



KENTUCKY ASSOCIATION OF HEALTH CARE FACILITIES • REPRESENTING LONG TERM CARE IN KENTUCKY



June 30, 2015

Sent via electronic mail Diona.Mullins@ky.gov, return receipt

Diona Mullins
Policy Advisory
Office of Health Policy
275 East Main Street, 4W-E
Frankfort, Kentucky 40621

RE: KAHCF Comments to proposed amendment to 900 KAR 5:020

Dear Ms. Mullins:

The Kentucky Association of Health Care Facilities (“KAHCF”) appreciates the opportunity to submit written comments to the proposed amendment to 900 KAR 5:020, which updates the current 2013-2015 Kentucky State Health Plan (“SHP”). KAHCF is a member driven organization that proudly represents 226 proprietary, non-proprietary, and government-owned nursing facilities and personal care homes throughout the Commonwealth of Kentucky. KAHCF was one of several organizations responding to the Office of Health Policy’s request for stakeholder input on certificate of need (“CON”) modernization. KAHCF also participated in the listening session on the CON modernization efforts that was held on March 17, 2015.

By letter dated December 8, 2014, KAHCF filed written comments to the request for stakeholder input on CON modernization. In that letter, among other recommendations, KAHF recommended the following:

KAHCF supports Improving Access to Care. KAHCF supports the CON process for long-term care services. However, the Office of Health Policy should support innovation among providers and how they work together to serve the needs of their communities to benefit Kentucky as a whole. KAHCF recommends that the Office of Health Policy allow cooperating parties to transfer and sell licensed nursing facility beds from one county to another county as long as certain criteria are met.

KAHCF recommends that in order for licensed nursing facility beds to be moved out of one county to another county that the following conditions be met:

- (1) There is less than a 95% occupancy rate in the county from where the beds are transferred;**
- (2) There is at least a 95% occupancy rate in the county that will receive the licensed nursing facility beds; and**
- (3) No more than ten (10) beds can be transferred from one county to another.**
- (4) Bed transfers are limited to one time a year.¹**

This is a logical market-driven solution to access to care.

KAHCF appreciates the Office of Health Policy adopting its recommendation for allowing the transfer of beds based on county occupancy rates. However, KAHCF respectfully requests that the limitation, in Section III. A. 5. d., of the proposed updated SHP, be expanded beyond facilities that have an overall rating of 5-stars as reported by CMS' most recently published Nursing Home Compare. Although KAHCF applauds the Office of Health Policy's focus on quality, KAHCF firmly believes that limiting innovation to 5-star facilities only is too narrow of an approach and does not accomplish the overall goals of CON modernization in Kentucky.

KAHCF requests that the ability to receive beds be expanded to those facilities that also have 3 and 4-stars as reported by CMS' most recently published Nursing Home Compare. To support this request, KAHCF provides the following information.

1. Recent changes to the CMS 5-star program:

CMS rates nursing homes on three categories: results from onsite inspections by surveyors, performance on certain quality measures, and staffing levels. As the Office of Health Policy is aware, starting in February 2015, nursing home ratings also include: two quality measures – for short-stay and long-stay patients – related to antipsychotic use; improved calculations for staffing levels; results from onsite quality assessments surveys; and tougher standards for achieving a high quality measure rating. Because of this rebasing, nearly one in three nursing centers across the nation lost a star. In Kentucky, the impact of the rebasing was significant resulting in a total of fifty-eight (58) facilities dropping one or more stars. Twenty-two (22) facilities went from a 4-star rating to a 3-star rating. However, and most importantly, these changes in star ratings have nothing to do with changes in the quality of services being provided in the facilities.

Based on the recent changes in the CMS star rating methodology, KAHCF requests that a facility's ability to receive transferred beds be extended to those facilities operating at a 3 or above star rating.

2. New Medicare accountable care organization rule:

¹ The cooperating parties would file a "Notice of Intent to Transfer" with the Office of Health Policy, which could be challenged by an Affected Party. The occupancy rate in a county can also be challenged based on circumstances such as an unimplemented CON or closed facility with non-utilized beds.

Starting in 2017 for Track 3 ACOs, physicians have the option to send patients directly to a nursing center for skilled-nursing care, waiving the required three-day hospital visit that currently exists before Medicare will pay for skilled nursing. In order to qualify, the physician must refer the patient to a facility that **at least has 3-stars on Medicare's five-star rating scale**. In the new rule, Medicare recognizes the quality services being provided by not only 5-star facilities but also 3 and 4-star rated facilities.

KAHCF requests that the Office of Health Policy follow Medicare's lead and extend the transfer requirements to facilities that have at least 3-stars on Medicare's five-star rating scale.

3. **Kentucky-based ACO extends participation to facilities that are below 5-star rated facilities:**

On April 21, 2015, KentuckyOne Health Partners, part of KentuckyOne Health, announced that it was making strides in providing more "accountable, coordinated care for those in need of skilled nursing care in Lexington" by adding 10 skilled nursing facilities to the KentuckyOne Health Partners network, an ACO. Many of the 10 skilled nursing centers added to the KentuckyOne network rank below 5-stars, according to the most recently available data. KAHCF believes that this recognizes that a nursing center does not need to be a five-star facility to play and integral an important role in the continuum of care – as well as ensuring that individuals are receiving the best care in the best setting.

KAHCF requests that the Office of Health Policy follow the lead of the largest ACO in Kentucky and extend the requirement for receiving beds to facilities that at least have 3-stars on Medicare's five-star rating scale.

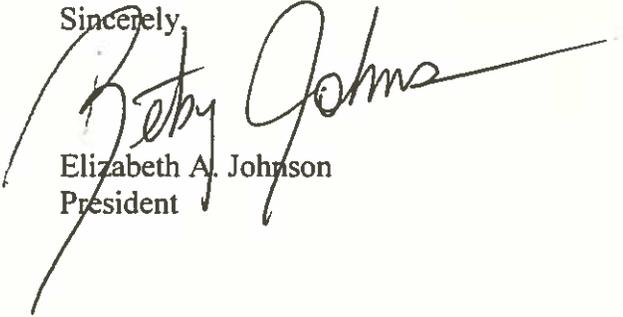
By narrowly limiting the ability to receive beds under the revised criteria in the SHP to 5-star facilities, KAHCF does not believe that the Office of Health Policy can achieve its "Triple Aim" of (1) better value, (2) better care, and (3) population health improvement. Although KAHCF fully understands and appreciates the Office of Health Policy's focus on quality, there is nothing in the data to support the conclusion that facilities operating at the 3 and 4-star level do not provide quality of care for its residents. In fact, other innovative payment systems and care delivery models throughout the country recognize the role of facilities with less than 5-star ratings in providing quality long-term care services and supports.

In its response to the CON modernization stakeholder input request, KAHCF recommended the ability of cooperating parties to transfer nursing facility beds to high occupancy counties in order to increase access to valuable long-term care services. Improving access is one of the core principles cited by the Cabinet for Health and Family Services in seeking modernization of the CON program. By limiting the ability to receive transferred beds to only 5-star facilities, KAHCF does not believe the Cabinet can achieve its core principle of improving access to care for long-term care services and supports.

KAHCF appreciates the opportunity to respond to the proposed amendment to 900 KAR 5:020. As always, we are available to discuss these important issues with the Cabinet for Health

and Family Services. KAHCF looks forward to working collaboratively with the Cabinet to achieve its goals of improving access to care for all Kentuckians.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Johnson", with a long horizontal flourish extending to the right.

Elizabeth A. Johnson
President



Health Directions, inc.
Managing Excellence in Home Healthcare

June 30, 2015

Commonwealth of Kentucky
Cabinet for Health and Family Services
Office of the Secretary
275 East Main Street
Frankfort, KY 40601

RE: 2015-2017 State Health Plan Proposed Home Health Changes

To whom it may concern:

It has come to my attention that the proposed amendment to 900 KAR 5:020 state health plan will have an adverse impact if several of the proposed changes are enacted. There simply is no support or evidence to the changes related to private duty nursing services.

First, there is no detail provided in the regulatory impact analysis indicating the necessity of the amendment as related to private duty nursing services. Furthermore, there is no information to support the regulatory changes to allow the proposed changes to the private duty nursing services portion of the state health plan. These changes weaken the efficacy of the certificate of need process by allowing the proliferation of private duty providers. The added language is unnecessary and creates criteria that is ONLY based on population data, not driven by actual need for the service. There is no data that states that the population numbers used in the criteria are statically valid. Nor is there any documentation that supports that existing traditional home health agencies or private duty nursing services are not providing services for the "specialty" population identified in the proposed changes, i.e. pediatric, etc.

Due my numerous years of experience in the industry and my personal knowledge that there is no need for additional private duty nursing service providers, I believe that the current language contained in the state health plan protects the Commonwealth against duplicative, unnecessary and proliferate services. It is cost prohibitive to implement the proposed changes, especially in light that we already have a strained healthcare system. Thank you for your consideration in keeping the current state health plan provisions related to private duty nursing services. The proposed changes are unwarranted and will not be in the best interest of the Commonwealth.

Sincerely,

Brian W. Lebanion
Chief Operations Officer
Health Directions, Inc.
141 Prosperous Place, Suite 24
Lexington, KY 40508

1313 South Main Street
London, Kentucky 40741
606-877-1135 Fax 606-877-3240

foxed by Whitley Co. Health Dept.

June 30, 2015

VIA E-MAIL tricia.orme@ky.gov
and FACSIMILE (502) 564-7573

Ms. Tricia Orme
Office of Legal Services
275 East Main Street 5 W-B
Frankfort, KY 40601

Dear Ms. Orme:

Please accept this letter in opposition to making any changes in the existing home health agency provisions in the current State Health Plan. The proposed changes to exempt certain providers that meet arbitrary federal milestones are discriminatory and run afoul of the purpose of the State Health Plan. It should be noted that data for Home Health Compare reports favors agencies who only accept (or cherry pick) Medicare patients. Data from Medicaid and other patients are also included in the Home Health Compare Report; therefore can reflect unfavorably to current agencies that provide services to all patients of differing payor services and case mix.

Pursuant to KRS 216B.010, the purpose of the State Health Plan is the prevention of "the proliferation of health care facilities, health services and major medical equipment which increases the cost of quality health care within the Commonwealth". Placing unfounded preferences for certain providers to expand home health services is the epitome of proliferation. If the proposed changes are effectuated, the State Health Plan would look at the proposed provider to determine consistency with the State Health Plan rather than the patient population or the existing home health environment for the area served.

Therefore I pray that no home health agency changes be made to the existing State Health Plan.

Respectfully,

Mullins, Diona (CHFS Health Policy)

From: Orme, Tricia L (CHFS OLS)
Sent: Tuesday, June 30, 2015 7:56 AM
To: Mullins, Diona (CHFS Health Policy)
Subject: FW: Proposed change in State Health Plan

comments

From: Nancy Powell [<mailto:nancypowell435@yahoo.com>]
Sent: Monday, June 29, 2015 4:24 PM
To: Orme, Tricia L (CHFS OLS)
Subject: Proposed change in State Health Plan

Hayswood Home Health Agency strongly disagrees with the proposed changes to the State Health Plan criteria. The present State Health plan requires that new agencies or those who wish to expand services must show that a need exists in the area in which they wish to provide services. The present CON process has proved effective and has prevented much of the fraud which has plagued other states. We feel that all interested parties desiring to open a Home Health agency or extend services should be subject to the same process. Therefore Hospitals should not be exempt from the current process.

