

## Instructions for NQTL Comparative Analysis Compliance Filing

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA),<sup>1</sup> prohibits health plans from imposing non-quantitative treatment limitations (NQTLs) on mental health or substance use disorder (MH/SUD) benefits that apply more restrictively than as applied to medical/surgical benefits. MHPAEA applies to full-service health plans that offer commercial coverage that include medical/surgical benefits and MH or SUD benefits. Each full-service health plan is responsible for ensuring compliance, whether MH/SUD services are provided directly by the health plan, carved out to a behavioral health delegate, or delegated to a provider.

The Consolidated Appropriations Act, 2021 (CAA), effective December 2020, requires health plans to use a standardized methodology for documenting and demonstrating NQTL compliance. Under the CAA, health plans that impose NQTLs on MH or SUD benefits, are required to perform and document comparative analyses of the design and application of the NQTLs, providing specified, detailed information to demonstrate compliance.<sup>2</sup> The NQTL rule requires that a health plan's processes, strategies, evidentiary standards, or other factors used to apply the NQTLs to MH/SUD benefits in the classification, as written and in operation, are comparable to, and applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used to apply the NQTLs to medical or surgical benefits in the classification.

Beginning February 10, 2021, the CAA requires health plans to make available to the applicable State authority, upon request, the comparative analyses along with other required information.<sup>3</sup> As part of the comparative analyses, health plans must demonstrate compliance by providing the following information in the following five steps:

**Step 1:** The specific plan or coverage terms or other relevant terms regarding the NQTLs and a description of all MH/SUD and medical or surgical benefits to which each such term applies in each respective benefits classification.

**Step 2:** The factors used to determine that the NQTLs will apply to MH/SUD benefits and medical or surgical benefits.

**Step 3:** The evidentiary standards used for the factors identified, when applicable, provided that every factor shall be defined, and any other source or evidence relied upon to design and apply the NQTLs to MH/SUD benefits and medical or surgical benefits.

**Step 4:** The comparative analyses demonstrating that the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to MH/SUD 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 in the benefits classification.

**Step 5:** The specific findings and conclusions reached by the health plan, including any results of the analyses that indicate that the plan or coverage is or is not in compliance with the MHPAEA requirements.<sup>4</sup>

**The Department requests the health plan submit an NQTL Comparative Analysis compliance filing.**

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<sup>1</sup> 42 U.S.C. § 300gg-26 et. seq.

<sup>2</sup> See 42 U.S.C. § 300gg-26(a)(8)(A)(i)-(v).

<sup>3</sup> 42 U.S.C. § 300gg-26(a)(8)(A).

<sup>4</sup> 42 U.S.C. § 300gg-26(a)(8)(A)(i)-(v).

## FILING OVERVIEW / GENERAL INSTRUCTIONS

Health plans should complete and submit the following documents in its NQTL Comparative Analysis compliance filing:

- Exhibit E-1: Summary of the filing and list of all filed exhibits
- Demonstration of compliance with NQTLs:
  - Exhibit J-12-A: NQTL Comparative Analysis
  - Exhibit J-12-B: NQTL Attestation
  - Exhibit J-12-C: Licensing Preliminary Question – List of All Other NQTLs
  - Exhibit J-12-1, -2, etc.: NQTL policies and procedures and other supporting documents from the Plan and/or its behavioral health delegate, if applicable
  - Exhibit Q-1, T-1 or U-1: EOCs

When submitting the health plan's compliance filing in the Department's e-Filing system, please use the subject title "NQTL Comparative Analysis."

## INSTRUCTIONS FOR DEMONSTRATING COMPLIANCE WITH NQTL COMPARATIVE ANALYSIS

### 1. Complete Exhibit J-12-A: NQTL Comparative Analysis Worksheet

Complete an NQTL Comparative Analysis worksheet (Exhibit J-12-A) for the benefit plan design within each product line (e.g., HMO, EPO, POS, PPO) with the highest enrollment offered by the health plan for all contract types (e.g., individual, small and large group). For example, a health plan shall submit one NQTL Comparative Analysis worksheet for its HMO product line and another for its PPO product line. If the medical/surgical NQTLs and MH/SUD NQTLs are the same for all product lines, then complete just one NQTL Comparative Analysis worksheet (Exhibit J-12-A).

