STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In re: Parity Examination of
Anthem Health Plans of New Hampshire, Inc. and
Matthew Thornton Health Plan, Inc.

Docket No.: INS No. 17-046-MC

REGULATORY SETTLEMENT AGREEMENT AND ORDER

This Regulatory Settlement Agreement and Order ("Agreement and Order") is made by and between the New Hampshire Insurance Department ("the Department") and Anthem Health Plans of New Hampshire, Inc. and Matthew Thornton Health Plan, Inc. (collectively, "the Company") in the targeted market conduct examination of the Company referenced below ("the Parity Examination"). The Department and the Company are collectively referred to herein as "the Parties."

RECITALS

1. Pursuant to RSA 400-A:37, on December 14, 2017, the Department issued an examination warrant for the purpose of examining the Company's administration of benefits for parity of Mental Health and Substance Use Disorder and Addiction treatment services (hereinafter, "MH/SUD") in comparison to Medical/Surgical services (hereinafter, "M/S").

2. The goal of the examination was to ascertain how companies regulated by the Department are providing coverage for MH/SUD treatments and to ensure that benefits are consistently applied within the requirements of state and Federal laws and are not subject to more stringent requirements than for M/S benefits during the examination period of January 1, 2016 through July 31, 2017.

3. This examination encompassed all regulatory requirements under RSA Title XXXVII that apply to the health carrier's practices with respect to the handling of MH/SUD services, including, but not limited to:

a. RSA 417-E:1, V and RSA 420-B:8-b, V, which authorize the Commissioner to enforce the provisions of the federal Mental Health Parity Addiction Equity Act of 2008, codified at 29 U.S.C. § 1185a (hereinafter, "MHPAEA") that relate to the business of insurance, including federal regulations adopted under MHPAEA, 45 CFR § 146.136, Parity in mental health and substance use disorder benefits (federal parity rule);

b. RSA 420-N:5, which authorizes the Commissioner to enforce the consumer protections and market reforms set forth in the Affordable Care Act (hereinafter, "ACA") including the ACA's amendments to MHPAEA;

c. RSA 415:18-a, requiring coverage for mental or nervous conditions and treatment for chemical dependency under group health plans;

d. RSA 420-B:8-b, requiring Health Maintenance Organizations (hereinafter, "HMOs") to provide coverage for mental and nervous conditions and chemical dependency;

e. RSA 417-E:1, requiring coverage for certain biologically-based mental illnesses that is in parity with coverage for physical illness; and

f. Provisions of New Hampshire's Managed Care Law, including RSA 420-J:5 through 5-e, governing appeals; RSA 420-J:7, regarding network adequacy; RSA 420-J:8-a, requirements for prompt pay; RSA 420-J:4 governing provider credentialing; and RSA 420-J:6, regarding utilization review.

4. The Department's final examination report, dated January 17, 2020, found that the Company was in compliance with many of the requirements of MHPAEA. However, the Department found a large disparity between the weighted averages of the Company's reimbursement for certain categories of M/S and MH/SUD providers when compared to Medicare reimbursement. The Department found that this large difference constitutes a strong indicator of potential non-compliance with the non-quantitative treatment limitation ("NQTL") requirements of MHPAEA with respect to MH/SUD provider reimbursement practices.

5. In view of this strong indicator of potential non-compliance, the Department examined whether the Company was in compliance with MHPAEA's NQTL requirements regarding demonstration of comparable provider reimbursement practices. The Department found that the Company did not adequately document the processes, strategies, evidentiary standards or other factors it uses to set reimbursement rates or otherwise provide sufficient information to demonstrate that the Company applies these standards comparably to MH/SUD and M/S reimbursement and not more stringently to MH/SUD providers than to M/S providers.

6. The Company disputes the Department's findings with respect to its MH/SUD provider reimbursement practices and denies any wrongdoing or engaging in any practices that violate the NQTL requirements of MHPAEA with respect to parity in provider reimbursement practices,

7. In view of the complexity of the issues raised and the probability that long-term litigation and/or administrative proceedings would be required to resolve the disputes between the Parties, the Company and the Department desire to resolve their differences regarding MHPAEA's NQTL requirements as applied to provider reimbursement practices and all claims that the Department may assert with respect to the Company's provider reimbursement practices.

