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:
Independent Health Association, Inc.	Focus Survey: MHPAEA Testing Phase I and Phase II Workbooks
STREET ADDRESS, CITY, STATE, ZIP CODE	**SURVEY DATES:**
511 Farber Lakes Drive Buffalo, NY 14221	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 Independent Health Association, Inc.'s Phase I and Phase II nonquantitative treatment limitation (NQTL) workbook submissions, 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 5 of 9 NQTLS examined; prior authorization, formulary design, coding edits, out of-network coverage standards, and reimbursement. • Specifically, in Phase I, Independent Health Association, Inc. 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 prior authorization and formulary design of prescription drugs.	**Corrective Action:** **Phase II – Coding Edits** **Review:** Independent Health Association ("IHA") has reached out to Milliman to schedule a meeting to discuss what should be included when conducting a comparative analysis as it relates to coding edits for inpatient, outpatient and emergency room services and to discuss any technical questions related to parity. IHA will then perform a comparative analysis relating to coding edits related to inpatient, outpatient and emergency room services. The comparative analysis will look at services handled by IHA as well as those performed by IHA's delegated entities to document compliance with mental health parity. The comparative analysis will be completed biannually, the results will then be reviewed and a plan to address identified opportunities for improvement will be implemented as needed.

MCO Representative's Signature	Date
[redacted]	3/17/21
Title: Chief Compliance Officer	

• Specifically, in Phase II, Independent Health Association, Inc. failed to provide all required information and comparative analyses for inpatient, outpatient, emergency care and prescription drug coding edits (Steps 1 through 5). The MCO 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 inpatient and outpatient out of network coverage standards. For inpatient, outpatient, and emergency care reimbursement, the MCO failed to provide substantive comparative analyses for (Step 2) factors triggering the NQTL and (Step 3) evidentiary standards comparability and equivalent stringency.	**Responsible Party:** [redacted] State Programs Implementation Manager to secure meeting with Milliman; [redacted], Manager-Provider Contracting & Reimbursement and [redacted], Manager-Reimbursement Unit for the remaining pieces of the coding edits section; [redacted], Chief Compliance Officer/Mental Health Parity Compliance Officer **Date Certain:** 12/3/20 – IHA's outreach to Milliman and OMH for consultation 4/30/21 – For completion of the 1st biannual comparative analysis 7/31/21 – To implement any internal corrective action identified during the 1st biannual comparative analysis. **Monitoring and/or Auditing:** IHA's Compliance Department will assign an internal Corrective Action Plan ("CAP") to ensure the execution of the steps outlined in this Plan of Correction. The CAP will include detailed corrective actions to be taken, timeframes for completion, and a monitoring period, and will be reported to Management and the Board of Directors. Additionally, biannual comparative analysis results will be reported to the Mental Health Parity Compliance Officer, Management, and the Board of Directors. The Compliance Department will assign an internal corrective action plan for any comparative analysis results that indicate a potential parity concern, updating policies and procedures and/or training associates as appropriate. The Compliance Department will track the completion of Phase I and II workbooks as part of its compliance monitoring workplan. **Education:** IHA will incorporate training and education on federal and state mental health and substance use disorder parity requirements for all workforce members that are engaged in functions that are subject to federal or state mental health and substance use disorder parity requirements or involved in the analysis as a part of the compliance program. This training will be provided to all workforce members at new hire orientation and annually

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Title: Chief Compliance Officer	

thereafter. Should review of comparative analyses identify parity issues, additional education on parity requirements will be included as part of a CAP. IHA is working with consultants to help develop the content of this training.

Phase II – Out of Network Coverage

Review: IHA will add comparability and equivalent stringency as a standing agenda item on all Joint Operating Oversight meetings applicable to delegate partnerships.

Responsible Party: [redacted], Director, Utilization Quality Operations Improvement Management and [redacted] Clinical Manager – Behavioral Health

[redacted], Chief Compliance Officer/Mental Health Parity Compliance Officer

Date Certain: 1/31/2021

Monitoring and/or Auditing: IHA's Compliance Department will assign an internal Corrective Action Plan ("CAP") to ensure the execution of the steps outlined in this Plan of Correction. The CAP will include detailed corrective actions to be taken, timeframes for completion, and a monitoring period, and will be reported to Management and the Board of Directors. Additionally, quarterly comparative analysis results will be reported to the Mental Health Parity Compliance Officer, Management, and the Board of Directors. The Compliance Department will assign an internal corrective action plan for any comparative analysis results that indicate a potential parity concern, updating policies and procedures and/or training associates as appropriate. The Compliance Department will track the completion of Phase I and II workbooks as part of its compliance monitoring workplan..

