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

October 1, 2024

New Jersey State Health Benefit Plan – New Jersey

Joyce Malerba
Assistant Director
Joyce.Malerba@treas.nj.gov

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

Dear Ms. Malerba,

This letter informs you that a review of the Corrective Action Plan (CAP) and additional 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 the New Jersey State Health Benefit Plan's (Plan) compliance with the following requirements under Title XXVII of the Public Health Service Act (PHS Act) and its implementing regulations:

> PHS Act § 2726, 45 C.F.R. § 146.136 - Parity In Mental Health And Substance Use Disorder Benefits (MHPAEA and its implementing regulations).

The Review covered prior authorization requirements for inpatient, in-network services for the 2022 plan year (hereinafter referred to as "the NQTL").

The Centers for Medicare & Medicaid Services (CMS) conducted this Review on behalf of the Secretary of Health and Human Services 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 April 25, 2023, 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' initial

[1] Pub. L. 116-260 (Dec. 27, 2020).

determination letter, we identified the following instances of non-compliance with PHS Act § 2726:

I. Failures to Provide Sufficient Information and Supporting Documentation, in Violation of PHS Act § 2726(a)(8)(A).

1. Failure to provide sufficient information and supporting documentation regarding the factors considered in the design and application of the NQTL, as written and in operation.

The Plan addressed CMS' concerns regarding this issue. The Plan provided a revised comparative analysis in its CAP submission that stated "High Utilization Relative to Benchmark" is the only factor utilized to subject inpatient MH/SUD services and inpatient M/S services to a prior authorization requirement.[2] The Plan further described how this factor is measured and the sources used to apply this factor, noting that utilization must be nine percent or higher above the *"established [Milliman Care Guidelines] (MCG) benchmark"* to impose a prior authorization requirement on MH/SUD services and M/S services.[3] No further instances of non-compliance were noted.

2. Failure to provide sufficient information and supporting documentation for the sources or evidence used for the factors identified in the design and application of the NQTL, as written and in operation.

i. Failure to provide sufficient information and supporting documentation regarding the evidentiary standards considered in the design and application of the NQTL.

The Plan addressed CMS' concerns regarding this issue. The Plan provided a revised comparative analysis in its CAP submission which clarified the evidentiary standards and sources utilized for the NQTL.[4] The Plan identified its internal "Utilization Management Trend Analysis" and "MCG Health Behavioral Health Care Utilization Models and Level of Care Statistics, 26th Edition" as the evidentiary standards utilized to design and apply the NQTL.[5] No further instances of non-compliance were noted.

ii. Failure to provide sufficient information and supporting documentation regarding the medical necessity factor considered in the application of the NQTL.

The Plan addressed CMS' concerns regarding this issue. The Plan had identified several externally developed evidentiary standards, sources, and guidelines utilized for its "Medical necessity of service" factor. It was unclear what evidentiary standards, sources, and guidelines were used to apply the "Medical necessity of service" factor considered in the design and application of the NQTL.

The Plan provided a revised comparative analysis that removed the "Medical necessity of a service" factor in its CAP submission. The comparative analysis stated the evidentiary standards

[2] SHBP Response to CMS Initial Determination Letter CAP request 6.9.23, pg. 2.
[3] Exhibit A, pgs. 6-8.
[4] Exhibit A, pgs. 7-9.
[5] SHBP Response to CMS Initial Determination Letter CAP request 6.9.23, pg. 2.

utilized for the NQTL are its internal "Utilization Management Trend Analysis" and "MCG Health Behavioral Health Care Utilization Models and Level of Care Statistics, 26th Edition."[6] No further instances of non-compliance were noted.

iii. Failure to provide sources, evidentiary standards, or guidelines utilized to determine whether a prior authorization request should be approved or denied.
iv. Failure to provide supporting documentation pertaining to the sources, evidentiary standards, or guidelines utilized to determine whether a prior authorization request should be approved or denied.

The Plan addressed CMS' concerns regarding this issue. The Plan provided the ASAM criteria on October 5, 2023.[7] CMS was provided with MCG access to review the criteria used to approve or deny prior authorizations for the NQTL on January 4, 2024. No further instances of non-compliance were noted.

3. Failure to provide a sufficient reasoned discussion of findings and conclusions as to the comparability of the processes, strategies, evidentiary standards, factors, and sources identified and their stringency, as written and in operation.

The Plan addressed CMS' concerns regarding this issue. The Plan provided a revised comparative analysis which included metrics on the approval rates, denial rates, appeal rates, and average length of approval time periods for urgent and non-urgent prior authorization requests in its CAP submission.[8] The Plan also provided a narrative explaining the findings and conclusions of comparability and relative stringency of the processes, strategies, evidentiary standards, factors, and sources utilized in the design and application of the NQTL identified in its revised comparative analysis.[9] No further instances of non-compliance were noted.

CMS' 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 and its implementing regulations. CMS reserves the right to conduct an additional review for compliance with MHPAEA or other applicable PHS Act requirements.[10]

CMS' 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' review in its annual report to Congress pursuant to PHS Act § 2726(a)(8)(B)(iv).

[6] SHBP Response to CMS Initial Determination Letter CAP request 6.9.23
[7] Final response to CMS 10.5.23, pg. 1.
[8] Exhibit A, pgs. 9-12.
[9] SHBP Response to CMS Initial Determination Letter CAP request 6.9.23, pg. 3.
[10] See PHS Act § 2726(a)(8)(B)(i). See also 45 C.F.R. § 150.303.

Sincerely,

Mary M. Nugent -S

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Date: 2024.09.30 17:01:21 -04'00'

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