Regulatory Reform Concepts to Support the Success of the Delivery System Reform Incentive Payment (DSRIP) Program

LeadingAge New York has developed concepts for regulatory waivers that could support DSRIP objectives, based on input from members. This document is intended to be used by members engaged in DSRIP Performing Provider Systems (PPS) for inclusion the lead organizational application, due Dec. 22, 2014. If approved by the Department of Health, the waiver would be specific to the project, and limited to the life of the project.

Any waiver request must include:

- the specific citation of the regulation that the PPS would like waived;
- the reasons for the waiver request, including a description of how the waiver would facilitate implementation of the identified project and why the regulation might otherwise impede the ability of the PPS to implement such project;
- what, if any, alternatives the PPS considered prior to requesting regulatory relief; and,
- information to support why the cited regulatory provision does not pertain to patient safety and why a waiver of the regulation(s) would not risk patient safety; include any conditions that could be imposed to ensure that no such risk exists, which may include submission of policies and procedures designed to mitigate the risk to persons or providers affected by the waiver, training of appropriate staff on the policies and procedures, monitoring of implementation to ensure adherence to the policies and procedures; and evaluation of the effectiveness of the policies and procedures in mitigating risk.

Below are concepts, organized by service line, for home care, adult care facility/assisted living, and nursing home providers. Some of the aforementioned components are provided for your use.

Home Care

- **Expedite the processing of Certificate of Need (CON) and other applications for home health services.** Home health CON and other applications must be processed more quickly to meet the increasing demands on these services as we serve more people with more complex needs in the community. LeadingAge NY recommends establishing an expedited, streamlined process with clear and posted timeframes for processing and action on:
    - home care (CHHA, LHCSA and LTHHP) establishment applications; and,
    - applications to serve new geographic areas and/or add new services to the operating certificate.

  ***Statutory and Regulatory Reference**: NYS Public Health Law Article 36 – Section 3606 (2) and Title 10 NYCRR 760.5 Determinations of public need.*

- **Eliminate duplication.** Efforts should be made to identify instances when duplicative assessments or services are being provided to a beneficiary who is enrolled in an MLTC plan and also receiving home care services, and determine how best to eliminate the duplication. This would result in a more rationalized and efficient health care delivery system for Medicaid-

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eligible and dual-eligible individuals. The need for home health providers to be able to respond to consumer needs quickly and efficiently is only heightened in a DSRIP environment.
Regulatory References: *Below are references to regulations that are duplicative of MLTC regulatory requirements:*

- *Assessments, Certified Home Health Agency (CHHA): Title 10 NYCRR Part 763.3 (State regulation) and 42 CFR 484. 55 (federal regulation).*
- *Plan of Care: Title 18 NYCRR section 540, Title 10 NYCRR 763.6 (State regulation), 42 CFR 484.18 (federal regulation)*
- *Physician Orders: Title 10 NYCRR 766.4, Title 10 NYCRR 763.7 (State regulation)*

- **Establish an exception to the 90 day time limitation for Medicaid billing** to address circumstances where untimely turn-around of written physician orders precludes providers (and plans) from qualifying for billing for medically necessary services provided.
Regulatory References: *Title 18 NYCRR, Section 540.6*

For questions about this section, please contact Cheryl Udell at cudell@leadingageny.org.

Nursing Homes

- **Encourage facilities to bring on physician extenders by allowing them to keep the Medicare Part B offset funds that would normally be taken from the Medicaid rate.** Such staffing would support serving higher acuity residents and providing necessary treatments to avoid hospitalization and emergency room visits.
Regulatory References: *Title 18 NYCRR, Section 540.6(4)*

- **Allow nursing homes to offer enhanced services that could limit avoidable hospital use.** Nursing homes face reimbursement and other challenges to providing chemotherapy services, which leads to more lengthy hospital stays and readmissions. Similarly, if nursing homes were permitted to offer hyperbaric services for wound care and any other specialty services which can feasibly be provided in a nursing home, avoidable hospital use could be further reduced.
Regulatory References: *Title 18 NYCRR, Section 505.9. Various references in the residential health care section are made regarding allowed and covered services. The above mentioned services are not specifically prohibited, but there is no language specifically allowing them.*
- **Allow Medicaid reimbursement for remote consultations with psychiatrists and other specialty physicians.** This would increase the ability of the facility to meet the specialized needs of their residents in an expeditious manner. This is likely to reduce avoidable hospital and emergency room use.
Regulatory References: *Title 18 NYCRR, Section 505.9 - Residential health care. Various references in the residential health care section are made regarding allowed and covered services. As above, this is not specifically prohibited, but there is no language specifically allowing it.*

