



STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES

OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET • HARTFORD, CONNECTICUT 06106-5033

MEMORANDUM

To: Organizations that Submitted Comments in Response to Executive Order 37

From: Roderick L. Bremby, Commissioner
Department of Social Services
25 Sigourney St.
Hartford, CT 06106

Date: March 14, 2014

Re: Responses to Public Comment

The following are the Department of Social Services' responses to comments received from the public in response to Executive Order 37. Comments were received from the following organizations: Connecticut Council of Small Towns; Connecticut Community Providers Association; Connecticut Association for Healthcare at Home; and Connecticut Association of Health Care Facilities.

1. Connecticut Council of Small Towns

Comment:

The Connecticut Council of Small Towns expressed concern that the Medicaid reimbursement rates for emergency ambulance transportation services are insufficient to cover the cost of emergency ambulance transportation provided to individuals living in rural communities because individuals in rural areas must be transported longer distances than individuals in urban areas. The Commentator supports increased Medicaid reimbursement levels to ease the resulting economic burden on small towns and cities.

Response:

Medicaid reimbursement rates for emergency ambulance transportation services are not codified in regulations. These rates are determined through the state general assembly's budget adoption process and are established in our Medicaid State Plan, which is not a regulation.

2. **Connecticut Community Providers Association**

Comment:

Multiple and overlapping audit requirements are a barrier to service provision for nonprofit community providers, as providers dedicate much time and resources to ensure compliance with each audit, including those by DSS, DCF, DPH mental health audits, DPH substance abuse audits, or ECC audits. Multiple overlapping audits have far reaching implications for all nonprofit community providers, considering that audit penalties can often result in thousands of dollars owed back to the state by providers. The stakes are higher for providers with multiple sites, as each site is required to undergo an individual review process which may take anywhere between one month and an entire year to complete. It is proposed that the state review all audit requirements for nonprofit community providers to identify and address overlaps, inconsistencies, or redundancies within the state auditing process.

Response:

The DSS Audit Division continuously strives to improve the efficiency and effectiveness of its audits. The Department will, in the future development of any agency specific audit requirements, consider the requirements of other state agencies to avoid redundancies in the audit process when feasible.

3. **Connecticut Association of Health Care Facilities**

Comment:

General Comment: The provisions in the Waiting List regulations enacted in 1988 (except for 17-311-209 which was enacted in 1990) and never updated, are antiquated and impose unreasonable administrative burdens on facilities without any added benefits.

Response: The Department agrees with this comment and will include the suggested revision in the future amendment to the regulation.

Comment: Regulation 17-311-200 (b) and (c)

(1) Remove “or general assistance benefits from a town” from (b).

(2) Revise the definition of “applicant for admission” in (c) as follows: “applicant for admission means any person who either himself or through a representative, including but not limited to his guardian, conservator, family member or physician, indicates a desire to the nursing home to be admitted into such nursing home. A general inquiry from a hospital does not create an applicant for admission under this section.

Such indication of desire for admission to the nursing home may be communicated to the facility by a person or his representative in person, by mail, by telephone or by electronic mail to the individual or address specified by the facility for indicating a desire for admission. Nursing homes may not restrict applicant for admission status to those persons who have personally

visited the facility, completed and signed application forms, submitted medical, social or financial information, or in any other way not expressly permitted by this section.”

Reason:

(1) P.A. 04-76 removed this language from the statute in 2004. See Conn. Gen. Stat. §19a-533.

(2) In the 25 years since this regulation took effect, technology has changed dramatically. Hospital discharge planners now use systems such as eDischarge, an automated fax notification system. This system allows discharge planners to seek admission for patients to a large number of nursing homes at one time and has greatly increased the number of “inquiries” which a nursing home receives. Most of these patients never specifically expressed an interest in the facility. Because the regulation is unclear as to whether these general inquiries fall within this regulations, many facilities have been including them and are overcome with the administrative burden complying with the related requirements. In fact, one administrator reported that his facility sent out 1,154 receipts in the first six months of 2013 as a direct result of these general inquiries. This is time consuming and expensive. These names of these persons are then also added to the dated list of applications. Not only is management of these requirements unnecessarily burdensome on facilities, they also no longer serve the intended purpose and are totally ineffective with respect to general inquiries made by hospitals.

