

Unified Long-Term Care System Advisory Workgroup NURSING FACILITY CAPACITY SUBCOMMITTEE

REPORT TO THE OHIO GENERAL ASSEMBLY September 1, 2011

Background

House Bill 153 of the 129th Ohio General Assembly re-established a Unified Long-Term Care System Advisory Workgroup and in Section 209.50 instructed the Workgroup to convene a subcommittee to "...study the current and future capacity of nursing facilities in this state, the configuration of that capacity, and strategies for addressing nursing facility capacity, including the ability of nursing facility operators to determine the number of beds to certify for participation in the Medicaid program." Section 209.50 instructed the subcommittee to "...complete a report of the part of the study regarding the ability of nursing facility operators to determine the number of beds to certify for participation in the Medicaid program not later than September 1, 2011." This is the Nursing Facility Capacity Subcommittee's September 1, 2011 report. The subcommittee will continue to meet on other topics within its charge, and further report to the legislature on those topics not later than December 31, 2012.

Membership

- Bill Sundermeyer, AARP
- Rich Browdie, Benjamin Rose Institute
- Greg Moody, Governor's Office of Health Transformation (Subcommittee Chair)
- Ken Huff, Leading Age Ohio
- Linda Black-Kurek, Ohio Health Care Association
- Chris Murray, Ohio Academy of Senior Health Sciences Inc.
- Bob Applebaum, Scripps Gerontology Center
- Erin Pettegrew, Ohio LTC Ombudsman
- Bonnie Kantor-Burman, ODA
- Steve Wermuth, Ohio Department of Health
- John McCarthy, Ohio Office of Health Plans (Medicaid)

Schedule

- July 19, 2011
- August 23, 2011

Process

At the first meeting (July 19, 2011), subcommittee members discussed the reasons they proposed and the legislature subsequently agreed to study the ability of nursing facility operators to determine the number of beds to certify for participation in the Medicaid program. The primary objective the provider associations (OHCA and LeadingAge) described was the need to give nursing facilities the ability to transfer a resident among units and align the services provided with the resident's needs as the resident's needs change (e.g., from a rehab unit to a long-term care unit). State staff proposed that the objective could be met through administrative rule change rather than changing state Medicaid certification laws. It was agreed that state staff would meet to identify strategies to meet this objective and report back to the subcommittee.

In addition, LeadingAge made a case for separating certification for Medicaid and Medicare, but that issue was set aside based on concerns it could create a second tier of lesser services for residents covered by Medicaid.

Prior to the second meeting (August 23, 2011), state staff circulated proposed rule changes to accomplish the objective identified at the first meeting. The first version of the rule was not clear and seemed to separate Medicare and Medicaid certification, and state staff agreed to revise the rule to make it clear separate certification is only allowed to the extent already authorized by section 5111.31(B)(1)(a) of the Revised Code. The subcommittee recommends and the Ohio Department of Health has agreed to propose the revised rule changes (attached) to the Joint Committee on Agency Rule Review.

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DRAFT

3701-61-01 Definitions.

As used in this chapter of the Ohio Administrative Code:

- (A) "Department" means the Ohio department of health.
- (B) "Director" means the director of the Ohio department of health.
- (C) "Distinct part" means the portion of the home that is authorized by section 5111.31(B)(1)(a) of the Revised Code.
- (D) "Dually certified part" means that portion of the facility which is certified for both Medicare and Medicaid
- (E) "Home", "resident", "Medicare", "Medicaid", "facility" and "sponsor" have the same meanings as defined in section 3721.10 of the Revised Code.
- (F) A "resident transfer" means any of the following:
 - (1) The movement of the resident from the home where the resident currently resides to another health care facility;
 - (2) The movement of the resident from a dually certified portion of the facility to a distinct part of the facility; or
 - (3) The movement of the resident from a distinct part of the facility to a part of the facility that is not certified for participation in Medicaid or Medicare; or
- (G) A "room change" means any of the following:
 - (1) The movement of a resident within the dually certified part of the facility;
 - (2) The movement of a resident within the Medicaid only certified part of a facility; or
 - (3) The movement of a resident from the Medicaid only certified part of the facility to the dually certified part of the facility.

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3701-61-08 Room Changes.

- (A) The home shall provide the resident and sponsor reasonable notice before the resident's room is changed, including an explanation of the reason for the change.
- (B) The home may provide notice in accordance with paragraph (C) of this rule if the reason for the room change is due to one of the following situations:
- (1) The resident to be relocated no longer needs the specialized medical services or programs that are the focus of the area of the home where the resident is currently residing;
 - (2) The resident to be relocated needs the specialized medical services or programs that are the focus of the area of the home to where the resident is to be relocated;
 - (3) Another resident or prospective resident needs access to the specialized medical equipment no longer needed by the resident to be relocated, if the medical equipment is the type that cannot be moved from the room.
- (C) Notice of a room change due to one of the situations specified in paragraph (B) of this rule is reasonable if the home:
- (1) Provided the resident and sponsor a copy of, and explained its policy, regarding transfers in and out of specialized care areas or rooms prior to admitting the resident to the specialized area or room;
 - (2) Notified the resident and sponsor verbally, followed by written notification, of any pending room change as soon as the home determined the need for any change, but no less than twenty-four hours before the change occurred; and

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- (3) The notice included an explanation of the reason for the change.
- (D) The home shall take into account the preferences of the resident being relocated, the compatibility of any new roommate and, if time permits, provide the resident an opportunity to see the new room, meet the new roommate, and to ask questions prior to the move.