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 Visiting Nurses Service of New York Choice (VNSNY)	**TYPE OF SURVEY:** Mental Health Parity and Addiction Equity Act (MHPAEA) Compliance Virtual Focus Survey **Survey ID #** 2109409436
STREET ADDRESS, CITY, STATE, ZIP CODE 220 East 42nd Street New York, New York 10017	**SURVEY DATES:** July 24, 2023 – October 17, 2024

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 NYCRR 98- 4.4 Mental health and substance use disorder parity compliance program (a) Every MCO shall adopt and implement a compliance program that shall include at a minimum: (1) designation of an appropriately experienced individual who shall: (i) be responsible for assessing, monitoring, and managing parity compliance; (ii) report directly to the MCO's chief executive officer or other senior manager; and (iii) report no less than annually to the MCO's board of directors or other governing body, or the appropriate committee thereof, on the activities of the compliance program; 2) written policies and procedures that implement the compliance program, and that describe how the MCO's parity compliance is assessed, monitored, and managed, including: (i) a system for assigning each benefit to the defined benefit classifications as required by MHPAEA; (ii) methodologies for the identification and testing of all financial requirements and quantitative treatment limitations; and (iii) methodologies for the identification and testing, including a comparative analysis, of all non-quantitative treatment limitations that are imposed on mental health or substance use disorder benefits; (3) methodologies for the identification and remediation of improper practices, as described in paragraph (1) of subdivision (b) of this section; (4) a system for the ongoing assessment of parity compliance….	**1. Corrective Actions** a. Prior authorization, concurrent review, and retrospective review - step 3 corrective actions i. Inpatient 1. VNS will expand and provide more detail about the factors used in Step 2 to determine the applicability of UM for MH/SUD and M/S. Then ,in Step 3, we will provide more detail about the evidentiary standards and evidence used to define these factors. We will also include evidentiary standards that were considered but rejected. In addition, we will provide a comparative analysis showing that the factors and evidentiary standards are applied no more stringently for MH/SUD benefits and services than for M/S benefits and services. 2. Evidentiary standards applied are derived from:: a. Federal or state requirements b. Medicaid FFS c. Medicaid Model Contract ii. Outpatient 1. VNS will expand and provide more detail about the factors used in Step

	2 to determine the applicability of UM for MH/SUD and M/S. Then in Step 3, we will provide more detail about the evidentiary standards and evidence used to define these factors. We will also include evidentiary standards that were considered but rejected. In addition, we will provide a comparative analysis showing that the factors and evidentiary standards are applied no more stringently for MH/SUD benefits and services than for M/S benefits and services. 2. Evidentiary standards applied are derived from: a. Federal or state requirements b. Medicaid FFS c. Medicaid Model Contract b. Medical necessity - step 5 corrective actions – structured approach to ensure compliance with mental health parity regulations, focusing on a thorough comparative analysis between inpatient and outpatient services for MH/SUD and M/S benefits. i. Inpatient 1. Medical necessity comparative analysis – the plan will collect data on the application of medical necessity criteria, such as through audit results and authorization data, to ensure criteria are standard and no more stringent for MH/SUD. a. The plan will provide an analysis how often certain criteria lead to approvals or denials in both categories, looking for patterns that suggest discrepancies or more stringent criteria for MH/SUD. b. The Health Plan currently conducts quality audits of the clinical reviewers and will implement physician reviewer audits in Q1 2025. The Health

