13 British American Blvd. | Suite 2 | Latham, New York 12110 | P 518.867.8383 | F 518.867.8384 | www.leadingageny.org

M E M O R A N D U M

TO: RHCF Members

FROM: Dan Heim, Executive Vice President

DATE: August 29, 2016

SUBJECT: **Initiating Outpatient Therapy Services**

ROUTE TO: Administrator, Department Heads, Business Office

Introduction

From time to time, LeadingAge New York nursing home members seek information on offering outpatient therapy services. This memo is intended to provide general information on:

- the types of therapy services that can be offered on an outpatient basis;
- methods for offering such services;
- a comparison of service delivery options;
- the process of adding outpatient therapies to a nursing home operating certificate;
- Medicare and Medicaid reimbursement issues; and
- other considerations in initiating an outpatient therapy program.

Types of Outpatient Therapy Services

Rehabilitation therapy services that may be offered on an outpatient basis include physical therapy, occupational therapy, speech-language pathology and audiology. Rehabilitation therapy (skilled therapy) is administered by a qualified professional to restore physical function insofar as possible and/or help patients adjust or compensate for loss of function. These objectives should be accomplished within a reasonable length of time.

Maintenance therapy programs are established and monitored by qualified occupational therapists or physical therapists. These programs help the patient/resident retain an existing level

of function and may be continued for an undetermined period of time. In general, maintenance is not skilled therapy. With few exceptions, it is carried out by support personnel.

Physical Therapy

Physical therapy (PT) is provided by a physical therapist who is a licensed health care professional, and involves examining and evaluating a patient's condition and then planning and administering treatments to promote optimal health. Physical therapists seek to relieve pain, improve the body's movement and function, maintain cardiopulmonary function, restore, maintain and promote optimal physical function; and limit disabilities resulting from injury or disease.

A physical therapist assistant is a licensed health care professional who provides treatment according to a plan developed by and under the supervision of a licensed physical therapist to assist in providing PT services.

Occupational Therapy

Occupational therapy (OT) is provided by an occupational therapist who is a licensed rehabilitation care professional, and involves working to restore or improve physical abilities, promote behavioral changes, adapt surroundings, and teach new skills; the goal is to have the individual achieve her or his best physical and/or mental functioning in daily life tasks. Occupational therapists provide these services on the referral or prescription of a physician, physician assistant, or nurse practitioner.

Occupational therapy assistants provide treatment according to a plan developed by or in collaboration with a licensed occupational therapist. They must work under the supervision of a licensed occupational therapist or a licensed physician to assist in providing OT services.

Speech-Language Pathology

These services are made available at the direction of a physician to eligible persons as medically needed and as an integral part of a comprehensive medical care program. Such services include not only service to the patient but also instructions to responsible members of the family in follow-up procedures necessary for the care of the patient.

Speech-language pathology (SLP) services are provided by speech-language pathologists, who specialize in the evaluation and treatment of communication disorders and swallowing disorders.

Methods for Offering Such Services

Nursing homes that are interested in offering outpatient therapies can do so through a specific service site (a facility-based location) or in individuals' homes through a certified home health agency (CHHA). CHHA establishment is controlled through the Certificate of Need (CON) Process, and entails a full review by the Department of Health (DOH) and the Public Health and Health Planning Council (PHHPC). At present, there are no opportunities to establish new CHHAs and the only way to enter the business is by acquiring an existing agency and having the transaction approved by the PHHPC.

Facility-based options for offering outpatient therapy services include: (1) modification of the nursing home operating certificate to incorporate outpatient therapies; (2) establishment of a Diagnostic and Treatment (D&T) Center and certification as a Comprehensive Outpatient Rehabilitation Facility (CORF); and (3) authorization to operate an adult day health care (ADHC) program. Options (1) and (3) are, by far, the most common methods utilized by nursing homes currently to offer these services. Overview information on each option is provided below:

Nursing Home Operating Certificate

Nursing homes are permitted to offer PT, OT and SLP services to outpatients if authorized to do so by their nursing home operating certificate. The next section of this memo provides more detailed information on how to become authorized to provide therapy services under this method.

