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February 28, 2017

Lorene Reagan
NH Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301

RE: CFI Waiver Renewal

Ms. Reagan,

I am writing on behalf of the Granite State Home Health Association (GSHHA) to offer comments on the State of New Hampshire's draft Choices for Independence (CFI) Waiver Renewal. GSHHA is a non-profit membership organization that advocates for home care agencies and the people they serve.

GSHHA's member agencies are essential providers of home-based care for over 2500 vulnerable citizens who rely on CFI long-term services and supports to remain independent. Home care agencies provide skilled nursing care, home health aide services, personal care services and homemaker services. GSHHA's members range from large, non-profit providers to small, community-based organizations and private businesses. In SFY 15, the last year for which GSHHA has access to public CFI data, New Hampshire's home care agencies provided:

- More than 37,000 nursing visits
- Over 46,000 home health visits that lasted less than 2 hours
- Nearly 110,000 hours of home health aide services for longer visits
- 1,400,000 hours of personal care services

The Granite State Home Health Association appreciates NH DHHS's efforts to seek input from CFI stakeholders. The Listening Sessions provided a unique opportunity for collective dialogue regarding ways to improve the Choices for Independence Program. Below are GSHHA's comments on information shared in the draft waiver document and at the Public Hearings in February.

CFI Draft Waiver Document - APPENDIX B

The Granite State Home Health Association supports NH DHHS's proposal in Section B-6 (Evaluation/Reevaluation of Level of Care) to allow determination and redetermination of level of care to be based on the Medical Eligibility Evaluation (MEA) or information in the current MDS or OASIS. Timely processing of determinations and redeterminations has been a challenge for New Hampshire's CFI program. Allowing DHHS's qualified medical professionals to evaluate applicants based on information in clinical assessments that may already have been completed will eliminate redundancy and should improve timeliness of determination and redeterminations.

CFI Draft Waiver Document – APPENDICES E and C

The Granite State Home Health Association opposes the addition of Participant Direction of Services to New Hampshire's Choices for Independence Program. As home care providers, our member agencies fully support consumer engagement in their care. In fact, New Hampshire's Home Care Clients' Bill of Rights (RSA 151:21-b) affirmatively states that clients have *a right* to (c) "participate in the development and periodic revision of the plan of care and (f) "suggest changes in service or staff."

There are both practical and technical reasons why we oppose participant direction of services in the CFI program. From a practical perspective:

- **We believe that oversight from licensed home health agencies is critical to safeguard New Hampshire's vulnerable CFI population, including assuring that participants are free from harm and appropriate services are being provided.** CFI participants are eligible for 24-hour nursing care, and for the most part are elderly and in declining health. While this does not preclude their ability to direct their services, it is important to recognize that CFI participants are medically fragile and vulnerable. Some clients may initially be able to direct services, but declines in health or cognition may unknowingly hinder the continuation of their management capability.
- **NH DHHS's draft waiver does not have sufficient safeguards for participants who choose to self-direct their care.** A recent report from the United States Government Accountability Office entitled *CMS Could Do More to Harmonize Requirements across Programs* focused on the risks inherent in provision of in-home personal care services. While Section E-1 of the Waiver Document states that "The Case Manager will work in partnership with the participant to ensure that all aspects of the person-centered plan are implemented," this does not meet CMS's requirements for states to safe-guard beneficiaries, as outlined in the GAO Report. It neither constitutes a quality assurance system that continuously monitors health and wellbeing, nor does it measure individual outcomes. It does not assure that the participant is free from abuse, neglect or exploitation, or that critical incidents will be reported. By virtue of their state license, home care agencies – whether licensed under New Hampshire's He-P 809 rules or He-P 822 rules – are required to do these things, while individuals who would provide participant-directed services are not.
- New Hampshire's Governor, Legislature, and Department of Health and Human Services have indicated their intent to transition CFI waiver services to managed care organizations soon, possibly as early as January 2018. This will be a major change in the provision of CFI services for both providers and beneficiaries. Introducing participant-directed services now will add confusion for beneficiaries, providers, and managed care organizations that will soon be adjusting to a new delivery system.