Education: : IHA will incorporate training and education on federal and state mental health and substance use disorder parity requirements for all workforce members that are engaged in functions that are subject to federal or state mental health and substance use disorder parity requirements or involved in the analysis as a part of the compliance program. This training will be provided to all workforce members at new hire orientation and annually thereafter. Should review of comparative analyses identify

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parity issues, additional education on parity requirements will be included as part of a CAP. IHA is working with consultants to help develop the content of this training

Phase II – Reimbursement

Review: IHA has reached out to Milliman to schedule a meeting to discuss what should be included when conducting a comparative analysis as it relates to reimbursement components for inpatient, outpatient and emergency room care and to discuss any technical questions related to parity. IHA will then perform a comparative analysis relating to reimbursement components for inpatient, outpatient and emergency room care. The comparative analysis will look at services handled by IHA as well as those performed by IHA's delegated entities to document compliance with mental health parity. The comparative analysis will be completed biannually, the results will then be reviewed and a plan to address identified opportunities for improvement will be implemented as needed.

Responsible Party:

[redacted] State Programs Implementation Manager to secure meeting with Milliman

[redacted], Director of Contract Management and [redacted], Director – Provider Network for the remaining pieces of the reimbursement section

[redacted], Chief Compliance Officer/Mental Health Parity Compliance Officer

Date Certain:

1/31/21 – For meeting with Milliman
4/30/21 – For completion of the 1st annual comparative analysis
7/31/21 – For meeting to review the results of the 1st annual comparative analysis.

Monitoring and/or Auditing: IHA's Compliance Department will assign an internal Corrective Action Plan ("CAP") to ensure the execution of the steps outlined in this

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	Plan of Correction. The CAP will include detailed corrective actions to be taken, timeframes for completion, and a monitoring period, and will be reported to Management and the Board of Directors. Additionally, biannual comparative analysis results will be reported to the Mental Health Parity Compliance Officer, Management, and the Board of Directors. The Compliance Department will assign an internal corrective action plan for any comparative analysis results that indicate a potential parity concern, updating policies and procedures and/or training associates as appropriate. The Compliance Department will track the completion of Phase I and II workbooks as part of its compliance monitoring workplan. **Education:** IHA will incorporate training and education on federal and state mental health and substance use disorder parity requirements for all workforce members that are engaged in functions that are subject to federal or state mental health and substance use disorder parity requirements or involved in the analysis as a part of the compliance program. This training will be provided to all workforce members at new hire orientation and annually thereafter. Should review of comparative analyses identify parity issues, additional education on parity requirements will be included as part of a CAP. IHA is working with consultants to help develop the content of this training.

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Statement of Findings
Independent Health Association, 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 Independent Health Association, Inc.'s 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 5 of 9 NQTLS examined; prior authorization, formulary design, coding edits, out of-network coverage standards, and reimbursement.

- Specifically, in Phase I, Independent Health Association, Inc. 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 prior authorization and formulary design of prescription drugs.

- Specifically, in Phase II, Independent Health Association, Inc. failed to provide all required information and comparative analyses for inpatient, outpatient, emergency care and prescription drug coding edits (Steps 1 through 5). The MCO 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 inpatient and outpatient out of network coverage standards. For

inpatient, outpatient, and emergency care reimbursement, the MCO failed to provide substantive comparative analyses for (Step 2) factors triggering the NQTL and (Step 3) evidentiary standards comparability and equivalent stringency.

Additionally, based on the review of Independent Health Association, Inc.'s Phase II NQTL workbook submission (submitted October 30, 2019) for reimbursement, the MCO is not in compliance with the MHPAEA. The MCO reported the following in Step 3 for inpatient, outpatient, and emergency care reimbursement:

> "In terms of other market factors, many BH/SUD providers operate de facto geographic monopolies within the network (e.g. CPEP, certain IP psychiatric units) arguably allowing them to exert more contracting pressure in rate competitiveness and inflationary adjustments than medical/surgical providers. IH's (and likely other plans) response to these dynamics is wedding greater portions of overall reimbursement to quality and value-based activities while paying fair and market based rates on medical/surgical services where utilization patterns are more diffuse, thus offsetting any undue burden facilties may assign to BH/SUD services within their contract negotations."

