Statement of Findings
Visiting Nurses Service of New York Choice
MHPAEA Testing Phase III Workbooks
March 11, 2020 – November 30, 2020
Survey ID #: -1248855623

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 Visiting Nurses Service of New York Choice (VNSNY) 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; retrospective review, outlier review, experimental/investigational determinations, fail first, and provider credentialing.

Specifically, for inpatient and outpatient VNSNY failed to provide all required information and substantive comparative analyses in Steps 3 through 5, including failing to define factors in Step 3, evidentiary standards comparability and equivalent stringency, for retrospective review and experimental/investigational determinations in the inpatient and outpatient benefit classifications.

The MCO failed to provide all required information and substantive comparative analyses in Steps 1 through 5 for retrospective review in the prescription drugs benefit classification. For experimental/investigational determinations in the prescription drugs benefit classification, VNSNY failed to demonstrate that the factors identified for MH/SUD are comparable to M/S in Step 2, factors triggering the NQTL, failed to define factors in Step 3, evidentiary standards comparability and equivalent stringency, and failed to provide substantive comparative analyses in Step 3 through Step 5.

VNSNY failed to provide all required information and substantive comparative analyses for outlier review in Step 2 through Step 5 in the inpatient and outpatient benefit classifications and Step 3 through Step 5 in the prescription drugs benefit classification. In the prescription drugs benefit classification for fail first, VNSNY failed to define factors in Step 3, evidentiary standards comparability and equivalent stringency, and failed to provide substantive comparative analyses in Steps 3 through 5. Additionally, the MCO failed to provide all required information and substantive comparative analyses Steps 1 through 5 for provider credentialing in the inpatient and outpatient benefit classifications.

VNSNY CHOICE SelectHealth Response:

Phase III workbooks will be updated and maintained with the required information and substantive analysis demonstrating compliance with Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). Specifically, the plan will conduct reviews of the following data elements from the State tools:

Retrospective Review:
Inpatient and Outpatient – Steps 3-5

Step 3: The Plan will identify the evidentiary standards and sources used to design its protocols for retrospective reviews. Examples will focus on Article 49 of Public Health Law Utilization Review and External Appeal and the New York State MMC SNP Model Contract.

Step 4: The plan will provide a comparative analysis indicating that the processes and strategies used to design the retrospective review and the strategies used to apply the NQTL are comparable to those used to design and apply the NQTL for M/S benefits. The Plan will add the following information related to M/S benefits to Step 4:

1. M/S staff requirements
2. Time frames for completing a retrospective review
3. Clinical peer reviewers
4. Adverse determination process

Step 5: The Plan will provide the comparative analysis indicating the processes and strategies used in operationalizing retrospective review for MH/SUD benefits are comparable to and no more stringently applied than those used in operationalizing retrospective review for M/S benefits. The plan will add thefollowing related to M/S benefits:

1. M/S staff requirements
2. Time frames for completing a retrospective review
3. Clinical peer reviewers
4. Adverse determination process

Responsible Person: Tanya McCray, VP of Grievance and Appeals and External Entity Management

Prescription Drugs – Steps 1-5

Step 1: MedImpact will update its documentation to provide the specific plan language regarding the NQTLand describe how the NQTL is applied to prescription drug benefits.

Step 2: MedImpact will update its documentation to more specifically identify the factors that are used toapply the NQTL to prescription drug benefits for M/S and MH/SUD drugs.

Step 3: MedImpact will more clearly identify and describe the evidentiary standard for each of the factorsidentified in Step 2 including any other evidence relied upon to design and apply the NQTL. The definition for each factorwill include the applicable evidentiary threshold that MedImpact uses to determine whether to invoke the factor in deciding whether to apply the NQTL type to a particular benefit.

Step 4: MedImpact will update its NQTL documentation to perform a comparability and stringency analysis inwriting based on the factors more fully defined in Step 3. Specifically, MedImpact will document its analysis toreflect the analysis by which it determined comparability and stringency for the factors identified in Step 3.

Step 5: MedImpact 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 theMH/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 measureand 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 operationanalysis.

Responsible Person: Tanya McCray, VP of Grievance and Appeals and External Entity Management incollaboration with the Director for Federal and State Regulatory Compliance at MedImpact, Matt Kusek

Training and Education:
VNS CHOICE provided initial MH Parity training to key staff on December 27, 2021. By January 32, 2022, advanced training will be provided to the business leads responsible for revising the NQTL Workbook for Retrospective Review - G&A – the VP and Manager of G&A, Pharmacy – VP and Manager of Pharmacy, and MedImpact key staff.

