# 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: |
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| MetroPlus Health Plan Inc. | Focus Survey: MHPAEA Testing Phase III Workbooks |
| **STREET ADDRESS, CITY, STATE, ZIP CODE**<br>160 Water Street<br>New York, NY 10038 | **SURVEY DATES:**<br>March 11, 2020 - November 30, 2020<br><br>Survey ID #: 1647138643 |

**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 |
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| **10 CRR-NY 98-1.16 Disclosure and filing**<br>**(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.**<br><br>**Deficiency:**<br><br>Based on the review of MetroPlus Health Plan Inc.'s (MetroPlus) Phase III 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 (MHPAEA), P.L. 110-343, for 5 of 10 NQTLs examined, including retrospective review, outlier review, experimental/investigational determinations, fail first, and provider credentialing.<br><br>• Specifically, MetroPlus failed to provide all required information and substantive comparative analyses in Steps 1 through 5 for retrospective review and Steps 2 through 5 for outlier review in the prescription drug benefit classification. The MCO failed to provide substantive comparative | MetroPlus HealthPlan has reviewed the findings presented by the State regarding the Mental Health Parity, Phase III submission. We are committed to conducting ongoing analysis that will assess, monitor, and manage parity compliance to ensure that the Plan is providing comparable coverage for benefits necessary to treat mental health and substance use disorder, as required under both State and Federal law. Included in our assessment we will review the oversight of operations and controls the plan has in place to ensure each benefit is properly classified, assess the methodologies utilized for the identification and testing of financial requirements and quantitative treatment limitations, and evaluate procedures for the identification and testing of all non-quantitative treatment limitations that are imposed on MH/SUD benefits.<br><br>If MetroPlusHealth identifies discrepancies in coverage of services for the treatment of mental health conditions and substance use disorder as compared to medical-surgical services, the Plan will remedy disparate or improper practices. As part of our Mental Health and Substance Use Disorder Parity Compliance Program, overseen by [redacted], Senior Director of Compliance Operations, an analysis will be conducted to determine if the NQTLs for conducting MH/SUD Retrospective Review, Outlier Review, and Experimental/Investigational determinations are comparable and applied no more stringently than the Med/Surg processes, both as written and in operation. This analysis will include the contractual/regulatory factors as well as the documented additional factors considered when determining the appropriateness of |

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| analyses in Step 5, in-operation comparability and equivalent stringency, for retrospective review and provider credentialing in the inpatient and outpatient benefit classifications. MetroPlus failed to define factors in Step 3, evidentiary standards comparability and equivalent stringency, and failed to provide substantive comparative analyses in Step 5, in-operation comparability and equivalent stringency for outlier review in the inpatient and outpatient benefit classifications.<br><br>MetroPlus failed to define factors in Step 3, evidentiary standards comparability and equivalent stringency, and failed to provide substantive comparative analyses in Step 3, evidentiary standards comparability and equivalent stringency, and Step 5, in-operation comparability and equivalent stringency for experimental/investigational determinations in the inpatient, outpatient, and prescription drug benefit classifications and fail first in the prescription drug benefit classification. The MCO also failed to provide a substantive analysis in Step 4, as written comparability and equivalent stringency, for experimental/investigational determinations and fail first in the prescription drug benefit classification. Due to these findings, the State is not able to assess whether the MCO complies with MHPAEA for the above-referenced NQTLs. | MH/SUD and Med/Surg comparability. A review of each factor will be conducted to determine that, as written in policy and in operation, the factors for MH/SUD are comparable and no more restrictive than Med/Surg utilization review protocols.<br><br>MetroPlusHealth, in collaboration with Beacon Health Options, began the review of metrics to evaluate mental health parity, both in process and in operation measure parity on August 11, 2021. The Q2 2021 metrics and policies in effect during this review period were reviewed. No parity issues were identified. Subsequently, the MetroPlus contract with Beacon Health Options expired. However, a review of Q3 2021 data will still take place by February 28, 2022.<br><br>As of October 1, 2021, Mental Health/SUD services are managed by the Behavioral Health/SUD team established internally by MetroPlusHealth and staffed with MetroPlusHealth employees. Senior staff from the Medical/Surgical Medical Management Team and the Regulatory Compliance Team were members of the implementation team and evaluated the processes established to ensure they were no more restrictive than Medical/Surgical processes.<br><br>MetroPlus will be able to conduct an analysis of our internal MH/SUD and Medical/Surgical processes and metrics by February 28, 2022, as previously indicated in our plan of correction for Phase I and II. This workgroup will be facilitated by the MetroPlus Behavioral Health Parity Compliance Manager, a role recently filled by [redacted]. This review will include data produced by our pharmacy benefit manager, CVS Caremark, where appropriate. During this meeting, the workgroup will review Q4 2021 metrics and processes.<br><br>The assessment of parity compliance will include:<br>I. Perform a comparative analysis of review procedures for both MH/SUD benefits and medical/surgical benefits, including each step, associated triggers, timelines, forms, and requirements, as well as the qualifications/training for persons performing retrospective review.<br>II. Define and compare all relevant factors identified in the NQTLs for Med/Surg and MH/SUD Utilization Review that were not self-evident. We will: |

