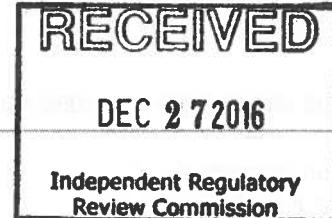


3160

14-540-270

Kroh, Karen

From: Mochon, Julie
Sent: Wednesday, December 21, 2016 8:49 AM
To: Kroh, Karen
Subject: FW: Final Rule on Home and Community Based Services



From: Roy Diamond [mailto:roy@diamondandassociates.com]
Sent: Tuesday, December 20, 2016 4:37 PM
To: Mochon, Julie
Subject: Final Rule on Home and Community Based Services

Please receive this comment in response to the identified provision in the proposed Final Rule on Home and Community Based Services.

Reference Regulation No. 14-540 (IRRC #3160)

Section 6100.447(b) of the proposed rule states,

"(b) No more than 10% of the units in an apartment, condominium or townhouse development may be funded in accordance with this chapter."

In short, a physically, mentally, developmentally, or intellectually disabled person who seeks to lease (or, presumably, purchase) an apartment or home within any development in which 10% of the units are already occupied by disabled persons enrolled in a Medicaid Waiver has to choose between the unit and keeping his/her Medicaid services. The burden is not on the developer, landlord or seller. DHS's interpretation of CMS' guidance is to force persons with disabilities to face this "Sophie's Choice". Doing so could be grounds for a challenge on a Fair Housing basis.

This is also a profound "unfunded mandate", in that in order to create this ideal world in which no community has more than 10% persons with disabilities, much more in the way of quality affordable housing opportunities for persons with disabilities must be built. In the meantime, adults with disabilities will continue to live in institutions or at home, or, more likely, distressed locations where the reach of DHS's review does not extend.

Following Brian Hudson's and Ted Dallas' joint announcement of DHS -PHFA collaboration to expand quality housing opportunities for persons receiving DHS services, one of the investments both agencies made was to pair DHS clients with HUD's Section 811s in PHFA financed communities. As I understand it, As you know, the use of 811s restricts the "formal set aside or preference" for persons with disabilities to 25% of the units. Given the existing federal, state and local laws that require that 5% of every unit be fully ADA accessible, plus PHFA's requirement of a 90 day leasing preference (and subsequent waiting list preference) for people with physical disabilities, the 811 limitation still left 15% of the units for persons with other disabilities who are enrolled in Medicaid Waivers.

Moreover, this window for persons with intellectual, developmental, and mental disabilities is reduced to 10% if the community is in an urban location and the developer elects to double the accessible units. Given the scarcity of the 9% LIHTCs, most urban developer's select this option in order to score well. So, past and proposed PHFA LIHTC communities in Pittsburgh, Philadelphia, Erie, Wilkes Barre and other urban areas will not be available to Waiver enrollees with intellectual, developmental, or mental disabilities. Of course, they can enter into a lease in those communities, as long as they terminate their services.

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DHS's proposed 10% restriction virtually eliminates the opportunity for Medicaid Waiver enrollees with non-physical disabilities to live in PHFA LIHTC urban communities. It also minimizes that opportunity to 5% of the units in non-urban locations.

The proposed rule appears to undermine the purpose of the PHFA-DHS collaboration. It also chokes off a source of quality, affordable housing opportunities for non-physically disabled adults and children.



****WE HAVE MOVED! SEE OUR NEW ADDRESS BELOW!****

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