Glendening, Erin

From: Brown, Elizabeth
Sent: Friday, August 15, 2014 3:19 PM
To: Fisk, Kelli
Subject: FW: Comments from AHHC to SHCC Petitions

fyi

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From: Tim Rogers [mailto:timrogers@homeandhospicecare.org]
Sent: Friday, August 15, 2014 3:18 PM
To: Brown, Elizabeth
Cc: Tim Rogers
Subject: Comments from AHHC to SHCC Petitions

Memorandum:

TO: Elizabeth Brown, Planner, MFPS

FROM: Tim Rogers, President &CEO, Association for Home and Hospice Care of North Carolina

RE: Comments regarding SHCC Petitions

DATE: August 15, 2014

I am Tim Rogers, President and CEO of the Association for Home and Hospice Care of North Carolina and the South Carolina Home Care and Hospice Association. I will be commenting today on the three Hospice adjusted need determination petitions as well as the two Home Health special needs Petitions on behalf of AHHC of NC. AHHC-NC is a 42 year old non-profit trade association proudly representing over 98% of the Medicare certified skilled Home Health Agencies, Hospice Home Care Agencies, and Hospice Inpatient Facilities. I have been the President and CEO for 13 years and a total of 22 years' experience in the home health care and hospice care industry. Some of my comments will be based also on the fact that for nine years, I worked in senior management positions for two of North Carolina's largest dually certified Home Health and Hospice agencies in capacities ranging from Regulatory Affairs, Strategic Planning, and Director of Marketing with an emphasis on Hospitals and Physician Practices. Also, I have many years' experience in writing successful CON applications as well as testifying before SHCC and CON public hearings. I proudly served as SHCC member from 2003—2009.

HOSPICE:

- Petition for an Adjusted Need Determination for Three Hospice Inpatient Beds for Burke County
- Petition for Special Need Adjustment for Inpatient Hospice Beds in Caldwell County
- Petition for Special Need Adjustment for Inpatient Hospice Beds in Richmond County

When I served on the Council, I along with others helped lead a major education initiative to the fact North Carolina was woefully below the national average in hospice inpatient beds for our growing population. The SHCC began to learn of the unique needs of hospice through the standard methodology as well as through the usage of adjusted needs or special needs petitions. Every SHCC since 2003 has been extremely open and flexible to many of the various Hospice petitions. Today, I ask you as well as the SHCC to both remember the history of hospice support over the years and the strong support of each of the three petitions.

Burke Hospice is one of North Carolina's oldest and serves a unique rural community in and around Valdese. The nearest hospices are over 35-60 miles away which is burdensome for some families. Birgit Lisanti, CEO, made an impassioned plea before the Raleigh Public Hearing and eloquently answered each question. I, too, testified in favor of Burke Hospice. Burke has the strong support of the health care community and many citizens.

The other two petitions, Richmond County and Caldwell County, have many of the same merits and unique circumstances….rural, long history of excellent patient care, clinical excellence, support of families after a loved ones' passing, and support of the health care community and many citizens. Cathy Swanson of Caldwell County is a state and national leader in hospice and much of the same came be said for the professional staff of Hospice of Richmond County. Plus, another similarity is that all 3 petitions have my strong personal and professional support. I urge support for all 3 to be approved.

HOME HEALTH

- Petition to Adjust the Need Determination to Allocate an Additional Home Health Agency in Wake County
- Petition for an Adjusted Need Determination for one Medicare-certified home health agency in the Triangle Area committed to coordinating post-acute care with an orthopaedic surgery program

The Standard methodology for Home Health calls for no need for another Medicare/Medicaid certified Home Health Agency. In fact, the Home Health methodology was recently modified and AHHC strongly supports the proposed Chapter 12 for Home Health. There are over 28 well established, home health agencies serving Wake County

and are accredited by one of the three national accrediting bodies –JCAHO, CHAP, and ACHC. Myriad's petition is a duplication of existing services as existing agencies are serving all populations and impose language translation services as required by CMS and Medicare. Myriad is allow to accept Medicaid reimbursement for in home aide services and could seek further Medicaid reimbursement if approved for the state's PDN program. Myriad could also continue to seek the purchase of an HHA or await a year when real need is shown. There simply is no justification for another agency in Wake County. For many reasons, AHHC opposes this petition.