	plan will conduct an examination and comparison of interrater reliability audits for MH/SUD and medical/surgical utilization reviewers. ii. Outpatient 1. Medical necessity comparative analysis – the plan will collect data on the application of medical necessity criteria, such as through audit results and authorization data, to ensure criteria are standard and no more stringent for MH/SUD. a. The plan will provide an analysis how often certain criteria lead to approvals or denials in both categories, looking for patterns that suggest discrepancies or more stringent criteria for MH/SUD. b. The Health Plan currently conducts quality audits of the clinical reviewers and will implement physician reviewer audits in Q1 2025. The Health plan will conduct an examination and comparison of interrater reliability audits for MH/SUD and medical/surgical utilization reviewers. **2. Responsible Party** 1) Responsible parties – Step 3 a. [redacted] Director of Utilization Management – Provision and analysis of VNS data, updating of NQTLs, and coordinating/ensuring education and training of NQTL of appropriate parties b. [redacted], Vendor Management Specialist, Product Management – Obtain Carelon data Coordinate with Behavioral Health vendor 2) Responsible parties – Step 5 a. [redacted], Director of Utilization Management - Provision and analysis of VNS data, updating of NQTLs

	b. [redacted], Vendor Management Specialist, Product Management – Coordinate with Behavioral Health vendor **3. Date Certain** All corrective actions will be completed prior to March 31, 2025. **4. Monitoring and Auditing** a. Compliance will conduct a review of updated NQTLs to ensure that evidentiary standards have been analyzed for the inpatient and outpatient sections of step 3 for the Prior Authorization, Concurrent Authorization, and Retrospective Review NQTLs. b. Compliance will conduct a review of the comparative analysis in step 5 of the Medical Necessity NQTL to ensure that the analysis of inpatient and outpatient criteria properly demonstrates compliance with MHPAEA. **5. Education and Training** a. VNS Health staff attended Mental Health Parity and Addiction Equity Act (MHPAEA) training on December 21, 2024 with Epstein, Becker, and Green. Training covered the processes and procedures for completing the plan's parity documentation; including guidelines for documentation of non-quantitative treatment limits, associated outcomes measures, defining factors used in the design of the NQTL along with the evidentiary standards, and analysis of processes, strategies, identified factors, and evidentiary standards to ensure the Plan is in compliance with MHPAEA. The plan attested to completion of the annual MHPAEA training.
MCO Representatives Signature: [redacted]	Date: 2/12/25
Title: Chief of Health Plans, VNS Health	

NEW YORK STATE DEPARTMENT OF HEALTH
ARTICLE 44 STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION
CONTINUATION SHEET

Name of Managed Care Organization Visiting Nurses Service of New York Choice (VNSNY)	**Survey Dates:** July 24, 2023 – October 17, 2024 **Survey ID #** 2109409436
Deficiencies	**Plan of Correction with Timetable**
PHL § 4406 Health maintenance organizations; regulation of contracts **1. The contract between a health maintenance organization and an enrollee shall be subject to regulation by the superintendent as if it were a health insurance subscriber contract, and shall include, but not be limited to, all mandated benefits required by article forty-three of the insurance law. Such contract shall fully and clearly state the benefits and limitations therein provided or imposed, so as to facilitate understanding and comparisons, and to exclude provisions which may be misleading or unreasonably confusing. Such contract shall be issued to any individual and dependents of such individual and any group of one hundred or fewer employees or members, exclusive of spouses and dependents, or to any employee or member of the group, including dependents, applying for such contract at any time throughout the year. An individual direct payment contract shall be issued only in accordance with section four thousand three hundred twenty-eight of the insurance law. The superintendent may, after giving consideration to the public interest, exempt a health maintenance organization from the requirements of this section provided that another health insurer or health maintenance organization within the health maintenance organization's same holding company system, as defined in article fifteen of the insurance law, including a health maintenance organization operated as a line of business of a health service corporation licensed under article forty-three of the insurance law, offers coverage that, at a minimum, complies with this section and provides all of the consumer protections required to be provided by a health maintenance organization pursuant to this chapter and regulations, including those consumer protections contained in sections four thousand four hundred three and four thousand four hundred eight-a of this chapter. The requirements shall not apply to a health maintenance organization exclusively serving individuals enrolled pursuant to title eleven of article five of the social services law, 1 title eleven-D of article five of the social**	

