

**NEW YORK STATE DEPARTMENT OF HEALTH**  
**DIVISION OF HEALTH PLAN CONTRACTING AND OVERSIGHT**  
**ARTICLES 44 AND 49 STATEMENT OF DEFICIENCIES**

<b>NAME OF MANAGED CARE ORGANIZATION</b> Affinity Health Plan, Inc.	<b>TYPE OF SURVEY:</b> Focus Survey: Mental Health Parity and Addiction Equity Act Testing of Phase III Workbooks
<b>STREET ADDRESS, CITY, STATE, ZIP CODE</b> 1776 Eastchester Road Bronx, NY 10461	<b>SURVEY DATES:</b> March 11, 2020 - November 30, 2020  Survey ID #: 1629314864

**NOTE:** The following list of deficiencies was identified by Health Department representatives during an Article 44 and/or Article 49 operational or focused survey of your Managed Care Organization (MCO). Correction of these deficiencies is required in order to bring your MCO into compliance with Article 44 and/or 49 of the New York State Public Health Law and the New York State Official Compilation of Codes, Rules, and Regulations (10NYCRR). In the column headed Provider Plan of Correction, describe the Plan of Corrective Action and anticipated date of corrections. The Plan of Correction should be returned within 15 business days.

<b>Deficiencies</b>	<b>Plan of Correction with Timetable</b>
<p><b>10 CRR-NY 98-1.16 Disclosure and filing</b></p> <p><b>(h) In the event an MCO does not provide substantially complete reports or other information required under this Subpart by the due date, or provide requested information within 30 days of any written request for a specific analysis or report by the superintendent or commissioner, the superintendent or commissioner is authorized to levy a civil penalty, after notice and hearing, pursuant to section 12 of the Public Health Law or sections 307 and 308 of the Insurance Law.</b></p> <p><b>Deficiency:</b></p> <p>Based on the review of Affinity Health Plan, Inc.'s Phase III nonquantitative treatment limitation (NQTL) workbook submissions, the MCO failed to follow parity reporting requirements and demonstrate compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), P.L. 110-343M for 5 of 10 NQTLs examined, including retrospective review, outlier review, experimental/investigational determinations, fail first, and failure to complete.</p> <ul style="list-style-type: none"> <li>Specifically, Affinity Health Plan, Inc. failed to provide all required information and substantive comparative analyses in Steps 1 through 5 for retrospective review, outlier review, fail first, and failure to complete in the prescription drug benefit classification. The MCO also failed to provide a substantive comparative analysis in Step 5, in-operation comparability and equivalent stringency,</li> </ul>	<p>Affinity Health Plan (AHP) was acquired by Molina Healthcare of New York, Inc. (MNY) in an asset purchase effective 11/1/2021 therefore MNY takes full ownership of the findings, citations, and remediation efforts. MNY is in the process of terminating the AHP legacy contract with Beacon effective 12/31/2021. In working through the de-implementation process the noted deficiencies for Affinity will be covered by MNY's plan of correction which was submitted to the Department on 11/17/2021 and is outlined below, inclusive of responsible parties and date certain.</p> <p><b>Phase III</b></p> <ul style="list-style-type: none"> <li>- <b>Review of the Noncompliance</b> <ul style="list-style-type: none"> <li>Molina Health of New York, Inc. (MNY) is committed to maintaining an updated Phase III workbook with required information and substantive comparative analyses demonstrating compliance with the MHPAEA.</li> <li>MNY reviewed the report card and citations provided on October 26, 2021. After further review of our initial submission (August 21, 2020), MNY concluded that the NQTL workbook analysis provided for Phase III was completed incorrectly, reflecting that MNY is noncompliant, which may not necessarily be accurate.</li> </ul> </li> <li>- <b>Methods to Revise and Remediate</b> <ul style="list-style-type: none"> <li>Because the Health Plan's parity status was not documented accurately in our</li> </ul> </li> </ul>

MCO Representative's Signature 	Date 11/19/2021
Title Compliance Officer	

for retrospective review and experimental/investigational determinations in the inpatient and outpatient benefit classifications. Due to these findings, the State is not able to assess whether the MCO complies with MHPAEA for the above-referenced NQTLs.

