MARKET CONDUCT REPORT ON EXAMINATION

OF

MVP HEALTH PLAN, INC.

AND

MVP HEALTH INSURANCE COMPANY

AND

MVP HEALTH SERVICES CORP.

AS OF DECEMBER 31, 2018

EXAMINER: **TOMMY KONG, CPCU, CFE, PIR**

DATE OF REPORT: **MARCH 23, 2023**

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March 23, 2023

Honorable Adrienne A. Harris
Superintendent of Financial Services
Albany, New York 12257

Madam:

Pursuant to the provisions of the New York Insurance Law and Public Health Law, and acting in accordance with the instructions contained in Appointment Numbers 31934, 31935, and 31936, dated April 12, 2019, attached hereto, I have made an examination into the affairs of MVP Health Plan, Inc., a health maintenance organization certified pursuant to the provisions of Article 44 of the New York Public Health Law; MVP Health Insurance Company, a for-profit accident and health stock company licensed pursuant to the provisions of Article 42 of the New York Insurance Law; and MVP Health Services Corp., a not-for-profit health services corporation licensed pursuant to Article 43 of the New York Insurance Law, as of December 31, 2018, and submit the following report thereon.

The examination was conducted at the home office of MVP Health Care, Inc., the ultimate parent company of the above three companies covered under this examination, located at 625 State Street, Schenectady, New York.

Wherever the designations “MVPHP” or the “HMO” appear herein, without qualification, they should be understood to indicate MVP Health Plan, Inc.

Wherever the designations “MVPHIC” or the “Company” appear herein, without qualification, they should be understood to indicate MVP Health Insurance Company.

Wherever the designations “MVPHSC” or the “Plan” appear herein, without qualification, they should be understood to indicate MVP Health Services Corp.

Wherever the designation the “MVP Companies” appear herein, without qualification, it should be understood to indicate MVP Health Plan, Inc., MVP Health Insurance Company, and MVP Health Services Corp., collectively.

Wherever the designation “MVP” appears herein, without qualification, it should be understood to indicate MVP Health Care, Inc., the ultimate parent of the MVP Companies.

Wherever the designation the “Department” appears herein, without qualification, it should be understood to indicate the New York State Department of Financial Services.

1. SCOPE OF THE EXAMINATION

The previous market conduct examination of the MVP Companies was conducted as of December 31, 2013. This market conduct examination of the MVP Companies was performed to review the manner in which the three (3) MVP Companies conduct their business practices and fulfill their contractual obligations to policyholders and claimants and covers the five-year period January 1, 2014, through December 31, 2018. Transactions occurring subsequent to December 31, 2018, were reviewed where deemed appropriate.

This report on examination contains the significant findings of the examination and is confined to comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require an explanation or description.

A review was also made to ascertain the corrective actions taken by the MVP Companies with respect to the comments and recommendations contained in the prior market conduct report on examination. The results of the examiners review are contained in Item 7 of this report.

A separate examination of the financial conditions of the MVP Companies as of December 31, 2016, was performed by Risk & Regulatory Consulting, LLC. Separate financial reports on examination for MVPHP, MVPHIC, and MVPHSC have been submitted thereon.

2. DESCRIPTION OF THE MVP COMPANIES

MVP Health Plan, Inc.

MVP Health Plan, Inc. is a New York State not-for-profit corporation certified as a health maintenance organization ("HMO") to deliver health care services in the States of New York and Vermont.

MVPHP was incorporated on July 30, 1982, pursuant to Section 402 of the New York Not-For-Profit Corporation Law, for the purpose of operating as an HMO, as such term is defined in Article 44 of the New York Public Health Law. The incorporators of MVPHP were the Board of Directors of the Schenectady County Foundation for Medical Care, Inc., a non-profit physicians association. Simultaneous with the incorporation of MVPHP, the incorporators also formed Mohawk Valley Medical Associates, Inc., a non-profit independent practice association ("IPA"), pursuant to Section 402 of the New York Not-For-Profit Corporation Law. MVPHP is an IPA model HMO.