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| | a. Provide rationale for comparability for those factors that are different.<br>b. Explain or illustrate why certain factors were deemed similar or no more restrictive for MH/SUD, as compared to the Med/Surg factors.<br>c. Immediately remediate areas deemed non-compliant.<br>III. Review MH/SUD utilization review policies to ensure that they are comparable and not more stringently applied than the policies for Med/Surg utilization review.<br>a. This review will determine if contractual/regulatory standards and the internal protocols are documented, comparable, and no more stringent than Med/Surg policies.<br>b. This review will determine the comparability of staff involved in the authorization or denial of an authorization request.<br>c. This review will explain why the reviewers concluded that the policies are deemed comparable or no more stringently applied for MH/SUD.<br>IV. Review of a sample of MH/SUD benefits to ensure such determinations were consistent with regulatory, contractual, and internal protocols governing the authorization of retrospective services.<br>a. A sample of 50 MH/SUD case files will be audited to ensure that the utilization review process is compliant, comparable or no more restrictive than a sample of 50 Med/Surg case files.<br>b. This review will include a review of the qualifications of staff involved in utilization review determinations to ensure they are comparable and consistent with policy.<br>c. Compare the evidentiary standards and processes relied upon including any evidence considered in developing its techniques, recognized medical literature and professional standards and protocols (including comparative effectiveness studies and clinical trials), and published research studies. Variation identified in the application of |

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a guideline or standard relied upon will be investigated with an explanation of the process and factors relied upon for establishing that variation.

V. Inter-rater reliability audits of MH/SUD and MH/SUD clinical reviewers will be compared to determine the extent to which independent parties, each following the same contractual/regulatory guidelines, using the same tools, or examining the same data, arrive at matching conclusions.
    a. This will include a review of the tools used to conduct MH/SUD and MH/SUD inter-rater reliability audits of determinations to ensure that these audits are conducted in a comparable manner.
    b. This review will include ensuring that documented corrective actions are taken when clinical staff do not achieve a passing score.

VI. Review of credentialing policies and procedures to ensure equivalent stringency is applied in practice, this includes reviewing the average length of time to negotiate provider agreements and negotiated reimbursement rates with network providers and methods for the determination of usual, customary and reasonable charges.

In accordance with 11 NYCRR PART 230, MetroPlusHealth has developed a MH/SUD Parity Compliance Program. This program includes the designation of a Behavioral Health Parity Compliance Manager currently filled by [redacted] This individual is responsible for assessing, monitoring, and managing parity compliance and comply with all other rules defined in the law. Oversight of this program includes ensuring written policies include the methodologies for the identification and testing, including a comparative analysis, of all nonquantitative treatment limitations that are imposed on mental health or substance use disorder benefits, and a system for the ongoing assessment of parity compliance. Improper practices discovered through this process, or reported to the Mental Health Parity Compliance Manager, will be remediated. In instances of noncompliance, employees, directors or other governing body members, agents and other representatives of MetroPlus Health will be

