TESTIMONY OF THE

NEW YORK STATE ASSOCIATION OF HEALTH CARE PROVIDERS, INC.

PRESENTED BEFORE THE PLANNING COMMITTEE OF THE

STATE HOSPITAL REVIEW AND PLANNING COUNCIL

JAMES X. KENNEDY, PLANNING COMMITTEE CHAIR

ON

THE CERTIFICATE OF NEED PROCESS FOR

HOME CARE AGENCIES

ALBANY, NEW YORK

JULY 23, 2008

Good afternoon, Chairman Kennedy and other distinguished members of the Planning Committee of the State Hospital Review and Planning Council and the Public Health Council. My name is Glenn Lefebvre and I am the Vice President of Public Policy for the New York State Association of Health Care Providers, Inc. (HCP).

HCP represents approximately 500 offices of Licensed Home Care Services Agencies (LHCSAs), Certified Home Health Agencies (CHHAs), Long Term Home Health Care Programs (LTHHCPs), Hospices and related health organizations throughout New York State. On behalf of the Board of Directors and members of HCP, thank you for the opportunity to speak with you today and offer our recommendations for reform of the Certificate of Need (CON) process for home care providers.

HCP commends the Department of Health and the State Hospital Review & Planning Council for undertaking this evaluation of the CON process to ensure that the process facilitates the appropriate alignment of health care resources with community needs and avoids another forced downsizing of the delivery system. We support your stated goals to develop a patient-centered, high performing health care delivery system that offers accessible, affordable, high-quality and cost-effective care in settings that are appropriate to the needs and preferences of health care consumers. We also strongly agree that a high performing health care delivery system contributes not only to individual health, but also the health of the community as a whole.

Home Care Remains the Solution

HCP believes that policies that promote home and community-based care are fundamental part of range of solutions needed to develop a patient-centered, high performing health care delivery system. Beginning in 2007, the administration and Department of Health have shared a new vision for New York's health care system and noted that one fundamental strategy that we must pursue is "to support better home and community based long-term living options that reduce the need for more expensive nursing home care. We must work to provide options across the full range of long term care settings."

HCP applauds the recognition of the critical role home and community-based care plays in New York. Home care is the cost-effective alternative to health care delivered in more costly institutional settings and plays a critical role in the prevention of higher cost care. When the numbers are reviewed, home care is more cost-effective; when people

are asked where they prefer to receive care, home care is emphasized; when the health care system is being reformed or restructured, home care is relied upon.

In addition to the specific focus paid to home and community-based care, many additional health policy visions can be supported through further use of home and community-based care—developing better chronic disease management systems, developing a better and less costly managed care system, integration of technology, and improving access to health care. Home and community-based care also advance many of the critical components of Commissioner Daines' Public Health Policy Agenda. Home and community-based providers can bring wellness services, disease management, and health education to people throughout the continuum of care, which helps prevent their entry into more expensive and overburdened sectors of the health care system.

As health policy recommendations are made in the coming months, HCP encourages the Department to make every effort to ensure that this sector of the health care continuum is given the policy attention and dedication of resources it needs to ensure that it can provide the solution and meet the challenges that face this State.

Why Must New York Promote Home & Community-Based Care?

The redirection of long-term care policy from an institutional setting to focus on home and community-based care has occurred over the past five years with increasing intensity. There have been many factors driving policy in that direction, including an increased consumer awareness and desire to utilize such services; lawsuits that have challenged the degree to which care recipients could choose the manner in which they want to receive services; the cost-effectiveness of home and community-based care in the face of rapidly rising health care costs in both the public and private payer markets; rapidly changing technology that make it possible to deliver care efficiently and effectively in the home setting; and a population shift that will require an enormous increase in the availability of long-term care services.

