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:
Affinity Health Plan, Inc.	Focus Survey: Mental Health Parity and Addiction Equity Act Testing of Phase III Workbooks
STREET ADDRESS, CITY, STATE, ZIP CODE 1776 Eastchester Road Bronx, NY 10461	**SURVEY DATES:** March 11, 2020 - November 30, 2020 Survey ID #: 1629314864

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 Affinity Health Plan, Inc.'s Phase III nonquantitative treatment limitation (NQTL) workbook submissions, the MCO failed to follow parity reporting requirements and demonstrate compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), P.L. 110-343M for 5 of 10 NQTLs examined, including retrospective review, outlier review, experimental/investigational determinations, fail first, and failure to complete. • Specifically, Affinity Health Plan, Inc. failed to provide all required information and substantive comparative analyses in Steps 1 through 5 for retrospective review, outlier review, fail first, and failure to complete in the prescription drug benefit classification. The MCO also failed to provide a substantive comparative analysis in Step 5, in-operation comparability and equivalent stringency,	Affinity Health Plan (AHP) was acquired by Molina Healthcare of New York, Inc. (MNY) in an asset purchase effective 11/1/2021 therefore MNY takes full ownership of the findings, citations, and remediation efforts. MNY is in the process of terminating the AHP legacy contract with Beacon effective 12/31/2021. In working through the de-implementation process the noted deficiencies for Affinity will be covered by MNYs plan of correction which was submitted to the Department on 11/17/2021 and is outlined below, inclusive of responsible parties and date certain. **Phase III** - **Review of the Noncompliance** o Molina Health of New York, Inc. (MNY) is committed to maintaining an updated Phase III workbook with required information and substantive comparative analyses demonstrating compliance with the MHPAEA. o MNY reviewed the report card and citations provided on October 26, 2021. After further review of our initial submission (August 21, 2020), MNY concluded that the NQTL workbook analysis provided for Phase III was completed incorrectly, reflecting that MNY is noncompliant, which may not necessarily be accurate. - **Methods to Revise and Remediate** o Because the Health Plan's parity status was not documented accurately in our

MCO Representative's Signature [redacted]	Date 11/19/2021
Title Compliance Officer	

for retrospective review and experimental/investigational determinations in the inpatient and outpatient benefit classifications. Due to these findings, the State is not able to assess whether the MCO complies with MHPAEA for the above-referenced NQTLs.

PHL § 4406 Health maintenance organizations; regulation of contracts

1. The contract between a health maintenance organization and an enrollee shall be subject to regulation by the superintendent as if it were a health insurance subscriber contract, and shall include, but not be limited to, all mandated benefits required by article forty-three of the insurance law. Such contract shall fully and clearly state the benefits and limitations therein provided or imposed, so as to facilitate understanding and comparisons, and to exclude provisions which may be misleading or unreasonably confusing. Such contract shall be issued to any individual and dependents of such individual and any group of one hundred or fewer employees or members, exclusive of spouses and dependents, or to any employee or member of the group, including dependents, applying for such contract at any time throughout the year. An individual direct payment contract shall be issued only in accordance with section four thousand three hundred twenty-eight of the insurance law. The superintendent may, after giving consideration to the public interest, exempt a health maintenance organization from the requirements of this section provided that another health insurer or health maintenance organization within the health maintenance organization's same holding company system, as defined in article fifteen of the insurance law, including a health maintenance organization operated as a line of business of a health service corporation licensed under article forty-three of the insurance law, offers coverage that, at a minimum, complies with this section and provides all of the consumer protections required to be provided by a health maintenance organization pursuant to this chapter and regulations, including those consumer protections contained in sections four thousand four hundred three and four thousand four hundred eight-a of this chapter. The requirements shall not apply to a health maintenance organization exclusively

initial submission to the Department, MNY is in the initial stages of our NQTL analysis, and it is on track to be completed by March 31, 2022. MNY will then be able to gauge and report on whether we have areas of non-compliance or are MH Parity-compliant.

- The business owners (outlined below) are responsible for completing their respective workbooks and providing them to Compliance and Government Contracts by April 1, 2022.
- Compliance and Government Contracts will have an assessment of the workbooks to determine MH Parity compliance by April 15, 2022.

- Our remediation plan is centered on completing the workbooks in a detailed and accurate fashion.
  - If MNY determines to be compliant, the Health Plan will prepare for a monitoring state as next steps, rather than corrective action.
  - If MNY determines to be noncompliant, the Health Plan will shift into a corrective action state:
    - Remediate any areas of noncompliance by revising or stopping the practice(s) creating disparity. This remediation work will be done consistent with project management discipline, replying upon relevant workbooks to drive and document this work.
    - Educate department leadership and other relevant personnel regarding why the practice is not compliant, to include communication of what is expected to assure compliance.
    - Train staff on the respective change- why it's happening and what their role is going forward to maintain compliance.

