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:

HIGHMARK WESTERN AND NORTHEASTERN NEW YORK, INC.
257 West Genesee Street
Buffalo, New York 14202

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

STIPULATION

AND

ORDER

MC-23-008

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 Highmark Western and Northeastern New York, Inc. (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 phrases providing the non-quantitative treatment limitation ("NQTL") comparative analyses demonstrating compliance with MHPAEA; and

WHEREAS, the Department alleged deficiencies relate only to inaccurate or

incomplete completion of the workbooks and do not include any alleged violations of MHPAEA; and

WHEREAS, the Department accepted Respondent's Plan of Corrections; 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 Statements of Deficiencies that are attached hereto as Attachment A and Attachment B 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, the Respondent submitted: (a) a revised Phase I and Phase II Plan of Correction, dated August 25, 2021, which the Department accepted by letter dated October 5, 2021; and (b) a Phase III Plan of Correction dated January 11, 2022, which the Department accepted by letter dated January 31, 2022; 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 Part 98-1.16 alleged in the aforementioned Statements of Deficiencies (Attachments A and B), 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 Attachments A and B, in violation of 10 NYCRR § 98-1.16 and Public Health Law Article 44. The Respondent submitted the Plan of Corrections in Attachment A and B.

3. Pursuant to Public Health Law §§ 12(1)(a) and 206, the Respondent is assessed a civil penalty of One Hundred Twenty-Two Thousand Dollars ($122,000) and shall pay Sixty-One Thousand Dollars ($61,000) of that amount within thirty (30) days of the effective date of this Stipulation and Order. The remaining balance of the assessed civil penalty ($61,000) shall be suspended and ultimately waived if:

i. the Respondent submits requested information related to comparative analyses it performs to determine compliance with MHPAEA within the timeframe required by the Department, and in accordance with guidance, available now or as amended, from the Department, which shall not be shorter than 15 business days from the date the request is issued;

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

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

iv. 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 the 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 for guidance on the documentation required in the comparative analysis: 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. 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.

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. 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.

9. 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.

10. 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: Buffalo, New York
, 2023

Highmark Western and Northeastern New York, Inc.

BY: _____

Print Name: Michael Edbauer, DO

AGREED AND SO ORDERED:

DATED: Albany, New York
11/7 , 2023

New York State Department of Health

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

Mail Stipulation and Order To:

Regina Long, Associate 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