In addition to the recent recommendations forwarded by the Berger Commission, the State has already launched numerous public policy initiatives that have their success pinned to the availability of home and community-based care, including the Nursing Home Transition and Diversion Waiver, the Point of Entry Initiative, Money Follows the Person, and Real Choice Programs. These and other policy efforts are positive steps toward creating a better health care system, but it is imperative that health planning initiatives be targeted to ensure the success of these policy initiatives and to expand access to such care. With such a committed focus on making home and community-based care available to more people in different circumstances, it is now time to address the health planning issues associated with promoting access to these services, including realigning resources and support at the Federal, State, and local levels to accomplish these policy objectives.

The rapid aging of the baby boomer population is a significant factor in the need for cost-effective care delivery settings. In 2000, the portion of the State's population aged 65 and over was 13 percent, compared to 12.4 percent nationwide. New York's figure is expected to grow to over 17.5 percent by 2015. This population is also knowledgeable of care delivery options and wants to avail themselves of services that will help them remain independent for as long as possible and will seek the same for their parents, who are already in need of services. Home care fills those needs.

As already noted, home care is a cost-effective solution to more expensive care settings and approaches, not only for individuals recuperating from a hospital stay but also for those who, because of a functional or cognitive disability, are unable to take care of themselves without assistance. In less than 20 years, institutional care for the elderly is projected to consume 80 percent of the nation's health care spending. The rising cost of health care and what to do about it is among the most challenging health policy issues facing New York and the nation. It is becoming increasingly apparent that chronic conditions can be managed more cost-effectively in the home. An analysis of studies investigating the use of home care as a cost-effective substitute for acute care services found a statistically significant relationship between home health use and reduced use of inpatient hospital care.

Home and community-based care increases access to health care services. The diversity of the services available and the flexibility of the service delivery setting bring health care to people who may not otherwise access services.

Specifically, HCP recommends the following reforms to the CON process:

1. Elimination of Public Need Determinations for Certified Home Health Agencies

HCP recommends the elimination of the CHHA public need methodology to help establish a "level playing field" for home health care delivery, permitting competition, with the prospect of enhancing efficiency, quality and access.

Dramatic changes in health care and specifically in home health care delivery have occurred over the years that are not accounted for in the current CHHA public need methodology:

1. Public policy shifts have increased the need for home care, as patients are discharged from hospitals sooner and require post-acute care. This phenomenon of quicker discharges from hospitals accelerated in the post-NYPHRM world, in which third-party payers have no incentive to keep patients in the hospital up to the DRG limit. In addition, enhanced delivery of chronic long-term care at home under such programs as Personal Care, the Long Term Home Health Care Program, and the managed chronic care programs that integrate service delivery and financing to better serve long-term clients at home, also encourages the delivery of more care at home, which is not reflected in the current formula's "normative use."
2. Technological advances have made it ever more possible during the last decade to administer treatment in a home environment that previously had been confined to a hospital setting. Telehealth and Infusion therapy are major examples.
3. The delivery systems for home care have become more efficient and effective, as home care begins to focus on patient outcomes.
4. Unlike hospitals or nursing home beds, the number of CHHAs has no impact with respect to controlling the utilization of home health services. Further, because the need for capital in the establishment of a CHHA is not as significant an issue, there is no need to demonstrate that there is adequate demand for home health services in order to secure financing.

The needs test is an arbitrary restriction to the market that is antiquated and flawed. Eliminating the public need criteria that is currently used in connection with the establishment certified home health care agencies (CHHAs) is necessary to appropriately respond to these dramatic changes in the evolving health care delivery system.

HCP supports increased access to both public and private markets for home care services for providers who are able to demonstrate character, competence and financial feasibility in the delivery of services. There are entities, including Licensed Home Care Services Agencies (LHCSAs), that have the expertise, interest and the capacity to become CHHAs, but are unable to do so because of the existing public need methodology. HCP believes that the number of such entities is actually relatively small, as larger institutions such as hospitals and managed care organizations often prefer to subcontract for home care services, and many LHCSAs would prefer to establish a market niche, rather than compete for business under the broad scope of service provision required of a CHHA. The artificial restriction of the marketplace effectuated by the CHHA public need methodology, akin to a taxicab medallion, only serves to stifle the efficiency and quality born of competition. The CHHA public need methodology has been criticized for artificially restricting the home health market, and there is anecdotal information indicating that some patients have not been able to adequately access home health care services despite administrative measures designed to ensure otherwise. Elimination of the CHHA public need methodology would help to establish a "level playing field" for home health care delivery, permitting competition, with the prospect of enhancing efficiency, quality and access.

