

**FOCUS:
MENTAL HEALTH**


**Marc Apsis and
Lavanya Sathyamurthy**

Post-traumatic stress disorder. School shootings. Suicide. Eating disorders. Post-partum depression. Help lines for high-stress professions. Devastating mental health by-products of COVID-19 and of nearly 20 years of constant American warfare. This begs the question: Is the United States in the midst of a mental health crisis? According to the Centers for Disease Control and Prevention (the “CDC”), the answer is an unequivocal “yes.”¹

A 2024 report from Mental Health America shared that 23.08% of U.S. adults, equivalent to nearly 60 million Americans, are suffering from a mental illness, and 17.82% of U.S. adults have a substance use disorder.² In 2023, the White House stated that less than half the people with a mental health condition and fewer than one in ten people with a substance abuse disorder were receiving care.³

While we may think of this as a relatively recent phenomenon, Congress recognized that access to mental health care is a problem and passed the original Mental Health Parity Act in 1996 (the “1996 Act”). In the intervening 30 or so years, the basic tenets of the 1996 Act have remained largely unchanged, but other factors surrounding those basic principles have changed.

Mental Health Parity Act of 1996

The Mental Health Parity Act (the “Act”) is a federal law⁴ that requires both group and individual health plans to cover mental health and substance use disorders in a similar way as medical and surgical benefits are covered.⁵ Employers who do not comply with the mental health parity requirements may be subject to stiff financial penalties under Internal Revenue Code (the “Code”) section 4980D. Importantly, the law does not require group health plans to cover mental health and/or substance use disorders; rather, it only applies to plans that cover mental health and/or substance abuse.

The law was initially passed in 1996 and required group health plans with 50 or more employees that offered mental

Mental Health Parity—Past, Present, Future

health coverage to apply the same lifetime and annual dollar limits to mental health benefits as those applied to medical and surgical benefits.⁶ The law is codified in both ERISA and the Code. The law did not apply to other limits on mental health coverage, such as visit limits, and it did not require parity for substance use disorders.⁷

The Mental Health Parity Act was amended in 2008 to extend parity requirements to substance use disorders as well.⁸ Furthermore, the law also requires that financial requirements (for example, coinsurance and copays) and treatment limitations (for example, visit limits) cannot be more restrictive for mental health and substance use disorders than for medical and surgical benefits.⁹

The regulations were amended again in 2013 to become applicable to all non-federal governmental plans with more than 50 employees, to group health plans of private employers with more than 50 employees, and to individual health plans.¹⁰ The Act specifies that health plans that offer medical/surgical coverage and mental health/substance use coverage must provide mental health and substance use coverage in all classifications in which medical and surgical benefits are provided. Classifications include inpatient in-network, inpatient out-of-network, outpatient in-network, outpatient out-of-network, emergency and prescription drugs.¹¹

The law also requires that financial requirements such as deductibles and out-of-pocket limits must combine both physical and behavioral health coverage, which encompasses mental health and substance use disorders.¹² For example, there can only be an overall deductible that applies to both types of services, rather than a separate deductible for each category.¹³

Finally, the Act distinguishes between quantitative treatment limitations, such as visit limits, and non-quantitative treatment limitations, such as requiring pre-authorization for treatment.¹⁴ The Act eliminates an exception that allowed for different nonquantitative treatment limitations for physical and behavioral health benefits “to the extent that recognized clinically appropriate standards of care may permit a difference.”¹⁵

Most recently, the Mental Health Parity Act received another update in 2024. In September 2024, the U.S. Departments of Labor, Health and Human Services, and the Treasury—the three federal agencies responsible for enforcing the Act (the

“Departments”)—issued a rule (the “Final Rule”) to prohibit any material differences in “meaningful benefits” provided for physical and behavioral health conditions, as measured by key outcomes data on access to care.¹⁶

ERIC’s Challenge to the Mental Health Parity Act

In January 2025, the Employee Retirement Income Security Act Industry Committee (“ERIC”), a nonprofit organization that represents the interests of several large employer health plans, filed a lawsuit against the Departments, challenging the 2024 amendment to the Act.¹⁷ ERIC asserted that it “should have no obligation to ensure there is no ‘material difference in access to SUD/MH [substance use disorder/mental health] services.’”¹⁸ More specifically, ERIC claimed that the law is impermissibly vague and arbitrary, which makes it difficult for health insurance plans to comply with the requirements.¹⁹

The Administrative Procedure Act prohibits agencies from passing regulations that are “arbitrary and capricious,” meaning there is no rational connection between the reasoning for the rule and the law itself.²⁰ For example, ERIC’s complaint alleged that the reliance on outcome measures, such as rate of service utilization, is arbitrary because access to mental health benefits may depend on state laws and provider shortages rather than insurance coverage.²¹ Also, ERIC stated that the law does not clearly define key terms like “material differences” and “meaningful benefits.”²² Furthermore, ERIC alleged that the rule’s ambiguities may also violate the Due Process Clause, since health insurance plans do not have fair notice of their obligations.²³ For these reasons, ERIC asserted that the Mental Health Parity Act is overly burdensome to implement.²⁴