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serving individuals enrolled pursuant to title eleven of article five of the social services law, 1 title eleven-D of article five of the social services law, 2 title one-A of article twenty-five of this chapter 3 or title eighteen of the federal Social Security Act, 4 and, further provided, that such health maintenance organization shall not discontinue a contract for an individual receiving comprehensive-type coverage in effect prior to January first, two thousand four who is ineligible to purchase policies offered after such date pursuant to this section or section four thousand three hundred twenty-eight of the insurance law due to the provision of 42 U.S.C. 1395ss in effect prior to January first, two thousand four.

4303(g) 4303(k) and 4303(l) State Insurance Law

Deficiency:

Based on the review of Affinity Health Plan, Inc.'s Phase III nonquantitative treatment limitation (NQTL) workbook submission (submitted August 12, 2020), the MCO failed to comply with MHPAEA for retrospective review and outlier review.

- Specifically, the MCO's submission for retrospective review in the inpatient and outpatient benefit classifications demonstrated in Step 1, MCO specific language of NQTL, Step 2, factors triggering the NQTL, and Step 3, evidentiary standards comparability and equivalent stringency, that the factors in place for mental health and substance use disorder (MH/SUD) benefits are not comparable to the factors in place for medical or surgical (M/S) benefits. The factors that trigger review for MH/SUD were reported to be related to the delivery of care and clinical concerns; however, the submission did not indicate that this is comparable to M/S.

  Furthermore, Affinity Health Plan, Inc.'s submission for outlier review in the inpatient and outpatient benefit classifications demonstrated that the MCO performs outlier review on MH/SUD benefits, but does not perform outlier review for M/S benefits; thereby making this a separate treatment standard applied to MH/SUD benefits and a violation of MHPAEA.

    - All education and training will include resources for questions to be answered and concerns to be reported about potential MH Parity noncompliance moving forward.
    - Necessary changes will be affirmed by a business owner, sign off on agreed upon changes will be held by Compliance and Government Contracts.

- **Monitoring the Implementation of the POC**
  - MNY Compliance and Government Contracts are responsible for the oversight of this POC
    - Compliance/ Government Contracts will establish a meeting series to follow the respective departments through the analysis phase to completion.
    - Upon complete, Compliance/ Government Contracts will establish a quarterly meeting with the identified business owners to determine if the Phase III workbooks have had any changes made or have proposed changes that need to be discussed prior to implementation.
  - MNY Health Care Services, Pharmacy, Credentialing and Network/ Contracting are responsible for implementing this POC, including completion of the NQTL analysis, determination of compliance (in conjunction with Compliance and Government Contracts) and then monitoring of any possible changes to the NQTLs as they originally stand.
    - These departments are responsible for monitoring change(s) to ensure parity and that the NQTL is applied to MH/SUD services comparably and no more stringently than to Med/Surg services. Should need for a change be identified, it is the duty of the responsible parties (outlined below) to notify Compliance and Government

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Contracts of the change and begin the process to review implications to the NQTL.

- Health Care Services- retrospective review, outlier review, experimental/ investigational, fail first, certification requirements, unlicensed provider/ staff requirements, exclusions for court ordered treatments, failure to complete
- Pharmacy- retrospective review, outlier review, experimental/ investigational, fail first, certification requirements, unlicensed provider/ staff requirements, exclusions for court ordered treatments, failure to complete
- Network/ Contracting- UCR rate determinations
- Credentialing- provider credentialing

- [redacted]



- **Date Certain**
  - Complete NQTL analysis for Phase III- March 31, 2022
  - Determine parity compliance and next steps- April 15, 2022
    - Additional milestones to be

MCO Representative's Signature [redacted]	[redacted]
[redacted] Officer	

	created based on results of compliance assessment. o Business owners maintain ongoing responsibility to monitor their respective NQTLs for changes and report such to Compliance and Government Contracts- March 31, 2022 o By April 15, 2022 MNY will have fully implemented the Plan of Correction outlined in this document, this includes maintenance of required information and comparative analyses. o Compliance to include Phase III monitoring into the already established quarterly meetings with business owners to evaluate any impacts to NQTLs- no later than June 30, 2022

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Statement of Findings
Affinity Health Plan, Inc.
Mental Health Parity and Addiction Equity Act Testing of Phase III Workbooks
March 11, 2020 - November 30, 2020
Survey ID #: 1629314864

Parity Compliance

10.2 Compliance with State Medicaid Plan, Applicable Laws and Regulations
h.) Mental Health and Substance Use Disorder Benefits Parity Requirements
ii.) The Contractor shall comply with mental health and substance use disorder benefits parity requirements for financial requirements and treatment limitations specified in 42 CFR 438.910.

