



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

August 10, 2016

RE: DAL:DHCBS 16-07
Questions and Answers Regarding
LTHHCP Status, Continuity, Roles

Dear Administrator:

The purpose of this Question and Answer (Q&A) document is to clarify for Long Term Home Health Care Program (LTHHCP) providers, Local Social Services Districts, Managed Care Plans, Hospitals and other key stakeholders the status, operating authority and service roles of LTHHCPs under state and federal statutes, regulations, and Medicaid/health structural reforms in New York State. It further clarifies certain LTHHCP procedures in the new service delivery structure.

This guidance is in response to questions in the wake of several new LTHHCP developments: (i) recent finalization of the Department's statewide enrollment of LTHHCP Medicaid and dual eligible Medicaid-Medicare recipients into managed care; and (ii) certain extension/expiration of the specific 1915(c) federal waiver for non-state plan Medicaid services offered by LTHHCP (per GIS 16 MA/11).

I. LTHHCP Operating Authority

Q 1. Under the state's new Medicaid reform policies, and with the conclusion of the federal 1915(c) home and community based services waiver, what is the authority and permissible scope of LTHHCP provider operation?

A 1.1 Under NYS Public Health Law (PHL) Article 36, providers possessing a valid LTHHCP certificate of operation issued by the Department are state and federally authorized to provide LTHHCP services enumerated on their operating certificate, as well as other services allowed LTHHCPs or home care agencies under Article 36 and/or other applicable laws and regulations (e.g., telehealth, contracted care management with managed care plans, and other).

A 1.2 LTHHCPs are further qualified as Medicaid and Medicare home health agencies under Article 36 and Federal Code 42 CFR 440.70 as Medicaid and Medicare home health agencies.

II. LTHHCP Roles, Functionality, Options

Q 2. Under state and federal statute and regulation, may LTHHCPs admit and service patients directly, and under what set of procedures?

A 2. LTHHCPs have the same status as state and federally qualified “certified home health agencies” (CHHAs). As such, LTHHCP providers with valid LTHHCP operating certificates may directly admit and serve patients under their LTHHCP/CHHA-authorization.

In a home health agency capacity, LTHHCPs may, like other CHHAs:

Directly admit and serve Medicaid and dual Medicare-Medicaid patients consistent with state and federal CHHA guidelines.

Directly admit and serve Medicare, private pay, and private insurance patients under applicable Medicare, Article 36 and/or State Insurance Law standards.

Q 3. Can you clarify LTHHCP contracting authority, including whether this authority has changed given the expiration of the LTHHCP-specific 1915(c) waiver?

A 3. LTHHCP providers may contract to provide services with the following:

Managed care, managed long term care, and FIDA plans to provide services, care management or other permissible contract services (including skilled and non-skilled, professional, aide and waived services) for Medicaid or dual Medicaid-Medicare managed care plan enrollees, including contracts for services allowable under PHL Article 49 (utilization review organizations), subject to the LTHHCP provider obtaining separate Article 49 approval.

Local districts to conduct assessments for and/or to provide Medicaid covered personal care services under current state-LDSS personal care authority.

Performing Provider Systems (as qualified safety-net providers) for the provision of services and payment under the Delivery System Reform Incentive Payment (DSRIP) program.

Accountable care organizations, health homes, hospitals, advanced primary care practices (all forms) to provide services and to partner in Value Based Payment Arrangements.

Additionally, LTHHCPs may contract to provide both state plan services and waived services (see Q.4/A.4 below), or care management services under the Community First Choice state plan amendment, the Nursing Home Transition and Diversion Waiver, the Traumatic Brain Injury Waiver, and the Care at Home Waivers.

Note: LTHHCP provider permissibility to contract to provide services to Medicaid recipients in such waiver programs *is now permissible* with the expiration of the LTHHCP’s own separate waiver. For many years, CMS has maintained a policy that a Medicaid recipient not be simultaneously served by two different waiver providers, which precluded LTHHCP (which had its own waiver) from dually serving patients in these other waiver programs. With the LTHHCP-

specific waiver recently no longer in force LTHHCP providers may now contract with Medicaid waiver programs to provide under their discreet waivers, services to Medicaid waiver program patients.

The above list of roles and scope in A.3 is not exclusive to this list, and LTHHCPs are advised to contact the Division of Home and Community Based Services in the DOH Office of Primary Care and Health Systems Management at homecare@health.ny.gov, with any additional inquiry about permissible roles and service options under LTHHCP provider status.

Q 4. May LTHHCPs still otherwise directly provide the types of services previously covered under the LTHHCP-specific waiver?

A 4. Yes. LTHHCPs may continue to provide and be reimbursed for these services under one or more of the following sources:

Direct Provision of the “mandated” waiver services:

The 1915(c) waived service package consisted of a number of “optional” (i.e., respite care, home delivered meals, home maintenance, etc.) and “mandatory” services (medical social work, respiratory therapy, nutritional counseling) included for LTHHCP. These services, along with an extensive array of regular state plan Medicaid and other core services (e.g., care management, nursing, physical therapy, occupational therapy, speech pathology, audiology, home health aide, personal care, homemaker, housekeeper, medical supplies and equipment, telehealth, and other) formed the LTHHCP service package.

The mandatory services (MSW, Respiratory Therapy, and Nutritional Counseling) are a basic part of the LTHHCP operating certificate, along with the rest of the required state plan services for LTHHCP. LTHHCP operating certificates continue to reflect LTHHCPs’ authority to provide these services.

Provision of other “waivered” or specialty services Direct or by Contract:

Personal Emergency Response System Services (PERS) and Telehealth Services may continue to be provided by LTHHCP providers, and are not affected by the expiration of the waiver. Both PERS and telehealth are approved state plan services for LTHHCP providers. As such both of these services may continue to be provided by the LTHHCP without regard to the waiver’s expiration.

LTHHCPs may provide PERS or Telehealth directly for patients admitted under A 2 of this Q&A or for patients served under contract pursuant to A 3.

Many of the other (“optional”) LTHHCP waived services (e.g., respite care, home delivered means, home adaptation services, home maintenance tasks, etc.) are otherwise eligible to be covered under managed long term care (MLTC) plans and other existing waivers or the CFCO state plan amendment. LTHHCPs may provide these services as contractors under these other program/waiver entities (see A 3).

III. Questions/Further Information

Please submit inquiries to: homecare@health.ny.gov

Sincerely,

A handwritten signature in black ink that reads "Rebecca Fuller Gray". The signature is written in a cursive style with a large initial 'R'.

Rebecca Fuller Gray
Director
Division of Home and Community Based Services