

Esposito, John

2880

14-524-7

From: Sanchez-Roberts, G. Yvette
Sent: Monday, December 06, 2010 11:00 AM
To: Yocum, Marilyn S; Patrick, Judith A; Esposito, John
Subject: FW: 40 Pa.B. 6405-Participation Review Process for Medical Assistance Nursing Facilities
Attachments: Participation Review Process for MA Nursing Facilities Comment (12.6.10).doc

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-----Original Message-----

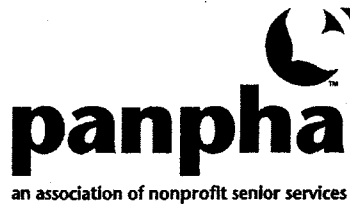
From: Nick Luciano [<mailto:Nick@panpha.org>]
Sent: Monday, December 06, 2010 10:09 AM
To: Sanchez-Roberts, G. Yvette
Cc: Russ McDaid
Subject: 40 Pa.B. 6405—Participation Review Process for Medical Assistance Nursing Facilities

Ms. Sanchez-Roberts:
Please accept the attached document as PANPHA's comment to the proposed Participation Review Process for MA Nursing Facilities.

If you have any questions or concerns, please do not hesitate to contact me.

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December 6, 2010

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Department of Public Welfare
Office of Long Term Living
Attention: Yvette Sanchez-Roberts
Forum Place 5th Floor
555 Walnut Street
Harrisburg, PA 17105

Re: 40 Pa.B. 6405—Participation Review Process for Medical Assistance Nursing Facilities

Ms. Sanchez-Roberts:

In response to the Department's Proposed Regulatory Revision regarding Nursing Facility Services, PANPHA provides the following comments.

PANPHA is an association of Pennsylvania non-profit aging services providers, representing approximately 230 licensed nursing facilities in Pennsylvania. The vast majority of these facilities participates in the Medicaid program and will be impacted by the Department's proposed change. 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 a consumer's ability to age in place, and receive care in an environment that they can call home.

It is our contention that these proposed revisions fall short in providing consumers a meaningful ability to age in place. PANPHA, almost exclusively, represents Pennsylvania's Continuing Care Retirement Communities (CCRC's). CCRC's have quickly become a highly desired setting by the public due to the built-in concept of aging in place. Individuals enter into an agreement with the provider, whereby the individual can progress through the full continuum of care, from independent living to skilled nursing care, while remaining in one community. This is the essence of aging in place—remaining in the environment you call home, while receiving care in the safest and most appropriate setting practical.

The CCRC's promise to care for its residents is for life. While the financial assets and ability to pay for services is screened and projected at admission, residents will often spend down their assets more quickly than anticipated. Spending down can happen for a variety of reasons, such as an unforeseen medical incident demanding more intensive medical care, or the resident may simply outlive their resources. The reason for the spend down is immaterial; the end result is that the resident is impoverished and must rely on MA to fund their care. If the facility has full occupancy of its MA certified beds, then the provider has no recourse for caring for these individuals other than transferring them to another facility which has an MA vacancy.

PANPHA's concern is that the proposed revision is crafted for the benefit of the Department's Medicaid budget, and not for the benefit of Medicaid consumers. If Pennsylvania is to truly embrace the concept of aging in place, then it is incumbent upon the state to allow CCRC's to honor their commitment to their residents through a temporary certification. The CCRC exception included in the administration's current proposal would benefit a select few, if any, CCRC's in the Commonwealth. The requirements outlined in the definition of a "closed CCRC," as well as the provisions in Subsection 1187.176(a), are entirely too restrictive. Few, if any, spend-down residents of a CCRC would be assured access to an MA bed within the facility they have called home, and therefore we suggest a reexamination of the process provided for in Section 176.

With regard to specific provisions contained in the proposed Statement of Policy, PANPHA's comments are as follows:

1. CH. 1187.162 DEFINITIONS

CLOSED-CAMPUS CONTINUING CARE RETIREMENT COMMUNITY

Issue: The separate components paragraphs (A) and (B) of the requirements of subsection (i) of this provision should be separated by "or". Furthermore, an additional phrase should be included to allow for those CCRC's that do not have the beds on the same campus, but do provide the service within an appropriate radius.

