

Mental Health Parity Under the Trump Administration: Where DOL Is Headed and What Congress Is Doing About It

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VIEWPOINT TOPICS

- Health Care

On September 8, 2026, the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) issued [Field Assistance Bulletin No. 2026-03](#) (Bulletin 2026-03), narrowing near-term enforcement of the [Mental Health Parity and Addiction Equity Act](#) (MHPAEA) to three priority areas and confirming nonenforcement of the [2024 Final Rule](#)'s newer provisions pending litigation. The administration has also stopped defending that rule in court and promised a substantially revised proposal by December 31, 2026. Congress is moving the other way: [bipartisan legislation to expand DOL's enforcement authority](#) is pending in the House, and the Senate HELP Committee is poised to scrutinize any administration proposal. For plans and insurers, the message is clear: narrower federal enforcement does not eliminate the risk of leaving mental health services uncovered. That risk now runs through EBSA, fiduciary litigation, state law, and Congress simultaneously.

Congress Built This Framework and Keeps Revisiting It

MHPAEA has never been static. The original [2008 statute](#) built on the [1996 Mental Health Parity Act](#); the [Affordable Care Act](#) extended parity to the individual and small-group markets in 2010; the [21st Century Cures Act](#) added disclosure and enforcement tools in 2016; and the [Consolidated Appropriations Act of 2021](#) added the nonquantitative treatment limitation (NQTL) comparative analysis requirement that remains the operative compliance obligation today, regardless of the [2024 Final Rule](#)'s fate. Each amendment passed with bipartisan support, making parity one of the few health policy areas where congressional consensus has outlasted administrative follow-through.

Where the Trump Administration Is Headed

Four elements define the administration's direction:

- **Nonenforcement tied to litigation:** EBSA will not enforce the [2024 Final Rule](#)'s new provisions until [ERISA Industry Committee v. HHS](#) is resolved, plus 18 months. In a [September 30 status report](#), the Departments of Health and Human Services, Treasury, and Labor (the Departments) told the court they will issue a new rule rather than defend the old one.
- **A revision, not a repeal:** A proposed rule is due by December 31, 2026, and the Departments expect to send it to the White House Office of Information and Regulatory Affairs by December 18. It will make "significant revisions" to the provisions the ERISA Industry Committee challenged and preserve MHPAEA's statutory core.
- **A broader enforcement lens:** EBSA's priorities extend beyond the three NQTL categories, as discussed below. [Field Assistance Bulletin No. 2026-01](#) (Bulletin 2026-01) ranks breaches of the duty of loyalty and impermissible conflicts of interest as EBSA's top civil enforcement priority across ERISA plans, including group health plans.
- **Burden reduction:** Officials call the approach "fair and even-handed" and pledge to avoid enforcement that would "unnecessarily drive-up compliance costs." Expect narrower, more targeted enforcement.

EBSA's Three NQTL Enforcement Priorities

Bulletin 2026-03 directs EBSA to concentrate its NQTL enforcement on three areas:

- **Separate treatment limitations and exclusions:** Blanket exclusions of mental health and substance use disorder (MH/SUD) treatment where comparable medical/surgical treatment is covered.
- **Medical necessity standards and review processes:** Prior authorization and concurrent and retrospective review. Plans, issuers, and service providers must produce clinical guidelines on request.
- **Network adequacy:** Network admission standards and provider reimbursement rates as barriers to access.

The **2025 MHPAEA Report to Congress** shows the stakes: EBSA's NQTL enforcement produced corrections affecting more than 18 million participants across more than 39,000 group health plans.

Beyond the Three Priorities: Fiduciary Exposure

These categories mark where EBSA will focus, not the limit of a plan's exposure. Three sources confirm it. **Bulletin 2026-03** says EBSA "may need to investigate other categories of NQTLs as issues arise, particularly when responding to participant complaints." **Bulletin 2026-01** prioritizes loyalty breaches and conflicts of interest while preserving enforcement of ERISA's health benefit and claims-processing requirements. And the **2025 MHPAEA Report to Congress** states that "responsibility for MHPAEA compliance lies with the plan, not their service provider," keeping fiduciaries accountable for vendor decisions.

