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MEMORANDUM

To: Health and Welfare Trust Funds
From: Saltzman & Johnson
Date: June 3, 2025
Re: Statement of Departments regarding enforcement of the final rule on requirements related to the Mental Health Parity and Addiction Equity Act

2024 Final Rules and Enforcement Pause

On September 9, 2024, the U.S. Departments of Health and Human Services (HHS), Labor, and the Treasury released new final rules implementing the Mental Health Parity and Addiction Equity Act (“MHPAEA”), which became effective on November 22, 2024, with staggered applicability dates for plan years starting on or after January 1, 2025, and January 1, 2026. However, in May 2025, the federal agencies announced they will not enforce the 2024 final rule due to legal challenges by the ERISA Industry Committee (“ERIC”), with enforcement relief applying only to new provisions from the 2024 rule while the 2013 final rule and underlying statute remain in effect.¹

Continuing Legal Framework

MHPAEA’s statutory obligations, as amended by the Consolidated Appropriations Act, 2021 (CAA, 2021), continue to have effect.² The CAA 2021 requires plans and issuers to perform and document comparative analyses of nonquantitative treatment limitations (NQTLs) to demonstrate parity between mental health/substance use disorder benefits and medical/surgical benefits.

Future Regulatory Direction

The Departments will undertake a broader reexamination of each department's respective enforcement approach under MHPAEA, including those provisions amended by the CAA, 2021.³ The Departments noted they intend to provide additional MHPAEA-related guidance committed to ensuring that individuals receive protections under the law in a way that is not unduly burdensome for plans and issuers.⁴

¹ Department Statement regarding enforcement of MHPAEA, <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-parity/statement-regarding-enforcement-of-the-final-rule-on-requirements-related-to-mhpaea>, last visited 6/3/25.

² Id.

³ Statement regarding enforcement.

⁴ Statement regarding enforcement.

2024 Report to Congress Findings – Enforcement of MHPAEA⁵

The 2024 Report to Congress suggests that group health plans and health insurance issuers are making progress complying with MHPAEA but are continuing to fall short of the requirement to cover mental health and substance use disorder benefits in parity with medical and surgical benefits.⁶

Resource Allocation: The DOL is currently devoting nearly 25 percent of its employee benefits enforcement program to work focusing on MHPAEA NQTLs.⁷

Top Six Enforcement Focus Areas: The following six priority areas continue to comprise the vast majority of NQTLs subject to review in DOL’s enforcement cases:

- Prior authorization requirements for in-network (INN) and out-of-network (OON) inpatient services and outpatient services
- Concurrent care review
- Provider admission to participate in a network, including reimbursement rates
- OON reimbursement rates
- Impermissible exclusions of mental health conditions and substance abuse disorders (ABA for autism, medication-assisted treatment for opioid use disorder, nutritional counseling for eating disorders)
- Provider network adequacy for mental health/substance abuse disorders⁸

Fiscal Year 2023 Results: Although the DOL noted widespread noncompliance with MHPAEA, it declined to issue any final determinations of noncompliance for the reporting period, attributed to a greater willingness among plans and insurers to correct objectionable NQTLs earlier during the comparative analysis review process.⁹

Enforcement Approach: For the annual reporting period ending July 2023, the DOL issued 17 initial letters requesting comparative analyses from plans and insurers, 45 insufficiency letters, and 13 initial determination letters finding MHPAEA NQTL violations.¹⁰ The agencies emphasize collaborative compliance assistance over punitive enforcement.

Persistent Issues: Common deficiencies identified include failure to identify the specific mental health/substance abuse disorders and medical/surgical benefits or MHPAEA benefit classifications affected by an NQTL, focusing only on similarities rather than explaining differences to show parity, and conclusory assertions lacking specific supporting evidence.¹¹

⁵ The 2024 MHPAEA Report to Congress was issued under the Biden administration and may not reflect the current policies of the DOL under the Trump administration.

⁶ Report to Congress 2024, <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2024.pdf>, dated January 2025.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.