**PHL § 4406 Health maintenance organizations; regulation of contracts**

**1. The contract between a health maintenance organization and an enrollee shall be subject to regulation by the superintendent as if it were a health insurance subscriber contract, and shall include, but not be limited to, all mandated benefits required by article forty-three of the insurance law. Such contract shall fully and clearly state the benefits and limitations therein provided or imposed, so as to facilitate understanding and comparisons, and to exclude provisions which may be misleading or unreasonably confusing. Such contract shall be issued to any individual and dependents of such individual and any group of one hundred or fewer employees or members, exclusive of spouses and dependents, or to any employee or member of the group, including dependents, applying for such contract at any time throughout the year. An individual direct payment contract shall be issued only in accordance with section four thousand three hundred twenty-eight of the insurance law. The superintendent may, after giving consideration to the public interest, exempt a health maintenance organization from the requirements of this section provided that another health insurer or health maintenance organization within the health maintenance organization's same holding company system, as defined in article fifteen of the insurance law, including a health maintenance organization operated as a line of business of a health service corporation licensed under article forty-three of the insurance law, offers coverage that, at a minimum, complies with this section and provides all of the consumer protections required to be provided by a health maintenance organization pursuant to this chapter and regulations, including those consumer protections contained in sections four thousand four hundred three and four thousand four hundred eight-a of this chapter. The requirements shall not apply to a health maintenance organization exclusively**

initial submission to the Department, MNY is in the initial stages of our NQTL analysis, and it is on track to be completed by March 31, 2022. MNY will then be able to gauge and report on whether we have areas of non-compliance or are MH Parity-compliant.

- The business owners (outlined below) are responsible for completing their respective workbooks and providing them to Compliance and Government Contracts by April 1, 2022.
- Compliance and Government Contracts will have an assessment of the workbooks to determine MH Parity compliance by April 15, 2022.
- Our remediation plan is centered on completing the workbooks in a detailed and accurate fashion.
  - If MNY determines to be compliant, the Health Plan will prepare for a monitoring state as next steps, rather than corrective action.
  - If MNY determines to be noncompliant, the Health Plan will shift into a corrective action state:
    - Remediate any areas of noncompliance by revising or stopping the practice(s) creating disparity. This remediation work will be done consistent with project management discipline, relying upon relevant workbooks to drive and document this work.
    - Educate department leadership and other relevant personnel regarding why the practice is not compliant, to include communication of what is expected to assure compliance.
    - Train staff on the respective change- why it's happening and what their role is going forward to maintain compliance.

MCO Representative's Signature

Date 11/19/2021

Title Compliance Officer

**serving individuals enrolled pursuant to title eleven of article five of the social services law, 1 title eleven-D of article five of the social services law, 2 title one-A of article twenty-five of this chapter 3 or title eighteen of the federal Social Security Act, 4 and, further provided, that such health maintenance organization shall not discontinue a contract for an individual receiving comprehensive-type coverage in effect prior to January first, two thousand four who is ineligible to purchase policies offered after such date pursuant to this section or section four thousand three hundred twenty-eight of the insurance law due to the provision of 42 U.S.C. 1395ss in effect prior to January first, two thousand four.**

#### **4303(g) 4303(k) and 4303(l) State Insurance Law**

##### **Deficiency:**

Based on the review of Affinity Health Plan, Inc.'s Phase III nonquantitative treatment limitation (NQTL) workbook submission (submitted August 12, 2020), the MCO failed to comply with MHPAEA for retrospective review and outlier review.

