

Esposito, John 2880

14-524-6

From: Adam Kane [Adam.Kane@erickson.com]
Sent: Friday, December 03, 2010 5:30 PM
To: AI, ParticipationReview
Subject: Comments on Proposed Regulation
Attachments: image001.gif; Response to Closed Campus MA Proposed Rule.doc

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2010 DEC -6 P 3:56

Dear Ms. Sanchez-Roberts

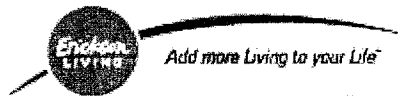
Attached are comments to the proposed rule 14-524 submitted on behalf of Erickson Living Management. We appreciate the opportunity to comment and look forward to working with the Department.

Please acknowledge receipt of the attached.

Sincerely,

Adam Kane

*Adam E. Kane, Esq.
Senior Vice President of Corporate Affairs
Erickson Living
5525 Research Park Drive
Baltimore, MD 21228
410-402-2211*



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December 3, 2010

Ms. Yvette Sanchez-Roberts
Bureau of Policy & Strategic Planning
Department of Public Welfare
Office of Long Term Living
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1919

Via electronic mail: RA-PartReview@state.pa.us

RE: Regulation No. 14-524

Dear Ms. Sanchez-Roberts

Erickson Living manages and develops continuing care retirement communities ("CCRCs") across the country. In the Commonwealth of Pennsylvania, Erickson Living develops and manages two very successful communities; Ann's Choice in Warminster and Maris Grove in Concord. Between these two communities, Erickson serves close to three thousand residents in the Commonwealth of Pennsylvania.

This comment supports the overall intent of the proposed rule to provide a limited bed need process for CCRCs for important policy goals while also suggests refinements to the language to better meet the Department's policy objectives.

Erickson supports the Department's efforts to create a new medical assistance bed request process for "closed-campus CCRCs." Many other states have created similar medical assistance bed request processes for CCRC to achieve important state policy objectives. In these other states, CCRC residents have access to medical assistance when appropriate and there has been little to no impact on the broader long term care market. The state policy objectives achieved with little to no impact on the broader long term care market include the following:

- (1) Continuity of care

CCRCs provide various component of care to residents. Residents move through various levels of care based on the needs and preferences of the residents. Access to medical assistance when appropriate facilitates access to services in a variety of settings without regard to payor source while also avoiding displacement for residents.



(2) Reduced Costs for Medical Assistance Program

CCRCs assist the Commonwealth in managing its medical assistance budget in two fundamental ways. First, CCRCs provide non-institutional supportive housing to the frail elderly that uses significant health and social wrap-around services that maximize independence, reduce hospitalizations, and delay the need for costly long term care and medical assistance eligibility. Second, the nature of some CCRC entrance fees and contracts ensure that assets are exhausted prior to becoming eligible for medical assistance. In fact, CCRCs that comply with the provisions of the DRA require spend down available entrance fee balances prior to being eligible for medical assistance. As a result of these specific federal provisions, CCRC residents that qualify for medical assistance only after spending through assets that are typically associated with home exclusion provisions in medical assistance determinations.

The proposed rule tries to balance the benefits of a CCRC exception with preserving the market place for stand alone skilled nursing. The most effective means to affect this balance is to ensure that the CCRC product in form and substance is different from the stand-alone nursing facility product. To that end, we would suggest adding to the scope of the proposed criteria around the entrance fee and resident contract to further refine the definition of "closed-campus." The underlined language is suggested additions to the proposed rule.

§ 1187.162. Definitions.

(ii.) (A.) Paid the entrance fee.

The entrance fee shall have the following characteristics:

1. The entrance fee shall be paid in a similar form or manner as entrance fees offered to subscribers of the community that are entering into for the independent living or assisted living components of the CCRC.
2. The sum of the entrance fee or consideration shall be equal to at least \$100,000.
3. The entrance fee or equivalent account balance shall be available to pay for housing and health expenses should alternate subscriber funds become exhausted.
4. The entrance fee shall be an available asset for medical assistance eligibility purposes consistent with Sec. 6015 of the Federal Deficit Reduction Act (DRA) of 2005 P.L. 109-171(\$1932)(Feb. 8, 2006).

The additional provisions above refine the definition of entrance fee to reflect that subscribers entering the CCRC are paying the same consideration to access the services of the entire CCRC product. In addition, the characteristics of the entrance fee should comply with applicable federal law to make the entrance fee an available asset for medical assistance eligibility purposes. This supports a Commonwealth objective of ensuring that medical assistance is available for people who have truly exhausted assets available to pay for long term care services.

(B) Entered into an enforceable resident agreement with the CCRC that is effective at least 30 days and that provides the individual the right to occupy the CCRC's independent living units.



The resident agreement shall have the following characteristics:

1. The term of the resident agreement shall be for the life of a subscriber (strike the proposed: "that is effective at least 30 days and") assuming the responsibilities of each party are maintained.
2. The resident agreement shall provide subscribers all of the rights and privileges of subscribers moving into other components of the CCRC.
3. The resident agreement includes provisions that ensure subscribers the right to occupy independent living, assisted living, or skilled nursing facility units and to move between such types of care at reasonable terms.
4. The resident agreement prohibits subscribers from inappropriately shifting assets with the intent of qualifying for medical assistance as consistent with Sec. 6015 of the Federal Deficit Reduction Act (DRA) of 2005 P.L. 109-171(S1932)(Feb. 8, 2006).

The additional provisions make it clear that the resident agreement defines the CCRC product as different and distinct from a stand-alone nursing facility contract. In addition, it references applicable federal law to ensure that subscribers do not inappropriately qualify for medical assistance and therefore preserving medical assistance for those citizens that need medical assistance as a last resort.

iii. The CCRC does not market its nursing facility component directly to the general public.

Provision iii., as written, is overly broad and has the potential of restricting important information about CCRCs to consumers. The nursing facility is a very important component of a CCRC. The CCRC should not be restricted from marketing its nursing facility as a component of the services it offers to the general public. It is important for consumers to understand and effectively evaluate all of the services provided by the CCRC.

We would suggest the following alternative language which does not restrict information available to consumers:

iii. The CCRC markets its nursing facility as a component of the larger CCRC.

The alternate language allows the CCRC to include the nursing facility in its overall marketing program to provide consumers information but ensures that the nursing facility services are a component of the larger CCRC product. The additional refinements to the definition of "entrance Fee" and "enforceable resident agreement" ensures that the CCRC product is separate and distinct from the stand-alone nursing facility product.

Overall, the suggested changes and refinements proposed support the Department's objectives of balancing important policy objectives, including integrating medical assistance with the continuum of care, controlling medical assistance costs and ensuring that medical assistance is the payor of last resort, and ensuring that the CCRC product is sufficiently distinct from the stand-alone nursing facility product.

If you have any questions or would like additional information, please contact me at 410-402-2211 or via electronic mail at adam.kane@erickson.com



Sincerely,

A handwritten signature in black ink, appearing to read "Adam E. Kane". The signature is fluid and cursive, with a large, prominent circle around the letter "E".

Adam E. Kane Esq.
Senior Vice President of Corporate Affairs

