

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Center for Consumer Information and Insurance Oversight  
200 Independence Avenue SW  
Washington, DC 20201



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August 5, 2025

The City of Tuscaloosa – Alabama

Jessica Jenkins  
Benefits Coordinator  
[jjenkins@tuscaloosa.com](mailto:jjenkins@tuscaloosa.com)

Re: Final Determination Letter – Mental Health Parity and Addiction Equity Act (MHPAEA) Non-Quantitative Treatment Limitation (NQTL) Comparative Analysis Review – Limitations or exclusions of services to treat a mental health condition or substance use disorder (MH/SUD) as compared to limitations or exclusions of services to treat medical/surgical (M/S) conditions in the outpatient, in-network classification.

Dear Ms. Jenkins:

The Centers for Medicare & Medicaid Services (CMS), on behalf of the U.S. Department of Health and Human Services, has completed its review of the Corrective Action Plan (CAP) and additional comparative analysis submitted to address the instance of non-compliance noted in the MHPAEA NQTL Analysis Review (Review).

The purpose of the Review was to assess compliance of the group health plan sponsored by the City of Tuscaloosa (Plan) with the following requirements under Title XXVII of the Public Health Service Act (PHS Act) and its implementing regulations:

Section 2726 of the PHS Act and implementing regulations at 45 C.F.R. § 146.136<sup>1</sup> - Parity In Mental Health And Substance Use Disorder Benefits (MHPAEA and its implementing regulations).

The Review covered limitations or exclusions of services to treat MH/SUD as compared to limitations or exclusions of services to treat M/S conditions in the outpatient, in-network classification for the 2021 plan year for Option 1 Healthcare Plan (hereinafter referred to as “the NQTL”).

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<sup>1</sup> In this document, references to C.F.R. § 146.136 refer to the regulations applicable during the 2021 plan year.

CMS conducted this Review pursuant to section 2726(a)(8)(A) and (B) of the PHS Act, as added by section 203 of Title II of Division BB of the Consolidated Appropriations Act, 2021.<sup>2</sup> CMS contracted with Examination Resources, LLC to assist CMS with conducting this Review.

On May 22, 2024, CMS provided an Initial Determination Letter of non-compliance to the Plan and directed the Plan to submit a CAP and additional comparative analysis to CMS to demonstrate compliance with MHPAEA and its implementing regulations. In CMS's Initial Determination Letter, CMS identified the following instance of non-compliance with section 2726 of the PHS Act and its implementing regulations C.F.R. § 146.136, which has been addressed by the Plan's corrective action and additional comparative analysis.

## **I. Separate Treatment Limitation, in Violation of Section 2726(a)(3)(A)(ii) of the PHS Act.**

### **1. The Plan excluded Applied Behavior Analysis (ABA) therapy, a MH/SUD benefit, from coverage for the 2021 plan year.**

The Plan excluded ABA therapy coverage for plan year 2021.<sup>3</sup> The Plan has not identified any M/S benefits within the same benefit classification during the 2021 plan year that were subject to a similar exclusion. Furthermore, there is no evidence to support a contention that this exclusion of ABA therapy was not a separate treatment limitation applicable only to a MH/SUD benefit.<sup>4</sup> On October 1, 2022, the Plan added coverage for ABA therapy services as a MH/SUD benefit used to treat Autism Spectrum Disorder (ASD).<sup>5</sup>

In its CAP submission provided on July 1, 2024, the Plan stated that it performed a self-audit for claims impacted by the exclusion of ABA therapy for plan year 2021 and found no impacted claims.<sup>6</sup> Additionally, the Plan confirmed that no current similar exclusions or limitations for MH/SUD benefits exist and stated, "*For our Commercial Fully Insured MHP NQTL Comparative Analysis, Blue Cross and Blue Shield of Alabama<sup>7</sup> does not exclude or limit services to MH/SUD conditions as compared to limitations or exclusions to treat medical/surgical (M/S) conditions in the in-network, outpatient classification.*"<sup>8</sup> On March 4, 2025, CMS requested that the Plan notify all enrollees with coverage effective during the 2021 plan year that the benefit was improperly excluded from coverage for the 2021 plan year. CMS required that the Plan provide enrollees an opportunity to submit claims for ABA therapy

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<sup>2</sup> Pub. L. 116-260 (Dec. 27, 2020).

<sup>3</sup> City of Tuscaloosa Option 1 Healthplan 2021.

<sup>4</sup> According to the United States Department of Health and Human Services, Centers for Disease Control and Prevention, ABA therapy is a notable behavioral treatment for people with ASD and is widely accepted among educators and healthcare providers (Treatment and Intervention Services for Autism Spectrum Disorder, pg. 1 ([link](#))). See also FAQs ABOUT MENTAL HEALTH AND SUBSTANCE USE DISORDER PARITY IMPLEMENTATION AND THE 21ST CENTURY CURES ACT PART 39, <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-39-final.pdf> at p. 4 (noting that "[m]ore than one professionally recognized treatment guideline and more than two controlled randomized trials support the use of Applied Behavior Analysis (ABA) therapy to treat certain children with Autism Spectrum Disorder.").

<sup>5</sup> City of Tuscaloosa Option 1 Health Plan, pg. 25.

<sup>6</sup> CAP Response Letter 7.1.24, pg. 1.

<sup>7</sup> Blue Cross and Blue Shield of Alabama (BCBSAL) is the Plan's third-party administrator.

<sup>8</sup> BCBSAL COT MHPAEA Corrective Action Plan Follow-Up 1024 w signature, pg. 2.

services rendered during that time for adjudication and report any findings to CMS. On June 11, 2025, the Plan confirmed that as of June 5, 2025, no claims were submitted for ABA therapy services for the 2021 plan year.<sup>9</sup> CMS agrees that the Plan's corrective actions addressed the violation and no further instances of non-compliance were noted.

CMS's findings detailed in this letter pertain only to the NQTL under review and do not bind CMS (or any other government agency or entity) in any subsequent or further review of other plan provisions or their application for compliance with governing law, including MHPAEA and its implementing regulations. If additional information is provided to CMS regarding this NQTL or Plan, CMS reserves the right to conduct an additional review for compliance with MHPAEA or other applicable PHS Act requirements.<sup>10</sup>

CMS's findings pertain only to the specific plans to which the NQTL under review applies and are offered by the Plan and do not apply to any other plan or issuer. However, these findings should be shared with affiliated entities, and steps should be taken as appropriate to ensure compliance with applicable requirements.

CMS will include a summary of the comparative analysis and the results of CMS's review in its annual report to Congress pursuant to section 2726(a)(8)(B)(iv) of the PHS Act.

Sincerely,

Mary M.  
Nugent -S

 Digitally signed by Mary M. Nugent -S  
Date: 2025.08.04 07:42:47 -04'00'

Mary Nugent  
Director, Division of Plan and Issuer Enforcement  
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<sup>9</sup> CoT Claims Confirmation 060525.

<sup>10</sup> See section 2726(a)(8)(B)(i) of the PHS Act. See also 45 C.F.R. § 150.303.