Monitoring:
VNS CHOICE has drafted a MH Parity Compliance Oversight and Monitoring Policy that details the actions thePlan will take to ensure that any benefit limitations for mental health or substance use disorder benefits are comparable to those for medical/surgical benefits and will not impose less favorable benefit limitations on MH/SUD benefits compared to medical surgical benefits.

Date Certain: February 28, 2022

Experimental/Investigational Determinations
Inpatient and Outpatient – Steps 3-5

Step 3: The Plan will review examples from page 15 of the Compliance Assistance Guide MHPAEA (Step 3)to identify and describe evidentiary standards and other evidence relied upon including:

- Medical expert reviews
- Recognized medical literature and professional standards and protocols
- Comparative effectiveness studies and clinical trial data
- Published research studies

Step 4: The Plan will review prompts from page 40 of the CMS Parity Compliance Toolkit Applying Mental Health and Substance Use Disorder Parity Requirements to Medicaid and Children's Health Insurance to develop a comparative analysis of as written processes and strategies including:

Policies and procedures, both written and in operation, associated with the development of the NQTL and its application to MH/SUD benefits in a classification. (If the NQTL is applied to MH/SUD benefits in more than one classification, this information will need to be collected for each classification in which the NQTL is appliedto MH/SUD benefits.)
Policies and procedures, both written and in operation, associated with the application of these NQTLs to M/Sbenefits in the same classification.

Step 5: The Plan will review prompts from page 40 of the CMS Parity Compliance Toolkit Applying MentalHealth and Substance Use Disorder Parity Requirements to Medicaid and Children's Health Insurance to develop a comparative analysis of as in operation processes and strategies including:

- Policies and procedures, both written and in operation, associated with the development of the NQTLand its application to MH/SUD benefits in a classification. (If the NQTL is applied to MH/SUD benefitsin more than one classification, this information will need to be collected for each classification in which the NQTL is applied to MH/SUD benefits.)
- Policies and procedures, both written and in operation, associated with the application of theseNQTLs to M/S benefits in the same classification.

Responsible Person: Jaime McDonald, Director of Care Management

Prescription Drugs – Steps 2-5

Step 2: MedImpact will update its documentation to more specifically identify the factors that are used to apply the NQTL to prescription drug benefits for M/S and MH/SUD drugs.

Step 3: MedImpact will more clearly identify and describe the evidentiary standard for each of the factors identified in Step 2 including any other evidence relied upon to design and apply the NQTL. The definition foreach factor will include the applicable evidentiary threshold that MedImpact uses to determine whether to invoke the factor in deciding whether to apply the NQTL type to a particular benefit.

Step 4: MedImpact will update its NQTL documentation to perform a comparability and stringency analysisin writing based on the factors more fully defined in Step 3. Specifically, MedImpact will document its analysis to reflect the analysis by which it determined comparability and stringency for the factors identifiedin Step 3.

Step 5: MedImpact 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 theMH/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 measureand 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.

MedImpact will make technical specifications and raw data for all operations measures available uponrequest.

Responsible Persons: Tanya McCray, VP of Grievance and Appeals and External Entity Management incollaboration with the Director for Federal and State Regulatory Compliance at MedImpact, Matt Kusek

Training and Education:

VNS CHOICE provided initial MH Parity training to key staff on December 27, 2021. By January 31, 2022, advanced training will be provided to the business areas and leads responsible for revising the NQTL Workbook for Experimental/Investigational Determinations: UM – the Director and Manager of Utilization Management, External Entity Management – the VP and Manager of External Entity Management, Pharmacy – VP and Manager of Pharmacy, and MedImpact key staff.

Monitoring:
VNS CHOICE has drafted a BH Parity Compliance Oversight and Monitoring Policy that details the actions the Plan will take to ensure that any benefit limitations for mental health or substance use disorder benefits are comparable to those for medical/surgical benefits and will not impose less favorable benefit limitations onMH/SUD benefits compared to medical surgical benefits.

Date Certain: February 28, 2022

Outlier Review
Inpatient and Outpatient Steps 1-5

Step 1: While not cited as a deficiency, VNSNY will redefine the definition of "Outlier Review Management" from the M/S perspective to be consistent with the definition applied by our Behavioral Health Vendor, BeaconHealth. This will allow valid comparative analyses and comparisons to be performed between the application of Outlier Management to M/S vs. MH/SUD benefits.

