



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

Insurance Circular Letter No. 4 (2016)  
July 27, 2016

**TO: All Insurers Authorized to Write Accident and Health Insurance in New York State, Article 43 Corporations, Health Maintenance Organizations, Student Health Plans Certified Pursuant to Insurance Law § 1124, and Municipal Cooperative Health Benefit Plans (collectively, “issuers”)**

**RE: United States Department of Labor and United States Department of Health and Human Services Compliance Guidance “Warning Signs - Plan or Policy Non-Quantitative Treatment Limitations (NQTLs) that Require Additional Analysis to Determine Mental Health Parity Compliance”**

**STATUTORY AND REGULATORY REFERENCES: 42 U.S.C. § 300gg-1, et seq.; 42 U.S.C. § 18001, et seq.; 29 U.S.C. § 1185a; 45 C.F.R. Parts 146 and 147; and N.Y. Ins. Law §§ 3103, 3201, 3221, 4303, and 4308**

The purpose of this circular letter is to inform insurers authorized to write accident and health insurance in New York State, Article 43 corporations, health maintenance organizations, student health plans certified pursuant to Insurance Law § 1124, and municipal cooperative health benefit plans (collectively, “issuers”) of recent guidelines for mental health treatment.

Issuers are reminded of DFS Circular Letter Number 1 (2016), which informed health insurance issuers of their obligations to cover mental health and substance use disorder (“MH/SUD”) services in accordance with federal and state law. Recently, the United States Department of Labor (“DOL”) and the United States Department of Health and Human Services (“HHS”) issued guidance<sup>1</sup> that provides examples of non-quantitative treatment limitations (“NQTLs”) for MH/SUD benefits that may violate the federal Mental Health Parity and Addiction Equity Act (“MHPAEA”) codified in 29 U.S.C. § 1185a. MHPAEA prohibits issuers whose policies or contracts provide medical and surgical benefits and MH/SUD benefits from applying financial requirements, quantitative treatment limitations (“QTLs”), and NQTLs to MH/SUD benefits that are more restrictive than the predominant financial requirements or treatment limitations that are applied to substantially all medical and surgical benefits covered by the plan.

---

<sup>1</sup> The DOL/HHS guidance is available on the DOL website at <https://www.dol.gov/ebsa/pdf/warning-signs-plan-or-policy-nqtl-that-require-additional-analysis-to-determine-mhpaea-compliance.pdf> and on the HHS website at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/MHAPeAChecklistWarningSigns.pdf>.

The Department advises issuers that they may not impose a NQTL on MH/SUD benefits unless the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefits in a classification (inpatient in-network, inpatient out-of-network, outpatient in-network, outpatient out-of-network, prescription drugs and emergency care) are applied no more stringently than those used in applying the limitation with respect to medical and surgical benefits in the same classification.<sup>2</sup>

Furthermore, according to the DOL/HHS guidance, absent similar restrictions on the medical and surgical benefits, the following policy or contract provisions may serve as a warning that an issuer may be imposing an impermissible NQTL. DOL/HHS has recommended that state regulators further review the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to both MH/SUD and medical and surgical benefits to determine parity compliance:

- preauthorization and pre-service notice requirements;
- fail-first protocols;
- probability of improvement requirements;
- written treatment plan requirement; and
- other requirements, such as patient non-compliance rules, residential treatment limits, geographical limitations, and licensure requirements.

Accordingly, issuers are advised that the Department of Financial Services will be reviewing issuers' NQTLs and QTLs to ensure that issuers fully comply with MHPAEA and will take necessary action in the event of any non-compliance.

Please direct any questions regarding this circular letter to Thomas Fusco, Supervising Insurance Attorney, Health Bureau, New York State Department of Financial Services, Walter J. Mahoney Office Building, 65 Court Street, Room 7, Buffalo, New York 14202 or by e-mail at [Thomas.Fusco@dfs.ny.gov](mailto:Thomas.Fusco@dfs.ny.gov).

Very truly yours,

Lisette Johnson  
Bureau Chief, Health Bureau

---

<sup>2</sup> QTLs are treatment limitations that are numerical in nature and include annual or lifetime day and visit limits. NQTLs are limits on the scope and duration of treatment that are not numerical in nature. NQTLs include medical management standards, medical necessity determinations, experimental or investigative treatment determinations, formulary designs for prescription drugs, network tier design for multiple tier networks, standards for provider admission to participate in a network, provider reimbursement rates, step-therapy programs, and restrictions based on geographic location, facility type, and provider specialty.