#### Plan Information on Page 1

Complete Items A through E with information about the health plan and contact; Items F through H with information about the line of business, contract type, and benefit plan design (BPD) effective date; Item I identify by name the BPDs of the applicable benefit plan design(s) ("identifiers"). Also, complete the header with the health plan name and the BPD's effective date.

#### NQTLs Column

This column lists the following nonquantitative treatment limitations: prior authorizations, concurrent review, retrospective and claims utilization management review, pharmacy services, provider reimbursement methodology and network adequacy.

#### Medical/Surgical Benefits Column

For each NQTL listed in the first column, provide a narrative response explaining each of the steps in the Medical/Surgical benefits column.

#### Mental Health/Substance Use Disorder Benefits Column

For each NQTL listed in the first column, provide a narrative response explaining each of the steps under Mental Health and Substance Use Disorder, as applicable. If the narrative response for any of the steps differs between 1) Mental Health or 2) Substance Use Disorder, provide a separate narrative response under 1) Mental Health and 2) Substance Use Disorder.

**Step 1:** Specify the specific plan or coverage terms or other relevant terms regarding the NQTLs, that apply to such plan or coverage, and provide a description of all MH/SUD and medical or surgical benefits to which the NQTLs apply.

**FAQ 45 Guidance:** [The FAQ 45](#) (Q2, #'s 1 and 2) guidance stipulates that a sufficient analysis should include:

A clear description of the specific NQTL, plan terms, and policies at issue; and

Identification of the specific MH/SUD and medical or surgical benefits to which the NQTL applies within each benefit classification, and a clear statement as to which benefits identified are treated as MH/SUD and which are treated as medical or surgical.

**Step 2:** Identify all the factors used to determine that the NQTLs will apply to MH/SUD and medical or surgical benefits.

**FAQ 45 Guidance:** [The FAQ 45](#) (Q2, #3) guidance stipulates that a sufficient analysis includes:

Identification of any factors, evidentiary standards or sources, or strategies or processes considered in the design or application of the NQTL and in determining which benefits, including both MH/SUD benefits and medical or surgical benefits, are subject to the NQTL. Analyses should explain whether any factors were given more weight than others and the reason(s) for doing so, including an evaluation of any specific data used in the determination.

**Step 3:** Provide the evidentiary standards used for the factors identified in Step 2, when applicable, provided that every factor shall be defined, and any other source or evidence relied upon to design and apply the NQTLs to MH/SUD benefits and medical or surgical benefits.

**FAQ 45 Guidance:** [The FAQ 45](#) (Q 2, #4) guidance stipulates that a sufficient response includes:

To the extent the health plan defines any of the factors, evidentiary standards, strategies, or processes in a quantitative manner, it must include the precise definitions used and any supporting sources.

[The FAQ 45](#) guidance (Q 3, # 5) states that the following is insufficient:

Reference to factors and evidentiary standards that were defined or applied in a quantitative manner, without the precise definitions, data, and information necessary to assess their development or application.

**Step 4:** Provide the comparative analyses demonstrating the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to MH/SUD 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.

**FAQ 45 Guidance:** [The FAQ 45](#) guidance states that the following is appropriate for a sufficient response:

(Q 2, #5) The analyses, as documented, should explain whether there is any variation in the application of a guideline or standard used by the health plan between MH/SUD and medical/surgical benefits and, if so, describe the process and factors used for establishing that variation.

(Q 2, #6) If the application of the NQTL turns on specific decisions in administration of

the benefits, the health plan should identify the nature of the decisions, the decision maker(s), the timing of the decisions, and the qualifications of the decision maker(s).

(Q 2, #7) If the health plan's analyses rely upon any experts, the analyses, as documented, should include an assessment of each expert's qualifications and the extent to which the health plan ultimately relied upon each expert's evaluations in setting recommendations regarding both MH/SUD and medical/surgical benefits.

