



MEMORANDUM

TO: Adult Care Facility and Assisted Living Members
FROM: Diane Darbyshire, Senior Policy Analyst
DATE: August 3, 2009
SUBJECT: Overview of ACF/Assisted Living Quarterly Meeting With DOH
ROUTE TO: Administrators

ABSTRACT: Updates on adult care facility and assisted living issues.

Introduction

This memo provides the latest information from the Department of Health (DOH) on a variety of adult care facility (ACF) and assisted living issues.

General ACF Issues

ACF Grants and Funding

- Solicitation for Quality Incentive Payment Program (QUIP) funds will be issued soon.
- The Request for Applications (RFA) for the next round of Enhancing Abilities and Life Experience (EnABLE) grant funding is in development; no predicted timeframe has been released.
- Awards for the prior year's EnABLE grant funding were announced at: http://www.health.state.ny.us/press/releases/2009/2009-06-16_adult_care_facilities_quality_of_life.htm.

Uniform Assessment Tool

DOH hopes to identify a uniform assessment tool for the long term care continuum by early 2010, with plans for a pilot demonstration before state and system-wide implementation. This initiative stems from provisions in this year's budget. DOH clarified that **the tool will not apply to ACFs but will apply to Assisted Living Programs (ALPs)**. There will be some duplication in assessments, as this tool will not correlate with reimbursement like the PRI does for the ALP, though these processes may be streamlined in the future, to coordinate data between the assessment tools. Attached to the bottom of this memo is a PowerPoint provided by DOH to illustrate qualities of the assessment tool and the Regional Assessment Center demonstration.

Regional Assessment Center Demonstration RFP Issued

DOH has issued a Request for Proposals (RFP) for the Regional Assessment Centers demonstration authorized in this year's budget. The centers will provide comprehensive assessments and reassessments, service authorizations and ongoing case management for Medicaid-eligible consumers requesting and/or accessing services, replacing the county role. The demonstration project will serve Medicaid consumers in Kings, Ulster and Orange counties for a variety of programs, **including the ALP**. An evaluation will follow the three-year demonstration. See [NYAHSa Doc ID# n00003681](#) for more information.

Companion Care in ACFs Discouraged

DOH stressed that companions in ACFs should not be providing any personal care or other services that an ACF is required to provide by law. DOH cautioned ACFs that allow residents to hire companions privately, as the ACF is ultimately responsible for residents' care and well-being. See [NYAHSa Doc ID #n00003478](#) for more information and the DOH *Dear Administrator* letter issued in May.

Assisted Living Program Issues

HEAL NY Phase 12

A significant number of the 87 applicants for HEAL NY Phase 12 funding requested assisted living program (ALP) beds as a part of their proposal. The requests were related either to a decertification of nursing home beds in that organization or by some community partner with whom the applicant had made an arrangement. DOH intends to announce the awards for this funding opportunity by the end of September. There will not be any appeals process for the HEAL NY awards.

Future ALP Opportunities Expected This Fall

Shortly after the HEAL NY Phase 12 awards are announced, DOH plans to announce another opportunity to apply for ALP beds. It is unclear at this time what type of application process will be used. DOH is working to implement the provision in this year's budget to cut 6,000 nursing home beds and subsequently create 6,000 new ALP beds. DOH intends to account for those nursing home beds eliminated as a result of a facility closure, as well as those beds "left over" from the voluntary nursing home rightsizing demonstration initiative. For example, if a nursing home decertified 50 nursing home beds and created 25 ALP beds through "rightsizing", the department will identify the remaining 25 ALP beds as available to an applicant, creating the opportunity for both ACF and other qualified entities to apply for ALP beds.

DOH has identified 498 ALP beds available and is working to identify additional beds available through closures and rightsizing. For more information, visit DOH at http://www.health.state.ny.us/funding/rfa/0905041240/qna1_additional_info_pool_of_available_beds.pdf. DOH noted that there may be ALP opportunities related to a revision in need methodology in the future.

ALP Application Reviews

DOH is reviewing applications for 30 ALPs that stem from recent competitive application processes and “rightsizing” initiatives. The department is awaiting information from approximately 20 applicants. A status report for each applicant will identify outstanding items.