The elimination of the public need methodology as a criterion for the establishment and expansion of a Certified Home Health Agency (CHHA) would require the enactment of statutory change by the Legislature and the Governor, and the recommendation by this distinguished body would go a long way in helping to secure such

enactment. Elimination of the public need methodology for CHHA home health service delivery would bring long-sought competition to the home health marketplace, with the prospect of enhancing efficiency, quality, and access.

2. Character and Competency

HCP recommends retaining the current Character and Competency standards and does not agree that such standards should be amended to include specific requirements that the owners of the agency have health care experience.

HCP's proposal to eliminate the public need methodology from the criteria required for establishment of a CHHA should not be construed as calling for the elimination of other important standards required under State law and regulation, including the demonstration of character and competence of owners and operators and requirements that there be adequate finances and sources of future revenue to properly establish and operate a CHHA. These later requirements are important public safeguards and should not be eliminated.

Owners of home care agencies that have the appropriate staff with the requisite experience in place to manage their agency should be judged to have met the Character and Competency requirement; the experience of the owner of the agency then becomes irrelevant, so long as they meet all other regulations and requirements for operation of the agency. Adoption of new requirements that emphasize prior health experience will only serve to limit the potential pool of authorized and otherwise qualified operators and will not guarantee that there will be any demonstrable impact on the quality of care and services provides by such agencies, which will still be required to meet the established regulations and requirements for operation of the agency.

3. CHHA Charity Care

HCP recommends revising the requirements for community and charitable services provided by CHHAs. As is clear from the CHHA Charity Care Report generated by the Department of Health and shared with the Councils in July 2008, most CHHAs are out of compliance with the current charity care requirements. Certified agencies are unable to meet the level of charity care required by the Department because of the narrowly drawn definition, which makes it difficult to find patients that meet the technical definition of persons with the appropriate financial need. This difficulty is compounded by efforts by the State to increase enrollment in public programs such as Medicaid, Family Health Plus, and Healthy New York, thus reducing the amount of charity care that can feasibly be supplied by agencies.

For many years hospitals have been authorized under law to establish community service plans in order to promote, publicize and help implement the community mission of these providers. Many certified home health agencies are also mission-driven providers that provide extensive services and benefits to their communities. **HCP supports legislation introduced this year by Senator Kemp Hannon that would allow CHHAs to submit a Community Service Plan and reduce their level charity care, as hospitals are currently able to do.** By adding a community service plan requirement for these agencies, this legislation will simultaneously aid in planning and promoting CHHAs' community mission and increase the transparency of the services provided by these agencies, as well as the opportunities for public input, support and coordination.

4. Projects, Services, and Equipment Subject to Review

HCP recommends that the State simplify the CON process that providers must navigate to respond to changes in the health care market and by working to make home and community-based services more accessible. HCP also recommends that all DOH regulations, including those related to certificate of need, be applied in a uniform, consistent and fair manner for all providers who provide similar care.

The current CON process takes a very, very long time to complete, as applicants often face multiple delays at several stages of the review. In order to respond in a meaningful way to the growing demand for home and community-based services in New York, the process must be streamlined to reduce the burdens on applicants associated with the CON process.

The State's long-term care system is very complex. The addition of new waiver programs and the bureaucracy inherent in the already existing Medicaid and Medicare programs makes the delivery of services increasingly difficult for home care providers. These difficulties are complicated by the fact that the current system is being eroded by all of the programs outside of Article 36 and the State's exemption of certain groups of providers from important regulatory requirements, including the Consumer Directed personal Assistance Program and Money Follows the person Program including the State's Criminal History Record Check (CHRC) and the soon-to-be implemented Home Health Aide Training Registry. There have also been issues with policies that permit a two-tiered system for home care in which LHCSAs and CHHAs are heavily regulated, while scofflaw agencies are not adequately pursued by the Department of Health.

