

**Statement of Findings
Affinity Health Plan, Inc.
Mental Health Parity and Addiction Equity Act Testing of Phase III Workbooks
March 11, 2020 - November 30, 2020
Survey ID #: 1629314864**

Parity Compliance

10.2 Compliance with State Medicaid Plan, Applicable Laws and Regulations

h.) Mental Health and Substance Use Disorder Benefits Parity Requirements

ii.) The Contractor shall comply with mental health and substance use disorder benefits parity requirements for financial requirements and treatment limitations specified in 42 CFR 438.910.

18.5 Reporting Requirements

a) The Contractor shall submit the following reports to SDOH (unless otherwise specified). The Contractor will certify the data submitted pursuant to this section as required by SDOH. The certification shall be in the manner and format established by SDOH and must attest, based on best knowledge, information, and belief to the accuracy, completeness and truthfulness of the data being submitted.

xxii) Mental Health and Substance Use Disorder Parity Reporting Requirements

Upon request by the SDOH, OMH or OASAS the Contractor shall prepare and submit documentation and reports, in a form and format specified by SDOH, OMH or OASAS, necessary for the SDOH, OMH or OASAS to establish and demonstrate compliance with 42 CFR 438 Subpart K, and applicable State statute, rules and guidance.

35.1 Contractor and SDOH Compliance With Applicable Laws

Notwithstanding any inconsistent provisions in this Agreement, the Contractor and SDOH shall comply with all applicable requirements of the State Public Health Law; the State Social Services Law; the State Finance Law; the State Mental Hygiene Law; the State Insurance Law; Title XIX of the Social Security Act; Title VI of the Civil Rights Act of 1964 and 45 CFR Part 80, as amended; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973 and 45 CFR Part 84, as amended; the Age Discrimination Act of 1975 and 45 CFR Part 91, as amended; the ADA; Title XIII of the Federal Public Health Services Act, 42 U.S.C § 300e et seq., regulations promulgated thereunder; the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and related regulations; the Federal False Claims Act, 31 U.S.C. § 3729 et seq.; Mental Health Parity and Addiction Equity Act of 2008, (P.L. 110-345); for Contractors operating in New York City, the New York City Health Code; and all other applicable legal and regulatory requirements in effect at the time that this Agreement is signed and as adopted or amended during the term of this Agreement. The parties agree that this Agreement shall be interpreted according to the laws of the State of New York.

Finding:

Based on the review of Affinity Health Plan, Inc.'s Phase III nonquantitative treatment limitation (NQTL) workbook submissions, the Managed Care Organization (MCO) failed to follow parity reporting requirements and demonstrate compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), P.L. 110-343, for 5 of 10 NQTLs examined, including retrospective review, outlier review, experimental/investigational determinations, fail first, and failure to complete.

- 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, 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.

Additionally, based on the review of Affinity Health Plan, Inc.'s Phase III NQTL workbook submission (submitted August 12, 2020) for retrospective review and outlier review, the MCO is not in compliance with MHPAEA. 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.

Plan of Correction:

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.

Phase III

- **Review of the Noncompliance**
 - 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.
 - 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.
- **Methods to Revise and Remediate**
 - Because the Health Plan's parity status was not documented accurately in our 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.
 - 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.