NOW, THEREFORE, upon consent of the Department and the Company, it is hereby **ORDERED** as follows:

A. Adoption and Publication of Examination Report

1. Pursuant to RSA 400-A:37, IV (c) (3), the Report is adopted as Final with modifications and open for public inspection. The Company waives the 20 day waiting period referenced in RSA 400-A:37, IV (c) (3) between the issuance of this Final Order and the opening of the report for public inspection.

2. Pursuant to RSA 400-A:37, IV-a, all documents, materials, work papers or other information obtained or produced by the Commissioner during the course of the examination that led to the Examination Report (other than the Report itself with attachments) are confidential by law and privileged, are not subject to RSA 91-A, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

B. Implementation of Compliance Assurance Plan.

For the term of this Agreement and Order, the Company shall implement the written Compliance Assurance Plan ("CAP") incorporated by reference in this Agreement and Order and focusing upon the Company's provider reimbursement practices and its maintenance and development of its MH/SUD network. The purpose of the CAP and of the ongoing regulatory oversight provided for in this Agreement and Order is to create the following assurances of MHPAEA compliance:

1. Demonstration of Comparable Provider Reimbursement Practices as Written. The Company will develop, in writing, an analytic framework describing its provider reimbursement practices as follows.

a. The framework shall be sufficiently objective and verifiable through quantitative metrics that it can be used to demonstrate that the Company's processes, strategies, evidentiary standards and other factors for provider reimbursement are comparable and that the Company does not apply them more stringently to MH/SUD services.

b. The framework shall clearly and specifically describe the processes, standards, strategies, evidentiary standards and other factors used to determine provider reimbursements, including the reason any factor was chosen, the evidence used when considering the factor, and, if any factor is given more weight than others, the reason for such difference. Nothing in the framework, however, shall require The Company to establish a mathematical formula for determining reimbursement rates or to assign weights to the various factors The Company considers when determining reimbursement rates. Nothing in the foregoing sentence, however, intended to or shall limit or eliminate any of The Company's documentation and reporting obligations in the framework or the CAP. The analytic framework shall be sufficiently detailed to demonstrate that the processes, standards, factors and strategies the Company uses to set reimbursement rates for M/S and MH/SUD services are comparable and comply with the NQTL requirements under MHPAEA.

2. Demonstration of Comparable Provider Reimbursement Practices in Operation.

a. Having demonstrated, through the development of an objective, analytic framework, that its provider reimbursement practices, as written, are consistent with MHPAEA's comparability requirement and that the Company does not apply its processes, standards, strategies, evidentiary standards and other factors for determining reimbursement rates more stringently to MH/SUD services by acting in a manner that is arbitrary or discriminatory, the Company shall utilize this framework (1) to re-evaluate its MH/SUD statewide fee schedule at the beginning of the monitoring period and (2) to review its MH/SUD statewide fee schedule annually thereafter. In doing so, the Company shall make such adjustments to the schedule as are warranted by the conscientious application of this framework and by close attentiveness to the comparability standard for NQTLs under MHPAEA itself, the federal parity rule promulgated thereunder, sub-regulatory guidance issued by the supervising federal agencies, including the September 5, 2019 FAQs, and the Self-Compliance Tool.

b. If an element of discretion is exercised when applying the framework to determine provider reimbursement rates, the framework shall require documentation to demonstrate that, for both MH/SUD and M/S services, the discretion was comparably exercised and The Company did not apply its processes, standards, strategies, evidentiary standards and other factors for determining reimbursement rates more stringently to MH/SUD services by acting in a manner that is arbitrary or discriminatory.

