

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 10 HEALTH INSURANCE— GENERAL

31.10.51 Mental Health Benefits and Substance Use Disorder Benefits—Reports on Nonquantitative Treatment Limitations and Data

Authority: Insurance Article, §§2-109(a)(1) and 15-144, Annotated Code of Maryland

Notice of Proposed Action [25-018-P]

The Acting Insurance Commissioner proposes to amend Regulations .03 and .04 repeal existing Regulation .05, amend and recodify existing Regulations .06 and .07 to be Regulation .05 and .06, and recodify existing Regulation .08 to be Regulation .07 under **COMAR 31.10.51 Mental Health Benefits and Substance Use Disorder Benefits—Reports on Nonquantitative Treatment Limitations and Data Notices of Cancellation, Nonrenewal, Premium Increase, and Reduction in Coverage.**

Statement of Purpose

The purpose of this action is to amend COMAR 31.10.51 Mental Health Benefits and Substance Use Disorder Benefits—Reports on Nonquantitative Treatment Limitations and Data to conform to recent changes to corresponding federal regulations under 45 C.F.R. §146.136, and to implement amendments made to Insurance Article, §15-144, Annotated Code of Maryland during the 2024 General Assembly legislative session. Chapter 234 (H.B. 1074) modified the nonquantitative treatment limitation reporting requirements, necessitating certain revisions to the uniform definitions and methodologies for the reporting requirements currently described in COMAR 31.10.51.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Jessica Blackmon, Administrative Law Clerk, Maryland Insurance Administration, 200 Saint Paul Place, Suite 2700, Baltimore, MD 21202, or call 4104682019, or email to insuranceregview.mia@maryland.gov. Comments will be accepted through June 2, 2025. A public hearing has not been scheduled.

.03 Definitions.

- A. (text unchanged)
- B. Terms Defined.

- (1) “Analysis report” means the report required by Insurance Article, [§15-144], §15-144(c)(2), Annotated Code of Maryland.
- (2) (text unchanged)

[(3) “Data report” means the report required by Insurance Article, §15-144(f), Annotated Code of Maryland.]

[(4)] (3) “Evidentiary standards” [means the carrier’s defined level and type of evidence necessary to evaluate whether a given factor is established, present, or utilized, which results in the determination to apply or not apply a NQTL to which that factor relates] *has the meaning stated in 45 C.F.R. §146.136(a).*

[(5)] (4) “Factor” [means a circumstance, condition, fact, standard, criterion, influence, or any other consideration that contributes to the development, design, or implementation of a NQTL] *has the meaning stated in 45 C.F.R. §146.136(a).*

[(6)] (5)—[(13)] (12) (text unchanged)

[(14)] (13) “Process” [means a series of actions or steps taken during the development, design, or implementation/application of a NQTL] *has the meaning stated in 45 C.F.R. §146.136(a).*

(14) “Product” *has the meaning stated in Insurance Article, §15-1309(a)(3), Annotated Code of Maryland.*

(15)—(16) (text unchanged)

(17) “Strategy” *has the meaning stated in 45 C.F.R. §146.136(a).*

[(17)] (18)—[(18)] (19) (text unchanged)

.04 Filing of Nonquantitative Treatment Limitation Comparative Analysis Report.

A. For [the five health benefit plans with the highest enrollment for] each product offered by the carrier in the individual, small, and large group markets, a carrier that delivers or issues for delivery a health benefit plan in the State shall file a comparative analysis for each nonquantitative treatment limitation [specified] *selected by the Commissioner in accordance with Insurance Article, §15-144 (c)(5), Annotated Code of Maryland,* in the form required by the Commissioner, to demonstrate the carrier’s compliance with *the Parity Act, in accordance with Insurance Article, §15-144(c)—(e), and (g), Annotated Code of Maryland.* An analysis report shall be filed with the Commissioner using only the form developed by the Commissioner and posted on the Administration’s website.