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Deficiencies	**Plan of Correction with Timetable**
services law, 2 title one-A of article twenty-five of this chapter 3 or title eighteen of the federal Social Security Act, 4 and, further provided, that such health maintenance organization shall not discontinue a contract for an individual receiving comprehensive-type coverage in effect prior to January first, two thousand four who is ineligible to purchase policies offered after such date pursuant to this section or section four thousand three hundred twenty-eight of the insurance law due to the provision of 42 U.S.C. 1395ss in effect prior to January first, two thousand four. **4303(g) 4303(k) and 4303(l) State Insurance Law** **Deficiency:** Based on the review of the Phase I, Phase II, and Phase III nonquantitative treatment limitation (NQTL) workbooks, specific in-operation NQTL requests (Focus Survey Attachment A), and the Mental Health Prior Authorization Information Request (Attachment B) submitted in response to the Mental Health Parity and Addiction Equity Act (MHPAEA) Compliance Virtual Focus Survey, VNSNY Choice (VNSNY) failed to provide sufficient, complete comparative analyses demonstrating compliance with MHPAEA, P.L. 110-343, for the following NQTLs: • prior authorization, • concurrent review, • medical necessity criteria and • retrospective review. Specifically, within the NQTL workbooks, VNSNY failed to identify and define evidentiary standards in Step 3 for inpatient and outpatient prior authorization, concurrent review, and retrospective review. The responses provided in Step 3 for prior authorization, concurrent review, and retrospective did not contain an analysis or complete sufficient information. Specifically, for inpatient and outpatient medical necessity criteria, the NQTL workbook failed to demonstrate in-operation compliance in Step 5. VNSNY provided a	

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Deficiencies	**Plan of Correction with Timetable**
description of audit and oversight procedures in place for both MH/SUD and M/S but did not provide a comparative analysis. The issues were discussed with VNSNY during an exit conference call on October 17, 2024.	

Statement of Findings
Visiting Nurses Service of New York Choice (VNSNY)
Mental Health Parity and Addiction Equity Act (MHPAEA) Compliance
Virtual Focus Survey
Survey Dates: July 24, 2023 – October 17, 2024
Survey ID: 2109409436

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.

Findings:
Based on the review of the Phase I, Phase II, and Phase III nonquantitative treatment limitation (NQTL) workbooks, specific in-operation NQTL requests (Focus Survey Attachment A), and the Mental Health Prior Authorization Information Request (Attachment B) submitted in response to the Mental Health Parity and Addiction Equity Act (MHPAEA) Compliance Virtual Focus Survey, VNSNY Choice (VNSNY) failed to provide sufficient, complete comparative analyses demonstrating compliance with MHPAEA, P.L. 110-343, for the following NQTLs:

- prior authorization,
- concurrent review,

- medical necessity criteria and
- retrospective review.

Specifically, within the NQTL workbooks, VNSNY failed to identify and define evidentiary standards in Step 3 for inpatient and outpatient prior authorization, concurrent review, and retrospective review. The responses provided in Step 3 for prior authorization, concurrent review, and retrospective did not contain an analysis or complete sufficient information.

Specifically, for inpatient and outpatient medical necessity criteria, the NQTL workbook failed to demonstrate in-operation compliance in Step 5. VNSNY provided a description of audit and oversight procedures in place for both MH/SUD and M/S but did not provide a comparative analysis.

The issues were discussed with VNSNY during an exit conference call on October 17, 2024.

