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The Office of Long Term Living
Draft Nursing Facility Clinically Eligible (NFCE) Clarification
Comments
May 22, 2008

Submitted by:

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Thank you for the opportunity to provide comments regarding the draft Nursing Facility Clinically Eligible (NFCE) clarification. As you know, some older adults suffered serious repercussions when the Office of Long Term Living made the original NFCE clarification and change in the Level of Care Assessment (LOCA) process. Clients not only lost needed services but the change was not communicated to the public even though the change triggered major consequences for older consumers. When older clients, their caregivers and the professionals who serve them are not aware of new rules, policies, or clarifications, it is difficult to understand or assess whether reductions or elimination of service plans are being fairly implemented. We hope that when the Office of Long Term Living finalizes the NFCE definition the information will be made readily available to consumers, their families and the professionals that serve them, particularly those outside of the Area Agency on Aging (AAA) network.

After reviewing the draft document, the NFCE definition still seems vague and it appears to continue to overly rely on a skilled nursing facility standard as the threshold for care. Holding the NFCE definition to such a stringent standard appears to be counterproductive to the Rendell Administration's goal of rebalancing the long term care system. We recommend changing #2 in the *Discussion* section on page 3 by deleting the requirement that services "that are ordered by, and provided under, the direction of a physician" and adding "and the older adult is certified as NFCE by a physician." The language beginning in paragraph 4 on page 3 that states, "provided by or under the supervision of a skilled medical professional" should also be deleted since this implies skilled care. As you know, Aging Waiver services are supervised by Care Managers not skilled medical professionals.

In the *Discussion* section on page 3, #3b describes care and services as, "...and are **usually available only through institutional facilities.**" This language supports the current institutional bias and could prove to be an additional barrier to accessing home and community-based care. How can PA achieve a 50/50 split in the provision of long term care services if by definition an individual is considered NFCE if the "care and services" needed are either

“skilled nursing or rehabilitation...” or “...**usually available only through institutional facilities?**” While there is not uniform access to all home and community-based services throughout Pennsylvania, typically any service provided in a nursing facility has the potential of being provided in the home or a community-based setting. Therefore, we recommend that the last part of that sentence be removed: “and are usually available only through institutional facilities” or changed to “and were previously available only through institutional facilities.”

The *Discussion* section (first paragraph on page 4) also references that individuals who meet the definition of intermediate care would be considered NFCE. Since it has been many years since Pennsylvania distinguished nursing home residents as needing either skilled or intermediate care, utilizing the definition of intermediate care does not bring clarity to understanding the level of care that is less than skilled or rehabilitative but above what would be classified as “nursing facility ineligible” (NFI) such as provided at personal care homes. The current case mix system in nursing facilities does not classify residents as skilled or intermediate thus professionals lack a reference point for understanding what is actually meant by “intermediate care.” While it is important to impart that individuals who need care that is somewhat less than skilled or rehabilitative in nature can still be classified as NFCE, the use of the term “intermediate care” does not add clarity to the distinction that needs to be made.

While the NFCE definition and LOCA are two separate issues, they are related. It is worth noting that the Rutgers Center for State Health Policy recently released a report, “Determining Medicaid Nursing Home Eligibility: A Survey of State Level of Care Assessment.” (<http://www.cshp.rutgers.edu/Downloads/7720.pdf>) Out of 50 states, Pennsylvania was among only three states that emphasize clinical information in determining level of care. Seven states emphasize ADL information and the other 40 states reported using a mix of clinical and ADL information. While the report mentioned that Pennsylvania does utilize ADL information in the assessment process, it states; “The functional definitions provided by Pennsylvania and Rhode Island have a pronounced emphasis on the clinical aspects of the assessment process.” In contrast the states that use a combination of clinical and ADL information appear to have far less uncertainty. The report states, “The LOC assessment forms used by these states require specific answers to questions regarding the applicant’s functional status and clinical condition and go far toward removing any ambiguity regarding the capability of an applicant to function within different care settings.” We hope the Office of Long Term Living will create a clear and meaningful definition of intermediate care to ensure that those who do not quite meet the threshold of skilled care may still access Aging Waiver services.

We are pleased to read on page 5 of the draft document, “Generally, once a consumer has been properly determined to be NFCE, the consumer should remain NFCE unless there is some change in circumstance that warrants a different outcome.” While we agree that there may be situations when a consumer’s condition improves and a nursing facility level of care is no longer needed or perhaps an assessment was based

upon inaccurate information—we recommend that any NFCE consumer that is assessed as NFI be transitioned to any identified needed care or program prior to losing Waiver services. In addition to appeal rights, policies and procedures should be implemented to ensure an appropriate care plan is in place prior to a client losing her/his Waiver services or being “discharged” from Waiver services. Hospitals and nursing homes are required to have an appropriate discharge plan in place prior to discharging a patient or resident. The very nature of being NFCE even when conditions improve, makes these individuals particularly vulnerable; to transition from having comprehensive Waiver services to no help or very limited help could prove detrimental to their health and well being. Finally, it is important that any information a client receives about the denial, termination, or reduction in services is clear and detailed in explaining the reason for the denial or change. Low literacy issues should also be taken into consideration when writing these notices to clients.

Founded in 1977, CARIE is a nonprofit organization dedicated to improving the quality of life for frail older adults. Our focus of concern includes all consumers of long term care services from those who need home or community-based services to those who are institutionalized. Older adults who experience physical or psychological impairments have difficulty advocating for themselves and are often a silent group. We work to protect their rights and promote awareness of their special needs and concerns.

Thank you once again for the opportunity to provide comments. Please do not hesitate to contact me should you need any additional information or assistance.