Anthem Class Action

In April 2020, plaintiffs filed a class action against the insurance company, Anthem, in New York federal court, alleging that the insurance company applied overly restrictive criteria, such as requiring that services must be medically necessary to be covered, to claims for residential inpatient behavioral health treatment.²⁵ The Mental Health Parity Act states that health plans cannot place more restrictions on claims for behavioral health treatment, compared to those applied in the medical and surgical context.²⁶ The court denied Anthem’s motion to dismiss the case in

February 2022.²⁷

In March 2024, the court granted declaratory relief, an order that clarifies the insured parties’ right to coverage of behavioral health services, and issued a retroactive injunction requiring Anthem to reprocess claims for mental health treatment.²⁸ In July 2025, Anthem agreed to pay \$13 million to settle a class action lawsuit that alleged the company had violated the Mental Health Parity Act.²⁹ This payment, after deducting costs such as attorney fees, will be distributed to settlement class members who were denied behavioral health coverage, which encompasses mental health and substance use disorders, by Anthem.³⁰ Each member will receive a nominal payment of \$100 or a reimbursement based on their individual claims.³¹ More than 3,500 violations of the Act were investigated by the U.S. Department of Labor between 2010 and 2018.³²

Current Enforcement

In May 2025, the U.S. Departments of Labor, Health and Human Services, and the Treasury released a public statement that they will not enforce the Final Rule to the Mental Health Parity Act before the court reaches a final decision in the ongoing litigation, as well as an additional 18 months after the decision, although health plans must still comply with 2013 and earlier guidance.³³

In addition to the above-mentioned litigation, Kaiser Foundation Health Plan reached a settlement agreement with the U.S. Department of Labor in February 2026 for failing to maintain adequate provider networks for mental health and substance use disorder care.³⁴ Kaiser will pay a \$2.8 million penalty to the federal government and must compensate at least \$28 million for the costs incurred by its members in seeking out-of-network mental health and substance use disorder services.³⁵

The Departments have also not provided any timeline for determining whether to rescind or modify the law,³⁶ which would involve the Administrative Procedure Act’s notice and comment process.³⁷ The process requires agencies to publish a proposed rule in the *Federal Register* and provide the public with an opportunity to submit comments for a certain time period.³⁸ The Departments have encouraged states to similarly halt enforcement of the law and notified state health departments that they will not be penalized by the U.S. Department of Health and Human Services for doing so.³⁹

Importance of the Mental Health Parity Act

The Mental Health Parity Act is a crucial civil rights accomplishment as a response to health plans' (and society's) historical discrimination against people with mental illnesses and substance use disorders.⁴⁰ Before this law was passed, hundreds of health insurance plans did not cover medications for opioid use disorder.⁴¹ More than a million people were denied coverage for nutritional counseling for mental health conditions such as anorexia nervosa and binge-eating disorder.⁴² Additionally, the Act contributes to the overall public health of the nation.

Looking Ahead

The future enforcement of this law remains unclear. Organizations, such as the CEO Alliance on Mental Health, are advocating for enforcement of the Act by sending letters to Congress.⁴³ Meanwhile, employers should continue complying with all requirements of the Mental Health Parity Act until the case reaches resolution.

Importantly, only the 2024 Final Rule to the Act is in question. Original obligations—such as the documentation of a comparative analysis of a plan's treatment limitations for physical and behavioral disorders, including geographic restrictions—will remain in place regardless of the litigation's

outcome. As awareness of mental health and substance use disorders continues to increase, the government may enforce the Mental Health Parity Act more strongly, through thorough investigation and sanctions, and demand more equitable coverage from insurers. Until then, we may have to wait and see. ✍️

1. *Protecting the Nation's Mental Health*, CDC (June 9, 2025), <https://www.cdc.gov/mental-health/about/what-cdc-is-doing.html>.

2. Policy Priority: Mental Health Parity, American Foundation for Suicide Prevention (updated Jan. 2026), 1769622868-afsp-mental-health-parity-issue-brief_january-2026.pdf.

3. *Mental Health Parity: What It Is and Why It Still Matters*, Special Needs Answers (Mar. 19, 2024), <https://specialneedsanswers.com/mental-health-parity-what-it-is-and-why-it-still-matters-20382>.

4. It is important to note that New York and other states have state-specific mental health parity laws, but this article focuses on the federal laws.

5. *Mental Health and Substance Use Disorder Parity*, U.S. Dep't of Labor, <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-and-substance-use-disorder-parity> (last visited Feb. 11, 2026).

6. Colleen L. Barry, Haiden A. Huskamp & Howard H. Goldman, *A Political History of Federal Mental Health and Addiction Insurance Parity*, *Milbank Q.* 2010 Sep;88(3):404-33, at 407, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2950754>.

