



5 Pine West Plaza, Suite 506, Albany, NY 12205
(518) 459-7911
Family Help Line (800) 228-8201
www.bianys.org



13 British American Blvd Suite 2, Latham, NY 12110
518.867.8383
518.867.8384 Fax

August 2, 2021

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue SW
Washington, DC 20001

Dear Administrator Brooks-LaSure:

Together LeadingAge NY and the Brain Injury Association of New York State (BIANYS), are writing to you today with an urgent message concerning a vulnerable group of New Yorkers that are eligible for Medicaid 1915(c) Traumatic Brain Injury (TBI) and Nursing Home Transition & Diversion (NHTD) waivers. For 6,000 New Yorkers, these waivers provide access to quality home and community-based services (HCBS), allowing them to live where they are most comfortable and generating savings for New York's health care system. Unfortunately, these waivers are under threat. A final rule (CMS-2249-F/CMS-2296-F) from the Centers for Medicare & Medicaid Services (CMS) is set to be implemented in New York at the conclusion of the public health emergency (PHE). The rule imposes conflict of interest (COI) requirements which, while well-intentioned, will only serve to create barriers to HCBS. As leading advocates for aging New Yorkers and those suffering from traumatic brain injuries, we strongly urge you to address this problem.

The requirements that CMS is demanding the New York State Department of Health (NYSDOH) implement will have only negative effects. The regulations mandate that care coordination cannot be performed by a waiver recipient's provider of direct services unless there is no other able and willing provider. Due to New York's severe capacity and operational limitations, as well as inadequate funding, there is no conceivable way such requirements could be met without undermining waiver participants' choice or hampering their ability to access care altogether. Most other states have been able to transition Medicaid waiver participants to managed care, making them compliant with these COI requirements. In New York, patient advocacy groups like us have argued against making such a transition for this waiver population. Based on evidence from the field and our own projections, we believe that implementing the COI requirements would prevent waiver participants from accessing the care they need.

Moreover, New York already accomplishes the goals of COI regulations through the existing structure of independent contractors that both disseminate information about available providers and approve final plans. In short, the CMS regulations are a solution in search of a problem. The existing 1915(c) TBI and NHTD waivers are tremendously successful and provide both independent care coordination and comprehensive COI protections to waiver participants. Implementing the new requirements would threaten the viability of the waivers in New York, create bottlenecks at care coordination, lead many providers to exit service delivery under the waivers, and ultimately make it more difficult for participants to access care. Indeed, in some parts of the state, access to the 1915(c) waivers will be cut off completely, forcing more New Yorkers to be institutionalized in nursing homes.

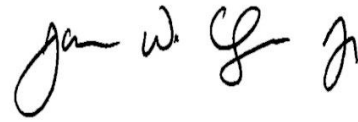
CMS delayed implementation of the COI requirements for TBI and NHTD populations until six months after the public health emergency (PHE) ends. We urge you to make this delay permanent in order to prevent the harmful impacts of this rule from ever taking effect. Given uncertainty regarding the end date of the PHE and the time NYSDOH would need for implementation, we ask that you make this request a priority.

LeadingAge NY and BINAYS thank you for your consideration of this important request.

Sincerely,



Eileen Reardon
Executive Director
Brain Injury Association of New York State



James W. Clyne, Jr.
President
LeadingAge New York

CC: The Honorable Charles Schumer
The Honorable Kirsten Gillibrand
The Honorable Lee Zeldin
The Honorable Andrew Garbarino
The Honorable Thomas Suozzi
The Honorable Kathleen Rice
The Honorable Gregory Meeks
The Honorable Grace Meng
The Honorable Nydia Velazquez
The Honorable Hakeem Jeffries
The Honorable Yvette Clarke
The Honorable Jerrold Nadler
The Honorable Nicole Malliotakis
The Honorable Carolyn Maloney
The Honorable Adriano Espaillat
The Honorable Alexandria Ocasio-Cortez
The Honorable Ritchie Torres
The Honorable Jamaal Bowman
The Honorable Mondaire Jones
The Honorable Sean Patrick Maloney
The Honorable Antonio Delgado
The Honorable Paul Tonko
The Honorable Elise Stefanik
The Honorable Claudia Tenney
The Honorable Tom Reed
The Honorable John Katko
The Honorable Joseph Morelle
The Honorable Brian Higgins
The Honorable Chris Jacobs

The Brain Injury Association of New York State (BIANYS) is a statewide non-profit membership organization that advocates on behalf of people with brain injuries and their families. BIANYS provides education, advocacy and community support services that lead to improved outcomes. Please visit bianys.org for more information.

Founded in 1961, LeadingAge New York is the only statewide organization representing the entire continuum of not-for-profit, mission-driven, and public continuing care, including home and community-based services, adult day health care, nursing homes, senior housing, continuing care retirement communities, adult care facilities, assisted living programs, and Managed Long Term Care plans. LeadingAge New York's 400-plus members serve an estimated 500,000 New Yorkers of all ages annually.