Marion Russell
Executive Director
Hayswood Home Health
Maysville, Ky. 41056



HOSPARUS

June 30, 2015

VIA FACSIMILE: (502) 564-7573

Tricia Orme
Cabinet for Health and Family Services
Office of Legal Services,
275 East Main Street 5 W-B,
Frankfort, KY 40621

Re: Comments on Amendment to 900 KAR 5:020

Dear Ms. Orme:

Hosparus, Inc. is a non-profit community based hospice provider serving 27 Kentucky counties and appreciates the work of the Cabinet for Health and Family Services to review Certificate of Need (CON) standards and incorporating stakeholder input throughout the process. We acknowledged from the beginning of the process the need to “modernize” aspects of the current CON principles. As the largest provider of hospice care in the Commonwealth, we understand and realize the importance hospice services have in meeting the intent of the “Triple Aim.” Part of the success of the hospice benefit on cost and outcomes is related to the overall management of the patient and family needs as they relate to the body, mind, and spirit. Studies such as the research published by Mount Sinai in 2013¹ support these outcomes.

Hosparus supports maintaining the existing CON review criteria for hospice care. These review criteria were improved in 2006 with input from hospice providers across the Commonwealth working with the Cabinet. These improvements have made an impact as hospice penetration rates across Kentucky counties have increased from 2007 to 2013².

On May 21, 2008, the Cabinet for Health and Family Services granted Hosparus CON approval to expand hospice services to the ten county Barren River Area Development District. These counties were deemed underserved based on the current State Health Plan hospice methodology. Hosparus is a mission driven organization and did not enter these Kentucky counties based on market profitability, but saw the need to serve Kentucky residents contiguous to our current territory. There continues to be a

¹ <http://www.mountsinai.org/about-us/newsroom/press-releases/medicare-patients-who-use-hospice-receive-better-care-at-a-lower-cost-to-the-government>

² Kentucky State Summary of Medicare Hospice Utilization

3532 Ephraim McDowell Drive
Louisville, KY 40205
502-456-6200 or 800-264-0521

few rural counties with unmet need related to hospice care within the state. However, there has been little to no interest from others to serve these counties. The lack of interest is not related to the current CON structure, but to the complexities and cost of providing home hospice care to patients in very rural parts of Kentucky.

Maintaining the current State Health Plan review criteria for hospice services is important to ensure the continued delivery of high quality care to patients and families across the Commonwealth. The 2012 MedPac report to Congress identified problems for states without a CON program to regulate hospice care. This report identified the problems when CON is removed and allows providers to focus solely on the densely populated areas, which are the most cost efficient and profitable to serve. When this occurs, residents of rural areas may not receive the same level of high quality hospice services from providers. An example of this behavior is evidenced by the state of Alabama, which in 2009 re-enacted its CON program to control hospice provider supply.

In summary, hospice providers in Kentucky are delivering the "Triple AIM" for patients and families at the end of life. The existing CON process has been effective and we support the continuation of the Hospice Service State Health Plan review criteria now found in 900 KAR 5:020.

Respectfully,

A handwritten signature in blue ink, appearing to read "Phillip L. Marshall". The signature is fluid and cursive, with a long horizontal flourish at the end.

Phillip L. Marshall
President and CEO



305 Ann Street, Suite 308
Frankfort, Kentucky 40601

June 30, 2015

Tricia Orme
Office of Legal Services
275 East Main Street 5 W-B
Frankfort, KY 40601

Re: Comments on 900 KAR 5:020
State Health Plan

Ms. Orme,

The members of the Kentucky Association of Hospice and Palliative Care (KAHPC) would like to thank the Cabinet for your efforts to modernize the certificate of need process in Kentucky in an effort to further improve the health care outcomes for the citizens of Kentucky in a meaningful manner. Further, we want to thank the Cabinet for soliciting input from stakeholders, such as KAHPC, who are advocates for quality care for all persons with life limiting illness. We believe that all eligible persons should have access to the services hospice has to offer and recognize the importance of assuring access to high quality health care for the citizens of the Commonwealth.

After reviewing the proposed changes to the State Health Plan, we support the Cabinet's decision to retain the criteria for hospice services. As stated in our original comments, the hospice criteria underwent an intense review process which resulted in new criteria and methodology in 2006 after months of in depth research and review.

The CON process is important for the hospice industry because of the nature of the business. While it is debatable among groups whether or not health care is a free market industry, it is clear that hospice is not – hospice is a defined benefit with a fixed reimbursement. When price is fixed and supply is fixed the laws of supply and demand no longer apply. Market entry for providing hospice services is relatively easy as it requires minimal capital expenditures. Relaxing or eliminating the certificate of need program for hospice services would jeopardize the ability of the existing community based, not-for-profit programs in Kentucky to provide the highest quality of care to all patients regardless of ability to pay.

Some states have gone down the path of eliminating the certificate of need requirement and have seen firsthand the unintended consequences of this decision which include a proliferation of hospice programs, mostly for-profit organizations, generally located in the areas that need them the least. Multiple case studies have shown that without CON, a proliferation of programs results with the greatest concentration in the metropolitan areas with the rural areas of the state rarely effected. This has resulted in lower quality service and higher rates of programs exceeding the hospice CAP which can be an indicator that patients are being inappropriately admitted to hospice in an effort to help the program survive with so many hospices in one area. None of these are outcomes we would want for Kentucky.

Hospice providers in Kentucky are committed to ensuring access to hospice services to every Kentuckian who wishes to access them. As we look across the nation, the states we are seeing the most significant problems with inappropriate activity by hospice programs occurs in the states that do not have the protections of a CON program and have an abundance of for profit hospice programs in the state. In 2009, Alabama actually re-enacted CON for hospice programs in order to control unnecessary proliferation of provider supply and the associated adverse consequences.

Kentucky hospice providers continue to focus on providing access and the highest quality of care to the citizens of Kentucky. At this time, we feel the CON methodology for hospice is in line and is working to ensure access to care as well as high quality care from appropriate providers. In fact, hospice penetration rates based on the Medicare claims from 2000-2013 show an overall statewide increase in penetration rates between 2000 and 2013.¹

In closing, as the hospice industry continues to grow across the nation, it is even more important to ensure that growth is appropriate and focused on delivering the highest quality of care to the patients served. The hospice certificate of need methodology that was recently revised by the Cabinet is working to ensure proper growth and use of hospice services in the state and KAHPC supports the Cabinet's decision to retain the current provisions of the state health plan.

In closing, we appreciate your consideration of our concerns and the work you do on behalf of the health care needs of our citizens.

Sincerely,

Brandy Cantor
Executive Director
Kentucky Association of Hospice and Palliative Care

¹ Kentucky State Summary of Medicare Hospice Utilization



Cook & Cheek

Certified Public Accountants, PLLC

302 Falls Street, London, KY 40741
(606) 877-2654 Fax: (606) 864-0300

June 30, 2015

Tricia Orme
Office of Legal Services
275 East Main Street 5 W-B
Frankfort, KY 40601

Dear Ms. Orme:

I am writing to express my concern relative to proposed changes to the State Health Plan which I believe would have a significant adverse impact on the home health industry.

The proposed changes would result in the Certificate of Need criteria for home health being changed as follows:

Any licensed acute care hospital would be allowed to provide home health services in a county where the hospital is located and in contiguous counties without regard to the ability of the hospital to perform home health services. This criteria bypasses the calculations for need assessments in the areas involved and would be based solely on hospital compare outcomes.

Existing providers would also have the ability to provide services in a contiguous county without regard to need calculations. This will allow many providers to move into markets where the needs are already being met by existing agencies. Many of these providers will cherry pick patients who have the greatest resources available to provide for their care and needs, leaving your non-profit and health department agencies to provide services to the indigent and those with less resources. It will be difficult, if not impossible for these agencies to provide care for these types of cases when their overall resources are diminished.

Accountable Care Organizations (ACO) or a home health agency associated with an ACO could establish a home health agency in a contiguous county if the ACO provides services there, again without regard to established needs. This will have the same impact on existing agencies as described in the first two paragraphs.

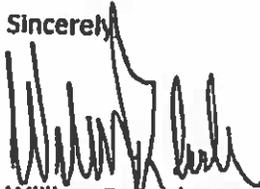
These proposed changes will result in a duplication of services and will spread limited resources across a much broader base of providers to the detriment of all. Limiting resources beyond what they already are will have a negative impact on the people served as quality and outcomes will suffer, ultimately leading to higher costs for the Commonwealth.

Agencies within the Commonwealth are currently very diligent in hiring and training personnel to provide home health services. The proposed changes would require home health agencies to utilize the Cabinet's Criminal Background Check program pursuant to 906 KAR 1:190, again adding additional costs to operations. In addition to required utilization of Cabinet's Criminal Background Check, agencies would be required to place employees on "provisional employment status" for up to 60 days until the background check is complete. The employee would be required to have one on one supervision during this provisional period. This would not only be cost prohibitive but unreasonable and logistically impossible for home health agencies.

The current State Health Plan takes into consideration needs, accessibility, cost effectiveness and quality of services and outcomes. The current Certificate of Need process has proven effective in providing quality and quantity of patient care as defined by need and provides sufficient resources for home health agencies. Any changes to this process at this time would, in my opinion, prove to be very detrimental both to the Commonwealth and existing providers.

I thank you in advance for your consideration of these comments.

Sincerely,



William R. Cook, CPA



Community Home Health Care

June 30, 2015

VIA FAX ONLY (502) 564-7573

Ms. Tricia Orme, Administrative Specialist III
Cabinet for Health and Family Services
Office of Legal Services
275 East Main Street, 5W-B
Frankfort, Kentucky 40621

RE: 900 KAR 5:020. State Health Plan for facilities and services.

Dear Ms. Orme:

Please accept these comments on behalf of Community Health Services, Inc. d/b/a Community Home Health Care ("Community"). Community is a full-service, Medicare-certified home health agency that is licensed to provide home health services in Daviess, Hancock, Henderson, McLean, Ohio, Union, Webster, Breckinridge, Grayson, Hardin, Larue, Marion, Meade, Nelson, and Washington Counties. CHS' existing service area covers the Green River Area Development District ("ADD") and Lincoln Trail ADD. Community provides traditional home health services, including skilled nursing services; physical therapy, occupational therapy, and speech therapy services; disease management services; home health aide services; and medical supplies, as well as home and community-based waiver services through the Medicaid Waiver Program.

Community is a member of the Kentucky Home Care Association ("KHCA") and fully supports the comments it has filed regarding the proposed revisions to the State Health Plan. Like the KHCA, Community appreciates that home health services are retained in the Certificate of Need ("CON") Program and believes that it is necessary to ensure the continued provision of quality care to patients in a cost-effective and efficient manner. However, CHS does not believe that the proposed revisions to the Home Health Services Review Criteria achieve the identified goals of the Cabinet's CON Modernization process or the Triple Aim principles.

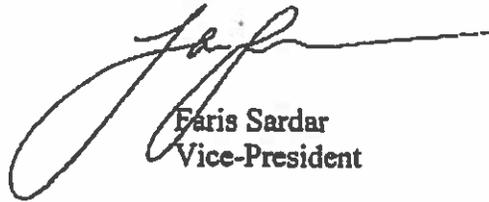
Specifically, the proposed changes in the methodology would add home health agencies to the licensed inventory by allowing Kentucky federally-based qualified accountable care organizations ("ACO") so long as certain benchmarks are met. The reference to a Kentucky "affiliated" home health agency of such an ACO does not define the term "affiliated." Without a clear definition of this term as it applies to the State Health Plan Home Health Review Criteria, there may be an inconsistent application of this criterion to applicants, thereby resulting in arbitrary results. Further, it may detrimentally impact referral relationships, which could affect patients' access to home health services. Such a result will not increase access, improve quality, or reduce costs but rather may and negatively impact patients' health, safety, and welfare.