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| | required to undergo refresher Parity Compliance Training. If any changes are made to the MetroPlus Mental Health and Substance Use Disorder Parity Compliance Program or any of its supporting policies and procedures as a result of a potential issue of noncompliance, the Behavioral Health Parity Manager will work with the Learning and Organizational Development department to revise or create any necessary training content. If immediate remediation is not possible, a corrective action plan will be developed to address any open issues as soon as practicable, but in no event later than 60 days after discovery.<br><br>To ensure ongoing compliance and as part of the Mental Health and Substance Use Disorder Parity Compliance Program, MetroPlus has developed a Parity Compliance Training Program for all employees, directors or other governing body members, agents and other representatives engaged in functions that are subject to federal to federal or state mental health and substance use disorder parity requirements or involved in analysis as a part of the compliance program. This training is also provided to new employees, directors, or other governing body members, agents, and other representatives during orientation. Each module included in the Annual Compliance Training program and provided during orientation, is reviewed and approved by the departments identified as being the subject matter experts of each area.<br><br>The Parity Compliance Training Program will cover the following topics:<br>• New York State Substance Use Law<br>• New York State Timothy's Law<br>• Mental Health Parity and Addiction Equality Act<br>• Mental Health and Substance Use Disorder Parity Compliance Program<br><br>Core Competencies to be gained by staff from the training program includes:<br>• An understanding of Federal Mental Health Parity, including the history of its implementation, the stakeholders involved, the application to client types and benefits, and the impact on managed care activities.<br>• An understanding of Non-Quantitative Treatment Limitations (NQTLs), a framework for analysis, and how they relate to functional areas.<br>• An understanding of Timothy's law in New York and how it relates to federal programs. Special |

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| | attention is paid to how the law applies to both adults and children, especially those with Serious Emotional Disturbances (SED).<br>• An awareness of how Parity is woven into clinical, operational, and network matters at MetroPlusHealth. Certain topics include Utilization Review Criteria, appeals processes, and provider network status.<br>• A recognition of the role staff have in complying with Parity regulations, including the history of modified activity and the acknowledgement of consequences from non-compliance.<br>MetroPlus has incorporated this information into its 2021 Annual Compliance Training that was completed by all required workforce members during the training window of October 1 through October 31, 2021.<br><br>Additionally, a comprehensive MH/SUD comparative analysis will be conducted any time there is a contractual or regulatory change, or when the Plan revises it protocols for the management of MH/SUD or Med/Surg operations and that change may lead to a policy or process that is more restrictive for MH/SUD utilization review. Given the transition of MH/SUD management to MetroPlus, a comprehensive analysis of the newly established internal MH/SUD operations and processes compared to the existing Med/Surg information will be completed by May 30, 2022.<br><br>In summary, our strategy as described above will define and compare all the relevant NQTL factors and demonstrate that MH/SUD factors are comparable or no more stringent than the Med/Surg factors, both as written and in operation. This will be accomplished by conducting a written analysis of the policies and procedures which govern the application of the NQTLs, and by identifying, defining, and analyzing the processes that are used to monitor and evaluate the application of the NQTLs in operation. Performance metrics will be provided to validate our conclusions as to the equity of application stringency. |

