



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
LABOR BUREAU

August 8, 2025

Visiting Nurse Service of New York d/b/a VNS Health
VNS CHOICE d/b/a VNS Health Health Plans
220 East 42nd Street
New York, NY 10017

Dear Kerry M. Parker:

The purpose of this letter is to resolve the investigation of the Labor Bureau of the New York Office of the Attorney General (“Labor Bureau” or “the Bureau”) into Visiting Nurse Service of New York d/b/a VNS Health and VNS CHOICE d/b/a VNS Health Health Plans (collectively “VNS”).

Background

VNS CHOICE operates a managed long term care plan (“MLTCP”). MLTCPs receive Medicaid funding from the State to provide services to eligible New Yorkers. The obligations of MLTCPs are memorialized in their contracts with the New York State Department of Health. Among other obligations, MLTCPs are required to assess and authorize Medicaid recipients (referred to as “members”) for appropriate levels of home care services. In turn, MLTCPs contract with various licensed home care services agencies (“LHCSAs”) to provide home care services, including care provided by home health aides, to their members. Under their contracts with the LHCSAs, MLTCPs agree to pay the LHCSAs at hourly rates or daily rates/per diem rates for 24-hour shifts, where the aide must remain in the home for 24 hours. These rates are negotiated and include wages for aides, some amount for the LHCSA’s overhead, and some profit percentage. MLTCPs are also required to certify with the Department of Health that all payments to contracted providers for home care services are in compliance with the New York Home Care Worker Wage Parity Law.

VNS CHOICE has contracted with two LHCSAs, Intergen Health, LLC (“Intergen”) and Amazing Home Care Providers, Inc. (“Amazing”) from February 1, 2015.

Intergen/Amazing Investigation

In November 2021, the Labor Bureau concluded an investigation into Intergen and Amazing for their failure to pay wages to home health aides in compliance with the New York Labor Law. Intergen and Amazing agreed to substantial payments and injunctive relief as

detailed in the Assurance of Discontinuance #21-030 (available at https://ag.ny.gov/sites/default/files/intergen_aod_consent_order_combined_11.16.2021_2.pdf).

24-Hour Shifts

One of the Labor Bureau’s key findings in the Intergen/Amazing investigation was the LHCSAs’ failure to correctly pay aides who worked a 24-hour shift. Aides who work a 24-hour shift may be paid for only 13 hours if the aide receives at least 11 hours of break time.¹ Before an employer may deduct the break time, however, it must demonstrate that the parties have an “expressed or implied agreement” to exclude break time; break hours are “regularly scheduled”; employees are provided “adequate sleeping facilities”; and employees “usually enjoy an uninterrupted night’s sleep.”^{2,3}

Through its investigation into Intergen and Amazing, the Labor Bureau determined that aides frequently missed their required breaks. While these violations varied among aides, the failure to receive these breaks was a consistent problem for some. Aides detailed attending to patients who suffered from dementia and wandered their apartments at night, others who required assistance using the bathroom throughout the night, as well as patients who required diaper changes or to be turned during the night. Aides also described failing to receive their required meal breaks because of similar patient needs.

The Labor Bureau also found that Amazing and Intergen largely or entirely failed to compensate aides appropriately when they experienced violations of 24-hour shift break policies.

VNS-LHCSA Contracts

Alterations to the contracts between VNS CHOICE and LHCSAs can ameliorate the issue of proper compensation by LHCSAs for aides working a 24-hour shift.

To that end, VNS CHOICE agrees that within 60 days of signing this agreement it will make the following changes to its provider manual, which is incorporated by reference into VNS CHOICE’s contracts with LHCSAs, and will as part of a planned revision to its contracts with LHCSAs:

¹ 12 NYCRR § 142-2.1(b); NYSDOL Op. Ltr. at 4 (Mar. 11, 2010). This policy was upheld by the Court of Appeals in its decision *Andryeyeva v. New York Health Care, Inc.*, 33 N.Y.3d 152 (2019).

² 29 C.F.R. 785.22(a); Wage & Hour Division Opinion Letter, 1987 WL 1369157, at *2 (Sept. 11, 1987); incorporated by NYDOL regulation in NY Reg. Oct. 25, 2017 at 6.

