

[Employee Benefits Tracker, EXPERT INSIGHTS -- Mental health parity compliance traps—Department of Labor \(DOL\) guidance warns what to watch out for, \(Sept. 28, 2026\)](#)

Employee Benefits Tracker

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As discussed in our prior article, available [here](#), the DOL, Department of Health and Human Services, and the Department of the Treasury (the Departments) have taken a position of non-enforcement related to the final Mental Health Parity and Addiction Equity Act (MHPAEA) regulations published in the fall of 2024 (the Final Rule). However, employers and health plans should not forget about Mental Health Parity compliance, because the Departments certainly have not.

In a new Field Assistance Bulletin (the FAB) published on September 8, 2026, the DOL's Employee Benefits Security Administration (EBSA) repeated its intention to treat MHPAEA compliance as an enforcement priority. While the FAB confirms the non-enforcement policy of the Final Rule, EBSA emphasizes that the MHPAEA's statutory requirements continue to apply.

In the FAB, EBSA outlines three categories of compliance issues that it will prioritize in its MHPAEA non-quantitative treatment limitation (NQTL) comparative analysis enforcement:

- (1) **Exclusions.** EBSA states that blanket exclusions are generally not allowed for treatments of covered mental health/substance use disorder (MH/SUD) conditions, where similar treatments are covered for medical/surgical (M/S) conditions. EBSA indicates that it will focus on blanket exclusions of MH/SUD benefits, but may also address other limited exclusions and separate treatment limitations.
- (2) **Different Medical Necessity Standards.** EBSA indicates its intention to focus on ensuring comparable standards for and application of prior authorization, concurrent review, and retrospective review requirements as between MH/SUD and M/S benefits. While plans are permitted to use proprietary clinical guidelines as a part of medical necessity reviews, they must make the guidelines available upon request during any EBSA investigation and to participants upon request.
- (3) **Network Adequacy.** EBSA indicates that where a plan has network adequacy parity issues, it will ensure plans are considering options to help participants obtain MH/SUD treatment without being exposed to out-of-network costs due to the lack of an in-network provider.

While these three areas have been identified as EBSA's priorities, EBSA is clear that it will investigate broader MHPAEA compliance concerns as issues arise. These three priority categories generally align with specific enforcement topics the Departments have previously identified as red flags (see a prior article on MHPAEA red flags [here](#)) and the specific compliance issues identified in the Departments most recent [report](#) to Congress. While the FAB is limited in application to EBSA, it is expected that the other Departments will follow similar enforcement priorities against non-ERISA plans.

In tandem with the FAB, EBSA released a resource for employers, which is available [here](#). This resource provides several specific examples of MHPAEA compliance red flags, including examples that are not one of the three enforcement priorities. The resource also provides questions to ask when selecting a service provider to assist with MHPAEA compliance and best practices for monitoring a plan's compliance with MHPAEA.

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