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| **PHL § 4406 Health maintenance organizations; regulation of contracts**<br>**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 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** | MetroPlus HealthPlan has reviewed the findings presented by the State regarding the Mental Health Parity, Phase III submission. We are committed to conducting ongoing analysis that will assess, monitor, and manage parity compliance to ensure that the Plan is providing comparable coverage for benefits necessary to treat mental health and substance use disorder, as required under both State and Federal law. Included in our assessment we will review the oversight of operations and controls the plan has in place to ensure each benefit is properly classified, assess the methodologies utilized for the identification and testing of financial requirements and quantitative treatment limitations, and evaluate procedures for the identification and testing of all non-quantitative treatment limitations that are imposed on MH/SUD benefits.<br><br>If MetroPlusHealth identifies discrepancies in coverage of services for the treatment of mental health conditions and substance use disorder as compared to medical-surgical services, the Plan will remedy disparate or improper practices. As part of our Mental Health and Substance Use Disorder Parity Compliance Program, overseen by [redacted], Senior Director of Compliance Operations, an analysis will be conducted to determine if the NQTLs for conducting MH/SUD Retrospective Review, Outlier Review, and Experimental/Investigational determinations are comparable and applied no more stringently than the Med/Surg processes, both as written and in operation. This analysis will include the contractual/regulatory factors as well as the documented additional factors considered when determining the appropriateness of MH/SUD and Med/Surg comparability. A review of each factor will be conducted to determine that, as written in policy and in operation, the factors for MH/SUD are comparable and no more restrictive than Med/Surg utilization review protocols.<br><br>MetroPlusHealth, in collaboration with Beacon Health Options, began the review of metrics to evaluate mental health parity, both in process and in operation measure parity on August 11, 2021. The Q2 2021 metrics and policies in effect during this review period were reviewed. No parity issues were identified. Subsequently, the MetroPlus contract with Beacon Health Options expired. However, a review of Q3 2021 data will still take place by February 28, 2022. |

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| **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.**<br><br>**4303(g) 4303(k) and 4303(l) State Insurance Law**<br><br>**<u>Deficiency:</u>**<br><br>Based on the review of MetroPlus' Phase III NQTL workbook submission (submitted August 14, 2020) for retrospective review, the MCO failed to comply with MHPAEA.<br><br>• 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 processes, strategies, evidentiary standards, and other factors used to implement retrospective review for mental health and substance use disorder (MH/SUD) benefits are not comparable to those utilized for medical and surgical (M/S) benefits. To wit, the MCO indicated that it considers whether the provider failed to obtain prior authorization for M/S benefits and other, non-comparable factors related to clinical care for MH/SUD benefits. | As of October 1, 2021, Mental Health/SUD services are managed by the Behavioral Health/SUD team established internally by MetroPlusHealth and staffed with MetroPlusHealth employees. Senior staff from the Medical/Surgical Medical Management Team and the Regulatory Compliance Team were members of the implementation team and evaluated the processes established to ensure they were no more restrictive than Medical/Surgical processes.<br><br>MetroPlus will be able to conduct an analysis of our internal MH/SUD and Medical/Surgical processes and metrics by February 28, 2022, as previously indicated in our plan of correction for Phase I and II. This workgroup will be facilitated by the MetroPlus Behavioral Health Parity Compliance Manager, a role recently filled by [redacted]. This review will include data produced by our pharmacy benefit manager, CVS Caremark, where appropriate. During this meeting, the workgroup will review Q4 2021 metrics and processes.<br><br>The assessment of parity compliance will include:<br>VII. Perform a comparative analysis of review procedures for both MH/SUD benefits and medical/surgical benefits, including each step, associated triggers, timelines, forms, and requirements, as well as the qualifications/training for persons performing retrospective review.<br>VIII. Define and compare all relevant factors identified in the NQTLs for Med/Surg and MH/SUD Utilization Review that were not self-evident. We will:<br>a. Provide rationale for comparability for those factors that are different.<br>b. Explain or illustrate why certain factors were deemed similar or no more restrictive for MH/SUD, as compared to the Med/Surg factors.<br>c. Immediately remediate areas deemed non-compliant.<br>IX. Review MH/SUD utilization review policies to ensure that they are comparable and not more stringently applied than the policies for Med/Surg utilization review.<br>a. This review will determine if contractual/regulatory standards and the internal protocols are documented, |

