

June 4, 2015

Ms. Jackie Glaze
Associate Regional Administrator
Division of Medicaid
Centers for Medicare and Medicaid Services
Region IV
Atlanta Federal Center
61 Forsyth Street, SW – Suite 4T20
Atlanta, GA 30303-8909

Email Transmitted to Jackie.glaze@cms.hhs.gov

RE: NC SPA 14-039

Dear Ms. Glaze:

We write to express our great concerns about the proposed State Plan Amendment 14-039 submitted by the North Carolina Division of Medical Assistance (NC DMA) and their recent RAI response. We understand the budgetary pressures that have been placed on the Medicaid program in North Carolina and the North Carolina Department of Health and Human Services by the State's Legislature, but it is becoming evident that the continued reductions in provider reimbursement rates are taking a toll, both on access to care and quality of care in the Personal Care Services (PCS) program.

As with many states, the North Carolina Legislature has placed a significant focus on reducing the growth rate of the State's Medicaid program and the impact it has on the State's budget and other key state services including education. Absent other quick alternatives to reduce Medicaid spending, provider rate reductions have been a common legislative solution. While we certainly understand the concerns about the Medicaid budget, we also understand that if the Medicaid program is to provide the safety net services that are critical to care for our State's low income residents and the people who are frail elderly and disabled, the provider reimbursement rates must be sufficient to cover the costs of providing the services as outlined in federal regulations. If not, the scope of the approved service definition cannot be met and the provider requirements of the services will undoubtedly be diminished. Access to quality care will be denied and some of the services will ultimately disappear in

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communities, impacting statewide access. We strongly believe such is already occurring in our state.

In compliance with a legislative directive, the Division of Medical Assistance has submitted State Plan Amendment 14-039 and responded on March 16, 2015, to the questions you submitted to NC DMA on December 15, 2014. Neither the proposed plan amendment, nor the response to your questions, reflect the increasing financial strain that is being placed on the PCS provider community and their ability to meet the needs of the State's frail elderly and disabled population served by Medicaid. When these issues have been raised with the Division of Medical Assistance, and they have been raised in meetings contrary to what the Division's RAI response may have implied, the reaction from the Division is primarily that they are following the legislative directive and they do not have the ability to respond differently.

The additional one percent (1%) rate reduction that is proposed in State Plan Amendment 14-039, made effective January 1, 2015, may not seem to be significant. But that reduction brings the hourly reimbursement rate for these services to \$13.74. From a practical operational standpoint, a rate of \$13.74 will provide no more than an average hourly pay rate of approximately \$12.55 for a direct care PCS worker after payment of the employer FICA, Medicare, and unemployment taxes. If the employer is attempting to provide health insurance benefits, or is subject to the requirement under the Affordable Care Act to provide health insurance coverage for its employees, the employer's cost of the health insurance premium could easily bring the available net dollars for the payment of workers' average wages to approximately \$10.50 per hour. This obviously does not consider other related costs that the employer must pay such as workers compensation insurance, liability insurance, necessary training to ensure proper care and safety for consumers, any employee paid time off, and all other operational overhead expenses that are not optional for the employer to maintain required licensure and remain in business. Once these costs are considered, the average hourly wage rate that the proposed Medicaid reimbursement rate will allow the employer to provide and break-even considering all expenses is easily less than \$10.00 per hour. It also obviously

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does not allow any flexibility for offering pay increases or covering other inflationary costs that occur in the operation of any normal business including the provision of PCS services.

At a likely average pay rate of less than \$10.00 per hour, the ability for PCS provider organizations to attract and retain a quality workforce is difficult to impossible. This low wage is even more challenging given the sometimes difficult nature of the work and the importance of a properly trained and experienced staff to ensure appropriate quality of care and safety for consumers. As the need occurs to adjust wages and cover rising insurance and other costs, the PCS provider organizations have little or no capability of competing against many other community employers for workers, including the fast food industry. Accordingly, it is not only becoming increasingly difficult in North Carolina to maintain a competent, qualified workforce to ensure appropriate access to this important service, the efforts to maintain access in face of constant rate reductions is not without a decline in the quality of services that are being provided to the Medicaid consumer.

This reduction in quality is undoubtedly impacted by high worker turnover and overworked staff, and is evidenced by an overall increase in licensure deficiencies and violations resulting in assessed fines and penalties. Based upon information obtained from the North Carolina Department of Health and Human Services under the public information laws, deficiencies, fines, and penalties have increased by more than 115% since the series of rate reductions began in 2012. As a result of action prompted by legislation, PCS provider rates have been reduced in 2012, 2013, 2014, and again now, with this State Plan Amendment, in 2015. While there has been some modification for the number of hours available for service delivery that may be provided for some consumers when determined appropriate, the hourly reimbursement rate continues to decline. The limited increase in available hours for consumers with higher needs does not make up for the inadequate hourly rate that fails to cover the costs of service, particularly when most of the costs relate to the individual worker providing the hours of direct care.

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Using our own organization as an example, for almost two decades the members of the North Carolina Assisted Living Association have worked to expand their ability to accept Medicaid consumers with the desire to provide access to quality care for those individuals whose level of need was appropriate for the assisted living environment. As a result of the consistent reduction in Medicaid reimbursement rates for PCS, only five percent (5%) of our association's membership can now accept new Medicaid consumers simply because the declining reimbursement rates do not cover the cost of providing appropriate care.

The population of North Carolina continues to grow rapidly and age rapidly. Our state is reportedly among the ten (10) fastest growing states in the nation. The future need for long-term care and assistance in daily living activities is, without a doubt, going to grow as a result. Personal Care Services is a critical element in the continuum of care for our growing population of people who are frail elderly and disabled, be they served in their own homes or in an assisted living setting. If the Medicaid reimbursement rate for PCS is not set at a level sufficient to cover the cost of hiring, training, and retaining qualified and experienced individuals to provide the service, then the service quality and safety will undoubtedly suffer if the service is even available in many of our communities. Dedicated providers are attempting to maintain the access and quality, but no PCS service organization in any setting can survive indefinitely providing services for less than their costs, much less expand their capacity to serve a growing need created by a growing and aging population.

Again, while we understand the budgetary concerns expressed by the North Carolina Legislature, and we understand that the North Carolina Department of Health and Human Services and the Division of Medical Assistance must take direction from the State's Legislature, we do not believe they understand the critical financial issues that their actions are creating across the State with respect to Personal Care Services and the resulting negative impact on quality, safety, and access. We respectfully request that you carefully consider our concerns in making your decision about your acceptance of the proposed State Plan Amendment 14-039.

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While the North Carolina Assisted Living Association represents 175 communities that serve over 14,500 residents across the State, we express this concern because of the even broader need for Personal Care Services in the Medicaid program across all care settings in North Carolina for individuals who are frail elderly and disabled. If helpful, we would look forward to the opportunity to discuss our concerns with you, and will provide additional supporting information at your request.

Sincerely,

A handwritten signature in cursive script that reads "Frances L. Messer".

Frances L. Messer
Executive Director

Cc: Dr. Robin Cummings, NC Medicaid Director
David Richards, Incoming NC Medicaid Director
Elaine Elmore, CMS NC State Liaison