Administrative Hearings for 1,584 Bed ALP Solicitation

The hearing process has begun for unsuccessful applicants of the [1,584 bed solicitation](#); however no hearings have occurred yet. Some providers have had pre-administrative hearings with DOH staff and withdrawn their request, and some legal settlements have been made. It is our understanding that some beds have been awarded in at least one legal settlement; they do not detract from the beds already awarded. A hearing is scheduled for late August. Members are encouraged to [let us know](#) of their experience with the hearing process.

ALP LHCSAs May Be Subject to Mandatory Influenza Vaccine Requirement

The State Hospital Review and Planning Council (SHRPC) recommended emergency adoption of mandatory influenza vaccine for all home care personnel and volunteers. Under the proposal, each home care agency must provide or arrange for influenza vaccination(s) at no cost to its personnel. This proposal is expected to be adopted at the next SHRPC meeting on Aug. 6 and will go into effect once filed with the Secretary of State. LHCSAs that serve ALP programs will likely be subject to the requirement. NYAHSAs will keep members informed. See [NYAHSAs Doc ID# n00003675](#) for more information and a copy of the regulations.

DOH to Require ALP LHCSA Employees to Follow Criminal History Record Check Requirements

DOH is changing its stance on whether licensed home care services agencies (LHCSAs) serving ALP programs should be subject to criminal history record check (CHRC) requirements. Historically, DOH maintained that LHCSA ALPs were *not* subject. DOH recently indicated, however, that its interpretation has changed and that LHCSA ALPs *will be* subject to CHRC requirements because the law stipulates that LHCSAs are subject to the requirements.

The department will issue a DAL soon clarifying this change and the date effective. DOH is working to clarify which positions will be subject to the requirement, given the structure of some ALPs, and which entity is the employer. NYAHSAs has advocated that DOH must clarify expectations, provide adequate training and ensure reimbursement before this change can be implemented.

Compliance Program Regulations and ALPs

The Office of Medicaid Inspector General’s (OMIG) proposed regulations compliance programs for Medicaid providers have been promulgated, effective July 1. All providers

that bill Medicaid for \$500,000 or more during a consecutive 12 month period—which includes most ALP programs—must comply. Providers have 90 days from the effective July 1 date to develop programs. For more information, see [NYAHSa Doc ID #n00003618](#).

Assisted Living Residence Issues

- DOH will release an updated *Question and Answer* document on the DOH assisted living Web page soon.
- The ALR Consumer Information Guide is still under review.
- Fourteen entities have received ALR, enhanced ALR or special needs ALR licensure statewide thus far. To view the list of licensed entities, go to http://www.health.state.ny.us/facilities/assisted_living/licensed_programs_residences.htm.
- NYAHSa will meet with DOH this month to discuss member concerns regarding the ALR application process.

Other Issues of Interest

DOH Organizational News

The Department of Health Office of Long Term Care announced that Mary Ann Anglin has accepted the position of Director of the Division of Home and Community Based Services. Rebecca Fuller Gray has been promoted to Assistant Director of the Division to provide leadership support for the areas of quality assurance, surveillance and licensure. [Click here](#) for more information.

Office of State Comptroller Audit of DOH

In the past few years, DOH has undergone audits by the Office of State Comptroller (OSC) for their ACF oversight. ACFs are unique from other aspects of the long term care continuum in that there is no federal oversight, thus likely frequency of OSC audits. The department is meeting with OSC again this week to discuss findings from a recent audit. OSC's 2006 audit report and DOH's response are available at <http://osc.state.ny.us/audits/allaudits/093008/06s7.htm>. The report identifies problems such as regional offices not keeping to the survey schedule and delays in responding to complaints. The issues are broken down regionally.

H1-N1 Virus Update

DOH is working with other entities to ensure health care worker protection and optimize health care service delivery during the H1-N1 Virus, also known as the swine flu. The department is seeking grant funding for personal protective equipment and training for staff in ACFs and other residential care facilities. Members are encouraged to monitor the HPN for advisories. For materials and posters regarding good health practices related to the spread of flu, visit DOH at http://www.nyhealth.gov/diseases/communicable/influenza/h1n1/educational_materials.htm.

DOH reports that three flu vaccines may be available later this year: the seasonal flu vaccine and a two-step vaccine for the H1-N1 virus.

Conclusion

NYAHSa meets regularly with DOH to receive updates regarding pertinent issues and advocate for members. **Please keep us informed of any issues that you may be experiencing so we can advocate appropriately.** If you have questions or comments regarding this memo, please contact Diane Darbyshire at 518-449-2707, ext. 162, or by e-mail at ddarbyshire@nyahsa.org.