



March 30, 2026

Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel
Regulatory Affairs Unit, Room 2438
Empire State Plaza Tower Building
Albany, NY 12237

Re: Proposed Rulemaking, Personal Care Services (PCS) and Consumer Directed Personal Care Services, I.D. No HLT-04-26-00005-P

Dear Ms. Ceroalo:

LeadingAge New York appreciates the opportunity to comment on the above proposed rule which would allow Licensed Practical Nurses (LPNs) to carry out independent assessments under the New York State Independent Assessor (NYIA) to determine eligibility for personal care services and the Consumer Directed Personal Assistance Program (CDPAP), as well as enrollment in Managed Long Term Care (MLTC) plans. LeadingAge New York is opposed to this piecemeal approach to workforce shortages and recommends that the State pursue a broad-based evaluation and update of the nurse scope of practice, with stakeholder engagement, that includes consideration of the staffing needs of health care providers, not solely the needs of NYIA.

LeadingAge New York is the only statewide organization representing the entire continuum of not-for-profit, mission-driven, and public continuing care, including home and community-based services (HCBS), adult day health care, nursing homes, senior housing, continuing care retirement communities, adult care facilities, assisted living programs, MLTC plans, and Programs of All-Inclusive Care for the Elderly. Our 350-plus members serve an estimated 500,000 New Yorkers of all ages annually. It is with this unique perspective that we provide the following comments on the proposed regulation.

Background

NYIA utilizes the Uniform Assessment System (UAS) – Community Assessment to determine eligibility for personal care services and CDPAP under the Medical Assistance program. It is also the tool utilized to determine eligibility for MLTC. Currently, the UAS-NY is completed by Registered Professional Nurses (RNs) licensed in New York State with at least two years of recent satisfactory experience in home health care.

The Proposed Regulation Appears to Violate the State’s Scope of Practice Laws

It seems that the proposed regulation seeks to allow LPNs to practice outside of their current scope of practice. Article 139 of the State Education Law does not authorize assessments under the LPN scope of practice. Thus, we question how this regulation change could be implemented without statutory change.

According to the attached New York State Education Department (SED) guidance on the differences between RNs and LPNs, “It is **not** within the scope of practice of an LPN to perform nursing assessments, determine nursing diagnoses, or develop or change nursing care plans.”¹ In SED’s Nursing Guide to Practice, “LPNs may not conduct a nursing diagnosis and may not conduct the assessment phase of the nursing process.”² Further, under the SED [Frequently Asked Questions](#) (FAQs) regarding Practice Information for LPNs, the FAQ “What services can an LPN provide?” does not list providing assessments as an allowable task.³ In addition, a [2004 memo](#) from the State Office of the Professions to public schools regarding LPNs and RNs in school nurse settings states, “LPNs may not function independent of direction; they do not have assessment privileges; they may not interpret clinical patient data or act independently on such data; they may not triage; they may not develop a nursing care plan.”⁴

This Proposal Does Not Address Broad Workforce Shortages and May Even Exacerbate LPN Direct Care Shortages

LeadingAge New York agrees that there is a significant nursing shortage in the state. Long-term care and post-acute care settings struggle to recruit and retain nurses to work in the field. Given the overwhelming reliance on Medicaid reimbursement in these settings, and the chronic underfunding of those services, our members struggle to compete with hospitals and other employers such as insurers and NYIA that can pay a higher wage.

So, while this proposal may help alleviate some of the challenges experienced by NYIA, it does nothing to address the broader workforce shortages for those who are providing direct care to people who rely on these services. Further, the proposal could also exacerbate the shortage of LPNs needed for patient care jobs. LPNs play a significant role in the care provided in nursing homes and home care.

The state has seen RNs leave direct care and use their skills in other ways. According to the Center for Health Workforce Studies, “Currently, *only 31 percent of New York’s registered nurses work in patient*

¹ SED, Practice Difference Between Registered Professional Nurses (RNs), Licensed Practical Nurses (LPNs), Graduate Nurses (GNs) and Graduate Practical Nurses (GPNs), January 2025.

² SED, Office of the Professions, Nursing Guide to Practice, April 2009.

³ SED, Updated Frequently Asked Questions, Practice Information for LPNs.

⁴ SED, Memo to Public Schools, October 2004.

*care positions in New York State.*⁵ The proposed regulation could create an analogous challenge by pulling LPNs out of the patient-facing workforce for NYIA assessments.

LPNs Lack Training to Conduct Comprehensive Assessments Like the UAS-NY

LPNs are extremely valuable in the delivery of care in long-term care and post-acute care settings, but their training program curriculum and practice do not focus on performing initial or comprehensive assessments, consistent with their scope of practice. Nursing assessment training under an *RN* program focuses on mastering a systematic head-to-toe approach to gather subjective and objective data, building rapport, assessing the environment and responses of the patient, critical thinking and clinical judgment to distinguish normal from abnormal findings, fostering patient-centered care, and accurate documentation.