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| | comparable, and no more stringent than Med/Surg policies.<br>b. This review will determine the comparability of staff involved in the authorization or denial of an authorization request.<br>c. This review will explain why the reviewers concluded that the policies are deemed comparable or no more stringently applied for MH/SUD.<br>X. Review of a sample of MH/SUD benefits to ensure such determinations were consistent with regulatory, contractual, and internal protocols governing the authorization of retrospective services.<br>a. A sample of 50 MH/SUD case files will be audited to ensure that the utilization review process is compliant, comparable or no more restrictive than a sample of 50 Med/Surg case files.<br>b. This review will include a review of the qualifications of staff involved in utilization review determinations to ensure they are comparable and consistent with policy.<br>c. Compare the evidentiary standards and processes relied upon including any evidence considered in developing its techniques, recognized medical literature and professional standards and protocols (including comparative effectiveness studies and clinical trials), and published research studies. Variation identified in the application of a guideline or standard relied upon will be investigated with an explanation of the process and factors relied upon for establishing that variation.<br>XI. Inter-rater reliability audits of MH/SUD and MH/SUD clinical reviewers will be compared to determine the extent to which independent parties, each following the same contractual/regulatory guidelines, using the same tools, or examining the same data, arrive at matching conclusions.<br>a. This will include a review of the tools used to conduct MH/SUD and MH/SUD inter-rater reliability audits of determinations to ensure that these |

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audits are conducted in a comparable manner.

b. This review will include ensuring that documented corrective actions are taken when clinical staff do not achieve a passing score.

XII. Review of credentialing policies and procedures to ensure equivalent stringency is applied in practice, this includes reviewing the average length of time to negotiate provider agreements and negotiated reimbursement rates with network providers and methods for the determination of usual, customary and reasonable charges.

In accordance with 11 NYCRR PART 230, MetroPlusHealth has developed a MH/SUD Parity Compliance Program. This program includes the designation of a Behavioral Health Parity Compliance Manager currently filled by [redacted]. This individual is responsible for assessing, monitoring, and managing parity compliance and comply with all other rules defined in the law. Oversight of this program includes ensuring written policies include the methodologies for the identification and testing, including a comparative analysis, of all nonquantitative treatment limitations that are imposed on mental health or substance use disorder benefits, and a system for the ongoing assessment of parity compliance. Improper practices discovered through this process, or reported to the Mental Health Parity Compliance Manager, will be remediated. In instances of noncompliance, employees, directors or other governing body members, agents and other representatives of MetroPlus Health will be required to undergo refresher Parity Compliance Training. If any changes are made to the MetroPlus Mental Health and Substance Use Disorder Parity Compliance Program or any of its supporting policies and procedures as a result of a potential issue of noncompliance, the Behavioral Health Parity Manager will work with the Learning and Organizational Development department to revise or create any necessary training content. If immediate remediation is not possible, a corrective action plan will be developed to address any open issues as soon as practicable, but in no event later than 60 days after discovery.

To ensure ongoing compliance and as part of the Mental Health and Substance Use Disorder Parity Compliance

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| | Program, MetroPlus has developed a Parity Compliance Training Program for all employees, directors or other governing body members, agents and other representatives engaged in functions that are subject to federal to federal or state mental health and substance use disorder parity requirements or involved in analysis as a part of the compliance program. This training is also provided to new employees, directors, or other governing body members, agents, and other representatives during orientation. Each module included in the Annual Compliance Training program and provided during orientation, is reviewed and approved by the departments identified as being the subject matter experts of each area.<br><br>The Parity Compliance Training Program will cover the following topics:<br>• New York State Substance Use Law<br>• New York State Timothy's Law<br>• Mental Health Parity and Addiction Equality Act<br>• Mental Health and Substance Use Disorder Parity Compliance Program<br><br>Core Competencies to be gained by staff from the training program includes:<br>• An understanding of Federal Mental Health Parity, including the history of its implementation, the stakeholders involved, the application to client types and benefits, and the impact on managed care activities.<br>• An understanding of Non-Quantitative Treatment Limitations (NQTLs), a framework for analysis, and how they relate to functional areas.<br>• An understanding of Timothy's law in New York and how it relates to federal programs. Special attention is paid to how the law applies to both adults and children, especially those with Serious Emotional Disturbances (SED).<br>• An awareness of how Parity is woven into clinical, operational, and network matters at MetroPlusHealth. Certain topics include Utilization Review Criteria, appeals processes, and provider network status.<br>• A recognition of the role staff have in complying with Parity regulations, including the history of modified activity and the acknowledgement of consequences from non-compliance.<br>MetroPlus has incorporated this information into its 2021 Annual Compliance Training that was completed by all required workforce members during the training |

