# 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: |
|---|---|
| MVP Health Plan Inc. | Focus Survey: MHPAEA Testing Phase I and Phase II Workbooks |
| **STREET ADDRESS, CITY, STATE, ZIP CODE**<br>625 State Street<br>Schenectady, NY 12305 | **SURVEY DATES:**<br>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.**<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 MVP Health Plan Inc.'s (MVP) 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 6 of 9 NQTLS examined; prior authorization, concurrent review, medical necessity criteria, formulary design, coding edits and reimbursement.<br><br>• Specifically, in Phase I, MVP failed to provide all required information and substantive comparative analyses for Steps 2 through 5 for inpatient and Steps 3 through 5 for outpatient and prescription drug prior authorization. In inpatient, outpatient, and prescription drug concurrent review, the MCO failed to define factors in (Step 3) evidentiary standards comparability and equivalent stringency and provide substantive comparative analyses for (Step 4) as written. comparability and equivalent stringency and (Step 5) in | MVP will take all the following actions as part of this Plan of Correction:<br><br>**Parity Compliance Education and Training:**<br>MVP will provide parity education and training on the compliance program to advance the knowledge and understanding of the purpose and processes in Steps 2-5 of the NQTL Parity Test for all operational staff involved in implementing Phase I and II NQTL types. MVP will provide a re-education program for staff when issues are identified.<br><br>**Timeline:** This will be implemented by **February 1, 2021.**<br><br>**Responsible Person:** Linda Borges, Corporate Compliance Officer, will be responsible for ensuring completion of this project.<br><br>**Step 2 Plan of Correction:**<br>For Step 2 for the inpatient prior authorization NQTL, MVP will update its documentation to describe the reason more fully for applying the NQTL.<br><br>This will include the identification of the specific factors that MVP relies upon to determine whether to apply prior authorization to particular inpatient services within the mental health/substance use disorder (MH/SUD) and medical surgical (M/S) classifications.<br><br>**Timeline:** MVP will complete the process of documenting these factors by **February 15, 2021.**<br><br>**Responsible Person:** Lisa McCabe will be responsible for ensuring completion of this project. |

| MCO Representative's Signature | Date |
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|  | July 29, 2021 |
| Title<br>Mental Health Parity Officer | |

operation comparability and equivalent stringency.

Additionally, MVP failed to provide substantive comparative analyses for (Step 4) as written comparability and equivalent stringency and (Step 5) inoperation comparability and equivalent stringency (prescription drugs only) for inpatient, outpatient, and prescription drug medical necessity review. For prescription drug formulary design, the MCO failed to define factors in (Step 3) evidentiary standards comparability and equivalent stringency and provide substantive comparative analyses for (Step 4) as writtencomparability and equivalent stringency and (Step 5) inoperation comparability and equivalent stringency.

- Specifically, in Phase II, MVP failed to provide all required information and substantive comparative analyses responsive to each step for (Step 3) evidentiarystandards 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 coding edits.

  Additionally, the MCO failed to provide substantive comparative analyses for (Step 4) as written comparability and equivalent stringency and (Step 5) inoperation comparability and equivalent stringency for inpatient, outpatient, and emergency care reimbursement.

**Step 3 Plan of Correction:**
For Step 3 for each of the following NQTL types: prior authorization (Phase I), concurrent review (Phase I), coding edits (Phase II), and provider reimbursement (Phase II), MVP will identify and define each factor relied upon in the design of the NQTL type and will include the applicable evidentiary standards.

For each factor MVP identified in Step 2 for each of the listed NQTL types, MVP will update the analysis documents to provide detailed and substantive definitions necessary to perform the comparability and stringency analysis at Step 4.

Each definition will include the applicable evidentiary threshold that MVP uses to determine whether to invoke the factor in deciding whether to apply the NQTL type to a particular benefit.

MVP will also review current data related to each factor to ensure that the evidence supports the ongoing use of the NQTL type on that basis.

