



HYLANT



# Mental Health Parity in Focus

Insights & Industry Updates for Employers



**HOLLY  
WAHL, SVP**

EB Compliance  
Practice Leader

Hylant



**BENJAMIN  
CONLEY**

Partner

Seyfarth



# Learning Agenda

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- 1 Refresher on What's Required
- 2 Impact of Non-Enforcement Guidance
- 3 Practical Tips & Next Steps
- 4 Questions



# But First.....

## Key Take-Aways from Non-Enforcement Guidance

- DOL announced “Non-Enforcement” policy extending into foreseeable future
- Policy only extends to final regulations, not to existing rules (QTL, NQTL analyses still required)
- Non-enforcement policy has no impact on lawsuits from participants
- This all means MHPAEA remains in effect and subject to enforcement, but some of the more onerous new standards are delayed



# Overview of MHPAEA



# MHPAEA – Compliance Considerations

## Self-Funded Group Health Plans

- Plan sponsor (typically the employer) is responsible for compliance requirements
  - Compliance cannot be achieved without the involvement and cooperation of carriers / TPAs, PBMs, and other service providers
    - *These vendors may provide varying levels of support*
    - *These vendors may be co-fiduciaries and jointly liable*

## Fully Insured Group Health Plans

- Insurance carrier is responsible for most compliance requirements
- Named plan fiduciary is jointly liable and has responsibility to ‘certify’ analysis

# Background: What does MHPAEA require?

Plans that provide MH/SUD benefits must provide coverage for these benefits at least equal to the level of coverage provided for M/S benefits.

- The Mental Health Parity and Addiction Equity Act (MHPAEA) was signed into law in 2008
- MHPAEA does not mandate that plans cover mental health / substance use disorder (MH/SUD) benefits
- MHPAEA does mandate that plans covering any MH/SUD benefit do so in parity in comparison to medical/surgical (M/S) benefits
- This means plans that provide MH/SUD benefits must provide coverage for these benefits at least equal to the level of coverage provided for M/S benefits
  - Financial requirements
  - Quantitative treatment limitations
  - Nonquantitative treatment limitations

# Comparing M/S to MH/SUD Benefits



# Comparing M/S to MH/SUD Benefits – The Buckets



\*Outpatient can be optionally broken down to office visits and all other services.



# NQTL Comparative Analysis: What's Required?

1. A clear description of the specific NQTL, plan terms, and policies at issue.
2. Identification of the specific MH/SUD and medical/surgical benefits to which the NQTL applies within each benefit classification, and a clear statement as to which benefits identified are treated as MH/SUD and which are treated as medical/surgical.
3. Identification of any factors, evidentiary standards or sources, or strategies or processes considered in the design or application of the NQTL and in determining which benefits, including both MH/SUD benefits and medical/surgical benefits, are subject to the NQTL. Analyses should explain whether any factors were given more weight than others and the reason(s) for doing so, including an evaluation of any specific data used in the determination.
4. To the extent the plan or issuer defines any of the factors, evidentiary standards, strategies, or processes in a quantitative manner, it must include the precise definitions used and any supporting sources.
5. The analyses, as documented, should explain whether there is any variation in the application of a guideline or standard used by the plan or issuer between MH/SUD and medical/surgical benefits and, if so, describe the process and factors used for establishing that variation.

# NQTL Comparative Analysis: What's Required?

6. If the application of the NQTL turns on specific decisions in administration of the benefits, the plan or issuer should identify the nature of the decisions, the decision maker(s), the timing of the decisions, and the qualifications of the decision maker(s).
7. If the plan's or issuer's analyses rely upon any experts, the analyses, as documented, should include an assessment of each expert's qualifications and the extent to which the plan or issuer ultimately relied upon each expert's evaluations in setting recommendations regarding both MH/SUD and medical/surgical benefits.
8. A reasoned discussion of the plan's or issuer's findings and conclusions as to the comparability of the processes, strategies, evidentiary standards, factors, and sources identified above within each affected classification, and their relative stringency, both as applied and as written. This discussion should include citations to any specific evidence considered and any results of analyses indicating that the plan or coverage is or is not in compliance with MHPAEA.
9. The date of the analyses and the name, title, and position of the person or persons who performed or participated in the comparative analyses.

# Non-Enforcement Policy



# Non-Enforcement Policy Highlights

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Plans should continue to maintain or work toward compliance with MHPAEA's core statutory provisions while monitoring ongoing developments.

- On 1/17/2025, The ERISA Industry Committee (ERIC) filed a lawsuit alleging that the final rule is arbitrary and capricious in multiple respects, and that the Departments (DOL, HHS, IRS) exceeded their statutory authority in multiple provisions of the final rule
- On 5/12/2025, the court approved the government's request for a stay pending the government's review of the 2024 final regulations
- On 5/15/2025, the Tri-Agencies issued a non-enforcement statement to extend through the conclusion of the lawsuit plus 18 months
  - Non-enforcement policy does not extend to prior regulations or statutory provisions (i.e., the 2013 final rule and the provisions included in the CAA)
    - *Provisions still "in force" include QTL analysis and NQTL comparative analysis*
  - The non-enforcement statement applies to provisions such as relevant data evaluation, the meaningful benefits standard, fiduciary certification, and the requirement to provide the comparative analysis upon request or following an adverse benefit determination

# Final Regulations Target of Non- Enforcement Policy





# New Final Rule

On September 23, 2024, a final rule was published under MHPAEA, introducing amendments and implementing additional requirements.

