May 22, 2015

Jason Helgerson
Deputy Commissioner & Medicaid Director
Office of Health Insurance Programs
New York State Department of Health
One Commerce Plaza
Albany, New York 12237

Re: QIVAPP Process and Eligibility Criteria

Dear Mr. Helgerson:

On behalf of members of the above organizations, we are writing to express our serious concerns regarding the New York State Department of Health's (DOH's) most recent interpretation of provider eligibility criteria for participation in the State's Quality Incentive Vital Access Provider Pool (QIVAPP) program, as reflected in its April 29, 2015 QIVAPP Webinar Frequently Asked Questions (FAQs) document. We further support developing new approaches to assist home care providers in meeting rising costs stemming from the Home Care Worker Wage Parity Law of 2010 and other ongoing mandates.

Since the Department's April 15, 2015 QIVAPP webinar and subsequent FAQs—released on April 29, two days prior to the final deadline for managed long term care (MLTC) plans to attest and reconcile service hours to the Department—our associations have heard from numerous home care providers concerned about their eligibility for QIVAPP funds.

The concern is due to a major change in the Department's interpretation of the health benefit eligibility criteria. In a departure from the original health benefit requirement outlined in the April 23, 2014 *Dear Administrator Letter* (DAL) that an agency must **provide** comprehensive health insurance coverage to its employees, the April 29 FAQs state that "a minimum of 30% of a provider's total workforce must be **enrolled** in the health benefit" in order to qualify for QIVAPP funding. Home care providers and their contracted MLTC plans are concerned that while the home care providers offer a health benefit package that meets the formal QIVAPP eligibility standards, they may no longer be eligible for QIVAPP funding based on this new interpretation.

<u>Need for Equity in the QIVAPP Process</u>

Throughout the QIVAPP process, we have sought to ensure that opportunities for provider participation in the program are equitable to all potential applicants. While the program was still in development, we voiced strong opposition to proposed eligibility criteria that would give an advantage or target funding to any one category of organization in the QIVAPP selection process. We cited strong concerns about the connection to labor organizations in the draft QIVAPP eligibility standards, and urged the

Department to remove or modify provisions related to training and health fund participation, in order to ensure that QIVAPP funds would be accessible whether or not a home care agency had a unionized workforce.

In the April 23, 2014 *Dear Administrator Letter* (DAL) formally announcing the QIVAPP program, we were appreciative that the health benefit criteria had been expanded to also cover an agency that "provides comprehensive health insurance coverage to their employees." The QIVAPP application which followed further indicated that "all non-union providers…must meet or exceed what is offered in the…sample benefit package to qualify." Additionally, in response Question 8 in the August 6, 2014 QIVAPP FAQs, the Department stated only that "employees must participate" in the health benefit program.

Based on the original DOH guidance, many additional providers were able to determine their agencies were eligible for QIVAPP funding. These agencies have engaged in a very time-consuming and administratively-burdensome application process, requiring a substantial expenditure of resources by all parties involved—providers, MLTC plans, and the Department—to participate in the program and get QIVAPP monies flowing through the system.

On April 29, 2015, the Department issued a new interpretation of the health benefit criteria, indicating that "a minimum of 30% of an agency's total workforce must be enrolled in the health benefit" in order for the agency to qualify for QIVAPP funding. We oppose this change and urge the Department to retract this arbitrary change, which we believe inequitably favors one type of provider over another in the QIVAPP program and holds agencies responsible for the choices their workers make about health coverage.

Unfortunately, the most recent interpretation unfairly penalizes home care providers that offer comprehensive health coverage but whose workers may choose not to participate in the provider's health benefit because they access these benefits through other means or elect to receive a higher wage rather than obtain health coverage. These agencies are incurring similar costs as those agencies whose workers opt for health insurance because under the State Wage Parity law, they must still provide cash or other benefits for aides who do not choose the health benefit. Agencies seeking to receive QIVAPP funding cannot be expected to limit choices for their aides by forcing them to participate in the agency's health insurance plan.

We strongly object that the percentage of workers enrolled in the health benefit should impact provider eligibility for QIVAPP funds, and particularly that the Department made such a drastic change to the eligibility criteria at this late stage in the QIVAPP process.

Due to the late issuance of this new interpretation and the likely adverse impact of this change on providers that have met the QIVAPP eligibility standards and have complied with DOH requirements throughout the application process, **we urge the Department to retract its April 29 reinterpretation** of the health benefit eligibility standard. We further request that the Department identify a long-term solution to support adequate financing for the home care system in the future.

<u>Need for Long-term Solutions for Reimbursing Home Care</u>

As the current QIVAPP process nears completion, it is an opportune time for the Department to look ahead and identify an appropriate long-term strategy for investing additional funds into the home care system to support wage parity and other increased employer costs. The QIVAPP process, which was

originally developed with the intent of being a streamlined and effective method of providing essential funding to providers, has instead proven to be a very complex, resource-intensive process for all entities involved and ultimately will not fully compensate agencies for their costs. Rather than continue this cumbersome and inequitable QIVAPP approach in the future, we believe home care providers, MLTC plans and home care workers would be better served by the establishment of defined reimbursement standards.

In 2014, the Department identified $19.64 per hour as a reasonable pass-through rate for agencies contracting with MLTC plans to provide services in wage parity regions. This rate was intended to cover the total average hourly worker cost (salary + fringe + additional benefits including prevailing wage) and administrative costs for the agency. We urge the Department to establish a work group of associations, providers and plans to discuss adequate reimbursement rates for all agencies in counties impacted by wage parity and other mandates. Home care providers must be reimbursed at an established minimum amount and MLTC plan premium rates must be set at levels that are adequate to permit plans to meet or exceed this rate.

Our associations and members have long supported efforts to provide a living wage and benefits to home care workers. However, for agencies that are largely reimbursed by Medicare and Medicaid, home care providers need to be reimbursed at adequate levels to at least cover their costs. As these costs—which are not controlled by the provider – rise, so too must provider reimbursement rates and, accordingly, MLTC plan premiums. Setting specific, timely reimbursement standards would be a straightforward approach that would alleviate confusion for providers, plans and the Department, and help ensure that payment rates to providers are sufficient to support higher wages and other benefits for workers.

Your consideration of the concerns and recommendations outlined above is greatly appreciated, and we look forward to your response. We stand ready to work with you and Department staff to assist home care providers and MLTC plans to meet the goals and compensation levels of the State's wage parity laws, and to continue to provide employment opportunities and high quality home care to the State's citizens.

Sincerely,

Claudia J. Hammar
President, New York State Association of Health Care Providers (HCP)

Joanne Cunningham
President, Home Care Association of New York State (HCA)

James W. Clyne, Jr.
President/CEO, LeadingAge New York

Cc: Courtney Burke, Deputy Secretary for Health for Governor Andrew M. Cuomo
Senator Kemp Hannon, Chair, N.Y.S. Senate Health Committee
Assemblymember Richard Gottfried, Chair, N.Y.S. Assembly Health Committee
Howard Zucker, M.D., J.D., Commissioner, N.Y.S. Department of Health (DOH)
Sally Dreslin, Executive Deputy Commissioner, DOH
Mark Kissinger, Director, Division of Long Term Care, Office of Health Insurance Programs, DOH