**Timeline:** MVP will complete the process of defining each factor with a precise evidentiary standard and reviewing the current data associated with each by **April 15, 2021.**

**Responsible Person:**
For the prior authorization and concurrent review NQTL types, Lisa McCabe will be responsible for ensuring the completion of this project.

For the coding edits NQTL type Ann Whitley, Leader, Product and Benefit Configuration, and Susan Lohnes, Leader, Compliance and Vendor Claims Oversight, will be responsible for ensuring the completion of this project.

For the provider reimbursement methodology NQTL type, Patricia Deferio will be responsible for ensuring completion of this project.

**Step 4 Plan of Correction:** For Step 4 for each of the following NQTL types: prior authorization (Phase I), concurrent review (Phase I), medical necessity criteria (Phase I), coding edits (Phase II), and provider reimbursement (Phase II), MVP will update its NQTL documentation to perform a comparability and stringency analysis in writing based on the factors more fully defined in Step 3.

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MVP will review each factor identified in Step 3 that MVP relies upon to decide whether or not/how to apply the applicable NQTL type to MH/SUD benefits and will compare that factor and its evidentiary standard against the application to M/S benefits in the same classification.

MVP will document this analysis for each factor for each NQTL type in each classification.

MVP's parity compliance program will also ensure that the operational staff involved in implementing each NQTL understands their obligation to update this analysis if the data underpinning each factor change or if they decide to change the factors or evidentiary standards.

**Timeline:** This will be implemented by **May 1, 2021**.

**Responsible Person:**
For the prior authorization and concurrent review NQTL types, Lisa McCabe will be responsible for ensuring the completion of this project.

For the coding edits NQTL type Ann Whitley and Susan Lohnes will be responsible for ensuring the completion of this project.

For the provider reimbursement methodology NQTL type, Patricia Deferio will be responsible for ensuring completion of this project.

**Step 5 Plan of Correction:** For Step 5 for each of the following NQTL types: prior authorization (Phase I), concurrent review (Phase I), medical necessity criteria (Phase I), coding edits (Phase II), and provider reimbursement (Phase II), MVP will:

update its documentation to identify specific and applicable operational measures for each NQTL type in each classification (this will include ensuring alignment of operations measures between the MH/SUD and M/S application of the same NQTL type),

obtain timely data for each operations measure for each NQTL type in each classification,

perform a comparability and stringency analysis for each NQTL type for each operations measure and document the conclusions of the analysis, based on the analysis, make any adjustments to the factors (Step 2) or definitions/evidentiary standards (Step 3) necessary to address potential parity red flags identified in the Step 5 operation analysis.

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Operations measures will be based on industry standard technical specifications that MVP will document and make available upon request.

For the prior authorization (Phase I), concurrent review (Phase I), and coding edits (Phase II) NQTL types, MVP will ensure that the operations measure analysis includes a comparison of adverse determination rates and the relative percentage of MH/SUD vs. M/S benefits in each classification subject to the NQTL type.

For the provider reimbursement (Phase II) NQTL type, MVP will ensure that the operations measure analysis includes a comparison of paid rates.

**Timeline:** This will be implemented by **July 1, 2021**.

**Responsible Person:**
For the prior authorization and concurrent review NQTL types, Lisa McCabe will be responsible for ensuring the completion of this project.

For the coding edits NQTL type Ann Whitley, Leader, Product and Benefit Configuration, and Susan Lohnes, Leader, Compliance and Vendor Claims Oversight, will be responsible for ensuring the completion of this project.

For the provider reimbursement methodology NQTL type, Patricia Deferio will be responsible for ensuring completion of this project.