The UAS-NY is a comprehensive assessment. According to the New York State Department of Health (DOH) Training Environment webinar [“Administering the UAS-NY Community Assessment,”](#) “the goals of the UAS-NY are to assess an individual to maximize their functional capacity and quality of life, identify and address health problems and care needs, and ensure the individual remains in his or her home as long as possible. The tool allows the assessor to identify functional medical and social issues that are limiting and will likely become limiting to the individual, identify strengths and assets, integrate what is observed and heard during the assessment. Information collected can determine appropriate level of care for a person, facilitate care coordination and admission to, discharge from and transition between long term care services, provide a basis for further evaluation of unmet needs, inform care planning and ensure limited factors viewed in the context of life circumstances are managed to maximize quality of life.”⁶

According to the UAS-NY Reference Manual, February 2026, “When conducting the UAS-NY Community Health Assessment, assessors must remember that this instrument is not a questionnaire. The UAS-NY Community Health Assessment is not designed for the assessors to read the questions and potential responses and have the individual being assessed choose the most appropriate answer. Rather, this instrument should be used as a guide to structure a clinical and social assessment in planning for community-based care and services. The failure to capture this comprehensive information in the UAS-NY Community Health Assessment may result in incomplete care plans and inaccurate risk scoring of MLTC enrollees. It could also result in enrollment of applicants into MLTC who do not meet clinical eligibility criteria.”⁷

The UAS-NY requires knowledge and understanding of a patient’s cognition, communication/vision, mood/behavior, psychosocial well-being, disease diagnoses, health conditions, nutritional status, medications/allergies, treatments and procedures, and clinical reasons for hospitalization, emergency

⁵ Center for Health Workforce Studies, [Registered Nurse Workforce in New York State](#), 2025.

⁶ DOH Training Environment webinar “Administering the UAS-NY Community Assessment.”

⁷ UAS-NY Reference Manual, February 2026.

room use, or nursing home use. The process contemplates more than just a determination of functional status and need for personal care and CDPAP; it determines eligibility for MLTC as well. A full holistic assessment of the patient and his or her needs is critical to determine eligibility and to ensure access to the full breadth of services and benefits available to and needed by the individual. Under the State's current statutory and regulatory framework and the associated training to implement it, LPNs are simply not prepared to conduct the comprehensive assessment that the UAS-NY is intended to provide.

Telehealth

Another important consideration in contemplating this proposal is NYIA's use of telehealth for assessments. The UAS-NY has historically been an in-person assessment tool. It was utilized via telehealth during COVID-19 and has been used on a regular basis since May 2022, when the State transitioned assessments to Maximus, the statewide assessor. According to reporting by the Office of Health Insurance Programs, there are up to 7,000-8,000 assessments each month, sometimes with up to 70% completed via telehealth. Whereas RNs have significant training and experience with the assessment process and are capable of conducting accurate assessments via this format, LPNs are likely to experience greater challenges in conducting accurate assessments via telehealth. Notably, *the State's Division of HCBS, Office of Aging and Long-Term Care, prohibits telehealth for initial medical assessments and functional UAS-NY assessments even by RNs in agencies and programs serving patients at home and in the community.*

A Broader Approach to Workforce Challenges Is Needed

LeadingAge New York and our members are acutely aware of the workforce shortages that are plaguing health care, especially in long-term care and post-acute care. We agree that New York must take a hard look at the existing scope of practice statutes and regulations and determine what changes need to be made to ensure access to needed care and services in the current environment. We object, however, to a piecemeal approach that seeks only to address NYIA's workforce shortage.

Rather, if the State is considering scope of practice changes, it should consider the systemwide health care workforce needs of New Yorkers, now and into the future. Expanding the LPN scope of practice solely for NYIA assessments, without considering the broader implications, may lead to unanticipated and adverse outcomes. Such a policy review should include diverse stakeholders and consideration of the staffing needs of health care providers, demographic changes, the current consumer experience, and the likely trajectory of these trends. That is the most appropriate way to address the serious workforce shortages that are threatening access to care for all New Yorkers.

The state's Master Plan for Aging (MPA) focused a great deal on workforce issues, and multi-stakeholder groups evaluated a number of proposals to expand the aging services workforce. We encourage the State to review the MPA report and consider putting some of those recommendations into practice.

LeadingAge New York is committed to working with the State and other stakeholders to find solutions to these challenging issues, and we appreciate your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Barrett". The signature is fluid and cursive, with the first letter of the first name being a large, stylized 'S'.

Sebrina Barrett
President and CEO
LeadingAge New York