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

NAME OF MANAGED CARE ORGANIZATION	TYPE OF SURVEY:
Excellus Health Plan, Inc.	Focus Survey: MHPAEA Testing Phase I and Phase II Workbooks
STREET ADDRESS, CITY, STATE, ZIP CODE 165 Court Street Rochester, NY 14647	**SURVEY DATES:** August 22, 2018 – September 8, 2020

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.

Deficiencies	Plan of Correction with Timetable
10 CRR-NY 98-1.16 Disclosure and filing. **(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.** **Deficiency:** Based on the review of Excellus Health Plan, Inc.'s (Excellus) Phase I and Phase II nonquantitative treatment limitation (NQTL) workbook submission the MCO failed to provide all required information and comparative analyses demonstrating compliance with the Mental Health Parity and Addiction Equity Act of 2008, (P.L. 110-345; MHPAEA) for 2 of 9 NQTLS examined; formulary design and reimbursement. • Specifically, in Phase I, Excellus failed to provide a (Step 2) list of factors triggering the NQTL and a substantive comparative analysis for (Step 3) evidentiary standards comparability and equivalent stringency for prescription drugs formulary design. • Specifically, in Phase II, Excellus failed to provide substantive comparative analyses for (Step 3) evidentiary standards comparability and equivalent stringency, (Step 4) as written comparability and equivalent stringency, and (Step 5) in operation comparability and equivalent stringency for outpatient reimbursement.	**Revised Plan Response (3/19/21)** **Phase I – Prescription Drugs Formulary Design – Step 2** (List of Factors Triggering the NQTL) and Substantive Comparative Analysis for **Step 3** (Evidentiary Standards Comparability and Equivalent Stringency) As referenced in the Department of Health's November 25, 2020 correspondence, which accompanied this Statement of Deficiency, at this time due to the planned pharmacy benefit carve out from Medicaid Managed Care, our Plan is not required to address deficiencies related to the prescription drugs classification or the formulary design NQTL in Phase I. **Phase II – Outpatient Reimbursement – Steps 3, 4, and 5** Excellus Health Plan, Inc. is committed to ensuring ongoing compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and related regulations. This commitment includes updating and maintaining current workbooks with the required information and substantive comparative analyses to demonstrate compliance. **Remediation:** We have updated our workbooks to provide more detail about how our Plan is operationalizing this NQTL. We have also been in contact with OMH and Milliman to ensure that our updates meet their expectations with respect to accurately reflecting our compliance. In the event OMH recommends changes to the updated workbook, we will immediately implement such changes. **Responsible Party:** [redacted] HCNM Project Manager III

Completion Date:
12/17/2020

Monitoring:
We will perform ongoing comparative analyses.

If any parity discrepancies are identified through the comparative analyses, or other monitoring activities, the workbooks will be updated as appropriate. Additionally, the individual or business area responsible for performing the comparative analyses is required to notify the Plan's Regulatory Compliance Department of these potential or actual violations through our regulatory self-reporting process. Our Plan will document and retain records of these violations, take the appropriate action to remediate the violations as identified, produce the necessary evidence of the remediation activity, and provide this information to the State, upon request.

Responsible Party:
[redacted], Vice President Regulatory Compliance, Medicare and Safety Net Compliance Officer

Completion Date:
12/31/2021 and annually thereafter, and as often as needed when operational changes are made that impact the workbooks.

Education/Training:
We are implementing robust training on all aspects of MH Parity. We are in the process of developing formal training related to MH and SUD parity requirements to be provided to those employees and agents (i.e. behavioral health vendors and utilization review agents) who are engaged in functions subject to MH and SUD parity requirements or who are involved in conducting analyses to determine compliance with such requirements. This training will be conducted at least annually, and also be made a part of the orientation for new employees involved with MH and SUD benefits or analyses to determine compliance. We plan to conduct an initial training session (Lunch and Learn format) to be completed by 6/30/2021 and then annually thereafter.

Training also includes training on updating workbooks to reflect any changes or corrections needed to address any areas of noncompliance found through our monitoring activities.

We have also provided re-education to staff on the required components of a Plan of Correction.

	Responsible Party: [redacted] Vice President Regulatory Compliance, Medicare and Safety Net Compliance Officer **Completion Date:** We expect initial training of employees and agents on all aspects of MH parity including training on workbooks to be completed by 6/30/2021 and annually thereafter. The re-education on the required components of a Plan of Correction was completed 3/18/2021.