Proposed Language:

- (i) The CCRC has a nursing facility component that is either:
 - (A) Located on the same campus as the CCRC's independent living units; or
 - (B) Identified in the CCRC's Disclosure Statement and Resident Agreement under the CCRC Act **and located no more than 30 miles from the campus on which the CCRC's independent living units are located.**

2. SECTION 1187.172(a)(4) COMPLIANCE HISTORY.

Issue: PANPHA fully supports the notion that to warrant an expansion of its complement of MA certified beds, that a provider should meet a certain threshold of quality and safety. However, some of the language contained in this paragraph should be revised in order to more clearly convey the minimum standards that the government deems necessary.

Two sub-paragraphs that should be edited include (C) and (D) of provision (a)(4)(iii). The use of the phrase remedies could indicate any violation at all for which a plan of correction has been submitted. Violations requiring plans of corrections can be of minimal scope and severity, and have little relevance to the quality of care provided at a facility. For this reason, we suggest that attention be focused on those violations that lead to the imposition of fines.

Proposed Language:

- (C) The facility was subject to the imposition of ~~imposition of~~ civil monetary penalties, ~~sanctions, or remedies~~ for **repeated** resident rights violations.
- (D) The facility was subject to the imposition of ~~remedies~~ **civil monetary penalties** based on the failure to meet applicable Medicare and Medicaid Program participation requirements, and the facility's deficiencies **resulting in the imposition of the penalties** were graded as Immediate Jeopardy to Resident Health and Safety.

3. SECTION 1187.173(d)(2) REVIEW AND PUBLIC PROCESS RELATING TO BED REQUESTS.

Issue: PANPHA wholly endorses the transparency in the process outlined in this regulation. In fact, PANPHA requests that the transparency be expanded to those commenting on bed requests. Any and all comments submitted to the Department in associated with bed requests, bed transfers, and close-campus CCRC bed requests should also be made available to the public. This is done in any regulatory process through the Independent Regulatory Review Commission, and it is our belief that this level of openness is appropriate.

Proposed Language:

173(d)(2) Following the close of each 6-month request period, the Department will post online a list of bed requests, other than bed transfer requests and closed-campus CCRC bed requests, included in the group under consideration. The Department will make copies of the requests in that group available for review by the public during regular business hours, and will accept written comments related to the requests in the group for a 30-day period following the date that the notice is posted online. **Comments received by the Department shall be posted online with the bed request and shall remain posted until a decision is rendered by the Department.**

173(d)(3) No later than 15 calendar days following the last day of each calendar month, the Department will post online a list of bed transfer requests and closed-campus CCRC bed requests received by the Department during that calendar month. The Department will make copies of the requests for that calendar month available for review by the public during regular business hours, and will accept written comments related to the requests for a 15-day period following the date that the notice is posted online. **Comments received by the Department shall be posted online with the bed request and shall remain posted until a decision is rendered by the Department.**

4. SECTION 1187.174(3) DATA RELATING TO THE AVAILABILITY OF HOME AND COMMUNITY BASED SERVICES.

Issue: While PANPHA is committed to the expansion and full funding of all senior services, it is unclear how the availability of Home and Community Based Services (HCBS) is relevant in determining whether a facility is in need of expansion in the number of its MA certified beds. As PANPHA has indicated, Pennsylvania is going to need the expansion of both HCBS and nursing facility bed availability. The one does not necessitate the preclusion of the other. Additionally, a resident of a facility who has spent down their private assets and now is eligible for MA should not be deprived the opportunity to stay in the place they have called home for years, and not be allowed to age in place, simply because HCBS are available in the geographic area.

Proposed Language: PANPHA requests that this paragraph be stricken in its entirety.

5. SECTION 1187.174(5) DATA RELATING TO ADMISSION AND DISCHARGE.

Issue: The data requested by the Department regarding admission and discharge of the provider, and the providers within the primary service area, appears to be unrelated to the matter of whether there is adequate access for Medicaid eligible individuals. The Department has not made the relationship of this data to the purpose of the regulation clear. Perhaps if the nexus were more apparent, the provider community could assist the Department in acquiring data more relevant to the matter at hand.

Proposed Language: PANPHA asks that this paragraph be stricken in its entirety.

