rates, and medical management and prior authorization requirements.

MHPAEA requires health plans and health insurance issuers to conduct **comparative analyses** of the design and application of NQTLs used for MH/SUD benefits. Plans and issuers must make their comparative analyses available upon request to EBSA and other federal agencies, applicable state authorities and covered individuals.

MHPAEA's parity requirements apply to group health plans sponsored by employers with more than 50 employees. However, due to an Affordable Care Act reform, insured health plans in the small group market must also comply with federal parity requirements for MH/SUD benefits.

Status of MHPAEA Final Rule

A final rule was released on Sept. 9, 2024, making extensive changes to MHPAEA's requirements, especially those for NQTLs. The final rule generally applies to health plans and issuers for plan years beginning on or after Jan. 1, 2025; however, certain key requirements, such as NQTL data evaluation requirements, apply for plan years beginning on or after Jan. 1, 2026. The ERISA Industry Committee, a nonprofit organization representing large employers, has filed a lawsuit challenging the final rule's validity and enforceability. At this point, it is unclear how the new presidential administration will respond to this lawsuit and whether the final rule will be invalidated or enjoined by the court or otherwise modified or repealed. Employers should watch for legal developments while complying with MHPAEA's parity requirements.

MHPAEA Enforcement

EBSA oversees roughly 2.6 million private-sector health plans, which cover 136 million participants and beneficiaries. EBSA's investigations may stem from participant complaints to the agency or other sources. EBSA regularly partners with states with respect to MHPAEA enforcement activities, as states are the primary regulators of insurance and overseers of public health. Over the last several years, EBSA has requested and reviewed comparative analyses for hundreds of NQTLs, obtained corrections that removed impermissible MH/SUD treatment barriers for more than 7.6 million participants in over 72,000 plans, and ensured payment of wrongfully denied MH/SUD claims. When EBSA identifies MHPAEA violations in a specific group health plan, it asks the plan to make necessary changes to any noncompliant plan provision and pay any improperly denied benefit claims. EBSA may also require the plan or service provider to provide notice to potentially affected participants and beneficiaries.

While EBSA's report notes that it remains committed to MHPAEA enforcement, it may be unable to sustain its current pace of enforcement activity due to budget constraints. These budget restraints have left the agency with an enforcement capacity of roughly one investigator for every 13,900 plans it regulates at current staffing levels. In addition to budget restraints, it remains to be seen if enforcement priorities will shift under the new presidential administration.

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