STATE OF NEW YORK : DEPARTMENT OF HEALTH

IN THE MATTER

OF

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

STIPULATION

AND

ORDER

MC-23-005

EXCELLUS HEALTH PLAN, INC.
D/B/A UPSTATE HMO AND UNIVERA HEALTHCARE HMO

165 Court Street
Rochester, New York 14647

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") conducted focused Mental Health Parity and Addiction Equity Act (MHPAEA; 29 U.S.C. §1185a) testing surveys of Excellus Health Plan, Inc. at 165 Court Street, Rochester, New York 14647 (the "Respondent") on August 22, 2018 through September 8, 2020, and on March 11, 2020 through November 30, 2020; and

WHEREAS, the surveys requested Respondent complete multiple workbooks, developed by the Department, and submit in staggered phases, providing the non-quantitative treatment limitation ("NQTL") comparative analyses to demonstrate compliance with MHPAEA; and

WHEREAS, the Department's surveys have resulted in findings of alleged violations of Article 44 of the Public Health Law ("PHL") and Part 98 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR), identified in a Statement of Deficiencies that is attached hereto as Attachment A, in which these alleged violations relate only to inaccurate or incomplete completion of the workbooks and do not include any alleged violations of MHPAEA; and

WHEREAS, Respondent submitted: (a) a revised Phase I and Phase II Plan of Correction, dated June 23, 2021, which the Department accepted by letter dated August 19, 2021; and (b) a Phase III Plan of Correction dated November 16, 2021, which the Department accepted by letter dated December 30, 2021; 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, 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 § 98-1.16 alleged in the aforementioned Statement of Deficiencies (Attachment A), 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 having not provided sufficient information and comparative analyses to fully demonstrate its compliance with MHPAEA; 29 U.S.C. § 1185a, as alleged in Attachment A, in violation of 10 NYCRR § 98-1.16 and Public Health Law Article 44.

The Respondent submitted the Plan of Correction in Attachment A.

3. Pursuant to Public Health Law §§ 12(1)(a) and 206, the Respondent is assessed a civil penalty of Forty-Six Thousand Dollars ($46,000). Respondent shall pay Twenty-Three Thousand Dollars ($23,000) within 30 days of the effective date of this Stipulation and Order. The remaining balance of the assessed civil penalty ($23,000) shall be suspended and ultimately waived if:

i. the Respondent fully implements the Plans of Correction in Attachment A, to the Department's satisfaction, within 30 days from the effective date of this Stipulation and Order;

ii. the Respondent continuously adheres to and maintains compliance with the Plans of Correction in Attachment A, to the Department's satisfaction, for at least three years from the effective date of this Stipulation and Order;

iii. the Respondent submits requested information related to comparative analyses to determine compliance with MHPAEA within the timeframe required by the Department, which shall not be shorter than fifteen (15) days from the date the request is issued;

iv. the Respondent corrects errors in the comparative analysis identified by the Department within 30 business days of notification of such errors; and

v. the Respondent does not violate a non-reporting violation of 29 U.S.C. §1185a within three years from the effective date of this Stipulation and Order.

4. The Department, in determining whether the Respondent has implemented and adhered to the Plans of Correction, will consider whether the Respondent's

comparative analysis for each NQTL reviewed, as requested by the Department, contains a detailed, written, and reasoned explanation of the specific plan terms and practices at issue, and includes the bases for the plan's or issuer's conclusion that the NQTLs comply with MHPAEA. The Department's determination will also consider whether Respondent's analysis meets the guidelines, at the time the analysis is submitted, and as amended, contained in the New York State Office of Mental Health Parity Compliance Toolkit: https://omh.ny.gov/omhweb/bho/parity-compliance-toolkit.pdf.

5. If the Respondent does not comply with the any of the terms set forth in Paragraph 3 above, the Respondent shall pay the full amount of the suspended penalty within thirty (30) days of the Department's written demand for the same. The Department may also pursue any additional legal remedies as a result of the violation(s) that it may deem appropriate in accordance with applicable law and regulation.

6. Payments due under this Stipulation and Order shall be made by check, payable to the New York State Department of Health, and sent to the New York State Department of Health, Bureau of Accounts Management, Corning Tower Building, Room 2748, Empire State Plaza, Albany, New York 12237-0016.

7. 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].

8. The Department, in determining whether there has been non-compliance with the terms of this Stipulation and Order, shall consider whether the Respondent has made good faith efforts to comply and the Department shall take into consideration any matter beyond the control of the Respondent which may have caused non-compliance. However, the Respondent's obligations under this Stipulation and Order shall remain in full force and effect until the Respondent achieves full compliance with every item required. If the Respondent is, despite its good faith efforts, unable to complete any of the time frame obligations under this Stipulation and Order, it may request an extension from the Department.

9. 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.

10. 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, including any civil or criminal proceedings in which the issues or the burden of proof may differ. In addition, any such admissions are without prejudice to the Respondent's rights, defenses and claims in any other matter, proceeding, action, hearing or litigation not involving the Department.

11. This Stipulation and Order shall be effective upon service on Respondent or Respondent's attorney or representative of a copy by personal service or by certified or registered mail.

DATED: Rochester, New York
August 14, 2023

EXCELLUS HEALTH PLAN, INC.

BY: _____

Print Name: James R. Reed

AGREED AND SO ORDERED:

DATED: Albany, New York
17 August, 2023

New York State Department of Health

BY: _____
JAMES V. MCDONALD, M.D., M.P.H.
Commissioner of Health

Mail Stipulation and Order To:

Vanessa Murphy, Senior Attorney
Bureau of Administrative Hearings
Corning Tower, Room 2412
Empire State Plaza
Albany, New York, 12237-0016

Mail Payment To:

New York State Department of Health
Bureau of Accounts Management
Corning Tower, Room 2784
Empire State Plaza
Albany, New York 12237-0016