B. *If, for any plan within a product described in §A of this regulation, the processes, strategies, evidentiary standards, or other factors used in designing and applying the selected NQTLs to MH/SUD benefits and M/S benefits are different, as written or in operation, from the other plans within the product, the carrier shall submit a separate comparative analysis for the selected NQTLs for the plan, and the statement required by Insurance Article, §15-144(c)(3)(iii) shall note the exception and identify the plan.*

C. *A carrier shall submit the data templates described in Insurance Article, §15-144(f), Annotated Code of Maryland, in the form required by the Commissioner.*

D. *The analysis reports described in §A—C of this regulation shall be submitted on or before July 1, 2024, and every 2 years thereafter.*

[B.] E. — [D.] G. (text unchanged)

[E.] H. Each analysis report shall contain [a statement, signed by a corporate officer, attesting to the accuracy of the information contained in the analysis report] *the statements required by Insurance Article, §15-144(c)(3)(iii) and (g)(4), Annotated Code of Maryland.*

[F.] I. Failure to file a complete analysis report shall [result in penalties described in] *constitute noncompliance with the Parity Act and the Commissioner will have authority to act in accordance with the provisions of Insurance Article, §15-144 (j), Annotated Code of Maryland.*

[G.] J. Complete Analysis Report.

(1) The analysis required by Insurance Article, §15-144(d), Annotated Code of Maryland, shall have been performed for [processes] NQTLs in place during the calendar year preceding the analysis report.

(2)—(3) (text unchanged)

(4) The analysis reports shall include the following information to be considered complete:

(a) All of the information identified in Insurance Article, [§15-144(e)], §15-144(d)-(f), Annotated Code of Maryland, in the manner and format specified in the standard reporting form and associated instructions provided on the Administration's website;

(b) A response to each step listed in the reporting form, for each NQTL *selected in accordance with Insurance Article, §15-144(c)(5), Annotated Code of Maryland* in each classification and sub-classification, as applicable. If a particular item in a step is not applicable (for example, if none of the factors used to determine that the NQTL will apply to a benefit was given more weight than another), an explanation shall be provided as to why the item is not applicable;

(c) A statement as to whether there is any variation in the *design or* application of a guideline or standard used by the carrier between MH/SUD and medical/surgical benefits, and, if so, a description of the factors and process used for establishing that variation. Specific definitions of factors, processes, or criteria used to establish or support any variation is required. Any practice guidelines that may be associated with the NQTL shall also be provided;

(d) If the *design or* application of the NQTL turns on specific decisions in the administration of the benefits, identification of the basis of the decisions, the decision maker or makers, the timing of the decisions, and the qualifications of the decision maker or makers, including expertise and specialty;

(e)—(g) (text unchanged)

(h) Documentation of audits, reviews, and analyses to check sample claims or other administrative data to assess how each NQTL operates in practice, and whether written processes are correctly carried out, including the results of the audits and reviews performed on the NQTLs [identified] *selected in accordance with* Insurance Article, [§15-144(c)(2)(ii)] §15-144(c)(5), Annotated Code of Maryland, to conduct the comparative analysis required under

Insurance Article, §15-144 (d)(2), Annotated Code of Maryland, as written, and in operation;

(i) Citations to any documents, studies, testing, claims data, or reports that include factors, sources, evidentiary standards, or other evidence relied upon in developing *or applying* the NQTL (for example, meeting minutes or reports showing how those considerations were applied), with copies of those items available on request; and

(j) (text unchanged)

[.06] .05 Summary Form.

A. (text unchanged)

B. The summary form shall be made available to plan members and accessible to the public on the carrier's website no later than [April 1, 2022 and April 1, 2024] *30 days following the due date of each analysis report*. The carrier shall make the summary form available to plan members in response to a written request within 30 days of the request.

C.—D. (text unchanged)

[.07] .06 Compliance Plan.

A. If, as a result of the review of the reports described in [Regulations .02 and .03] *Regulation .04* of this chapter, the Commissioner finds that a carrier subject to Insurance Article, §15-144, Annotated Code of Maryland, failed to comply with provisions of the Parity Act, the Commissioner shall notify the carrier and require the carrier to submit a compliance plan pursuant to Insurance Article, §15-144(i), Annotated Code of Maryland, to correct the noncompliance. The notice shall be in writing, but may be transmitted electronically.

B.—C. (text unchanged)

MARIE GRANT
Acting Insurance Commissioner