Draft Working List of Recommendations
Regulatory Modernization Workgroup
Long Term Care Need Methodology and Innovative Models

1. The Committee recommendations in the Certificate of Need process area are as follows:

   A. Incorporate age-friendly concepts into the Certificate of Need (CON) process for all applicants, by requiring a demonstration of evidence of age-friendly concepts in their applications.

      COMMENT: LeadingAge NY supports the promotion of age-friendly concepts in state policies, but we do not understand how applicants would be evaluated on such criteria in the context of a CON application, particularly for a full-time residential setting or home health agency. In our experience, "age-friendly" typically refers to municipal or regional strategies, not to a specific type of health or long term care (LTC) provider. For example, the AARP's age-friendly communities project includes features such as walkable streets and traffic calming measures; accessible public transportation; safe, affordable and accessible housing; and civic engagement and employment. Other features that are more directly relevant to health care providers are already incorporated into state and federal health care provider operating regulations (e.g., opportunities for social interaction, respect and inclusion, communication, and health services).

   B. Incorporate community provider linkages into the CON process, by requiring applicants that are requesting establishment or a transfer of ownership to detail relationships with other health and community based entities in their applications with a specific focus on health disparities

      COMMENT: We support incorporation of linkages to other providers of health care and community services into the CON process, as we agree that it is important for providers to be rooted in their communities to promote integrated approaches to care/services and accountability to the community. Having said that, we question how this will be implemented and what objective standards will be applied to evaluate applicants. We suggest that applicants be asked to demonstrate support from local organizations and submit a plan for engagement with other organizations that serve patients/residents and their caregivers.

   C. Require the inclusion of quality efforts and measures into all parts of the CON process for all provider types.

      COMMENT: We support including quality measures and efforts into the CON process across provider types. Here, we question the types of measures that would be used and whether/how they will be utilized as a basis for approving or disapproving CON applications. For example, nursing home 5-star ratings represent one type of quality measure set, but they have methodological shortcomings, including inconsistency in surveillance practices among the State's regional offices. There are other measures of quality such as the NYS Nursing Home Quality Initiative that may be worth considering. The current CON process includes reviews of the 5-star ratings for nursing home changes of ownership, but there is no apparent decision rule governing how these ratings are to be utilized at the time of review or for ongoing monitoring and action.

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D. Incorporate Olmstead principles into all parts of the CON process for all provider types.

COMMENT: The Olmstead decision and accompanying guidance provide an important framework for the overall system of care and for determining the appropriate locus and level of care for individuals, but how would they be used in the context of evaluating individual CON applications?

E. Incorporate behavioral health competence measures into the CON process where appropriate.

COMMENT: Behavioral health services are an important consideration in the overall delivery system, and a priority area in DSRIP system redesign activities. However, access to appropriate behavioral health services for the LTC population remains a formidable challenge, particularly in rural areas. In addition to the availability of behavioral health professionals, there are Medicaid reimbursement and technological challenges to the delivery of these services. While it may be advisable to include one or more questions in the CON application about the applicant's plan to address behavioral health issues, the State should focus its efforts on working with providers to address workforce, access and financial issues.

F. Modernize licensure process for Assisted Living Residences and Adult Homes, by including these provider types on the NYSE-CON system.

COMMENT: We support inclusion of Assisted Living Residence and adult home licensure applications in the NYSE-CON system, with the expectation that this will have the effect of accelerating timeframes for review without requiring any increases in application fees. More broadly, we are also advocating for legislation which would create a CON-based system for the Assisted Living Program in lieu of the current solicitation-driven process.

2. Hospice

A. Develop a new need methodology for Hospices. The Department will convene a group of subject matter experts to develop specific options and possible regulatory amendments.

COMMENT: We support a long overdue update to the hospice need methodology. Since the methodology was last updated, hospice programming has changed greatly and the range of individual needs and disease conditions associated with hospice services has increased. The emergence of palliative care should also be considered in the context of updating the methodology. The Hospice and Palliative Care Association of NYS has already undertaken much of the formative work needed to expedite development of the methodology and regulatory amendments.

B. Explore additional education on Hospice for all providers and consumers, including behavioral health providers and consumers

COMMENT: Continued education of providers and consumers on hospice and palliative care services is needed to enable patients to make informed decisions about end-of-life care and to facilitate the use of these services when appropriate and consistent with the needs and desires of the patient and his/her family. Utilization rates for these services in New York continue to lag those of nearly all other states in terms of referral rates and average length

of stay. Education should focus on physicians and other practitioners during and after their schooling, and on consumers and providers about best practices for conducting difficult conversations, the benefits of executing advance directives, and the MOLST process.

C. Examine barriers to hospice utilization including assisted living residences and assisted living programs.

COMMENT: We agree that these barriers should be examined and must be addressed to avoid unnecessary and distressing transfers to hospitals and nursing homes and to improve quality of life for assisted living residents at the end of life. Pending legislation aimed at enabling nurses to practice to their scope in assisted living settings would facilitate more seamless care and partnerships with hospices in these settings. Barriers to family members and representatives assisting residents with their medications should also be examined and addressed. In addition, State policy preventing Assisted Living Program residents from accessing hospice must be repealed.

D. Explore increased integration between managed care and hospice services and identify actions to the eliminate disruption in services.

COMMENT: We support this in concept, and would welcome identification of and work on any barriers found to exist.

3. Move forward with the proposed PHHPC recommendations for the Nursing Home CON Process. Develop regulatory amendments as needed.

COMMENT: We support proceeding with the April 2016 recommendations of the PHHPC Health Planning Committee on updating the nursing home bed need methodology and the regulations at 10 NYCRR Section 709.3. However, we do not support a subsequent proposal discussed by the PHHPC to separately identify short-term/post-acute and long-term nursing home beds for CON and licensure purposes. New York has a long history of requiring Medicare certification of every Medicaid certified nursing home bed in the State as a means for maximizing Medicare coverage and ensuring Medicaid is the payer of last resort. As a practical matter, dual certification also provides facilities with greater flexibility to utilize their beds in a way that ensures greater access to needed services, whether they are short-term or long-term in nature. It may also reduce the likelihood that residents need to be transferred from a short-term bed to a long-term bed if their needs change.

4. The Department will review the process for allocation of Nursing Home specialty beds (i.e., ventilator beds).

COMMENT: We agree the ventilator-dependent bed need methodology should be re-examined and updated to reflect current demand for and capacity of the service. This review should be extended to other specialty beds as well which may not currently have discrete need methodologies including neurobehavioral, traumatic brain injury and pediatric. Along with an examination of bed resources, the issue of Medicaid reimbursement for these specialty services under the statewide pricing model should also be re-examined. Due to how these services were excluded from statewide pricing, case-mix changes in discrete specialty units have not been recognized since the implementation of statewide pricing in 2012.

5. Develop a new need regulation for Certified Home Health Agencies (CHHAs) which provides flexibility for established CHHAs to move into additional counties through an expedited administrative process.

   COMMENT: We would be interested in engaging in a discussion of how such a process would work, particularly in counties where there are already established CHHAs and workforce shortages. Would certain criteria be applied to trigger the expedited review? Would any condition or factor prevent it? Would quality and community linkages play a role?

6. A review should be undertaken of the financial conditions of CHHAs. This review should include an exploration of the underlying factors which contribute to the current fiscal conditions.

   COMMENT: We agree that there should be an evaluation of CHHA financial condition and causative factors. However, we would suggest that similar reviews be undertaken for the nursing home sector (where we are seeing significant numbers of ownership changes) and for the Assisted Living Program (which is highly dependent on adequate Medicaid reimbursement).