c. If the Company uses custom fee schedules for certain providers or provider groups that depart from the statewide fee schedule, the framework shall explain the processes and factors relied upon in establishing that variation from the statewide fee schedule, and The Company shall provide such information and data as the Department may reasonably require during the monitoring period to determine whether such practices are consistent with MHPAEA's comparability requirement and whether the Company is applying its processes, standards, strategies, evidentiary standards and other factors for determining reimbursement rates more stringently to MH/SUD services by acting in a manner that is arbitrary or discriminatory. For each year of the monitoring period, The Company shall provide the Department with a list of custom contracts that will be the subject of renewal negotiations. The Department shall select six (6) of these custom contracts for each year of the monitoring period for which The Company shall provide a narrative to the Department describing how it applied its processes, standards, strategies, evidentiary standards and other factors for determining reimbursement rates for the renewal of these contracts.

3. Comparability of Steps Taken to Develop MH/SUD and M/S Networks.

In order to address the Department's concern that the Company's attention to the development of the MH/SUD network capacity and quality may lag behind the attention it pays to its M/S network**,** the Company agrees to take the following actions regarding its MH/SUD network development and maintenance strategies.

a. The Company will implement and adhere to the written plan in the CAP to ensure that The Company takes steps to develop a MH/SUD network that are comparable to the

steps it takes to develop a M/S network and that meets patients' needs. The Company will continue to build on its efforts to capture and understand information regarding the MH/SUD treatment needs of at-risk populations and to respond to that information with programs or initiatives to address those needs. The requirement to take steps to develop its MH/SUD network that are comparable to the steps it takes to development its M/S network shall not be interpreted to require the Company to achieve comparable results, as there may be exogenous factors beyond the Company's control that contribute to disparate outcomes.

b. The CAP, and the subsequent quarterly reporting described in Section B. 2. below, shall identify all programs, initiatives and other efforts the Company takes to develop, enhance and maintain its network or MH/SUD providers.

C. Ongoing Regulatory Oversight

1. The monitoring of the Company for compliance with the terms of this Agreement and Order constitutes an ongoing examination by the Department in accordance with RSA 400-A:37. Consistent with RSA 400-A:37, the Department shall accord confidential treatment to the work papers, recorded information, documents, and documents produced by, obtained by or disclosed by the Company in the context of ongoing regulatory oversight. Likewise, the reasonable costs and expenses incurred by the Department after the signing of this agreement by the Parties and related to monitoring the Company's compliance with this Agreement and Order shall be borne by the Company.

2. For a period of twenty-four (24) months following the date this Agreement and Order is signed by the Parties, the Company shall provide to the Department quarterly reports on the implementation and execution of the requirements of this Agreement and Order and of the CAP. In addition, the Company shall provide such additional and follow-up information and answers to questions as the Department may request. Each quarterly report shall be delivered to the Department's designated examiner within thirty (30) days following the end of the applicable reporting period and shall include at a minimum:

a. A detailed and updated description of the specific actions the Company has taken to implement the CAP.

b. All of the information and metrics required under the CAP to be reported to the Department.

3. If, after the 24-month monitoring period, the Department is satisfied, based upon the Company's quarterly reports and any other information obtained by the Department relating to the CAP and this Agreement and Order, that the Company has fulfilled its obligations under this Agreement and Order, the pending examination will be closed, and this Agreement and Order will terminate.

4. In the alternative, if following the 24 month monitoring period, the Department remains concerned about the Company's compliance with MHPAEA with respect to MH/SUD provider reimbursement practices, the Department may conduct a follow-up review of the Company's compliance with MHPAEA and with the requirements of this Agreement and Order

consistent with its examination authority under RSA 400-A:37. The Department will provide a written examination report summarizing the results of that review to the Company, and the Company shall bear the cost of the review. If this review confirms that the Company has fulfilled its obligations under this Agreement and Order, the pending examination will be closed, and this Agreement and Order will terminate.