The program must be provided in an appropriate space, as determined by DOH. If the facility proposes to utilize the same space for its outpatient therapies program as it uses for its patients/residents, it must ensure that: (1) there is an entrance available to outpatients that does not require them to go through the inpatient living areas; and (2) there is no co-mingling of inpatients and outpatients (i.e., inpatient and outpatient therapy services must be offered during non-overlapping times of day).

The facility may utilize its existing employed or contracted therapy staff to provide these services. While outpatient therapy services are subject to specific authorization and payment requirements, there are minimal additional operating requirements applied to nursing homes that furnish these services through operating certificate authorization (as compared to other options noted below).

D&T Center/CORF

Providers can offer PT, OT and SLP services to outpatients through D&T Centers and CORFs. Unlike modifying a nursing home operating certificate to provide outpatient therapy services; however, initiating such services through a D&T Center or CORF requires establishment approval from the PHHPC and entails additional requirements.

DOH regulations at 10 NYCRR §751.1 define a D&T Center as: "…a medical facility with one or more organized health services not part of an inpatient hospital facility or vocational rehabilitation center primarily engaged in providing services and facilities to out-of-hospital or ambulatory patients by or under the supervision of a physician or, in the case of a dental service or dispensary, of a dentist, for the prevention, diagnosis and, in the case of a treatment center, treatment of human disease, pain, injury, deformity or physical condition, not including the individual or group private practice of medicine."

D&T Centers are typically established as separate corporations and are overseen by a medical director and administrator. In addition to outpatient therapies, they can provide a wide range of diagnostic services, medical treatments and therapeutic services.

CORFs provide coordinated outpatient diagnostic, therapeutic, and restorative services, at a single fixed location, to outpatients by or under the supervision of a physician. They furnish a broad array of services that must include, at a minimum, the following three core services: (1) physician services; (2) PT services; and (3) social work or psychological services. PT, OT and SLP services may be provided by a CORF in an off-site location.

A CORF may be owned by, or affiliated with, a legal entity operating as another type of Medicare provider such as a skilled nursing facility (SNF). A SNF operator may rent space within the SNF to the CORF. The CORF must be functionally and operationally independent from the SNF, but does not need to be separately incorporated. With the exception of financial management contracts; however, the responsibility for overall administration, management, and operation must be exercised by the CORF itself and not delegated to others. In New York State, there are approximately 40 CORFs in operation, a few of which are operated by entities that also operate SNFs.

Adult Day Health Care

ADHC is a community-based long-term care program that provides comprehensive health care services in a congregate day setting. Registrant needs are assessed and met through an individualized plan of care that is developed and implemented by an interdisciplinary team of medical professionals, including the registrant's personal community physician. ADHC programs must be sponsored by a nursing home, and can be located in the nursing home or an off-site location. Applications to establish ADHC programs are subject to DOH administrative review and public need determinations. Additional information on ADHC public need is posted here.

ADHC programs are required to offer not only PT, OT and SLP services to registrants, but also nursing, transportation, nutrition assessment, medical social services, psychosocial assessment, dental service, and coordination of referrals for outpatient treatment. Each approved ADHC session must operate for a minimum of five hours' duration, not including time spent in transportation, and must also provide nutritional services in the form of at least one meal and necessary supplemental nourishment, and planned activities.

Comparison of Service Delivery Options

Below is a high-level comparison of the outpatient service delivery options discussed above:

Feature	CHHA	NH Operating Certificate	D&T Center/ CORF	Adult Day Health Care
Level of State CON review required	Full establishment review	Limited review	Full establishment review	Administrative review
Subject to a need methodology?	Yes. No current unmet need	No need methodology	Yes. Possible to demonstrate need	Yes. Possible to demonstrate need
Incorporated separately from nursing home?	Yes, typically required	Not required	Yes, typically required	Not required
Can services be limited to only outpatient therapies?	No, must also offer nursing and other services	Yes	Yes, however therapies need to be provided under supervision of D&TC's medical director	No, must also offer nursing and other services

Adding Outpatient Therapies to the Nursing Home Operating Certificate

The addition of outpatient PT, OT and/or SLP services to an existing nursing home's operating certificate is subject to a Limited Review. Limited Review is the lowest level of CON review that is conducted by DOH, and does not require a recommendation from the PHHPC.

