

EMPLOYEE BENEFITS

INFORMATION MEMO

MAY 27, 2025

Administration Grants Welcome Reprieve From Certain NQTL Requirements

Earlier this month, the Departments of Labor, Health and Human Services and Treasury (the “Departments”) announced that for the foreseeable future they will not be enforcing final regulations (the “2024 Final Rule”) jointly issued in Sept. 2024 intended to refine and clarify certain requirements under the Mental Health Parity and Addiction Equity Act (“MHPAEA”).

Background

As background, the MHPAEA generally requires health insurance plans and issuers to provide mental health and substance use disorder (“MH/SUD”) benefits on a comparable basis to medical and surgical (“M/S”) benefits. Initial regulations issued in 2013 introduced requirements regarding quantitative and nonquantitative treatment limitations (“NQTL”) meant to ensure that individuals in group health plans or group or individual coverage who seek treatment for covered MH/SUD care do not face greater burdens on access to those treatments than they would face when seeking coverage for M/S care. An NQTL is a health care treatment limitation, like a prior authorization, required referral, step therapy protocol or utilization review, that must be met before care will be provided. Congress buttressed MHPAEA’s NQTL rules under the Consolidated Appropriations Act, 2021 (“CAA”) by requiring health plans and insurers to perform and document a “comparative analysis” of NQTLs among a plan’s M/S and MH/SUD benefits to further ensure that NQTLs applicable to MH/SUD benefits are not more restrictive than NQTLs applicable to M/S benefits.

With the 2024 Final Rule, the Departments attempted to further clarify the CAA’s comparative analysis requirements and:

- (i) Set forth (a) design and application requirements meant to ensure comparability of MH/SUD and M/S NQTLs; and (b) data evaluation requirements requiring plans and issuers to collect and evaluate “relevant” data to assess the impact an NQTL may have on an outcome related to MH/SUD or M/S benefits. If the relevant data suggest a material difference in access to MH/SUD benefits is based on an NQTL, the plan or issuer is required to take “reasonable action” to address the material difference and revise the NQTL.
- (ii) Required that if a plan provides any MH/SUD benefits in any benefit classification (e.g., in-network, inpatient; in-network, outpatient, etc.) it must provide “meaningful benefits” for that condition in every classification in which “meaningful” M/S benefits are provided. For this purpose, “meaningful benefits” may be analogized to a core treatment for a particular condition or disorder.
- (iii) Established six content requirements that must be included as part of a plan or issuer’s NQTL comparative analysis.
- (iv) Created steps related to Department review/audit of a plan or issuer’s NQTL comparative analysis (e.g., a plan has 10 days to submit its comparative analysis to requesting Department; 45 days to correct a noncompliant comparative analysis; a finding of noncompliance results in elimination of NQTL for affected benefits etc.)

ERIC Lawsuit and Department Nonenforcement of 2024 Final Rule

In Jan. 2025, the ERISA Industry Committee (“ERIC”) filed suit in federal court arguing, among other things, the 2024 Final Rule to be “arbitrary and capricious and contrary to law,” in no small part due to its complexity and difficulty in implementation.

In light of the ERIC lawsuit, and upon additional review of the 2024 Final Rule, the Departments, on May 15, requested that the ERIC litigation be held in abeyance while the Departments reconsider the 2024 Final Rule with the potential of modifying or rescinding the Final Rule completely. Consequently, the Departments announced that they will not enforce the 2024 Final Rule or pursue enforcement actions for failure to comply until 18 months after the final ruling in the ERIC litigation. Notably, this non enforcement action could take years, resulting in a much sought after reprieve for plans and issuers anxious over compliance concerns.

Next Steps

Importantly, the Department’s non enforcement action is limited only to the requirements under the 2024 Final Rule (e.g., the requirements listed in items (i) – (iv), above). Therefore, and consistent with the MHPAEA, NQTLs must still generally be applied equally to MH/SUD benefits as they do to M/S benefits. Similarly, consistent with the CAA, plans and issuers must still undertake an NQTL comparative analyses among their MH/SUD and M/S benefits. However, because the 2024 Final Rule was put in place to guide plans and issuers on how to conduct the NQTL comparative analyses, and because the 2024 Final Rule is under review, a plan or issuer will not be considered in violation of MHPAEA or the 2024 Final Rule if it undertakes its comparative analyses without regard to the requirements in the 2024 Final Rule (listed generally above).

What Plan Sponsors Should Do Now

Plan sponsors and issuers are advised to make good faith efforts to comply with the comparative analysis requirements under the CAA and all other applicable requirements under MHPAEA. Failure to conduct the comparative analysis in accordance with the 2024 Final Rule will not, at this point, result in adverse action from the Departments. For insured plans, the insurance carrier should be conducting the required analyses. Self-insured plans likely will need to work with their third-party administrators and/or engage a health plan consultant and work with legal counsel to prepare the analyses.

The Departments have indicated that they will be updating the status of their review of the 2024 Final Rule every 90 days. Bond will be sure to inform readers of the status of the Departments regular assessments. Consequently, readers should be alert for future updates on this matter and be ready for any changes to the 2024 Final Rules and NQTL comparative analysis requirements.

For more information, please contact [Devin Karas](#), [John Godsoe](#) or any attorney in Bond’s [employee benefits practice](#) or the Bond attorney with whom you are regularly in contact.

