

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

August 14, 2013

Dear Waiver Service Provider:

The Department is issuing this guidance letter in response to ongoing issues regarding instances in which waiver service providers, specifically Traumatic Brain Injury (TBI) and/or Nursing Home Transition and Diversion (NHTD) service coordinators, have deviated from providing service coordination/case management to waiver participants for the purpose of assuring that participants, and potentially eligible participants, obtain the necessary level, frequency and amount of services they are approved to receive, in order remain at home. It has been brought to the Department's attention that there are instances in which Medicaid enrolled provider agencies and their staff have exceeded their approved authority and have participated as advocates for their clients in legal proceedings challenging decisions of the Regional Resource Development Center (RRDC) or the local social services districts (LDSS) and this Department. The purpose of this letter is to clarify the appropriate role of service coordinators/case managers and other waiver providers in these proceedings.

Oversight of the NHTD, TBI, and Care at Home (CAH) I/II waivers is the responsibility of the Department of Health, with the assistance of the nine RRDC under contract with the Department, or the LDSS, respective to the waiver. In the TBI and/or NHTD waivers, once an applicant has been approved for Medicaid by his or her LDSS, the applicable RRDC serves as his or her point-of-entry for assessment for waiver participation purposes. For Care at Home I/II, the LDSS and the Department work together to administer the waiver program.

The service coordinator/case manager's role involves assisting the participant in developing the initial and subsequent Service Plans; determining the level, quantity, and frequency of those services; coordinating and monitoring all services and equipment provided in the Service Plan as well as initiating and overseeing the assessment and reassessment of the participant's level of care and conducting an on-going review of the Service Plan.

Situations brought to the Department's attention involve service coordinators/case managers functioning beyond the provider's duties set out in the applicable provider/program manuals or administrative directives (ADM). Specific examples involve service coordinators/case managers: (1) representing clients in fair hearings and litigation in which the RRDS and/or LDSS and this Department has determined that a participant is no longer eligible for waiver services, or that the type or amount of assistance requested is not appropriate, and/or (2) appearing as a witness for a participant in a fair hearing, challenging an RRDC/LDSS/Department determination.

Decisions regarding whether a participant continues to require waiver services, a particular waiver service, or a particular level or amount of one or more waiver services are made on the basis of documentation such as the participant's current Level of Care Review Instrument, the ability to maintain the participant safely in his or her community, and other evidence of the participant's need for one or more services or the quantity and/or types of services. The approval of the service

frequency and duration of services are the responsibility of the RRDC/LDSS and the Department. While a service coordinator/case manager, other waiver providers or employing agency may discuss and provide additional information in response to a preliminary decision with which the agency disagrees, once a written determination to deny, discontinue, or reduce one or more waiver services has been made by the RRDC/LDSS or the Department, any advocacy or appearance on behalf of the participant by the waiver provider or parent agency to challenge such a decision is beyond the scope of the provider's functions set forth in the applicable Provider/Program Manuals/Administrative Directives. Such activity constitutes a conflict of interest for the service coordinator/case manager or other waiver provider and the employing agency in the agency's role as an agent of the Department for waiver purposes.

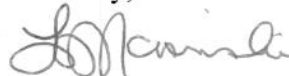
Advocating for the participant against the RRDC/LDSS and/or the Department is not intended by the reference in the Provider/Program Manuals/ADM to the waiver provider's role as an "advocate" for the participant. In the case of service coordination, for example, the referenced duties help a participant obtain the necessary waiver and other services he or she needs in order to be able to live in the community successfully. Once an RRDC/LDSS and or the Department has determined that an enrollee is no longer eligible for waiver service, or no longer needs a particular service or a particular level or amount of one or more waiver service(s) the enrollee received previously, the waiver provider agency is bound by that decision.

A waiver provider, for example a service coordinator, may assist a participant and his or her family in seeking a case conference to help resolve a discrepancy, making a fair hearing request and/or by referring the participant and his or her family to legal services providers. Waiver providers may also support the participant by performing tasks such as filing, mailing or managing paperwork for their participants who may have difficulty in managing these tasks, or provide factual evidence regarding the participant's case and care. Such assistance is appropriate and permissible, but the practice of advocacy by a Medicaid provider who is in the position to receive financial gain by that advocacy is a conflict of interest or an appearance of a conflict of interest.

All RRDC/LDSS will be instructed to report to the Department any waiver provider's and/or their agency's appearance at a fair hearing as the representative and/or witness for a participant or applicant, challenging an RRDC/LDSS and/or Department decision. The Department will review each instance reported to determine whether the waiver provider or the employing agency has engaged in unacceptable practices and/or failed to follow waiver policies and procedures.

If you have questions please feel free to contact me via the Division of Long Term Care's email address: OLTCDHCBS@health.state.ny.us .

Sincerely,



Lydia J. Kosinski
Home and Community Based Services
Division of Long Term Care

cc: M. L. Kissinger
P. B. Sheppard, Esq.