

May 31, 2016

Howard A. Zucker, MD, JD  
Commissioner of Health  
NYS Department of Health  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

**RE: Delays in Nursing Home Quality Initiative Payment Adjustments**

Dear Dr. Zucker:

We are writing on behalf of LeadingAge New York and the Continuing Care Leadership Coalition (CCLC) to respectfully urge the Department of Health (DOH) to take the necessary steps to implement the Nursing Home Quality Initiative (NHQI) authorized in Section 2808 of the Public Health Law. The protracted delays in making the associated payment adjustments have created considerable uncertainty for nursing home providers and managed care plans, and stand in stark contrast to the underlying objective of the program to recognize performance and value in Medicaid rates of payment.

As you recall, the Centers for Medicare & Medicaid Services (CMS) had previously granted approvals to the State for the 2013 (SPA #12-29) and 2014 (SPA #14-18) NHQI payment adjustments. The Department had completed the calculations and obtained approval from the Division of the Budget to implement the 2013 quality pool adjustments, and was in the process of finalizing the calculations for 2014.

However, on June 9, 2015, a group of nursing homes filed litigation in New York State Supreme Court, Queens County [*Dry Harbor Nursing Home et al vs. Zucker et al*] challenging the implementation of the NHQI. The *Dry Harbor* plaintiffs alleged certain procedural, constitutional and substantive issues, including, perhaps most notably, the absence of published and promulgated regulations authorizing the program.

Shortly after the filing of the litigation, we were advised that DOH's Division of Legal Affairs had determined that the Department should promulgate regulations prior to implementing any rate adjustments for 2013 or 2014, and that DOH was planning to publish emergency regulations in the *State Register* authorizing the NHQI. However, nearly a year has passed and we are aware of no immediate plans or timeframes within which implementing regulations would be published.

Meanwhile, payment adjustments for 2013-15 – totaling \$150 million – have yet to be made, and the current measurement year is nearly half over. Complicating matters further, both the

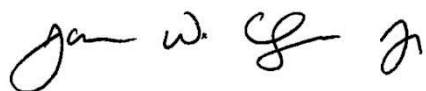
2015 and 2016 benchmark rates published by the Department for use by managed long term care and Medicaid managed care plans contain the 2014 NHQI payment adjustments, even though such adjustments have not been made to fee-for-service claims. In addition, the 2016 benchmark rates will need to be updated to reflect the most current NHQI adjustments.

As with other pay-for-performance and value-driven arrangements, the NHQI payment adjustments should be distributed as close to the end of the reporting year as possible to reinforce the link between the facility's performance and the financial results. From a financial perspective, nursing homes that incurred additional expenses associated with quality improvement efforts are seeing significant cash flow delays and are uncertain as to whether they can even recognize the NHQI adjustment amounts in their financial statements.

While we recognize that the NHQI program is under litigation, we are concerned that further delays in promulgating regulations are likely to preclude the possibility of making NHQI payment adjustments on a prospective basis in the immediate future. For this and other reasons identified in this letter, we respectfully urge the Department to take the necessary steps – including publishing proposed regulations – to implement the NHQI.

We would like to meet with you and/or your designee(s) as soon as possible to discuss this matter. Please contact the undersigned for this purpose.

Sincerely,



James W. Clyne  
President/CEO  
LeadingAge New York



Scott Amrhein  
President  
CCLC

cc: Jason Helgerson  
Patrick Roohan  
John Ulberg  
Mark Kissinger  
Raina Josberger