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March 22, 2018

VIA ELECTRONIC MAIL

Email address: DHSR.SMFP.Petitions-Comments@dhhs.nc.gov

North Carolina Division of Health Service Regulation
Healthcare Planning and North Carolina State Health Coordinating Council
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Commenter:

Transitions LifeCare
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Regarding: Opposition to Petition Submitted by LeadingAge North Carolina proposed a policy change for home health (Chapter 12)

Dear Sirs and Madams:

Transitions LifeCare is writing to express our strenuous opposition to the petition filed by LeadingAge to create a policy change resulting in an exemption to the NC State Medical Facilities Plan (SMFP, Chapter 12) allowing Continuing Care Retirement Communities (CCRCs) to establish Medicare-certified home health agencies outside of the SMFP.



Background:

Transitions LifeCare is a home and community-based provider of Medicare-certified home health, home care, hospice, palliative care, and bereavement services providing care in and around the Triangle region of North Carolina. Founded in 1979, we have provided continuous nonprofit healthcare services for almost 40 years with the mission of enhancing care and quality of life without regard to the patient's ability to pay or their insured status.

Concerns regarding the petition:

We believe that the petition fails to meet the requirements for a policy change in three main categories is detailed below.

1. The proposed policy change would duplicate services and is not an efficient use of Medicare funds.
 - a. The proposal would allow the creation of Medicare-certified home health agencies where no home health need determination exists thus creating a duplication of existing services.
 - b. Such a duplication of services calls into question the economic viability of the CCRC-developed home health agency since sufficient consumer demand would not exist to sustain high quality provision of care.
 - c. The addition of the new CCRC-developed home health agency may serve to destabilize the market for existing home health agencies established in the market via the Certificate of Need (CON) methodology thereby undermining the efficient delivery of care and value, a principle of CON.
 - d. As the petitioner has self-established, there is neither anecdotal nor documented circumstances where CCRC residents have needed home health care and been unable to obtain it through existing home health providers. This strongly suggests that the petition is attempting to meet an unsupported healthcare demand.
 - e. If there is a future determination of unmet demand for home health care in a specific county, the current CON process would, through the existing methodology, create a need determination for that county creating an opportunity for the CCRCs to apply through the competitive process.
 - f. In circumstances where a county-wide need is not created by the current methodology, each CCRC can request a special need determination to address the specific needs of their community. We are unaware of any CCRCs pursuing special need determinations which suggests that the LeadingAge petition desires to circumvent the CON process rather than address unmet medical needs in the community.

2. The proposed policy change would serve to limit, if not eliminate, choice of home health providers within CCRC communities.
 - a. As the petitioner makes clear in their proposed policy change, the purpose of the requested exemption is to provide home health care to the residents of the CCRC. Such an exemption would essentially create a monopolistic provider of home health care focused on the captured CCRC audience. The functional impact of such an exemption would be the almost certain elimination of informed choice for the residents/patients within the CCRC. Such a chilling impact on patient choice is contrary to both the tenants of the CON process and Medicare regulations.
 - b. Additionally, the Medicare Fiscal Intermediary for North Carolina, Palmetto GBA, is unable to certify a Medicare home health agency for the service of only CCRC residents. In short, either a home health agency is Medicare certified or it is not. This runs contrary to the position within the petition which suggests that only CCRC residents would receive care from the CCRC-based home health agency.
 - c. The reduction, if not elimination, of choice and access is proven to reduce the quality and efficiency of care, increase costs, and stands in stark opposition to the long-established CON concept of a value-focused, competitive marketplace.

3. The proposed policy change would create an uneven and biased playing field for home health providers and would set the precedent for similar exemptions for other service providers.
 - a. Instead of requesting a change to CON methodology or making the case for a special need determination for a specific county or population, this petition requests the wholesale exclusion of a large group of providers (CCRCs) and would eliminate the inclusion of their service data in future SMFP development. This undermines the requirements of competitiveness and undermines the NC Healthcare Planning section's and the SHCC's future capacity to make informed determinations of need. We are concerned that the approval of the LeadingAge petition would serve to undermine the CON process in any county where a CCRC is present and create an environment that weakens the effectiveness of the CON process in its entirety.
 - b. The petition not only inappropriately requests that the SHCC place their proverbial thumb on the scale of competition among home health providers but would also serve, if successful, to establish a precedent for such exemptions in other types of health care, which would almost certainly result in similar future requests to other sections of the SMFP. The arguments presented in the petition are not limited to home health and may just as easily be applied to other providers such as hospice, surgical operating rooms, dialysis units, etc. We find this petition to be particularly problematic with respect to establishing a

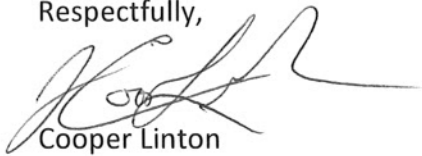
precedent since it seeks a substantive change to policy without defining the actual need for such a change. If the argument that CCRCs are inherently unique and deserving of exclusion from CON is supported, we can reasonably expect other providers to also make unsubstantiated claims of uniqueness necessitating further exemptions from CON compliance.

Conclusion:

Transitions LifeCare respectfully requests that the SHCC and DHSR Health Planning Section deny the LeadingAge petition for the reasons presented above. The impact of such an action would be to destabilize existing saturated markets, undermine patient choice, increase cost, reduce access, and fundamentally undermine the effectiveness of the NC CON process.

Thank you for the opportunity to present our comments and for the work that DHSR and the SHCC perform so admirably.

Respectfully,

A handwritten signature in black ink, appearing to read 'Cooper Linton', with a long horizontal flourish extending to the right.

Cooper Linton

VP of Marketing and Business Development