



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

April 2, 2007

Gary O'Brien
Chair, Commission on Quality of Care and
Advocacy for Persons with Disabilities
401 State Street
Schenectady, New York 12305-2397

Dear Mr. O'Brien:

This is in response to your May 22, 2006 letter concerning the Commission's draft report on Assisted Living Program (ALP) programmatic and financial practices in impacted adult homes. Thank you for sharing this draft with us. We apologize for the delayed response, but the draft report raises several complex issues regarding ALP reimbursement, which we have considered carefully.

The issue you have raised regarding hidden profits to related entities of the impacted ALPs included in your study has been an underlying problem for which we have mutual concern. We would agree that obtaining a true picture of expenditures and profits from Adult Care Facilities (ACFs), particularly if the facility has one or more related parties to whom it can pass on such revenues, is important to gaining an understanding of the financial stability of the industry. As you are aware, through our mutual efforts, the ACF cost report was revised. Further study of the ACF and ALP cost reports may give us a better understanding of this issue. Such actions would also be beneficial for better determining the level of public subsidy such organizations should have to provide access to affordable care.

Although we recognize that the report explains that the study sample was limited to residents of impacted facilities, we are concerned about generalizing the conclusions of this very restricted resident population and facility sample to all ALPs in the State. A broader study of this issue may help us determine the extent to which facilities with ALP beds are profitable or are experiencing annual losses.

We are also concerned that if generalizations are made, ALPs as a provider type will be perceived as unnecessarily costly. The ALP was established in 1991 for individuals who required supportive housing and some health care services and who were inappropriately being admitted to nursing homes. The greater savings of ALP residents not inappropriately placed in nursing homes needs to be recognized. Both the Governor and Legislature have adopted measures to restructure, downsize and rightsize the current long term care system. These initiatives have targeted the ALP as a viable non-institutional alternative that should be expanded. Given the per diem rate structure, costs of providing care to some ALP patients

should exceed the rate while the costs for other patients will be less. The congregate environment in some instances also provides a less costly setting for persons who would be in need of one-to-one home care, should they reside in a private residence. Lack of expansion and availability of the ALP would tax an already over-extended home care workforce.

We recommend that a joint study of the underlying issue of ACF profitability be undertaken so that further refinement and expansion of the Assisted Living Program can be more comprehensively examined. The study should include for-profit and not-for-profit ALPs, as well as those that are not impacted. This study could provide important information for the current discussion of affordability of assisted living residence which is being reviewed by the Task Force on Adult Care Facilities and Assisted Living. In fact we may want to elicit the input of the Task Force, once additional information is obtained, in making refinements to ALP cost reporting and reimbursement and integration of this activity into the Department's long term care restructuring would seem appropriate.

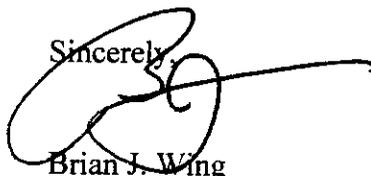
With regard to your concerns with the Patient Review Instrument (PRI) scoring, the Department is in the process of developing a timeline for replacement of the PRI with Minimum Data Set (MDS) to determine nursing home residents' Resource Utilization Groups (RUGs). As part of this process we will examine the continued use of the PRI for ALPs and consider the possible substitution of MDS for this process as well.

In the meantime, we will seek further guidance from our Division of Quality and Surveillance for Nursing Homes regarding appropriate scoring which is consistent with nursing homes. We will work with the Office of Medicaid Management to issue revised guidance to ALPs, Certified Home Health Agencies and Long Term Home Health Care Programs regarding PRI item definitions and completion of assessment data. We will also share the RUG "up-coding" issues noted in your report with the local social services districts, since the districts are responsible for reviewing assessment information and authorizing Medicaid payment for ALP services.

We ask that you consider our recommendation to further study the larger issue as we do agree with your underlying concern regarding hidden profits that create the perception of underfunding in these facilities.

I look forward to discussing these issues further and look forward to a continuing dialogue on this matter.

Sincerely,



Brian J. Wing

Interim Executive Deputy Commissioner

cc: Mark Kissinger
David Wollner