

## MEMORANDUM

**TO:** Members

**FROM:** Cheryl Udell, Community Services Policy Analyst

**DATE:** November 18, 2011

**SUBJECT:** Emergency Regulations for the Expansion of Certified Home Health Agencies (CHHAs)

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On November 17 the Public Health and Health Planning Council (PHHPC) met to review the proposed emergency adoption of changes to Section 3612(5) of the Public Health Law, and to Title 10 NYCRR Section 760.5. This emergency regulation would allow for the expansion of Certified Home Health Agencies (CHHAs) through a Request for Application (RFA) process that would circumvent a formal Certificate of Need application. DOH is proposing this emergency regulation based upon their concern that there is currently insufficient capacity to meet the demands of the upcoming transition from fee-for service programs to managed long term care systems.

*The proposed change to Section 760.5 – Determinations of public need.*

*(1) Notwithstanding the provisions of this section, the Commissioner is authorized to issue a request for applications to establish new certified home health agencies, or expand the approved geographic service area and/or approved population of existing certified home health agencies. Public need, in connection with any such request for applications, shall be found to exist only if the applicant demonstrates, in accordance with the criteria set forth in subdivision (a) of section 709.1 of this title, that approval of the application will:*

- (i) facilitate the implementation of Medicaid Redesign initiatives designed to shift Medicaid beneficiaries from traditional fee-for-service programs to managed long term care systems, integrated health systems, or similar care coordination models; or*
- (ii) ensure access to certified home health agency services in counties with less than 2 existing certified home health agencies not including those operated by the county.*

LeadingAge New York testified to the PHHPC to address this proposed addition to Section 760.5. The following are the concerns and recommendations we offered:

- This is a time of unprecedented change and instability in home care services, including: personal care benefit changes, CHHA payment caps and episodic pricing and, of course, MRT #90 which is effective April 1, 2012. MRT #90 begins the mandatory enrollment of Medicaid recipients who require more than 120 days of community-based long term services into a MLTC or similar care coordination model, and this change adds one more element of instability.
- Among the highest priorities of the state and the PHHPC should be continuity of services for people receiving care in their homes. This includes the 26,000 Long Term Home Health Care Program (LTHHCP) participants. The priority should focus on how the LTHHCP participants who are among the very ones that the state is looking to transition into MLTC will be able to have continuity of care. If the state wants to ensure continuity of care for the LTHHCP patients then they should allow LTHHCPs to be downstream providers by allowing them to revert to CHHA status for Medicaid purposes and to do so in a timely manner. The LTHHCPs are already Medicare certified as CHHAs.
- We support efforts to ensure that there is sufficient CHHA capacity that in turn ensures access to services and dovetails with efforts to coordinate care. We are concerned, however, with the methodology that was used to determine there is an unmet need and therefore justify an emergency regulation.
- This proposed regulation does not, either in form or substance, provide for an orderly process to address access to services, continuity of care and coordination of services. If anything, it would add more unpredictability and uncertainty while potentially creating unneeded infrastructure. Ignoring the established need methodology threatens existing CHHAs who will see their volume diluted and their unit cost increased.
- Consideration should be made for a well-planned transition strategy to allow for LTHHCP conversions to CHHA/LHCSA status that could be staged accordingly. Especially with the closing of county operated CHHAs the expansion of CHHAs in upstate counties can be done efficiently with this modification of the LTHHCPs. The existing LTHHCPs have an existing time tested, efficient provider network already established.
- In conclusion, the PHHPC should defer action on the proposed regulation until all of these concerns can be sorted out and along with the potential impact on patient access, continuity of care and assess the infrastructure that is already available.

The members of the Codes Committee voted 4 to 3 to move the emergency regulation to the full PHHPC to officially adopt at their December 7 meeting.

We will distribute our formal response to the Members of the Codes Committee and members of the Public Health and Health Planning Council next week on this proposed emergency regulation.

Please contact me with any questions; I can be reached at 518-867-8871 or [cudell@leadingagency.org](mailto:cudell@leadingagency.org).

