June 28, 2019

Ms. Ann Foster
Deputy Director
New York State Department of Health
Empire State Plaza, Corning Tower
Albany, NY 12237

Mr. Michael Ogborn
Medicaid Chief Financial Officer
New York State Department of Health
Empire State Plaza, Corning Tower
Albany, NY 12237

Dear Ms. Foster and Mr. Ogborn:

On behalf of the Residential Health Care Facilities Case Mix Adjustment Workgroup (known as the Nursing Home Acuity Workgroup)[1], we write to express grave concerns with the impending change in acuity adjustments to the July 1, 2019 Medicaid rates for skilled nursing providers to be implemented by the Department of Health ("DOH" or "Department"). This change is at odds with recently enacted state law and, if implemented, would negate recent efforts to address compensation of essential front-line caregivers, exacerbate the State's healthcare workforce crisis, and seriously disrupt access to high quality nursing home care throughout New York State.

Based on the clear language of Chapter 57 of the Laws of 2019, stakeholders understood that the Workgroup would provide recommendations and advice to the Department on the methodology utilized to calculate case-mix adjustments to nursing home reimbursement rates. The Department recently indicated that it plans to implement the cut on July 1st, using unrepresentative resident assessment data from the period August 8, 2018 through March 31, 2019. **A retroactive cut of this magnitude will without question damage the financial viability of numerous financially fragile nursing homes, endanger quality resident care and put crucial health care jobs at risk.** The Legislature has given no indication that it intended for the statute to result in a $246 million cut based on a retroactive change in methodology.

Detrimental Fiscal Impact

The large and unpredictable fiscal impact that DOH's proposed July 1, 2019 methodology will create on the provision of patient care throughout New York cannot be understated. Inasmuch as nursing home reimbursement is based on 2007 costs and Medicaid providers have received no inflation adjustment in over 10 years, a cut of $246 million (or potentially more) is simply unsustainable. According to a November 2018 report from a national accounting firm, New York's

[1] To clarify, the Residential Health Care Facilities Case Mix Adjustment Workgroup is the statutory name for the Workgroup, but the 'Nursing Home Acuity Workgroup' is used as the working title for the Workgroup.

Medicaid program paid the average facility 20 percent less than their actual costs of providing care, a $64 per patient per day shortfall.

As New York's nursing homes face annual staffing cost increases, such a reduction would not only negate the benefits of the State's promised 1.5 percent adjustment to reflect increased workforce costs, it would call into serious question facilities' ability to meet the requirements of recently negotiated collective bargaining agreements. Nursing home finances would be further destabilized by cutting rates by an average of at least $9.50 per Medicaid day, with major variations at the facility level. To further emphasize the magnitude of this cut, 1199 SEIU, the State's largest nursing home union with over 50,000 members, has written a letter to the Executive expressing its significant concern with the implementation of changes to acuity adjustments in the July 1, 2019 Medicaid rates for skilled nursing providers as this cut would threaten the above-mentioned collective bargaining agreements.

Lack of Access to Case Mix Data for Review and Removal of Safeguards

Workgroup members reasonably expected, based on the language of the statute, that the Workgroup would be permitted to review in detail the case-mix data and related analyses conducted by DOH, as well as how the $246 million in estimated savings was arrived at by the State. As of June 25, 2019, the Department has provided no such data or related analyses. DOH has also indicated that it plans to not invoke the current 5 percent constraint on case-mix changes during each six-month period pending completion of an OMIG audit. This 5 percent limit provides a safeguard to avoid jeopardizing the viability of many nursing homes, however, DOH has indicated this constraint needs to be removed as it anticipates case-mix decreases of greater than 5 percent.

Many providers will be unable to absorb the rate reduction, but few businesses of any kind can mitigate the impact of a dramatic, retroactive reduction in revenue with no advance warning. We strongly urge the Department of Health to collaborate with the Workgroup in order to develop the prospective acuity methodology the law requires so as to not disrupt resident care or threaten the financial viability of skilled nursing providers.

Failure to Achieve Savings on Enacted Managed Long-Term Care Policies

The 2018-19 Enacted Budget included a provision to exclude from managed long-term care ("MLTC") enrollment nursing home residents following three months of nursing home permanent placement. Individuals that meet these requirements would be disenrolled from MLTC and revert to FFS Medicaid for their nursing home stay.

This policy was expected to result in a total savings of $245 million for SFY 2019-20, in addition to the $147 million in savings for 2018-19. This initiative was effective in state law on April 1, 2018; however, as the Workgroup understands it, the State is still awaiting authorization from CMS and the policy cannot be implemented. **We believe that the State's efforts to achieve fiscal savings should focus on securing the requisite CMS approval for this initiative (which**

has clear legislative authority), rather than unilaterally pursuing savings by retroactively changing the methodology for calculating case-mix adjustments.

Nursing Home Acuity Workgroup Recommendations

Chapter 57 of the Laws of 2019 authorized a Nursing Home Acuity Workgroup to discuss and make recommendations on the methodology used to determine case-mix adjustments to nursing home Medicaid rates. The law requires the Workgroup to review case-mix data and related analyses conducted by the Department of Health with respect to July 1, 2019 rates and prohibits the Department from modifying the method used to determine the case-mix adjustment for periods prior to June 30, 2019. As noted above, Workgroup members have not received data or related analyses conducted by the Department as required by the law.

The legislative intent of convening the Nursing Home Acuity Workgroup was to "seek to promote a higher degree of accuracy in the minimum data set data." The current proposed methodology does not accomplish this and essentially ignores the requirement for "the commissioner not to modify the method used to determine the case mix adjustment for periods prior to June 30, 2019." Prior to June 30, 2019, nursing homes were notified of the measurement period and given the opportunity to validate the accuracy of the data submitted. The new methodology proposed by DOH changes this long-standing practice in order to achieve rate reductions in violation of the spirit of the enacted law.

