

Esposito, John

2880

14-524-8

From: Gail Weidman [gweidman@phca.org]
Sent: Monday, December 06, 2010 11:03 AM
To: AI, ParticipationReview
Cc: Stuart Shapiro; Anne Henry
Subject: Regulation No. 14-524 Comments
Attachments: PHCA_PR_Reg_Comments_12062010.pdf

RECEIVED
IRRC

2010 DEC -8 P 1:30

Please accept the attached comment letter regarding the Department's final-form regulation Participation Review Process for Medical Assistance Nursing Facilities Reg. No. 14-524 submitted on behalf of PHCA. Thank you.

Gail Weidman
Director of Policy and Regulatory Affairs
PHCA/CALM
717-221-7931
gweidman@phca.org

14-524-8

"The future of long term care"



RECEIVED
IRRC

2010 DEC -8 P 1:30

December 6, 2010

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

Re: Regulation No. 14-524

Dear Ms Sanchez-Roberts,

Please accept the following comments to the Proposed Participation Review Process for Medical Assistance Nursing Facilities regulation submitted by the Pennsylvania Health Care Association (PHCA). PHCA represents approximately 325 long term care and senior service providers throughout Pennsylvania. Our members offer care and services along the full continuum, including independent living, nursing facilities, assisted living residences, personal care homes, and home health and home care service providers.

Although we appreciate the fact that the Department amended some of the provisions contained in the proposed regulation as a result of the comments PHCA submitted by letter dated May 3, 2010 on the Department's draft regulation, we are dismayed and disappointed to see that the Department neglected to make any significant amendments to the provisions that we were and continue to be most concerned with; the provisions related to the Closed-Campus CCRCs. Additionally, we continue to have concerns relating to the Bed Transfer Requests as well as the Compliance History requirements. Finally, we continue to have questions and concerns related to other provisions of the proposed regulation such as the public process provisions and the approval criteria for the different types of bed requests.

Our specific concerns, questions and recommended amendments are highlighted below.

Closed-Campus Continuing Care Retirement Communities. First and foremost, PHCA opposes the inclusion of a separate set of standards and processes for the CCRC portion of nursing facilities and respectfully requests that the provisions be deleted from the proposed regulation. We continue to be puzzled as to why the Department would want to establish a process that offers a strategic advantage to one small segment of nursing facilities, and in doing so provides disincentives and potential harm to current MA nursing facilities that have a long standing

history of providing quality care to Pennsylvania's MA recipients in need of nursing home care. These provisions will, among other things, increase the public dollars needed to fund MA nursing facility services while providing no benefit to indigent consumers or MA Day-One eligible recipients. It is our opinion that this provision as written will only ensure services to those individuals that "spend down" in the independent living areas of the CCRC. Furthermore, the language as drafted does not include any safeguards from CCRC's structuring entrance fees so that consumers may quickly spend down resulting in the addition of individuals to the MA roles in an expedited manner.

Even though PHCA is categorically opposed to Closed-Campus CCRC provisions that in any way differ from the standard process applied to all other nursing facilities that seek to add MA beds into the system, we note the following flaws and inconsistencies in the Department's proposed provisions related to Closed-Campus CCRCs:

§1187.173 Review and public process relating to bed requests.

- As written the provisions contained in subsection (b) of this section only apply to Bed Transfer requests therefore based on the definition of a bed request a Closed-Campus CCRC bed request would be subject to the provisions contained in subsection (a) which provides for the review of Closed-Campus CCRCs by groups as required for all other bed requests that seek to add MA beds into the system. As previously stated PHCA supports this requirement; however we are concerned that the provisions contained in subsection (d) which establishes the public process for the bed requests are not consistent with this review process as it relates to Closed-Campus CCRC bed requests. Under the public process provisions Closed-Campus CCRC bed requests are treated in the same manner as bed transfer requests by providing for a monthly posting and a 15-day public comment period, this is in direct conflict with the review provisions contained in subsection (a) and (b). If the Department does not remove the CCRC provisions from the final-form regulation, as previously requested, the Department must amend the provisions contained in (d)(3) to only apply to bed transfer requests and the provisions contained in (d)(2) to include Close-Campus CCRC bed requests.

§1187.176 Criteria for the approval of closed-campus CCRC bed requests.