**Monitoring Plan of Correction:** MVP's Corporate Compliance Department implemented a parity analysis workplan, identified parity analysis leads by department or division and developed a parity organizational chart that includes ongoing weekly workplan monitoring by the Sr. Leader, Compliance and the Mental Health Parity Compliance Officer. The DOH CAP has been incorporated into this parity analysis workplan

**Timeline:** This CAP will be implemented between **February 1, 2021 through July 1, 2021.**

**Responsible Person:** The MVP Mental Health Parity Compliance Officer will:

- monitor the DOH Articles 44 and 49 Statement of Deficiencies CAP to ensure that MVP implements the CAP between February 1, 2021 and July 1, 2021.
- ensure updates on the status of the CAP are provided to MVP's Corporate Compliance Committee and Compliance and Risk Oversight Committee of the Board of Directors.
- assess, monitor, and manage parity compliance and confirm that standards of review for mental health and

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Date
July 29, 2021

Title
Mental Health Parity Officer

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| | substance used disorders benefits are comparable and applied no more stringently than the standards of review for medical or surgical condition benefits in compliance with applicable federal and state laws.<br>• identify potential noncompliance and ensure that corrective actions such as re-education/training of staff, revision to policies and procedures and other process improvements are implemented.<br>• monitor and ensure that Phase I and Phase II workbooks will be updated and maintained with the required information and substantive comparative analyses demonstrating compliance with the Mental Health Parity and Addiction Equity Act of 2008 (P.L. 110-345; MHPAEA). |

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| MCO Representative's Signature  | Date<br>July 29, 2021 |
| Title<br>Mental Health Parity Officer | |

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

**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 MVP Health Plan Inc.'s (MVP) 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 6 of 9 NQTLS examined; prior authorization, concurrent review, medical necessity criteria, formulary design, coding edits and reimbursement.

- Specifically, in Phase I, MVP failed to provide all required information and substantive comparative analyses for Steps 2 through 5 for inpatient and Steps 3 through 5 for outpatient and prescription drug prior authorization. In inpatient, outpatient, and prescription drug concurrent review, the MCO failed to define factors in (Step 3) evidentiary standards comparability and equivalent stringency and provide substantive comparative analyses for (Step 4) as written comparability and equivalent stringency and (Step 5) in operation comparability and equivalent stringency.

  Additionally, MVP failed to provide substantive comparative analyses for (Step 4) as written comparability and equivalent stringency and (Step 5) in operation comparability and equivalent stringency (prescription drugs only) for inpatient, outpatient, and prescription drug medical necessity review. For prescription drug formulary design, the MCO failed to define factors in (Step 3) evidentiary standards comparability and equivalent stringency and provide substantive

comparative analyses for (Step 4) as written comparability and equivalent stringency and (Step 5) in operation comparability and equivalent stringency.

- Specifically, in Phase II, MVP failed to provide all required information and substantive comparative analyses responsive to each step 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 coding edits.

  Additionally, the MCO failed to provide substantive comparative analyses for (Step 4) as written comparability and equivalent stringency and (Step 5) in operation comparability and equivalent stringency for inpatient, outpatient, and emergency care reimbursement.

**MVP will take all the following actions as part of this Plan of Correction to address the findings:**

**Step 1 Parity Compliance Education and Training:**
MVP provided parity education and training on the compliance program to advance the knowledge and understanding of the purpose and processes in Steps 2-5 of the NQTL Parity Test for all operational staff involved in implementing Phase I and II NQTL types. MVP will provide a re-education program for staff when issues are identified.

**Timeline:** The initial parity education and training was provided on October 9, 2020. Additional training was provided on the following dates:

1. Prior authorization and concurrent NQTL education and training was provided on 12/22/2020.
2. Medical necessity NQTL education and training was provided on 12/22/2020.
3. Network reimbursement NQTL education and training was provided on 11/19/2020 and 12/18/2020.
4. Coding edits NQTL education and training was provided on 2/17/2021.
5. Drug formulary design education and training was provided 2/24/2020.

**Responsible Person:** Linda Borges, Corporate Compliance Officer, will be responsible for ensuring completion of this project.

**Step 2 Plan of Correction:**
For Step 2 for the inpatient prior authorization NQTL (Phase I), MVP will update its documentation to describe the reason more fully for applying the NQTL.

This will include the identification of the specific factors that MVP relies upon to determine whether to apply prior authorization to particular inpatient services within the mental health/substance use disorder (MH/SUD) and medical surgical (M/S) classifications.