To initiate the process, an interested facility would submit the Limited Review Application electronically through the NYS Electronic Certificate of Need (NYSE-CON) system. The application consists of the LRA Cover Sheet and 12 schedules, although not all of the schedules are needed to add outpatient therapies. The responses given on the LRA Cover Sheet will determine which schedules to complete. Typically, adding outpatient therapy services to a nursing home's operating certificate is considered to be in the "Service Delivery" category on the LRA Cover Sheet, but could also involve "Minor Construction" and other actions depending on the scope of the project. The NYSE-CON webpage provides further information on CON submission.

Once the application has been submitted via NYSE-CON, the facility is instructed to remit the CON application fee, with payment in the form of a check made out to "New York State Department of Health" and mailed to: Bureau of Project Management, Division of Health Facility Planning, New York State Department of Health, Corning Tower – Room 1842, Empire State Plaza, Albany, New York 12237.

Depending on the specifics of the application (i.e., whether it involves construction and/or other actions), it will be reviewed by DOH's Bureau of Nursing Home Licensure and Certification and other DOH review bureaus in Albany. Typically, DOH will ask the applicant in writing to submit the following additional information within 30 days:

- Architectural plans for the outpatient program.
- A floor plan with the outpatient therapy area and square footage of treatment space identified as well as patient toilet rooms, and access routes to the outpatient program.
- Designs detailing the placement of changing areas/bathrooms and lockers/closet(s) accessible for outpatient residents as well as other anticipated stations, including hand washing, equipment/supplies, record storage, waiting area, and any other patient support areas. (*This element is very important, and often overlooked.*)
- Hours and days of operation, with differentiation between inpatient and outpatient schedules.
- An indication as to whether outpatient therapy policies and procedures have been established and incorporated into facility policies.
- Whether the addition of outpatient services will affect rehabilitation services provided to SNF residents.
- Whether the same rehabilitation services staff will provide treatment to both residents and outpatients.
- The intended profile of the prospective outpatient therapy participant, and whether participants will be referred by the applicant's other programs/ services or through other referral sources.
- Confirmation that accessible toilet rooms will be available for outpatients.
- Sufficiency of existing parking space for outpatients, visitors, and staff, and any plans to add additional parking spaces.
- Whether outpatients are expected to use other areas of the building outside the immediate area of the lobby and treatment room and, if so what areas (including routes of ingress to and egress from the treatment room). A separate entrance is not required, but outpatients should not be routed through inpatient residential areas to access the space.

Once the proposal has been recommended for approval by DOH Central Office, an approval letter is issued to the applicant by the Bureau of Project Management. At that point, the applicant is provided with instructions to contact the Regional Office (RO) through the NYSE-CON system. The RO will conduct a pre-opening survey of the program which addresses the following elements:

- Services to be provided
- Number of participants to be served
- Schedule (times and days)
- Location of facility
- Staffing
- Policies and procedures manual
- Facilities information (reception, changing facilities, entrance, parking)
- Life safety management plan

When the applicant has passed its pre-opening survey and satisfied any contingencies to approval, the RO initiates authorization paperwork which is forwarded to DOH Central Office and the Centers for Medicare & Medicaid Services for signoff. When these authorizations are finalized, the facility is given an effective date to commence operations.

Timeframes for review can vary, based on various factors. Any applicant that seeks to expedite Central Office review or has questions about the process may contact Susan Root, Bureau of Nursing Home Licensure and Certification, at 518-473-7285 or susan.root@health.ny.gov.

Medicare and Medicaid Reimbursement Issues

This section of the memo discusses some of the considerations involved in securing Medicare and Medicaid reimbursement for outpatient therapy services.

