HCA
HOME CARE ASSOCIATION
OF NEW YORK STATE

February 26, 2020

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

RE: I.D. No. HLT-53-19-00012-P

Dear Ms. Ceroalo:

Thank you for the opportunity to provide comments on the proposed rule (I.D. No. HLT-53-19-00012-P) that would establish a per member per month (PMPM) payment for Administrative services provided by Fiscal Intermediaries (FIs) under the Consumer Directed Personal Assistance Program (CDPAP).

HCA is the statewide health care association representative of all levels and models of home care including provider-sponsored Fiscal Intermediaries, Licensed Home Care Services Agencies (LHCSAs), Certified Home Health Agencies (CHHAs), Long Term Home Health Care Programs (LTHHCPs), hospice agencies, Managed Long Term Care (MLTC) plans, waiver programs, and allied agencies and organizations. HCA providers and programs are sponsored by health systems, hospitals, nursing homes, freestanding agencies and health plans. HCA members serve over a half million home care cases, families and communities annually.

HCA's comments are based on feedback received from both member FIs and MLTC plans.

Proposed PMPM Payments Are Inadequate

While HCA is not opposed to payment for FI administrative services on a PMPM basis, the amounts must be adequate to enable FIs to carry out their administrative responsibilities. Unfortunately, according to our members who provide FI services, the proposed levels ($64 for Tier 1; $164 for Tier 2; and $522 for Tier 3) cannot sustain FI viability and will result in the closure of many FIs who have a long history of providing services and are essential to CDPAP operation and consumer accessibility. Our FI members have informed us that these amounts will result in annual losses that range from $49,000 to $4.4 million. The largest losses would be faced by those FIs who serve more than 200 consumers.

HCA members have told us that the costs used to determine the PMPM amounts (in the Needs and Benefits section of the proposed rule) do not capture their true and essential costs. For example, while the proposed payment structure includes the costs for "approximately one-quarter of personal assistants who do not have health insurance to cover the cost of health assessment and immunizations," our FI members find that they have to pay for *more than half* of these costs.

Another example is that attributing only one full-time equivalent FI staff worker per 40 CDPAP consumers to perform the FI administrative duties (as per the Needs and Benefits section of the proposed rule) does not cover the cost of any supervisors and supervisors who earn more than the "current New York City prevailing wage amount . . ." that is attributed to the one full-time equivalent FI staff person.

Also, the proposed three-tier amounts don't consider the high rents and other related costs that some parts of the state, particularly large metropolitan areas, face.

In addition, these amounts do not incorporate any of the new administrative expenses that will be incurred under the state's recent Request for Offers for existing and new FIs. These include joint-employment responsibilities such as new overtime expenses; Paid Family Leave, Family Medical Leave Act, health insurance, sick and vacation time, etc.; new "best" practices such as peer support, consumer visits, consumer training, consumer advisory committee; facilities that meet ADA requirements; collecting and reporting new to-be- determined quality data; new oversight and compliance guidelines; and more.

HCA asks that the state adjust the proposed PMPM amounts to address the above costs and the additional costs that FIs will face under these new responsibilities.

Elimination of Current Alternative County Payment Methodology

HCA is opposed to the proposed elimination of local county/social service district discretion to use alternative payment methodologies when determining FI payments. Our understanding is that the New York City Human Resources Administration (NYC HRA) sets rates for FI vendors that include payment for initial and ongoing health assessments and immunizations (whose costs have increased substantially in the past year) and the use of electronic visit verification (EVV). As noted in the Needs and Benefits section of the proposed rule, EVV is not included in the proposed rate calculations. We have addressed earlier in our comments our concerns with the statement that payment is included for "approximately one-quarter of personal assistants who do not have health insurance to cover the cost of health assessment and immunizations."

Other counties may include costs in their rate calculations which would not be considered under DOH's proposal.

Regulatory Flexibility Analysis and Job Impact Statement

HCA believes that DOH is inaccurate in claiming that the proposed regulation does not impose an adverse economic impact on small businesses, and will not have a substantial adverse impact on jobs or employment opportunities. If the proposed PMPM amounts are finalized, we believe that many FIs will be forced to close and their staff will lose their jobs. This is not accounted for in the *Regulatory Flexibility Analysis and Job Impact Statement.*

Thank you for considering HCA's comments. Please contact me at 518-810-0662 if you have any questions or need additional information.

Sincerely,

Andrew Koski

Andrew Koski
Vice President
Program Policy and Services