On March 8, 1982, MVPHP and Mohawk Valley Medical Associates, Inc. contracted, through an "Independent Practice Association Service Agreement," to work collectively to provide for the administration of a comprehensive prepaid program of covered healthcare benefits and for the delivery of such health care services. Subsequently, MVPHP made similar arrangements with other IPAs to achieve the same goals. On August 30, 2013, the New York State Department of Health ("DOH") approved MVPHP's request to acquire Hudson Health Plan, Inc. ("HHP"). The Department issued a non-objection letter to DOH on August 29, 2013, relative to this acquisition. As of January 1, 2016, Hudson Health Plan, Inc. no longer had members and was dissolved on May 31, 2022.

MVPHP is the sole corporate member of HHP, a Tarrytown, New York based Medicaid managed care organization. HHP is a not-for-profit prepaid health services plan that provides state-sponsored Medicaid managed care, Child Health Plus, and Family Health Plus insurance coverage to its members in New York's Hudson Valley region. During the examination period, MVPHP offered HMO Point-of-Service commercial health insurance, Medicare Advantage, High Deductible Health Insurance Plans, and government-funded programs for New York members, as well as for Vermont members, limited to Medicare and HMO commercial health insurance.

MVP Health Insurance Company

MVP Health Insurance Company was incorporated on April 24, 2000, as a for-profit accident and health insurer. MVPHIC was licensed in June 2001, pursuant to Article 42 of the New York Insurance Law, to write insurance business as defined under Section 1113(a)(3) of the New York Insurance Law. In July 2001, MVPHIC began operations by delivering health care services in the State of New York. Additionally, on May 14, 2002, MVPHIC also received approval to operate as an accident and health insurer in the State of Vermont.

During the calendar years 2014 through 2018 covered under this examination period, MVPHIC offered predominantly comprehensive or major medical healthcare (i.e., policies that provide fully insured indemnity, HMO, PPO, or Fee-for-Service coverage) covering hospital, medical, and surgical expenses and standalone dental coverage to its New York and Vermont members in the small group and large group markets. The Company did not write any new business in calendar years 2017 and 2018.

MVP Health Services Corp.

MVP Health Services Corp. was incorporated on October 8, 1992. MVPHSC filed its Certificate of Incorporation with the New York Department of State on October 16, 1992. MVPHSC was incorporated under Section 402 of the Not-for-Profit Corporation Law and licensed pursuant to Article 43 of the New York Insurance Law, as a not-for-profit health services corporation. Prior to January 2002, MVPHSC offered point-of- service health insurance products. MVPHSC is a Type D membership corporation, as defined in Section 201 of the New York Not-for-Profit Corporation Law.

MVPHSC is a subsidiary of MVPRT Holdings, Inc., which is a wholly-owned subsidiary of MVPHIC Holding Corp., which in turn is a wholly owned subsidiary of MVP Health Care, Inc. Pursuant to its By-laws, MVPHSC has only one corporate member, MVPRT Holdings, Inc. During the examination period, MVPHSC offered a full line of comprehensive or major medical healthcare covering hospital, medical, and surgical expenses and stand-alone dental coverage to its New York members in the large and small groups markets.

3. CLAIM FORMS

Part 86.4(a) of Insurance Regulation No. 95 (11 NYCRR 86.4(a)) requires the following fraud warning statement to be included on all claim forms:

> "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation."

The MVP Companies dental claim forms used during the examination period were the standard American Dental Association form and were not in compliance with Part 86.4(a) of Insurance Regulation No. 95 (11 NYCRR 86.4(a)) in that the forms did not contain the fraud warning statement that is required by said regulation.

It is recommended that the MVP Companies revise its standard dental claim forms to include the fraud warning statement prescribed by Part 86.4(a) of Insurance Regulation No. 95 (11 NYCRR 86.4(a)).

After this matter was brought to the MVP Companies' attention, it was noted that they have updated their respective dental claim forms with the required fraud warning statement.