Community Home Health Care

Thank you for the opportunity to comment on the proposed changes to the Kentucky State Health Plan. Please contact me if you have any questions or need additional information.

Sincerely,

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

**Faris Sardar
Vice-President**

June 30, 2015

Commonwealth of Kentucky
Cabinet for Health and Family Services
Attn: Audrey Tayse Haynes, Secretary
275 East Main Street
Frankfort, KY 40601

RE: 2015-2017 State Health Plan Proposed Home Health Changes

Dear Secretary Haynes:

Thank you for this opportunity to express my concerns and opinion on the proposed amendment to 900 KAR 5:020 state health plan. The regulatory impact analysis for the proposed changes to the regulations do not provide sufficient detail to support the necessity of the amendment as related to home health changes. There is no supporting facts about why the regulatory changes to allow "certain" hospitals, home health agencies and Accountable Care Organization (ACO) to be exempt from the provisions that other providers must adhere to.

Additionally, in my opinion the added requirement for home health agencies to have to use a costly criminal background check process when other providers do not have to is burdensome. While other do to have, home health agencies must restrict newly hired employees from providing service for up to 60 days. This will be draining on the healthcare workforce and be fiscally overly burdensome to the agencies. This will be harder for agencies to compete in the employment market with those that do not have to.

On behalf of my constituents, I believe that the "current" language contained in the state health plan protects the Commonwealth against duplicative, unnecessary and proliferate services. It will increase cost to implement the proposed changes and strain the existing healthcare system.

Thank you for your consideration in keeping the current state health plan provisions related to home health agencies. In my opinion, the proposed changes are not needed and will not be in the best interest of the Commonwealth.

Sincerely,


Albert Robinson
State Senator
1249 South Main Street
London, KY 40741

CC: Tricia Orm, Office of Legal Services
Cabinet for Health and Family Services



*Friends & Companions
Day Health Care Center*

June 30, 2015

VIA E-MAIL tricia.orme@ky.gov
and FACSIMILE (502) 564-7573

Ms. Tricia Orme
Office of Legal Services
275 East Main Street 5 W-B
Frankfort, KY 40601

Dear Ms. Orme:

Friends and Companions, LLC, has provided day health care services in Kentucky since 1997, and currently operates three centers located in Laurel, Whitley, and Knox counties. Each center provides the communities with skilled nursing services, respite care, personal care, physical therapy, occupational therapy, and speech therapy, recreational and social activities, and nutritionally balanced meals and snacks in a community modeled center.

Please accept the following written comments to the proposed update to the 2015-2017 State Health Plan and the amendment to the Kentucky Administrative Regulation 900 KAR 5:020, which incorporate the State Health Plan by reference thereto and are administered by the Office of Health Policy (OHP). In the proposed update, adult day health care is removed from the State Health Plan criteria in totality.

Adult Day Health Care has been included in the State Health Plan for many years with the purpose of preventing "the proliferation of health care facilities, health services and major medical equipment which increases the cost of quality health care within the Commonwealth", as noted on the CHFS website describing the Office of Certificate of Need, Office of Health Policy and required by KRS 216B.010.

One of the major impacts of this proposed change would be a shift in the burden of proof from the applicant requesting adult day health care to the affected party opposing the application. By shifting the burden of proof, this eases the certificate of need process for the applicant; therefore allowing the proliferation of adult day health care facilities in the Commonwealth.

* 125 Enterprise Lane, London, KY 40741 *

* 2101 S Main Street, Corbin, KY 40701 *

*1957 Hwy 25E, Suite A, Barbourville, KY 40906 *

To remove the requirement that day health care centers be consistent with the State Health Plan only opens the door for centers to open without adequate resources to provide quality medical care to participants. Therefore, potentially harming citizens of the Commonwealth and additionally indirectly injuring reputable centers by instilling fear in families considering sending their frail and ailing family members to these centers.

Removing adult day health care centers from the State Health Plan would allow day health care centers to proceed to the Certificate of Need process without showing that they have the knowledge and resources to provide adequate care while awaiting the licensing process. Additionally, it is important to note that adult day health care facilities are actual "brick and mortar" physical medical facilities that are required to follow physician orders to treat patients while not required to have a physician on staff. Due to this specific set of circumstances it is even more imperative that the adult day health care facility provision remain in the State Health Plan.

In light of proposed Home and Community-Based Waiver changes which would expand services provided by adult day health care companies, a change in the State Health Plan is pre-mature and should not be made until a time that additional statistical data is collected to evaluate the changes in adult day health care service expansions.

The current provisions in the State Health Plan are not unduly burdensome on applicants. The current process does not require complicated need calculations to be made by the state and is a minimal process that only requires that basics are present prior to allowing medical services to be offered to citizens of the Commonwealth.

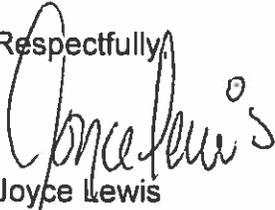
The review criteria in the State Health Plan for day health care ensures that aspiring adult day health providers are thoroughly aware of the regulations for daily operations, appropriate meal services and components, administration of medications and treatments, physician orders, care plans and relating age appropriate activities and recreations, daily routine personal care services, determining health care needs, and the equipment necessary to provide day health services. The review criteria and the application process allow applicants to demonstrate knowledge in monitoring patient's level of care and evaluating the best health care options for the patient. The applicant must also document that they have the ability to maintain medical records, and that universal precaution practices will be utilized.

The regulatory impact analysis also stated that there would be no impact to any state agency/department regarding cost to the administrative agency and the response was "initially, none". This statement is incorrect in that once a "proliferation" of providers open new centers throughout the state, costs will increase for the licensing agencies, inspection agencies, and Medicaid expenditures will increase. The licensing and inspecting agencies may experience additional increased costs because day health care centers were allowed to open with no documented exposure to the state requirements for adult day health care providers, causing multiple inspections and corrective action plans, and the additional time and cost to provide the oversight for these providers.

It is important that potential day health care providers and recipients have access to quality day health care services, but this access should not be given in an irresponsible manner by removing the service from the State Health Plan. Removal of day health care review criteria from the State Health Plan potentially places day health care recipients in the precarious position of receiving inadequate health care services that cannot be effectively or efficiently monitored.

Therefore we pray that adult day health care not be removed from the State Health Plan. Please call if you have any questions or need clarification of our position in these comments. I can be reached at (606) 877-1135.

Respectfully,

A handwritten signature in black ink that reads "Joyce Lewis". The signature is written in a cursive style with a large initial "J" and a distinct "L".

Joyce Lewis
Managing Member

June 30, 2015

Cabinet for Health and Family Services
Attn.: Tricia Orme
Office of Legal Services
275 East Main Street, 5 W-B
Frankfort, KY 40601

RE: 2015-2017 State Health Plan Proposed Home Health Changes

Dear Ms. Orme:

This letter is being submitted to oppose the proposed changes contained in the 2015-2017 State Health Plan for home health care. As the physician that works regularly with home health providers, I am familiar with the capabilities of home health care and can assure you that current providers are more than capable of meeting the need for quality home health services in my practice area.

Additionally, I am the Co-Chairman of the Whitley County Board of Health and have first-hand knowledge of the quality of care provided by the existing home health agencies. We do not need to create entities to provide services that already have specialized and innovative groups that have done this for years. There is no need for the proposed language that will give "free willy" for acute care hospitals, Accountable Care Organizations, and certain home health agencies to circumvent the established, effective system. If anything, these proposed changes will result in duplication of services and will spread resources across more providers. This will lessen the home health care agencies ability to focus on quality and outcomes as well as creating inefficiencies in the Kentucky healthcare system, creating cost to the Commonwealth.

Thank you for the opportunity to submit my opposition to the state health plan changes proposed for home health. Please contact me if you have any questions or need additional information.

Sincerely,



Daniel Whitley, MD
Co-Chairman Whitley County Board of Health

Commonwealth of Kentucky
Cabinet for Health and Family Services
Office of the Secretary
275 E. Main Street
Frankfort, Kentucky 40621

June 27, 2015

Dear Secretary:

Thank you for this opportunity to express my deep concerns on the proposed amendment to 900 KAR 5:020 state health plan. I am a long term former employee of the cabinet and worked in The Office of Inspector General from 1975 until I retired in 1999. I worked closely with the Certificate of Need Board and held this body in high esteem. As Director of Licensing and Regulation I witnessed several amendments to regulations; that improved the delivery of health care and ensured our citizens would have safe, adequate and efficient care. The amendments proposed by the Office of Health Policy on May 14, 2015, does not improve the delivery of health care, but will increase costs as follows;

These proposed changes to the State Health Plan will impact the quality of care/services provided by Home Health in Kentucky by allowing all licensed hospitals in the state to establish home health services in the county of location plus in contiguous counties, if it is their service area. This will be based solely on the hospital outcome criteria which is not synonymous or related to these hospitals ability to provide quality of care services. This will surely add to the hospital problems in rural communities such as critical care hospitals, to remain viable going forward. These hospitals are struggling financially in Kentucky and in the nation to survive. I do not see them going into the Home Health Business as any solution for them financially, but could be a financial burden on them and a negative impact on quality of services they are now providing. In addition, this amendment opens the door for the influx of large numbers of "for-profit" providers to move into the state, perhaps contractually with hospitals and take the low hanging fruits currently being done by non-profit agencies.

Your office needs to further evaluate the pros and cons of offering this amendment. Please review the facts that this will allow Accountable Care Organizations (ACO's) or Home Health Agencies (HHA) associated with an ACO to open HHA in contiguous counties which could cause an "ACO monopoly" and allow them to serve only the less acute and higher paying patients. This amendment creates a duplication of services, spread resources by having potentially large increases in providers and will cost Kentuckians more in the long term. Just as the criminal background check mandated will result in more costs to providers and more work for the Cabinet staff.

This amendment does not improve lives of our citizens in Kentucky. It does threaten the existing agencies ability to compete and provide quality of care with quality outcomes. There is no proof that I am aware of that would justify this proliferation of providers. This seems to go against the definition, purpose and intent of the Certificate of Need and State Health Plan by reducing the criteria for hospitals to open a home health agency in every county. This is blatantly unfair to existing HHA that have complied with far more stringent criteria and may cause them to struggle financially just like hospitals in Kentucky.

Your kind consideration of my concerns is appreciated.

Respectfully
Woody Dunn
Retired

A handwritten signature in cursive script that reads "Woody Dunn".

June 30, 2015

Cabinet for Health and Family Services
Attn: Tricia Orme
275 East Main Street, 5 W-B
Frankfort, KY 40601

RE: 2015-2017 State Health Plan Proposed Changes to Home Health

Dear Ms. Orme:

In light of the pending proposed changes to the Kentucky State Health Plan, I feel compelled to write you and express my concerns over the proposed changes. On its face, these changes propose solutions to problems that simply do not exist, all the while creating potential hazards and pitfalls for the current healthcare system and, in particular, home health services.

It is my understanding that the current Certificate of Need process is a safeguard for the residents of the area to ensure they have access to the level of care that they require. As the Director of Whitley County Home Health I can confirm that these proposed changes will result in the oversaturation of providers in our area. Encroaching upon the state health plan will lead to instability by spreading resources across proliferated, unnecessary providers, adversely affecting quality of care. This is completely unacceptable given that this market is judged on the health and wellbeing of the people it serves.

The proposed changes also include a provision to mandate home health providers utilize the Cabinet's criminal background check program. This change will force providers to put new hires through a 60 day probation period, dramatically increasing costs to providers of healthcare. Additionally, by forcing a newly hired person to be under the direct supervision of another for up to 60 days you are essentially creating a duplication of effort to provide said services. No home health agency could fiscally pay employees to "not work" during their first 60 days of employment. In doing so agencies would greatly diminish their ability to attract and retain new quality staff from the available workforce.

