

Publication

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Parity on Ice: MHPAEA's 2024 Final Rule Heads to the Penalty Box

I. Snapshot

Federal regulators have paused enforcement of the 2024 Mental Health Parity and Addiction Equity Act ("MHPAEA") Final Rule (the "2024 Final Rule", published September 23, 2024) while they reconsider the rule and defend against litigation brought by the ERISA Industry Committee ("ERIC"). On May 15, 2025, the Departments of Labor, Health & Human Services, and Treasury (collectively, "the Departments") announced that no enforcement actions will be taken for any violation of the new provisions in the 2024 Final Rule until the ERIC lawsuit is finally resolved, plus 18 months. Traditional MHPAEA obligations—including the 2013 regulations and the 2021 statutory mandate to maintain written Non-Quantitative Treatment Limitation ("NQTL") analyses—remain fully in force.

II. A (Very) Short History of Federal Parity

- **1996 Mental Health Parity Act ("MHPA"):** barred lower dollar limits on mental-health ("MH") benefits but left untouched visit limits, copays, and substance use disorder ("SUD") care.
- **2008 Wellstone-Domenici MHPAEA:** expanded parity to *all* financial requirements, quantitative limits (e.g., visit limits), and SUD benefits, but only for plans that choose to offer MH/SUD coverage.

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- 2010 Interim & 2013 Final Rules:
 - (i) first enumerated the six-classifications for determining whether the financial requirements and treatment limitations that apply to MH/SUD benefits are more restrictive than the “predominant” requirements and limitations that apply to “substantially all” of the medical/surgical (“M/S”) benefits in each such classification; and
 - (ii) first codified NQTL parity (the “comparability/no-more-stringent” standard).
- 2016 Cures Act (“Cures Act”) / 2021 Consolidated Appropriations Act (“CAA 2021”): The Cures Act directed federal agencies to issue guidance and examples clarifying how NQTL parity is to be evaluated and disclosed, and CAA 2021 required a comparative analysis for every NQTL and empowered regulators to demand the analysis on-request.

These layers make up the compliance baseline that still governs today.

III. Why a New Rule in 2024?

Agency audits found that many comparative analyses were “largely deficient,” data continued to show denials, ghost networks, and utilization hurdles for MH/SUD claims. The Departments answered with the 2024 Final Rule.

The Final Rule contains the following changes:

- **Prescriptive NQTL Analysis Template**—requires item-by-item disclosures of factors, evidentiary standards, and outcomes.
- **“Meaningful Benefits” Test**—if a plan covers a condition in *any* classification, it must cover at least

one “core” MH/SUD treatment in *each* classification where M/S benefits are covered.

- **Outcomes Data Review**—plans must collect claims, denial, and network data and remediate any “material differences in access.”
- **Fiduciary Certification**—an ERISA fiduciary must attest that a prudent process was used to select vendors preparing NQTL analyses, and must monitor those vendors, review the comparative analysis, and ask questions, as necessary, to understand the findings and conclusions. Additionally, an ERISA fiduciary must ensure the vendors provide assurance that, to the best of their ability, the comparative analysis complies with the requirements of MHPAEA and its implementing regulations.
- **Staggered Effective Dates:** plan years on or after January 1, 2025, for the documentation rules; January 1, 2026, for meaningful benefits and outcomes testing.

Stakeholders argued the rule was unworkable on such short notice and exceeded statutory authority.

IV. Litigation & Executive-Branch Realignment

- **January 17, 2025:** ERIC sues the Departments, alleging the Final Rule “rewrites MHPAEA,” especially the meaningful-benefits mandate and outcomes test.
- **February 25, 2025:** Executive Order 14219 directs agencies to “de-prioritize” enforcement of rules that stray beyond statutory text or impose undue burden.
- **May 9, 2025:** The Departments ask the court to hold the case in abeyance while agencies “re-evaluate” the rule.

- **May 15, 2025:** Departments issue a formal non-enforcement statement:
 - Non-enforcement applies *only* to provisions *issued after* the 2013 rules.
 - Non-enforcement lasts through the final resolution of the ERIC case +18 months.
 - The statement reminds plans that the MHPAEA statute and 2013 rules “remain fully operative.”

V. What *Is* Paused and What *Is Not* Paused?

STILL REQUIRED	TEMPORARILY ON PAUSE
Parity in dollar, financial, and quantitative limits across six classifications.	“Meaningful benefits” test across all classifications.
NQTL comparability / no-more-stringent standard from 2013 rule.	Mandatory outcomes-based data collection & remediation.
CAA 2021 NQTL Comparative Analyses (must be produced within 45 days of agency request).	Uniform content/specification template for those analyses.
Disclosure of parity information to participants & DOL.	ERISA fiduciary certification re: NQTL analyses.
Civil monetary penalties for statutory violations.	Any penalties tied solely to 2024 Final Rule provisions.

VI. Practical Take-Aways for Plan Sponsors

1. Keep the 2013 Rule & CAA 2021 Front and Center

- Maintain a current written analysis for *each* NQTL (prior authorization, utilization review, network admission, reimbursement, formulary tiers, etc.).
- Use the latest DOL Self-Compliance Tool and FAQ guidance as the de-facto template until new rules emerge.

2. Audit for “Obvious Unequal Treatment” Now

- Even without the outcomes mandate, regulators (and plaintiffs) can still attack patterns like higher denial rates, thinner networks, or blanket exclusions (e.g., failure to cover ABA therapy).
- Compare denial statistics, average wait times, and out-of-network utilization in MH/SUD vs M/S and remediate if disparities are stark.

3. Document a Prudent Fiduciary Process

- The certification requirement is paused, but ERISA’s duty of prudence is not. Minutes or memos showing fiduciary oversight of parity compliance will pay dividends in any audit or litigation.

4. Coordinate with Insurers & Third Party Administrators (“TPA”)

- **Insured products:** confirm whether state insurance departments will mirror the federal non-enforcement stance.
- **Self-funded plans:** press your TPA for basic NQTL analyses, or, alternatively, contract with a subject-matter specialist, and request contractual indemnity for parity failures (may be difficult to get).

5. Watch the Rule-Making Docket

- The Departments may issue a *proposed* “scaled-back” rule or settle the ERIC case with concessions.
- In advance of the pause lifting, draft a budget and design contingencies now.

6. Litigation Exposure Remains

- Despite this pause, private plaintiffs can still sue under ERISA § 502 (29 U.S. Code § 1132) for pre-existing causes of action under MHPAEA. Solid documentation and parity-aligned plan terms remain the best defense.

VII. Conclusion

MHPAEA’s promise is intact—even if its newest rule is on ice. The Departments have pressed “pause” on a rule they may revise, but they have not retreated from the statutory mandate that MH/SUD benefits be no more restrictive than M/S benefits. Plan sponsors should use this pause to complete NQTL analyses, close any glaring access gaps, and prepare for whatever version of the Final Rule skates back onto the ice.

Staying proactive today will make tomorrow’s compliance pivot far less painful—and **keep your group health plan out of the penalty box**. Should you have any questions, please contact Jeffrey J. Bakker, Patricia S. Cain, Aaron M. Weiss or your Neal Gerber Eisenberg attorney.

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