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February 8, 2017

Jason Helgeson  
Deputy Commissioner & Medicaid Director  
Office of Health Insurance Programs  
New York State Department of Health  
One Commerce Plaza, 12th Floor  
99 Washington Avenue  
Albany, New York 12237

Dear Mr. Helgeson:

The Alliance of TBI & NHTD Waiver Providers appreciates your commitment to address outstanding issues that members of the NHTD / TBI Transition Workgroup have identified regarding transitioning the Traumatic Brain Injury and Nursing Home Transition and Diversion Waiver populations and services into managed care. We agree with the Department that prior to transitioning this vulnerable population into managed care we must first ensure that policies, procedures and processes are developed that will provide for a smooth transition.

As a follow-up to your request during the NHTD / TBI Transition Workgroup meeting on January 26, 2017, please find the attached outstanding issues and recommended actions **that need to be completed prior to the finalization and submission of the TBI/NHTD Transition Plan to CMS to ensure a safe and thoughtful transition.** We have also attached a proposed NHTD / TBI Waiver Transition work plan for your review.

We look forward to working with the Department, as often as needed, to ensure that policies, procedures and processes are developed that will provide for a smooth transition for this vulnerable population.

Sincerely,

*Traci Allen*

Traci Allen  
Executive Director

1. **Outstanding issue:** The Traumatic Brain Injury and Nursing Home Transition and Diversion 1915c Home and Community Based Services Medicaid Waivers are on extension. Both 1915c Waivers need to be renewed prior to submitting a transition plan to CMS.
  - ✓ **Recommended Action:** Obtain CMS approval for the Traumatic Brain Injury and Nursing Home Transition and Diversion 1915c Home and Community Based Services Medicaid Waiver renewals.
  
2. **Outstanding issue:** The current Uniform Assessment System for New York (UAS-NY) has not yet been evaluated to determine whether or not it accurately evaluates level of care need for individuals that have cognitive disabilities – specifically, those with traumatic brain injuries.
  - ✓ **Recommended Action:** Complete all reviews, implement recommended changes and establish validity and reliability of any new tool/algorithm.
    - InterRAI multi-state review completed
    - IPRO review completed
    - Recommendations implemented
    - NYS UAS-NY algorithm evaluated
    - Establish validity and reliability of the new tool/algorithm
  
3. **Outstanding issue:** New York State Department of Health (NYSDOH) has not yet shared requested details regarding Community First Choice Option (CFCO) with the NHTD / TBI Transition Workgroup. Specifically, how CFCO services will be accessed, approved, monitored and provided in fee-for-service (FFS) through LDSSs, in Medicaid Managed Care and in Managed Long Term Care. Additionally, the Department has not yet identified the protections individuals will receive as part of CFCO services. Of specific concern are the protections currently afforded to NHTD and TBI waiver participants which are tailored to meet the specific needs of these populations. **As such, once participants are transitioned to CFCO services, they are potentially at risk of losing key protections currently available to them as part of waiver services.** As a result, without these protections, this transition could create barriers to accessing services and ensuring continuity of services.
  - ✓ **Recommended Action:** NYSDOH should request that the Community First Choice Option’s Development and Implementation Council detail, analyze, and share with the NHTD / TBI Workgroup , in writing:
    - How CFCO services will be accessed, approved, monitored and provided in fee-for-service through LDSSs, in Medicaid Managed Care and in Managed Long Term Care.
    - Information regarding service limits.
    - Protections that will be provided to the current TBI / NHTD waiver population upon transition to CFCO services. Protections such as the continuity of care protections outlined in the current draft TBI and NHTD Waiver transition plan including:
      - Managed Care plans will be required to contract with all waiver providers for two years that serve 5 or more participants for any specific service.
      - Two year rate continuity for providers.
      - Provider qualifications will be “grandfathered” as they differ from SED traditional qualifications for similar services.

- Existing participants of the NHTD/TBI waiver programs effective January 1, 2018 will be deemed eligible for community based long term care (CBLTC) services and will not be required to go to the Conflict-Free Evaluation and Enrollment Center (CFEEC) prior to enrollment into MLTC.
- Any waiver participant transitioning to MLTC will be deemed eligible for CBLTC for two years as long as the member actively participates in services identified in the plan of care. The member must receive at least one service at least monthly in order to maintain CBLTC eligibility.
- Current NHTD/TBI waiver participants effective January 1, 2018 are ensured continuity of care: all services in place at the time of transition will continue for the first six months of the transition period into MLTC/MMC. All existing services identified in the service plan at the time of enrollment will continue to be provided for at least six months after the member's enrollment date.

**4. Outstanding issue:** Despite stakeholder repeated requests, NYSDOH has not yet provided an eligibility crosswalk for managed care programs and the TBI and NHTD waivers. Therefore, it is impossible to determine whether or not current waiver participants will be eligible for MLTC, MMC, FIDA and/or CFCO and if not, what the unintended consequences will be.

