TO: Memo Distribution List

Empire State Association of Assisted Living

FROM: Hinman Straub P.C.

RE: New York State Department of Health DAL HCBS 14-01 - Provision of Home Health Services in Managed Care Plans

DATE: February 19, 2014

NATURE OF THIS INFORMATION: This is general information you might find helpful or informative.

DATE FOR RESPONSE OR IMPLEMENTATION: N/A

HINMAN STRAUB CONTACT PEOPLE: Sean Doolan, Meghan McNamara and Stephanie Piel

THE FOLLOWING INFORMATION IS FOR YOUR FILING OR ELECTRONIC RECORDS:
Category: #9 Medicaid and Medicare  Suggested Key Word(s):

©2014 Hinman Straub P.C.
On January 24, 2014, the New York State Department of Health (“DOH”) released a Dear Administrator Letter (“DAL”), DAL: HCBS 14-01, related to the provision of “home health services” in Medicare and Medicaid Managed Care Plans (attached). The stated purpose of the letter was to provide clarification to both managed care plans and providers as to what provider type may provide “home health services” to Medicare/Medicaid beneficiaries when these individuals are enrolled in a managed care plan or managed long term care plan.

As discussed in detail below, while the DAL quotes portions of the CMS State Operations Manual (SOM) and recites portions of federal regulations regarding the provision of Medicaid “home health services,” the DAL is an incomplete recitation of both the manual and the regulations, and does not answer a number of questions raised by both providers and plans, including the question of under what circumstances it is appropriate for a Medicaid Managed Care Organization (“MCO”) (including a Mainstream Medicaid Managed Care Plan (“MMC”) or Managed Long term Care Plan (“MLTC”)) to contract with a LHCSA for the provision of home care services to beneficiaries. This memorandum provides an overview of the federal law relied upon by the DOH, the legal basis for the DOH interpretation, and raises a number of questions left unanswered by the DAL.

Set forth below is a summary of the conclusions drawn from this analysis:

- The DAL is consistent with existing federal and state law and regulation which require that “home health services” provided to Medicaid and Medicare beneficiaries must generally be provided by a CHHA;

- CHHAs remain permitted to subcontract with LHCSAs for the provision of “home health services,” so long as the CHHA provides at least one of the services directly and maintains ultimate responsibility for the services. This includes meeting the federal Medicare Conditions of Participation for that patient, with limited exception;

- The DAL does not appear to modify the other “home care services” that LHCSAs may provide to Medicaid beneficiaries, which are separate and distinct from the “home health services” benefit, and include services such as personal care and private duty nursing; and

- There appears to be an avenue for the State to seek flexibility through the Medicaid State Plan or 1115(a) Medicaid demonstration waiver process to permit LHCSAs to provide a broader scope of home care services in New York’s Medicaid program.

I. **Background**

Clarification regarding the permissible parameters for contracting for home care services has become especially important most recently as the DOH continues to implement its “care management for all” MRT initiative and is of particular importance to providers and MCOs, as well as the New York State Medicaid Program. The critical question is whether the state Medicaid program is constrained and governed by the federal regulatory requirements known as
the Medicare “conditions of participation” for home health agencies. If that is the case, then the provision of “home health services” is limited to CHHAs, as LHCSAs do not meet the Medicare rules. The simple answer to that question, in the opinion of DOH set forth in the DAL, is yes, based on the state receiving the Federal share of the State’s medical assistance payment.

It is important to note at the outset that home care services covered by New York’s Medicaid program extend beyond the “home health services” discussed in the DAL, and also include, but are not limited to, “private duty nursing” as well as “personal care” services and other services provided to individuals in their homes. The distinction between the umbrella term of “home care” and the “home health services” benefit (as defined in federal regulation), is a critical distinction.

