COMPLIANCE **ALERT**

CORPORATE SYNERGIES®
A Foundation Risk Partners Company

Agencies Issue Statement of Nonenforcement Regarding the 2024 MHPAEA Final Rule

May 21, 2025

Action Required:

- **Employers and plan sponsors should ensure their plans continue to comply with both the original 2013 MHPAEA Rule and the 2020 rules added to the MHPAEA by the CAA.**

On May 15, 2025, the Departments of Labor, Health and Human Services and Treasury ("the Agencies") issued a statement ("Statement") explaining that they will not be enforcing the 2024 Mental Health Parity and Addiction Equity Act (MHPAEA) final regulation ("the Final Rule") issued on September 9, 2024.

As background, the 2024 Final Rule amended the 2013 final regulation implementing MHPAEA ("2013 Rule") and added new rules pertaining to the nonquantitative treatment limitation ("NQTL")[1] comparative analysis requirement under MHPAEA, as amended by the Consolidated Appropriations Act, 2021 ("CAA") (discussed in more detail in our e-Alert here).

On January 17, 2025, the ERISA Industry Committee (ERIC), a lobbying group working on behalf of benefit plan sponsors, filed suit in the U.S. District Court for the District of Columbia challenging certain provisions of the Final Rule and arguing that such provisions are arbitrary and capricious, and thus, should be invalidated.[2] The Agencies' new Statement provides that they will not enforce the Final Rule for the length of this ERIC litigation and for an additional 18 months after a decision is made in the litigation.

What Should Employers and Plan Sponsors Do Next?

Employers and plan sponsors must still ensure that they continue to comply with both the relatively new (2020) rules added to the MHPAEA by the CAA, including the requirement to complete and have readily available the NQTL comparative analysis, and the prior 2013 MHPAEA Rule, and monitor any developments in this area to remain in compliance should the Agencies issue further guidance.■

↓ Full Explanation Follows ↓

Agencies Issue Statement of Nonenforcement Regarding the 2024 MHPAEA Final Rule

On May 15, 2025, the Departments of Labor, Health and Human Services and Treasury ("the Agencies") issued a statement ("Statement") explaining that they will not be enforcing the 2024 Mental Health Parity and Addiction Equity Act (MHPAEA) final regulation ("the Final Rule") issued on September 9, 2024.

As background, the 2024 Final Rule amended the 2013 final regulation implementing MHPAEA ("2013 Rule") and added new rules pertaining to the nonquantitative treatment limitation ("NQTL")[1] comparative analysis requirement under MHPAEA, as amended by the Consolidated Appropriations Act, 2021 ("CAA") (discussed in more detail in our e-Alert here).

On January 17, 2025, the ERISA Industry Committee (ERIC), a lobbying group working on behalf of benefit plan sponsors, filed suit in the U.S. District Court for the District of Columbia challenging certain provisions of the Final Rule and arguing that such provisions are arbitrary and capricious, and thus, should be invalidated.[2] The Agencies' new Statement provides that they will not enforce the Final Rule for the length of this ERIC litigation and for an additional 18 months after a decision is made in the litigation.

How Does This Statement Change the Law?

This Statement from the Agencies explaining their new nonenforcement policy relaxes requirements imposed by the Final Rule on employers and plan sponsors by temporarily not enforcing these requirements. Specifically, employers and plan sponsors would not have to comply with the Final Rule's requirements during this temporary nonenforcement period.

As additional background on the Final Rule, the Final Rule amended certain provisions of the existing 2013 Rule and added new rules and requirements to the relatively new (since late 2020) statutory rules added to the MHPAEA by the CAA (e.g., the CAA requirement to complete the NQTL comparative analysis). These new rules included new definitions of key terms, clarifications regarding content requirements and timeframes, the requirement (for plans subject to ERISA) to have a plan fiduciary certify compliance with the Final Rule, and several other rules applicable to NQTL comparative analyses. In short, the Statement about the Agencies' new nonenforcement policy provides temporary relief from these new requirements imposed by the Final Rule—requirements which have proven to be difficult to complete, time-consuming and costly for employers and plan sponsors.

Which Parts of MHPAEA (from the Final Rule) Are Not Being Enforced?

The Agencies explained in their Statement that their new nonenforcement policy specifically addressed the requirements imposed by the Final Rule, not parts of MHPAEA that had existed prior to 2024. The aspects of the Final Rule that are temporarily not being enforced are:

- the establishment of a "meaningful benefits" standard for the parity analysis;
- formal adoption of specific content requirements and processes for NQTL comparative analyses;
- prohibitions on group health plans from using NQTLs that place greater restrictions on access to mental health/substance use disorder ("MH/SUD") benefits as compared to medical/surgical ("M/S") benefits;
- formal adoption of rules defining intellectual and neurodevelopmental disorders, including dementia and autism spectrum disorder, as MH conditions for the purposes of MHPAEA, even if applicable state laws define these conditions as M/S conditions;
- the addition of new technical clarifications to existing elements of the NQTL comparative analysis testing process under the CAA and existing guidance; and,
- for plans subject to ERISA, the requirement that a named plan fiduciary certify compliance and completion of the NQTL comparative analysis.

When Does This Nonenforcement Policy Begin?

The Agencies' nonenforcement policy for the Final Rule began on the date that it was issued, May 15, 2025, and it will continue

1. NQTLs include practices like medical management standards, "fail first" policies and prior authorization requirements.
2. The Agencies have requested that the ERIC litigation be held in abeyance (i.e., temporarily paused) while the Agencies reconsider the Final Rule.

through the end of the ERIC litigation, plus an additional 18 months. The Agencies encourage states that are the primary enforcers of MHPAEA with respect to issuers (insurers) to adopt a similar approach to enforcement. The Agencies will not consider a state to be failing to substantially enforce MHPAEA, as amended, because the state adopts such an approach. The Statement also encourages employers and plan sponsors to refer to the 2013 Rule as the applicable governing regulation.

What Should Plan Sponsors Do Next?

While MHPAEA compliance has been at the forefront of many employers' and plan sponsors' minds since the Final Rule was issued, this Statement's new nonenforcement policy gives employers and plan sponsors a much-welcomed reprieve, even though temporary.

Employers and plan sponsors have been tasked by the Final Rule to obtain comprehensive NQTL comparative analyses for their plans that meet the many stringent requirements of the Final Rule, but have often been met with resistance from their carriers and third party administrators (TPAs). For example, many sponsors of self-insured plans have found that complying with the Final Rule is especially difficult since their TPAs and carriers have refused to execute the NQTL comparative analyses on their behalf (or refused to complete it at the level required by the Final Rule's requirements) leaving these plans to often have to spend large sums of money to have their analysis performed by a separate vendor.

The new Statement's nonenforcement policy temporarily frees employers and plan sponsors from compliance with the Final Rule's many new requirements pertaining to the NQTL comparative analysis, potentially saving plan sponsors enormous sums of money and time. However, the new Statement doesn't eliminate MHPAEA compliance entirely, and nothing in the Statement permanently waives or excuses the requirement to complete the NQTL comparative analysis. In other words, employers and plan sponsors must still ensure that they continue to comply with both the relatively new (2020) rules added to the MHPAEA by the CAA, including the requirement to complete and have readily available the NQTL comparative analysis, and the prior 2013 MHPAEA Rule, and monitor any developments in this area to remain in compliance should the Agencies issue further guidance. ■

If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.