



June 14, 2011

Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Attention: CMS-2296-P  
Post Office Box 8016  
Baltimore, MD 21244-1850

**Re: CMS-2296-P, Medicaid Program; Home and Community-Based Services Waivers**

To Whom It May Concern:

The Home Care Association of New York State (HCA) is a statewide not-for-profit organization representing about 400 home health care providers, allied organizations and individuals involved with the provision of home care in New York State to approximately 400,000 patients. HCA's mission is to promote and enhance the quality, accessibility and availability of home care by enabling its members to meet the health and assistive needs of frail elderly, chronically ill and disabled New Yorkers.

HCA appreciates the opportunity to provide comments on the proposed rule to revise the regulations implementing Medicaid home and community-based services (HCBS) waivers under section 1915(c) of the Social Security Act.

New York State has a very comprehensive Medicaid home and community-based infrastructure that includes State Plan services (personal care/home attendant services, home health aides, therapies, and private duty nursing, and consumer-directed personal assistance), managed long term care, and several section 1915(c) waiver programs. These waiver programs include the Long Term Home Health Care Program (LTHHCP), AIDS Home Care, Nursing Home Transition and Diversion, Traumatic Brain Injury, Katie Beckett Care At Home, and other waivers administered by the Office of Mental Health and the Office for People with Developmental Disabilities. Our members participate in one or more of these programs, and our comments are based on their experiences.

## **Designing Waivers Based on Needs**

HCA supports and has strongly advocated for further flexibility within our waivers and for collaboration between waiver/case management programs. We thus believe it could be beneficial for CMS to pursue its efforts to allow flexibility in populations served in individual waivers by allowing services to be provided based on patient “needs” rather than “diagnoses.” However, we caution that these or any other changes in waiver programs must not impede the efficient operation of New York’s already existing HCBS waiver programs or create new silos that act as further barriers to the provision of services.

New York’s principal HCBS waiver program is the LTHHCP. For more than thirty years, the LTHHCP, also known as the “Nursing Home Without Walls” program, has delivered comprehensive, cost-effective home care services to patients who would otherwise receive care in a nursing home. This program is one of the most innovative of its kind, and has served as a national and state model for meeting the needs of chronically ill, disabled and medically frail patients.

New York’s LTHHCP already incorporates elements into a HCBS waiver program that CMS seeks to encourage, including a service planning process that is person-centered and development of a service plan that is based upon the needs of the individual, rather than on diagnosis or condition.

The efficiency and cost-effectiveness of New York’s LTHHCP stems from the integration of a number of key features into a single, person-centered model. These features include: a requirement that every patient served in this program be nursing home eligible; a comprehensive health, social and environmental assessment of each patient; an array of services that can be tailored to meet the individual needs of each patient; comprehensive care coordination and management; and a limitation that the cost of services provided to patients must not exceed 75 percent of the nursing home rate.

Given the LTHHCP’s integral role in New York’s long term care infrastructure and its successful design and performance, we would welcome further flexibility in service provision while strongly urging CMS not to include provisions that would fragment or compromise the provision of services or force the state to create a new silo.

For example, in the past few years, New York has added two new waivers – the Nursing Home Transition and Diversion and Money Follows the Person programs – that closely resemble existing waiver programs. Instead of improving the efficient operation of New York’s HCBS programs, these programs have been established in a manner that has created new silos that operate separately from New York’s other waivers and add to confusion among consumers, providers and local departments of social services that serve an integral role in the delivery of State Plan services.

## **Dual Waiver Issues**

As part of CMS’ efforts to increase a State’s ability to design service packages based on need, rather than diagnosis or condition, we urge CMS to remove obstacles which inhibit the collaboration of waiver/case management programs to serve individuals.

CMS' existing policies that seek to limit individuals to receiving services under only one waiver program severely impact those with complex health problems that require interdisciplinary and cross-specialty services, often from providers participating in different waiver programs. As more and more specialized services – e.g., HIV/AIDS, mental health, developmental disabilities, and pediatric care – are enhanced through the creation of waiver programs, this policy is creating barriers of growing severity to basic patient care. Federal waivers were meant to *provide*, not impair, flexibility.

For example, currently, many HIV/AIDS patients in New York State receive services under the LTHHCP to address their health related needs. These same patients also have a distinct set of needs relating to social, vocational, legal and/or residential aspects of their lives in connection with their AIDS diagnosis. The State has specialized HIV/AIDS case management services under separate federal authority to assist with these non-medical needs. However, because of CMS' policies that restrict individuals from being served by more than one waiver/case management program, these very sick and frail New Yorkers have to choose between programs – and thus face the loss of one service or the other – rather than have the benefit of collaborating services.

These policies also adversely affect many disabled children who need health-related services from a waiver program like the LTHHCP and other specialized services from a mental health or developmental disabilities provider whose services are also covered under a waiver. Again, the two programs should work together to ensure that the basic care plan and any highly specialized service that a patient might require are efficiently provided and coordinated. However, these programs are precluded from doing so now under this policy.

### **Characteristics of Home and Community-Based Settings**

CMS is proposing that individuals receiving services under a 1915(c) waiver must reside in settings that are home and community based; be integrated in the community; provide meaningful access to the community and community activities; and allow for choice about providers, individuals with whom to interact, and daily life activities. CMS also states that a setting is not integrated into the community if it is: (A) located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment or custodial care; in a building on the grounds of, or immediately adjacent to, a public institution; or a housing complex designed expressly around an individual's diagnosis or disability; or (B) has qualities of an institutional setting.

While this definition is an improvement over one proposed in the draft rule dated June 22, 2009, HCA still urges that CMS be flexible in defining such standards so that residents in existing and new models of housing, including naturally occurring retirement communities, adult homes, assisted living residences, etc. are able to participate in home and community-based waiver programs. Instead of dictating the elements that comprise person-centered, home-like environments, CMS should support existing housing arrangements and encourage the development of new innovative housing with services models operated by providers that enable individuals to age in place, maximize their choices and support their personal preferences for home-like environments.

## Public Input

CMS is also proposing a requirement that states establish and use public input processes for any changes in the services or operations of the waiver program, and that this process ensure meaningful opportunities for input for individuals served, or eligible to be served, in the waiver. HCA supports such a process, but requests that service providers also be identified as being part of this important venue.

I hope these comments are helpful and I am available to answer any questions. I can be reached at (518) 810-0662.

Sincerely,

A handwritten signature in cursive script that reads "Andrew Koski".

Andrew Koski  
Vice President for Advocacy and Public Policy