I know of the excellent reputation of Triangle Orthopedics as an outstanding physician practice and the fact many home health agencies provide excellent home health services to their patients upon discharge. Regarding this petition by Triangle orthopedics for a home health agency to coordinate post-acute care with an orthopedic surgery program, this petition is both troubling and could run afoul with CMS's Home Health Conditions of Participation, North Carolina's Licensure for Home Care Agencies, and potential OIG and Stark Law violations. Particularly troubling is Stark law: the practice indicates in its petition that it will fully comply with Stark law which prohibits physician direct or indirect ownership of a home health agency to which the physician refers patients or orders care. At this time, I do not see how they can comply under current CMS federal guidelines. In other words, they should have explained how it is possible for them to serve Medicare patients and show proof of CMS allowance. Saying they will comply with Stark is not enough and troubling. The Federal government has shut down numerous physician owned home health agencies over the past decades. Also, there are numerous CMS approved bundling demos that operate fully and smoothly with integrated physicians, hospitals, and existing home health agencies. In fact, Ownership and control is not needed to achieve successful care integration nor is it allowed at this time.
The bundling demonstration project by this practice will be just as successful utilizing the oversupply of existing, home health agencies serving Wake County. AHHC urges the SHCC to be extremely cautious in not confusing innovative projects with ones that could run afoul with state and federal law. AHHC opposes this petition and urges denial. Also see some citations below.

15.4.1.6 - Home Health Agencies (HHAs)
(Rev. 416, Issued: 04-13-12, Effective: 02-27-12, Implementation: 02-27-12) A. General Background Information An HHA is an entity that provides skilled nursing services and at least one of the following therapeutic services: speech therapy, physical therapy, occupational therapy, home health aide services, and medical social services. The services must be furnished in a place of residence used as the patient's home

They can't self-refer and they can't just provide therapy as an home health agency

Section 1877 of the Social Security Act (the Act) (42 U.S.C. 1395nn), also known as the physician self-referral law and commonly referred to as the "Stark Law":

1.Prohibits a physician from making referrals for certain designated health services (DHS) payable by Medicare to an entity with which he or she (or an immediate family member) has a financial relationship (ownership, investment, or compensation), unless an exception applies.

2.Prohibits the entity from presenting or causing to be presented claims to Medicare (or billing another individual, entity, or third party payer) for those referred services.

3.Establishes a number of specific exceptions and grants the Secretary the authority to create regulatory exceptions for financial relationships that do not pose a risk of program or patient abuse.

The following items or services are DHS:
1.Clinical laboratory services.
2.Physical therapy services.
3.Occupational therapy services.
4.Outpatient speech-language pathology services.
5.Radiology and certain other imaging services.
6.Radiation therapy services and supplies.
7.Durable medical equipment and supplies.
8.Parenteral and enteral nutrients, equipment, and supplies.
9.Prosthetics, orthotics, and prosthetic devices and supplies.
10.Home health services.
11.Outpatient prescription drugs.
12.Inpatient and outpatient hospital services.

§484.14(a) Standard: Services Furnished

Part-time or intermittent skilled nursing services and at least one other therapeutic service (physical, speech or occupational therapy; medical social services; or home health aide services) are made available on a visiting basis, in a place of residence used as a patient's home

Thank you for consideration of our support for the 3 hospice petitions and denial of the 2 home health petitions.

Tim Rogers

Timothy R. "Tim" Rogers, *President & CEO*
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Member – HCAOA (formerly NPDA)