



June 18, 2020

Katie Dzurec

Chair

Mental Health Parity and Addiction Equity Act (B) Working Group

C/O Pennsylvania Department of Insurance

1326 Strawberry Square

Harrisburg, PA 17120

Via Electronic Mail (Jolie Matthews - JMatthews@naic.org)

Re: Mental Health Parity Draft QTL/Financial Template

Dear Chairwoman Dzurec,

The Association for Behavioral Health and Wellness (ABHW) is writing to you today in your capacity as Chair of the Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group (Working Group), of the Regulatory Framework (B) Task Force, of the National Association of Insurance Commissioners (NAIC) to comment on the May 28, 2020, Quantitative Treatment Limitation (QTL)/Financial Requirement Draft Template (Template).

ABHW is the national voice for payers that manage behavioral health insurance benefits. ABHW member companies provide coverage to over 200 million people in both the public and private sectors to treat mental health, substance use disorders, and other behaviors that impact health and wellness.

Background:

For more than two decades, ABHW has supported mental health and addiction

parity. We were an original member of the Coalition for Fairness in Mental Illness Coverage (Fairness Coalition), a coalition developed to win equitable coverage of mental health treatment. ABHW served as the Chair of the Fairness Coalition in the four years prior to passage of MHPAEA. We were closely involved in the writing of the Senate legislation that became MHPAEA, and actively participated in the negotiations of the final bill that became law.

ABHW member companies have worked vigorously to understand and implement MHPAEA. We have had numerous meetings with the regulators to help us better understand the regulatory guidance and to discuss how plans can operationalize the regulations. Our member companies have teams of dozens of people working diligently to implement and provide a mental health and substance use disorder (MH/SUD) parity benefit to their consumers.

General Comments:

ABHW greatly appreciates the NAIC attempting to develop a template to ensure uniformity and consistency in enforcement of the MHPAEA rules governing financial requirements and quantitative treatment limitations (FR/QTLs). Currently, our members are encumbered by a patchwork quilt of different state compliance requirements that have differing interpretations of what parity means. Completing and submitting a multitude of diverse documents is both burdensome and costly.

ABHW seeks clarification on how the Template is intended to be used by regulators. Defining how the Template should be used is imperative because each use has different implications. Once we know the Template purpose, we may have other suggestions for improvements; the level of information necessary is dependent on the use of the Template. An annual reporting requirement, for example, establishes different legal implications than if the Template is used to review and approve forms, or conduct market conduct exams. Furthermore, the ability of regulators to use the Template to meet different reporting or filing requirements may be impacted by existing state laws or regulations that may need to be updated or amended prior to the Template being able to be used by regulators.

We encourage the Working Group to define the specific use for the Template in relation to existing NAIC models so that the legal implications are clearly defined

and consistently applied at a state level. We do not believe the Template should be used for form filings given its complexity and the resources needed to complete it. We recommend that if the Template is used for annual compliance, the NAIC should implement a mechanism that assures that plans receive affirmative approval notification if compliance is met.

Comments on Covered Services Tab:

ABHW seeks clarifications and/or changes to several of the steps outlined in the Template. Our comments are outlined below.

Step 2:

ABHW requests that the Working Group enrich the Template so that it can separate multiple networks for the purposes of analysis. At a minimum, additional guidance is needed on how to complete the analysis manually. The current Template includes very complex formulas that somewhat limit plan flexibility. The draft Template seems to put plans with multiple networks at a disadvantage since they are unable to use it in its current form to determine compliance with QTLs.

Step 3:

The template requires carriers list each and every medical/surgical (M/S) benefit on the schedule of benefits (SOB) and the certificate of coverage (COC) at a granular level and requires carriers identify the page number where the benefit is referenced within the COC and SOB. While most carriers' FR/QTL testing tools pull in recent claim experience for all covered M/S benefits listed on the SOB, the outcome of those testing analyses may group certain services subject to the same type of cost share together. For example, rather than listing speech therapy, physical therapy, and occupational therapy separately, they may group the services under the category, rehabilitative/habilitative services. Similarly, they may group MRI, CT, and PET scans under the category, advanced radiology. Rather than force carriers to list each and every M/S benefit on the SOB at a granular level, we suggest the tool ought to afford flexibility consistent with the "any reasonable method" language afforded under the parity rule governing the quantitative analysis of FRs/QTLs.