Medicaid reimbursable home care services are provided in New York under the mandatory home health state plan benefit, optional state plan benefits, 1915(c) home and community-based waiver programs, among other programs. For Medicaid managed care and managed long term care plans, home care services are also provided through New York’s Section 1115(a) Medicaid waiver demonstration program. Section 1115 demonstrations are the broadest Medicaid waiver authority available to states that wish to test innovative approaches to financing and delivering medical and supportive services to Medicaid beneficiaries. The general purpose of the Section 1115 demonstration authority is to allow states to experiment under the Medicaid program with new policies that could potentially further the overall objectives of the Medicaid program. The use of the 1115 demonstration for the provision of Medicaid home care services is critical in the analysis to determine whether New York has any flexibility in adherence to the federal standards of participation.

II. Accuracy of DAL

As discussed above, the DAL is limited to “home health services” benefit, and recounts that “home health services” include part-time or intermittent nursing services, home health aide services, and therapy services and must be provided by a Medicare-approved home health agency unless the managed care plans provide the services directly and meet the Medicare home health conditions of participation.

While it is accurate that federal law generally requires services provided pursuant to the Medicare or Medicaid “home health services” benefit to be provided by a home health agency (i.e, a CHHA), and that “home health agencies” must, generally, meet the Conditions of Participation for Medicare, the DAL does not provide a complete account of applicable state and federal law, regulation, and guidance documents. As a result, the DAL has led to additional confusion among stakeholders.

---

1 42 CFR Part 484.
2 42 U.S.C 1396d.
3 42 U.S.C. 1315.
The definition of “home health services” included in the DAL is incomplete recitation of federal regulation, in that it does not include the following items included in the federal regulation:

- The federal regulation permits the provision of nursing services by an RN in the event there is “no agency in the area”;
- Included in the federal definition are “medical supplies, equipment and appliances suitable for use in the home”; and
- The federal regulation permits the provision of therapies by a facility licensed in the state to provide medical rehabilitation services.

Presumably the DAL is intended to include the expanded regulatory definition; nevertheless, the absence of these provisions adds to the uncertainty of the DAL. In addition, and of critical importance, the DAL does not address when it is appropriate for MMCs and MLTCs to contract with LHCSAs, either under the “home health services” benefit, or pursuant to other Medicaid covered benefits. Instead, the DAL includes SOM reference to contractual requirements for meeting the Medicare conditions of participation stated in federal regulation (at 42 CFR 417.416).

III. Discussion of Applicable Federal and State Requirements

The regulatory requirements for services covered by Medicare and Medicaid are set forth in both federal and state law and regulation. Below is a detailed description of the federal and state legal framework, existing guidance, as well as a review of the applicable language included in the MMC and MLTC model contracts.

A. Federal Authority

Federal law defines Medical Assistance (i.e., Medicaid) as payment for covered services including, but not limited to:

- Home Health Care Services,
- Private Duty Nursing Services, and
- Personal Care Services.\(^4\)

These services are distinct Medicaid benefits (among many others) that have separate regulatory requirements for the provision of services covered under the benefit. Below is a description of each of the benefits and corresponding services within the benefit to the extent they are addressed in federal law and regulation.

1. Home Health Services

   As discussed above, the federal regulation defines “home health services” to include nursing services provided on a part-time or intermittent basis by a home health agency (i.e. CHHA) or, if no agency is in the area, by a registered nurse; home health aide

---

\(^4\) 42 U.S.C. 1396d.
services provided by a home health agency; medical supplies, equipment, and appliances; and physical therapy, occupational therapy, speech pathology and audiology services provided by a home health agency or facility licensed by the State to provide medical rehabilitation services. As noted, exceptions are included to allow for the provision of nursing and therapy services provided under the “home health service” benefit by an entity other than a “home health agency.” When the services are required to be provided by a “home health agency,” federal regulation defines such an agency as “...a public or private agency or organization, or part of an agency or organization, that meets the requirements for participation in Medicare, including the capitalization requirements. . .” Medicare statute defines a “home health agency” as an agency primarily engaged in providing skilled nursing services and other therapeutic services.5

