



December 20, 2011

Mr. Jason Helgerson  
Deputy Commissioner & Medicaid Director  
New York State Department of Health  
Office of Health Insurance Programs  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

Dear Mr. Helgerson:

On behalf of the Home Care Association of New York State (HCA) and its nearly 400 members – including Certified Home Health Agencies (CHHAs), Long Term Home Health Care Programs (LTHHCPs), Licensed Home Care Services Agencies (LHCSAs) and Personal Care programs providing care to approximately 185,000 patients statewide – I am writing today to urge several necessary and constructive changes in the Medicaid recoupment policies established by the state Department of Health (DOH) to implement retroactive rate adjustments in home care.

To further discuss our proposed changes outlined in this letter, we formally request a meeting with you and/or your reimbursement directors.

The crux of the issue involves the Department's attempt to implement multi-year retroactive rate adjustments at the same time the Department is implementing a series of budget cuts enacted by this year's 2011-12 state budget. This simultaneous action is enormously destabilizing to the providers and requires a more tailored administration by the Department.

As you know, DOH's Bureau of Long Term Care (BLTC) Reimbursement recently released its final 2009 and 2010 Medicaid rates for CHHAs and Personal Care services. These long-awaited rate reconciliations are the culmination of a two-year delay in obtaining approval from the U.S. Centers for Medicare and Medicaid Services (CMS) under a State Plan Amendment (SPA) submitted by DOH.

While HCA understands that the Department must wait for CMS approval before implementing these rate changes, we also believe the state's recoupment policy must recognize and accommodate the severe fiscal planning and budgetary timetable upheaval caused by the convergence of unprecedented – and, in many, cases still pending – future recoupments and rate actions affecting providers.

The sheer volume of reconciliations and other new policy changes stemming from this year's state budget and Medicaid Redesign Team process, including those changes subject to SPA approval still pending before CMS, is creating enormous instability and uncertainty in the provider fiscal management/planning process

at a time when 70 percent of home care providers are already operating in the red even prior to these actions, according to 2008 DOH Cost Report data analyzed by HCA and LeadingAge New York.

The immediate cuts to home care in this year's state budget are not only compounded by the retroactive CHHA and Personal Care recoupments for 2009 and 2010; these new and delayed actions will also be followed by yet another wave of recoupments to reflect reduced 2011 and 2012 rates, subject to a similarly unforeseeable SPA approval and DOH implementation timetable, resulting in further upheaval to provider fiscal management efforts. Furthermore, home care agencies are additionally subject to reconciliation processes that either may occur or are in effect due to the Global Medicaid Spending cap, the CHHA provider-specific cost ceilings, and other actions.

With these factors in mind, we urge a more reasonable standard, schedule and timetable for provider rate repayment. The state's current policy of withholding 15 percent of a provider's weekly Medicaid check until its overpayment liability is met places considerable stress on an agency's ability to continue delivering care and making payroll. The negative impact of this rate recoupment is further complicated by DOH recently implementing the 2 percent across-the-board (ATB) cut, which involves a retroactive reconciliation dating back to April 1, 2011; for most providers, this delay in implementing the 2 percent ATB cut has resulted in a 15 percent recoupment to their current and future Medicaid payments, a double hit. The Department's current Medicaid recoupment policy poses major threat to the stability of the home care system, especially after one considers that some Personal Care and CHHA providers could be facing Medicaid payment reductions of 30 percent to reconcile the 2 percent ATB reductions with the implementation of the final 2009 and 2010 rates.

HCA requests that DOH consider the following sensible revisions to its Medicaid recoupment policies for all home and community-based care providers that are impacted by this most recent rate reconciliation/recoupment to ensure that the service delivery system for patients receiving personal care or CHHA services is not disrupted:

- Reduce the base per-check recoupment percentage to 5 percent. Providers should retain the option to seek an increase in the percentage and/or repay the overpayment all at once or at a rate faster than the current 15 percent payment reduction. The Department should inform providers well in advance about the recoupment process, noting that the recoupment percentage per check can be increased or decreased;
- Eliminate punishing interest penalties on late payment reductions or rate reconciliation recoupments. DOH currently applies interest to recoupments exceeding ten weeks at a rate of Prime +2; however, when DOH owes retroactive payments to providers, it in turn provides no such interest payment to the agencies; and
- Extend the allowable recoupment timeframe beyond the current 24-month policy.

HCA appreciates your consideration of our requests. We hope that we can meet with you and/or your staff as soon as possible to further discuss these important issues.

I look forward to hearing from you regarding these concerns and suggestions and to schedule the requested meeting. Please contact me directly at (518) 810-0661 or [pconole@hcanys.org](mailto:pconole@hcanys.org).

Sincerely,



Patrick Conole  
HCA Vice President of Finance & Management

CC: Ms. Sue Kelly, Deputy Commissioner, NYSDOH  
Mr. John Ulberg, Director, Division of Health Care Financing, NYDOH  
Mr. Stephen Abbott, Director, Office of Medicaid Financial Management  
Joanne Cunningham, President, HCA