



Kathy Febraio, CAE  
President

20 Corporate Wood Blvd.  
2nd Floor  
Albany, NY 12211  
hcp@nyshcp.org  
(P) 518.463.1118  
(F) 518.463.1606  
www.nyshcp.org

April 28, 2020

Re: Budget Provisions Impacting Licensed Home Care Services Agencies

Dr. Howard A. Zucker  
Commissioner  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, New York 12210

Dear Commissioner Zucker:

The New York State Association of Health Care Providers (HCP)—a leading Home Care association in New York State—represents LHCSAs, certified home health agencies (CHHAs), Fiscal Intermediaries (FIs) in the Consumer Directed Personal Assistance Program (CDPAP), and health related organizations that support the home care industry.

### **Introduction**

The enacted NYS Fiscal Year 2020-2021 Budget includes many proposals significantly impacting the home care industry. Given the ongoing and unprecedented COVID-19 crisis, this year's budget process was unlike any other ever seen.

Home care providers and aides are among the essential workers on the front lines saving lives in the battle against COVID. Home care is there caring for sick, elderly and vulnerable New Yorkers. Home care is keeping these New Yorkers from being admitted to hospitals or congregate care settings and caring for them after being discharged from these settings.

Home care, naturally being out in the community and with training in infection control, could also be a valuable resource when it comes testing and contract tracing with proper reimbursement. A resource that should not be overlooked.

Now more than ever, home care can provide essential relief to the currently, significantly overburdened health care system. But it needs to be recognized and treated as essential and given access to financial support and personal protective equipment (PPE) that others

in the health care system have been given. Home care continues to need ready access to PPE as it continues to struggle obtaining it through the regular supply chain.

In addition, home care, specifically Licensed Home Care Services Agencies (LHCSA) need particular attention when it comes to financial relief. As a state created construct, LHCSAs do not have access to the relief from the federal government that Certified Home Health Agencies (CHHA) and hospices have through Medicare.

In a recent survey of HCP members, a majority of respondents reported holding outstanding accounts receivables from managed long term care (MLTC) companies in amounts exceeding \$100,000. Of those providers, a majority reported accounts receivables exceeding \$1 million. A welcome step from the State that would provide relief to many home care providers without costing the state anything, would be to direct MLTCs to get current on their accounts receivables held by LHCSAs. As you know, similar steps were recently taken to provide relief to hospitals.

In addition, on issues that will become acutely critical as we enter a post-COVID period, HCP is urging the sharing of information, guidance and feedback on key budget proposals and other impactful policies pursued prior to the onset of COVID. These issues and questions are detailed below.

Prior to the COVID crisis there was a substantial budget deficit that had to be dealt with. Obviously, the COVID crisis has significantly exacerbated the State's fiscal stability and contributes to seriously uncertain state finances.

During floor debate on the health budget and more specifically regarding proposals to cut the State's Medicaid program, Assembly Health Committee Chair, Richard Gottfried lamented the changes in the budget to the State's home care program as among the worst and most troubling provisions in the health care policy area.

Among these policies are those which HCP strongly opposes and is concerned by, as follows:

### **Medicaid Across the Board Cuts**

In addition to the one percent across the board cuts announced by the Governor in December, the final budget includes an additional one-half percent across the board cut for all Medicaid providers, making the total cut 1.5%.

HCP urges the State to delay these across the board cuts until after the COVID crisis has passed to provide necessary relief to providers.

## **LHCSA Contracting under Medicaid**

Newly enacted as part of the budget, it is required that LHCSAs wishing to continue to provide services in the Medicaid program will have to enter into a contract with the state under a process seemingly similar to the CDPAP Fiscal Intermediary (FI) request for offers (RFO).

This provision empowers DOH to propose a public process (RFP) which will include:

- criteria for selection of LHCSA contractors including: licensed under Article 36 PHL; geographic distribution to allow access to rural and underserved areas; cultural and language specific to recipients and workers; ability to provide timely assistance, experience in serving disabled persons; efficient and economic administration of LHCSA services; compliance with all federal and state laws including labor laws;
- response in no less than 30 days after the RFP or public process is posted on DOH's website;
- the Commissioner may run a continuous recruitment process for LHCSAs under these provisions; and
- the Commissioner may terminate any contract with a LHCSA under this program in 30 days.

With respect to this new LHCSA contracting process there are several questions that are arising and will continue to arise as the process develops. Based on the contracting process for Fiscal Intermediaries about which there were hundreds of questions, HCP strongly urges the department to extend the 30-day timeframe within which to respond to the notice of solicitation for offers to no fewer than 120 days from the time the notice is published on the Department's website. In addition, HCP urges the Department to keep open the continuous recruitment process for at least one year after the first round of contracts is awarded.

