



December 5, 2011

James Introne
Deputy Secretary for Health
Executive Chamber
State Capitol
Albany, NY 12224

Mark Kissinger, Director
Division of Long Term Care
NYS Department of Health
Corning Tower – 14th Floor
Empire State Plaza
Albany, New York 12237

Ed Matthews
CEO
United Cerebral Palsy of New York City
80 Maiden Lane – 8th Floor
New York, NY 10038

Dear Mr. Introne, Mr. Kissinger, and Mr. Matthews:

On behalf of the Home Care Association of New York State (HCA) I am writing to express opposition to some of the proposed recommendations for changes to the Assisted Living Program (ALP), as recently submitted to the MRT Affordable Housing Work Group.

These recommendations run contrary to the original intent of ALPs and, if enacted, would adversely affect the delivery of home care services to ALP residents.

HCA also objects to the process by which these recommendations have been vetted, given that no input was sought from home care providers and given that the MRT Work Group tasked with reviewing the proposals does not include any home care providers, whose perspectives on such issues are essential. We believe that any ALP recommendations should be separately discussed in a more comprehensive approach by a new, truly representative Work Group that has adequate time to analyze the program from all perspectives.

What follows is a summary of the specific ALP recommendations that HCA does **not** support.

Lift the moratorium on Certified Home Health Agencies (CHHAs) to enable ALPs to apply for a new CHHA to serve their residents

HCA strongly objects to this recommendation, which would allow ALPs to develop CHHAs.

Lifting the CHHA moratorium at this time or allowing another provider type to establish a CHHA will further destabilize the existing home care system that is already besieged by seismic new policy changes, including rate cuts, caps on CHHA spending, a transition to CHHA episodic payments, a shift to Medicaid managed care/mandatory enrollment of certain populations receiving non-institutional long term care services, and others.

This proposal also circumvents the role of the Health Planning Committee of the Public Health and Health Planning Council (PHHPC) that is currently examining Certificate of Need (CON) issues – a process that, unlike the Affordable Housing Work Group, operates under a clearly stated directive to consider public need as part of its deliberations over policy changes that affect service capacity. No such directive is shown to govern the Affordable Housing Work Group; HCA believes that issues pertaining to the CHHA moratorium, specifically, and CON, generally, should instead be subject to public discussion where providers, associations, consumers and other interested parties can offer input.

Rather than lift the moratorium at this time, HCA has advocated for a series of CON reforms to simplify and reduce the timeframes and steps in the state approval process and allow for the fast-tracking of projects that are urgent or demonstrate support for meeting a priority need. Opting for this more comprehensive approach, HCA's recommended CON reforms urge: a thoughtful examination of the need for and merit of flexibility in the addition/multi-use of agency services; a consideration of the existing infrastructure and the impact on that infrastructure when the state considers proposals to change existing capacity or institute new models of care; and consideration of projects that should no longer be subject to CON review.

Allow ALPs to access Medicare-covered therapy services from providers other than CHHAs or Long Term Home Health Care Programs (LTHHCPs)

This recommendation would allow entities other than CHHAs or LTHHCPs to provide therapy services, particularly private physical therapy companies and nursing homes on the same campus as the ALP.

We oppose this recommendation because it will eliminate the integral role of CHHAs and LTHHCPs in providing skilled services and coordination of care to residents who require therapy services. This proposal also extends such service authorizations to entities that operate under different rules in the Medicare billing process, with potential cost consequences for the state's Medicaid program.

These other entities would be billing under Medicare Part B which covers a limited amount of services, due to an annual cap on Medicare-reimbursed services (\$1,880 in 2012), a cap that does not apply to CHHAs and LTHHCPs billing for such services under Medicare Part A.

Also, under Part B, the patient incurs a copayment that the state, in many cases, would have to finance under Medicaid, contrary to the MRT's goal of reducing state Medicaid costs.

Allow ALPs the option to utilize their Licensed Home Care Services Agency (LHCSA) home health aides to perform all functions within their scope of practice/tasks

The basis for this recommendation – that some CHHAs and LTHHCPs have not been willing to accept certain ALP cases – stems largely from problems in the existing protocols and procedures and would, therefore, best be addressed first by supporting efforts already underway to attain clarity in the expectations for CHHAs, LTHHCPs and ALPs, rather than addressing scope of practice issues for aides.

Home care providers have reported service-stifling ambiguities and conflicts in the current criteria used for determining which home care providers can provide services to adult home residents, the type and amount of services that home care organizations can provide, the responsibility of home care providers for overseeing the plan of care, and the responsibilities of the adult home in providing personal care and other services and coordinating services to residents.

Over a nearly two year period, HCA and other associations have appealed to the state Department of Health (DOH) for clarity and a workable solution in the state's policy on the lines of responsibility and service between adult homes and CHHAs/LTHHCPs. As HCA has repeatedly advocated, by addressing these issues first, the state can remove existing bottlenecks in the coordination of services between ALPs and CHHA/LTHHCP home care providers.

In addition, we have engaged with the Office of the Medicaid Inspector General (OMIG) to ensure that OMIG's workplan pertaining to the audit of home care services to adult home residents recognizes the complexities and ambiguities of the state's policy. Although OMIG has since agreed to change its audit plan, guidelines from DOH are also needed so that CHHAs and LTHHCPs have a clear understanding of the criteria for serving this patient population and ensuring aide-level services within their purview. HCA believes that it is preferable to continue these discussions with DOH before considering scope of practice issues.

In addition, while the proposal notes that the ALP's registered nurse (RN) can provide aide supervision for the home health tasks, the RN employed by a LHCSA would not be able to bill Medicare, as is often appropriate in serving this population, creating an obstacle to the requirement that other payers be billed prior to Medicaid.

Allow the Registered Nurse (RN) employed by the ALP's LHCSA to conduct assessments

Current law requires that the CHHA or LTHHCP with which the ALP contracts must conduct all resident assessments. This law recognizes the unbiased and integral role played by CHHAs and LTHHCPs in ALPs. No strong argument has been made for changing this process and eliminating the role of CHHAs and LTHHCPs whose personnel have vast

experience and training in the completion of the Patient Review Instrument (PRI) that is used as part of the initial assessment. The assessment skills of CHHA/LTHHCP nurses are based on the clinical expertise and knowledge obtained from serving patients with an array of complex conditions and illnesses. We advocate that the CHHA/LTHHCP nurse continue to conduct assessments.

In summary, HCA has strong concerns with many recommendations related to the Assisted Living Program that are being considered by the Affordable Housing Work Group. Instead of the Work Group acting hastily to support piecemeal proposals, HCA urges the establishment of a representative Work Group comprised of providers, associations, consumers, and other interested parties that would be solely dedicated to conducting a comprehensive assessment of ALPs in a reasonable timeframe and making recommendations that consider the future role of ALPs in this rapidly changing health environment.

I am available to discuss this further at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Joanne Cunningham". The signature is written in a cursive style with a large, sweeping flourish at the end.

Joanne Cunningham
President

cc: Affordable Housing Work Group members