The current state health plan is adequate, provides the necessary oversight and adheres to the intent of state health planning. The language governing home health services should not be altered. Thank you for taking the time to seriously consider my comments regarding the proposed changes to the Kentucky State Health Plan, which are detrimental to my community and the members we serve.

Sincerely,



Martha Steele, MSN
Public Health Director of Whitley County
Health Department and Home Health Agency

June 30, 2015

Cabinet for Health and Family Services
Attn.: Tricia Orme
Office of Legal Services
275 East Main Street, 5 W-B
Frankfort, KY 40601

RE: 2015-2017 State Health Plan Proposed Home Health Changes

Dear Ms. Orme:

I appreciate the opportunity to submit this letter opposing the proposed home health changes contained in the 2015-2017 State Health Plan. I am a physician licensed by the State of Kentucky serving patients in Laurel, Knox and Whitley County, Kentucky. I work regularly with the home health agencies providing services in this area and can testify that there is no need for additional home health services. The existing providers meet the needs of this area and provide superior care to our mutual patients.

We do not need changes to the state health plan language that would result in proliferation of unnecessary providers. This would only result in patients and the resources available to care for them to be spread across more providers; reducing the quality of care and creating a situation where patients who require benevolent care to be left out of the loop. We currently have a system in place that protects healthcare processes to assure that patients receive quality services. I'm perplexed as to why these changes are being proposed as the system currently in place protects the patients and providers alike.

Thank you for your consideration of this opposition to the state health plan changes proposed for home health. Please contact me if you have any questions or need additional information.

Sincerely,



Bobby Turner, MD
Internal Medicine



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¹ ALSO ADMITTED IN SOUTH CAROLINA

JON-MICHAEL MURPHY
STEPHEN BUCHENBERGER
OF COUNSEL

June 30, 2015

VIA ELECTRONIC MAIL AND FACSIMILE

Tricia Orme
Cabinet for Health and Family Services
Office of Legal Services
275 East Main Street, 5 W-B
Frankfort, KY 40621
Fax: (502) 564-7573
Email: tricia.orme@ky.gov

Re: Maxim Healthcare Services, Inc.'s Comment: 2015 – 2017 State Health Plan

Dear Ms. Orme:

On behalf Maxim Healthcare Services, Inc. (“Maxim”), we appreciate the opportunity to submit this comment to the proposed amendments to 900 KAR 5:020 State Health Plan for facilities and services and the *2015-2017 State Health Plan* incorporated therein by reference. Specifically, this comment will address the proposed *State Health Plan* Review Criteria for home health services and private duty nursing services.

HOME HEALTH SERVICES

The current methodology for calculating projected need for additional home health services is flawed for several reasons, which will be discussed in detail below. Therefore, Maxim believes it is necessary to include criterion enabling an existing home health agency to expand services in the absence of a numeric need for additional services in a contiguous county.

Issue 1: The methodology for determining home health need is arbitrary as it assumes all 120 Kentucky counties utilize home health at the average statewide use rate and disregards county-specific variables that impact a county’s utilization of home health services.

Furthermore, average historical utilization of home health services cannot adequately project prospective utilization of services.

Issue 2: The methodology for determining home health need indicates a very limited need for new and expanded home health agencies within the Commonwealth. According to the 2014 Home Health Need table, a need for an expanded agency was only indicated in twenty-seven (27) or 22.5% of the 120 Kentucky Counties, while need for the addition of a new agency was only indicated in seven (7) or 5.8% of the counties in Kentucky. Obviously, a need for additional home health services could in the absence of need determined by the *State Health Plan* methodology.

Issue 3: Need, for purposes of establishing or expanding a home health agency, is strictly based on the utilization of and therefore, need for additional traditional home health services. This prejudices agencies proposing to focus on “non-traditional” home health services such as private duty nursing, EPSDT services, and other Medicaid waiver services. Currently, proposals with a strong focus on “non-traditional” home health services are only consistent with the *State Health Plan* if a need is indicated for traditional home health services in the county proposed to be served. Clearly, a need may exist for additional “non-traditional” home health services in a county where no need is indicated for additional traditional home health services.

According to the *2013 Kentucky Annual Home Health Service Report*:

- 0 EPSDT Therapy services were reported in 42 of 120 counties
- 0 EPSDT PDN services were reported in 96 of 120 counties
- 0 PDN services were reported in 99 of 120 counties
- 0 Model II waiver services were reported in 95 of 120 counties

Proposed Review Criteria 5:

Again, Maxim supports the ability for existing home health agencies to expand in the absence of *State Health Plan* indicated need, upon demonstration that the agency is providing quality services. However, the exclusive reliance on CMS Home Health Compare measures is prejudicial to an agency, such as Maxim, that has a strong focus on serving non-Medicare populations. Home health agencies that serve pediatric patients and those that accept only Medicaid, private insurance or direct payment by their patients are not required to report quality measures to CMS. Accordingly, quality measures for agencies that focus on the often under-served Medicaid and pediatric populations, like Maxim, will likely have insufficient data for a meaningful analysis of the agency’s quality measures under CMS Home Health Compare.

Therefore, Maxim proposes the inclusion of an additional Review Criteria, which would enable home health agencies that focus on non-Medicare populations to expand services by demonstrating the agency’s quality of care is being held to a high standard. Specifically, Maxim proposes the following language to be included as an additional home health Review Criteria:

Notwithstanding criteria 1 and 2, an existing licensed Kentucky home health agency's application to expand a home health service will be found consistent with this Plan if one (1) of the following conditions are met:

- a. The agency is accredited by the Accreditation Commission for Health Care; or
- b. The agency is accredited by The Joint Commission.

The Accreditation Commission for Health Care and The Joint Commission are each nationally recognized accrediting organizations that require agencies to demonstrate their ability to satisfy predetermined criteria and standards to ensure the highest standard of quality is provided to patients. Accreditation by one of these organizations symbolizes an agency's commitment to meeting certain benchmarks measuring the quality of an organization.

PRIVATE DUTY NURSING SERVICES

Review Criteria 1(a) and (b):

Maxim supports the proposed revisions to Private Duty Nursing Review Criteria 1, which recognizes the need to increase access to private duty nursing services across the Commonwealth. However, Maxim recommends several revisions to clarify potential concerns that may be raised in practice. Maxim recommends Review Criteria 1 be revised as follows:

1. Proposes to establish or expand private duty nursing services into a county which:
 - a. Has a current population of <50,000 and the county does not have more than two (2) licensed or certificate of need approved private duty nursing agencies issued a certificate of need within the previous three (3) years or two (2) home health agencies that provided traditional home health private duty nursing services to more than one (1) patient in the county according to the most recent *Kentucky Annual Home Health Services Report*~~offering private duty nursing services;~~ or
 - b. Has a current population of >50,000 and the county does not have more than four (4) licensed or certificate of need approved private duty nursing agencies issued a certificate of need within the previous three (3) years or four (4) home health agencies that provided traditional home health private duty nursing services to more than one (1) patient in the county according to the most recent *Kentucky Annual Home Health Services Report*~~offering private duty nursing services;~~

Maxim believes the threshold number of home health agencies should be inserted as referenced above for purposes of clarification. Maxim recommends that the phrase “offering private duty nursing services” in each subsection should be removed and replaced with “that provided traditional home health private duty nursing services to more than one (1) patient in the county according to the most recent *Kentucky Annual Home Health Services Report*”. The term “offering” is ambiguous and should be removed because a home health agency could “offer” private duty nursing services, but have no intention providing the services. Moreover, how would an existing agency establish or applicant rebut that private duty nursing services were “offered”? Marketing materials? Take our word for it?

Maxim also believes that it is necessary to include “more than one (1) patient in the county” in this criterion. According to the *2013 Kentucky Annual Home Health Services Report*, only one (1) patient was reported in six (6) of the twenty-one (21) counties for which traditional home health private duty nursing services were reported. In the absence of such language, an applicant’s proposal under Review Criteria 1(a) for example, could be deemed inconsistent with the *State Health Plan* if two (2) existing home health agencies each provided traditional home health private duty nursing services to only one (1) patient. This language would assist in advancing the objective of increasing access to private duty nursing services across the Commonwealth.

It is also important this criterion clarifies that only traditional home health private duty nursing services provided by home health agencies are to be considered. Two (2) types of private duty nursing services can be provided under the umbrella of home health: traditional home health private duty nursing and EPSDT private duty nursing services. EPSDT private duty nursing services are limited to pediatric patients and therefore, such services should not be considered for purposes of this Review Criteria.

Finally, the most recent *Kentucky Annual Home Health Services Report* should be used to determine whether a home health agency provided private duty nursing services in a county. Reliance upon this Report will eliminate the potential for dispute as to whether traditional home health private duty nursing services were provided in a county.

Review Criteria 4[3.] and 5[4.]:

4. Notwithstanding criterion 1, an application which proposes to establish private duty nursing services in, or expand private duty nursing services into, a county only for the provision of those services to pediatric patients (i.e. people under age 18) shall be consistent with this Plan if the application demonstrates that the proposed service is not ~~currently~~ provided by two (2) or more licensed home health agencies or private duty nursing service providers according to the most recent *Kentucky Annual Home Health Services Report* and *Kentucky Annual Private Duty Nursing Services Report*; and

5. Notwithstanding criterion 1, an application which proposes to establish private duty nursing services in, or expand private duty nursing services into, a county only for the provision of Model II Waiver services to Medicaid recipients shall be consistent with this Plan if the application demonstrates that the proposed service is not ~~currently~~ provided by two (2) or more licensed home health agencies or private duty nursing service providers according to the most recent *Kentucky Annual Home Health Services Report* and *Kentucky Annual Private Duty Nursing Services Report*.

The term “currently” is ambiguous and is subject to multiple interpretations. Accordingly, Maxim recommends the most recent *Kentucky Annual Home Health Services Report* and *Kentucky Annual Private Duty Nursing Services Report* be used to determine whether the subject services were provided in a county.

On behalf of Maxim Healthcare Services, Inc., we appreciate to opportunity to submit these comments regarding the proposed *2015-2017 State Health Plan* review criteria for home health and private duty nursing services.

Respectfully yours,



RANDALL S. STRAUSE

Commonwealth of Kentucky

HOUSE OF REPRESENTATIVES

1051 Old Corbin Pike Road
Williamsburg, Kentucky 40769
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COMMITTEES:
Education
Labor & Industry
Veterans, Military Affairs &
Public Protection

REGINA P. BUNCH
82nd Legislative District

June 30, 2015

Ms. Audrey Haynes, Secretary
Cabinet for Health and Family Services
275 E Main Street
Frankfort, KY 40601

RE: 2015-2017 State Health Plan Proposed Home Health Changes

Dear Secretary Haynes:

Thank you for this opportunity to express my deep concern on the proposed amendment to 900 KAR 5:020 state health plan. The regulatory impact analysis and tiering statement that accompanies the proposed changes to the regulation do not provide detail as to the necessity of the amendment as related to home health changes. There is no discussion of why the regulatory changes to allow "certain" hospital, home health agencies and Accountable Care Organization (ACO) entities to be exempt from other provisions of the state health plan that are applied to remaining hospitals, home health agencies and ACO's. The questionable ability of these identified entities to bypass long-standing COM criteria will only create incestuous relationships where markets will be monopolized. This arbitrary act of favoritism runs afoul of the purpose of the regulation and of the state health plan. This change appears to merely be an extension of the egregious limbs of the Affordable Care Act.

