

IN THE MATTER

OF

JAMES V. MCDONALD, M.D., M.P.H., as Acting Commissioner of Health of the State of New York, to determine the action to be with respect to:

STIPULATION

AND

ORDER

**MC-23-001**

Affinity Health Plan, Inc.  
922 East Tremont Avenue  
Suite 2105  
Bronx, New York 10460

Respondent,

arising out of alleged violations of Article 44 of the Public Health Law of the State of New York and Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York

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WHEREAS, the New York State Department of Health (the "Department") has conducted surveys of Affinity Health Plan, Inc. (the "Respondent") and has found alleged violations of Article 44 of the Public Health Law and Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR); and

WHEREAS, Statements of Deficiencies based on surveys of the operations of the Respondent have been issued to the Respondent as follows: on or about May 23, 2019, for the survey conducted December 1, 2017, through May 31, 2018; and on or about August 30, 2021, for the survey conducted September 24, 2020, through January 19, 2021; and

WHEREAS, each of the aforesaid Statements of Deficiencies sets forth alleged violations by the Respondent of Article 44 of the Public Health Law and Title 10 (Health)

of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR); and

WHEREAS, prior to commencement of administrative enforcement action based upon the alleged violations by service of a Notice of Hearing and Statement of Charges, the Department and the Respondent engaged in settlement discussions; and

WHEREAS, Molina Healthcare of New York, Inc. assumed certain liabilities of Respondent, Affinity Health Plan, Inc., pursuant to a transaction approved by the Department; and

WHEREAS, such assumption of liabilities requires Molina Healthcare of New York, Inc. to be responsible solely for payment of penalties imposed on Respondent, Affinity Health Plan, Inc., for an alleged violation of Article 44; and

WHEREAS, the parties wish to resolve this matter by means of a settlement instead of an adversarial administrative hearing.

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. The violations of Article 44 of the Public Health Law and 10 NYCRR Part 98 alleged in the Statements of Deficiencies, solely against Respondent Affinity Health Plan, Inc., issued on May 23, 2019, and August 30, 2021, are settled and discontinued with prejudice upon the terms and conditions set forth in this Stipulation and Order.

2. The Respondent, for the purpose of resolving this administrative matter only, admits to violations of 10 NYCRR Part 98 and Public Health Law Article 44 in connection with the Statements of Deficiencies specified in paragraph 1 herein, attached hereto and made a part hereof as attachments "A" and "B", respectively.

3. Pursuant to Public Health Law §§ 12(1)(a) and 206, the Respondent is assessed a civil penalty of Three Hundred Forty-Nine Thousand and Five Hundred Dollars (\$349,500) and shall ensure that the entire amount of that sum is paid within fifteen (15) days of the effective date of this Stipulation and Order.

4. Payment shall be sent by certified mail and shall be made payable to the New York State Department of Health, Bureau of Accounts Management, Corning Tower, Room 2748, Empire State Plaza, Albany, New York 12237-0016.

5. Any civil penalty not paid in accordance with this Stipulation and Order shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection and non-renewal of permits or licenses [Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32].

6. It is further stipulated and agreed by the Respondent and the Department that there exist valid and sufficient grounds as a matter of fact and law for the issuance of this Stipulation and Order under the Public Health Law and the Respondent consents to its issuance, accepts its terms and conditions and waives any right to challenge or review this Stipulation and Order through administrative or judicial proceedings, including a proceeding pursuant to Article 78 of the Civil Practice Law and Rules.

7. The foregoing admissions made by the Respondent in this Stipulation and Order are solely for the purpose of resolving the instant administrative matter and are not intended for use in any other forum, tribunal or court outside the Department,