MCO Representative's Signature	Date March 19, 2021 [redacted]
Title Vice President, Regulatory Compliance, Medicare and Safety Net Compliance Officer	

Statement of Findings
Excellus Health Plan, Inc.
MHPAEA Testing Phase I and Phase II Workbooks
August 22, 2018- September 8, 2020

Parity Compliance

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.

(42 CFR 438.910(d) *Nonquantitative treatment limitations.*)
(42 CFR 438.920(b) *State Responsibilities*.)

Finding:

Based on the review of Excellus Health Plan, Inc.'s (Excellus) Phase I and Phase II nonquantitative treatment limitation (NQTL) workbook submissions, the Managed Care Organization (MCO) failed to provide all required information and comparative analyses demonstrating compliance with the Mental Health Parity and Addiction Equity Act of 2008, (P.L. 110-345; MHPAEA) for 2 of 9 NQTLS examined; formulary design and reimbursement.

- Specifically, in Phase I, Excellus failed to provide a (Step 2) list of factors triggering the NQTL and a substantive comparative analysis for (Step 3) evidentiary standards comparability and equivalent stringency for prescription drugs formulary design.

- Specifically, in Phase II, Excellus failed to provide substantive comparative analyses for (Step 3) evidentiary standards comparability and equivalent stringency, (Step 4) as written comparability and equivalent stringency, and (Step 5) in operation comparability and equivalent stringency for outpatient reimbursement.

Plan of Correction - Revised Plan Response
Phase I – Prescription Drugs Formulary Design – Step 2 (List of Factors Triggering the NQTL) and Substantive Comparative Analysis for Step 3 (Evidentiary Standards Comparability and Equivalent Stringency)

As referenced in the Department of Health's November 25, 2020 correspondence, which accompanied this Statement of Findings, at this time due to the planned pharmacy benefit carve out from Medicaid Managed Care, our Plan is not required to address findings related to the prescription drugs classification or the

formulary design NQTL in Phase I.

Phase II – Outpatient Reimbursement – Steps 3, 4, and 5

Excellus Health Plan, Inc. is committed to ensuring ongoing compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and related regulations. This commitment includes updating and maintaining current workbooks with the required information and substantive comparative analyses to demonstrate compliance.

Remediation: We have updated our workbooks to provide more details about how our Plan is operationalizing this NQTL. We have also been in contact with OMH and Milliman to ensure that our updates meet their expectations with respect to accurately reflecting our compliance. In the event OMH recommends changes to the updated workbook, we will immediately implement such changes.

Responsible Party: [redacted], HCNM Project Manager III

Completion Date: 12/17/2020

Monitoring: We will perform ongoing comparative analyses through quarterly updates to the outpatient reimbursement workbook.

If any parity discrepancies are identified through the comparative analyses, or other monitoring activities, the workbooks will be updated as appropriate. Additionally, the individual or business area responsible for performing the comparative analyses is required to notify the Plan's Regulatory Compliance Department of these potential or actual violations through our regulatory self-reporting process. Our Plan will document and retain records of these violations, take the appropriate action to remediate the violations as identified, produce the necessary evidence of the remediation activity, and provide this information to the State, upon request.

Responsible Party: [redacted], Vice President Regulatory Compliance, Medicare and Safety Net Compliance Officer

Completion Date: 12/31/2021 and annually thereafter, and as often as needed when operational changes are made that impact the workbooks.

Education/Training: We are implementing robust training on all aspects of MH Parity. We are in the process of developing formal training related to MH and SUD parity requirements to be provided to those employees and agents (i.e. behavioral health vendors and utilization review agents) who are engaged in functions subject to MH and SUD parity requirements or who are involved in conducting analyses to determine compliance with such requirements. This training will be conducted at least annually, and also be made a part of the orientation for new employees involved with MH and SUD benefits or analyses to determine compliance. We plan to conduct an initial training session (Lunch and Learn format) to be completed by 6/30/2021 and then annually thereafter.

Training also includes training on updating workbooks to reflect any changes or corrections needed to address any areas of noncompliance found through our monitoring activities.

We have also provided re-education to staff on the required components of a Plan of Correction.

Responsible Party: [redacted], Vice President Regulatory Compliance, Medicare and Safety Net Compliance Officer

Completion Date: We expect initial training of employees and agents on all aspects of MH parity including training on workbooks to be completed by 6/30/2021 and annually thereafter. The re-education on the required components of a Plan of Correction was completed 3/18/2021.