2. Private Duty Nursing Services

Private Duty Nursing Services are differentiated from the nursing services included in “home health services” benefit in that private duty nursing services, again a distinct Medicaid service, are provided to “beneficiaries who require more individual and continuous care than is available from a visiting nurse or routinely provided by nursing staff of the hospital or skilled nursing facility.”7

3. Personal Care Services

Federal rules are vague with respect to defining personal care services, only providing that they are services provided in a home authorized by a physician or in accordance with an approved service plan.8 In the preamble to the 1997 update to the Federal Medicaid regulations, HHS stated their intent to define personal care to include assistance with ADLs and IADLs in the State Medicaid Manual. Services delegated by nurses or physicians may be provided under this benefit so long as the delegation is in accordance with State law or regulation and in accordance with the benefit as defined in the State’s plan. The preamble goes on to state that assistance with taking medications would be allowed if they are permissible in the States’ Nurse Practice Acts.9

B. State Authority

New York Medicaid laws and regulations are generally consistent with the federal law and regulations discussed above. Social Services Law defines Medicaid coverage to include a variety of home care services, including “home health services,” “personal care services,” and “private duty nursing services.”10 New York’s approved Medicaid State Plan provides definitions for each of these services. Although MMC and MLTC plans operate under an 1115 waiver, Plans must provide Medicaid services in accordance with federal statutory and

5 42 CFR 440.70.
6 SSA 1861(o).
7 42 CFR 440.80.
8 42 CFR 440.167.
9 62 FR 47898.
10 NY SSL §365-a.
regulatory requirements as reflected in the Medicaid State Plan unless the requirements of such
were specifically waived in the approved 1115 waiver.

1. Home Health Services

New York’s approved Medicaid State Plan defines covered “home health services” to
include:

- Intermittent or part-time nursing services provided by a home health agency or by a
  registered nurse when no home health agency exists in the area;
- Home health aide services provided by a home health agency;
- Medical supplies, equipment, and appliances available for use in the home; and
- Physical therapy, occupational therapy, or speech pathology and audiology services
  provided by a home health agency or medical rehabilitation facility.  

In a supplement to the “home health services” benefit, additional descriptive language
was included. This includes the statement that “[h]ome care services are medically
necessary services provided by a Certified Home Health Agency (CHHA) to individuals
in the home and community. Such services include both part time and intermittent
skilled health care and long-term nursing and home health aide services.” (emphasis
added).

The supplement also goes on to provide that “Providers of home (health) care services
must possess a valid certificate of approval issued pursuant to the provisions of Article
36 of the Public Health Law, be certified in accordance with certified home health
agency, long term home health care program and AIDS home care program certification
and authorization and provide services in accordance with minimum standards.” Home
(health) care services include nursing, home health aide, physical therapy, occupational
therapy, and speech therapy.” 12 In addition, the State commits to providing “home
health services” in accordance with 42 CFR 440.70.

Consistent with the DAL, state regulations further provide that “home health services”
must be provided by a CHHA as part of a plan of care developed after a comprehensive
assessment or reassessment. “Home health services” are defined to include nursing
services provided on a part-time or intermittent basis by a CHHA, or if no CHHA is
available an RN or LPN under the direction of a physician, physical therapy,
occupational therapy, or speech pathology and audiology services, and home health aide
services supervised by an RN from the CHHA or therapist. 13 “Home health services”
must be medically necessary and capable of maintaining a recipient’s health and safety
in his or her home. 14 For nursing services that are provided as part of the “home health
services” benefit, similar to federal regulations, state regulations allow that in the event

12 Medicaid State Plan, page 2(a)-2(a)(i), §7a, approved 9/8/08. Note: While reference is made to “home care
services” in this section of the State Plan, it appears that this reference is to “home health services.”
13 18 NYCRR 505.23.
14 Ibid.
“no certified home health agency is available,” nursing services may be provided “by a registered professional nurse or a licensed practical nurse acting under the direction of a recipient’s physician.”\textsuperscript{15} (Emphasis added).