In addition, HCP is seeking the Department's clarification of the statutory language to determine whether LHCSAs providing services in the Nursing Home Transition and Diversion (NHTD), Traumatic Brain Injury (TBI) and other such waiver programs are subject to this contracting process.

Additionally, HCP is disappointed that this proposal was passed with limited input as part of the budget, as it had been engaged with the Department and the Administration for months prior to the enactment of the budget. Not once were concerns about the number of, or demeritorious actions by LHCSAs raised by the Department during our communications. As an association HCP represents, provides education and interfaces with the government on behalf of its members in order to ensure our members and

constituency have the most reliable and accurate information to maintain compliance in this very highly regulated industry.

Finally, there was mention during the CDPAP FI Workgroup process, the CDPAP FI RFO, and the MRT II process, but no real substantive discussion, of having adequate firewalls between LHCSAs and FIs where a single provider offers both services. It is truly unfortunate that there has not been an interest by the Department to have such a conversation. The LHCSA/FI provider combination offers an optimum option to provide these services. LHCSAs are expert at patient care and have the best interests, safety and health of the patient or consumer as its focus.

### **Home Care Services Worker and CDPAP Personal Assistant Unique Identifier**

With the new requirement that every home care worker and personal assistant have a unique identifier, HCP urges the Department to share the process, timeline and cost for providers to obtain such an identifier. Last year when it was proposed that every home care worker obtain a national provider identifier (NPI) it was estimated that such an undertaking would cost in the millions of dollars to achieve. HCP urges the Department to ensure that whatever the cost of providing such a unique identifier, such cost is reimbursed to providers by the State.

### **Electronic Visit Verification (EVV)**

As the Department has begun its roll-out of implementation of EVV and given the on-going COVID crisis, HCP urges the Department to request of the federal government a further delay of EVV implementation until such time as the fallout of the COVID crisis is better known. In addition, when EVV implantation does move forward, the Department should make available financial assistance to providers who need such assistance with implementation.

### **Consumer Directed Personal Assistance Program (CDPAP) – Request for Offers (RFO)**

Since the onset of the COVID crisis, HCP understands that the Department has necessarily and rightfully had to reprioritize and redeploy its resources to effectively respond to the crisis. HCP wishes to ensure that prior to steps being taken by the Department to continue the procurement process, that the Department provide HCP with a summary of the current stage of the process, the remaining steps, and timeframe for completion.

## **Cost Reports**

Similar to the CDPAP RFO, the cost report rollout had to be put on hold. Prior to the re-initiation of the cost report rollout, HCP urges the Department to reengage with an in-person meeting of the workgroup that included providers and provider associations in order to reorient all involved to the process and to better understand the proposed timeframes for moving forward. Further to this point, as the timelines for submission of the new cost report and the existing LHCSA statistical report continue to more closely align, strong consideration of combining both reports into a single report should be given. Doing so will be more effective, more efficient at a time when the State has put an extremely high value on provider efficiency, be a much better use of precious resources, and make compliance easier and more economical.

In the alternative, with all of the uncertainty and turmoil in the health care industry generally, and the home care industry specifically given new and existing contracting requirements the new cost report should be delayed until such time as the industry stabilizes.

## **Lifting of the LHCSA Licensing Moratorium and Initiation of the new Certificate of Need Process**

Now that the LHCSA licensing moratorium has expired and the new certificate of need regulation is in place, HCP requests an update on how this new process will be proceeding and rolled out. It will also be beneficial to understand how the newly enacted LHCSA contracting process will impact upon or interact with the new licensing process.

## **Emergency or Disaster Liability Protection**

Finally, the budget amended the Public Health Law to create the Emergency or Disaster Treatment Act (the Act) to provide liability protection for institutional providers and individual providers including home health care workers. It does not, however, provide liability protection explicitly for licensed or certified home health care agencies or hospices. We urge that the Department provide an interpretation, opinion, or emergency regulation to make clear that the immunity from liability granted under the Act extends to article 36 and 40 providers.

## **Conclusion**

HCP recognizes and appreciates the leadership of Governor Cuomo and the Department to ensure the safety and health of all New Yorkers during this unprecedented global pandemic.

As New York begins to Un-PAUSE, HCP urges discussions at the appropriate time in advance of the next steps to implement these new and existing policies to ensure that the home care industry is educated and well prepared for the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Febraio". The signature is fluid and cursive, with a prominent initial "K" and "F".

Kathy Febraio, CAE  
President

cc: Speaker Carl Heastie  
Majority Leader Andrea Stewart Cousins  
Assemblymembers Weinstein, Gottfried, and Bronson  
Senators Krueger, Rivera and May  
Paul Francis  
Megan Baldwin  
Mark Kissinger  
Donna Frescatore  
Mark Hennessy  
Carol Rodat  
Lana Earle