5. Transfer of Ownership

HCP recommends the Public Health Law be amended to permit transfer of ownership interests by the operator of a LHCSA or a CHHA in the same manner as presently permitted under Article 28 of the Public Health Law for transfers of similar ownership interests by operators of hospitals.

HCP believes the current CON process for certain transfers of ownership by CHHAs and LHCSAs is time consuming, duplicative, and expensive. Streamlining this review process for certain transfers will retain appropriate Department of Health oversight of the critical issues that affect the operation of health facilities, while allowing operators to reduce the time and expense that is associated with seeking changes through the CON process.

6. Role of SHRPC in Home Care Agency Reviews

HCP recommends a change in the membership of SHRPC to better reflect the diversity of the State's health care system or, if deemed appropriate, that SHRPC's role in the CON review process is reduced or eliminated.

The role of the State Hospital Review and Planning Council in the process and its ability and necessity to provide input for all projects should be reexamined, as their review duplicates the work of the Public Health Council. Such review may result in a recommendation that the Council's role should be reduced or eliminated from the review process for home care agencies.

The makeup of the membership of SHRPC must be addressed so that the council will adequately reflect all segments of the health care system that it is required to review. HCP recommends better representation of the home care industry on SHRPC to reflect the diversity of the health care system and to ensure that the industry's expertise is used in review of home care applications.

7. Local Health Planning

HCP recommends that any local health planning initiatives be funded and implemented in a fair and equitable manner, and not according to politics at the state or local levels. It is also critical that such local planning process provide opportunity and processes that involve local home and community-based providers in a meaningful way to facilitate any consensus among stakeholders on community health care needs and priorities and appropriate strategies to address them. However, HCP cautions that local health planning will add another layer to an already complex process. Without reform of the current system, local health planning could slow down the process even further.

Local planning is intended to provide a vehicle for stakeholders in a community to examine the health status of its population and make recommendations to match health care resources to community needs. Through local planning, community stakeholders join together to examine: community health needs and priorities; barriers to appropriate care; health care trends that impact the availability, affordability, and/or quality of care; and strengths and weaknesses in the public health and health care delivery system. Based on this review, stakeholders offer informed proposals concerning the appropriate allocation of health care resources in the community, with the aim of shaping the health care delivery system to address community health needs in a cost-effective manner.

The Department has begun efforts to stimulate and support local health planning by integrating applicable Prevention Agenda priorities, PQI data, and community health assessments into the CON review process. In the long-term care arena, the Department and the State Office for the Aging (SOFA) have established Long Term Care Councils in every county to assist in the evaluation of the local long term care system on an ongoing basis and make recommendations to address identified needs. DOH has also recently issued a Request for Grant Application (RGA), the HEAL NY Phase 9: *Local Health Planning Initiatives* to stimulate and subsidize the development of multi-stakeholder, collaborative local health planning efforts aimed at promoting healthy communities by identifying community health care needs and aligning the health care delivery system with those needs.

8. Public Notice

HCP recommends that a reliable, accessible, and centralized source of information on pending CON applications be made available to providers so they can plan for and attend meetings when necessary.

The current CON review process does not adequately keep stakeholders informed of the status of pending applications. Our members have had to travel to a number of consecutive SHRPC and PHC meetings, at the expense of their agencies, to be available for questions from the Committee.

9. CON Workgroup

HCP recommends the establishment of a Department of Health Workgroup with representation from all of the relevant health care sectors to develop detailed recommendations for the reforms I have outlined to the CON process in my testimony today.

Reforming the CON is an immense project. As a membership association, HCP draws heavily on the expertise of our members who work within the confines of the regulatory process on a daily basis. Our knowledge of their experience with the system would be invaluable to SHRPC, PHC, and DOH as you move forward on development of these reforms.

Again, thank you for the opportunity to speak with you today. I am happy to answer any questions you might have and HCP looks forward to working with you as you evaluate possible reforms of the CON process.