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MEMORANDUM

TO: RHCF Members

FROM: Patrick Cucinelli, Senior Director of Public Policy Solutions

DATE: April 5, 2012

SUBJECT: **Consultant Pharmacy Services**

ROUTE TO: Administrator, Director of Nursing, Pharmacy Director, Medical Director

Abstract: CMS reverses position on proposed requirement regarding pharmacy consulting services.

Introduction

Last year, LeadingAge New York had joined with LeadingAge to advocate against the Centers for Medicare and Medicaid Services (CMS) proposed rule that would have set new guidelines regarding the independence of consulting pharmacists. **We are pleased to announce that CMS responded to this advocacy and is reversing itself on the rule.**

The rule as originally proposed by CMS is referred to as *section 5.) Independence of LTC Consultant Pharmacists (§ 483.60) of the proposed rule entitled Medicare Program; Proposed Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2013 and Other Proposed Changes; Considering Changes to the Conditions of Participation for Long Term Care Facilities (201125844).*

Our Opposition

In general, the proposed rule would have required facilities to hire consultant pharmacists who are independent of the vendor pharmacy supplier, or in cases where there is an in-house pharmacy, the pharmacist could not be employed by the facility.

We opposed this rule based on concerns that:

- It creates the potential for increased administrative burden and costs and thus represents an unfunded mandate;
- The problem it is meant to correct is not widespread and there are better ways to handle the potential for conflict of interest;
- There are advantages to the current system that would be lost; and
- There are unique circumstances for nursing homes running in-house pharmacies that are not addressed in the rule, and the rule needs to make an exception for these nursing homes.

For a complete analysis of our opposition, please [click here](#).

CMS to Continue to Review Issue

The official [CMS announcement](#) states:

*CMS will continue to consider changes to long-term care facility (LTC) conditions of participation relating to pharmacy services. In the proposed rule, CMS reported that it was considering a requirement for LTC consultant pharmacists to be independent of any affiliations with the facility's pharmacies, pharmaceutical manufacturers and distributors, or any affiliates of these entities. We argued that such a requirement would be necessary to ensure that consultant pharmacist decisions were objective, unbiased, and in the best interest of nursing home residents. **CMS analyzed industry and stakeholder comments to the proposed provision, and through this review, CMS has determined that this requirement did not provide a comprehensive solution to concerns of the over-prescribing of drugs in LTC settings and so is not finalizing the proposal at this time.***

From comments received on this issue, we now believe a more targeted and less disruptive approach is warranted. As such, CMS is soliciting additional comments to help determine a more comprehensive approach to eliminate overprescribing and the use of chemical restraints in LTC. CMS is strongly encouraging the LTC industry to voluntarily adopt the following changes to increase transparency:

- *Separate LTC consultant contracting for dispensing and other pharmacy services;*
- *Pay fair market rates for consultant pharmacist services; and*
- *Disclose to LTC facilities any affiliations of consultant pharmacists that pose potential conflicts of interest (this may include the execution of consultant pharmacist integrity agreements.)*

CMS urges LTC practices and stakeholders to implement changes to address these concerns which will result in a decrease in inappropriate prescribing. If improvements in inappropriate utilization do not occur, we will use a future notice and comment rulemaking to propose requirements to comprehensively address these concerns.

The Final Rule, where comments can be submitted on the LTC consultant pharmacist provision, is accessible at the Federal Register by [clicking here](#).

Conclusion

LeadingAge New York is grateful to our members who assisted in supporting our successful advocacy. It is clear from the CMS announcement, however, that this is an issue that will continue to be on their radar. LeadingAge New York will continue to carefully monitor and respond to the situation and advise members of any new developments.

Please contact me with any questions at pcucinelli@leadingageny.org or call 518-867-8827.