



Healthcare Association
of New York State



May 20, 2008

Honorable Richard F. Daines, MD
Commissioner of Health
New York State Department of Health
Corning Tower – 14th Floor
Empire State Plaza
Albany, New York 12237

Dear Commissioner Daines:

We are writing on behalf of the Home Care Association of New York State (HCA), the Medical Society of the State of New York (MSSNY), the Healthcare Association of New York State (HANYYS) and the New York Association of Homes and Services for the Aging (NYAHSA) to urge the Department of Health to challenge the Centers for Medicare and Medicaid Services' (CMS) recent decision to discontinue a physician's authority to override the DMS-1 "predictor score" used in determining patients' medical eligibility for enrollment in the Long Term Home Health Care Program (LTHHCP). Incredibly, it appears that CMS only recently became aware of the physician's override authority – despite its use as an eligibility safeguard for three decades.

The DMS-1 was created to render a score predictive of an individual's need for institutional care; a score of 60 or more denotes a medical need for placement. A physician override of the DMS-1 has been permitted since its inception on the basis that the instrument is not an accurate predictor of medical need in all circumstances. This limitation, and thus the override authority, has also applied to the use of the DMS-1 for eligibility/need determinations for LTHHCP services, which must also meet the institutional care threshold. The override authority recognizes that some patients with a score below 60 may in fact require institutional care because the DMS-1 – an "institutionally-gearred" instrument – assigns relatively low scoring values for emotional instability, sensory deprivation, cognitive impairment or other conditions that, particularly in a community-based setting, create substantial risk for the patient.

State Health Department staff recently participated in a meeting with 50 to 60 representatives of HCA's Upstate LTHHCP providers during which constructive approaches to modifying the DMS-1 and DMS-1 instructions were discussed. HCA greatly appreciates your staff's participation in this meeting and their openness and receptivity to our suggestions. We urge your support for the prompt implementation of these suggested changes, and we stand ready to assist the Department in any way possible.

However, just as important, we also urge the Department to challenge CMS' directive to discontinue the recognition of the physician's role in determining his or her patients' true medical need. As we have noted, the physician override is a long-standing, integral part of the DMS-1/medical eligibility process, and should be viewed as inseparable. We urge the Department to try to clarify its assurances to CMS in order to accommodate the physician's authority for override. It is inarguable that the approval for home care is derived from the physician's order and professional judgment, and that, therefore, deference to the patient's authorizing practitioner regarding the underlying eligibility/need for services should naturally follow as basic

to the provision of care. Our general system of health care laws, procedures and coverage is built on this principle.

We understand that the Department may be preparing to send a letter notifying providers that the physician override will no longer be allowed. We respectfully request that, rather than abide CMS' unfavorable position, the Department instead advocate for the correction of this CMS policy and the preservation of the physician's role in this process – and work with our organizations in formulating a reasonable policy.

Thank you again for the Department's constructive action to revise the DMS-1 and for your consideration in challenging and correcting CMS' policy with respect to the physician's role in determining his or her own patient's level of medical need.

We look forward to your reply and offer our support and assistance in this effort.

Sincerely,



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