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creating the future of aging services for pennsylvania

panpha

an association of nonprofit senior services

*cc: PAT
FRAN
Jim
Me
ON 9/1/05
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RW*

August 29, 2005

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

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REFERR TO
DIR OF LTC PGMS

Re: Nursing Facility Services; Preadmission Requirements and Civil Rights Compliance for Nursing Facilities [35 Pa.B. 4191]

Dear Regulations Coordinator:

As requested in the July 30, 2005 PA Bulletin, PANPHA provides the following comments On the Department's proposed rulemaking on preadmission and civil rights compliance for nursing facility services.

PANPHA is an association of Pennsylvania non-profit aging services providers, representing roughly 230 licensed nursing facilities in Pennsylvania. The vast majority of these facilities participate in the state/federal Medicaid program and will be impacted by the changes proposed by the Department. PANPHA members provide a wide array of care and services across the entire long-term care continuum, and have long embraced the concept of providing consumers with choice. One of our core areas of focus is ensuring consumer choice by offering the array of care and services necessary to provide consumers a broad range of choices within settings which are able to meet their care needs in a safe and cost efficient manner.

In light of its noble intent, it is our contention that this proposed amendment to 55 Pa. Code Ch. 1187 falls short in providing consumers with true "choice", ensuring that their care needs can be appropriately met in a community-based setting, or ensuring cost savings for Commonwealth taxpayers. PANPHA members have long held the concern that the Administration's efforts at "re-balancing" were focused more on forcing an anti "facility-based care" agenda than ensuring that consumers receive care in the safest, most cost efficient manner possible. It is our belief that these proposed regulatory changes verify that concern. Pennsylvania's demographic projections, the fiscal reality that in many cases, "facility-based care" is the less costly alternative for consumers with significant care needs, and the lack of an adequate community-based care infrastructure in some regions all demonstrate the need to give more thought to developing a delivery system with appropriate access and incentives rather than merely engaging in nursing home diversion as the "right answer". However, a response to a proposed regulatory change in

the Pennsylvania Bulletin is not the appropriate venue to further make that case. Rather, we would like to provide the following comments on the proposed amendments to the regulation:

1. Ch. 1187.2 Definitions

Clinical Evaluation Definition

ISSUE: We find it concerning that this definition immediately sets the bar at whether “. . . the individual’s needs may be met in a setting other than a nursing facility”.

AMENDMENT: If the Department’s intent is truly to create a consumer centered system of care and services, this should more appropriately read as follows:

CLINICAL EVALUATION: *A COMPREHENSIVE ASSESSMENT BY THE DEPARTMENT OR ITS INDEPENDENT ASSESSOR OF AN INDIVIDUAL’S CARE AND SERVICE NEEDS, AND THE SETTING MOST CLINICALLY APPROPRIATE TO MEET THOSE NEEDS.*

MA Applicant Definition

ISSUE: Clarification is needed on how the Department envisions determining whether a resident will be a “MA conversion resident” within 12 months from the date of admission.

Subchapter C. NURSING FACILITY PARTICIPATION

Sec. 1187.22 (18) (i) Civil Rights Data Reporting

ISSUE: We are unclear what purpose clinical data elements (F) and (I) serve in determining potential violations with relation to civil rights related discrimination in admission. They should be removed. We also have significant reservations about the use of occupancy rate as a determinant of a violation. Occupancy rate may not be an accurate indicator of available beds in many facilities, and does not speak to the clinical appropriateness of an admission. This should be removed, or at least clarified.

Sec. 1187.22 (18) (iii) Civil Rights Data Reporting

ISSUE: We object to the requirement that facilities also include all additional information requested of residents in their specific “civil rights report”. If the Department feels that there may be other types of information that would be valuable in assessing compliance with the applicable statutes, those items should be specifically listed under Section 1187.22 (18)(i).

Subchapter D. DATA REQUIREMENTS FOR NURSING FACILITY APPLICATIONS AND RESIDENTS

Sec. 1187.31 (2) (iii) (B) Penalties

ISSUE: The Department seems to clearly provide its intent to determine the penalty within a range based on compliance history in the language of the subsection, yet stipulates that the “. . . civil money penalty may not be less than the nursing facility’s total aggregate charges to the individual for services rendered during the period of noncompliance.” This provision is unnecessarily punitive and may cause significant financial harm to certain facilities’ financial positions and, by derivative, other residents of the facility.

AMENDMENT: The language beginning with “. . . but the civil money penalty may not be . . . during the period of noncompliance,” should be removed.

Sec. 1187.31 (2) (iv) Maintaining Clinical Evaluation Reports

ISSUE: This requirement, when extended beyond current or former residents to “applicants,” requires the facility to maintain records for an extended period of time on individuals for whom it was never responsible.

AMENDMENT: “Applicant” should be stricken from this section. If it is not stricken, “applicants” must be handled separately and the requirement should be record retention for one year following the date of application.

The additional administrative burden that the provisions of this proposed regulatory change require could not come at a worse time for nursing facility providers. The recently imposed 2.8% cap on MA reimbursement rate growth for FY 05-06 will result in a gap of almost \$150 million in state/federal funds between what MA nursing facilities’ cost reports show their funding needs to be, and the amount the Department is willing to pay. The number of facilities which lose significant amounts of money under the nursing facility assessment during FY 05-06 is also likely to increase significantly once the final figures are released. The requirements proposed in these regulatory changes represent yet another instance where the Administration is raising providers costs without any demonstrable increase in quality of resident care or allowance for increased provider efficiency. We urge the Department to withdraw these regulatory changes, and package them as part of a larger effort to create a sustainable, seamless delivery system which ensures consumers receive the care they need, in a setting which can safely provide it, in a manner that makes sense for consumers and taxpayers within the Commonwealth.

Sincerely,



W. Russell McDaid.

Vice President, Public Policy

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