

## **Self-Compliance Tool** **for Office of Management and Budget**

The Self-compliance Tool adds additional detail to the Model Form and the FAQs regarding the steps and analyses required in assessing each NQTL, and what is required by plans for disclosure to providers and consumers. SECTION F on NQTLs elucidates how NQTLs can be applied in a numerical way and the standards can rely on numerical standards:

“While NQTLs are generally defined as treatment limitations that are not expressed numerically, the **application of an NQTL in a numerical way does not modify its nonquantitative character.**” (emphasis supplied).

“For example, standards for provider admission to participate in a network are NQTLs because such standards are treatment limitations that typically are not expressed numerically. See 29 CFR 2590.712 (c)(4)(ii), 45 CFR 146.136(c)(4)(ii). **Nevertheless, these standards sometimes rely on numerical standards, for example, numerical reimbursement rates.** In this case, the numerical expression of reimbursement rates does not modify the nonquantitative character of the provider admission standards; accordingly, standards for provider admission, including associated reimbursement rates to which a participating provider must agree, are to be evaluated in accordance with the rules for NQTLs.” (Page 13, emphasis supplied).

The Compliance Tips on Page 17 highlight what analyses are required for compliance:

- “Look for compliance as written **AND IN OPERATION.**
- Determine whether there are exception processes available and when they may be applied.
- **Determine how much discretion is allowed in applying the NQTL and whether such discretion is afforded comparably for processing MH/SUD benefit claims and medical/surgical benefits claims.**
- Determine who makes denial determinations and if the decision-makers have comparable expertise with respect to MH/SUD and medical/surgical benefits.
- **Determine average denial rates and appeal overturn rates for concurrent review and assess the parity between these rates for MH/SUD benefits and medical/surgical benefits.**
- Document your analysis, as a best practice.” (Page 17, emphasis supplied).

“NOTE: While outcomes are NOT determinative of compliance, **rates of denials may be reviewed as a warning sign, or indicator of a potential operational parity noncompliance.** For example, if a plan has a **34% denial rate** on concurrent reviews of psychiatric hospital stays in a 12 month period and a **5% denial rate** on concurrent review for medical hospital stays in

that same 12 month period, the concurrent review process for both psychiatric and medical hospital stays should be carefully examined to ensure that the concurrent review standard is not being applied more stringently to MH/SUD benefits than to medical/surgical benefits in operation.” (Page 17, emphasis supplied).

The Self-compliance Tool and the FAQs provide specific examples as to what analyses are required. Here is one example from Page 19 of the Self-compliance Tool:

“A patient with chronic depression has not responded to five different anti-depressant medications and therefore, was referred for outpatient treatment with repetitive transcranial magnetic stimulation (rTMS). This specific treatment has been approved by the FDA and has been the subject of more than six randomized controlled trials published in peer reviewed journals. The plan denies the treatment as experimental. The plan states that it used the same criteria to deny the rTMS as it does to approve or deny any MH/SUD or medical/surgical benefits under the plan. The plan identifies its standard for both medical/surgical benefits and MH/SUD benefits as requiring that at least two randomized controlled trials showing efficacy of a treatment be published in peer reviewed journals for any new treatment for either medical or behavioral conditions to be covered by the plan.

However, the plan indicates that while more than two randomized controlled trials regarding rTMS have been published in peer reviewed journals, a committee of medical experts involved in plan utilization management reviews reviewed the journals and determined that only one of the articles provided sufficient evidence of efficacy. The plan did not identify what specific standards were used to assess whether a peer review had adequately evidenced efficacy and what the qualifications of the plan’s experts are. Lastly, the plan does not impose this additional level of scrutiny with respect to reviewing medical/surgical treatments beyond the initial requirement that the treatment has been the subject of the requisite number and type of trials.

**Conclusion:** The plan’s exclusion fails to comply with MHPAEA’s NQTL requirements because, in practice, the plan applies an additional level of scrutiny with respect to MH/SUD benefits and therefore the NQTL more stringently to mental health benefits than to medical/surgical benefits without additional justification.” (Page 19, emphasis supplied).

This example along with others in the Self-compliance Tool and the FAQs highlight that, in developing the NQTL of experimental or investigative, the plan is not compliant as it adds a more stringent standard for MH/SUD than what is required for medical/surgical. Further, the example demonstrates that a plan must audit the approvals and denials of both medical/surgical and MH/SUD to establish whether or not the standards are being applied, operationally, in a compliant manner.

The Self-compliance Tool specifically sets forth that plans should be prepared to provide the following information for NQTL compliance analyses:

- “All appropriate documentation including any guidelines or other standards that the plan or issuer relied upon as the basis for its compliance with the requirement that any NQTL applicable to MH/SUD benefits was comparable to and applied no more stringently than the NQTL as applied to medical/surgical benefits.

This should include details as to how the standards were applied, and any internal testing, review or analysis done by the plan or issuer to support the rationale that the NQTL is being applied comparably and no more stringently to MH/SUD benefits and medical/surgical benefits.

If the standards that are applied to MH/SUD are more stringent than those in nationally recognized medical guidelines, but the standards that are applied to medical/surgical benefits are not, an explanation of the reason for the application of the more stringent standard for MH/SUD benefits.

**For the period of coverage under review, plans and issuers should be prepared to provide a record of all claims (MH/SUD and medical/surgical) submitted and the number of those denied within each classification of benefits.** (Page 20, emphasis supplied).