

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



May 24, 2024

Acton-Boxborough Regional School District – Massachusetts

Marie Altieri, Deputy Superintendent
maltieri@abschools.org

Lena Jarostchuck, Benefits Administrator
ljarostchuk@abschools.org

Re: Final Determination Letter – Mental Health Parity and Addiction Equity Act (MHPAEA)
Non-Quantitative Treatment Limitation (NQTL) Comparative Analysis Review –
Prescription drug exclusions of specific treatments for certain conditions.

Dear Ms. Marie Altieri and Ms. Lena Jarostchuck,

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 compliance of the Harvard Pilgrim Best Buy Plan sponsored by the Acton-Boxborough Regional School District (Plan) 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 prescription drug exclusions of specific treatments for certain conditions for the 2022 plan year (hereinafter referred to as “the NQTL”).

The Centers for Medicare and 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 July 28, 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

¹ Pub. L. 116-260 (Dec. 27, 2020).

demonstrate compliance with MHPAEA and its implementing regulations. In CMS' initial determination letter, we identified the following instances of non-compliance with PHS Act § 2726 and its implementing regulations at 45 C.F.R. § 146.136, all of which have been addressed by the Plan's corrective actions and revised comparative analysis.

I. Separate Treatment Limitation Applicable Only to Mental Health and Substance Use Disorder (MH/SUD) Benefits, in Violation of PHS Act § 2726(a)(3)(A)(ii).

- 1. The Plan excluded methadone maintenance treatment for opioid use disorder (OUD), a generally accepted standard of clinical practice for a SUD condition, but did not apply a comparable exclusion to prescription drugs for medical/surgical (M/S) conditions.**

The Plan excluded outpatient methadone maintenance treatment for OUD, even though methadone maintenance treatment for OUD is a generally accepted standard of clinical practice. The Plan did not have exclusions for any M/S prescription drugs that are generally accepted standards of clinical practice (Acton_Boxborough_PY22_Initial Determination_Prescription Drugs Exclusions_Final_072823, pg. 2). The Plan provided a narrative in its CAP response that stated on January 1, 2023, it began covering methadone maintenance treatment for OUD and removed exclusions of coverage for methadone maintenance treatment for OUD (ABRSD Response to CMS Initial Determination, pg. 2). The Plan provided its updated plan benefit documents which confirmed that methadone maintenance treatment is no longer excluded (Ex. B.1 - 2023 Schedule of Benefits Best Buy HSA HMO, pg. 5 and Ex. B.2 – 2023 Schedule of Benefits Best Buy HMO 250, pg. 5). The Plan reviewed claims and authorization requests to determine if members were denied coverage as a result of this exclusion. The Plan found no denied claims or authorization requests for this drug (Ex. C - Acton Claims Declaration_8.29.23, pg. 2). CMS agrees that the Plan's corrective action addressed the concern regarding this issue.

II. Failure to Demonstrate Comparability and Relative Stringency in Operation, in Violation of 45 C.F.R. § 146.136(c)(4)(i).

- 1. The “Safety, e.g., Adverse effects of drugs; Contraindications; and Drug interactions” factor applied by the Plan to exclude coverage was not comparable for MH/SUD prescription drugs compared to M/S prescription drugs.**

The Plan excluded the MH/SUD prescription drug Spravato for individuals with substance use disorders, using the “Safety, e.g., Adverse effects of drugs; Contraindications; and Drug interactions” sections of the package label as the factor. The Plan did not apply a comparable factor to exclude coverage for M/S prescription drugs (Acton_Boxborough_PY22_Initial Determination_Prescription Drugs Exclusions_Final_072823, pgs. 3-4). The Plan provided a narrative in its CAP response that stated on January 1, 2023, it removed the exclusion of coverage for Spravato for individuals with substance use disorders (ABRSD Response to CMS Initial Determination, pgs. 2-3). The Plan provided updated criteria documents for this drug that detailed the coverage criteria for Spravato and confirmed that the exclusion of coverage is no longer applied to individuals with substance use disorders (Ex. D.1 - Spravato MNG COM QHP_1.1.23, pgs. 2-4). The Plan provided updated medical necessity guidelines for individuals

with substance use disorders that are consistent with the drug’s package label (Ex. D.2 - Spravato MNG COM QHP_7.1.23, pgs. 1-6 and ABRSD Response to CMS Initial Determination, pg. 3). The Plan reviewed claims and authorization requests to determine if members were denied coverage as a result of this exclusion. The Plan found no claims or authorization requests for this drug that were denied because a member had a substance use disorder (Ex. C - Acton Claims Declaration_8.29.23, pg. 2). CMS agrees that the Plan’s corrective action addressed the concern regarding this issue.

III. Failure 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 for the sources or evidence used to develop the factors identified in the design and application of the NQTL, as written and in operation.

The Plan failed to provide sufficient documentation of the current, up-to-date policies and procedures used by the Harvard Pilgrim Health Care (HPHC) Pharmacy & Therapeutics Committee, which advises on matters related to clinical management of MH/SUD drugs and M/S drugs (Acton_Boxborough_PY22_Initial Determination_Prescription Drugs Exclusions_Final_072823, pgs. 4-5). The Plan’s initial and supplemental submissions referenced the “Mental Health Parity Compliance Checklist,” which it stated is used in the design and application of the NQTL (Ex. A1 and A2, pgs. 4, 9 and Exhibit A, pgs. 14, 19). The Plan provided a narrative in its CAP response that stated it removed reference to the “Mental Health Parity Compliance Checklist” from its HPHC Pharmacy & Therapeutics Committee Charter on September 1, 2022 (ABRSD Response to CMS Initial Determination, pgs. 2-3). The Plan stated it has never used a Mental Health Parity Checklist to determine drug exclusions of specific treatments for certain conditions (ABRSD Response to CMS Initial Determination, pg. 2). The Plan provided updated HPHC Pharmacy & Therapeutics Committee Charters for 2022 and 2023, “Ex. E - HPHC_PT Committee PP and Charter 2022” and “Ex. A.4 - 2023 Point32Health PT Policies and Procedures,” which confirm the removal of the Mental Health Parity Compliance Checklist. CMS agrees that the Plan’s corrective action addressed the concern regarding this issue.

IV. Next Steps

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. If additional information is provided to CMS regarding this NQTL or Plan, CMS reserves the right to conduct an additional review for compliance with MHPAEA or other applicable PHS Act requirements.²

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, including other plans or

² See PHS Act § 2726(a)(8)(B)(i). See also 45 C.F.R. § 150.303.

coverage for which the Plan acts as an Administrator. 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).

Sincerely,

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