Precision matters here. Neither bulletin names fiduciary breach as an MHPAEA-specific category, and EBSA has not called cost containment a parity priority. The connection is legal. **ERISA Section 404(a)** requires fiduciaries to act solely in participants' interest and for the exclusive purpose of providing benefits and defraying reasonable plan expenses. A plan that adopts, or accepts from a vendor, a restrictive MH/SUD utilization practice without a documented parity analysis invites loyalty and prudence claims. Private plaintiffs have pressed this theory, most prominently in *Wit v. United Behavioral Health* (9th Cir. 2023), which challenged a claims administrator's level-of-care guidelines as a fiduciary breach (Ninth Circuit rulings have been mixed). Bulletin 2026-01 also says EBSA will not second-guess prudent, process-based fiduciary judgments. Plans that can show their process benefit; a current, documented NQTL comparative analysis is the best proof.

Congress's Response, and the Road Ahead

Congress is not waiting on DOL, and mental health parity remains a bipartisan issue.

Representatives Donald Norcross (D-NJ), Brian Fitzpatrick (R-PA), and Joe Courtney (D-CT) reintroduced the bipartisan **Parity Enforcement Act (H.R. 957)** in February 2025 to expand DOL's statutory enforcement authority, and a companion measure, **H.R. 9551, the Mental Health Parity Enforcement and Funding Act**, is also pending. With sponsors from both parties and decades of bipartisan parity legislation behind it, the issue is likely to retain support across the aisle whichever party controls the committees in 2027. Neither bill needs the administration's cooperation to advance, so plans and issuers face a second track of regulatory risk that runs independent of EBSA's current posture.

Two committees bear watching. The Senate HELP Committee, chaired by Bill Cassidy (R-LA), has pressed parity enforcement for nearly a decade, though the November 2026 midterms will determine who holds the gavel in 2027. House Education and Workforce Committee Democrats, led by Ranking Member Robert C. Scott, will likely seek comment letters or a hearing once the rule is published, with the American Psychiatric Association pushing for stronger enforcement and the ERISA Industry Committee pushing back.

Compliance Implications for Plans in the Interim

Bulletin 2026-03 narrows EBSA's near-term focus, not the underlying risk. Plans with blanket MH/SUD exclusions, disparate medical necessity or utilization review standards, or network adequacy gaps remain squarely within EBSA's three priorities, and the DOL's [2025 findings](#) show continued investigative activity. More importantly, non-enforcement binds only EBSA. It does not affect the private right of action under ERISA Section 502, including fiduciary breach claims, and parity litigation continues regardless of federal posture, including active cases in California.

Plans that cannot produce a current NQTL comparative analysis on request, to EBSA or to a participant, face exposure on that basis alone; the obligation predates the 2024 Final Rule. Multistate plans carry added risk: Washington, Colorado, and Maryland are tightening their own parity requirements, so federal compliance alone may not suffice. The non-enforcement window is also finite, tied to resolution of [ERISA Industry Committee v. HHS](#) plus 18 months, and gaps left open now become live enforcement risk when it closes.

What Stakeholders Should Watch

- The December 2026 Notice of Proposed Rulemaking—not Bulletin 2026-03—will establish the direction of this policy. Stakeholders should monitor its publication, the public comment period, and any related hearings or oversight correspondence from the Senate HELP Committee and the House Committee on Education and the Workforce.
- The November 2026 midterms: a change in committee leadership in 2027 would shape how the proposal is received on the Hill.
- [Parity Enforcement Act \(H.R. 957\)](#) and [Mental Health Parity Enforcement and Funding Act \(H.R. 9551\)](#): potential legislative vehicles if the proposal draws criticism from advocates or employers.
- A ruling in [ERISA Industry Committee v. HHS](#), which resets the enforcement timeline regardless of the rulemaking outcome.

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