This Step 2 Plan of Correction is responsive to Bullet Point I regarding Phase I.

**Timeline:** MVP completed the process of documenting these factors on **February 15, 2021.**

**Responsible Person:** Lisa McCabe will be responsible for ensuring completion of this project.

**Step 3 Plan of Correction:**
For Step 3 for each of the following NQTL types: prior authorization (Phase I), concurrent review (Phase I), coding edits (Phase II), and provider reimbursement (Phase II), MVP will identify and define each factor relied upon in the design of the NQTL type and will include the applicable evidentiary standards.

For each factor MVP identified in Step 2 for each of the listed NQTL types, MVP will update the analysis documents to provide detailed and substantive definitions necessary to perform the comparability and stringency analysis at Step 4.

Each definition will include the applicable evidentiary threshold that MVP uses to determine whether to invoke the factor in deciding whether to apply the NQTL type to a particular benefit.

MVP will also review current data related to each factor to ensure that the evidence supports the ongoing use of the NQTL type on that basis.

This Step 3 Plan of Correction is responsive to Bullet Point I and II regarding Phase I and Phase II.

**Timeline:** MVP will complete the process of defining each factor with a precise evidentiary standard and reviewing the current data associated with each by **April 15, 2021.**

**Responsible Person:**
For the prior authorization and concurrent review NQTL types, Lisa McCabe will be responsible for ensuring the completion of this project.

For the coding edits NQTL type Ann Whitley, Leader, Product and Benefit Configuration, and Susan Lohnes, Leader, Compliance and Vendor Claims Oversight, will be responsible for ensuring the completion of this project.

For the provider reimbursement methodology NQTL type, Patricia Deferio will be responsible for ensuring completion of this project.

**Step 4 Plan of Correction:** For Step 4 for each of the following NQTL types: prior authorization (Phase I), concurrent review (Phase I), medical necessity criteria (Phase I), coding edits (Phase II), and provider reimbursement (Phase II), MVP will update its NQTL documentation to perform a comparability and stringency analysis in writing based on the factors more fully defined in Step 3.

MVP will review each factor identified in Step 3 that MVP relies upon to decide whether or not/how to apply the applicable NQTL type to MH/SUD benefits and will compare that factor and its evidentiary standard against the application to M/S benefits in the same classification.

MVP will document this analysis for each factor for each NQTL type in each classification.

MVP's parity compliance program will also ensure
that the operational staff involved in implementing each NQTL understands their obligation to update this analysis if the data underpinning each factor change or if they decide to change the factors or evidentiary standards.

This Step 4 Plan of Correction is responsive to Bullet Point I and II regarding Phase I and Phase II.

**Timeline:** This will be implemented by **May 1, 2021**.

**Responsible Person:**
For the prior authorization and concurrent review NQTL types, Lisa McCabe will be responsible for ensuring the completion of this project.

For the coding edits NQTL type Ann Whitley and Susan Lohnes will be responsible for ensuring the completion of this project.

For the provider reimbursement methodology NQTL type, Patricia Deferio will be responsible for ensuring completion of this project.

**Step 5 Plan of Correction:** For Step 5 for each of the following NQTL types: prior authorization (Phase I), concurrent review (Phase I), medical necessity criteria (Phase I), coding edits (Phase II), and provider reimbursement (Phase II), MVP will:

- Update its documentation to identify specific and applicable operational measures for each NQTL type in each classification (this will include ensuring alignment of operations measures between the MH/SUD and M/S application of the same NQTL type);

- Obtain timely data for each operations measure for each NQTL type in each classification;

- Perform a comparability and stringency analysis for each NQTL type for each operations measure and document the conclusions of the analysis; and

- Based on the analysis, make any adjustments to the factors (Step 2) or definitions/evidentiary standards (Step 3) necessary to address potential parity red flags identified in the Step 5 operation analysis.

Operations measures will be based on industry standard technical specifications that MVP will document and make available upon request.

