

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



April 5, 2022

Colorado University Graduate Medical Education – Colorado

Debra Johnson, Benefits Program Manager
Debra.J.Johnson@cuanschutz.edu
Tel: 303-724-6024

Re: Final Determination Letter - Finding of Non-Compliance - Mental Health Parity and Addiction Equity Act (MHPAEA) Non-Quantitative Treatment Limitation (NQTL) Comparative Analysis Review – Treatment certification requirements for inpatient, in-network services

Dear Ms. Johnson:

This notice is being sent to inform you that a review of the Corrective Action Plan (CAP) and comparative analysis submitted to address the instances of non-compliance noted in the MHPAEA NQTL Analysis Review (Review) is complete.

The purpose of the Review was to assess Colorado University Graduate Medical Education’s (Plan Sponsor) compliance with the following requirements under Title XXVII of the Public Health Service Act (PHS Act) and its implementing regulations for the specific NQTL comparative analysis reviewed:

42 U.S.C. § 300gg-26, 45 C.F.R. § 146.136 - Parity In Mental Health And Substance Use Disorder Benefits

The Review covered the 2021 plan year for treatment certification requirements for inpatient, in-network services. CMS conducted this Review pursuant to PHS Act § 2726(a)(8)(A) and (B), as added by Section 203 of Title II of Division BB of the Consolidated Appropriations Act, 2021.¹ CMS contracted with Examination Resources, LLC to assist CMS with conducting this Review.

On November 19, 2021, CMS provided an initial determination letter of non-compliance to the Plan Sponsor and requested a CAP and comparative analysis to demonstrate compliance. After reviewing the CAP and comparative analysis, CMS is finalizing the determination of non-compliance with MHPAEA in the following area noted in the November 19, 2021 initial determination letter:

¹ Pub. L. 116-260 (Dec. 27, 2020).

1. The Plan Sponsor did not provide a sufficient comparative analysis, including information and documentation supporting the factors, evidentiary standards, sources, strategies or processes considered in the design or application of the NQTL and in determining which mental health/substance use disorder (MH/SUD) and medical/surgical (M/S) benefits are subject to the NQTL.

- a. PHS Act § 2726(a)(8)(A) requires in part that the Plan Sponsor “make available to [...] the Secretary of Health and Human Services [...] upon request [...] the comparative analyses and the following information: [...] (ii) The **factors** used to determine that the NQTLs will apply to mental health or substance use disorder benefits and medical or surgical benefits. (iii) The **evidentiary standards** used for the factors identified in clause (ii) [...] provided that every **factor shall be defined**, and **any other source or evidence relied upon** to design and apply the NQTLs to mental health or substance use disorder benefits and medical or surgical benefits. (iv) The comparative analyses **demonstrating** that the **processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to mental health or substance use disorder benefits, as written and in operation**, are comparable to, and are applied no more stringently than, the **processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to medical or surgical benefits** in the benefits classification” (emphasis added).

The Plan Sponsor’s CAP submission received on January 25, 2022 contained a document titled “NQTL Self Compliance Tool - Treatment Limitation Final,” which contains information required as part of a comparative analysis. However, the level of detail of the included information and available supporting documentation provided was not sufficient to demonstrate that the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to MH/SUD benefits as well as to determine whether the NQTLs are comparable to and no more stringently applied than those applied to M/S benefits, as written or in operation.

Examples of insufficient information include, but are not limited to:

- The Plan Sponsor states, "While we do not have access to the historical data regarding how this Plan was created, the following represents the processes that would have been followed for any plan design modifications" (“NQTL Self Compliance Tool - Treatment Limitation Final” document, page 1). As a result, the comparative analysis provided is limited to the information available at this time, and the statements within the comparative analysis are not definitive assertions of the processes, strategies, evidentiary standards, and other factors that were used in the design and application of the NQTL;
- The Plan Sponsor states their list of factors is "not an exhaustive list " (“NQTL Self Compliance Tool - Treatment Limitation Final” document, page 1). Therefore, the Plan Sponsor did not provide an exhaustive list of all factors used in the design and application of the NQTL;

- The Plan Sponsor did not provide a sufficient explanation and supporting documentation describing the process of determining which MH/SUD and M/S services are subject to the NQTL;
- The Plan Sponsor provided the names of one committee responsible for decisions pertaining to the design and application of the NQTL (“CU Exhibit D - NQTL Supplement Staffing” document, page 1), but did not provide the qualifications, including clinical specialties, of decision-makers; and
- The Plan Sponsor provided a general assertion of MHPAEA compliance between MH/SUD and M/S benefits without providing a sufficient comparative analysis or supporting documentation to prove the assertion (“NQTL Self Compliance Tool - Treatment Limitation Final” document, page 3).
- The Plan Sponsor did not provide a stringency assessment to demonstrate that the processes, strategies, evidentiary standards, and other factors used in the design and application of the NQTL are comparable and no more stringently applied to MH/SUD benefits as to M/S benefits, both as written and in operation.

Without a sufficient comparative analysis and supporting documentation, CMS is unable to validate whether the processes, strategies, evidentiary standards, and other factors used to apply the NQTL to MH/SUD benefits are comparable to and no more stringently applied than those applied to M/S benefits, as written and in operation. As such, the Plan Sponsor’s CAP submission did not adequately address the instance of non-compliance identified in the initial determination letter.


Pursuant to PHS Act § 2726(a)(8)(B)(iii)(I), the Plan Sponsor must, within seven calendar days of the date of this letter, notify all individuals who were enrolled under the plan(s) which include the NQTL under review that it is not compliant with the requirements under MHPAEA. Please provide a copy of the letter, with the date(s) the letter was sent, and a list of recipients by April 13, 2022. If these actions have not been completed by April 13, 2022, CMS may impose civil money penalties pursuant to 45 C.F.R. § 150.301.

CMS’s findings detailed in this letter pertain only to the NQTL under review and do not bind CMS in any subsequent or further review of other Plan provisions or their application for compliance with governing law, including MHPAEA. 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.²

CMS will include a summary of the comparative analysis, results of this Review, determination of non-compliance, and the identity of the Plan Sponsor in its annual report to Congress pursuant to PHS Act § 2726(a)(8)(B)(iv).

² See PHS Act § 2726(a)(8)(B)(i). See also 45 C.F.R. § 150.303.

Sincerely,
Mary M.
Nugent -S

 Digitally signed by Mary M. Nugent -S
Date: 2022.04.05 17:52:50 -04'00'

Mary Nugent
Director, Compliance and Enforcement Division
Oversight Group
Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services

cc: Colorado Department of Insurance