Additionally, the added burden of required costly criminal background checks that will restrict newly hired employees from providing service for up to 60 days will be draining on the healthcare workforce and be fiscally overly burdensome to the agencies. Agencies will be unable to hire and train qualified staff in a timely manner due to the provisional employment caveat.

On behalf of my constituents, I believe that the current language contained in the state health plan protects the Commonwealth against duplicative, unnecessary and proliferate services. It is cost prohibitive to implement the proposed changes, especially in light that we already have a strained healthcare system. Thank you for your consideration in keeping the current state health plan provision related to home health agencies. The propped changes are unwarranted and will not be in the best interest of the Commonwealth.

Sincerely,

Regina P. Bunch
State Representative

RPB:ash
CC: Tricia Orm, Office of Legal Services
Cabinet for Health and Family Services

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Almost Family, Inc.

9510 Ormsby Station Road, Suite 300
Louisville, KY 40223

June 30, 2015

Tricia Orme
Office of Legal Services
Kentucky Cabinet for Health and Family Services
275 East Main Street, 5 W-B
Frankfort, Kentucky 40601

Dear Ms. Orme:

On behalf of Almost Family, Inc. ("AFAM") and as CEO and Chairman of the Board of the Company, I write to respond to the proposed regulation of the Office of Health Policy amending the Kentucky State Health Plan. AFAM is a Kentucky-based company and a leading regional provider of skilled home health, personal care and ACO health management services operating in 14 states with over 240 offices and 11,000 employees. We now have over 26 offices in Kentucky and 1,300 employees including our home office in Louisville.

Background

In November of 2014, AFAM submitted extensive written comments at the request of your office for stakeholder input on CON reform: <http://www.chfs.ky.gov/NR/rdonlyres/20415A1F-63C8-4271-94B8-250125A54FA9/0/AlmostFamilyInc.pdf>.

As strong supporters of our Kentucky community-based home health agencies and the thousands of elderly and disabled patients we serve, we now offer the following comments related to the "Section B. Home Health Agency" Certificate of Need ("CON") proposed criteria. We are confident our suggested revisions to this section position homecare to meet your stated goals to improve access and the quality of post-acute care in a cost effective manner.

CMS Hospital and Home Health Compare Data As A Basis for Home Health Expansion

We note Sec. B contains criteria for home health ("HH") agency expansion including the ability of hospitals and existing HH agencies to expand into new areas upon meeting certain quality metrics. We are pleased as a general matter that this section retains need criteria given the suggestion in the October Stakeholder Request that certain services were being considered for exemption from CON. As stated in our original comment

letter, AFAM opposes the elimination of CON as it relates to homecare and believes access to care in areas of need should be structured carefully. States such as Tennessee that eliminated homecare CON years ago regretted the decision and have reinstated it. In that state the number of homecare providers ballooned to over 700 from about 170 in a few short years when homecare CON was eliminated in the early 90's and access in rural areas suffered as providers tended to congregate in urban settings. (Source: Jeff Ockerman, Tennessee Health Policy Director, jeff.ockerman@tn.gov.)

As it relates to the particular quality measures for hospitals and home health agencies, we offer the following general comments along with specific proposals for your consideration. At the outset we compliment the Cabinet on the linkage of quality measures to provider expansion. The use of quality measures to incentivize better outcomes and reduce spend has grown rapidly in recent years, particularly among Medicare provider reimbursement programs. As proposed in the State Health Plan however, we respectfully suggest you delay implementation of these measures pending further refinement for the following important reasons:

a. A significant concern on the use of quality metrics, as proposed, is the prospect of the award of a permanent license for what may be a temporary achievement of the metric by a provider. The notion of rewarding consistent quality could be defeated by the hospital or HH agency who meets the metric for a single instant but who otherwise may have missed it in prior or subsequent quarters before or after an application is approved. In the worst case this can reward marginal or even historically poor care providers that just meet the metric in a snapshot. Conversely an otherwise qualified provider could experience a blip in their metrics which might cause that applicant to be turned down for expansion.

b. We are concerned with both the lack of accuracy and the timeliness of the use of CMS Compare data. The Home Health Compare data, for example, on the current CMS website lists an entirely incorrect agency of AFAM under the Kentucky listings citing data for an AFAM Cleveland, Ohio agency instead of a Kentucky-based one. This erroneous entry is listed on line 35 of the attachment and can be seen at the CMS link: <https://www.medicare.gov/homehealthcompare/compare.html#cmprTab=0&cmprID=367548%2C187178%2C187145&stsltd=KY&state=KY&lat=0&lng=0>.

c. Lastly, the concept of quality metrics is evolving as evidenced by new quality metrics enacted recently by Congress in its IMPACT legislation (Improving Medicare Post-Acute Care Transformation Act of 2014). This legislation ties future bundled payments in the post-acute sector to a number of quality measures in addition to just hospital readmission and urgent care admissions. These include patient satisfaction, skin integrity, changes in functional status including mobility and cognitive function and the accurate communication of health information to patients and family caregivers. As you consider quality metrics, we urge you to consider the expansion of quality measures more in line with the federal standard and not just the snapshot of 2 metrics tied to hospital admissions. Here is a link to this federal legislation: <https://www.govtrack.us/congress/bills/113/hr4994>.

Medicaid Presumptive Eligibility for Homecare

Our November 2014 comment letter also proposed the enactment of Medicaid presumptive homecare eligibility as a means to help patients and family caregivers with a fast track to homecare assessment and placement upon hospital discharge. The Cabinet and the Office are to be thanked for their strong support of HB 144 which embodied this proposal and which passed the General Assembly with a near unanimous vote and was signed by Governor Beshear. The homecare and adult day communities, the AARP and others worked to pass this legislation which we urge the Cabinet to now propose for full funding in the upcoming budget session of the General Assembly.

Incentivizing Quality and Improving Coordination and Access to Care: ACO/HH CON Proposal

We compliment the Office on, but offer revisions to, its proposal linking licensed Kentucky based homecare agencies to federally qualified ACOs. This proposal indicates an application by federally qualified ACOs or by a Kentucky "affiliated" home health agency of such ACO to establish home health services in a county in which it is not currently authorized to operate but in which such ACO does operate, shall be found consistent with the Plan. One critical innovation within the Affordable Care Act was establishment of the ACO framework and its shared savings program. In 2013 AFAM acquired a controlling interest in Imperium Health Management, LLC ("Imperium") an entity that provides health management services to 11 physician-led ACOs, of which four operate in Kentucky.

Through our experience with and exposure to independent physician-led ACOs, we are increasingly convinced that HH plays a growing key role in both the coordination of care and containing costs. By linking HH through the independent physician-led ACO vehicle, greater savings can be delivered to the healthcare system. **According to the Centers for Medicare and Medicaid Services ("CMS"), 21 of the 29 ACOs that successfully produced shared savings in the first year of the Medicare Shared Savings Program ("MSSP") were independent and physician-led** (Source: Mostashari, F. "The ACO Hypothesis: What We're Learning from the Medicare Shared Savings Program," The Brookings Institution; 2014.) One of these successful ACOs was an Imperium managed physician-led ACO operating in 10 counties in south-central Kentucky (Southern Kentucky Healthcare Alliance ACO). Our intent with our previous proposal was to link the ACO physician-led model to HH services which make an ideal complement in already identified areas of need in Kentucky. This proposal also allows for better coordination of care to physician-led ACO patients without the geographic restrictions imposed under current CON regulations.

In order to refine this proposal, we offer the following revision which avoids potential imprecision in use of the term "affiliated" while continuing to advance the good policy of encouraging homecare expansion through ACO innovation which has proven, built in cost effective safeguards:

Notwithstanding criteria 1 and 2, an application by a Kentucky-based home health agency which shares common management and control with an entity that provides substantial health management services to a physician-led Kentucky based federally qualified Accountable Care Organization ("ACO") under the Medicare Shared Savings Program or the Next General ACO Model, to establish home health services in a county in which it is not currently authorized to operate but in which such physician-led ACO does operate shall be found consistent with this Plan; "substantial health management services" as used herein means all or the majority of the patient information and data management services necessary for participation in the Medicare Shared Savings Program.

By setting a common management and control nexus between a Kentucky based, physician-led ACO and a home health agency to qualify under this proposal, one advances the policy of encouraging home health expansion into areas of unmet need which may already have an ACO footprint. This has the added advantage of encouraging proper utilization through the built in cost containment incentives of the MSSP. As previously mentioned, 21 of the 29 ACOs that successfully produced shared savings in the first year of the MSSP were independent physician-led ACOs.

Independent physician-led ACOs, as opposed to hospital affiliated groups, are made up of physician practice groups which focus on low cost primary care interventions and avoidance of high cost institutional settings. Small physician-led, primary care focused ACOs, such as those we manage in Kentucky are innovative, proven effective and ideal partners for Kentucky-based home health agencies to improve patient outcomes and reduce state expenditures. The term and classification of an ACO as "physician-led" has been recognized by CMS and repeatedly noted in policy literature as being a model for successful and early patient intervention.

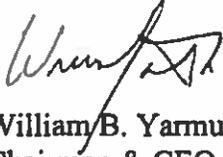
As Dr. Farzad Mostashari and his colleagues at the Brookings Institution observed:

A key difference between physician-led ACOs compared with other ACOs, such as those organized by hospitals, is that **physician-led ACOs have clearer financial benefits from reducing health care costs outside the physician group, which are much larger than physician costs.** In contrast, hospital-based ACOs also receive shared savings for avoiding hospitalizations or shifting care to a less costly ambulatory setting, but those cost reductions are lost revenue for the hospital. The interests and incentives of physicians in physician-led ACOs are not similarly conflicted, and the benefits are more concentrated. (Source: Mostashari, F., Sanghavi, D., McClellan, M. "Health Reform and Physician-Led Accountable Care: The Paradox of Primary Care Physician Leadership," The Journal of the American Medical Association, 311(18), 2014.)

Therefore, from a policy development standpoint, we feel there is a rational basis to differentiate between independent physician-led ACOs and other types of ACOs with regard to the CON law.

Thank you for this opportunity to comment on the homecare provisions in the proposed State Health Plan. We trust this material is useful to you as you finalize the regulation and continue to modernize Kentucky's healthcare delivery system. Feel free to contact me or our VP of Government Relations Denis Fleming anytime at 502-891-1000 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'William B. Yarmuth', written in a cursive style.

William B. Yarmuth
Chairman & CEO

cc: Secretary Audrey Haynes

Emily Parento, Executive Director, Office of Health Policy

Diona Mullins, Policy Advisor, Office of Health Policy



home health • hospice • long-term acute care • community-based services

June 30, 2015

Tricia Orme
Office of Legal Services
275 East Main Street 5 W-B,
Frankfort, Ky. 40601
via email: tricia.orme@ky.gov

Re: ***Proposed changes to the Certificate of Need Review Standards in the 2015-2017 Kentucky State Health Plan***

Dear Ms. Orme:

LHC Group, Inc. (“LHC”) appreciates the opportunity to submit these comments on the Certificate of Need Review Standards contained in the proposed 2015-2017 Kentucky State Health Plan. LHC is also a member of the Kentucky Home Care Association and we fully support and subscribe to the comments to the proposed Review Standards submitted by the Association.

LHC is a provider of post-acute health care services in 29 states with a focus in rural areas in the southern and central regions of the United States. We currently operate 24 home health agency locations and 5 home and community based locations in Kentucky, including the Lifeline family of agencies. LHC provides post-acute care services, including home health services, through our home health agencies, hospices, home and community based services agencies and long-term acute care hospitals. Our home health services include skilled nursing, in-home rehabilitation, chronic disease management, chronic care coordination, medication management and the provision of care through emerging technologies such as telehealth monitoring. These services are provided by a skilled staff of approximately 11,000 nurses, physicians, therapists, and aides in over 350 locations.