[The FAQ 45](#) guidance states that the following constitutes an insufficient response:

(Q 3, #1) Production of a large volume of documents without a clear explanation of how and why each document is relevant to the comparative analysis.

(Q 3, #2) Conclusory or generalized statements, including mere recitations of the legal standard, without specific supporting evidence and detailed explanations.

(Q 3, #3) Identification of processes, strategies, sources, and factors without the required or clear and detailed comparative analysis.

(Q 3, #4) Identification of factors, evidentiary standards, and strategies without a clear explanation of how they were defined and applied in practice.

**Step 5:** Provide the specific findings and conclusions reached by the health plan, including any results of the analyses that indicate that the plan or coverage is or is not in compliance with the MHPAEA requirements.

**FAQ 45 Guidance:** [The FAQ 45](#) guidance states that a sufficient response should include:

(Q 2, #8) A reasoned discussion of the health plan's findings and conclusions as to the comparability of the processes, strategies, evidentiary standards, factors, and sources identified above within each affected classification, and their relative stringency, both as applied and as written. This discussion should include citations to any specific evidence considered and any results of analyses indicating that the plan or coverage is or is not in compliance with MHPAEA.

[The FAQ 45](#) guidance states that the following constitutes an insufficient response:

(Q 3, #2) Conclusory or generalized statements, including mere recitations of the legal standard, without specific supporting evidence and detailed explanations.

## 2. Complete and Submit Exhibit J-12-B: NQTL Attestations

Complete the NQTL Attestations and have them signed by the health plan's Chief Medical Officer. Submit as Exhibit J-12-B the executed attestations. These statements attest to the completeness and accuracy with which the health plan has summarized on the NQTL Comparative Analysis worksheet the applicable nonquantitative treatment limitations imposed on the medical/surgical and MH/SUD benefits for all benefit plan designs within the applicable product line (HMO, PPO, etc.).

## 3. Submit Exhibit J-12-C: List of All Other NQTLs

Submit as Exhibit J-12-C a list of all other NQTLs identified by the health plan not included in the NQTL Comparative Analysis worksheet (Exhibit J-12-A). For each NQTL identified, include a statement whether the health plan has prepared a comparative analysis as set forth in 42 U.S.C.

§300gg-26(a)(8)(A). Health plans should be prepared to provide a comparative analysis for any other NQTLs listed in Exhibit J-12-C upon the Department's request.

#### **4. Submit Exhibit J-12's: Policies/Procedures from the Health Plan and Behavioral Health Delegate**

Submit as Exhibit J-12's copies of current policy, procedure, or other document cited in the NQTL Comparative Analysis worksheet that substantiates the NQTL analyses used by the health plan and its behavioral health delegate, if any, when applying an NQTL such as prior authorization on medical/surgical services or on MH/SUD services. For additional information regarding examples of documentation the health plan should be prepared to submit as part of its NQTL comparative analyses, please see [The FAQ 45](#) Q4 and the attached Attachment A. *Do not submit duplicate NQTL documents.*

#### **5. Submit Exhibits Q-1, T-1 or U-1: Evidences of Coverage (EOCs)**

Submit as Exhibit Q-1, T-1 or U-1 one representative EOC for each product line (e.g., HMO, EPO, POS, PPO) if the medical/surgical NQTLs and MH/SUD NQTLs are identical for all benefit plan designs within a product line. If the medical/surgical NQTLs and MH/SUD NQTLs are the same for all product lines, then submit just one representative EOC.

In Exhibit E-1, list each EOC submitted and the pertinent page numbers that disclose the NQTLs, and identify the medical/surgical and MH/SUD benefits subject to the NQTL.

#### **6. Submit All Other Supporting Documents**

[The FAQ 45](#) Q4 includes examples of documentation the health plan should be prepared to submit to support the analysis and conclusions of its NQTL comparative analyses. The health plan shall submit the supporting documents as Exhibit J-12. *Do not submit duplicate supporting documents.*