Furthermore, requiring the identification of every plans' benefits articulated in each COC and SOB in the list of covered services adds additional administrative burden in

the production of FR/QTL testing that is immaterial to the outcome of the FR/QTL testing. For some insurers, claims data used for FR/QTL testing is produced using generic benefit descriptions (i.e. not COC/SOB specific benefit naming conventions) and many larger insurers have hundreds of different articulations of COC/SOBs filed with various states. However, these nuances do not drive testing outcomes, as the primary drivers of FR/QTL testing would have the same general naming class (e.g. PCP, Specialist).

Network:

We recommend that the Working Group enhance the layout of this spreadsheet. There is an opportunity to improve the “covered services” tab in order to eliminate redundancy by creating in-network and out-of-network columns as opposed to having a different row for each time a service is in-network or out-of-network. Another way to streamline the spreadsheet is to consider pre-populating standard categories (for example under covered services) and then allow for plan customization where necessary.

Classification:

The approach taken in this section is very prescriptive and does not allow for other approaches to parity calculation in this area. The product approval and market conduct exam process should continue to allow for flexibility regarding other reasonable methodologies that may be used.

The template requires carriers to list all covered treatments or services for each and every MH/SUD condition. For example, the form appears to request carriers list occupational therapy rendered for the treatment of autism; occupational therapy rendered for the treatment of ADHD, etc. Because the type and level of FR/QTLs applied to the MH/SUD classifications of benefits is dictated by the predominant type and level of FRs/QTLs applied to at least two-thirds of the M/S benefits, the FR/QTL template should only request data specific to covered M/S benefits by classification. Data relating to covered MH/SUD benefits is irrelevant to the quantitative analysis of the M/S benefits and therefore ought to be excluded from any FR/QTL template.

Step 5:

In regard to the expected claim dollar amount column we request you add actual

claims experience as an option for reporting in this column. Existing plans will be able to use a reasonable method to indicate their actual claims experience as opposed to their expected claim dollar amount. There should also be a recognition that QTL rules permit any reasonable method to be used to determine the dollar amount expected to be paid under a plan for M/S benefits subject to a financial requirement or QTL. [45 CFR 146.136(c)(3)(i)(E)].

Step 7:

The requirement to provide citations in the form of page numbers and sections from both the COC and SOB is unduly burdensome, especially in comparison to its utility. Step 7 does not help identify whether or not a plan is parity compliant and ABHW members are unaware of any similar form filing requirement. The Working Group should consider the fact that this step will need to be done manually for each standard health plan design/product administered by the carrier and many plans have multiple product offerings in each state. We recommend Step 7 be removed from the Template. If it remains, it should only have to be done for the largest (based on number of members or projected number of members) plan/product the health plan has in the state and the intended purpose of the template should support why such in-depth information is required.

Step 8:

Listing non-quantitative treatment limitations (NQTLs) seems out of place in a QTL Template. We suggest removing Step 8 and using a separate template for NQTLs. QTLs and NQTLs are treated separately in the final rule issued by the federal regulators and the analysis should remain separate for these areas.

Closing Comments:

Before adopting this template, we suggest the Working Group consider other templates such as the one approved by the Market Conduct Examination Standards (D) Working Group, the URAC mental health and substance use disorder [parity program](#), or other state templates.

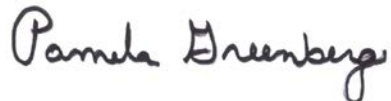
For whatever template is adopted, the NAIC should allow the industry reasonable accommodations to ensure that there is enough time to implement systems and process changes to conform to the imposed requirements. If changes to regulations or

the market conduct examination handbook are required, the NAIC should establish new requirements through appropriate notice and comments processes, including the promulgation of any model laws or regulations that may be necessary to facilitate such changes. Requirements should be applied prospectively in accordance with established precedent.

Furthermore, the template's utility will ultimately be defined in relation to the proportional burden it places on issuers and regulators who are directed to use the template. We strongly encourage the NAIC to determine whether the chosen template provides utility that is proportional in relation to the burden it imposes on plans and regulators.

Thank you for the opportunity to comment on the Working Group's QTL/Financial Template. If you would like to discuss our letter I can be reached at greenberg@abhw.org or (202) 449-7660.

Sincerely,

A handwritten signature in black ink that reads "Pamela Greenberg". The signature is written in a cursive, flowing style.

Pamela Greenberg, MPP
President and CEO