(Sent via Mail and E-mail)

June 3, 2019

Robert Mujica
Director Division of Budget
NYS Division of Budget
Executive Office
State Capitol
Albany, NY 12224-0341

Donna Frescatore
Interim Deputy Commissioner
Office of Health Ins. Program NYS Medicaid
One Commerce Plaza
Albany, NY 12210-2820

Howard A. Zucker, M.D., J.D.
Commissioner of Health
NYS Department of Health
Corning Tower, Empire Plaza
Albany, NY 12237

Paul Francis
Deputy Secretary for Health and Human Svcs.
Office of the Secretary to the Governor
State Capitol
Albany, NY 12224

Dear Mr. Mujica, Commissioner Zucker, Ms. Frescatore and Mr. Francis:

On behalf of our respective provider memberships we collectively write to express grave concerns about the impending change in acuity adjustments to the July 1, 2019 Medicaid rates for skilled nursing providers to be implemented by the Department of Health ("DOH"). This change is at odds with recently enacted state law and, if implemented, would negate recent efforts to address compensation of essential front-line caregivers, exacerbate the State's healthcare workforce crisis, and seriously disrupt access to high quality nursing home care for all New York State residents.

Chapter 57 of the Laws of 2019 authorized a Workgroup to discuss and make recommendations on the methodology utilized to calculate case-mix (i.e., resident acuity) adjustments to nursing home Medicaid rates. The description of the Workgroup that appears in Chapter 57 is as follows:

> **The Commissioner of Health or his or her designee shall convene and chair a workgroup on the implementation of the change in case mix adjustments to Medicaid rates of payment of residential health care facilities that will take effect on July 1, 2019.** The workgroup shall be comprised of residential health care facilities or representatives from such facilities, representatives from the statewide associations and other such experts on case mix as required by the commissioner or his or her designee. **The workgroup shall review recent case**

mix data and related analyses conducted by the department with respect to the department's implementation of the July 1, 2019 change in methodology, the department's minimum data set collection process, and case mix adjustments authorized under in the Public Health Law (Section 2808 (2-b)(b)(ii)). Such review shall seek to promote a higher degree of accuracy in the minimum data set data, and target abuses. The workgroup may offer recommendations on how to improve future practice regarding accuracy in the minimum data set collection process and how to reduce or eliminate abusive practices. In developing such recommendations, the workgroup shall ensure that the collection process and case mix adjustment recognizes the appropriate acuity for residential health care residents. The workgroup may provide recommendations regarding the proposed patient driven payment model and the administrative complexity in revising the minimum data set collection and rate promulgation processes. **The Commissioner shall not modify the method used to determine the case mix adjustment for periods prior to June 30, 2019.** Notwithstanding any changes in federal law or regulation relating to nursing home acuity reimbursement, the workgroup shall report its recommendations no later than June 30, 2019. **[Emphasis added]**

DOH clearly signaled during the first Workgroup meeting on May 22, 2019 that they intend to unilaterally revise the methodology used to determine the case-mix adjustment for the July 1, 2019 rates in an effort to achieve a reduction of at least $123 million in state spending ($246 million total impact) over the balance of the State's fiscal year ending March 31, 2020. This approach would, contrary to Chapter 57, change the method used to determine the case-mix adjustment for periods prior to June 30, 2019 using unrepresentative patient assessment data from the period August 8, 2018 through March 31, 2019.

As members of the Workgroup, we reasonably expected, based on the plain wording of the statute, that the Workgroup would be permitted to review in detail the case-mix data and related analyses conducted by DOH, as well as how the $246 million in estimated savings was arrived at by the Department. This vitally important information was not proffered at or in advance of the first Workgroup meeting. Furthermore, at the May 22nd meeting, the Department asserted that the Workgroup's charge is limited to making recommendations to improve future practices regarding the accuracy of patient assessment data collection which would relate to case-mix determinations on and after January 1, 2020. Limiting the Workgroup's authority in this way and moving forward with this major change without a transparent and deliberate approach violate the plain wording and intent of the law.

By far, the biggest concern is the large and unpredictable fiscal impact that DOH's proposed methodology will create effective July 1, 2019 on the provision of patient care throughout New York.

Inasmuch as nursing home reimbursement is based on 2007 costs and Medicaid providers have received no inflation adjustment in over 10 years, a cut of $246 million (or potentially far more) is simply unsustainable. According to a November 2018 report from a national accounting firm, New York's Medicaid program paid the average facility 20 percent less than their actual costs of providing care, a $64 per patient per day shortfall. As New York's nursing homes face

annual staffing cost increases, such a reduction would not only negate the benefits of the State's promised 1.5 percent adjustment to reflect increased workforce costs, it would call into serious question facilities' ability to meet the requirements of recently negotiated collective bargaining agreements. Nursing home finances would be further destabilized by cutting rates by an average of $9.50 per Medicaid day, with major variations at the facility level.

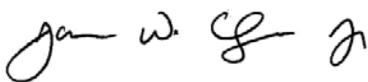
We agree that the State needs a dependable methodology for evaluating resident acuity that relies on accurate assessment data and provides a consistent approach. That is why the Office of the Medicaid Inspector General ("OMIG") is tasked with auditing the data that is the basis for acuity adjustments. It is worth noting that along with the OMIG audit process, the current methodology limits case-mix changes during each six-month period to 5 percent pending completion of an OMIG audit for that rate period. Notwithstanding this safeguard, and jeopardizing the viability of countless nursing homes, the DOH indicated that it is eliminating the 5 percent limit as it anticipates case mix decreases of greater than 5 percent.

With the continuing shift of medically complex care from hospitals to post-acute care settings, nursing homes play an increasingly important role in reducing hospital length of stay. Many nursing homes have increased their capabilities to serve residents with complex medical conditions, allowing patients to be discharged from hospitals more quickly and managing in-place many conditions that previously required hospitalization. At the same time, the increased availability of services in the community has decreased the number of lower-need individuals living in nursing homes. These changes are in line with the Medicaid Redesign Team goals and Medicare policy initiatives and have resulted in an increase in the average acuity of the nursing home population, further calling DOH's approach into question.

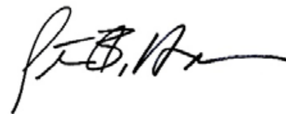
DOH's plan also fails to recognize that quality is improved when nurses can provide care to residents over completing paperwork, especially when providers are struggling to recruit and retain nursing staff. The same lengthy resident assessments completed by nurses that determine acuity adjustments are used to develop resident care plans and are not conducted every time a reimbursement item changes. For this reason, DOH's plan to use all patient assessments for a previous time period that are not fully representative of the responses that drive patient acuity adjustments is arbitrary and opportunistic.

A change of this importance and magnitude needs to be undertaken by DOH along with the Workgroup in a carefully considered way to ensure the integrity of acuity adjustments, improve efficiency for both DOH and providers, and minimize unintended consequences. To do otherwise will destabilize nursing home finances, threaten access to high quality nursing home care, and do a disservice to the health care workers that provide this essential service.

Sincerely,



James W. Clyne, Jr.
President and CEO
LeadingAge NY



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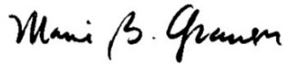

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President
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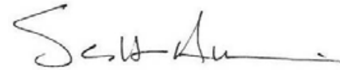

Scott Amrhein
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cc: Senate Majority Leader Stewart-Cousins
Assembly Speaker Heastie
Senator Gustavo Rivera
Assemblyman Richard Gottfried
Megan Baldwin, Assistant Secretary for Health
Frank Walsh, Unit Head, Health
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