Medicare

Under the Medicare program, covered outpatient therapy services are those that would be covered as inpatient hospital services if furnished in a hospital. Covered items or services must be reasonable and medically necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body member. A service furnished as part of a maintenance program involving repetitive activities not requiring the skilled services of nurses or therapists would not be covered.

Under Medicare rules, there are three types of organizations that may qualify as providers of outpatient PT and SLP services: clinics (e.g., D&T centers), public health clinics, and rehabilitation agencies (e.g., nursing homes with operating certificate authority for outpatient services). A rehabilitation agency must provide, at a minimum, PT and/or SLP services. OT is an optional service and cannot be substituted for either of these two services.

In addition to the primary site and any extension locations, a rehabilitation agency (which would include a nursing home outpatient program) may provide therapy services in the patient's private residence or in a patient's room in a SNF/nursing home, in an assisted living facility, or in an independent living facility. Services provided in a patient's room within an assisted living facility or independent living facility may be considered to be provided in a patient's residence.

The Medicare Physician Fee Schedule (MPFS) is the method of payment for outpatient therapy services furnished by CORFs; rehabilitation agencies; hospitals; SNFs (to residents not in a covered Part A stay and to nonresidents who receive outpatient rehabilitation services from the SNF); and CHHAs (to individuals who are not homebound or otherwise are not receiving services under a home health plan of care). The Medicare allowed charge for the services is the lower of the actual charge or the MPFS amount. The Medicare payment for the services is 80 percent of the allowed charge after the Part B deductible is met. Coinsurance is made at 20 percent of the lower of the actual charge or the MPFS amount.

Federal law sets financial limitations on all outpatient rehabilitation services reimbursable by Medicare (except those furnished by or under arrangements with a hospital). More specifically, these "therapy caps" apply to all Medicare Part B outpatient therapy settings and providers including therapists' private practices; offices of physicians and certain non-physician practitioners; Part B SNF services to inpatients; home health agency Part B services; rehabilitation agencies; CORFs; hospital outpatient departments; and Critical Access Hospitals. For 2016, the annual per beneficiary limit on incurred expenses is $1,960 for PT and SLP services combined, with a separate limit of $1,960 for OT services. Deductible and coinsurance amounts paid by the beneficiary for therapy services count toward the amount applied to the limits. These therapy caps are updated annually and posted at www.cms.gov/TherapyServices, on Medicare contractor websites, and on each beneficiary's Medicare Summary Notice.

An "exceptions process" to the therapy caps is currently in effect for all of 2016 and 2017. For services furnished during a calendar year that exceed the therapy caps, providers and practitioners may request an exception on a beneficiary's behalf when those services are reasonable and necessary. More details are also available at www.cms.gov/TherapyServices.

Detailed information on Medicare payment for outpatient therapy services is provided in the Medicare Claims Processing Manual, Chapter 5.

Medicaid

New York's Medicaid program requires rehabilitation services to be ordered, in writing, by a physician, physician assistant, or nurse practitioner. In addition, speech therapy services may be provided based on a written referral from a speech-language pathologist. An evaluation is required prior to implementing any treatment plan.

Many beneficiaries are limited to 20 therapy visits per fiscal year for each type of therapy covered (physical, occupational, and speech therapy). The fiscal year begins April 1st and ends March 31st of the next year. Certain Medicaid enrollees, settings, and circumstances are exempt from the 20-visit limitation. These include:

- Children from birth to age 21;
- Recipients with a developmental disability;
- Recipients with a traumatic brain injury (TBI);
- Recipients with both Medicare Part B and Medicaid coverage (dually eligible enrollees) when Medicare Part B payment is approved
- Rehabilitation services received as a hospital inpatient;
- Recipients receiving rehabilitation services in a nursing home in which they reside; and
- Rehabilitation services provided by a CHHA.

Prior authorizations allow tracking of the number of rehabilitation visits per discipline an enrollee receives per benefit year. A prior authorization must be obtained for each therapy visit for enrollees not exempt from the 20-visit limitation.

