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 Capital District Physician's Health Plan, Inc.	**TYPE OF SURVEY:** Focus Survey: Mental Health Parity and Addiction Equity Act Testing Phase III Workbooks
STREET ADDRESS, CITY, STATE, ZIP CODE 500 Patroon Creek Blvd. Albany, NY 12206	**SURVEY DATES:** March 11, 2020 – November 30, 2020 Survey ID# - 706012282

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 (10 NYCRR). 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 Capital District Physician's Health Plan, Inc.'s (CDPHP) Phase III nonquantitative treatment limitation (NQTL) workbook submission, the MCO failed to provide all required information and comparative analyses demonstrating compliance with 42 CFR 438 Subpart K, and applicable State statute, rules and guidance, including the Mental Health Parity and Addiction Equity Act of 2008, (P.L. 110-345; MHPAEA) for 2 of the 10 NQTLS examined; experimental/investigational determinations and fail first. • Specifically, CDPHP failed to define factors and provide a substantive comparative analysis in Step 3 evidentiary standards comparability and equivalent stringency, for experimental/investigational determinations in the inpatient and outpatient benefit classifications. CDPHP also failed to provide substantive comparative analyses in Step 4, as written comparability and equivalent stringency, for experimental/investigational determinations in the inpatient and outpatient benefit classifications.	As a result of the findings outlined in this SOD, CDPHP performed the following: • Reviewed the information provided by CDPHP for the phase III submission; • Reviewed the approved plan of correction (POC) for phases I & II, **for which all deliverables are complete. This involved the identification of all NQTLs, their factors, evidentiary standards, as well as performing all appropriate comparative analyses**; and • Reviewed the **current comparative analyses and NQTL summaries** for inpatient and outpatient UM determinations (which encompass medical necessity and experimental/investigational determinations) and for Rx fail first (CDPHP step therapy NQTL). CDPHP has determined the following: • The root cause of the identified deficiencies: o Insufficient narrative to describe the policies, procedures and/or operations of the NQTLs subject to phase III; o Inadequate documentation of factors, evidentiary standards, and comparative analyses; and o Insufficient summary of CDPHP's compliance program to evaluate and document parity. • CDPHP notes that implementation of the approved plan of correction for phases I & II impacts the response to this SOD, particularly as it relates to resolution of the information/data insufficiency in previous NQTL summaries. **As a result, no new comparative analyses are required as all were performed, including the services subject to this SOD, when CDPHP implemented its Phase II POC.**

MCO Representative Signature: [redacted]	Date: 1-13-21
Title: Senior Vice President, State Programs	

	Additionally, the MCO failed to delineate and define factors and provide a substantive comparative analyses in Step 3 evidentiary standards comparability and equivalent stringency, for fail first in the prescription drugs benefit classification. CDPHP also failed to provide substantive comparative analyses in Step 4, as written comparability and equivalent stringency, and Step 5, in operation comparability and equivalent stringency, for fail first in the prescription drugs benefit classification. Due to these findings, the State is not able to assess whether the MCO complies with MHPAEA for the above referenced NQTLs.	Therefore, CDPHP proposes the following plan of correction: • Update, as necessary, the current year NQTL summaries and analyses-- in the form of the DOL template (which is similar to the Phase III workbooks) -- completed since the phase III submission and implementation of the previous POC to ensure a comprehensive review of comparability and equivalent stringency as written and in operation (these include the DOL step by step analysis); and • Repeat, as appropriate, staff training relating to mental health parity compliance. CDPHP intends to implement the above steps by February 15, 2022. Mental health/SUD parity compliance is monitored on an ongoing basis by the Mental Health/SUD Parity Compliance Officer and the internal compliance team, which meets monthly and reviews data regularly to monitor compliance. The person responsible for completion or direction of these efforts is: [redacted] Senior Vice President, State Programs

MCO Representative Signature: [redacted]	Date: 1-13-21
Title: Senior Vice President, State Programs	

Statement of Findings
Capital District Physician's Health Plan, Inc.
Mental Health Parity and Addiction Equity Act Testing of Phase III Workbooks
March 11, 2020 – November 30, 2020
Survey ID #: -706012282

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 Capital District Physician's Health Plan, Inc.'s (CDPHP) Phase III nonquantitative treatment limitation (NQTL) workbook submission, the Managed Care Organization (MCO) failed to provide all required information and comparative analyses demonstrating compliance with 42 CFR 438 Subpart K, and applicable State statute, rules and guidance; including the Mental

Health Parity and Addiction Equity Act of 2008 (MHPAEA), P.L. 110-343, for 2 of 10 NQTLS examined; experimental/investigational determinations and fail first.

- Specifically, CDPHP failed to define factors and provide a substantive comparative analysis in Step 3, evidentiary standards comparability and equivalent stringency, for experimental/investigational determinations in the inpatient and outpatient benefit classifications. CDPHP also failed to provide a substantive comparative analysis in Step 4, as written comparability and equivalent stringency, for experimental/investigational determinations in the inpatient and outpatient benefit classifications.

  Additionally, the MCO failed to delineate and define factors and provide a substantive comparative analysis in Step 3, evidentiary standards comparability and equivalent stringency, for fail first in the prescription drugs benefit classification. CDPHP also failed to provide substantive comparative analyses in Step 4, as written comparability and equivalent stringency, and Step 5, in operation comparability and equivalent stringency, for fail first in the prescription drugs benefit classification. Due to these findings, the State is not able to assess whether the MCO complies with MHPAEA for the above-referenced NQTLs.

CDPHP Plan of Correction:

As a result of the findings outlined in this SOD, CDPHP performed the following:

- Reviewed the information provided by CDPHP for the phase III submission;
- Reviewed the approved plan of correction (POC) for phases I & II, for which all deliverables are complete. This involved the identification of all NQTLs, their factors, evidentiary standards, as well as performing all appropriate comparative analyses; and
- Reviewed the current comparative analyses and NQTL summaries for inpatient and outpatient UM determinations (which encompass medical necessity and experimental/investigational determinations) and for Rx fail first (CDPHP step therapy NQTL).

CDPHP has determined the following:

- The root cause of the identified deficiencies:
  - Insufficient narrative to describe the policies, procedures and/or operations of the NQTLs subject to phase III;
  - Inadequate documentation of factors, evidentiary standards, and comparative analyses; and
  - Insufficient summary of CDPHP's compliance program to evaluate and document parity.
- CDPHP notes that implementation of the approved plan of correction for phases I & II impacts the response to this SOD, particularly as it relates to resolution of the information/data insufficiency in previous NQTL summaries. As a result, no new comparative analyses are required as all were performed, including the services subject to this SOD, when CDPHP implemented its Phase II POC.

Therefore, CDPHP proposes the following plan of correction:

- Update, as necessary, the current year NQTL summaries and analyses -- in the form of the DOL template (which is similar to the Phase III workbooks) -- completed since the phase III submission and implementation of the previous POC to ensure a comprehensive review of comparability and equivalent stringency as written and in operation (these include the DOL step by step analysis); and
- Repeat, as appropriate, staff training relating to mental health parity compliance.

CDPHP intends to implement the above steps by February 15, 2022. Mental health/SUD parity compliance is monitored on an ongoing basis by the Mental Health/SUD Parity Compliance Officer and the internal compliance team, which meets monthly and review data regularly to monitor compliance.

The person responsible for completion or direction of these efforts is:

[redacted]
Senior Vice President, State Programs