

## DOL Publishes Guidance on MHPAEA Enforcement

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On September 8, 2026, the Department of Labor's ("DOL's") Employee Benefits Security Administration ("EBSA") published Field Assistance Bulletin 2026-03 ("FAB 2026-03") and an accompanying web page (the "Enforcement Guidance Tool"), providing MHPAEA enforcement guidance.

Collectively, FAB 2026-03 and the Enforcement Guidance Tool:

- Outline EBSA's priorities when enforcing MHPAEA's nonquantitative treatment limitation ("NQTL") requirements;
- Identify warning signs of potential MHPAEA compliance issues; and
- Provide a list of best practices for plan sponsors to consider with respect to MHPAEA compliance.

### ■ Background

Briefly, MHPAEA generally prohibits certain group health plans and carriers from imposing more restrictive limitations on mental health/substance use disorder ("MH/SUD") benefits than those applied to medical and surgical ("M/S") benefits. The Consolidated Appropriations Act, 2021 ("CAA-21") amended MHPAEA, requiring plans and carriers to provide a comparative analysis of their NQTLs upon request.

In 2024, the Departments of Labor, Health and Human Services, and the Treasury (collectively, the "Departments") issued a final rule (the "2024 Final Rule") that expanded various aspects of MHPAEA, including the comparative analysis requirements. However, as a result of ongoing litigation, the Departments announced they would not enforce the 2024 Final Rule and will re-examine their approach to MHPAEA enforcement. Accordingly, plan sponsors should continue complying with CAA-21's statutory provisions, including the comparative analysis requirement, and refer to final rules previously issued in 2013. The Departments announced further guidance would be forthcoming.

## ■ EBSA's Enforcement Priorities for NQTL Compliance

FAB 2026-03 provides that EBSA will prioritize MHPAEA NQTL comparative analysis enforcement efforts in three categories that present the greatest potential for significant harm to participants and beneficiaries:

1. Separate Treatment Limitations (Including Exclusions) for MH/SUD Benefits – EBSA will generally focus enforcement on situations where plans or carriers impose blanket treatment exclusions applicable to only MH/SUD benefits. However, EBSA may also investigate more limited exclusions, particularly in response to participant complaints.
2. Medical Necessity Standards and Review Processes – EBSA will focus enforcement on processes used to determine medical necessity, including prior authorization, concurrent review, and retrospective claims review standards. Plans and carriers are required to make the criteria used for medical necessity determinations available to participants, beneficiaries, and regulators upon request.
3. Network Adequacy Standards – EBSA signaled that network adequacy remains a significant enforcement priority given longstanding concerns regarding access to in-network MH/SUD providers. When network adequacy parity issues arise, EBSA will ensure plans and carriers:
  - Consider all available options; and
  - Help participants and beneficiaries access covered MH/SUD treatments without incurring out-of-network costs due to insufficient in-network availability.

Although EBSA is primarily focused on the three areas described above, the agency emphasized that it retains authority to investigate other NQTL issues, particularly when responding to participant complaints.

## ■ Enforcement Guidance Tool

The Enforcement Guidance Tool provides a non-exhaustive list of “red flags” and accompanying examples that EBSA has seen in investigations signaling potential MHPAEA compliance issues, including:

- Excluding specific services for covered MH/SUD conditions, particularly if such services are not excluded for M/S conditions;
- Stricter medical necessity, prior authorization, concurrent review, or documentation requirements for MH/SUD claims than for comparable M/S claims;
- Standards that make it more difficult for MH/SUD providers to join the network than comparable M/S providers; and
- Reimbursement methodologies that contribute to the lack of available in-network MH/SUD services.

Additionally, the Enforcement Guidance Tool emphasizes that health plan fiduciaries must prudently select and monitor plan service providers and are responsible for ensuring benefits administration complies with MHPAEA. Fiduciaries should not rely solely on third party administrators, behavioral vendors, or carriers to ensure MHPAEA compliance.

The Enforcement Guidance Tool provides a list of potential MHPAEA-focused questions that EBSA recommends plan fiduciaries should ask existing and prospective service providers.

The Enforcement Guidance Tool also notes that plan sponsors should look beyond their plan documents to examine how NQTLs are applied in practice. The Enforcement Guidance Tool provides a list of best practices that plan sponsors should keep in mind when monitoring MHPAEA compliance in a plan's operations, including, but not limited to:

- Identifying which MH/SUD and M/S benefits are subject to medical necessity, prior authorization, concurrent review, documentation, or respective review requirements and comparing how these processes work in practice for both benefit classifications;
- Asking the network administrator how, exactly, the administrator determines whether the MH/SUD network is adequate;
- Comparing certain data points between MH/SUD and M/S benefits, such as wait times, reimbursement practices, and out-of-network utilization;
- Properly tracking and responding to participant complaints; and
- Creating and following a written policy for monitoring MHPAEA compliance.

Lastly, the Enforcement Guidance Tool explains how plan sponsors can best prepare for an NQTL compliance audit, providing tips that plans can reference during audits and examples of how plans have resolved concerns during NQTL investigations.

## Employer Action

FAB 2026-03 and the Enforcement Guidance tool do not create new substantive requirements for employers. Rather, this guidance offers insight into areas of MHPAEA NQTL compliance that EBSA may be more likely to scrutinize. While this information is helpful, the guidance does not include a model (or sample) comparative analysis.

In light of FAB 2026-03 and the Enforcement Guidance Tool, employers sponsoring group health plans that are subject to MHPAEA should continue to review MHPAEA compliance and work with their carriers, TPAs, and other service providers. Specifically, employers should consider

- Reviewing any plan exclusions or treatment limitations for MH/SUD benefits to confirm they do not create compliance concerns;
- Evaluating medical necessity, prior authorization, concurrent review, and retrospective review processes affecting MH/SUD benefits for potential parity concerns;
- Assessing network adequacy standards and reimbursement methodologies for potential parity concerns;
- Confirming with carriers and TPAs that NQTL comparative analyses are current, complete, supported by appropriate data, and can be furnished upon request; and
- Monitoring future regulatory developments and guidance from the Departments. Reports indicate additional rulemaking may be published before the end of 2026.