Furthermore, the current definition does not acknowledge the use of electronic mail. The revision provides for the use of electronic mail to indicate a desire provided that it is sent to the individual or address designated by the facility for handling indications of desire for admission.

Response: The Department agrees with this comment and will include the suggested revision in the future amendment to the regulation.

Comment: Regulation 17-311-204

Revise the language to remove the requirement that the dated list of applications be maintained in a bound volume and replace with “Such dated list of applications shall be maintained either in a bound volume or an electronically generated list that ensures the integrity of the data entered. The list must be in the chronological order in which the persons contacted the facility and indicated a desire to be admitted with the date and time of initial contact indicated by the person’s name.”

Reason:

In 1988, when this regulation took effect, adequate electronic means were not readily available to facilities for maintaining a list. Twenty-five years later, requiring a bound volume is outdated, unnecessarily burdensome, and ineffective. As with the advent of electronic medical records, it is possible and, in fact, preferable to maintain such records electronically not only to reduce document storage needs but also to add a level of security. The ability to track changes made to electronic files far surpasses the ability to track hand-written changes to a bound volume.

Response: The Department agrees with this comment and will include the suggested revision in the future amendment to the regulation.

Comment: Regulation 17-311-205

(1) Revise the language in (a) as follows: Add electronic mail and facsimile as acceptable methods of sending a written application form.

(2) Add the following language to the end of (b): An application that does not include requested financial information shall not be considered substantially complete.

Reason:

(1) The additions of electronic mail and facsimile are required to update this regulation to acknowledge advances in technology.

(2) The addition of this language provides the necessary clarification for facilities that applications without requested financial information do not entitle one to occupy a space on the waiting list. Establishment of a payor source and the ability to meet Medicaid requirements now or in the future are critical components of the application. This is consistent with 17-311-209(b)(1).

Response: The Department agrees with this comment and will include the suggested revision in the future amendment to the regulation.

Comment: Regulation 17-311-206

Revise the language in (a) to remove the requirement that the waiting list be maintained in a bound volume and replace with “which shall be maintained either in a bound volume or an electronically generated list that ensures the integrity of the data entered. The waiting list must contain the names of persons who have substantially completed and returned to the facility the written application form.”

Reason:

In 1988, when this regulation took effect, adequate electronic means were not readily available to facilities for maintaining a list. Twenty-five years later, requiring a bound volume is the epitome of outdated, unnecessarily burdensome, and ineffective. As with the advent of electronic medical records, it is possible and, in fact, preferable to maintain such records electronically not only to reduce document storage needs but also to add a level of security. The ability to track changes made to electronic files far surpasses the ability to track hand-written changes to a bound volume.

Response: The Department agrees with this comment and will include the suggested revision in the future amendment to the regulation.

Comment: Regulation 17-311-207

(1) Repeal this section.

(2) In the alternative, revise the language to remove the requirement that the daily log be maintained in a bound volume and replace with “which shall be maintained either in a bound volume or in an electronic record that automatically records the date, time and author and does not permit any data to be overwritten or changed without maintaining a record of the originally entered data. The daily log must be completed...”.

Reason:

(1) P.A. 93-381 removed the daily log requirement from the statute in 1993 and therefore, there is no longer a need for it in the regulation. See §19a-533.

(2) Electronic records are becoming the norm. Requiring the maintenance of bound volumes is consistent with the standard 25 years ago. Medical records are now successfully maintained electronically as well as many other types of records and facilities should be permitted to maintain all of its required documentation electronically. Current technology allows for the integrity of the data to be maintained through automatic date, time and author stamps and by not allowing permanent deletions.

Response: The department agrees that the regulation should either be repealed or revised to allow for electronic records.