D. Miscellaneous

1. This Agreement and Order is an agreement solely between the named Parties as set out above, and no other person or entity shall be deemed to obtain or possess any enforceable rights against the Company as a third-party beneficiary or otherwise as a result of the Agreement and Order. The Parties agree that this Agreement and Order is not intended to and shall not confer any rights upon any other person or entity and shall not be used for any other purpose. Nothing in this Agreement and Order shall be construed to provide a private right of action for any person or entity not a Party to this Agreement and Order. Nor shall the Agreement and Order be deemed to create any intended or incidental third-party beneficiaries, and the matters treated herein shall remain within the sole and exclusive jurisdiction of the Department.

2. This Agreement and Order represents a compromise of disputed matters between the Parties. Neither this Agreement and Order, nor any of the communication or negotiations leading up to this Agreement and Order, nor any actions taken or documents executed in connection with this Agreement and Order, is now, or may be deemed in the future to be an admission or evidence of any liability or wrongdoing by the Company with respect to the subject matter of the Parity Examination or the Examination Scope.

3. This Agreement and Order does not impair, restrict, suspend or disqualify the Company from engaging in any lawful business in New Hampshire based upon, or arising out of, the Parity Examination regarding any alleged act or omission of the Company.

4. The Parties agree that in any future legal or other proceeding, evidence concerning any term or provision of this Agreement and Order shall not be used in any way, shall not be discoverable or admissible in any respect, except in any action to enforce the terms and provisions of this Agreement and Order.

5. By entering into this Agreement and Order, the Department and the Company intend to resolve, for the term of this Agreement and Order, all issues relating to the Parity Examination. Subject to the Company's performance of and compliance with the terms and conditions of this Agreement and Order and the CAP, the Department releases the Company from any and all claims, demands, interest, penalties, actions or causes of action that the Department may have or could have alleged by reason of any matter, cause or thing whatsoever, regarding, arising out of or relating to the subject matter of the Parity Examination within the Examination Period. This Agreement and Order shall be deemed a complete settlement and full and final resolution of the findings in the Parity Examination report, and is in lieu of any other action that could have been brought by the Department relating to these matters. Provided however, notwithstanding the foregoing, the Department is in no way precluded from re-examining issues identified in this Agreement and Order after the term of this Agreement and Order has ended.

6. The CAP is incorporated in this Agreement and Order by reference as if fully set out herein.

7. Although this Agreement and Order shall be a public document, the CAP itself and all reporting by the Company to the Department pursuant to this Agreement and Order and the CAP shall remain confidential under RSA 400-A:37 and shall be exempt from subpoena and from public disclosure under RSA 91-A.

8. This Agreement and Order represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes any and all prior understandings, agreements, plans and negotiations, whether written or oral, with expect to the subject matter hereof. All modifications to this Agreement must be in writing and signed by each of the Parties hereto.

9. This Agreement shall be deemed to have been prepared jointly by the Parties hereto. Any ambiguity herein shall not be interpreted against any Party hereto and shall be interpreted as if each of the Parties had prepared this Agreement.

10. This Agreement may be executed in one or more counterparts, any of which shall be deemed an original and all of which taken together shall constitute one and the same Agreement. Execution and delivery of this Agreement and Order may be evidenced by email.

11. If New Hampshire enacts or adopts a law or regulation relating to or conflicting with any provision of this Agreement, then application of such provision of this Agreement and Order shall be superseded by such law or regulation, and all other unaffected terms and conditions of this Agreement and Order shall remain in full force and effect.

12. The Parties represent and warrant that the person(s) executing this Agreement on behalf of each Party has the legal authority to bind the Party to the terms of this Agreement.

E. Enforcement. The failure to comply with any provision of this Agreement and Order shall constitute a violation of an order of the Commissioner and a breach of this agreement and shall subject the Company to such administrative and regulatory enforcement actions and penalties as the Department deems appropriate and founded in law.

SO AGREED

Anthem Health Plans of New Hampshire, Inc. and
Matthew Thornton Health Plan, Inc.

Date: 1-21-2020

By: Lisa Guertin, President

SO ORDERED

NEW HAMPSHIRE INSURANCE DEPARTMENT

Date: 1/21/2020

Alexander K. Feldvebel

By: Alexander K. Feldvebel, Acting Commissioner