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MEMORANDUM

TO: **Memo Distribution List**

LeadingAge New York

FROM: Hinman Straub P.C.

RE: Proposed Regulation Regarding Nursing Home Resident Rights

DATE: June 28, 2019

NATURE OF THIS INFORMATION: This memorandum solicits your comments or responses on new proposals or pending action.

DATE FOR RESPONSE OR IMPLEMENTATION: The Department is accepting comments on the proposed regulation through July 29, 2019. Please provide any comments on the proposed regulation by July 22, 2019.

HINMAN STRAUB CONTACT PEOPLE: Sean Doolan, Michael Paulsen and Kimberly Philip

THE FOLLOWING INFORMATION IS FOR YOUR FILING OR ELECTRONIC RECORDS:

Category: #9 Medicaid and Medicare

Suggested Key Word(s):

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The Department of Health (DOH) recently issued a notice of proposed rulemaking that would require nursing homes to provide information about home and community based services and community transition programs to residents. Specifically, the proposed regulation would require that all nursing homes provide residents with information on services and programs that may be available to support the resident in returning to the community, including their right to live in the most integrated and least restrictive setting, upon admission. A copy of the proposed regulation is attached.

The Department is accepting comments on the proposed regulation through Monday, July 29, 2019. If you would like to submit a comment for consideration by the Department, please send it to us by Monday, July 22, 2019.

Background

New York's Public Health Law requires all nursing homes to adopt, and make public, a statement of the rights and responsibilities of residents, and requires that residents are made aware of their rights prior to, or at, their admission to a nursing home.

DOH is placing a focus on ensuring that individuals with disabilities are afforded the right to live in the most integrated setting possible. DOH currently oversees and operates the federally funded Money Follows the Person program. This program provides assistance and support to nursing home residents that wish to return to their community. Residents that express an interest are referred to the Local Contact Agency¹ and connected with a transition specialist that will assist them with transitioning to community living.

To further the states effort to encourage and facilitate community-based living for individuals with disabilities, Governor Andrew M. Cuomo launched his "Able New York" agenda in July 2018, which is a multi-agency initiative aimed at enhancing accessibility to state programs and services for New Yorkers with disabilities. This proposed rule is part of a series of actions to promote community living for New Yorkers.

Summary

The proposed rule would require nursing homes to:

- advise all residents upon admission, of their right to live in the most integrated and least restrictive setting, with considerations for the resident's medical, physical, and psychosocial needs;
- provide all residents, upon admission, with information on home and community-based services and community transition programs;

¹ Local Contact Agency shall mean an agency designated by the Department to accept referrals of nursing home residents that wish to receive information about services in the community. Local Contact Agencies shall contact referred nursing home residents and provide them with information and counseling on available home- and community-based services. Local Contact Agencies shall also either assist residents directly with transition services or refer residents to organizations that assist with transition services, as appropriate.

- refer all residents to the Local Contact Agency, or a community-based provider of the resident or designated representative's choosing, whenever the resident requests information about returning to the community, or whenever the resident requests to talk to someone about returning to the community during any state or federally mandated assessment;
- post in a public area of the facility; at wheelchair height, contact information for the Local Contact Agency;
- have staff available to discuss options for discharge planning, with consideration for the resident's medical, physical and psychosocial needs; and
- ensure that all discharge activities align with resident transfer and discharge rights.

To comply with the proposed rule, nursing homes will be required to replace their existing resident rights materials with an amended version and replace existing signage with new signage that includes the amended residents' rights, as soon as the materials are available from DOH. Nursing homes may be subject to annual review to ensure compliance with this rule.

Please contact us with any questions you may have.