18.5 Reporting Requirements
a) The Contractor shall submit the following reports to SDOH (unless otherwise specified). The Contractor will certify the data submitted pursuant to this section as required by SDOH. The certification shall be in the manner and format established by SDOH and must attest, based on best knowledge, information, and belief to the accuracy, completeness and truthfulness of the data being submitted.
xxii) Mental Health and Substance Use Disorder Parity Reporting Requirements
Upon request by the SDOH, OMH or OASAS the Contractor shall prepare and submit documentation and reports, in a form and format specified by SDOH, OMH or OASAS, necessary for the SDOH, OMH or OASAS to establish and demonstrate compliance with 42 CFR 438 Subpart K, and applicable State statute, rules and guidance.

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.

Finding:

Based on the review of Affinity Health Plan, Inc.'s Phase III nonquantitative treatment limitation (NQTL) workbook submissions, the Managed Care Organization (MCO) failed to follow parity reporting requirements and demonstrate compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), P.L. 110-343, for 5 of 10 NQTLs examined, including retrospective review, outlier review, experimental/investigational determinations, fail first, and failure to complete.

- Specifically, Affinity Health Plan, Inc. failed to provide all required information and substantive comparative analyses in Steps 1 through 5 for retrospective review, outlier review, fail first, and failure to complete in the prescription drug benefit classification. The MCO also failed to provide a substantive comparative analysis in Step 5, in-operation comparability and equivalent stringency, for retrospective review and experimental/investigational determinations in the inpatient and outpatient benefit classifications. Due to these findings, the State is not able to assess whether the MCO complies with MHPAEA for the above-referenced NQTLs.

  Additionally, based on the review of Affinity Health Plan, Inc.'s Phase III NQTL workbook submission (submitted August 12, 2020) for retrospective review and outlier review, the MCO is not in compliance with MHPAEA. The MCO's submission for retrospective review in the inpatient and outpatient benefit classifications demonstrated in Step 1, MCO specific language of NQTL, Step 2, factors triggering the NQTL, and Step 3, evidentiary standards comparability and equivalent stringency, that the factors in place for mental health and substance use disorder (MH/SUD) benefits are not comparable to the factors in place for medical or surgical (M/S) benefits. The factors that trigger review for MH/SUD were reported to be related to the delivery of care and clinical concerns; however, the submission did not indicate that this is comparable to M/S. Furthermore, Affinity Health Plan, Inc.'s submission for outlier review in the inpatient and outpatient benefit classifications demonstrated that the MCO performs outlier review on MH/SUD benefits, but does not perform outlier review for M/S benefits; thereby making this a separate treatment standard applied to MH/SUD benefits and a violation of MHPAEA.

Plan of Correction:

Affinity Health Plan (AHP) was acquired by Molina Healthcare of New York, Inc. (MNY) in an asset purchase effective 11/1/2021 therefore MNY takes full ownership of the findings, citations, and remediation efforts. MNY is in the process of terminating the AHP legacy contract with Beacon effective 12/31/2021. In working through the de-implementation process the noted deficiencies for Affinity will be covered by MNYs plan of correction which was submitted to the Department on 11/17/2021 and is outlined below, inclusive of responsible parties and date certain.

Phase III

- **Review of the Noncompliance**
  - Molina Health of New York, Inc. (MNY) is committed to maintaining an updated Phase III workbook with required information and substantive comparative analyses demonstrating compliance with the MHPAEA.
  - MNY reviewed the report card and citations provided on October 26, 2021. After further review of our initial submission (August 21, 2020), MNY concluded that the NQTL workbook analysis provided for Phase III was completed incorrectly, reflecting that MNY is noncompliant, which may not necessarily be accurate.
- **Methods to Revise and Remediate**
  - Because the Health Plan's parity status was not documented accurately in our initial submission to the Department, MNY is in the initial stages of our NQTL analysis, and it is on track to be completed by March 31, 2022. MNY will then be able to gauge and report on whether we have areas of non-compliance or are MH Parity-compliant.
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            - Health Care Services- retrospective review, outlier review, experimental/ investigational, fail first, certification requirements, unlicensed provider/ staff requirements, exclusions for court ordered treatments, failure to complete
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            - Network/ Contracting- UCR rate determinations
            - Credentialing- provider credentialing

- **Responsible Parties**



- **Date**
    - Complete NQTL analysis for Phase III- March 31, 2022
    - Determine parity compliance and next steps- April 15, 2022
        - Additional milestones to be created based on results of compliance assessment.
    - Business owners maintain ongoing responsibility to monitor their respective NQTLs for changes and report such to Compliance and Government Contracts- March 31, 2022
    - By April 15, 2022 MNY will have fully implemented the Plan of Correction outlined in this document, this includes maintenance of required information and comparative analyses.
    - Compliance to include Phase III monitoring into the already established quarterly meetings with business owners to evaluate any impacts to NQTLs- no later than June 30, 2022