³ In *Andryeyeva v. New York Health Care, Inc.*, the Court of Appeals’ seminal decision regarding “live-in” shift break policies in New York, the Court stated “As DOL confirms, failure to provide a home health care aide with the minimum sleep and meal times required under DOL’s interpretation of the Wage Order is a “hair trigger” that immediately makes the employer liable for paying every hour of the 24-hour shift, not just the actual hours worked.” 33 N.Y.3d 152, 182 (2019). In giving an example of such a “hair trigger” violation, *Andryeyeva* continued “[t]hus, even if a home health care aide sleeps without interruption for four hours and 59 minutes, but is not able to obtain five full hours of sleep, DOL mandates the employer pay for the entire eight hours allotted for sleep.” *Id.*

- require LHCSAs to train home health aides on their rights to sleep and meal breaks at least annually, and both verbally and in writing in the recipient's primary language;
- conduct periodic outreach to patients receiving 24-hour care to determine if a sleep study or reassessment is required and to more readily identify situations where aides experience a "pattern of interruptions"⁴ during 24-hour shifts;
- If VNS CHOICE collects or receives information that a patient has a "pattern of interruptions" during the night, and which VNS CHOICE subsequently approves, VNS CHOICE will proceed with a temporary rate increase in the amount that it pays the LHCSA to support proper compensation for home health aides assigned by the LHCSAs to that patient and will evaluate whether the patient requires two 12-hour shift care rather one 24-hour shift care;
- require LHCSAs to comply with all applicable wage laws and in the event that there are changes to any applicable wage law after a contract has been executed, VNS CHOICE will review and meaningfully engage in negotiations concerning the wage rates it pays the LHCSAs to determine whether an increase in the rates is necessary;
- consider a LHCSA's volume of 24-hour care cases when negotiating rates.

The contract language for these alterations is attached as Exhibit A. VNS will maintain these contract changes in its provider manual and its contracts with LHCSAs for 3 years.

VNS CHOICE will also provide a report to the OAG every six months for three years detailing:

- VNS CHOICE's outreach efforts to patients, sleep studies, and reassessments;
- LHCSAs' requests for and VNS CHOICE's implementation of temporary rate increases; and
- VNS CHOICE's re-evaluation of patients' need for 12-hour split shift care.

In addition, VNS CHOICE will contribute \$500,000 to a fund administered by the OAG within 15 business days of signing this agreement, which will be distributed as restitution to aides who worked for InterGen and Amazing and, who in the opinion of the OAG, were adversely affected by InterGen and Amazing's actions. VNS CHOICE will also pay \$30,000 for a settlement administrator. The OAG will have sole discretion to determine which aides are eligible for payment and the amount of payment that each aide receives.

VNS CHOICE will comply with all applicable federal, state, and local laws pertaining to compensation for home health aides. In addition, VNS agrees that it shall not in any manner discriminate or retaliate against anyone who cooperated or is perceived to have cooperated with the OAG's investigation.

⁴ A "pattern of interruptions" is defined as nightly interruption to the 5 consecutive hour portion of the sleep period of the assigned aide for 2 out of 5 consecutive nights for 2 consecutive weeks.

If the Labor Bureau determines that there has been a violation of the terms of this agreement, it will notify VNS CHOICE by e-mail and provide VNS CHOICE with a reasonable opportunity to cure the violation.

Kristen J. Ferguson

Kristen Julie Ferguson

Assistant Attorney General

Labor Bureau

New York Office of the Attorney General

28 Liberty St., 15th Floor

New York, NY 10005

(212) 416-8603

Kristen.Ferguson@ag.ny.gov

Agreed to by:

Kerry M. Parker

Kerry M. Parker

Executive Vice President

Chief Legal & Risk Officer

Visiting Nurse Service of New York d/b/a VNS Health

VNS CHOICE d/b/a VNS Health Health Plans

220 East 42nd Street

New York, NY, 10017

(212) 290-6570

Kerry.Parker@vnshealth.org

EXHIBIT A

IN-SERVICE EDUCATION

On at least an annual basis, LHCSA's in-service education for LHCSA Personnel shall include, but not be limited to, instruction concerning policies and procedures concerning: ... Rights to meal and sleep breaks during live-in shifts (verbally and in writing in each LHCSA Personnel's primary language).

