



September 5, 2008

Dr. Richard F. Daines, M.D.
Commissioner
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1408
Albany, New York 12237

Dear Dr. Daines:

On behalf of the Home Care Association of New York State, I am writing to express our serious concern that the State Department of Health (DOH) last week to activate a Supplement to the 2007 Licensed Home Care Services Agency (LHCSA) Statistical Report on the Health Provider Network (HPN) without providing a promised opportunity for industry comment. It is additionally perplexing and disturbing that this apparent "rush" to issue the report comes after more than five years since the Legislature passed the enabling statute.

The Home Care Association (HCA) represents over 400 mission-driven home care providers, allied organizations and individuals involved in home care in New York State, including some of the largest LHCSAs in the state.

These new reporting requirements are a result of state legislation passed in **2003**; the corresponding regulations were adopted by DOH just this past spring. In July, during a DOH quarterly Home Health Advisory meeting, Office of Long Term Care staff notified HCA and other industry representatives that a "draft" Supplement to the 2007 LHCSA Statistical Report was forthcoming and that industry feedback was welcomed. That draft was emailed to HCA and other associations on August 13, without a deadline for comments, as promised at our July meeting. On August 19, HCA notified the appropriate DOH staff that we had convened a LHCSA Workgroup to review the draft and would submit comments by August 27. With no warning as to deadline, we discovered that, on August 25, DOH proceeded to simply post the new statistical report without our industry's comments.

We are concerned that the Department acted contrary to its communications to the industry and has left our membership with serious questions about the report, as well as the need for clarification and modification of the document. We also note that the document contains a number of errors that we believe you would wish to have had corrected prior its public posting. We respectfully ask your assistance with these requests and concerns, including the retraction and revision of this document and the timetable for submission.

Clarification to the Supplement

Included with the Supplement to the 2007 LHCSA Statistical Report are DOH instructions on how to complete the entire report including the new Sections in 6-10. The new Supplement will require LHCSAs

to submit statistical summaries of all health care services, including the type, frequency, and reimbursement for services provided.

We ask the Department's **confirmation** that the new schedules that pertain to agency costs should be prepared in a manner consistent with the practices and principles of cost allocation and cost finding utilized by other home care programs in New York State that bill Medicaid directly (specifically, the personal care program, certified home health agency and long term home health care programs). These principles offer guidance to LHCSAs that meets both federal standards (applicable to the Medicare program) and standards applied by the State of New York under the Medicaid program.

Concerns with the Retrospective Requirement of the Supplement

HCA also expresses our concern with the Department's decision to retrospectively require this Supplement to the 2007 LHCSA Statistical Report, originally due July 31, 2008. HCA strongly believes that this Supplement should have instead been applied prospectively, and required to be filed for the 2009 LHCSA Statistical Report. This later timetable would have given many LHCSAs an opportunity to update their systems and software in order to ensure collection of the new information required in the Supplement. We feel this would have been an appropriate consideration to have been given by the Department, especially in light of the Department's own regulatory impact statement describing the likely need for agencies to upgrade their computer capability in order to comply.

Throughout the years, many LHCSAs statewide have struggled with the difficulty of their operating system and software capacity allowing them to collect all of the data requested by DOH in the Statistical report. DOH's decision last year to change the Statistical Report submission process from paper to electronic submission via the HPN has caused further challenges for many LHCSAs. Now, DOH's decision to retrospectively add a Supplement to the 2007 LHCSA Statistical Report makes compliance all the more difficult for this time period.

HCA respectfully asks the Department to consider applying this Supplement to the 2009 LHCSA Statistical Report, rather than retrospectively to the 2007 report. In any case, we assert that an extension beyond the October 15, 2008 submission deadline date is justified and would be considerate of our agencies.

Concerns with Language in Attestation of LHCSA Statistical Report

HCA and our LHCSA members are also highly concerned about the language included by DOH in the Attestation section of the 2007 Statistical Report. As written, the attestation is requiring LHCSA Operators or Administrators to certify that the information provided in the report is true and correct, without a "best of knowledge" qualification. This language is especially problematic when considering that some of the information in the new Supplement is neither maintained by, nor under the control of, the LHCSA. The LHCSA must obtain the requisite information from Certified Home Health Agencies (CHHAs) or Long Term Home Health Care Programs (LTHHCPs) with whom they contract to provide services.

As a matter of fairness, HCA urges in the strongest possible terms that DOH revise the Attestation portion of the LHCSA Statistical Report to state: "I hereby certify that I have read the above statement and that to the best of my knowledge the information furnished in this document is true and correct."

Errors within the Statistical Report

As previously noted, HCA and our members have also identified errors within the Statistical report that we trust the Department would want corrected. For example, we note that on page 10 of the report, there are two number "12s" and the instructions have additional inconsistencies with the report form for this page.

We greatly appreciate your consideration of our concerns and urge your direct intervention in this matter. If you have any questions regarding any of the issues we have raised in this letter, please contact me at (518) 810-0664 or HCA Vice President Patrick Conole at (518) 810-0661.

We look forward to your assistance and, considering the extremely tight timeframe established for this report, kindly ask for your expeditious reply.

Sincerely,

Joanne Cunningham
President

cc: Mark, Kissinger, Deputy Commissioner, Office of Long Term Care