April 18, 2013

Nirav R. Shah, M.D., M.P.H.
Commissioner of Health
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Dear Commissioner Shah:

I write on behalf of LeadingAge New York to express concerns and offer recommendations regarding recent developments that could adversely affect access to home health care services. As you know, the federal government recently approved amendments to Medicaid waivers that will allow the state to transition frail elderly recipients from the Long Term Home Health Care Program (LTHHCP) to Managed Long Term Care (MLTC) and mainstream Medicaid Managed Care (MMC) plans.

LeadingAge New York is the only statewide organization representing the entire continuum of not-for-profit, mission driven and public continuing of care, including home and community-based services, adult day health care, nursing homes, senior housing, continuing care retirement communities, adult care facilities, assisted living programs and MLTC plans.

Our fundamental concerns with this change are twofold. First, the LTHHCP population is a vulnerable group of individuals whose transition to managed care must be carefully planned and executed. Secondly, it is critically important to ensure the continued viability of the state's home health care providers, and in turn maintain the vital safety net of services that allow many of New York's most vulnerable citizens to safely age in place, with dignity and choice.

With these fundamental concerns as the backdrop, we ask that you consider the following recommendations which are designed to ensure a smooth and successful transition of this population into managed care, while preserving access to home health services.

1. **Issue:** Continuity of care is particularly important for this frail, nursing home-eligible population.

   Recommendation: Given that this population has service needs that are significantly greater than those of the personal care population, a much more robust continuity of care policy should be instituted to ensure patient safety. This concern was also apparently raised by the Centers for Medicare & Medicaid Services (CMS) during the waiver amendment process. While we are encouraged the Department has proposed a 90-day continuity policy, we are recommending 120 days due to the multitude of services and supports that these recipients typically rely on. In other

13 British American Blvd. | Suite 2 | Latham, NY 12110
P 518.867.8383 | F 518.867.8384 | LeadingAgeNewYork.org

words, the recipient's existing Plan of Care (PoC) would be continued for the greater of 120 days or when the PoC is revised by the managed care plan.

2. **Issue**: For LTHHCP providers and managed care plans to effectively prepare for the transition, more specific timeframes and procedures are needed as soon as possible.

   Recommendation: The Department should articulate specific and realistic timeframes and procedures for the transition of LTHHCP patients to managed care plans in both the currently mandatory counties and those counties that are not yet mandatory for MLTC enrollment. LTHHCPs and managed care plans should be able to rely on these timeframes to effectively plan their staffing needs, capacity and continuity of care. Procedures that were in place during the managed care transition period for personal care recipients should also be instituted for the LTHHCP transition period such as mandatory contracting with existing providers and payment assurances.

3. **Issue:** There are significant regulatory and contracting issues between MLTC plans and LTHHCPs that should be resolved as quickly as possible.

   Recommendation: The Department should work with home care stakeholders now to clarify how LTHHCP services can be delivered in a managed care framework from a regulatory and contractual standpoint. Among the areas that require resolution are conducting patient assessments, LTHHCP slot limits, individual budget caps, nursing home level of care determination, monthly waiver service requirement, supervision frequency and responsibility for medical orders. LeadingAge New York maintains that LTHHCPs should have significant flexibility to provide any and all services they are currently authorized for to enrollees of managed care plans, and that they be permitted to do so in a streamlined regulatory manner.

   While we were pleased that the final 2013-14 state budget legislation authorized creation of a Home and Community Based Care Workgroup to explore these issues, we are concerned that the group would not make final recommendations until March 2014. With the anticipated mandatory enrollment of LTHHCP participants slated to begin in only a few months, we cannot afford to wait for nearly a year to address these time-sensitive issues. By then, many LTHHCPs may have already closed their doors, which in turn will erode participant choice and the home care infrastructure upon which successful managed care will need to rely.

4. **Issue**: There are delays in reviews of the contracts between home care providers, including LTHHCPs and Certified Home Health Agencies (CHHAs), their subcontractors and managed care plans.

   Recommendation: The Department should streamline and expedite the contract review process. Our home care agency members have sought to adapt to the new managed care environment by entering into contracts with MLTCs and MMC plans; however, the contracts are not being processed in a timely fashion. This includes both provider agreements and Care Management Administrative Services agreements. Without executed contracts and facing continued declines in referrals, our LTHHCP members have already begun downsizing their home care staffs and operations. Unfortunately, this lost capacity may not be recovered.

5. **Issue:** LTHHCPs seeking to initiate CHHA services are facing two areas of delay.

   Recommendation: Most of our member home care agencies that either were not established under Article 36 (i.e., Article 28-based LTHHCPs) or were licensed to provide Special Needs CHHA services responded to the CHHA Request for Applications. However, many have yet to have their Certificate of Need (CON) applications acted upon. We understand that those organizations that have obtained CON approvals are still awaiting approval of their policies and procedures by the DOH regional offices. The Department should work with the Public Health and Health Planning Council and with its regional offices to expedite these reviews.

   These providers are seeking to facilitate the state's goal of care management for all, and have been planning for an orderly transition of their staff from the LTHHCP to the CHHA and to provide their patients with the choice of receiving home care services through the CHHA. However, time delays associated with the CON process threaten agencies' ability to provide this patient choice as well as their continued viability to operate home care services. These delays are already leading to agency downsizings and potential closures.

6. **Issue:** Spousal impoverishment budgeting under Medicaid managed care still needs to be resolved.

   Recommendation: We understand that the Department has been working with CMS on this issue, and urge that it be resolved as quickly as possible. The community spouses of an estimated 800 LTHHCP patients currently benefit from this protection under the 1915(c) waiver authority, but it is unclear whether this will continue when these individuals are enrolled in an MLTC or MMC plan. Unraveling this protection could place the spouses of these recipients at a significant disadvantage when they enroll in a plan.

LeadingAge New York remains available to work with the Department to make this a safe and smooth transition for LTHHCP patients and to preserve the infrastructure of home care services. The availability of an array of high quality home and community-based services is obviously critical to the success of the managed care model.

Sincerely,

Daniel J. Heim
Executive Vice President

cc: Jason Helgerson
Mark Kissinger
Vallencia Lloyd
Karen Westervelt