LHC Group offers the following comments regarding the Certificate of Need Review Standards appearing in Section III. Long-term Care, B. Home Health Care:

1. LHC Group generally supports the proposed Common Review Criteria. However, we also note that home health providers are not sufficiently aware of the Kentucky Health Information Exchange program and urge the Cabinet to conduct further education and outreach to the home health community. Additionally, it is our experience that some hospitals are reluctant to participate in KHIE as they are wary of interfacing with external information systems. Thus, we believe the Cabinet can achieve a higher participation rate by providing further outreach to other provider sectors as well.

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2. LHC supports continuation of Home Health Review Criterion #3 the “emergency circumstances” exemption. This provision is sporadically invoked and there exists sufficient safeguards to ensure that the exemption is granted only to meet the needs of a particular patient experiencing a lack of access to home health care.
3. LHC opposes proposed Home Health Review Criterion #4 as proposed in that it exempts acute care hospitals from meeting the need requirements in Criterion #1 for establishing, and in Criterion #2 for expanding, home health services. While it is laudable that the Cabinet is tying this exemption from the need methodology to hospital quality measures, those measures do not predict the ability of a hospital to effectively operate home health services. Additionally, there is no rational basis for exempting acute care hospitals from Criterion #1 for the establishment a new home health services based on these quality measures since, the hospital is already meeting the needs of its patients by utilizing existing post-acute care resources and relationships with existing providers. On the other hand, those hospitals that currently have home health services, those quality measures may well be a measure of the hospital’s successful care coordination with its home health services.

As numerous prior comments in response to the Special Memorandum to CON Modernization have pointed out, very few counties in the Commonwealth demonstrate a current need for additional home health agencies and in many counties home health utilization is low and the current agencies are able to meet the need of the patients. Currently existing home health providers in Kentucky are capable of providing necessary home health services as the needs increase throughout the Commonwealth. Unlike hospitals and nursing facilities which are constrained in increasing services by their existing physical plants, the only restrictions on home health capacity are recruitment and training of sufficient staff and expansion of licensed service areas. As more home health agencies are approved for a certificate of need, available staff resources will be spread rather thin over more home health providers, and competition for trained nurses, therapists and other ancillary healthcare providers will increase. Thus, we oppose providing new certificates of need except in cases where the need Criterion of #1 are met.

Therefore, we recommend that the Cabinet modify the phrase “Notwithstanding criteria 1 and 2,” at the beginning of Criterion #4 to “Notwithstanding criteria 2,” which would permit existing hospital-based home health agencies to expand their services to accommodate their patients’ needs without having to establish need, but which would not exempt new hospital-based home health agencies from establishing need for new home health services.

4. LHC generally supports proposed Home Health Review Criterion #5. And while we agree that the two quality measures designated for this Criterion are important, we urge the Cabinet to consider including additional quality measures to provide a more

comprehensive survey of a home health agency's quality in determining eligibility of agency to expand their service areas.

Additionally, we are concerned that some home health agencies might use the addition of contiguous counties to relocate the agency parent office to another county without the necessity of showing need in the new county. For example, suppose an agency in Grant County desired to provide services in Fayette County. The agency could apply for a CON for the contiguous county of Scott and once the CON was approved for that county, it could then apply for a CON for Fayette County, even as soon as the very next batching cycle. We believe it is in the Commonwealth's best interest to prevent this type of manipulation of the CON procedures and should consider including a temporal restriction in its Review Criteria to prevent an agency from "marching across the Commonwealth" to its desired destination.

5. LHC opposes proposed Home Health Review Criterion #6 exempting ACOs from meeting the need requirements in Criterion #1 for establishing, and in Criterion #2 for expanding, home health services. As discussed in regards to acute care hospitals in comment #3 above, there is no rational basis for exempting ACOs from Criterion #1 for the establishment a new home health services based solely on its status as a "federally qualified ACO." Status as a federally qualified ACO doesn't indicate any ability of the ACO to effectively provide home health services. And, unlike the situations in which a hospital is effectively operating a hospital-based home health agency as demonstrated by its quality measures, there are no ACOs operating operating home health agencies in Kentucky.

Moreover, as numerous prior comments in response to the Special Memorandum to CON Modernization have pointed out, very few counties in the Commonwealth demonstrate a current need for additional home health agencies and in many counties home health utilization is low and the current agencies are able to meet the need of the patients. Currently existing home health providers in Kentucky are capable of providing necessary home health services as the needs increase throughout the Commonwealth. As more home health agencies are approved for a certificate of need, available staff resources will be spread rather thin over more home health providers, and competition for trained nurses, therapists and other ancillary healthcare providers will increase. Thus, we oppose providing new certificates of need except in cases where the need Criterion of #1 are met.

Therefore, we recommend that the Cabinet delete the phrase "Notwithstanding criteria 1 and 2," at the beginning of Criterion #6.

6. LHC is neutral in regards to the proposed Home Health Review Criterion #7 concerning National Background Checks. It is possible that this system of background checks may assist the Cabinet in reducing the potential for fraud and elderly abuse by home care workers by enhancing the specificity of background checks. However we question whether the additional specificity is warranted at a substantial increase in costs to providers. We are also concerned that this system of background checks may pose unnecessary delays in hiring of additional personnel. Therefore, we suggest the Cabinet re-evaluate this criterion in respect to the effectiveness of the current system of background checks.

LHC Group offers the following comment regarding the removal of the Certificate of Need Review Standards appearing in Section III. Long-term Care, E. Adult Day Health Care Program:

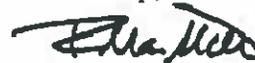
1. LHC opposes the deletion of the Review Criteria for Adult Day Health Care Programs. We are not currently providing Adult Day Health Care in the Commonwealth, but we believe the Certificate of Need process is a vital tool to ensure program integrity in this program, as well as ensuring ongoing quality and availability for this very important service for our elderly population.

LHC also wishes to address an additional issue related to the proposed revisions to the home Health Agency Review Criteria. In removing the requirement that certain applicants need not prove the 125/250 threshold need for expansion of existing services or establishment of new services, the Cabinet is increasing the likelihood that entities will apply for CONs more frequently than under the existing criteria. Consequently, there will be more CON hearings and this will increase costs to the Commonwealth for administering the CON program.

Again, LHC appreciates the opportunity to comment on the proposed Certificate of Need Review Standards contained in the 2015-2017 Kentucky State Health Plan. We hope that you will carefully consider the comments provided by us, as well as the extensive comments submitted by the Kentucky Home Care Association.

Please do not hesitate to contact me if I may provide you with any additional information regarding these comments. I can be reached by phone at 337-769-0672 and by email at: richard.macmillan@lhcgroupp.com.

Sincerely,
LHC Group, Inc.



Richard MacMillan
Senior Vice President & Senior Counsel
Legislative and Regulatory Affairs

Cabinet for Health and Family Services
Attn.: Tricia Orme
Office of Legal Services
275 East Main Street, 5 W-B
Frankfort, KY 40601

RE: 2015-2017 State Health Plan Proposed Home Health Changes

In regards to the proposed State Health Plan changes for home health, I respectfully submit this letter of opposition. I am licensed pharmacist in the Commonwealth of Kentucky and have experience with the current licensed home health agencies within the Tri-County area. I work closely with the current providers as they meet the rural healthcare needs of the communities. I have real world knowledge of the healthcare services provided to those beneficiaries and can wholeheartedly report that the current agencies more than meet the needs of said communities. The proposed state health plan will not improve access as more providers does not equate more services or better care. Unfortunately, this will only be an extreme negative impact on the health departments and non-profit agencies and make it more difficult for beneficiaries to navigate the already strained healthcare maze.

The State Health Plan that is currently in effect has worked over the years and there is no evidence that has been given to support the need to inflict these proposed changes. I believe that the language should remain unchanged and thank you for your immediate imperative attention to this matter.

Sincerely,



George Hammons, PharmD
Knox County Board of Health Chairman

June 30, 2015

Cabinet for Health and Family Services
Attn.: Tricia Orme
Office of Legal Services
275 East Main Street, 5 W-B
Frankfort, KY 40601

RE: 2015-2017 State Health Plan Proposed Home Health Changes

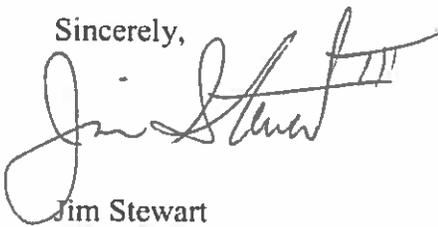
Dear Ms. Orme:

Please accept this letter opposing the proposed changes contained in the 2015-2017 State Health Plan for home health care. As the state representative for Laurel and Knox County, Kentucky, I am familiar with the existing home health providers. They are more than capable of meeting the need for quality home health services and the state utilization need calculations support this.

On behalf of my constituents, and my many years of state government experience I have first-hand knowledge of state health planning processes and goals. History has shown that the current language of the state health plan has not only worked, but has protected the Commonwealth against having duplicative and proliferate services that are not needed in our state and are cost prohibitive to an already strained healthcare system. We also do not need to place burdensome and costly requirements on existing providers including their participation in the Cabinet's National Background Check Program. This would impact their ability to hire and retain qualified staff timely because it requires a possible, lengthy 60-day provisional employment.

Thank you for the opportunity to submit my opposition to the state health plan changes proposed for home health. Please contact me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Stewart", with a stylized flourish at the end.

Jim Stewart
State Representative

June 30, 2015

Commonwealth of Kentucky
Cabinet for Health and Family Services
Office of the Secretary
275 East Main Street
Frankfort, KY 40601

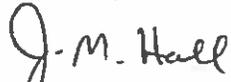
RE: 2015-2017 State Health Plan Proposed Home Health Changes

Dear Ms. Orme:

I would like to take this important opportunity to express my deep concerns regarding the proposed changes to the State Health Plan. I believe these changes will negatively impact the beneficiaries of the Commonwealth as well as the current providers. The current State Health Plan and its established criteria have worked within the Commonwealth for many years and has been effective in maintaining the integrity of the CON process. I have many years of experience in applying the laws that are set forth within the Commonwealth of Kentucky and, therefore; feel that with my experience if a law and/or process has been effective to meet the overall needs of all persons involved then that law or process needs to remain unchanged.

Thank you for your consideration of my express opposition to the state health plan changes for home health.

Sincerely,

A handwritten signature in cursive script that reads "J.M. Hall".

J.M. Hall
Judge Executive

June 30, 2015

Cabinet for Health and Family Services
Attn: Tricia Orme
275 East Main Street, 5 W-B
Frankfort, KY 40601

RE: 2015-2017 State Health Plan Proposed Changes

Dear Ms. Orme:

I am writing you to express my concerns for the proposed changes to the Kentucky State Health Plan. While I respect the states attempt to improve the healthcare system in Kentucky, it is in my professional opinion that these proposed changes would be detrimental to many areas in Kentucky. In my many years as a doctor in a rural setting I've seen how delicate and fragile the healthcare system can be in these areas. Diluting the certificate of need process and ultimately allowing more competition into these areas would cause havoc for these delicate service areas. A retraction in already limited resources would force providers to lay off staff and diminish their capacity to provide quality care to patients. As two or more agencies compete for an already limited pool of resources, the health and wellbeing of rural Kentuckians will suffer.

Thank you for taking a moment to read over my comments, and I urge you to consider the impact these changes would have on the delicate healthcare systems in rural Kentucky.