6. SECTION 1187.175(a)(7) CRITERIA FOR THE APPROVAL OF BED TRANSFER REQUESTS.

Issue: PANPHA's concern is that the proposed revision is crafted for the benefit of the Department's Medicaid budget, and not for the benefit of Medicaid consumers. This paragraph necessitates that many MA recipients will be denied access to medically necessary care in the place they call home because it will "increase the costs to the MA Program." This should not be the focus of the Department. Rather, the Department should be concerned with delivering the medically necessary care in the place that individual wants.

Proposed Language:

175(a)(7) Approval of the bed transfer request will not result in increased costs to the MA Program that are unrelated to improve or maintain access to care.

7. SECTION 1187.175(b)(2) CRITERIA FOR THE APPROVAL OF BED TRANSFER REQUESTS.

Issue: PANPHA believes that the focus should be on the needs of the recipient and not on the cost to the MA program. PANPHA suggests a change in the language to reflect that focus.

Proposed Language:

175(b)(2) There are alternatives to the transfer of beds, such as an increase in home and community-based services, that would be ~~less costly, more efficient or~~ more appropriate in assuring that long-term living care and services will be provided under the MA Program in a manner consistent with applicable Federal and State law.

8. SECTION 1187.176(a)(4) CRITERIA FOR THE APPROVAL OF CLOSED-CAMPUS CCRC BED REQUESTS.

Issue: This provision is unduly limiting, arbitrary, and not reflective of industry practice. The ratio of 17:1, independent living units to nursing facility beds is extraordinarily high. PANPHA members have indicated that a ratio at this level does not accurately reflect the historical development of existing CCRC's and would effectively make the availability of a transfer non-existent.

Proposed Language: PANPHA asks that this paragraph be stricken in its entirety.

9. SECTION 1187.176(b)(2) CRITERIA FOR THE APPROVAL OF CLOSED-CAMPUS CCRC BED REQUESTS.

Issue: PANPHA believes that the focus should be on the needs of the recipient and not on the cost to the MA program. PANPHA suggests a change in the language to reflect that focus.

Proposed Language:

176(b)(2) There are alternatives to the transfer of beds, such as an increase in home and community-based services, that would be ~~less costly, more efficient or~~ more appropriate in assuring that long-term living care and services will be provided under the MA Program in a manner consistent with applicable Federal and State law.

10. SECTION 1187.177(a)(3)(ii) CRITERIA FOR THE APPROVAL OF BED REQUESTS OTHER THAN BED TRANSFER OR CLOSED-CAMPUS BED REQUESTS.

Issue: This provision places an unreasonable burden on the facility by imposing an artificial application of a mandated percentage of MA residents. This would prevent some homes from expanding their complement of beds, even if all of the newly requested beds were to be reserved for MA-eligible residents, simply because the facility's previous census had an uncharacteristically low percentage of MA residents. Enforcement of this provision would

effectively tether those facilities with currently low MA occupancy, not allowing them to expand their outreach to MA-eligible individuals in any meaningful way, and could take a great number of years for such facilities to break free.

Proposed Language: PANPHA asks that this paragraph be stricken in its entirety.

11. SECTION 1187.177(a)(3)(iv) CRITERIA FOR THE APPROVAL OF BED REQUESTS OTHER THAN BED TRANSFER REQUESTS OR CLOSED-CAMPUS CCRC BED REQUESTS.

Issue: The imposition of this requirement is troublesome, and PANPHA questions whether the Department can legally enforce this provision.

Proposed Language: PANPHA asks that this paragraph be stricken in its entirety.

12. SECTION 1187.177(c)(2) CRITERIA FOR THE APPROVAL OF BED TRANSFER REQUESTS.

Issue: PANPHA believes that the focus should be on the needs of the recipient and not on the cost to the MA program. PANPHA suggests a change in the language to reflect that focus.

Proposed Language:

177(c)(2) There are alternatives to the transfer of beds, such as an increase in home and community-based services, that would be ~~less costly, more efficient~~ or more appropriate in assuring that long-term living care and services will be provided under the MA Program in a manner consistent with applicable Federal and State law.

PANPHA would like to sincerely thank the Department for the opportunity to submit comment on this proposed draft regulatory revisions. PANPHA has endeavored to provide the Department with a comment that is as comprehensive as possible, given the constricted timeframe. We will continue to examine the proposal, and look forward to a more full exchange of ideas as we advance through the regulatory process. However, we urge the Department to thoughtfully consider the comments outlined above, and to incorporate the accompanying proposed amendments.

Sincerely,



W. Russell McDaid
V.P. of Public Policy
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