

# HCA MEMORANDUM OF OPPOSITION



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*HCA, New York State's premier home care association, represents more than 400 providers, individuals and associate members who collectively serve thousands of New Yorkers.*

*Home care encompasses a broad spectrum of services delivered at home to patients who are disabled, chronically ill, recovering from an illness, or have other health-related needs that can be met in the home setting.*

*"Helping New Yorkers **Feel Right** at Home"*

**To: Members of the New York State Legislature**

**Re: S.5252-A (Hannon) and A.8213 (Gottfried) of 2011**  
Mandates Payments on Home Care Agencies and Managed Care Plans

**Date: June 13, 2011**

The Home Care Association of New York State (HCA) **strongly opposes** legislation, S.5252-A/A.8212, which would amend the public health law to impose problematic and incompatible new payment mandates on home health agencies, Managed Long Term Care Plans (MLTCs), hospices and others.

**HCA respectfully requests the Senate and Assembly sponsors to reconsider and hold this seriously problematic legislation.**

Not only are the bill's provisions adverse in and of themselves, but the bill's effects are further compounded by its ill timing – the bill would impose new and unnecessarily burdensome mandates at a time when the state budget is imposing an unprecedented \$600 million in home care cuts as well as hundreds of millions more in additional burden from a new living wage mandate. The home care environment is also facing widespread complications, uncertainty and destabilization as a result of the budget's phase-in of new managed care mandates affecting home care programs and patients.

Specifically, this legislation: 1) constrains the current flexible use, and requires pass-through to subcontractors, of funds currently received and utilized by home care agencies, MLTCs and hospices to support the recruitment and retention (R&R) of direct care workers in home care; 2) imposes a rigid and incompatible mandate on home care agencies, MLTCs and other entities in an attempt to control the timelines for payment of patient service bills to subcontracting agencies; and, 3) imposes recoupment provisions as well as fines and penalties for each violation of the bill's proposed timelines for payment.

Following review by its Board of Directors and a workgroup of member providers, including Licensed Home Care Services Agencies (LHCSAs), HCA strongly asserts that the legislation is incompatible with the elements of billing/payment, reprograms R&R funds inappropriately, would create an onerous mandate on agencies, is ill-timed, is ill-suited to such a legislative solution, is imprecise, unnecessarily promotes adversarial relationships between contractors, and has other undesired effects on home care.

### *Time-limit Provisions*

The time-limit provisions are an attempt to model statutory payment standards for home care providers after current Insurance Law provisions applicable to insurance companies. The claiming/billing context in home care does not support this type of mandate. Because of multiple factors inherent in home care billing, providers of home care services are not reimbursed in a manner that supports a turnaround commensurate with the bill's mandate. For example, home care agencies cannot bill for services until they receive written orders from physicians; delay in receipt of these orders often delays billing, and creates unpredictability in turnaround capability. As another example, agencies are also subjected to conflicts and delays in having to first determine responsible payers, and then having to bill and receive reimbursement from that payer. The state's Medicare Maximization policy, for example, uniquely affects home care billing, subjecting home care providers to the complexities and ambiguities of federal home care coverage rules for Medicare and the often challenging task of having to sort out Medicare versus Medicaid billing for a patient. Agencies face similar circumstances when attempting to sort out billing with commercial plans and HMOs.

Not only are the time limit provisions of the bill incompatible with home care, but the bill would establish a violation and fine for anytime a payment is unable to comport with the bill's standard. This only adds to the burden and potential adversarial nature fostered by the bill.

### *Mandated Pass-through and Reprogramming of Recruitment & Retention (R&R) Funds*

The legislation would also require the direct pass-through to subcontractors of funds received by home care agencies, MLTCs and hospices for purposes of recruitment and retention of direct care workers.

The current provisions of law do not restrict the use of these funds to passed-through payments to subcontractors. The current law and recruitment and retention program provides that rate increases received by these providers be reflected in "either the fees paid or benefits or other supports provided to non-supervisory home care services workers or any worker with direct patient care responsibility." This present language ensures flexibility *for the receiving home care agency, MLTC or hospice*, to utilize funds in the manner determined most effective for overall purpose of the program, which includes the personnel directly employed by the agency as well as its subcontracting arrangements, as well as worker-support options such as day care, education, training, etc.

This proposed change seemingly ignores the fact that the existing statute, first and foremost, accords such flexibility to home care providers and MLTCs; the bill inserts incompatible and restrictive language into existing language that otherwise denotes flexibility. It proceeds to restrict the use of funds without regard to the accorded flexibility, the current uses of the funds or the benefits in supporting all staff, including directly employed staff nurses and therapists along with staff procured through subcontracting arrangements.

The language is also problematic in that it requires funds to be passed-through to subcontractors “upon receipt” by home care agency, MLTC or hospice.

Because of factors associated with delays and methods in the state’s provision of the R&R funds to these providers and programs, including the requirements for federal approval prior to the distribution of the funds, these monies have not steadily flowed from the state to the providers in order to “immediately” pass-through to subcontractors. In fact, funds have often been provided by the state to agencies in lump allocations over concentrated periods of time (rather than on an ongoing basis as part of a normal reimbursement process), preventing the fluid planning and disbursement to subcontractors in the manner contemplated by the bill. Thus, a requirement for immediacy of the pass-through in funds is not only incompatible, but further jeopardizes the ability to well plan the allocation of the funds by contractors and subcontractors.

HCA member providers who themselves are subcontracting agencies (LHCSAs) who are the intended beneficiaries of this legislation have informed HCA that, while they would support improvement in the timeliness of service payments and the pass-through of R&R monies, the legislation in question is problematic, overly and unnecessarily burdensome and risks the creation of an adversarial environment with contractors, which is undesirable and counterproductive. These intended beneficiaries also acknowledge the legislation’s especially disruptive and added burden at a time when major cuts and destabilizing changes are occurring in the home care field.

HCA has communicated with the legislative sponsors and the Legislative Leaders’ staffs in each chamber, indicating concerns on behalf our member providers.

HCA recognizes the importance of the goals of these bills for LHCSAs and their contracting agencies and is exploring other approaches for supporting proper, timely and responsible payments to these agencies.

**For these and related reasons, HCA opposes this legislation and urges the sponsors to hold these bills so that preferable approaches to addressing the goals of the legislation can be developed.**