NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

February 14, 2014

Patricia A. Sevast, BSN, RN
Centers for Medicare and Medicaid Services
Survey and Certification Group
7500 Security Blvd.
Baltimore, MD 21244

Dear Ms. Sevast:

In 2011, New York State began a fundamental restructuring of its Medicaid program to achieve measureable improvement in health outcomes, sustainable cost control and a more efficient administrative structure. As one part of this restructuring, individuals receiving more than 120 days of community based long term care services and supports are being transitioned from fee-for-service and enrolled in managed care and managed long term care plans. Community based long-term care services and supports include any of the following:

- Personal Care Services;
- Consumer Directed Personal Care;
- Adult Day Health Care;
- Private Duty Nursing; and
- Home Health Services

In response to concerns expressed by various stakeholders, New York State enacted legislation requiring the Health Department to convene a Home and Community Based Care Workgroup tasked with examining and making recommendations on State and Federal regulatory requirements and related policy guidelines including the applicability of the federal conditions of participation and the alignment of functions between managed care entities and home and community based providers. The work group comprises representatives of providers, health plans and consumers and has met several times in the past year. The work group has requested that the following questions be forwarded to your attention for clarification and guidance.

Background

As you know**,** New York State currently licenses two different types of home care services agencies. The Certified Home Health Agency (CHHA) must meet state and federal requirements (42 CFR Part 484), Federal Conditions of Participation (COPs), and is required to provide part time or intermittent skilled nursing services and at least one other service including physical, speech or occupational therapy, medical social services, or home health aide services.

The Licensed Home Care Services Agency (LHCSA) is licensed by the State and must meet State regulations found in NYCRR Title 10 Sections 765 and 766, and must provide nursing service and may provide other services including Personal Care Services, Home Health Aide Services, therapies, nutrition, social work, respiratory therapy, physician services and medical supplies, equipment and appliances. Licensed home care services agencies do not meet the Federal conditions of participation for home health agencies.

Questions from the Home and Community Based Care Workgroup:

1. We understand that CMS has a process that allows entities that operate CHHAs to provide certain "administrative" services to Medicaid patients outside of the "conditions of participation" as long as distinct from the provision of skilled services to a patient, and as long as certain additional distinctions between the "entity" and its "home health agency" are maintained.

    a. Please confirm that these permissible "administrative" services include "supervision," "assessment," and "case management."

    b. What additional services or functions would be also considered "administrative" (or otherwise categorized) and able to be provided outside of the COPs?

    c. What is the process and/or requirements that entities have to follow to provide these distinct (non-COP) services?

    d. Can these distinct services also be provided to Medicare patients?

    e. Does a provider's ability to provide these distinct services rest solely with its adherence to federal guidelines, or must states also have requisite guidelines in place?

2. Is there any authority under which CMS can waive any of its home care COPs for a specific provider, class of providers or a state Medicaid plan?

3. Is there a process whereby LHCSAs that would like to do so can meet the COPs without applying to become a CHHA? Would it suffice to meet the COPs in practice?

4. Do CHHAs have the ability to provide care management services without home visits? This could include phone calls and other forms of telehealth.

5. The federal Medicare PACE statute waives certain provisions of federal Medicare law with regard to PACE but none of the waived provisions relate to the Medicare conditions of participation for home health agencies. Specifically, 42 USC 1395eee(g) specifies the provisions of federal Medicare law that are waived for PACE programs. None of the

waived provisions relate to the federal Medicare conditions of participation for home health agencies, which are at 42 USC 1395bbb. Does this mean that home health agencies providing services under Medicaid's home health services benefit to individuals enrolled in PACE must meet the Medicare COPs for that service ?

Thank you in advance for your assistance in responding to these questions. We request your assistance in forwarding those questions that may be more appropriately responded to by another office at CMS. Please respond in writing so we can move forward with this workgroup.

Sincerely,

Rebecca Fuller Gray
Director Home and Community Based Services
Office of Primary Care and Health Systems Management

Mark L. Kissinger
Director, Division of Long Term Care
Office of Health Insurance Programs