In determining reimbursement rates for mental health and substance use disorder services, Independent Health Association, Inc. applies strategies that are not comparable to the strategies it uses in determining reimbursement rates for medical and surgical services, in violation of Federal regulation cited above. Although Independent Health Association, Inc. states in Step 6 of its NQTL workbook submission for reimbursement that it strives to provide "fair and market based reimbursement for all services," it in fact employs strategies in contract negotiations to avoid reimbursing market rates for mental health and substance use disorder services, while stating that it reimburses facilities which provide both mental health and/or substance use disorder and medical/surgical services at fair market based rates for medical/surgical services. In addition, Independent Health Association, Inc.'s comparative analysis for this NQTL did not demonstrate that it complies with MHPAEA in the application of this strategy to determine reimbursement rates. To wit, the comparative analysis does not indicate how Independent Health Association, Inc. defines providers with "de facto monopolies" nor analyze whether it uses quality or value-based payment methodologies, or other comparable strategies, to attempt to reimburse less than market rates for other services for which demand exceeds the supply of qualified providers in the network.

Corrective Action:

Phase II – Coding Edits

Review:

Independent Health Association ("IHA") has reached out to Milliman to schedule a meeting to discuss what should be included when conducting a comparative analysis as it relates to coding edits for inpatient, outpatient and emergency room services and to discuss any technical questions related to parity. IHA will then perform a comparative analysis relating to coding edits related to inpatient, outpatient and emergency room services. The comparative analysis will look at services handled by IHA as well as those performed by IHA's delegated entities to document compliance with mental health parity. The comparative analysis will be completed biannually, the results will then be reviewed and a plan to address identified opportunities for improvement will be implemented as needed.

Responsible Party:

[redacted], State Programs Implementation Manager to secure meeting with Milliman; [redacted], Manager-Provider Contracting & Reimbursement and [redacted], Manager-Reimbursement Unit for the remaining pieces of the coding edits section [redacted], Chief Compliance Officer/Mental Health Parity Compliance Officer

Date Certain:

12/3/20 – IHA's outreach to Milliman and OMH for consultation
4/30/21 – For completion of the 1st annual comparative analysis
7/31/21 – To implement any internal corrective action identified during the 1st annual comparative analysis.

Monitoring and/or Auditing:

IHA's Compliance Department will assign an internal Corrective Action Plan ("CAP") to ensure the execution of the steps outlined in this Plan of Correction. The CAP will include detailed corrective actions to be taken, timeframes for completion, and a monitoring period, and will be reported to Management and the Board of Directors. Additionally, biannual comparative analysis results will be reported to the Mental Health Parity Compliance Officer, Management, and the Board of Directors. The Compliance Department will assign an internal corrective action plan for any comparative analysis results that indicate a potential parity concern, updating policies and procedures and/or training associates as appropriate. The Compliance Department will track the completion of Phase I and II workbooks as part of its compliance monitoring workplan.

Education:

IHA will incorporate training and education on federal and state mental health and substance use disorder parity requirements for all workforce members that are engaged in functions that are subject to federal or state mental health and substance use disorder parity requirements or involved in the analysis as a part of the compliance program. This training will be provided to all workforce members at new hire orientation and annually thereafter. Should review of comparative analyses identify parity issues, additional education on parity requirements will be included as part of a CAP.

Phase II – Out of Network Coverage

Review:

IHA will add comparability and equivalent stringency as a standing agenda item on all Joint Operating Oversight meetings applicable to delegate partnerships.

Responsible Party:

[redacted] Director, Utilization Quality Operations Improvement Management and [redacted] Clinical Manager – Behavioral Health

[redacted], Chief Compliance Officer/Mental Health Parity Compliance Officer

Date Certain:

1/31/2021

Monitoring and/or Auditing:

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Phase II – Reimbursement

Review:

In response to the Department's identified Mental Health Parity and Addiction Equity Act of 2008 violation, IHA seeks to clarify the information previously provided on payment methodologies. IHA's contractual fee schedules for facilities follow fair market reimbursement for inpatient, outpatient, and emergency room mental health/substance use disorder and medical/surgical services. IHA references the NYS Medicaid managed care fee schedule and default reimbursement methodologies, for example the All Patient Related Group (APR DRG), when setting rates and contracting with behavioral health and medical/surgical providers. IHA may additionally employ value-based methodologies, as mutually agreed upon by the facility, for mental health/substance use disorder **and** medical/surgical services. The terms of the value-based purchasing programs for mental health/substance use disorder services allow the facility to receive payment *additional* to the fair market reimbursement outlined in the fee schedule.

IHA has reached out to Milliman to schedule a meeting to discuss what should be included when conducting a comparative analysis as it relates to reimbursement components for inpatient, outpatient and emergency room care and to discuss any technical questions related to parity. IHA will then perform a comparative analysis relating to reimbursement components for inpatient, outpatient and emergency room care. The comparative analysis will look at services handled by IHA as well as those performed by IHA's delegated entities to document compliance with mental health parity. The comparative analysis will be

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Responsible Party:

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[redacted] Director of Contract Management and [redacted] Director – Provider Network for the remaining pieces of the reimbursement section

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