More information on Medicaid coverage for therapy services is provided in the Rehabilitation Services Manual Policy Guidelines.

The rules governing Medicaid reimbursement of Medicare Part B cost sharing amounts for dual eligible beneficiaries have changed in recent years. Specifically:

- Effective for dates of service on and after July 1, 2015, for dual eligible beneficiaries in traditional Medicare, Medicaid no longer reimburses partial Medicare Part B coinsurance amounts (i.e., 20 percent of the Part B coinsurance) when the Medicare payment exceeds the Medicaid fee or rate for that service. Consequently, if the Medicare Part B payment exceeds the Medicaid payment for the therapy service, Medicaid will not pay any Medicare coinsurance.
- Effective for dates of service on and after April 1, 2016, for dual eligible beneficiaries enrolled in Medicare Advantage plans, Medicaid will reimburse 85 percent of the copayment or coinsurance amount for Part B covered services.

Other Considerations in Initiating an Outpatient Therapy Program

Identified below are some additional factors for a nursing home to consider when deciding whether to offer outpatient therapy services through its operating certificate:

Factor	Specific Considerations
Serving other levels of care	If the organization that operates the nursing home also operates assisted living (AL) and/or independent living (IL), residents of those facilities can also receive outpatient therapies from the nursing home. • Under certain circumstances, the outpatient therapy services can even be offered in those AL and IL settings. • This service offers convenience and easy access to therapies for the AL and IL residents.
Employees vs. contracted therapy staff	A nursing home may use its own therapy employees and/or contracted therapy staff to provide outpatient therapy services.
Volume estimates	Volume may be estimated based on industry norms: • 22 working days per month (i.e., no weekend hours); • Average treatment time of 45+ minutes per patient visit; • Patients average 12 visits before discharge for care; and • Patients treated 2-3 times per week.
Generating referrals	Generating sufficient volume depends on creating a diverse and large referral pool: • Residents of any AL or IL on the nursing home campus. An added benefit is that AL and IL residents may be able to remain in their units longer, with fewer vacancies; • Patients discharged from the nursing home's post-acute care unit. Most of these patients will need additional therapy services, either on an outpatient basis or in the home;

Factor	Specific Considerations
	• Referrals from specialists including orthopedic, physiatrist, neurology, cardiac, hand surgeon, and other medical specialties; and • Referrals from primary care and gerontology not involving specialty physicians.
Cross-referrals	The outpatient therapy program can generate: • Referrals to the nursing home from patients; and • Referrals to any AL or IL facility operated by the organization.
Other business opportunities	The outpatient therapy program can help to create other business opportunities: • Interest from Medicaid and Medicare managed care and commercial insurance plans in offering continuity of care and therapy services at a lower price point than inpatient services; and • Interest and opportunities from Medicare bundlers including hospitals, physician practices and nursing homes.
Typical features of successful programs	Successful outpatient programs are often characterized by: • Visually appealing spaces with new, state-of-the-art equipment and convenient parking; • Smooth transitions from the hospital or nursing home post-acute care unit to outpatient care; • Presence of an in-house physiatrist to increase clinical focus and provide added referrals; • Use of individualized care rather than concurrent or group therapy, where appropriate; • Expertise and reputation for serving the active adult patient population; • Specialty programming around specific rehabilitation diagnoses such as neurodegenerative diseases (e.g., Parkinson's disease), cognitive diagnoses, pulmonary disease, heart disease and speech-related diagnoses; and • Offering multiple therapy modalities (i.e., PT, OT and SLP). Many freestanding outpatient clinics offer only PT.
Financial and related considerations	Outpatient therapy programs may not generate major additional revenue or profit, but they can contribute to the organization's overall success: • Greater awareness of, and increased referrals to, the organization's other service lines; • Enhancing continuity of care; • Building expertise and reputation; • More effective use of existing therapy staff and space; and • Contribution to overhead costs.

Questions

Please contact Dan Heim at dheim@leadingageny.org or 518-867-8866 with any questions on this memorandum.