4. GRIEVANCES

Part 98-1.14(d) of the Administrative Rules and Regulations of the New York State Department of Health (10 NYCRR 98-1.14(d)) states, in part:

> "The MCO shall document the receipt and disposition of each grievance or complaint, comply with all applicable reporting requirements of section 210 of the Insurance Law..."

Section 210(b)(1) of the New York Insurance Law states in part:

> "Beginning September first, nineteen hundred ninety-nine and annually thereafter, the superintendent shall include in such guide, and insurers and entities certified pursuant to article forty-four of the public health law shall provide to the superintendent the information required for such guide in a timely fashion, the following information: (1) The number of grievances filed pursuant to section forty-four hundred eight-a of the public health law …and the number of such grievances in which an adverse determination of the insurer or entity was reversed in whole or in part versus the number of such determinations which were upheld…"

Separate lists of each of the MVP Companies' grievances for examination year 2018 was obtained and reviewed. In addition to the MVP Companies' internal handling of grievances, they also contracted with external third-party administrators to handle the grievances and appeals on their specialty products, such as dental with Healthplex Insurance Company ("Healthplex") and mental health with Beacon Health Options, Inc. ("Beacon").

As of December 31, 2018, MVP Health Insurance Company reported no internal or external generated grievances.

MVP Health Plan Inc., reported 76 grievances in Schedule M, Part 1 of its 2018 New York Supplement but had 118 cases (comprised of 101 MVPHP grievances, 13 Beacon grievances, and 4 Healthplex grievances) recorded in its internal system. A variance of 42 cases (comprised of 25 MVPHP grievances, 13 Beacon grievances, and 4 Healthplex grievances) were excluded from the 2018 Schedule M, Part 1 filing.

MVP Health Services Corp. also reported an inaccurate number of grievances in its 2018 Schedule M, Part 2 filing. MVPHSC reported 74 grievances but had 79 cases recorded in its internal system. A variance of 5 Beacon cases were excluded from the 2018 Schedule M, Part 2 filing. The inaccurate number of grievances reported by MVPHP and MVPHSC in their respective 2018 Schedule M filing was the result of inadvertent human errors.

It is recommended that MVPHP comply with Part 98-1.14(d) of the Administrative Rules and Regulations of the New York State Department of Health by reporting the correct number of grievances in Schedule M, Part 1 of the New York Supplement.

It is also recommended that MVPHSC comply with Section 210(b)(1) of the New York Insurance Law by reporting the correct number of grievances in Schedule M, Part 2 of the New York Supplement.

5. PRODUCERS

Section 2112(b) of the New York Insurance Law states:

> "To appoint a producer, the appointing insurer shall file, in a format approved by the superintendent, a notice of appointment within fifteen days from the date the agency contract is executed, or the first insurance application is submitted."

It was noted from a review of the MVP Companies' population of 134 producers that there were nine (9) appointed producers for which a notice of appointment was not filed with the Department within fifteen (15) days of appointment, as required under Section 2112(b) of the New York Insurance Law. For all nine (9) producers, it took more than a year to notify the Department of such agents' appointments. The failure to notify the Department of these appointments was due to inadvertent human errors and systematic delays.

Subsequent to the examination period, the MVP Companies filed with the Department the appointment notices for those nine (9) producers, upon discovering the oversights during an internal quality assessment review.

It is recommended that the MVP Companies comply with Section 2112(b) of the New York Insurance Law by filing with the Department a notice of appointment within fifteen (15) days of a producer's appointment.

It is recommended that the MVP Companies appropriately train its staff to properly handle the manual procedures of notifying the Department of a producer's appointment.

It is also recommended that the MVP Companies revise its policy and procedures to require internal quality assessment reviews be performed more frequently to ensure appointment notices are filed with the Department within fifteen (15) days of a producer's appointment.

It is further recommended that the MVP Companies review its policy and procedures to determine if there's any inadequacy that should or could be improved to prevent any delays in the future when notifying the Department of a producer's appointment.

