

June 18, 2020

FILED ELECTRONICALLY

Ms. Katie Dzurec  
Chair  
Mental Health Parity and Addiction Equity Act (B) Working Group  
c/o Pennsylvania Insurance Department  
1326 Strawberry Square  
Harrisburg, Pennsylvania 17120

RE: Draft QTL Template and Instructions – Industry Comments

Dear Ms. Dzurec:

The undersigned companies, who jointly provide health insurance benefits to more than 280 million members globally, thank you for the opportunity to provide comments on the QTL template exposed for comment in early June. We have some comments generally about the use of a template in the first instance, and additional more specific comments and suggestions about this particular template.

#### General Comments

As a preliminary comment, we agree with the working group that having a uniform template, that will be used and interpreted uniformly by the states, would be beneficial. The current medley of state requirements is less efficient, both for regulators and for industry filers, than having a uniform FR/QTL document for the health industry to complete, and regulators to analyze. We encourage the working group to lead in the development of a uniformly understood and implemented template and look forward to working with you in its development.

However, with respect to this template, we note a troubling lack of clarity of purpose about how it will be used. As noted on the last working group conference call, this template is being proposed for adoption for whatever use states decide. This is unworkable. It is critical that there be a generally accepted understanding between states, and between regulators and industry, about how this template will be used and why it is being proposed. During working group calls it has been suggested that the proposed template could be used as a means of FR/QTL data collection; it could be a market conduct tool; it could be used as a market analysis tool; and it could also be used to review and approve forms. But it cannot, nor should it be, used for all four. Each of these potential purposes will generate a different analysis of the template, different filing requirements upon carriers and different legal and practical results from the template's review.

We recommend that this template *not* be used for initial form filings. As noted below, the template, while beneficial, is quite onerous to develop and to analyze. There is a concern that this would negatively impact a company's ability to get forms filed timely, and regulators' ability to get forms approved, which could have dire impacts on the small group and individual markets. We also suggest its complexity might prevent new entrants into markets, which would not serve consumers well.

In addition, it is critically important that the working group undertake a substantive cost benefit analysis before adopting any template in order to make an informed decision about the use, cost and administrative burden of completing the template as opposed to its ultimate utility and other alternatives. This can only be done if there is a clear understanding of why the data is being collected and how the template will be used.

### Specific Comments

As noted above, we agree that a uniform FR/QTL template may be helpful, and we welcome the opportunity to help craft one with this working group. Once the template's ultimate use has been determined industry users will be able to provide additional and more pointed suggestions. However, without that clarity, it is unclear both how the document will be used and whether each of the data points it requires are necessary. We will provide those additional specific comments when there is a better understanding of the template's purpose, use and potential impact on carriers.

We also note that while the federal parity regulations prohibit a plan from applying a type or level of cost share to MH/SUD benefits within a classification that is more restrictive than the predominant type and level of cost share applied to substantially all (at least two-thirds) of the M/S benefits within the corresponding classifications of benefits [45 CFR 146.136(c)(2)(i)], that applicable federal regulations provide that carriers may use *any* reasonable method to determine the dollar amount expected to be paid under a plan for M/S benefits subject to a QTL. [45 CFR 146.136(c)(3)(i)(E)]. Rather than force carriers into a specific analysis, a template should request an explanation of each plan's methodology.

#### **A. COC/SOB Cross References are Unnecessary**

The following are broad points we can make about the template regardless of its ultimate use. As a first point, we suggest that the cross references to the Certificates of Coverage (COC) and Schedule of Benefits (SOB) are unduly burdensome and ultimately unnecessary for any use as they require the manual population of this information for each standard health plan design/product administered by the carrier. If required as part of the form filing process – which we do not encourage - this will slow – if not entirely stop – the form filing process for many carriers and for many states. This is particularly concerning in the small group and individual markets with their firm filing deadlines, as it will be nearly impossible to create these cross references for an entire slate of products in a manner that will allow carriers to meet those deadlines. State form reviewers already complete their own internal checklists and read the forms thoroughly as part of the approval process.

Even if the template is used on the back end for market conduct analysis purposes, carriers should not be required to manually provide cross references to the COC and SOB. The stated utility of the template is to identify the predominant type and level of FR/QTLs applied to the medical/surgical (M/S) classifications of benefits to assess whether the type and level of FR/QTLs applied to a plan's mental health/substance use disorder (MH/SUD) classifications of benefits comply with parity.

The cross-reference requirement is not only unreasonably burdensome, but in fact demands a level of detail that is unnecessary. The template requires that carriers list each and every M/S benefit on the SOB at a granular level. While it is likely true that 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 that are subject to the same type of cost share together. For example, they may group the projected plan payments for all rehabilitative/habilitative services rendered for the treatment

of M/S conditions as opposed to reporting the projected plan payments separately for speech therapy, physical therapy and occupational therapy rendered for the treatment of M/S conditions. Similarly, carriers may group the projected plan payments for advanced radiology as opposed to reporting the projected plan payments separately for MRI/CT/PET scans, etc. 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 of the rule.

We urge the working group to eliminate the cross-reference requirements, which, ultimately, are unnecessary for a quantitative parity analysis of the M/S FR/QTLs. If regulators wish carriers to provide this information, then there needs to be sufficient time for all carriers nationwide to revamp and reprogram their systems to automate what currently will be a labor-intensive, manual process that will be tremendously costly and time-consuming, and provides no consumer benefit. We suggest that it would take three or more years for all carriers to fully understand what is expected and to make the necessary changes to COC and SOB language and create internal systems to fully operationalize those expectations. Given the discussion above, ultimately it is unnecessary to require such a significant and costly change.

#### **B. Quantitative Analysis of M/S FR/QTLs**

Because the quantitative testing of the cost shares and FR/QTLs applied to M/S benefits within each classification of benefits dictates the type and level of cost shares and FR/QTL that may be applied to the corresponding MH/SUD classification of benefits, there is no utility or purpose for the template to include references to the covered MH/SUD benefits. We also note that the template requires carriers to list all covered treatments or services for each and every MH/SUD diagnosis. For example, rather than listing “mental health habilitative services”, the form appears to request carriers list occupational therapy rendered for the treatment of autism; occupational therapy rendered for the treatment of ADHD, etc. Again, because the type and level of FR/QTLs applied to the MH/SUD classifications of benefits is dictated by the type and level of QTLs applied to at least two-thirds of the M/S benefits, there is no meaningful purpose in including covered MH/SUD benefits in the template, and certainly not by each and every diagnosis for which a MH/SUD treatment may be rendered.

#### **C. NQTL Inclusion**

Column H of the proposed FR/QTL template requires carriers to identify all NQTLs to which each covered benefit is subject. There are many different types of NQTLs, such as prior authorization requirements, development and application of medical necessity criteria, methodology for determining in-network and out-of-network provider reimbursements, etc. Moreover, there are different parity rules governing NQTLs and FR/QTLs. State regulators generally review them separately, with different templates and information for each. We agree that this approach is the correct one, and urge the working group to delete the NQTL requirement in the proposed QTL template.

#### **Conclusion**

For the reasons above, we urge the working group to articulate clearly the purpose of the FR/QTL template and to consider alternatives that do not include overly burdensome cross-referencing as well as the other suggestions outlined above.

Thank you for the opportunity to provide comments. Please let us know if you have any comments or questions. We look forward to further discussions of the proposed FR/QTL template.

Sincerely,

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