RESPONSIBILITIES OF VNSNY CHOICE

VNSNY CHOICE shall conduct periodic outreach to live-in members through care management assessments or otherwise in compliance with applicable rules and regulations, no less than every six months, to determine whether the circumstances may warrant a sleep study and/or a reassessment. Such outreach will involve solicitation of information regarding sleep patterns, the extent to which the member requires assistance during sleep periods, and the tasks necessitating such assistance. If the information collected in the periodic outreach indicates the patient's sleep patterns cause a "Pattern of Interruptions" (as defined in Appendix B), VNSNY CHOICE will approve the Temporary Rate Increase as set forth in Appendix B and proceed with the process detailed therein. VNSNY CHOICE shall maintain records of this outreach for a period of six (6) years.

STATUS OF THE PARTIES

It is understood that both parties to the Agreement are independent contractors and engage in the operation of its own respective businesses. Any person furnished by LHCSA pursuant to this Agreement shall not be, nor shall be considered to be, an employee of VNSNY CHOICE or its affiliates. Such persons shall be deemed employees of -LHCSA; and -LHCSA shall have the direct responsibility for payment of wages and other compensation, reimbursement of expenses, and compliance with federal, state and local tax requirements pertaining to withholding, Workers' Compensation, Social Security, unemployment and other insurance requirements and obligations imposed on the employer of personnel with regard to such persons. VNSNY CHOICE complies with and requires LHCSA to comply with all applicable state and/or federal wage requirements, and the rates set forth in Appendix B reflect funding that was paid to VNSNY CHOICE by the New York State Department of Health ("DOH") to enable Provider to comply with applicable state and/or federal statutory wage requirements, including minimum wage and/or Fair Labor Standards Act ("FLSA") obligations, as applicable depending on the county ("Statutory Wage Requirements"). VNSNY CHOICE and LHSCA agree that the rates set forth in Appendix B are sufficient to satisfy Statutory Wage Requirements in place as of the Effective Date of this Agreement and LHCSA further agrees that it shall pay all eligible

employees, and shall require any subcontractors to pay all eligible employees, any applicable Statutory Wage amounts including but not limited to any required minimum wage or FLSA amounts. To the extent that there are changes in Statutory Wage Requirements after the effective Date, VNSNY CHOICE will review the rates to insure that the rates will remain sufficient for LHCSA to meet its Statutory Wage Requirements. In the interest of clarity, not all increases in Statutory Wage Requirements will necessitate an increase in rates. LHCSA may initiate negotiations with VNSNY CHOICE if LHCSA believes that VNSNY CHOICE is not adequately funding Statutory Wage Requirements and VNSNY CHOICE agrees to meaningfully engage in these negotiations. LHCSA represents that is in compliance with the same, in addition to other applicable labor laws, and shall stay in compliance for the duration of the Agreement. Neither party has authority to enter into any contract or assume any obligations for the other party or the Department or make any warranties or representations on behalf of the other party. Nothing in this Agreement shall be construed to establish a relationship of co-partners or joint ventures between the two parties or either party and the Department.

SPECIAL PROVISION FOR TEMPORARY RATE INCREASE FOR LIVE-IN CASES

- a) LHCSA may request a temporary, member-specific rate adjustment where a live-in HHA experiences a pattern of interruptions to sleep and/or meal breaks required by applicable law, caused by a live-in member. A pattern exists where a live-in member receiving live-in care 5 nights per week has caused nightly interruption to the 5 consecutive hour portion of the sleep period of their assigned HHA for 2 out of 5 consecutive nights for two consecutive weeks or where a live in member receiving live-in care 7 nights per week has caused nightly interruption to the 5 consecutive hour portion of the sleep period of their assigned HHA for 2 out of 7 consecutive nights for 2 consecutive weeks (“Pattern of Interruptions”).
- b) In such circumstances, LHCSA may, upon submission of the Attestation and Interruption log attached hereto as Appendix ___, request a Temporary Rate Increase for the particular member at issue.
- c) VNSNY CHOICE shall review such request and issue an approval or denial of a Temporary Rate Increase within 15 days of receipt. VNSNY CHOICE will approve TRI requests where it finds a Pattern of Interruptions. If approved, VNSNY CHOICE will determine and communicate to LHCSA the appropriate amount and length of any temporary increase, not to exceed sixty (60) days. In determining appropriate amount of a TRI, VNSNY CHOICE will consider factors including but not limited to LHCSA’s current reimbursement rate and frequency of interruptions documented by LHCSA. The TRI will include payment for the number of additional hours worked as reported in the Attestation and Interruption Log upon which the TRI was approved and which were spent assisting members with Activities of Daily