Comment: Regulation 17-311-209

Add: (21) Regardless of the ratio of payer mix, if at the time of vacancy a nursing home has residents who have been Medicaid pending for longer than 90 days or are in a Medicaid penalty period and the facility is receiving no payment for care for those residents, then the nursing home may admit the next self-pay person on the waiting list.

Reason:

Nursing homes must continue to provide care for patients with Medicaid applications pending and for those with imposed penalty periods without being paid for that care. While the cost of that care may be reimbursed if a pending application is granted without a penalty period, many times a penalty period is imposed or the delay in granting the application is so extensive as to create a financial hardship for the facility. The difference in payment rates between self-pay and those individuals receiving assistance will help to carry the overwhelming burden it has as a result of penalty periods and delayed Medicaid applications.

Response:

The Department disagrees. Furthermore, the addition of the suggested exception is beyond the statutory authority provided in section 19a-533 of the Connecticut General Statutes.

Comment: Regulation 17-2-140 through 17-2-145

Update all dollar amounts referenced herein to reflect appropriate increases since time regulations were implemented.

Reason:

These regulations have not been updated with respect to dollar amounts for PPA, allowable gifts, burial accounts etc. since 1978 and are no longer accurate or reasonable given the passage of time.

Response: The Department agrees with this comment and will include the suggested revision in the future amendment to the regulation.

Comment: Regulation 17-2-143(C)(10)(i)

Increase the value of a gift that a resident may use his or her personal needs allowance to give or purchase from \$25 to an amount not to exceed the value of the monthly personal needs allowance.

Reason:

This regulation took effect in 1978 and has not been amended. According to the regulation, the amount of the personal needs allowance at that time was \$25 per month. Clearly, the intention of the regulation was to limit gifts to the amount paid to the resident monthly as a personal needs allowance. The proposed change eliminates the need for future changes due to increases in the personal needs allowance.

Response: The Department agrees with this comment and will include the suggested revision in the future amendment to the regulation.

4. **Connecticut Association for Healthcare at Home**

Comment:

Section 17b-262-7 of the Regulations of Connecticut State Agencies, Refusal to Serve. This regulation sets forth the reporting procedure to be followed by a home health agency in the event that the agency refuses to serve or suspends the service to an individual. The purpose is to ensure that the agency's refusal to serve was for a legitimate, non-discriminatory basis. The commentator suggested that the forms and process should be updated to ensure the agencies are tracking any refusals to serve and that the home health agency can produce a tracking log, if one is requested by DSS. The commentator also suggested that subsections (b) and (c) of section 17b-262-7 be revised to be consistent with the Department of Public Health's regulations regarding home health agencies.

Response: The Department agrees with this comment and will include the suggested revision in the future amendment to the regulation.

Comment:

Section 17b-262-728. Home Health Services. Services Covered and Limitations. Revise the home health services regulation at section 17b-262-728 of the Regulations of Connecticut State Agencies to expand description of covered nursing services within home health services to include assessment and evaluation of patient progress similar to a comparable description in the DPH home health agency regulations.

Response: The Department agrees with this comment and will include the suggested revision in the future amendment to the regulation.

Comment:

Section 17b-262-838. Payment of Hospice. Services Covered. Revise the hospice regulation at section 17b-262-838 of the Regulations of Connecticut State Agencies to mirror Medicare's conditions of participation requirement to bill by allowing verbal orders, provided that a written order is received prior to billing the claim (rather than within forty-eight hours of the verbal order).

Response: The Department agrees with this comment and will include the suggested revision in the future amendment to the regulation.

Comment:

Streamline reporting requirements across all state health and human services agencies (DCF, DPH, DMHAS, and DSS) in order to ensure that only necessary, useful data is being reported.

Response: In general, the Department agrees that streamlining reporting is an important goal and that all data reporting requirements should be as specifically tailored as possible to capturing the most useful data. In many cases, federal statutes, regulations, and federal grant conditions provide very specific data reporting requirements that state agencies do not have discretion to change. In other cases, there may be programmatic or business reasons for specific reporting requirements. The Department welcomes the opportunity to discuss specific proposals further with the commenter and with other affected agencies to help begin the process of streamlining data reporting requirements where possible.