2. **Private Duty Nursing**

Private Duty Nursing (PDN) is medically necessary nursing services provided in accordance with a physician’s treatment plan and provided in the home on a continuous basis normally considered beyond those nursing services available from a CHHA or intermittent nursing services normally provided through a CHHA but which are unavailable. PDN services may also be provided by Licensed Home Care Services Agencies (LHCSAs), registered nurses (RNs), or licensed practical nurses (LPNs). The State makes assurances that PDN services are provided in accordance with the requirements of 42 CFR 440.80.\textsuperscript{16} State regulations further recite that the provision of PDN services on a private practitioner basis are limited to instances where there is no approved home health agency available to provide intermittent or part-time nursing services or when the patient is in need of continuous nursing care beyond that available from an approved home health agency.\textsuperscript{17}

3. **Personal Care Services**

Personal Care Services are some or total assistance with personal hygiene, dressing and feeding and nutritional and environmental support functions, and currently include “Level I” and “Level II” personal care functions, as set forth in state Medicaid regulation.\textsuperscript{18} While New York’s Medicaid personal care services program and regulations had also contemplated the provision of “Level III” health-related tasks, this component of the program was never implemented and the regulations were subsequently modified to eliminate reference to this component of the program in 2006.\textsuperscript{19}

Personal care services must be prescribed by a physician in accordance with a plan of treatment and provided in a home by qualified individuals who are not family members. Qualified providers are broadly defined as personal care aides meeting the requirements set forth in the State Plan and must be supervised by a registered professional nurse with at least 2 years’ experience. Personal care services are provided in accordance with 42 CFR 440.167.\textsuperscript{20} State regulations mirror the State Plan language\textsuperscript{21} and, unlike “home health services” are not limit to CHHAs when provided by an MLTC or MMC. Complicating the distinction, however, is that there is significant overlap in the services that may be permissibly provided by a “home health aide” and a “personal care aide.” For example, both personal care aides and home health aides may provide the “Level I”

\textsuperscript{15} Ibid.
\textsuperscript{16} Medicaid State Plan, page 2(a)(iii)-2(a)(iv), §8, approved 12/14/10.
\textsuperscript{17} 18 NYCRR 505.8.
\textsuperscript{18} 18 NYCRR 505.14.
\textsuperscript{19} See NYS Register, July 12, 2006. Available at: \url{http://docs.dos.ny.gov/info/register/2006/jul12/pdfs/rules.pdf}.
\textsuperscript{20} Medicaid State Plan, page 3(d)-3(d)(A), §25, approved 1/19/10.
\textsuperscript{21} 18 NYCRR 505.14.
and “Level II” covered personal care services, which includes services such as assistance with bathing and dressing, preparing meals in accordance with modified diets, some assistance with the self-administration of medication, and providing routine skin care. Whereas, “home health aides” are permitted to perform certain additional “health-related tasks” that are not currently included in the personal care services benefit, such as preparing meals for complex modified diets, performing simple measurements and tests (e.g., measuring pulse, blood pressure or temperature), special skin care, additional assistance with self-administration of medications, and, in certain instances, administration of pre-filled insulin injections.

Notwithstanding the previous elimination of the “Level III” health-related tasks from New York’s current Medicaid personal care services benefit, modification of this benefit appears to be an additional pathway that could be explored to allow LHCSAs to provide the full scope of Medicaid-covered home health aide services.

