Testimony of the Home Care Alliance of Massachusetts
Executive Office of Elder Affairs (EOEA)

651 CMR 12.00: Certification Procedures and Standards for Assisted Living Residences

Secretary Hartstein and Executive Office staff, thank you for the opportunity to offer comments on behalf of the Home Care Alliance of Massachusetts on 651 CMR 12.00: Certification Procedures and Standards for Assisted Living Residences

The Home Care Alliance is a trade association of 200 home care agencies that are both Medicare-certified – authorized to provide medical services for reimbursement from Medicare and MassHealth – and privately paid supportive services. Both types of agencies deliver care that helps keep people independent, whether it is skilled nursing and therapy services or basic companionship and transportation to and from medical appointments.

The Alliance applauds EOEA for proposing standards for certification for Assisted Living Residences as we believe this gets the Commonwealth another step closer to a higher quality of life for our seniors. As noted in the proposed regulations, Assisted Living Residences are an important part of the spectrum of living alternatives for the elderly and should support the goal of aging in place through services, available either directly or through contract or agreement, to help manage physical or cognitive impairments while maximizing his or her dignity and independence.

We offer the following comments by section of the proposed regulations:

12.02: Definitions:

Ancillary health services are traditionally known as assistance with activities of daily living (ADL), homemaking and other such non-medical duties. However, the proposed regulation specifically notes that a “certified provider of ancillary health services” is a provider of skilled service. The Alliance would urge an addition explaining that ADL assistance can be provided by a Certified Provider of Ancillary Health Services and that the definitions remain consistent throughout the regulation.

There are also home care agencies that provide privately paid home care aides and certified nursing assistants that are separate from federally-certified providers and they should be included in this definition as well.

There are instances where a “home health agency” is singled out apart from the term “Ancillary Health Services.”

12.03: Certification:

Under the heading “Service and Service Coordination Requirements,” the Alliance urges that a requirement be added that Service Coordinators not steer residents toward any
medical or Certified Ancillary Service Provider, but present a list of options and allow residents a choice of those providers.

12.04: General Requirements for an Assisted Living Residence:

Under the heading of “Skilled Care Services,” clarification is needed in that the Sponsor may arrange for the provision of Ancillary Health Services, but the Sponsor may not use Assisted Living Residence staff unless said staff is functioning as an employee of a Certified Provider of Ancillary Health Services. This is confusing and counter to the intent of the regulation, which is to provide a place of residence while not serving as a medical or nursing facility, as noted in section 12.01.

However, in the same heading, there is also a restriction on the length of time that skilled services could be provided stating that “the Resident requires Skilled Nursing Care no more than ninety consecutive days or such care is limited to a periodic scheduled basis.” This restriction contradicts the idea that Assisted Living Residences serve as private residences because people can receive home health services in their home.

Wound care and other situations may arise that require care for greater than ninety days and therefore the Alliance suggests the time requirement be lifted. In its place, the regulation language should say the resident may receive skilled nursing care from a home health agency as needed by the resident and as approved by public or commercial insurance. In addition, the regulation should insert periodic assessments from the nurse and/or service coordinator at regular intervals established in the regulations (i.e. 60 days) pertaining to whether continuing skilled care beyond the defined length of time is sufficient to ensure patient safety. If individuals can receive continuous private duty nursing at home, the same should apply to their assisted living residence.

Under the heading “Service Plan Requirements,” is an example of where “Ancillary Health services” is an inconsistent term. VNA services are listed as a possibility, but so are private duty aides, which as mentioned above, are not always from a certified provider.

Under the heading, “Disaster and Emergency Preparedness Plan,” the Alliance has concerns about the conducting of annual evacuation drills and rehearsals. Language should be added to this regulation ensuring that residents remain safe during these procedures and are conducted in conjunction with local public safety officials that may be instructed in emergency situations to enter the residence and extract individuals.

Moreover, if there are any home health agency patients living within the residence, the Sponsor or their staff should be required to contact the agency, which has to account and check on patients during emergency situations.

Under the heading, “Distribution of Information on Palliative Care and End-of-Life Options,” the definition of palliative care needs clarification. Palliative and hospice services are not always one in the same. Palliative care can be employed during an advanced illness like cancer, but one that is not necessarily terminal. Palliative care is a team-based and patient-centered approach that takes into account a person’s emotional and mental well-being and strives to improve the quality of life for both patient and family.
12.07: Training Requirements:

Under the heading of “Exemptions,” add the words “(75 hours)” after “Home Health Aides with documentation of having successfully completed the Certified Home Health Aide training program”

12.08: Resident Rights and Required Disclosures:

Under the heading of “Resident Rights,” the Alliance urges the addition of a subsection that the Residence post or provide residents with a notice of their right under Medicare rules that they have a choice of home health care services.

12.09: Compliance Reviews of Assisted Living Residences:

Under the heading of “Compliance Review Reports, Findings and Responses,” more clarification, and a solid definition, is essential relative to the term: “sub-regulatory guidance.” The current language implies that assisted living residences will be held to a regulatory standard that lacks transparency and is free from public comment as EOEA sees fit. Such “sub-regulatory guidance,” unless it is simply clarification of existing guidance in the remainder of the proposed regulation, should not be allowed.

Thank you for your consideration of our comments and please do not hesitate to contact me with any questions.

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