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October 3, 2008

Ms. Gale Arden
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2249
P.O. Box 8016
Baltimore, MD 21244-8016

Dear Ms. Arden:

Thank you for the opportunity to comment on the "Draft White Paper: Proposing Changes to the 1915(c) HCBS Waiver Regulation through an Advance Notice of Proposed Rulemaking."

The American Health Care Association and National Center for Assisted Living (AHCA/NCAL) are committed to performance excellence and Quality First, a covenant for healthy, affordable, and ethical long term care. AHCA/NCAL represents nearly 11,000 non-profit and for-profit providers dedicated to continuous improvement in the delivery of professional and compassionate care for our nation's frail, elderly, and disabled citizens who live in nursing facilities, assisted living residences, subacute centers, and homes for persons with mental retardation and developmental disabilities.

Home and Community Based Characteristics

As AHCA/NCAL stated in commenting on the proposed regulations implementing Sec. 1915(i) of the Deficit Reduction Act, AHCA/NCAL has serious concerns about potential negative impacts on beneficiary choice and services that may occur through redefining home and community-based services (HCBS) options. As we noted in our previous comments (attached), the task of defining and describing Medicaid HCBS settings is extremely difficult, especially as this is CMS' first attempt to define HCBS settings. CMS should be very careful that the definitions and processes it designs to determine HCBS eligibility do not inadvertently disqualify particular types of community residential settings and thereby unduly constrain beneficiary choice of places in which to live and receive services.

It is important that vulnerable Medicaid beneficiaries who are eligible for Medicaid HCBS retain access to as wide a range as possible of housing and services alternatives under the 1915(c) waiver program. Like other populations using long term care services, Medicaid beneficiaries have a wide range of needs and preferences. While AHCA/NCAL agrees that it is important that living environments should be as home-like as possible and should foster individuals' dignity, autonomy, and independence, we also think that it would be a mistake to remove residential options, such as assisted living communities, that currently serve beneficiaries and are the preferred residence of some individuals. Restricting options on this part of the long term care spectrum would eliminate true choice for beneficiaries.

The marketplace already is witnessing a decrease in residential options for Medicaid beneficiaries. A recent federal government report, for example, states that the assisted living population served by the Medicaid program declined by 5 percent between 2004 and 2007, even as the overall assisted living population continued to grow. (See U.S. Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation, *Assisted Living and Residential Care Policy Compendium, 2007 Update*, by Robert Mollica and Kristin Sims-Kastelein of the National Academy for State Health Policy.)

Contributing to this decline in assisted living Medicaid coverage are inadequate state Medicaid reimbursement and the fact that Medicaid does not pay HCBS providers for housing, food, or utilities. These factors already have prompted some assisted living providers to exit the Medicaid program. Based on a survey of member providers, AHCA/NCAL estimates that, in states relying on Supplemental Security Income (SSI) checks to cover the cost of room and board for Medicaid beneficiaries, assisted living providers are being paid about \$10,000 below their annual costs for serving each Medicaid beneficiary. Given the unfolding national financial crisis and likelihood that state budgets will be sorely strapped for years to come, creating new regulatory barriers that could remove quality housing options for low-income seniors and individuals with disabilities is not a wise decision. Our concern extends beyond individuals who choose to live in assisted living communities to include individuals with developmental disabilities who choose to live in group homes that could be at risk of losing their status as HCBS providers under the potential regulations.

Limited Target Groups Served Per Waiver

While AHCA/NCAL agrees that developing separate 1915(c) waivers for each target group is tedious for states, we are concerned that the proposed solution to allow waivers for combined populations could create new and more serious problems. For example, we are unclear how this would not affect cost neutrality, particularly when CMS states that "States could experience higher costs if services are available across diagnostic target groups..." We think it would be useful to refer back to the original Notice of Rulemaking to learn why the requirement for separate waivers was created in 42 CFR 441.301 in the first place.

Conclusion

Like CMS, AHCA/NCAL believes that all individuals should receive their long term care services in the setting that best meets their preferences and needs. Attempts to define settings is an endeavor that must be taken carefully. We commend CMS for preparing and disseminating a white paper that describes identified problems and contemplated regulatory changes prior to potentially moving forward with an Advance Notice of Proposed Rulemaking.

Sincerely,



Bruce Yarwood
President and CEO, American Health Care Association



David Kylo
Executive Director, National Center for Assisted Living