C. Federal & State Guidance

In addition to the statutory and regulatory language above, the state and federal governments also provide guidance documents on the administration of the Medicaid program. CMS publishes Manuals, two of which are useful in reviewing the requirements for the provision of covered services in the home—the State Operations Manual and the Medicaid Manual. The Department of Health has cited the State Operations Manual (SOM) as the basis for requiring “home health services” to be provided by CHHAs. In fact, this is a federal regulatory requirement. The Manual in large part recites federal regulatory requirements but does provide exceptions to the OASIS reporting requirements for “home health services” provided to certain beneficiaries (i.e., patients under 18, maternity services, housekeeping and chore services, personal care only services, private pay). The SOM also differentiates skilled and non-skilled care for the purposes of the comprehensive assessment requirements. In pertinent part, the SOM states “skilled services are services which can only be provided by a registered nurse (RN) (or a licensed practical nurse under the supervision of an RN), a physical therapist (PT), occupational therapist (OT), or a speech language pathologist (SLP), licensed by the State.”

Critically, the SOM also states “[i]f home care is provided by an entity that is not required to meet the Medicare CoPs, then the provider must comply with only those requirements imposed under State or local law. In this case if the provider treats patients under a Medicaid waiver or State plan, then none of the Medicare CoPs for [home health agencies (HHAs)] including the comprehensive assessment and OASIS data reporting requirements, apply.” Thus, there again appears to be a pathway through the State Plan or waiver process for the state to permit LHCSAs to provide Medicaid-covered home health aide services.

Finally, as to whether HHAs must provide the services themselves, the SOM states:

---

22 SOM 2202.3A.
23 SOM 2202.3D.
24 SOM 2202.3E.
All HHAs must provide skilled nursing services and at least one of the following other therapeutic services: physical therapy, speech language pathology, or occupational therapy, medical social services, or home health aide services in a place of residence used as a patient’s home. The HHA must provide at least one of these services (i.e., skilled nursing, physical therapy, speech language pathology, occupational therapy, medical social services, or home health aide services) directly and in its entirety by employees of the HHA. The other therapeutic service and any additional services may be provided either directly or under arrangement.

An HHA is considered to provide a service “directly” when the person providing the service for the HHA is an HHA employee. For the purpose of meeting 42 CFR Part 484.14(a), an individual who works for the HHA on an hourly or per visit basis may be considered an agency employee if the HHA is required to issue a Form W-2 on his/her behalf.

An HHA is considered to provide a service “under arrangements” when the HHA provides the service through contractual or affiliation arrangements with other agencies or organizations, or with an individual(s) who is not an HHA employee. The HHA is responsible for ensuring that the applicable CoPs are complied with, as though the HHA was furnishing the services directly.  

Likewise, on the DOH webpage under the topic of “About Licensed Home Care Service Agencies” is the following description:

Licensed Home Care Services Agencies (LHCSAs) offer home care services to clients who pay privately or have private insurance coverage. These agencies may also contract to provide services to Medicare/Medicaid beneficiaries whose cases are managed by another provider or entity, such as providing home health aide services to a certified home health agency patient or providing a licensed practical nurse for a Medicaid prior-approved private duty nursing shift. .

The State has also provided guidance to managed care organizations (“MCOs”) in the form of a Coverage Question which appears on the DOH’s Health Commerce Systems website. Specifically, the DOH addresses the circumstances in which a LHCSA may provide home health services, private duty nursing services, and personal care services. The Department’s position was articulated as follows:

Home health services provided to Medicaid or Medicare beneficiaries, other than those provided to pregnant postpartum women, MUST be provided by a CHHA pursuant to Section 4303 of the State Insurance Law. The CHHA may subcontract with a LHCSA, but the CHHA is ultimately responsible for case

25 SOM 2180D.
27 In 2000, Section 4303 of the NYS Insurance Law was amended to permit plans to contract with either CHHAs or LHCSAs for the provision of home care services. See 2000 Sess. Laws of N.Y. Ch. 557. It should be noted that this expansion does not supercede Medicare and Medicaid requirements.
management and meeting State and federal requirements regarding the care provided to the individual. Under such a subcontracting arrangement, the LHCSA must provide care according to an assessment performed by the CHHA or by the local social services district. The CHHA must be the billing entity. A LHCSA may provide private duty nursing services to Medicaid managed care enrollees according to a physician's order. In this case, the LHCSA may bill.