In furtherance of the statutory requirement of the Nursing Home Acuity Workgroup set forth in Chapter 57 of the Laws of 2019, we submit the following proposals to promote accuracy, stability and transparency within the system that provides essential care for thousands of frail and elderly New Yorkers. **Please note, all proposals are subject to change contingent upon receipt and review of the outstanding data and analyses owed to the Workgroup from the Department.**

Consistent with the Workgroup statute and with the objective of ensuring the integrity of case-mix data, our recommendations are as follows:

For the July 1, 2019 Rate Period and January 1, 2020 Rate Period

- Freeze and apply the July 2018 CMI (utilized in the recently released January 1, 2019 rates) for the six-month rate periods commencing July 1, 2019 and January 1, 2020;
- Proposals that would utilize different assessment datasets for periods prior to June 30, 2019 and apply these to case-mix determination for July 1, 2019 rates, such as patient assessment data from August 8, 2018 through March 31, 2019, would base rates on unrepresentative data, be detrimental to providers and violate current law and practices.
- The above proposal for the July 1, 2019 Rate Period and the January 1, 2020 Rate Period is subject to change contingent upon receipt and review of the outstanding data and analyses owed to the Workgroup from the Department.

For the July 2020 Rate Period

- Utilize a quarterly calculation (the average) of all Medicaid MDSs as a temporary methodology. DOH would use the quarterly average of all MDSs for the six-month period from July 1, 2019 through December 31, 2019;
- Continue the practice of releasing to each facility the data sets that are being used for reimbursement prior to the promulgation of any rate so that each facility can validate the data and make corrections to pay sources along with updating for dementia and bariatric add-ons; and
- Apply the 5 percent constraint for each six-month period.
- The above proposal for the July 2020 Rate Period is subject to change contingent upon receipt and review of the outstanding data and analyses owed to the Workgroup from the Department.

For the January 2021 Rate Period (starting date subject to change)

- Transition to the RUG-IV 48-Group model, which collapses the 23 Rehabilitation groups in the RUG-IV 66-Group model in 5 Rehabilitation groups (which are based on ADL scoring levels not minutes of therapy).
    - The overall 48-Group model and simplified 5-category Rehabilitation hierarchy are more relevant to the Medicaid long-term care population in that they classify residents based on the need for nursing care.
    - In studies, RUG-IV has been shown to have a greater ability to predict differences in resource usage among various types of patients than RUG-III.
    - As with the current RUG-III system in use, this new methodology would utilize index maximizing classification.
    - As it did for the current pricing system, the State would calculate revised case-mix weights for RUG-IV using minutes of care from the STRIVE staff time and New York State wage data.
- Continuation of the 5 percent constraint.
- The above proposal for the January 2021 Rate Period is subject to change contingent upon receipt and review of the outstanding data and analyses owed to the Workgroup from the Department.

Nursing Home Acuity Workgroup Continuation

- The Nursing Home Acuity Workgroup would continue to analyze, advise and collaborate with the Department on improving current and future practices regarding the minimum data set collection accuracy and rate promulgation processes.

- Oversee development and implementation of the transitional methodology beginning July 2020;
- Oversee development and implementation of the RUG-IV model and associated changes;
- Review the basis for, qualifiers for and calculation of existing add-ons (e.g., TBI extended care, bariatric, dementia) for possible continuation/revision, as well as other possible adjustments to case-mix/add-ons;
- Develop recommendations to enhance the timeliness of case-mix determination and finalization for each rate period;
- Develop recommendations on a possible update of the base year costs and the wage equalization factors used to calculate statewide prices; and
- Establish transitional corridors over a specific phase-in period (for example, 3-5 years) relative to implementation of RUG-IV and associated rate changes.
- Study the implementation and outcomes of the new federal Patient Driven Payment Model which is being implemented beginning October 1, 2019, and determine whether certain elements of it can be adapted for use in New York's acuity determination and rate setting processes.

We urge the Department of Health to reconsider its proposed methodology for case-mix adjustments and respectfully request the State provide feedback to the Workgroup regarding its recommendations as soon as possible as the July 1, 2019 date is rapidly approaching. The Department's proposed methodology would destabilize nursing home finances, threaten access to high quality nursing home care and negatively impact health care workers that provide essential long-term care services.

Sincerely,

The Nursing Home Acuity Workgroup[2]

cc: Robert Mujica, Director, Division of Budget
Donna Frescatore, Interim Deputy Commissioner
Howard A. Zucker, M.D., J.D., Commissioner of Health
Paul Francis, Secretary for Health and Human Services
Megan Baldwin, Assistant Secretary for Health
Senate Majority Leader Stewart-Cousins
Assembly Speaker Heastie

[2] Scott Amrhein, Michael Balboni, David Berkowitz, Andrea Brindisi, Sean Doolan, Mary Gracey-White, Stephen Hanse, Dan Heim, Neil Heyman, Darius Kirstein, Gedalia Klein, Christopher Koenig, Dov Lebovic, Nancy Leveille, Mitch Marsh, James McGregor, Robert McLeod, John Murray, Robert Nasso, Christine Pesiri, Paul Rosenfeld, Jeffrey Rubin, Mojdeh Rutigliano, Larry Slatky, Michele Synakowski, Robert Werner, Douglas Wissmann

Senator Gustavo Rivera
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Senator James Skoufis
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(Sent via Mail and E-mail)