Plan Response:

1. **Corrective Actions**
    a. Prior authorization, concurrent review, and retrospective review - step 3 corrective actions
        i. Inpatient
            1. VNS will expand and provide more detail about the factors used in Step 2 to determine the applicability of UM for MH/SUD and M/S. Then ,in Step 3, we will provide more detail about the evidentiary standards and evidence used to define these factors. We will also include evidentiary standards that were considered but rejected. In addition, we will provide a comparative analysis showing that the factors and evidentiary standards are applied no more stringently for MH/SUD benefits and services than for M/S benefits and services.
            2. Evidentiary standards applied are derived from::
                a. Federal or state requirements
                b. Medicaid FFS
                c. Medicaid Model Contract
        ii. Outpatient
            1. VNS will expand and provide more detail about the factors used in Step 2 to determine the applicability of UM for MH/SUD and M/S. Then in Step 3, we will provide more detail about the evidentiary standards and evidence used to define these factors. We will also include evidentiary standards that were considered but rejected. In addition, we will provide a comparative analysis showing that the factors and evidentiary standards are applied no more stringently for MH/SUD benefits and services than for M/S benefits and services.
            2. Evidentiary standards applied are derived from:
                a. Federal or state requirements
                b. Medicaid FFS
                c. Medicaid Model Contract

b. Medical necessity - step 5 corrective actions – structured approach to ensure compliance with mental health parity regulations, focusing on a thorough comparative analysis between inpatient and outpatient services for MH/SUD and M/S benefits.
    i. Inpatient
        1. Medical necessity comparative analysis – the plan will collect data on the application of medical necessity criteria, such as through audit results and authorization data, to ensure criteria are standard and no more stringent for MH/SUD.
            a. The plan will provide an analysis how often certain criteria lead to approvals or denials in both categories, looking for patterns that suggest discrepancies or more stringent criteria for MH/SUD.
            b. The Health Plan currently conducts quality audits of the clinical reviewers and will implement physician reviewer audits in Q1 2025. The Health plan will conduct an examination and comparison of interrater reliability audits for MH/SUD and medical/surgical utilization reviewers.
    ii. Outpatient
        1. Medical necessity comparative analysis – the plan will collect data on the application of medical necessity criteria, such as through audit results and authorization data, to ensure criteria are standard and no more stringent for MH/SUD.
            a. The plan will provide an analysis how often certain criteria lead to approvals or denials in both categories, looking for patterns that suggest discrepancies or more stringent criteria for MH/SUD.
            b. The Health Plan currently conducts quality audits of the clinical reviewers and will implement physician reviewer audits in Q1 2025. The Health plan will conduct an examination and comparison of interrater reliability audits for MH/SUD and medical/surgical utilization reviewers.

2. Responsible Party

1) Responsible parties – Step 3
    a. [redacted], Director of Utilization Management – Provision and analysis of VNS data, updating of NQTLs, and coordinating/ensuring education and training of NQTL of appropriate parties
    b. [redacted], Vendor Management Specialist, Product Management – Obtain Carelon data Coordinate with Behavioral Health vendor
2) Responsible parties – Step 5
    a. [redacted], Director of Utilization Management - Provision and analysis of VNS data, updating of NQTLs
    b. [redacted], Vendor Management Specialist, Product Management – Coordinate with Behavioral Health vendor

3. **Date Certain**
   All corrective actions will be completed prior to March 31, 2025.

4. **Monitoring and Auditing**
   a. Compliance will conduct a review of updated NQTLs to ensure that evidentiary standards have been analyzed for the inpatient and outpatient sections of step 3 for the Prior Authorization, Concurrent Authorization, and Retrospective Review NQTLs.
   b. Compliance will conduct a review of the comparative analysis in step 5 of the Medical Necessity NQTL to ensure that the analysis of inpatient and outpatient criteria properly demonstrates compliance with MHPAEA.
5. **Education and Training**
   a. VNS Health staff attended Mental Health Parity and Addiction Equity Act (MHPAEA) training on December 21, 2024 with Epstein, Becker, and Green. Training covered the processes and procedures for completing the plan's parity documentation; including guidelines for documentation of non-quantitative treatment limits, associated outcomes measures, defining factors used in the design of the NQTL along with the evidentiary standards, and analysis of processes, strategies, identified factors, and evidentiary standards to ensure the Plan is in compliance with MHPAEA. The plan attested to completion of the annual MHPAEA training.

[redacted]

[redacted]
EVP, Chief of Health Plans

2/12/25
Date