According to the Medicaid managed care contract, if there is no CHHA that serves a particular county/district or if a CHHA is not available (or has insufficient resources to take on the enrollee), an RN or LPN may provide nursing services under the direction of the enrollee's primary care physician. When no CHHA is available to supervise a qualified professional providing non-nursing home health services, the professional must be supervised by an RN or therapist. **If a CHHA is not available, a Medicaid managed care plan may turn to a LHCSA to supply the necessary nurse/therapist/aide as long as the requisite supervision is provided. In this circumstance, the LHCSA may provide multiple services, such as nursing, therapy and supervision.** The LHCSA would bill the Medicaid managed care plan for these services.

It should be noted that contractual authorization to provide home health services without using a CHHA was provided for those areas of the State that have one or few CHHAs. It is highly unlikely, for instance, that Medicaid managed care plans would have difficulty finding a CHHA in New York City.

In addition, the New York State Medicaid Private Duty Nursing Provider Manual provides that in the event that continuous nursing services are beyond the scope of care available from a CHHA or are unavailable, “it is expected that those nursing services be provided by a licensed home care services agency “LHCSA” and that full and primary use be made of the services provided by such agencies.”

28 MA00162.
Finally, the Department created Personal Care Guidelines to provide guidance to MCOs and providers during the carve-in of the personal care benefit to MMC. The Guidelines state in part:

The MCO must also arrange for the LHCSA to care for the member. The MCO will provide the LHCSA with a copy of the medical request, the assessment and the authorization for services. The LHCSA will arrange for the supervising RN, the personal care services worker, the member or the member’s designated representative to develop the plan of care based on the MCO’s authorization.29

D. Medicaid Managed Care and MLTC Model Contracts

A review of the Medicaid Managed Care (MMC) Model contract,30 MLTC Model Contract,31 and the Special Terms and Conditions (STCs) for New York’s Partnership Plan section 1115(a) Medicaid demonstration extension32 provides somewhat conflicting positions regarding the contracting requirements for home care services approved by MMC and MLTC Plans. Specifically, the MMC Model Contract and STCs for Mainstream Medicaid Managed Care Benefits specifically include “home health services” as a covered benefit, and limits the provision of nursing, therapy, and home health aide services provided pursuant to the “home health services” benefit to a CHHA (unless a CHHA is “not available”).33 However, the MLTC Model Contract and STCs provide for the coverage of “home care services,” including nursing, home health aide, physical therapy, occupational therapy, speech pathology, and medical social services. Such services, however, are not similarly contractually restricted to CHHAs. Based on DOH guidance, this omission appears to be inadvertent.

IV. Conclusions and Current Environment

It is clear that Federal and State policy and current guidance to MMCs in New York, has consistently limited “home health services” to CHHAs, unless a CHHA either is not in the area (federal standard) or is not available (state standard), in which case MCOs may contract with LHCSAs for home health services in certain instances. The details of this exception should be discussed with the Department, especially in light of the recent number of CHHA approvals, and also the issue of the availability of CHHAs due to the insufficient reimbursement for the CHHA (versus the LHCSA) to staff cases.