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| | window of October 1 through October 31, 2021.<br><br>Additionally, a comprehensive MH/SUD comparative analysis will be conducted any time there is a contractual or regulatory change, or when the Plan revises it protocols for the management of MH/SUD or Med/Surg operations and that change may lead to a policy or process that is more restrictive for MH/SUD utilization review. Given the transition of MH/SUD management to MetroPlus, a comprehensive analysis of the newly established internal MH/SUD operations and processes compared to the existing Med/Surg information will be completed by May 30, 2022.<br><br>In summary, our strategy as described above will define and compare all the relevant NQTL factors and demonstrate that MH/SUD factors are comparable or no more stringent than the Med/Surg factors, both as written and in operation. This will be accomplished by conducting a written analysis of the policies and procedures which govern the application of the NQTLs, and by identifying, defining, and analyzing the processes that are used to monitor and evaluate the application of the NQTLs in operation. Performance metrics will be provided to validate our conclusions as to the equity of application stringency. |

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| MCO Representative's Signature [redacted] | Date<br>January 5, 2021 |
| Title<br>Chief Compliance & Regulatory Officer | |

**Statement of Findings**
**MetroPlus Health Plan Inc.**
**MHPAEA Testing Phase III Workbooks**
**March 11, 2020 - November 30, 2020**
**Survey ID #: 1647138643**

**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 MetroPlus Health Plan Inc.'s (MetroPlus) Phase III 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 (MHPAEA), P.L. 110-343, for 5 of 10 NQTLs examined, including retrospective review, outlier review, experimental/investigational determinations, fail first, and provider credentialing.

- Specifically, MetroPlus failed to provide all required information and substantive comparative analyses in Steps 1 through 5 for retrospective review and Steps 2 through 5 for outlier review in the prescription drug benefit classification. The MCO failed to provide substantive comparative analyses in Step 5, in-operation comparability and equivalent stringency, for retrospective review and provider credentialing in the inpatient and outpatient benefit classifications. MetroPlus failed to define factors in Step 3, evidentiary standards comparability and equivalent stringency, and failed to provide substantive comparative analyses in Step 5, in-operation comparability and equivalent stringency for outlier review in the inpatient and outpatient benefit classifications.

  MetroPlus failed to define factors in Step 3, evidentiary standards comparability and equivalent stringency, and failed to provide substantive comparative analyses in Step 3, evidentiary standards comparability and equivalent stringency, and Step 5, in-operation comparability and equivalent stringency for experimental/investigational determinations in the inpatient, outpatient, and prescription drug benefit classifications and fail first in the prescription drug benefit classification. The MCO also failed to provide a substantive analysis in Step 4, as written comparability and equivalent stringency, for experimental/investigational determinations and fail first in the prescription drug benefit classification. 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 MetroPlus' Phase III NQTL workbook submission (submitted August 14, 2020) for retrospective 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 processes, strategies, evidentiary standards, and other factors used to implement retrospective review for mental health and substance use disorder (MH/SUD) benefits are not comparable to those utilized for medical and surgical (M/S) benefits. To wit, the MCO indicated that it considers whether the provider failed to obtain prior authorization for M/S benefits and other, non-comparable factors related to clinical care for MH/SUD benefits.

**MetroPlus Response:**

MetroPlus HealthPlan has reviewed the findings presented by the State regarding the Mental Health Parity, Phase III submission. We are committed to conducting ongoing analysis that will assess, monitor, and manage parity compliance to ensure that the Plan is providing comparable coverage for benefits necessary to treat mental health and substance use disorder, as required under both State and Federal law. Included in our assessment we will review the oversight of

operations and controls the plan has in place to ensure each benefit is properly classified, assess the methodologies utilized for the identification and testing of financial requirements and quantitative treatment limitations, and evaluate procedures for the identification and testing of all non-quantitative treatment limitations that are imposed on MH/SUD benefits.