- To require providers that fall under the bed transfer provisions (See §1187.175(a)(2)) to agree to achieve and maintain a certain "MA Day-One" admission rate with absolutely no requirement for any "MA Day-One" admissions in the "Closed-Campus CCRC" provisions gives significant differential treatment to one class of providers. The MA Day-One requirement for Closed-Campus CCRC requests must be consistent with the requirements placed on any other nursing facility provider seeking to add MA beds.
- As noted in our prior comments, PHCA requests that the Department provide information on how they will monitor whether or not the closed-campus CCRC continues to meet the definition as provided for in paragraph (a)(5).

Bed Transfer Requests. PHCA continues to have concerns regarding the provisions related to bed transfer requests. The bed transfer provisions contained in the proposed regulation are written in a manner that will limit a provider's ability to make modifications to their physical plant in response to consumer demand for a friendlier homelike environment, provide the highest quality of care and meet regulatory expectations. As indicated in our comments on the draft regulation we are perplexed about the intent of the provisions as written and are seeking clarification on a number of the provisions. Below is a listing of our questions/concerns and recommended amendments to the provisions related to bed transfer requests.

§1187.175 Criteria for the approval of bed transfer requests.

- *Approval Criteria (a)(1) – (8).* PHCA requests clarification on how the approval criteria will be applied to bed transfer requests. Is it the Department's intent to disapprove a bed transfer request if they do not meet all of the criteria contained in paragraphs (1)-(8) or is there room for flexibility in all or any of the requirements? For example, if an applicant's request, as submitted, does not include all of the information will the Department request the additional information from the applicant or review the request based on the information provided and disapprove on the basis of incomplete information. PHCA recommends that the Department provide some flexibility in the provisions to allow the exchange of information between the applicant and the Department as well as exceptions to the established provisions.
- *MA Day-One admissions (a)(2).* Please clarify the point in time of the surrendering facility's MA Day one admission rate that the receiving facility's MA Day one admission rate will be required to meet or exceed.
- *Peer group (a)(5) and (6).* When PHCA reviewed the draft regulation we asked for clarification on the provisions related to peer groups. We believe that paragraph (6) was added to the proposed regulation to address our questions, however the provisions regarding peer grouping continue to be unclear and therefore we have reiterated our questions below.
 - If the bed transfer request would result in one of the nursing facilities changing peer groups, will the request be disapproved for that reason? Or is it the intent that if the bed transfer request was approved that both the receiving and the surrendering nursing facilities would remain in their peer groups prior to the bed transfer?
- *(b) May Deny.* PHCA continues to seek information on the following: (1) How will the Department determine whether or not the request will negatively affect the Department's goal to rebalance the long-term living delivery system? (2) How will this be measured? Will the Department consider the negative impact on the affected NFs as part of the determination?

- The proposed regulation is silent on the issue of capital component payment in situations where the surrendering facility's beds being transferred are eligible for capital component payment. Specifically we are seeking clarification as to whether or not the Department intends to allow any capital component payment to follow the bed from the surrendering facility to the receiving facility. This information is important to facilities that are considering submitting a Bed Transfer request. PHCA would recommend that capital component payment follow the bed, but at a minimum requests that the Department include language in the regulation to address this issue.

Compliance History Provisions. PHCA continues to have concerns regarding the compliance history provisions contained in §1187.172(a)(4) (relating to contents and submission of bed requests). As we noted in our prior comments the language regarding licensure or participation sanctions and or remedies imposed on any other nursing facilities owned or controlled by the same applicant is too broad and unfairly penalizes large multi-corporations. It is unfair to evaluate Pennsylvania facilities to those in other states, when CMS will readily admit and data clearly shows that licensure surveys are inconsistent from state to state and vary considerably within regions in states. Holding Pennsylvania facilities accountable for the performance of facilities in other states will not serve to assure greater quality care or access to MA residents in this Commonwealth. PHCA therefore requests that the language regarding licensure of participation sanction and/or remedies imposed on any other nursing facilities owned or controlled by the same applicant, be limited to Pennsylvania facilities only.