- **Allow a Nursing Home to admit someone without requiring a PRI, to enable more rapid admission.** In certain parts of the State, it takes time to arrange for a PRI and Screen to be done, which can delay someone's admission to a nursing home. This is particularly along the borders to other states, where facilities commonly accept people from out of state, or repatriate a resident in a nursing home in another state. While an assessment of appropriateness is still conducted, arranging for the appropriately trained person to conduct a PRI can stall an admission. Waiving this requirement would enable nursing homes to more rapidly accept people out of the hospital, or bring them back from other states.
  Regulatory Reference: *Title 10 NYCRR, 415.26 and 400.11*

  For questions about this section, please contact Patrick Cucinelli at pcucinelli@leadingageny.org.

Adult Care Facility (ACF)/Assisted Living

- **Expand the role of the nurse in ACFs and assisted living settings** to provide more proactive, preventative services that keep people from needing acute or emergency care. Many of these facilities have nurses that work in the building but are not able to perform duties within their training and scope of practice due to State policy.
  Action required: *LeadingAge NY's request is for DOH to enable (but not require) nurses to perform duties that home health aides perform in the community, which LeadingAge NY believes requires simply a change in State policy. LeadingAge NY also suggests that Licensed Home Care Services Agencies (LHCSAs) that are a component of an Assisted Living Program (ALP) should be able to perform the duties that a LHCSA can do in the community, which includes nursing. Again, this would require a reinterpretation of State policy.*

- **Update admission and retention standards for ACFs.** The social ACF model is somewhat outdated and needs to be updated. The current admission and retention standards provide a rather narrow band of eligibility, as people are staying in their own homes longer than ever People are coming to ACFs frailer, and with more complex needs than before. We anticipate that trend will only grow, and the model should be updated accordingly.
  Regulatory Reference*: Title 18 NYCRR, Section 487.4 (Adult Home) or 488.4 (Enriched Housing Program). The waiver could also be temporary, for a period of time post-discharge from a rehabilitative or hospital stay, as well, to get a person back to the adult home or enriched housing program level of care.*

- **Allow access to hospice services in the assisted living program (ALP).** Currently, DOH prohibits a Medicaid beneficiary from residing in the ALP and concurrently accessing the hospice benefit. This limits access to critical services and supports. We urge the Department to work with LeadingAge NY and other stakeholders to eliminate this barrier. Aside from the clear benefits to

the beneficiary, doing so is also likely to reduce hospitalizations and emergency room visits for the dual-eligible resident population.
Action required: *This will require a policy change, with clarification of roles, responsibilities and payment.*

- **Provide more guidance so that ACFs and Assisted Living Residences (ALRs) feel comfortable working with hospice recipients at end of life.** Separate from the specific Medicaid issue of the ALP, there remains difficulty in providing hospice services in an ACF and ALR setting. Many providers are fearful of being cited by DOH as the needs of a hospice resident do not fit within the ACF/assisted living regulatory framework. DOH worked with the provider community years ago to provide guidance, however it doesn't seem to be sufficient in some circumstances. DOH should work with the assisted living and hospice provider communities to develop more explicit guidance and safeguards to broaden access to these critical services in ACF and assisted living settings.
  Action required: *This will require further clarification of existing policy, with specific and explicit direction about what is allowed. Another way to approach this would be an explicit waiver of retention standards (Title 18 NYCRR, Section 487.4 (Adult Home) or 488.4 (Enriched Housing Program) in these circumstances. Given the vague nature of existing direction, there remains hesitancy for hospice services to be provided in ACF settings.*

  For questions about this section, please contact Diane Darbyshire at ddarbyshire@leadingageny.org.

We hope you find this guide helpful. We are also providing more in-depth policy recommendations to the Department of Health. If you have general questions about this document or DSRIP, please contact Diane Darbyshire at ddarbyshire@leadingageny.org or Dan Heim at dheim@leadingageny.org, 518-867-8383.