Sincerely,


Dr. Richard Carter

Knox County Board of Health

June 30, 2015

Cabinet for Health and Family Services
Attn.: Tricia Orme
Office of Legal Services
275 East Main Street, 5 W-B
Frankfort, KY 40601

RE: 2015-2017 State Health Plan Proposed Home Health Changes

Dear Ms. Orme:

I am submitting my comments to oppose the proposed State Health Plan changes for 2015-2017. I have the privilege to serve as Vice-Chair on the Knox County Board of Health and have knowledge of the home health services that are currently being provided within the Tri-County area. The current State Health Plan and its current established criteria have worked within the Commonwealth over the years and has been effective in maintaining the integrity of the CON process. The current home health providers provide quality care services and meet individualized patient needs and therefore there is no need to change the state health plan. The proposed changes will only monopolize the industry and result in a detrimental impact on health departments and non-profit agencies. It will also negatively impact the amount of resources that providers will have to render care and potentially cost quality as well as volume.

I implore you to take action by ensuring that these State Health Plan changes are not imposed. Thank you in advance for your attention to my opposition to the state health plan changes for home health.

Sincerely,



Jack Ketcham
Knox County Board of Health Vice-Chairman

June 30, 2015

Cabinet for Health and Family Services
Attn.: Tricia Orme
Office of Legal Services
275 East Main Street, 5 W-B
Frankfort, KY 40601

RE: 2015-2017 State Health Plan Proposed Home Health Changes

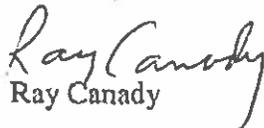
Dear Ms. Orme:

This letter is being submitted in opposition of the proposed changed to the 2015-2017 State Health Plan relating to home health services. These changes would have a tremendous negative impact on the existing healthcare infrastructure, thereby, jeopardizing quality care and access for patients.

As a former home health administrator with decades of experience, I feel that I have first-hand knowledge of how the state health plan and certificate of need process protects the infrastructure of the health care system. The proposed changes to the State Health Plan would alter Certificate of Need criteria for home health to bypass the established regulations governing the "tried and true" process, which already includes consideration of need, accessibility, costs/economic feasibility, quality, linkages, and consistency with the state health plan. There is no need to change the language in the state health plan as the existing agencies meet the need and provide quality care.

Thank you for the opportunity to submit my opposition to the state health plan changes proposed for home health. If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,


Ray Canady



525 Whitley Street
London, Kentucky 40741

Tele: 606-864-5187
Fax: 606-864-8295

June 30, 2015

Cabinet for Health and Family Services
Attn.: Tricia Orme
Office of Legal Services
275 East Main Street, 5 W-B
Frankfort, KY 40601

RE: State Health Plan Proposed Home Health Changes 2015-2017

Dear Ms. Orme:

I am submitting this letter in opposition of the proposed changed to the 2015-2017 State Health Plan. The Office of Health Policy has proposed several changes to the home health services portion of the State Health Plan that would have a tremendous negative impact on the existing healthcare infrastructure, thereby, jeopardizing quality care and access for patients residing in the tri-county area that includes Laurel, Knox and Whitley counties.

As the Director of the Laurel County Health Department, I regularly work with the home health agencies serving the tri-county area. I partner with these agencies and work with them through the Laurel County Community Health Coalition and regularly participate with other local coalitions. I feel that the current home health providers more than meet the need for home health care in our area and provide superior, quality services to the community. The proposed changes to the State Health Plan would alter Certificate of Need criteria for home health to bypass the established regulations governing this process, which already includes consideration of need, accessibility, costs/economic feasibility, quality, linkages, and consistency with the state health plan. There is no need to change the language in the state health plan as the existing agencies meet the need and provide quality care.

Thank you for your consideration of this very important matter. If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Mark Hensley
Laurel County Health Department, Director

Commonwealth of Kentucky

HOUSE OF REPRESENTATIVES

1051 Old Corbin Pike Road
Williamsburg, Kentucky 40769
Home: 606-549-3439
Message Line: 800-372-7181
Email: regina.bunch@lrc.ky.gov



COMMITTEES:
Education
Labor & Industry
Veterans, Military Affairs &
Public Protection

REGINA P. BUNCH
82nd Legislative District

June 30, 2015

Ms. Audrey Haynes, Secretary
Cabinet for Health and Family Services
275 E Main Street
Frankfort, KY 40601

RE: 2015-2017 State Health Plan Proposed Home Health Changes

Dear Secretary Haynes:

Thank you for this opportunity to express my deep concern on the proposed amendment to 900 KAR 5:020 state health plan. The regulatory impact analysis and tiering statement that accompanies the proposed changes to the regulation do not provide detail as to the necessity of the amendment as related to home health changes. There is no discussion of why the regulatory changes to allow "certain" hospital, home health agencies and Accountable Care Organization (ACO) entities to be exempt from other provisions of the state health plan that are applied to remaining hospitals, home health agencies and ACO's. The questionable ability of these identified entities to bypass long-standing COM criteria will only create incestuous relationships where markets will be monopolized. This arbitrary act of favoritism runs afoul of the purpose of the regulation and of the state health plan. This change appears to merely be an extension of the egregious limbs of the Affordable Care Act.

Additionally, the added burden of required costly criminal background checks that will restrict newly hired employees from providing service for up to 60 days will be draining on the healthcare workforce and be fiscally overly burdensome to the agencies. Agencies will be unable to hire and train qualified staff in a timely manner due to the provisional employment caveat.

On behalf of my constituents, I believe that the current language contained in the state health plan protects the Commonwealth against duplicative, unnecessary and proliferate services. It is cost prohibitive to implement the proposed changes, especially in light that we already have a strained healthcare system. Thank you for your consideration in keeping the current state health plan provision related to home health agencies. The propped changes are unwarranted and will not be in the best interest of the Commonwealth.

Sincerely,

A handwritten signature in cursive script that reads "Regina P. Bunch".

Regina P. Bunch
State Representative

RPB:ash
CC: Tricia Orm, Office of Legal Services
Cabinet for Health and Family Services

HOME OF:

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Kentucky Home Care Association 2331 Fortune Dr. Suite 280

Lexington, KY 40509

Ph: 859-268-2574

Fax: 859-898-2175

June 30, 2015

VIA FAX ONLY (502) 564-7573

Tricia Orme, Administrative Specialist III
Cabinet for Health and Family Services
Office of Legal Services
275 East Main Street, 5W-B
Frankfort, KY 40621

RE: 900 KAR 5:020. State Health Plan for facilities and services.

Dear Ms. Orme:

Please accept these comments on behalf of the Kentucky Home Care Association ("KHCA"). The KHCA is trade association founded in 1974 that represents and serves Kentucky's home care industry. We represent nearly 70 home health agencies, including non-profit, for profit, health department based, multi-state and independent agencies. KHCA also represents hospices, personal services agencies and companies that deliver durable medical equipment and supplies.

KHCA appreciates that home health, private duty nursing and hospice services are retained in the Certificate of Need ("CON") program. Kentucky has been able to maintain a stable and economically viable home care industry that delivers quality care to an increasing patient base due, in part, to the CON program. While we agree that the methodology for home health services should be changed to appropriately identify need for additional agencies or distinguish among services, we do not believe the proposed changes to the methodology achieve that end.

KHCA agrees with the Deloitte Study, formally known as the "Commonwealth of Kentucky Health Care Facility Capacity Report," that the implementation of economic incentives would enable home health agencies to provide care to patients with higher acuity levels as well as maintain a stable workforce. Home health agencies' ability to use telehealth and other technology, and receive reimbursement therefore, would also enable increased access without the necessity of expensive and sometimes dangerous travel in the more rural parts of the state. Home health agencies have not seen an increase in their

reimbursement rates in over 20 years. This has resulted in a decline in the number of agencies accepting Medicaid patients.

The conclusions in the Deloitte Study that additional home health agencies are needed, however indicate a *mis*understanding of Kentucky's CON law as it relates to home health agencies. Once established, a home health agency can add nurses and services in its approved service area as the need for those services grows. Additional agencies aren't necessarily the answer, rather the reimbursement system should be modernized to ensure economic viability and workforce sustainability.

The proposed changes in the methodology would add home health agencies to the licensed inventory by enabling hospitals to establish home health services in the counties in which they're located as well as contiguous counties. To allow hospitals the ability to add agencies could delete significant referral sources for home health agencies. It may even lead to the end of the contractual relationship which has enabled the hospital to meet the CMS benchmark. Likewise, the same circumstance occurs with the Kentucky federally-based qualified accountable care organizations ("ACO"). The reference to a Kentucky "affiliated" home health agency of such an ACO does not define the term "affiliated."

It is our understanding that these criteria would provide the opportunity for six hospitals and nine Kentucky based ACOs to establish home health agencies and twelve home health agencies to expand. Of course, this number can change as hospitals, home health agencies and ACOs meet the appropriate benchmarks. There is no provision for the circumstance when a hospital, ACO or home health agency fails to meet the qualifying criteria.

Under the current methodology in the State Health Plan, only six counties show a need for additional agencies. These are: Boyd, Daviess, Fayette, Henderson, Jessamine, Pike and Warren Counties. In spite of the need demonstrated in the State Health Plan, applications considered for these counties have been denied based on the failure to meet some, or all, of the other four criteria. The changes proposed to the home health criteria fail to meet the Triple Aim objectives upon which the CON Modernization is predicated. It will not increase access and quality or reduce costs. Eroding the patient base of one group of health care providers for the benefit of another fails to serve either the health care system or the patient in need of the service.

The one area in which need has been understood for some time is for pediatric home health services. Language should be included to provide the opportunity for an existing agency which provides care to pediatric patients to expand into other counties as well as for an agency to be established to provide pediatric care in counties where little or none is being provided.

KHCA disagrees that home health agencies, private duty nursing services and hospices should be required to participate in the National Background Check Program. It is cost prohibitive, is overly burdensome and significantly delays the hiring of new

employees. The current background check system ensures patient safety and the timely delivery of quality services.

Thank you for the opportunity to comment on the proposed changes to the Kentucky State Health Plan. We look forward to the opportunity to work with you on updating the home health care methodology and reimbursement.

Sincerely,



Nan Frazer Hanley
Executive Director



Professional Home Health Care Agency, Inc.