- Specifically, the MCO's submission for retrospective review in the inpatient and outpatient benefit classifications demonstrated in Step 1, MCO specific language of NQTL, Step 2, factors triggering the NQTL, and Step 3, evidentiary standards comparability and equivalent stringency, that the factors in place for mental health and substance use disorder (MH/SUD) benefits are not comparable to the factors in place for medical or surgical (M/S) benefits. The factors that trigger review for MH/SUD were reported to be related to the delivery of care and clinical concerns; however, the submission did not indicate that this is comparable to M/S.

Furthermore, Affinity Health Plan, Inc.'s submission for outlier review in the inpatient and outpatient benefit classifications demonstrated that the MCO performs outlier review on MH/SUD benefits, but does not perform outlier review for M/S benefits; thereby making this a separate treatment standard applied to MH/SUD benefits and a violation of MHPAEA.

- All education and training will include resources for questions to be answered and concerns to be reported about potential MH Parity noncompliance moving forward.
- Necessary changes will be affirmed by a business owner, sign off on agreed upon changes will be held by Compliance and Government Contracts.

##### **- Monitoring the Implementation of the POC**

- MNY Compliance and Government Contracts are responsible for the oversight of this POC
  - Compliance/ Government Contracts will establish a meeting series to follow the respective departments through the analysis phase to completion.
  - Upon complete, Compliance/ Government Contracts will establish a quarterly meeting with the identified business owners to determine if the Phase III workbooks have had any changes made or have proposed changes that need to be discussed prior to implementation.
- MNY Health Care Services, Pharmacy, Credentialing and Network/ Contracting are responsible for implementing this POC, including completion of the NQTL analysis, determination of compliance (in conjunction with Compliance and Government Contracts) and then monitoring of any possible changes to the NQTLs as they originally stand.
  - These departments are responsible for monitoring change(s) to ensure parity and that the NQTL is applied to MH/SUD services comparably and no more stringently than to Med/Surg services. Should need for a change be identified, it is the duty of the responsible parties (outlined below) to notify Compliance and Government

MCO Representative's Signature



Date 11/19/2021

Title Compliance Officer

Contracts of the change and begin the process to review implications to the NQTL.

- Health Care Services- retrospective review, outlier review, experimental/ investigational, fail first, certification requirements, unlicensed provider/ staff requirements, exclusions for court ordered treatments, failure to complete
- Pharmacy- retrospective review, outlier review, experimental/ investigational, fail first, certification requirements, unlicensed provider/ staff requirements, exclusions for court ordered treatments, failure to complete
- Network/ Contracting- UCR rate determinations
- Credentialing- provider credentialing

- **Responsible Parties**

- Compliance- Julie Emerson- Compliance Officer
- Government Contracts- Jennifer Young- AVP of Government Contracts
- Health Care Services- Dr. D'Angelo- Chief Medical Officer, Joanne Scilla- VP Health Care Services, Stacy Marko- Director of Health Care Services, Kristine Knoll- BH Clinical Programs Manager
- Pharmacy- Irina Venshtain- Manager of Health Plan Pharmacy Services
- Credentialing- Kari Hough- Director of Credentialing
- Network- Gregg Gordon- VP of Provider Network Mgmt. and Operations
- Contracting- Mario Macias- Director of Contracting

- **Date Certain**

- Complete NQTL analysis for Phase III- March 31, 2022
- Determine parity compliance and next steps- April 15, 2022
  - Additional milestones to be

MCO Representative's Signature



Date 11/19/2021

Title Compliance Officer

- created based on results of compliance assessment.
- Business owners maintain ongoing responsibility to monitor their respective NQTLs for changes and report such to Compliance and Government Contracts- March 31, 2022
  - By April 15, 2022 MNY will have fully implemented the Plan of Correction outlined in this document, this includes maintenance of required information and comparative analyses.
  - Compliance to include Phase III monitoring into the already established quarterly meetings with business owners to evaluate any impacts to NQTLs- no later than June 30, 2022

MCO Representative's Signature

A handwritten signature in black ink, appearing to read "Julie Emerson".

Date 11/19/2021

Title Compliance Officer