Public process relating to bed requests. PHCA continues to have concerns regarding the provisions contained in §1187.173 (relating to review and public process relating to bed requests). As previously submitted we recommend that the Department shorten the decision timeframe for bed requests placed into groups. Currently if a NF submits a bed request in January, they do not get a decision until at least December. It is recommended that the Department consider developing 4 review groups such as 1/1 – 3/31 – decisions by June 30; 4/1 – June 30- decisions by September 30; July 1 – September 30- decisions by December 31; and October 1 – December 31 – decisions by March 31. This will be more responsive to the applicants' requests and continue to allow the Department to have decision groups.

As noted in our prior comments the provisions in subsection (c) provide the opportunity for the applicant to request an expedited review. We request that the Department clarify or provide examples of good causes that would constitute an approval for an expedited review.

PHCA requests that the Department provide detailed information regarding the online workbook such as where the workbooks will be posted, how applicants will be made aware of their availability, the timing for posting of the workbooks and the timing of the data included in the workbook. In addition, we recommend that the workbook specifically contain the day-one MA days and the occupancy for the county and Commonwealth.

Additionally, we request that the Department provide detailed information regarding the publication of and public comment period for bed requests, such as where the bed requests will be posted online, how applicants will be made aware of their availability, and whether the

applicant will have the opportunity to review and respond to the comments the Department receives on their bed request.

Consideration of bed requests (§1187.174). If the Closed-Campus CCRC provisions are maintained in the final-form regulation clarification must be provided as to whether any new MA beds added as per the proposed CCRC provisions would be used when determining the need for additional MA beds and the occupancy rates of MA beds in either the county or primary service area in the bed request review process. PHCA specifically requests that if the CCRC provisions remain as part of the final regulation, when determining the need for additional MA beds and the occupancy rates of MA beds in either the county or primary service area, the MA beds located in the CCRCs NOT be included in that determination.

- *Specialized medical services (7).* PHCA is seeking information on how the Department intends to assure that a nursing facility that requests new MA beds to provide specialized services will then actually provide that service? Does the Department plan to decertify MA beds if a provider does not fulfill the specialized services that were proposed in the bed request?

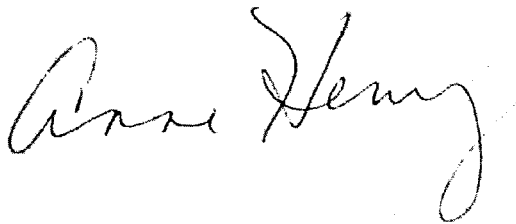
Criteria for the approval of bed requests other than bed transfer requests or closed-campus CCRC bed requests (§1187.177).

- *Approval Criteria (a)(1) – (4).* As we inquired under the provisions on the approved criteria for bed transfer requests (1187.175 a (1)-(8)), PHCA also requests clarification on how the approval criteria will be applied to bed requests. Is it the Department's intent to disapprove a bed request if they do not meet all of the criteria contained in paragraphs (1)-(4) or is there room for flexibility in all or any of the requirements. For example, if an applicant's request, as submitted, does not include all of the information will the Department request the missing information from the applicant or review the request based on the information provided and disapprove on the basis of incomplete information. PHCA recommends that the Department provide some flexibility in the provisions to allow the exchange of information between the applicant and the Department as well as exceptions to the established provisions.
- (b)(1) and (b)(2) PHCA continues to be concerned that the 95% occupancy threshold is too extreme. If a facility is at 95% occupancy they literally do not have room to admit new residents. This is often a result of residents needing private rooms due to medical conditions or simply the need for male or female beds. We urge the Department to consider adopting an occupancy threshold of "less than 90%" in (b)(1) and "90% or greater" in (b)(2).
- (c) *May deny* PHCA continues to seek information and clarification on the following: (1) How will the Department determine whether or not the request will negatively affect the Department's goal to rebalance the long-term living delivery system? (2) How will this be measured? Will the Department consider the negative impact on the affected NFs as part of the determination?

In conclusion, PHCA has grave concerns regarding the special provisions provided for Closed-Campus CCRCs since this will add significant new costs to a state budget that is at a critical breaking point and strongly urges the Department to remove these provisions or amend them in a manner that does not result in special treatment of one small class of nursing facilities. We are prepared to work with the Department to develop a final regulation that meets the goals of the Department while at the same time allows providers the flexibility to make operational changes to their facilities in a streamline fashion.

If you have any questions regarding our comments, please contact me at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Anne Henry". The signature is written in black ink and is positioned above the typed name.

Anne Henry

Chief Operating Officer