If MetroPlusHealth identifies discrepancies in coverage of services for the treatment of mental health conditions and substance use disorder as compared to medical-surgical services, the Plan will remedy disparate or improper practices. As part of our Mental Health and Substance Use Disorder Parity Compliance Program, overseen by [redacted], Senior Director of Compliance Operations, an analysis will be conducted to determine if the NQTLs for conducting MH/SUD Retrospective Review, Outlier Review, and Experimental/Investigational determinations are comparable and applied no more stringently than the Med/Surg processes, both as written and in operation. This analysis will include the contractual/regulatory factors as well as the documented additional factors considered when determining the appropriateness of MH/SUD and Med/Surg comparability. A review of each factor will be conducted to determine that, as written in policy and in operation, the factors for MH/SUD are comparable and no more restrictive than Med/Surg utilization review protocols.

MetroPlusHealth, in collaboration with Beacon Health Options, began the review of metrics to evaluate mental health parity, both in process and in operation measure parity on August 11, 2021. The Q2 2021 metrics and policies in effect during this review period were reviewed. No parity issues were identified. Subsequently, the MetroPlus contract with Beacon Health Options expired. However, a review of Q3 2021 data will still take place by February 28, 2022.

As of October 1, 2021, Mental Health/SUD services are managed by the Behavioral Health/SUD team established internally by MetroPlusHealth and staffed with MetroPlusHealth employees. Senior staff from the Medical/Surgical Medical Management Team and the Regulatory Compliance Team were members of the implementation team and evaluated the processes established to ensure they were no more restrictive than Medical/Surgical processes.

MetroPlus will be able to conduct an analysis of our internal MH/SUD and Medical/Surgical processes and metrics by February 28, 2022, as previously indicated in our plan of correction for Phase I and II. This workgroup will be facilitated by the MetroPlus Behavioral Health Parity Compliance Manager, a role recently filled by [redacted]. This review will include data produced by our pharmacy benefit manager, CVS Caremark, where appropriate. During this meeting, the workgroup will review Q4 2021 metrics and processes.

The assessment of parity compliance will include:

I. Perform a comparative analysis of review procedures for both MH/SUD benefits and medical/surgical benefits, including each step, associated triggers, timelines, forms, and requirements, as well as the qualifications/training for persons performing retrospective review.
II. Define and compare all relevant factors identified in the NQTLs for Med/Surg and MH/SUD Utilization Review that were not self-evident. We will:
    a. Provide rationale for comparability for those factors that are different.
    b. Explain or illustrate why certain factors were deemed similar or no more restrictive for MH/SUD, as compared to the Med/Surg factors.
    c. Immediately remediate areas deemed non-compliant.
III. Review MH/SUD utilization review policies to ensure that they are comparable and not more stringently applied than the policies for Med/Surg utilization review.

a. This review will determine if contractual/regulatory standards and the internal protocols are documented, comparable, and no more stringent than Med/Surg policies.
b. This review will determine the comparability of staff involved in the authorization or denial of an authorization request.
c. This review will explain why the reviewers concluded that the policies are deemed comparable or no more stringently applied for MH/SUD.

IV. Review of a sample of MH/SUD benefits to ensure such determinations were consistent with regulatory, contractual, and internal protocols governing the authorization of retrospective services.
a. A sample of 50 MH/SUD case files will be audited to ensure that the utilization review process is compliant, comparable or no more restrictive than a sample of 50 Med/Surg case files.
b. This review will include a review of the qualifications of staff involved in utilization review determinations to ensure they are comparable and consistent with policy.
c. Compare the evidentiary standards and processes relied upon including any evidence considered in developing its techniques, recognized medical literature and professional standards and protocols (including comparative effectiveness studies and clinical trials), and published research studies. Variation identified in the application of a guideline or standard relied upon will be investigated with an explanation of the process and factors relied upon for establishing that variation.

V. Inter-rater reliability audits of MH/SUD and MH/SUD clinical reviewers will be compared to determine the extent to which independent parties, each following the same contractual/regulatory guidelines, using the same tools, or examining the same data, arrive at matching conclusions.
a. This will include a review of the tools used to conduct MH/SUD and MH/SUD inter-rater reliability audits of determinations to ensure that these audits are conducted in a comparable manner.
b. This review will include ensuring that documented corrective actions are taken when clinical staff do not achieve a passing score.

