NYSHFA | NYSCAL
NYS HEALTH FACILITIES ASSOCIATION | NYS CENTER FOR ASSISTED LIVING

INDEPENDENCE CARE SYSTEM (ICS) MLTC CLOSURE TO IMPACT NURSING HOMES

On behalf of the New York State Health Facilities Association/New York State Center for Assisted Living (NYSHFA/NYSCAL), a statewide association of providers of long-term care and assisted living services, caring for nearly 60,000 elderly, frail, and physically challenged men, women, and children at over 400 skilled nursing facilities throughout New York, the following reflects some concerns NYSHFA/NYSCAL has with the shutdown of Independence Care System (ICS).

Background

Earlier this year, the DOH began notifying providers that ICS will no longer participate as a health plan in the New York State Managed Long Term Care (MLTC) program as of March 31, 2019. In collaboration with the Department of Health, ICS has developed a plan to close down and transition ICS members to a different MLTC plan, VNSNY CHOICE. There is no question the first priority is and should be the health and safety of ICS members and to ensure they continue to receive the level of services they need after April 1. However, providers have some serious concerns regarding how this deal materialized, the financial loss to providers who are owed money by ICS, and the overall precedent set by this arrangement.

DOH indicated that ICS' total projected liabilities to providers is approximately $131 million, which represents 75 percent of estimated total liabilities. This figure was calculated using (1) the known liabilities through March 1, 2019 and (2) the expected utilization estimates through the month of March based on past utilization and authorizations. About 300 providers will receive notices within the next week or so (ICS and VNS hopes to mail out on March 8) which will include the amount to be paid to that provider based on the calculation method above. Providers wishing to accept the 75 percent payment will need to sign a release with ICS and VNSNY Choice that the provider agrees to:

1. Enter into an agreement to release ICS/VNSNY Choice from future liabilities by accepting the 75% payment; and
2. Agree to participate or continue to participate in VNSNY Choice's network for three years or enter into a specialty agreement for ICS members.

Liability payments will be distributed to providers using an "Enhanced Provider Network Reimbursement" that will be part of VNSNY Choice's premium rate to be passed on to participating providers. No lump sum or cash advance options are available for these providers.

Providers will need to decide if they wish to accept the payment and enter into the networking agreement by the end of March 2019.

Discussions on liabilities to providers with no current ICS member also took place. The Department and ICS indicated there are about 100 providers that fall into this category with liabilities totaling roughly $3.5 million, but it is unknown at this time how and when those claims will be addressed.

We would like to note that DOH has taken steps to minimize the upheaval caused to members by the loss of their health plan by ensuring that members who enroll in VNSNY CHOICE will be guaranteed the same level of services they currently receive for at least one year, with members that choose a different plan than VNSNY CHOICE will maintain their same level of service for 120 days. However, plans other than VNSNY CHOICE will not receive the Enhanced Provider Network Reimbursement even if ICS members enroll.

Future Implications

NYSFHA/NYSCAL is greatly concerned about the precedent set by this process and subsequent arrangement by DOH and ICS. Firstly, the collaboration between DOH and ICS for the shutdown and subsequent agreement for transitioning members and payment arrangements did not include health care providers. Secondly, providers are required to sign the 'release agreement' in order to receive the payment by March 31, 2019. Notices of this went out to providers in the second week of March, with some still having not received notifications or payment offers. The timing of this is made even more difficult for providers as state officials to grapple with the fact that the State's Budget for SFY 2019-20 is due on April 1. Thirdly, despite requests from stakeholders, DOH has said it will not be providing any guidance to providers on the shutdown, despite requests from stakeholders to do so and the fact that DOH is the agency that oversees MLTC plans and this specific arrangement. Providers have been instructed to direct questions and concerns to ICS.

ICS and DOH insist that the total amount available for making providers whole is $131 million, which represents approximately 75 percent of the outstanding liabilities to providers by ICS, a percentage calculated by ICS and agreed to by the Department. However, providers indicate that the payments available are less than 75 percent of claims, substantially so in some cases.

We ask that you, as Legislators, analyze:

Oversight of MLTC Plan Solvency: Identify the entity responsible for determining, reporting and overseeing plan solvency. Whether it is the Department of Health, the MLTC plan, the Office of the Medicaid Inspector General or otherwise, there cannot be a lack of oversight of MLTC plan solvency. If the current mechanisms for health plan oversight have not been utilized or are insufficient for determining plan solvency, we ask the that the Legislature work with the Executive and stakeholders to determine where the problem exists and/or improve these mechanisms for the future. In last year's enacted Budget, language was included that required DOH, in consultation with DFS, to "examine such books and records and shall issue a report on the health maintenance organization's reserves[1]" in order to ensure health plans had adequate reserve levels to cover claims and other costs or losses. The managed care model contract should also contain language related to solvency and reporting requirements.

Timely Payments of Claims: As individuals are shifted from MLTC to fee-for-service (FFS), there is a concern that the lack of premium dollars coming in will make outstanding claims impossible to pay. The State needs to ensure that claims are paid in timely manner as is required by law. ICS' financial difficulties have been documented in the media, though the first briefing by the Department with stakeholders was not held until March of this year.[2]

Make Providers Whole: A remedy to ensure that providers will be made whole. NYSFHA/NYSCAL remains ready to work the Legislature, the Executive and other stakeholders on the mechanism for ensuring that providers are reimbursed for care they have provided.

We want to thank the Senate for acknowledging the negative impact of the ICS shutdown for both its members and health providers, and the Legislature as a whole for restoring the proposed cuts to Medicaid in the SFY 2019-20 One-House Budget proposals. As noted recently by the State's Budget Director, continued threats from Washington make it all the more necessary that the Executive's proposed Medicaid cuts be restored to ensure access to necessary care given that the State has a responsibility to those who rely on long-term care providers for their care and services.

NYSFHA/NYSCAL appreciates your interest and leadership on this important issue.

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[1] Public Health Law § 4416 Excess reserves of certain health maintenance organizations
[2] Disability Advocates Fear Closure of Specialized Plan
https://www.crainsnewyork.com/article/20180705/HEALTH_CARE/180709962/disability-advocates-fear-closure-of-specialized-plan