From a technical perspective:

- **State law precludes registered nurses, licensed practice nurses and home health aides from providing services – as individuals – to clients.** NH RSA 151:2, 1(a) requires licensure of home health providers, as defined in RSA 151:2-b in order to provide nursing, home health aide, physical rehabilitation services, personal care and homemakers services. Agencies that provide medical services are licensed in accordance with NH He-P 809 rules. Agencies that provide personal care or homemaker services are licensed under NH He-P 822 rules. Both sets of rules include standards for agency administration, employee qualifications, scope of services, supervision, training, quality assurance, and complaint processes. Licensed agencies must follow the Home Care Clients' Bill of Rights and comply with RSA 151:26-a, which includes important consumer protections for the discharge of home care clients. The CFI Draft Waiver Document that allows for participant-directed employment of individual nurses and home health aides is contrary to New Hampshire's laws and rules.

- **New Hampshire’s Nurse Practice Act (RSA 326-B) and its corresponding rules include important scope of practice requirements that create supervisory roles for licensed professionals and do not allow for direct participant supervision.** For instance, licensed nursing assistants (home health aides) must be supervised by a RN or LPN, a LPN must be supervised by a RN, and a RN may only work under a plan of care developed by a physician. This creates a complex hierarchy of employment that participants would need to follow if they were to direct their own medical care. We are uncertain how DHHS would assure individual participants and their employed providers would follow all facets of the Nurse Practice Act.
- **GSHHA is extremely concerned that NH Medicaid would enroll home-based providers who lack training, oversight and offer no consumer protections.** NH RSA 151:2-b,V allows for “individual home care service providers” to solicit and provide personal care or homemaker services. These providers must be “registered” under He-P 820 rules and complete a criminal background check and state registry check. While these types of providers may qualify for participant-directed employment, they have no requirements for training, minimum qualifications, oversight, or quality assurance processes. They are not required to comply with the Home Care Clients’ Bill of Rights and discharge requirements which afford important consumer protections.

GSHHA believes that the practical and technical reasons cited above demonstrate that participant direction of services is unfeasible for New Hampshire’s Choices for Independence Program. Most importantly, we believe that CFI beneficiaries should have the consumer protections and safeguards that the current agency system provides. We believe that consumer involvement in their own care is already a right and a requirement afforded under New Hampshire law. **We urge DHHS to delete the participant direction of service option from the draft waiver, along with any coordinating services – such as Financial Management Services -- that are otherwise unnecessary.**

CFI Draft Waiver Document – APPENDIX I

GSHHA supports NH DHHS’s addition of a Rate Setting Methodology that is based on the CMS Home Health Prospective Payment System Market Basket Update. Current CFI rates do not cover the cost of providing home care and other services. In the past, the Department has failed to follow NH RSA 126-A:18-a which requires establishment of a rate-setting methodology for home health services, and annual rate-setting that reflects the average cost to deliver services. As a result, inadequate reimbursement rates have led to a deterioration of the CFI home health provider network and negative impacts on access to care, especially in rural parts of the state. Including a rate-setting methodology in the 5-year waiver proposal gives some assurance to providers that NH DHHS recognizes and is willing to respond to the financial challenges facing CFI providers.

The Home Health PPS Market Basket Update is a reasonable indicator of the increasing cost of doing business for home care agencies. The Draft Waiver Document proposes that the rates be updated on a biennial basis. We assume this is because the NH Legislature adopts a biennial budget. However, it’s essential that rates be updated annually in compliance with state statutory requirements and to ensure that rates reflect the increasing cost of labor, benefits, insurance, and administrative requirements. **We urge DHHS to amend the waiver to set rates *annually*, utilizing the CMS Home Health PPS Market Basket Update in the first year of the biennium, and an average rate based on a 3-year rolling trend of the CMS Home Health PPS Market Basket Update in the second year of the biennium.**

CONCLUSION

New Hampshire's Choices for Independence Draft Waiver Document forms the basis for a critical program to help some of the Granite State's most vulnerable citizens remain independent at home and engaged in their communities. A strong CFI program can also help the State avoid the expense of higher cost institutional settings. The Granite State Home Health Association believes that the CFI program will be strengthened by the new assessment tools for determination and redetermination, and an annual provider rate increase based on the CMS HHPS Market Basket Update. We are concerned that the CFI program will be weakened by addition of Participant Direction of Services, because the proposal lacks important safeguards to protect individuals from harm and exploitation, reduces consumer rights, and contradicts existing New Hampshire laws that are designed to protect the public.

The Granite State Home Health Association members appreciate the opportunity to provide input on New Hampshire's Draft CFI Waiver Document. We welcome continued dialogue regarding the Choices for Independence Program.

Respectfully,

A handwritten signature in black ink, appearing to read "Gina Balkus", with a long horizontal flourish extending to the right.

Gina Balkus

Chief Executive Officer