LHCSAs, however, may contract with MCOs to provide some services outside of the “home health service” benefit, including personal care services and private duty nursing services to Medicaid beneficiaries. In addition, to the extent therapies are separately covered, it appears that MCOs may contract with LHCSAs to provide those therapies in some instances where they

29 Guidelines for the Provision of Personal Care Services in Medicaid Managed Care, NYSDOH Office of Health Insurance Programs, May 31, 2013.
30 Available at: https://www.health.ny.gov/health_care/managed_care/docs/medicaid Managed_care_fhp_hiv-snp_Model_contract.pdf.
31 Available at: http://www.health.ny.gov/health_care/medicaid/redesign/docs/mrt90_partial_capitation_model.pdf.
33 Exception is also included for the provision of “home health services” by LHCSAs to pregnant and post-partum women. See Appendix K, §14(d).
are not billed under the “home health service” benefit. To the extent MCOs contract with LHCSAs under the “personal care” benefit, the services that may be permissibly provided by the LHCSA are currently limited to those Level I and Level II personal care services as set forth in regulation, and will not extend to the “health-related” tasks that may only be provided by a home health aide.

CHHAs are also permitted to subcontract with LHCSAs for home health services so long as the CHHAs provide at least one of the services directly and maintain ultimate responsibility for the services. This includes meeting the federal Medicare Conditions of Participation for that patient, with limited exception.34 Where LHCSAs permissibly contract directly with MCOs for the provision of Medicaid covered benefits, they are not required to comply with the federal Medicare Conditions of Participation for a “home health agency.”

Significantly, as the benefits provided by both the MMC and the MLTC programs are provided pursuant to the 1115(a) Medicaid waiver demonstration program, clarification (or additional waiver authority) regarding whether contracting flexibility for the provision of a broader scope of home care services by LHCSAs could be afforded by CMS in either the MMC or MLTC context is suggested. Even if the DOH does not apply for additional waiver authority, it is apparent that additional clarification and guidance from the DOH is required to address some of the ambiguities referenced above.

34 See SOM 2202.3.
January 24, 2014

DAL: HCBS 14-01
Subject: Home Health Services in Managed Care Plans

Dear Administrator:

This letter is in response to numerous questions received by the Department related to licensed or certified home health agencies that provide home health services through agreements with Medicare & Medicaid managed care plans. This information is intended to provide guidance and clarification to both managed care plans and home health providers.

Many of these questions have sought clarification as to what provider type, i.e. Certified Home Health Agency (CHHA), Long Term Home Health Care Program (LTHHCP) or Licensed Home Care Services Agency (LHCSA) may provide home health services to Medicare/Medicaid beneficiaries when these individuals are enrolled in a managed care plan or managed long term care plan.

The State Operations Manual (SOM) contains official policy guidance issued by the Center for Medicare and Medicaid Services (CMS) pertaining to Medicare and Medicaid programs. The SOM contains official guidance related to services provided to both Medicare and Medicaid patients including home health services provided under the Medicaid home health benefit provided to Medicaid beneficiaries enrolled in managed care plans.

Section 2202.3A of the SOM states the following:

“Home Health Agencies providing services under Medicaid’s home health benefit must meet the Conditions of Participation (CoPs) for Medicare, as specified at 42 CFR 440.70(d).”

“Health maintenance organizations serving Medicare/Medicaid patients can either provide home health services themselves or can contract out for those services. If they provide home health services themselves, they must meet the Medicare home health CoPs. If they contract out for home health services, they must contract with a Medicare-approved home health agency in order to serve Medicare/Medicaid patients. (See 42 CFR 417.416 and §2194.)”
Home Health Agency is defined in 42 CFR 440.70(d) as a public or private agency or organization, or part of an agency or organization, that meets requirements for participation in Medicare, including the capitalization requirement under §489.28 of this chapter.

Home health services are defined in 42 CFR 440.70(b) as:

- nursing service, as defined in the State Nurse Practice Act, that is provided on a part time or intermittent basis by a home health agency as defined above;
- home health aide service provided by a home health agency; and
- physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency.

For further clarification, or questions related to this directive please contact the Department of Health at mltcquestions@health.state.ny.us. Thank-you.

Sincerely,

Karen Westervelt, Deputy Commissioner
Office of Primary Care and Health Systems Management

Jason Helgerson, Medicaid Director
Office of Health Insurance Programs