October 6, 2014

Jason Helgerson
New York State Medicaid Director
NYS Department of Health
Corning Tower
Empire State Plaza Albany, NY 12237

RE: DSRIP Attribution Methods and Safety Net Status

Dear Mr. Helgerson:

On behalf of LeadingAge New York, I am writing to share our concerns related to the impact of DSRIP implementation on long term care providers.

DSRIP Attribution Methodology

We participated in the Aug. 1 *Attribution and Valuation* webinar, which walked through the very complex methodologies for how individuals will be attributed to specific PPSs. We appreciate that the Department took into consideration the importance of nursing home services in the process; however we are concerned about the omission of other key providers that will be vitally important to the performing provider systems (PPSs).

Home Care: Home care will be integral to the success of DSRIP projects. Home care is essential to successfully managing people in the community and avoiding hospital and emergency room use. In addition, there are many Medicaid and dual-eligible individuals who receive long term home care services, including personal care. These individuals are seen most frequently by their home care or personal care provider, and consistently receive services from these providers that are critical to their successful management in the community. Home care agencies are also providing care management services under contract with managed care entities. Thus, it is vital that receipt of home care services be considered in attributing an individual to a particular PPS.

ALP: The Department should also add assisted living programs (ALPs) to the attribution hierarchy. Like nursing home residents, ALP residents receive the majority of their services from the ALP. The ALP is the most frequent service provider to that resident, and this service relationship is oftentimes more consistent than other provider relationships the individual may have.

ADHC: Adult day health care (ADHC) programs should also be added to the attribution hierarchy. Similar to the aforementioned services, ADHC participants typically attend the program several times a week. During these visits an individual may receive a range of services including nursing, personal care, case management and maintenance and restorative therapies. As a result of the types of services and the time spent during a visit (minimum five hours), the consumer relationship with the ADHC is likely

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the primary provider relationship. It makes sense that participation in an ADHC would also be a factor in attribution.

New CHHAs and Safety Net Provider Designation

In August, LeadingAge New York and the Home Care Association of New York sent you a memo outlining some other concerns that, unfortunately, do not appear to have been addressed. As noted, we are very concerned that new Certified Home Health Agencies (CHHAs) were not deemed Safety Net providers through the second appeals process. Given the point in time at which the determinations are being made, recently approved CHHAs simply do not have the historic data requested by the Department to show that they meet the Safety Net criteria. We had recommended that new CHHAs in this circumstance be reviewed separately, given their unique circumstance. We are extremely disappointed to see that this was not done, and that the updated Safety Net lists do not reflect consideration of the following points:

- The CHHA need methodology was opened up to address the increased demand for services as a result of the changing healthcare landscape in New York. The rationale provided for disregarding the typical process was the need for CHHAs to meet the growing and changing needs in a managed care/managed long term care environment. New CHHAs were essentially approved to be safety net providers. It is incongruous to now determine that they don't meet the Safety Net definition because they simply haven't been operational long enough to demonstrate that role. They are unable to provide the requested data simply because of the *point in time* at which the analysis is being conducted.
- Some new CHHAs were created as successors to Long Term Home Health Care Programs (LTHHCPs) in response to state policy initiatives (as the CHHA application solicitations contemplated). Particularly downstate, the majority of LTHHCP caseloads were transitioned to managed care plans. Based on historical data, these LTHHCPs (now essentially converted to CHHAs) would have clearly met the Safety Net definition, but the sponsoring organizations were compelled to seek CHHA licensure because the mandatory enrollment policy and contracting provisions jeopardized LTHHCP viability. Once again, because of the point in time at which the Safety Net analysis is being conducted, these providers are effectively shut out of the DSRIP Safety Net provider designation. These providers have worked to adapt in this ever-changing environment, and it has been extremely difficult. They should be supported, rather than limited in this process.
- Existing CHHAs which substantially served the long term care Medicaid population through their LTHHCPs face a similar situation to that above. Most of these organizations were structured such that the CHHA substantially provided the post-acute/rehabilitative care under Medicare, and the LTHHCP provided the substantial Medicaid long term care. With the transition of LTHHCP cases to managed care, the provider, now as a standalone CHHA, cannot show that it meets the Safety Net Medicaid criteria, even though this has long been the provider's overall record and commitment to community. Again, this calls for a broader, unique review of these providers.

We urge the Department to provide these CHHAs with an avenue to fully financially participate in DSRIP PPSs. While some may have one more opportunity under the Vital Access Provider Exception

process, not all will due to the narrowness of the exception criteria. Since most of the new CHHAs actually do have demonstrated experience as Safety Net providers in other services lines, including the LTHHCP, they could be evaluated by this additional data, along with a binding commitment to achieve the Safety Net definition by a realistic date-certain, thereby enabling their participation in a DSRIP PPS as a Safety Net provider. A separate process should be undertaken to consider the unique circumstances of these organizations, and rightly deem them as Safety Net Providers.

Non-Medicaid Providers and Safety Net Status

We remain concerned about the evolving criteria of a Safety Net Provider through the appeals process. The initial appeals process did not state that a Safety Net provider must be a Medicaid provider; however the second process did explicitly state that qualification. As a result, several non-Medicaid providers that have a longstanding track record of service to a substantial Medicaid and dual eligible population submitted applications during the first round and were designated as Safety Net providers on the DOH lists. These lists remain unchanged based on the second appeals process. While we hope that this is indicative of a determination that they do indeed serve a Safety Net function, this remains unclear.

LeadingAge NY believes that adult care facilities and licensed home care services agencies play critical roles in the overall health status of their consumers, and could play an integral part in any DSRIP PPS. We urge that these providers be considered for Safety Net designation. If, however, DOH does not intend to maintain the Safety Net provider designation, it is critical that this is communicated to the providers and PPSs.

Thank you for your consideration of our concerns. If you have any questions regarding our comments, please do not hesitate to contact us at (518) 867-8383.

Sincerely,

Daniel J. Heim
Executive Vice President

cc: Greg Allen
Mark Kissinger