Section 2103(m) of the New York Insurance Law states:

> "An agent appointed for an insurer authorized to transact business in this state may transact business for any subsidiaries or affiliates of said insurer that are licensed in this state for the same line or lines of insurance without such insurers submitting additional appointments, provided a certified copy of a resolution adopted by the board of directors of each of the insurers requesting such authority is filed with the superintendent by each of the insurers and renewed and refiled whenever deemed necessary by the superintendent. The resolution shall also designate the primary insurer for which all of the company's agents must be appointed pursuant to subsection (a) or (b) of this section, and said appointment must be in full force and effect in order to transact business for any of the affiliated or subsidiary insurers."

The examiner ascertained that the existing arrangement among the MVP Companies has been for MVPHP to appoint agents to represent MVPHP and its two (2) affiliates, MVPHIC and MVPHSC, rather than have each entity appoint their own agents separately. As a result, MVPHP has been appointing agents on behalf of MVPHIC and MVPHSC without the consent of their respective Boards of Directors ("Boards"). The Boards of MVPHIC and MVPHSC were required to adopt a written resolution approving the designation of MVPHP as the primary insurer with the authority to appoint agents on behalf of MVPHIC and MVPHSC. A certified copy of such

approved Boards resolutions should have also been filed with the Department, as both are required under Section 2103(m) of the New York Insurance Law.

It is recommended that the MVP Companies comply with Section 2103(m) of the New York Insurance Law by having the Boards of Directors of MVPHIC and MVPHSC approve resolutions designating MVPHP's appointed agents to also serve as MVPHIC and MVPHSC's appointed agents.

Subsequent the examination period, on December 9, 2019, the Boards of MVPHIC and MVPHSC adopted and approved resolutions granting MVPHP with the authority to appoint agents on their behalf.

It is recommended that MVPHIC and MVPHSC file a copy of their respective Board resolution with the Department, as required under Section 2103(m) of the New York Insurance Law.

It is also recommended that the MVP Companies, for future references, incorporate within their respective policy the requirements of Section 2103(m) of the New York Insurance Law.

6. UTILIZATION REVIEW

Section 4903(b)(1) of the New York Insurance Law states, in part:

> "A utilization review agent shall make a utilization review determination involving health care services which require pre-authorization and provide notice of determination to the insured or insured's designee and the insured's health care provider by telephone and in writing within three business days of receipt of the necessary information…"

Section 4903(c)(2)(a) of the New York Public Health Law ("NYPHL") states, in part:

> "A utilization review agent shall make a utilization review determination involving health care services which require pre-authorization and provide notice of a determination to the enrollee or enrollees designee and the enrollees health care provider by telephone and in writing within three business days of receipt of the necessary information..."

A sample of twenty-eight (28) utilization review ("UR") cases was selected, comprised of seven (7) hospital/medical cases (of which 6 (six) were MVPHP and one (1) was MVPHSC) and twenty-one (21) pharmacy cases (of which fourteen (14) were MVPHP and seven (7) were MVPHSC).

It was noted in one (1) case relative to MVPHP that the determination was not made within three (3) business days and in two (2) other cases (of which one (1) was relative to MVPHP and the other relative to MVPHSC) the determination letter took longer than three (3) business days to be provided to the enrollees / insureds or their designee and their health care providers. All three (3) cases were pharmacy cases and presented a preliminary error rate of 14.3% out of the twenty-one (21) pharmacy cases sampled which necessitated additional review.

The review was performed using a statistical sampling methodology. A statistical sample of one hundred and sixty-seven (167) cases was extracted from the 2018 population of 21,258 UR cases, comprised of 9,797 hospital/medical cases and 11,461 pharmacy cases. From this sample, the first fifty (50) cases were selected for additional review and became the basis for determining whether the remaining one hundred and seventeen (117) cases would be subjected to further review.

The first fifty (50) cases consisted of twenty-two (22) hospital / medical cases (of which thirteen (13) were MVPHP and nine (9) were MVPHSC) and twenty-eight (28) pharmacy cases (of which twenty-one (21) were MVPHP and seven (7) were MVPHSC).