Living (“ADLs”) or Instrumental Activities of Daily Living (“IADLs”) for which the Plan would be permitted to authorize services for the duration of the TRI.

- d) In the event a Temporary Rate Increase is approved by VNSNY CHOICE, LHCSA shall track and collect details of any interruptions to required sleep/meal breaks for that member’s HHAs and shall share this information with VNSNY CHOICE by submitting additional interruption logs contained in Appendix ___ on a weekly basis. VNSNY CHOICE will consider this information in determining whether particular interventions, sleep studies, or reassessments may be appropriate.
- e) VNSNY CHOICE will collaborate with LHCSA to implement clinical interventions and behavioral modifications to remedy the Pattern of Interruptions within the time period set for the TRI.
- f) Upon or before the expiration of the TRI, VNSNY CHOICE will determine, in its sole discretion, whether the member’s circumstances may warrant a Single Case Agreement, referral to a NHTD waiver program, reversion to LHCSA’s regular reimbursement rate, or re-authorization for non-live-in-shift services. If VNSNY CHOICE does not make this determination by the TRI’s expiration, the TRI will be extended until such determination is made.
- g) VNSNY CHOICE shall maintain records of LHCSA’s requests for such temporary increases, approvals, denials, and adjustment details, for a period of six (6) years.

RATES

VNSNY CHOICE will consider a provider’s volume of live-in cases to its overall VNS Health cases, amongst other appropriate factors, including location and quality of services provided when negotiating contract rates set forth in Paragraph 1 with a LHCSA. The contract rates set forth in Paragraph 1 include amounts for LHCSA’s training and administrative costs.

APPENDIX __

**ATTESTATION IN SUPPORT OF TEMPORARY RATE ADJUSTMENT FOR LIVE-IN
CASE**

I hereby certify that:

1. The Home Health Aide(s) assigned by LHCSA to provide live-in services to [VNSNY CHOICE member] has/have reported routine interruptions to sleep/meal breaks required by applicable laws;
2. LHCSA has documented the duration of all such interruptions and the nature of services rendered during such interruptions on the attached Interruption Detail Log, as reported by the Home Health Aide(s) assigned to the member;
3. LHCSA has paid the Home Health Aide(s) all wages and benefits owed pursuant to state and federal laws; and
4. LHCSA will maintain all time-keeping and payroll records necessary to verify compliance with applicable state and federal laws for a period of at least six (6) years.

Name of LHCSA _____

Name (Please Print) _____

Title (Please Print) _____

Signature _____

CONFIDENTIAL DRAFT
FOR SETTLEMENT PURPOSES ONLY

Live-In Interruption Detail Log

VNS Member/Client Name: _____

Week Covered: _____

VNS Member ID #: _____

Aide Name: _____

	Date	Interruption 1 Start Time	Interruption 1 End Time	Interruption 2 Start Time	Interruption 2 End Time	Interruption 3 Start Time	Interruption 3 End Time	Interruption 4 Start Time	Interruption 4 End Time	Total Hours Worked
	Monday									
	Tuesday									
	Wednesday									
	Thursday									
	Friday									
	Saturday									
	Sunday									
Total time worked during sleep/meal periods:										

Please check off/detail activities performed during interruptions.

	Date	Assisted with Feeding	Assisted with Toileting	Turned/Positioned Patient	Assisted with other ADL (specify below)	Responded to behavioral concern (specify below)	Other (specify below)
	Monday						
	Tuesday						
	Wednesday						
	Thursday						
	Friday						
	Saturday						
	Sunday						

HHA Signature: _____

Date: _____