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REVIEW COMMISSION

Genesis HealthCare℠

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August 29, 2005

Department of Public Welfare
Office of Medical Assistance Programs
Attention: Regulatory Coordination
Room 515
Health and Welfare Building
Harrisburg, PA 17105

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REFER TO

Re: PA Bulletin, July 30, 2005: Proposed DPW Rule Changes Preadmissions/Civil Rights

On behalf of Genesis HealthCare Corporation, I write commenting on the proposed rules published in the Pennsylvania Bulletin on July 30, 2005 proposing to alter the pre-admission screening requirements for nursing facilities and imposing additional documentation of pre-admission inquiries.

Genesis HealthCare Corporation, headquartered in Kennett Square, is one of the state's largest long term care providers. We operate 46 facilities in the state; providing over a 1.5 million days of care to the most vulnerable residents of the state; about two-thirds of our care days are for Medicaid eligible individuals.

We strongly opposed the pre-admission screening requirements. We fully endorse the comments submitted by the Pennsylvania Health Care Association (PHCA). It appears as if the Commonwealth, once again, is listening to consultants that attempt to sell an aggressive opportunity without carefully researching the potential exposures to the state and our taxpayers.

1. We believe the state has far exceeded its legal authority. In the preamble the agency makes a vague reference to the Olmstead decision. Nothing in that decision gives the state the authority to impose requirements on private paying nursing home residents.

2. A casual reading of Part 2 of the State Medicaid Manual, suggests that the state may be jeopardizing its authority to secure Federal Medicaid funding of in its attempt to interfere with access to nursing home care for residents. First, it is suspect whether the state can impose a limit in such a manner as to impede access to nursing home services. The statute is clear; nursing home care is a mandated benefit. What is equally clear is that the rules impose time limits for FMAP (Federal Medical Assistance Percentage) funds. Federal matching for assessment performed on residents one-year prior to their applying would be highly questionable. Certainly, the state would require waiver authority to impose such a sanction. Be assured efforts would be made to oppose any such waiver request.

3. By setting a 12-month prior eligibility, the agency is putting itself at risk. First, for individuals required to be pre-screened, the state would not be permitted to change

eligibility criteria. Clearly the rules are the rules – what is good for the state, must also lock the state into specific criteria. Nursing homes cannot certify that potential Medicaid eligibility unless the rules are to stay the same for the duration of the pre-application process. Second, because the pre-screening process occurred, the state is making a commitment to expeditiously process the eligible individual's application, thus binding county agencies to accept the pre-screened application. There should be no excuse for the state not being able to process an application within 72 hours of submission as it would already have the information. Anticipate that consumers will be prepared to sue for specific performance. A quick review of other states that have attempted one-stop, fast track enrollment will document heightened advocacy for enrollment and added costs to county entities.

4. The current state efforts to create a streamlined, alternative placement option are fraught with delays and inadequate performance by the entities required to perform the functions. The state needs to get its act together on the current system before adding additional burdens onto care providers.

We urge the state to withdraw these proposed rules. Punishing the frail and vulnerable while promoting patronage rich bureaucracy is not the way to a market based solution for long term care issues.

Sincerely

Laurence F. Lane
Vice President
Government Relations