From these fifty (50) cases, it was noted that five (5) cases relative to MVPHSC were confirmed violations of Section 4903(b)(1) of the NYIL. These five (5) cases were pharmacy UR and presented an error rate of 17.9% out of the twenty-eight (28) pharmacy cases sampled.

Of these five (5) confirmed violations, three (3) cases took longer than three (3) business days to make a determination while the remaining two (2) cases took longer than three (3) business days to provide the determination letter to the insureds/enrollees and their healthcare providers. The noncompliance with Section 4903(b)(1) of the NYIL and Section 4903(c)(2)(a) of the NYPHL was the result of employee staffing, a variable occurrence within their normal business operation.

The results from the two samples, yielded an error rate of 14.3%, which when applied to the 2018 pharmacy UR claims resulted in total violations of 1,639.

It is recommended that the MVP Companies ensure their pharmacy determination letters are promptly provided to the insureds / enrollees and their health care providers within the allotted three (3) business days timeframe of when the pharmacy utilization review determinations are made, as required under Section 4903(b)(1) of the New York Insurance Law and Section 4903(c)(2)(a) of the New York Public Health Law, respectively.

It is also recommended that the MVP Companies explore and implement solutions that will mitigate the difficulty of such occurrences relative to the issue of employee staffing.

It is further recommended that the MVP Companies incorporate those implemented solutions within their respective policy and procedures to provide guidance for future references.

7. COMPLIANCE WITH PRIOR MARKET CONDUCT REPORT

The prior market conduct report on examination, as of December 31, 2013, contained the following nine (9) comments and recommendations (page number refers to the prior market conduct report on examination):

ITEM NO.		PAGE NO.
	Preventative Services	
1.	It is recommended that the MVP Companies comply with the above stated sections of the New York Insurance Law and Federal Patient Protection and Affordable Care Act relative to preventive services. *The MVP Companies have complied with this recommendation.*	14
2.	It is also recommended that the MVP Companies pay claims for preventive services in accordance with their own payment policy. *The MVP Companies have complied with this recommendation.*	14
3.	It is recommended that the MVP Companies update their claim system and make the necessary configuration changes to include all facilities. *The MVP Companies have complied with this recommendation.*	15
4.	It is also recommended that the MVP Companies appropriately train the staff for any manual procedures that will address the manual errors in the future. *The MVP Companies have complied with this recommendation.*	15
5.	It is recommended that the MVP Companies revise their claims payment policy and provide clear and concise instructions to their providers. *The MVP Companies have complied with this recommendation.*	16
6.	It is also recommended that the MVP Companies update the claims payment policy more frequently as new mandates are added and/or revised. *The MVP Companies have complied with this recommendation.*	16

ITEM NO.		PAGE NO.
	Preventative Services	
7.	It is recommended that the MVP Companies describe within their claims payment policy, using examples, specifically identifiable procedure code and diagnosis code descriptions to identify a preventive service for which cost sharing should not be applied. As such, the provider and the insurer will have a similar understanding of preventive services claims payment procedures.	16
	The MVP Companies have complied with this recommendation.	
8.	It is recommended that the MVP Companies update their claims payment policy to reflect all preventive services and the associated procedure codes, including diagnosis codes and modifiers which identify preventive services.	17
	The MVP Companies have complied with this recommendation.	
9.	It is recommended that the MVP Companies consistently monitor the effectiveness of their payment policy in conjunction with the actual claims paid.	17
	The MVP Companies have complied with this recommendation.	