✓ **Recommended Actions:**

- NYSDOH should develop an eligibility crosswalk for MC/MLTC/CFCO/FIDA and TBI/NHTD Waivers and establish a plan to address any barriers to accessing services.
- NYSDOH should create a standardized safe discharge plan for all current waiver participants, with a UAS-NY score below 5 (particularly those needing HCSS), who will lose services and supports with the transition to managed care.
- NYSDOH should develop a strategy for addressing the needs of people who are "stable" as a result of the supports they receive under the current waivers however and as a result, do not score as needing nursing home level of care, but who, without these supports, will decompensate and end up in an institution.
- NYSDOH should develop a written appeals process that outlines participant's rights if the RRDC determines the need for enhanced services and the plan does not agree and/or the RRDC does not determine a need for enhanced services and the participant disagrees.
- NYSDOH should develop similar guidelines to those established with the MH/BH carve-in to managed care that outline the type, scope, amount and frequency of services. These guidelines included developing a "level of care" tool that ensured utilization management and initial and ongoing assessments result in the type and intensity of services needed and developing a transparent and agreed upon process regarding utilization management.
- NYSDOH should commit in writing that TBI/NHTD waiver participants that currently receive housing subsidies will continue to receive the subsidy after transition.

**5. Outstanding issue:** Despite the workgroups repeated requests, NYSDOH has not yet provided a crosswalk of the protections offered to, and model contract changes made for,

mental health (MH)/behavioral health (BH) population and those being offered to TBI/NHTD populations.

✓ **Recommended Actions:**

- Crosswalk protections offered to MH/BH population and those being offered to TBI/NHTD populations.
- Develop and present to the NHTD / TBI Transition Workgroup draft contract language in order to understand and resolve the many Phase II issues and ensure effective and appropriate implementation of the transition plan.

**6. Outstanding issue:** Despite the workgroups repeated requests, NYSDOH has not yet clearly separated and clarified the roles and responsibilities for Care Managers and Service Coordinators.

✓ **Recommended Actions:**

- NYSDOH should develop and present to the NHTD / TBI Transition Workgroup draft contract language that clearly identifies the roles and responsibilities for the Care Manager and the Service Coordinator.
- NYSDOH should submit draft contract language to CMS to provide them updated information regarding service coordinators roles and responsibilities under managed care and request clarification from CMS regarding whether or not “service coordinators” - with roles and responsibilities as defined in the draft contract language – will be required to be conflict-free as outlined under the HCB Setting Final Rule.

**7. Outstanding issue:** NYSDOH will cease enrollment of any new waiver service providers and will no longer approve expansion of existing waiver service providers effective October 1, 2017.

✓ **Recommended Actions:**

- NYSDOH should identify a process in which service providers of enhanced benefits that are non-LHCSA services, specifically Community Integration Counseling, Independent Living Skills Training, Positive Behavioral Interventions and Supports Services, Structured Day Program, and Service Coordination, will be approved to ensure the number of providers remains sufficient.
- NYSDOH should develop contract language that will ensure that all current TBI/NHTD waiver providers that meet waiver service qualifications will be allowed to continue to provide services indefinitely rather than establishing a grandfathering provision that will sunset after 2 years.

**8. Outstanding issue:** NYSDOH has not yet developed trainings for NYMC, the Managed Care Plans, and providers to effectively work with these specific populations and each other.

✓ **Recommended Actions:** NYS contracted with Managed Care Technical Assistance Center to provide training and intensive support on quality improvement strategies to achieve the

overall goal of preparing Behavioral Health providers for the transition to managed care. NYSDOH should contract with an agency that has experience and expertise in developing needed trainings, such as the Managed Care Technical Assistance Center, to develop:

- Training and intensive support on quality improvement strategies to achieve the overall goal of preparing TBI / NHTD providers for the transition to managed care.
- Training for NYMC and managed care plans to ensure they are prepared to effectively work with these specific populations and providers of specialized services that have not been offered previously through managed care.
- Training for RRDC's to ensure they are prepared to work with managed care plans and providers in their new role.
- A standardized training for those working with TBI population (should be developed in conjunction with stakeholders).

**9. Outstanding issue:** Metrics and processes to track outcomes for these populations have not been identified.

✓ **Recommended Actions:**

- NYSDOH should develop policies and procedures to track outcomes, decrease in services (and a process to evaluate if those decreases were appropriate), and institutionalizations to ensure the most expensive members are not unduly institutionalized due to their individual cost.
- NYSDOH should develop policies and procedures that establish actions the DOH will take if it determines that plans are unjustly institutionalizing members of this population that have successfully lived in the community prior to the transition.
- NYSDOH should develop policies and procedures to track and identify on an ongoing basis people with an ICD-10 diagnosis of brain injury and similar populations and the services provided to these populations.
- NYSDOH should review and update current TBI/NHTD waiver incident reporting policies and procedures which the RRDCs and providers of enhanced services will follow once the transition to managed care occurs.

**10. Outstanding issue:** The current per member per month reimbursement rate that managed care plans receive is not adequate to cover the costs of providing services for this high need population and therefore could lead to a decrease in services and unwarranted institutionalizations.

✓ **Recommended Actions:** To ensure Managed Care Plans are adequately compensated to provide additional services to these populations, NYSDOH should develop a high needs community rate cell.