The Plan's definition of Outlier Management will focus on administrative review processes to ensure claimsinformation is appropriate and to identify and prevent fraud, waste, and abuse (FWA). The Plan will also include a description of our FWA process.

Step 2: The plan will identify factors considered in the design of the NQTL. Factors applicable to the Plan include but are not limited to: Claim types with high percentage of fraud, Claims exceeding $20,000 for a single claim, excessive utilization, and notifications from regulatory entities.

Step 3: Evidentiary standards will be identified and described using plan specific data from the factors listed on page 15 of the MHPAEA compliance assistance guide including but not limited to: internal claims analysis, State and Federal requirements, medical expert reviews.

Step 4: The Plan will provide comparative analyses demonstrating that the processes and strategies used in the design of the outlier review of MH/SUD benefits are comparable to and no more stringently applied than the processes and strategies used to design the outlier review of M/S benefits.

Step 5: The Plan will conduct analyses substantiating that factors, evidentiary standards and processesused in operationalizing outlier review are comparable and no more stringently applied to MH/SUD and medical/surgical benefits both as written and in operation.

Responsible Persons: Remy Nunez, Associate VP Operations and James Conroy, Manager SIU

Prescription Drugs – Steps 3-5
Step 3: MedImpact will more clearly identify and describe the evidentiary standard for each of the factors identified in Step 2, including any other evidence relied upon to design and apply the NQTL. The definition for each factor will include the applicable evidentiary threshold that MedImpact uses to determine whether toinvoke the factor in deciding whether to apply the NQTL type to a particular benefit.

Step 4:, MedImpact will update its NQTL documentation to perform a comparability and stringency analysis in writing based on the factors more fully defined in Step 3. Specifically, MedImpact will document its analysis to reflect the analysis by which it determined comparability and stringency for the factors identifiedin Step 3.

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

Step 5: MedImpact 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 theMH/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 measureand 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 operationanalysis.

Responsible Persons: Tanya McCray, VP of Grievance and Appeals and External Entity Management incollaboration with the Director for Federal and State Regulatory Compliance at MedImpact, Matt Kusek

Training and Education:
VNS CHOICE provided initial MH Parity training to key staff on December 27, 2021. By January 31, 2022,advanced training will be provided to the business leads responsible for revising the NQTL Workbook for Outlier Review: External Entity Management - VP and Manager of External Entity Management, Claims – Associate VP of CHOICE Operations, SIU – Manager of SIU, Pharmacy - Manager of Pharmacy, and MedImpact key staff.

Monitoring:
VNS CHOICE has drafted a BH Parity Compliance Oversight and Monitoring Policy that details the actions the Plan will take to ensure that any benefit limitations for mental health or substance use disorder benefits are comparable to those for medical/surgical benefits and will not impose less favorable benefit limitations onMH/SUD benefits compared to medical surgical benefits.

Date Certain: February 28, 2022

Fail First
Prescription Drugs – Steps 3-5

Step 3: MedImpact will more clearly identify and describe the evidentiary standard for each of the factors identified in Step 2, including any other evidence relied upon to design and apply the NQTL. The definition for each factor will include the applicable evidentiary threshold that MedImpact uses to determine whether toinvoke the factor in deciding whether to apply the NQTL type to a particular benefit.

Step 4:, MedImpact will update its NQTL documentation to perform a comparability and stringency analysis in writing based on the factors more fully defined in Step 3. Specifically, MedImpact will document its analysis to reflect the analysis by which it determined comparability and stringency for the factors identifiedin Step 3.

MedImpact'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.

Step 5: MedImpact 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 theMH/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 measureand 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.

Responsible Persons: Tanya McCray, VP of Grievance and Appeals and External Entity Management incollaboration with the Director for Federal and State Regulatory Compliance at MedImpact, Matt Kusek

Training and Education:
VNS CHOICE provided initial MH Parity training to key staff on December 27, 2021. By January 31, 2022, advanced training will be provided to the business leads responsible for revising the NQTL Workbook for Fail First: External Entity Management - VP and Manager of External Entity Management, Pharmacy - Manager ofPharmacy, and MedImpact key staff.

Monitoring:
VNS CHOICE has drafted a BH Parity Compliance Oversight and Monitoring Policy that details the actions the Plan will take to ensure that any benefit limitations for mental health or substance use disorder benefits are comparable to those for medical/surgical benefits and will not impose less favorable benefit limitations onMH/SUD benefits compared to medical surgical benefits.