The ERISA Edit: MHPAEA Regulations Targeted in APA Challenge

Employee Benefits Alert
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Tri-Agencies Issue 2024 MHPAEA Report to Congress as Employers Sue to Enjoin New MHPAEA Regulations

The U.S. Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury (collectively, the Departments) have issued their 2024 Report to Congress on the Mental Health Parity and Addiction Equity Act (MHPAEA). The 2024 Report discusses enforcement efforts related to non-quantitative treatment limitations (NQTLs) on mental health (MH) and substance use disorder (SUD) benefits, as well as compliance of plans and issuers with MHPAEA more generally. Section IV of the Report discusses the Departments' September 2024 Final Rule, which significantly added to existing MHPAEA regulatory requirements and standards (2024 Final Rule). Portions of the 2024 Final Rule are now the subject of a January 17, 2025, Administrative Procedure Act (APA) challenge filed by the ERISA Industry Committee (ERIC) in federal district court in Washington, DC.

Of particular note, DOL's Employee Benefits Security Administration (EBSA) states that "non-compliance" with the requirement to provide a NQTL comparative analysis "remains widespread" and that "comparative analyses in general have not included sufficient information for EBSA to determine compliance with the substantive requirements of MHPAEA." "As a result, EBSA has needed to look beyond the comparative analyses and use investigative techniques, such as depositions, subpoenas, interviews, and claims reviews to determine compliance with... MHPAEA." EBSA notes that while it could focus on the non-compliant NQTL comparative analyses themselves, it has instead "focused on identifying and obtaining corrections for harmful NQTL violations."

During the reporting period, EBSA requested comparative analyses 17 times (11 letters to plans and six to issuers) for 22 NQTLs, but did not issue any final determinations of non-compliance. Half of the NQTLs examined focused on network admissions standards, including reimbursement rates and network adequacy, and exclusions of Applied Behavior Analysis (ABA), intensive behavioral, rehabilitative/habilitative, or cognitive therapies to treat MH/SUD conditions.

According to EBSA, the same deficiencies and trends noted in the Departments' prior MHPAEA reports continued to appear in comparative analyses reviewed during the reporting period. These include:

- Failure to document a comparative analysis before designing and applying the NQTL, conclusory assertions lacking specific supporting evidence or detailed explanation
- Lack of meaningful comparison or analysis
- Non-responsive comparative analysis
- Documents provided without adequate explanation
- Failure to identify the specific MH/SUD and medical/surgical (M/S) benefits or MHPAEA benefit classifications affected by an NQTL
- Focusing only on similarities, rather than explaining differences, to show parity

EBSA attributes these deficiencies to "inadequate preparation by plans and issuers" and "plans and issuers attempting to justify practices that were adopted without MHPAEA compliance in mind." According to the report, the Departments are currently developing a much-requested sample comparative analysis that will include "helpful details that, if provided by a plan or issuer in an NQTL investigation, would greatly expedite EBSA's review."

We've previously written about the 2024 Final Rule, parts of which became effective January 1, 2025. ERIC's lawsuit challenges the rule's "meaningful benefits" provision, the "material differences in access" standard, the comparative analysis requirements, the fiduciary certification requirement, and the January 1, 2025, applicability date. According to the complaint, these objected-to provisions, in whole or in part, exceed the Departments' statutory authority, are arbitrary and capricious, violate due process, were issued without proper notice and comment or are not a logical outgrowth of the proposed rule, unconstitutionally delegate executive power to private parties, and are contrary to law. The suit seeks a declaration that the provisions of the rule at issue violate the APA, and vacatur and a permanent injunction prohibiting enforcement of the entire 2024 Final Rule or in the alternative the challenged provisions.

We await the Departments' response to the complaint, as well as any other action taken by the new administration's secretaries of DOL, HHS, and the Treasury with respect to the 2024 Final Rule once they are installed. Of note, the lead attorney who filed the complaint on behalf of ERIC is President Trump's former Secretary of Labor, Eugene Scalia.

Supreme Court Holds Plaintiff May Amend Claims After Removal to Rid Federal Court of Jurisdiction

On January 15, 2025, a unanimous Supreme Court held that when a plaintiff amends their complaint to eliminate the federal law claims on which the defendant relied to remove a case to federal court, the federal court *must* remand the case back to state court. *Royal Canin U.S.A., Inc., v. Wullschleger* , No. 23-677 (U.S. Jan. 15, 2025). The Court's decision upends precedent in a majority of federal jurisdictions and may have a significant impact on the efficacy of removal proceedings by allowing plaintiffs to unilaterally remand properly removed cases to state court, including in cases removed to federal court based on ERISA preemption and similar doctrines.

The plaintiff in *Royal Canin* brought multiple claims in Missouri state court under state and federal law related to the marketing of premium dog food. The defendant removed the case to federal court under the federal claim removal statute, 28 U.S.C. §1441(a), and the federal court invoked its supplemental jurisdiction under 28 U.S.C. §1367(a) to adjudicate both the federal and state law claims. After removal, the plaintiff filed an amended complaint, dropping the federal law claims, and petitioned the court for remand to state court. The district court denied the motion to remand, and the Court of Appeals for the Eighth Circuit reversed.

The Supreme Court agreed with the Eighth Circuit, despite acknowledging countervailing precedent allowing federal courts to retain jurisdiction in such situations in the First, Third, Fourth, Sixth, and Eleventh Circuits. The Court explained that "nothing in §1367(a)'s text distinguishes between cases removed to federal court and cases originally filed there," and it is well-settled that federal courts must remand cases originally filed in federal court in which federal law claims are absent or later removed (without another source of federal jurisdiction). Therefore, federal courts must also remand cases removed to federal court when a federal law claim is no longer present in the "well-pleaded complaint." The Court opined, "The plaintiff is 'the master of the complaint,' and therefore controls much about her suit.... [S]he can establish—or not—the basis for a federal court's subject-matter jurisdiction."

The Court's ruling stands to have a noticeable impact on ERISA litigation, particularly in cases alleging improper action by insurers or third-party administrators, which are often removed to federal court based on "complete preemption." *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987). *Royal Canin* provides plaintiffs an as-of-right opportunity to remand such cases to state court by amending the complaint to drop ERISA-oriented claims, whereas previously many federal courts would retain jurisdiction once a case was properly removed, in order to prevent the plaintiff from engaging in "forum manipulation." *See, e.g., Giles v. NYLCare Health Plans, Inc.*, 172 F.3d 332, 340 (5th Cir. 1999) (encouraging lower courts to "guard against such manipulation by denying motions to remand where appropriate" in complete preemption cases).

EBSA Publishes FY 2024 Enforcement Results Fact Sheet

On January 17, 2025, the EBSA published its enforcement results for FY 2024. According to the agency's Fact Sheet, it recovered approximately $1.4 billion for plans, participants, and beneficiaries, approximately $742 million of which originated from

enforcement actions. More than $432,000 of that amount was in the form of benefit payments to former employees who were terminated vested participants in ERISA pension plans. EBSA also reported over $544 million to workers through information complaint resolution. EBSA closed 729 civil investigations and referred 53 cases to the DOL Office of the Solicitor for litigation. EBSA also closed 177 criminal investigations, with 161 guilty please or convictions and 68 indictments.