For the prior authorization (Phase I), concurrent review (Phase I), and coding edits (Phase II) NQTL types, MVP will ensure that the operations measure analysis includes a comparison of adverse determination rates and the relative percentage of MH/SUD vs. M/S benefits in each classification subject to the NQTL type.

For the provider reimbursement (Phase II) NQTL type, MVP will ensure that the operations measure analysis includes a comparison of paid rates.

This Step 5 Plan of Correction is responsive to Bulletin Point I and II regarding Phase I and Phase II.

**Timeline:** This will be implemented by **July 1, 2021**.

**Responsible Person:**
For the prior authorization and concurrent review NQTL types, Lisa McCabe will be responsible for ensuring the completion of this project.

For the coding edits NQTL type Ann Whitley, Leader, Product and Benefit Configuration, and Susan Lohnes, Leader, Compliance and Vendor Claims Oversight, will be responsible for ensuring the completion of this project.

For the provider reimbursement methodology NQTL type, Patricia Deferio will be responsible for ensuring completion of this project.

For the prior authorization (Phase I), concurrent review (Phase I), and coding edits (Phase II) NQTL types, MVP will ensure that the operations measure analysis includes a comparison of adverse determination rates and the relative percentage of MH/SUD vs. M/S benefits in each classification subject to the NQTL type.

For the provider reimbursement (Phase II) NQTL type, MVP will ensure that the operations measure analysis includes a comparison of paid rates.

This Step 5 Plan of Correction is responsive to Bulletin Point I and II regarding Phase I and Phase II.

**Timeline:** This will be implemented by **July 1, 2021**.

**Responsible Person:**
For the prior authorization and concurrent review NQTL types, Lisa McCabe will be responsible for ensuring the completion of this project.

For the coding edits NQTL type Ann Whitley, Leader, Product and Benefit Configuration, and Susan Lohnes, Leader, Compliance and Vendor Claims Oversight, will be responsible for ensuring the completion of this project.

For the provider reimbursement methodology NQTL type, Patricia Deferio will be responsible for ensuring completion of this project.

**Addendum A:**
**MVP Corrective Action Plan (CAP) Monitoring for Department of Health (DOH) Articles 44 and 49 Statement of Deficiencies CAP:**

In November 2020, MVP's Compliance Department implemented a parity analysis workplan, identified parity analysis leads by department or division and developed a parity organizational chart that includes ongoing weekly workplan monitoring by the MVP Corporate Compliance Officer. The DOH CAP has been incorporated into this parity analysis workplan.

The MVP Corporate Compliance Officer will monitor the DOH Articles 44 and 49 Statement of Deficiencies CAP to ensure that MVP is meeting the required timeframes. In addition, the Corporate Compliance Officer will ensure updates on the status of the CAP are provided to MVP's Corporate Compliance Committee and Compliance and Risk Oversight Committee of the Board of Directors.

The Corporate Compliance Officer will be responsible for assessing, monitoring, and managing parity compliance and confirming that standards of review for mental health and substance used disorders benefits are comparable and applied no more stringently than the standards of review for medical or surgical condition benefits in compliance with applicable federal and state laws. The ongoing monitoring of parity compliance will be accomplished by quarterly review of NQTL parity analyses to ensure the CAP is maintained. If issues of parity noncompliance are identified, MVP will keep a record of the noncompliance and produce evidence of actions taken to remediate upon the State's request. The Compliance Officer will ensure that corrective actions such as re-education/training of staff, revision to policies and procedures and other process improvements are implemented to correct any parity noncompliance. The Corporate Compliance Officer will then re-review the NQTL parity analyses after any corrective action, re-education/training and/or process improvement has been implemented, to ensure that any parity noncompliance has been corrected.

The submission of this remediation is MVP's assurance to DOH of our commitment that Phase I and Phase II workbooks will be updated and maintained with the required information and substantive comparative analyses demonstrating compliance with the Mental Health Parity and Addiction Equity Act of 2008 (P.L. 110-345; MHPAEA).

This plan of correction will be implemented between Monday, February 1, 2021 and Thursday, July 1, 2021. The plan of correction will be completed by July 1, 2021.