VI. Review of credentialing policies and procedures to ensure equivalent stringency is applied in practice, this includes reviewing the average length of time to negotiate provider agreements and negotiated reimbursement rates with network providers and methods for the determination of usual, customary and reasonable charges.

In accordance with 11 NYCRR PART 230, MetroPlusHealth has developed a MH/SUD Parity Compliance Program. This program includes the designation of a Behavioral Health Parity Compliance Manager currently filled by [redacted]. This individual is responsible for assessing, monitoring, and managing parity compliance and comply with all other rules defined in the law. Oversight of this program includes ensuring written policies include the methodologies for the identification and testing, including a comparative analysis, of all nonquantitative treatment limitations that are imposed on mental health or substance use disorder benefits, and a system for the ongoing assessment of parity compliance. Improper practices discovered through this process, or reported to the Mental Health Parity Compliance Manager, will be remediated. In instances of noncompliance, employees, directors or other governing body members, agents and other representatives of MetroPlus Health will be required to undergo refresher Parity Compliance Training. If any changes are made to the MetroPlus Mental Health and Substance Use Disorder Parity Compliance Program or any of its supporting policies and procedures as a result of a potential issue of noncompliance, the Behavioral Health Parity Manager will work with the Learning and Organizational Development department to revise or create any necessary training content. If immediate remediation is not possible, a

corrective action plan will be developed to address any open issues as soon as practicable, but in no event later than 60 days after discovery.

To ensure ongoing compliance and as part of the Mental Health and Substance Use Disorder Parity Compliance Program, MetroPlus has developed a Parity Compliance Training Program for all employees, directors or other governing body members, agents and other representatives engaged in functions that are subject to federal to federal or state mental health and substance use disorder parity requirements or involved in analysis as a part of the compliance program. This training is also provided to new employees, directors, or other governing body members, agents, and other representatives during orientation. Each module included in the Annual Compliance Training program and provided during orientation, is reviewed and approved by the departments identified as being the subject matter experts of each area.

The Parity Compliance Training Program will cover the following topics:

- New York State Substance Use Law
- New York State Timothy's Law
- Mental Health Parity and Addiction Equality Act
- Mental Health and Substance Use Disorder Parity Compliance Program

Core Competencies to be gained by staff from the training program includes:

- An understanding of Federal Mental Health Parity, including the history of its implementation, the stakeholders involved, the application to client types and benefits, and the impact on managed care activities.
- An understanding of Non-Quantitative Treatment Limitations (NQTLs), a framework for analysis, and how they relate to functional areas.
- An understanding of Timothy's law in New York and how it relates to federal programs. Special attention is paid to how the law applies to both adults and children, especially those with Serious Emotional Disturbances (SED).
- An awareness of how Parity is woven into clinical, operational, and network matters at MetroPlusHealth. Certain topics include Utilization Review Criteria, appeals processes, and provider network status.
- A recognition of the role staff have in complying with Parity regulations, including the history of modified activity and the acknowledgement of consequences from non-compliance.

MetroPlus has incorporated this information into its 2021 Annual Compliance Training that was completed by all required workforce members during the training window of October 1 through October 31, 2021.

Additionally, a comprehensive MH/SUD comparative analysis will be conducted any time there is a contractual or regulatory change, or when the Plan revises it protocols for the management of MH/SUD or Med/Surg operations and that change may lead to a policy or process that is more restrictive for MH/SUD utilization review. Given the transition of MH/SUD management to MetroPlus, a comprehensive analysis of the newly established internal MH/SUD operations and processes compared to the existing Med/Surg information will be completed by May 30, 2022.

In summary, our strategy as described above will define and compare all the relevant NQTL factors and demonstrate that MH/SUD factors are comparable or no more stringent than the Med/Surg factors, both as written and in operation. This will be accomplished by conducting a written analysis of the policies and procedures which govern the application of the NQTLs, and by identifying, defining, and analyzing the processes that are used to monitor and evaluate the

application of the NQTLs in operation. Performance metrics will be provided to validate our conclusions as to the equity of application stringency.