4934 South Laurel Road · London, KY 40744 · (606) 864-0724 · Fax (606) 864-5256

June 30, 2015

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141 PROSPEROUS PLACE, SUITE 24 A
LEXINGTON, KENTUCKY 40509
(859) 543-0408

Cabinet for Health and Family Services

Tricia Orme

Office of Legal Services

275 East Main Street 5 W-B

Frankfort, KY 40601

Dear Ms. Orme:

On behalf of Professional Home Health Care Agency, Inc. this letter is in response to the proposed changes contained in the 2015-2017 State Health Plan. Professional Home Health Care Agency, Inc. is a long-standing, non-profit, home health agency providing quality home health services since 1977. Our current service area includes Knox, Laurel, Whitley and Fayette Counties in Kentucky and Seven Counties in Tennessee. We oppose four proposed changes in the 2015-2017 State Health Plan updates and support the following actions:

- 1) **Removal of the added criteria # 4 (Page 36) in its entirety that would allow a licensed Kentucky acute care hospital proposing to establish a home health service in the county in which the hospital is located or in a contiguous county if they document their outcome performance is better or equal to select outcome criteria.**
- 2) **Removal of the added criteria #5 (page 36) in its entirety that would allow an existing licensed Kentucky Home Health agency to expand a home health service if select outcome criteria are met.**
- 3) **Removal of the added criteria #6 (Page 36) in its entirety that would allow a Kentucky-based federally qualified Accountable Care Organization (ACO), or the Next General ACO Model or by a Kentucky affiliated home health agency of such ACO, to establish home health services in a county in which it is not currently authorized to operate but in which such ACO does operate.**
- 4) **Removal of the added criteria #7 (Page 37) in its entirety that would require participation in the Cabinet's National Background Check Program.**

We resolutely oppose these changes for the following reasons:

- 1) **There are enough existing home health providers that provide quality care to serve the Commonwealth of Kentucky. There is at least one home health agency in all 120 counties and 116 of 120 counties have two or more home health agencies.**

- 2) **There is no documentation that supports the need to include language for licensed Kentucky acute care hospitals to be allowed to establish a home health service based on Hospital compare criteria.** There is no correlation between improved outcomes between hospital-based home health agencies and non-hospital based home health agencies. There is no valid reason to include language related to this special interest group in the state health plan as it relates to home health services.
- 3) **There is no documentation that supports the need for existing licensed Kentucky home health agencies' to expand a home health service based solely on home health compare criteria.** There is no foundation for allowing expansion of home health services by an existing agency based on outcomes as there is no unmet need for home health services being provided by quality agencies, as evidenced by the Cabinet's home health need calculations as well as Kentucky's home health compare averages.
- 4) **There is no documentation that supports the need for Accountable Care Organizations (ACO) to be able to establish a home health service solely based on the type of entity they are.** Existing home health agencies are already providing quality care for the patients receiving home health services and regularly participate in coalitions, provider agreements, care coordination, etc. to improve access to care and improve patient outcomes.
- 5) **There is no rationale to require home health agencies to utilize the Cabinet's National Background Check Program and it is cost-prohibitive.** The program is cost prohibitive and contains overly burdensome requirements that will adversely affect a home health agencies ability to hire, train and retain qualified staff.
- 6) **If these changes are approved it will dilute the importance and the efficacy of the CON process for home health agencies.**

First, one look at the latest published home health need calculations tells you that there simply isn't a need for increased leniency of the CON process as it relates to home health services. The latest statics published from September 2014 show that only 7 counties in the state meet the need threshold to establish a new agency, a mere 5.8%. Allowing special interest groups such as Acute Care facilities, Accountable Care Organizations, (ACO's) and home health agencies meeting certain outcome criteria to bypass this important component of the state health plan is simply outrageous and will only result in the duplication and proliferation of unnecessary services.

Unwarranted proliferation of home health agencies in a non-CON state, such as Florida results in an environment where it is common that recoupments of over \$50 million by the federal government is recovered in fraudulent home health care claims alone. When proliferation of unnecessary services occurs actions like the

federal government's moratoria in metropolitan areas in Florida, Illinois, Michigan, and Texas are common place.

Additionally, Kentucky should have learned a lesson from our neighboring state of Tennessee who made a drastic change in the CON requirements by removing home health from the certificate of need process in the early 80's; only reinstating it in 1984 due to the failure of proper patrol and control, unlike what the Commonwealth currently has in place. Professional Home Health Care Agency, serving patients in Tennessee, has first-hand knowledge of the impact of removing or weakening CON criteria. During the three-year period that Tennessee did not have a CON process in place for home health, the number of home health agencies more than doubled. Tennessee's legislature reinstated the CON review for home health in 1984 due to the following reasons:

- The sheer number of home health agencies that started up during the three-year period. (from approximately 170 agencies to 400 agencies)
- The concentration of agencies in the metropolitan areas tripled during this three year period leaving the rural communities of Tennessee with concerns over access to home health services
- Over 90% of home health agency business models served the Medicare patient. Therefore, each time a new agency opened and closed, federal Medicare dollars were used to pay for this non-CON regulated activity, and the state's Medicaid and indigent population did not benefit from the unwarranted expansion of providers.
- The State's responsibility to provide licensure oversight also doubled because of the sheer number of agencies cropping up across the State, increasing state budget requirements for regulatory staff.

The effect on the consumer needing home health services was also a consideration. With the proliferating growth of home health agencies, consumers were faced with mass marketing from an industry competing with itself for the same patient. Physicians also experienced an avalanche of marketing calls seeking referrals. An over-abundance of home health agencies and the aggressive marketing that resulted were not in the best interests of patients, physicians or Tennessee. Kentucky's state health plan, in its current form, has appropriate review criteria to assure proper utilization, cost control and quality. To coin an applicable phrase, "If it isn't broke, don't fix it!"

In fact, in the Kentucky Hospital Association's comments their expert, Dan Sullivan, stated, "An analysis of historical home health utilization data indicates that there is little correlation between the numbers of agencies serving a county and the rate of home health utilization in the county; therefore, approving more agencies, whether hospital based or free-standing, for counties with numerous existing providers will do little to change historical utilization patterns."

Additionally, after years of personally studying state demographics and statistics the need calculations utilized by the Commonwealth have proven to be an accurate indicator of need. In my experience, when a new home health entrant began serving in Whitley County it only resulted in shifting patients and resources to another provider. It did not result in increased utilization nor did it result in higher quality of services. If anything, it resulted in less resources for the existing providers to serve Medicaid and indigent patients as the new entrant was only interested in serving the Medicare population. Furthermore, our experience in Fayette County has been just as informative. In the process of obtaining a Certificate of Need for Fayette County we were able to identify a specific need in a given population that was not being served by the existing providers. Actual statistics of the patients served at this branch have proven true to the state need calculations as predicted.

In Deloitte's Kentucky Health Care Facility Capacity Study they acknowledge that, despite the fact that few new home health agencies have received CON approval in Kentucky in recent years, the rate of home health utilization has increased by 15% between 2006 and 2012. The limited number of CON approvals is a reflection of the fact that there is an abundance of existing providers with the ability to expand to meet patient population needs and little evidence of patients requiring home health care who are not being served or that they are not receiving quality services.

Furthermore, "quality of care" will be a function of the care management systems implemented by organizations as defined by their business model. The proposed changes to the home health portion of the State Health Plan will have the effect of diminishing quality of care by reducing volumes across all providers and stretching scarce resources over a greater number of providers. Current CON standards support quality as it is already incorporated into the CON criteria. These standards seek to ensure that new facilities operate at volumes that are sufficient to provide quality services. They also assure that new provider volume does not come at the expense of existing providers where the lowering of their volumes would reduce quality of existing programs.

Allowing a licensed Kentucky acute care hospital to establish a home health service in the county in which the hospital is located or in a contiguous county when there is no evident need will only proliferate unnecessary services and dilute the quality of care being rendered by all home health providers within the service area because of the diminished resources. Furthermore, there is no correlation between a hospital's performance on Hospital Compare and whether or not there is: 1) a need for another home health agency or 2) whether the hospital is able to provide quality home health services. In fact, it would seem that if a hospital is already at or exceeds the national average in one or both of the identified criteria contained in the proposed state health plan they already have established relationships with other long-term providers, including home health agencies that

positively impact their unplanned readmissions and 30-day death rates. If you are already meeting or exceeding the quality indicators then the existing infrastructure is already providing quality services and achieving the goals of acute care hospitals and Accountable Care Organizations.

Professional Home Health Care Agency works regularly with acute care facilities and other health care providers to transition patients and assure that their level of care is met. Programs that incorporate state-of-the-art telemonitors and Congestive Heart Failure standing orders are just a few that the agency has developed to improve patient outcomes. These programs in particular, assist patients discharged from an acute care facility to be monitored on a daily basis and implement interventions that prevent unnecessary re-hospitalizations. We also regularly participate in healthcare coalitions in the Southeastern and Central Kentucky area to work with all facilities to coordinate care and achieve common goals; but most importantly impact patient care and assure effective, cost-controlled and quality services are delivered.

In fact, we participated with a local coalition for over two years, headed by an acute care facility that included other providers across the spectrum. While the coalition's purpose was to achieve common goals and integrate and coordinate services the acute care facility abruptly abandoned the coalition once their grant application to fund the program failed. This was evidence that the acute care facility was not open to working with ancillary providers and was not patient centered. Historically, hospitals have not been interested in home health care because of the small margin of revenue it generates as compared to their other revenue streams.

The intent of the Accountable Care Organization (ACO), which is a voluntary Medicare program, is to improve the safety and quality of care and reduce healthcare costs in Medicare. The ACO was never intended to create a situation where hospitals monopolize the health care market. The provision to allow an ACO or other listed entities to establish a home health service in a county in which it is not currently authorized to operate but in which such ACO does operate will not fulfill ACO network provisions but simply create a hospital-based monopoly that includes a new home health entity that is duplicative and unnecessary. Quite frankly, the questionable ability of acute care hospitals, ACO's and select home health agencies to bypass long-standing CON criteria is the epitome of what outsiders view Kentucky as; an incestuous pool of intertwined relationships. This arbitrary act of favoritism runs afoul of the purpose of the regulation and intent of the state health plan.

Finally, there is already a requirement for agencies to conduct background checks but it does not dictate which service the provider has to utilize. The requirement to participate in the Cabinet's National Background Check Program pursuant to 906

KAR 1:190 is unnecessarily burdensome for home health agencies. For one, the program is currently being funded by a grant received by the Cabinet, making the cost of the background checks reasonable for a limited amount of time. Once the grant has expired the cost of the background checks will drastically increase and exceed competitor's costs, making participation cost prohibitive. For example, the additional cost to our agency alone will would *triple* the costs of background checks for the amount of employees this year alone.

Additionally, the regulation requires that applications be placed on a provisional employment status that can last as long as 60 days. During this provisional employment, "the individual shall not... have routine contact with patients... without supervision on-site and immediately available to the individual." Obviously, this just isn't going to work for home health agencies who cannot logistically nor fiscally provide supervision on-site to new employees for as long as it may take the background check to be complete. Additionally, if new hires are forced to wait for this arduous process to be completed before they can commence working then they will more than likely find alternative employment elsewhere. This requirement will simply damage the ability of providers to hire staff in an extremely competitive market, increasing costs to the provider and reducing the availability of quality staff to meet care needs.

The proposed state health plan changes will limit existing home health that are required to continue to provide care to the most disadvantaged members of our community, such as Appalachian regional hospitals, the health departments and the many not-for-profits that have tirelessly served this population for years. Home health providers are already trying to figure out how to use limited existing resources to deal with the newly implemented MWMA system that was taunted and applauded as a "fix" as a one-stop portal and make certain patients are case managed. However, when you cannot access any information you can hardly make sure patients get the care they need. The MWMA system has wrapped its tentacles around the Home and Community Based Waiver program whose purpose was to serve the most frail and vulnerable members of our community. MWMA was supposed to give these individuals quick and seamless access to the care they desperately need. Instead of flow and accessibility we have quagmire and quicksand.

As recently as two weeks ago we experienced a dead-end to the promise of what MWMA would be. We received a call about a 47 year old man who is dying of brain cancer. His distraught wife merely wanted to get him the care he needs but can't get past the gate into the MWMA system, much less begin receiving the care. We contacted the ADD. We contacted the state. Nobody simply knew what to do with him. Instead, we contacted his physician who also saw the need for a home health referral and now this patient is being seen through the traditional home health program because the existing providers know how to do home health care and do

it well. They make certain that people in need receive quality care and work with all comers to achieve this aim.

In closing, it is premature to make changes to the State Health Plan that will result in: 1) greater fragmentation rather than integration of providers, 2) proliferation of duplicative and unnecessary services, 3) jeopardizing quality of care by spreading resources across more, superfluous providers, and 4) damaging the efficacy of the CON process. Changes should only be made in accordance with valid health planning principles which consider actual changes in the delivery system and reliable data documenting actual needs. This will ensure state health planning and the limited resources of the Commonwealth remain tightly oversights and protected.

Sincerely,



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