8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

ITEM		PAGE NO.
A.	Claim Forms	
	It is recommended that the MVP Companies revise its standard dental claim forms to include the fraud warning statement prescribed by Part 86.4(a) of Insurance Regulation No. 95 (11 NYCRR 86.4(a)).	7
B.	Grievances	
i.	It is recommended that MVPHP comply with Part 98-1.14(d) of the Administrative Rules and Regulations of the New York State Department of Health (10 NYCRR 98-1.14(d)) by reporting the correct number of grievances in Schedule M, Part 1 of the New York Supplement.	8
ii.	It is also recommended that MVPHSC comply with Section 210(b)(1) of the New York Insurance Law by reporting the correct number of grievances in Schedule M, Part 2 of the New York Supplement.	9
C.	Producers	
i.	It is recommended that the MVP Companies comply with Section 2112(b) of the New York Insurance Law by filing with the Department a notice of appointment within fifteen (15) days of a producer's appointment.	9
ii.	It is recommended that the MVP Companies appropriately train its staff to properly handle the manual procedures of notifying the Department of a producer's appointment.	10
iii.	It is also recommended that the MVP Companies revise its policy and procedures to require internal quality assessment reviews be performed more frequently to ensure appointment notices are filed with the Department within fifteen (15) days of a producer's appointment.	10

ITEM **PAGE NO.**

C. Producers (Cont.)

iv. It is further recommended that the MVP Companies review its policy and procedures to determine if there's any inadequacy that should or could be improved to prevent any delays in the future when notifying the Department of a producer's appointment. 10

v. It is recommended that the MVP Companies comply with Section 2103(m) of the New York Insurance Law by having the Boards of Directors of MVPHIC and MVPHSC approve resolutions designating MVPHP's appointed agents to also serve as MVPHIC and MVPHSC's appointed agents. 11

vi. It is recommended that MVPHIC and MVPHSC file a copy of their respective Board resolution with the Department, as required under Section 2103(m) of the New York Insurance Law. 11

vii. It is also recommended that the MVP Companies, for future references, incorporate within their respective policy the requirements of Section 2103(m) of the New York Insurance Law. 11

D. Utilization Review

i. It is recommended that the MVP Companies ensure their pharmacy determination letters are promptly provided to the insureds/enrollees and their health care providers within the allotted three (3) business days timeframe of when the pharmacy utilization review determinations are made, as required under Section 4903(b)(1) of the New York Insurance Law and Section 4903(c)(2)(a) of the New York Public Health Law, respectively. 13

ii. It is recommended that the MVP Companies explore and implement solutions that will mitigate the difficulty of such occurrences relative to the issue of employee staffing. 13

iii. It is also recommended that the MVP Companies incorporate those implemented solutions within their respective policy and procedures to provide guidance for future references. 14

Respectfully submitted,

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Tommy Kong, CPCU, CFE, PIR
Financial Services Examiner 2

STATE OF NEW YORK)
)SS.
)
COUNTY OF NEW YORK)

Tommy Kong, being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

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Tommy Kong, CPCU, CFE, PIR

APPOINTMENT NO. 31934

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, ***LINDA A. LACEWELL****, Acting Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:*

Tommy Kong

as a proper person to examine the affairs of the

MVP Health Plan, Inc.

and to make a report to me in writing of the said

HMO

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name and affixed the official Seal of the Department at the City of New York

this 12th day of April, 2019

LINDA A. LACEWELL
Acting Superintendent of Financial Services

By: _____

Lisette Johnson
Bureau Chief
Health Bureau

APPOINTMENT NO. **31935**

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, ***LINDA A. LACEWELL****, Acting Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:*

Tommy Kong

as a proper person to examine the affairs of the

MVP Health Insurance Company

and to make a report to me in writing of the said

Company

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name and affixed the official Seal of the Department at the City of New York

this 12th day of April, 2019

LINDA A. LACEWELL
Acting Superintendent of Financial Services

By: _____

Lisette Johnson
Bureau Chief
Health Bureau

APPOINTMENT NO. **31936**

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, ***LINDA A. LACEWELL****, Acting Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:*

Tommy Kong

as a proper person to examine the affairs of the

MVP Health Services Corporation

and to make a report to me in writing of the said

Corporation

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name and affixed the official Seal of the Department at the City of New York

this 12th day of April, 2019

LINDA A. LACEWELL
Acting Superintendent of Financial Services

By: _____

Lisette Johnson
Bureau Chief
Health Bureau