- Codifies the NQTL comparative analysis requirements
- Adds new two-part test for NQTLs
- Adds a meaningful benefits requirement
- Amends the definition of MH/SUD
- Adds new disclosure requirements
- Adds a fiduciary certification requirement (ERISA plans only)

# Additional / New Requirements – Definitions and Disclosures

*Effective Date Deferred via Non-Enforcement Policy\**

- Definition of MH/SUD
  - Determination of whether a condition is MH/SUD (versus M/S)
    - *Based solely on updated ICD/DSM guidelines*
    - *No more reliance on state standards*
- Disclosure to participants
  - NQTL analysis must be disclosed upon request
    - *Under ERISA Section 104 (ERISA plans only)*
  - Adverse benefits determination (all plans, regardless of ERISA status)

# Additional / New Requirements – Definitions and Disclosures

*Effective Date Deferred via Non-Enforcement Policy\**

- Fiduciary certification
  - ERISA plans only
  - Engaged in a **prudent process** to select qualified service provider to perform and document the NQTL comparative analysis
  - Satisfied the **duty to monitor** that service provider
  - No model language provided here
- Note: The fiduciary does NOT have to certify compliance with the NQTL content requirements

# Effective Dates

## NOW

- Parity in financial requirements (math test)
- Parity in quantitative treatment limitations (math test)
- Parity in NQTLs / NQTL comparative analysis (as required by CAA)

## DEFERRED

- Must consider processes and strategies in design and application of NQTLs
- Revised definition of MH/SUD vs. M/S
- Obligation to produce NQTL comparative analysis in response to a participant request (ERISA plans only)
- Obligation to produce relevant NQTL comparative analysis in response to an adverse benefit decision (all plans)\*
- Fiduciary certification\*

## DEFERRED

- Must consider evidentiary standards in design and application of NQTLs
- Prohibition on using discriminatory factors in design and application of NQTLs
- NQTL analysis must include relevant data evaluation (three-step process)
- Meaningful benefits requirement
- Related changes to NQTL comparative analysis

# Practical Tips & Next Steps





# Practical Tips

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- For ERISA plans – educate plan “fiduciary” along the way
  - Engagement process of QSP
  - Familiarity with identified NQTLs
  - Monitoring of process
  - Fiduciary certification
    - *In each stage*
    - *Final version in the NQTL analysis itself*
- Focus on DOL-identified priority issues
  - Network adequacy
  - Nutritional counseling
  - Applied behavioral analysis (ABA) therapy (treatment for autism)
  - Gender dysphoria
- Monitor legal developments
  - Change in Administration
  - Reports to Congress
  - Loper challenges

# Practical Tips

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DOL still actively auditing plans

- DOL Audit triggers
  - Random audits (still mandated by law)
  - Solicitation of “non-compliant” client list from TPA/carrier
  - Participant complaints
- DOL will solicit plan documentation (including requesting a copy of the plan’s comparative analysis)
  - DOL will also solicit claims data relating to MH/SUD claims
- While DOL will work with plan to remedy issues with comparative analysis, lack of comparative analysis is a problem
- DOL seeks to address remedies through “equitable relief”
  - Reprocess claims, notify impacted participants
  - Statute does not authorize civil monetary penalties

# Practical Tips

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DOL still actively auditing plans

- The Consolidated Appropriations Act of 2021 amended MHPAEA to require all group health plans to **conduct comparative analyses** of the NQTLs used for M/S benefits compared to MH/SUD benefits
  - This was effective 2/10/21 yet there has been little traction
  - Testing results can be requested by DOL
  - If a violation is found, failure to correct within 45 days, the following consequences apply:
    - *Plan must notify all participants that the plan is not in compliance*
    - *DOL will publish a (publicly available) report of non-compliance*
    - *Potential for statutory penalties and claims reprocessing*

# Next Steps

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The more effort you can demonstrate, the better position you're in.

- Fully insured plans should confirm compliance with their carrier
  - Plan fiduciary needs to certify the NQTL analysis
- Self-funded plans should determine how much cooperation and/or support their current vendors will provide
  - Engaging a third party to do an analysis may be costly—especially without sufficient results due to lack of information provided
  - Document all efforts
- Self-funded plans should consider hiring a third-party vendor to complete the NQTL analysis
  - Once all information is received, it can take six weeks or more to produce a report

# Thank you!

Send us a message at [contact@hylant.com](mailto:contact@hylant.com)  
if you have any questions.

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