7. *Id.* at 409.

8. *The Mental Health Parity and Addiction Equity Act (MHPAEA)*, CMS (last modified Sep. 10, 2024, at 06:27 PM), <https://www.cms.gov/marketplace/private-health-insurance/mental-health-parity-addiction-equity#:~:text=The%20Paul%20Wellstone%20and%20Pete,only%20to%20MH/SUD%20benefits>.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Departments announce nonenforcement of 2024 Mental Health Parity Rule*, APA (May 21, 2025), <https://www.apaservices.org/practice/news/nonenforcement-2024-mental-health-parity-rule>.

17. *ERIC lawsuit challenges mental health parity law*, APA (Jan. 31, 2025), <https://www.apaservices.org/practice/legal/managed/lawsuit-federal-parity-law>.

18. Press Release, Deborah Steinberg, *ERIC Lawsuit Threatens Access to Critical Substance Use and Mental Health Treatment Amid Dual Crises*, LAC Legal Action Ctr. (Jan. 31, 2025), <https://www.lac.org/news/eric-lawsuit-threatens-access-to-critical-substance-use-and-mental-health-treatment-amid-dual-crises>.

19. *Arbitrary and Capricious Challenges*, Governing for Impact (May 2025), <https://governingforimpact.org/wp-content/uploads/2025/05/Arbitrary-and-Capricious-Challenges.pdf>.

20. *Id.*

21. APA, *supra* note 17.

22. *Id.*

23. *Complaint, ERISA Indus. Comm. v. U.S. Dep't of Health & Human Servs.*, No. 1:25-cv-00136 (D.D.C. Jan. 17, 2025).

24. *Id.*

25. *Anthem agrees to \$1.3M settlement to end mental health class action*, Top Class Actions (July 9, 2025), <https://topclassactions.com/lawsuit-settlements/lawsuit-news/anthem-agrees-to-13m-settlement-to-end-mental-health-class-action/>.

26. *Id.*

27. *Anthem Settles Mental Health Class Action For Nearly \$1.3M*, MarketScreener (Aug. 11, 2025, at 10:13 AM EDT), <https://www.marketscreener.com/news/anthem-settles-mental-health-class-action-for-nearly-13m-ce7c5ed2d18ef52d?>

28. *Id.*

29. Top Class Actions, *supra* note 25.

30. *Id.*

31. *Id.*

32. Andrew D. Carlo, Brian S. Barnett & Richard G. Frank, *Behavioral Health Parity Efforts in the US*, Author manuscript, Published in final edited form as: *JAMA*, 2020 Aug 4;324(5):447-448, <https://pmc.ncbi.nlm.nih.gov/articles/PMC9109701/>.

33. *Statement of U.S. Departments of Labor, Health and Human Services, and the Treasury regarding enforcement of the final rule on requirements related to the Mental Health Parity and Addiction Equity Act*, U.S. Dep't of Labor (May 15, 2025), <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](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).

34. *Kaiser reaches \$30 million settlement with US Labor Dept over mental health care practices*, Reuters (Feb. 10, 2026, at 4:06 PM EST), <https://www.reuters.com/sustainability/sustainable-finance-reporting/kaiser-reaches-30-million-settlement-with-us-labor-dept-over-mental-health-care-2026-02-10/>.

35. *Id.*

36. U.S. Dep't of Labor, *supra* note 33.

37. *Challenges to mental health parity law leave uncertainty for mental health and substance use treatment*, APA (May 29, 2025), <https://www.apaservices.org/advocacy/news/challenges-mental-health-parity-law>.

38. *Notice-and-Comment Rulemaking*, Admin. Conf. of the U.S. (May 2021), <https://www.acus.gov/sites/default/files/documents/IIB014-Rulemaking.pdf>.

39. U.S. Dep't of Labor, *supra* note 33.

40. *What is Parity?*, The Kennedy Forum, <https://www.thekennedyforum.org/focus-areas/coverage-parity/parity/> (last visited Feb. 11, 2026).

41. Andis Robeznieks, *Insurer accountability on mental health parity is long overdue*, *AMA* (Feb. 4, 2022), <https://www.ama-assn.org/health-care-advocacy/access-care/insurer-accountability-mental-health-parity-long-overdue>.

42. *Id.*

43. APA, *supra* note 37.



Marc Aspis, Special Counsel at Phillips Lytle LLP, is a member of the firm's Corporate and Business Law Practice with extensive experience in employee benefits and executive compensation. He is a member of the NCBA

Labor & Employment Committee, Business Law, Tax and Accounting Committee and Publications Committee. He can be reached at maspis@phillipslytle.com or (212) 508-0490.

Lavanya Sathyamurthy, attorney and member of Phillips Lytle LLP's Corporate and Business Law Practice, can be reached at lsathyamurthy@phillipslytle.com or (212) 508-0494.