From: Trent Cockerham
To: DHSR.SMFP.Petitions-Comments
Subject: [External] Comments to Leading Age Petition
Date: Thursday, March 22, 2018 11:13:47 AM

Dear Council Members:

After careful review of Leading Age of North Carolina's (Petitioner) petition for the change of North Carolina's State Medical Facilities Plan – Policies Applicable to Home Health Services (HH); I appreciate the opportunity to provide the following comments for consideration by the State Healthcare Coordinating Council:

- Without question, there has been a greater shift towards the provision of home and community-based healthcare services in recent years. While the empirical data related to expected growth in home health services is factual, the Petitioner presents no quantitative data to support their assertion that the quality of services available to residents of a CCRC will diminish in the future as a result of the increased demand nor has the Petitioner shown an appreciable lack of service availability for current CCRC residents. Furthermore, the Petitioner offers no quantitative or qualitative data convincing of the need for a change in the State's Medical Facilities Plan for Home Health Services based on quality measures.
- The Petitioner proffers an existing SMPF exclusion and Certificate of Need (CON) precedent as a basis for the need to change or amend the home health need determination. In fact, the precedent to which the Petitioner refers is for services CCRC's are required to provide and extends only to services provided in a setting for which finite capacity is assigned. In an oversimplified illustration, for example, a 100 – bed facility of any level of service may serve no more than a maximum of 100 persons at any point in time. Even though the Petitioner attests that CCRC's would provide Home Health services only to those individuals with whom the CCRC has a contract pursuant to the applicable NC Department of Insurance rules and regulations, there exists no reasonable check and balance to ensure a CCRC which may develop a Medicare-certified Home Health Agency would serve only those individuals for whom they have a CCRC contract. State regulation alone, would not suffice in the case of a Medicare-certified Home Health Agency. The Medicare program has no regulatory authority to restrict a Medicare-certified Home Health Agency's ability to provide services solely to an individual with whom a CCRC maintains a contract thus creating a distinct disadvantage to existing Medicare-certified home health providers which operate due to their having received a CON pursuant to the existing CON need determination and application process.
- The Petitioner acknowledges that currently many individuals living in a CCRC are receiving services from a Medicare-certified home health agency with current CON's, but offers no evidence of a CCRC's attempt(s) or inability to either 1) compete for a home health CON under the current methodology or 2) acquire an existing Medicare-certified home health agency's CON and/or license. Similarly, the Petitioner does not offer any evidence of poor satisfaction among CCRC residents with current Medicare-certified Home Health Agency providers.
- The quality and safety metrics by which Medicare-certified Home Health agencies are measured are incomparable to those measures by which Skilled Nursing Facilities are measured. Accordingly, this is not a reasonable or compelling reason to create a home health needs determination exemption for CCRC's. The Petitioner asserts customer satisfaction as one of their primary arguments; yet they offer no qualitative or quantifiable data which supports their assertion that CCRC's would experience better patient outcomes than the outcomes of current Medicare-certified home health providers providing services to individuals living in CCRC's. In fact, the Petitioner has no material basis for their claim.
- The Petitioner's claim of increasing access is without merit and lacks any data sufficient to

illustrate their assertion that access to currently Medicare-certified home health agencies is hindered.

- Although the Petitioner acknowledges the importance of value, the petition is ostensibly absent any data which supports their supposition that 1) current Medicare-certified home health agency(ies) delivering services to CCRC residents are not providing healthcare value and 2) a CCRC-operated Medicare-certified home health agency would have better value metrics.

Beyond those components of the petition discussed above, it is worth noting the Petitioner makes no attempt to quantify the number of CCRC residents who would 1) be eligible for Home Health Services and 2) would choose to receive Medicare Home Health Services provided through their CCRC. Similarly, on page 10 of the petition, the Petitioner admits its intention to "[limit] the number of service providers caring for the CCRC population. . . " effectively eliminating competition and patient choice in the CCRC setting.

Contrary to the Petitioner's assertion this exemption would provide alleviation to the confusion and fragmentation of post-acute care, creating an exemption would only further fragment the healthcare marketplace. In fact, an article published on May 14, 2015 in the American Journal of Managed Care points to lapses in care quality and greater costs in highly fragmented systems. The lessening of CON protections in this one instance creates a precedent of systematic exemption which could be applied to other healthcare services currently subject to the CON statute(s). Paving the way for such exemptions, would adversely affect the cost curve for all payers, especially Medicare and Medicaid.

In short, the Petitioner is proposing a solution to a problem which does not exist.

I thank the members of the SHCC and the Division of Health Service Regulation (DHSR) for the opportunity to provide these brief comments. I am happy to provide any additional comments to DHSR or the SHCC in its review of the Leading Age Petition.

Sincerely,

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