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MEMORANDUM

TO: Adult Care Facility and Assisted Living Members

FROM: Diane Darbyshire, Senior Policy Analyst

DATE: January 16, 2013

SUBJECT: **Transitional Adult Home Regulations Finalized**

ROUTE TO: CEOs, Administrators

ABSTRACT: Final regulations regarding people with mental health living in adult homes are issued.

Introduction

DOH issued final regulations in the [State Register](#) on Wed., Jan. 16 which amend existing adult home regulations relating to serving people with mental illness. At the same time, regulations for providers of services regulated by the Office of Mental Health (OMH), designed to work in tandem with the transitional adult home regulations, were finalized. While most of the regulations apply to adult homes with a certified capacity of 80 or more that serve a large number of people with serious mental illness, some of the new requirements apply to *all adult homes*, statewide. For background on this issue, [click here](#).

Based on the input of our members, LeadingAge New York [submitted comments](#) on the proposed regulations. While the finalized regulations are substantially similar to the proposed regulations, the items that were changed reflect concerns we raised.

Overview of Regulations that Affect All Adult Homes

Below is a summary of the final regulations, which are effective as of January 16, 2013. First discussed are the proposed changes affecting *all adult homes*, followed by those affecting adult homes that serve a significant number of people with serious mental illness.

The definition of people who meet the criteria of “serious mental illness” in Section 487.2 (c) is referenced as it relates to the mental health evaluation and the threshold for a transitional adult home. This definition has been modified slightly:

... individuals who meet criteria established by the commissioner of mental health, which shall be persons who have a designated diagnosis of mental illness under the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR, American Psychiatric Association, July 2000), and whose severity and duration of mental illness results in substantial functional disability.

LeadingAge New York raised concerns about a second qualifier; *individuals who are receiving or have received within the past five years services from a mental hygiene provider which is licensed, operated or funded by OMH*; and are pleased to see it omitted from the final language.

LeadingAge New York also raised concern about the broad definition of serious mental illness, and that it may capture unintended populations. While the regulations do not include any further refinements to the definition, the *Assessment of Public Comment* acknowledges these concerns and provides assurances that the guidance, which will be developed jointly by OMH and DOH, will not include people with Alzheimer’s disease, dementia, episodic depression or anxiety, etc. The State Register also suggests that this and other information and resources will be provided, again addressing a concern the Association had about lack of information, resources and understanding, particularly of OMH programs and language.

Section 487.10 (b) maintains that an operator must allow a *designee* of DOH access to the facility and residents, as well as the books and records, financial statement, etc. deemed appropriate to effectuate the purposes of the regulations. In addition, the regulations in Section 487.4(d) maintain that an operator cannot admit a resident unless it has been determined that they can support the *psychological*, as well as physical and social, needs of the resident.

Mental Health Evaluation

The regulations regarding the mental health evaluation in Section 487.4(g) have been modified slightly. The final regulations maintain the proposal that the individual signing the mental health evaluation must be a professional that is approved by DOH in consultation OMH, despite LeadingAge New York’s concerns that this could delay the process. In addition, the evaluation must include:

- the date of the examination;
- significant mental health history and current conditions, including whether the resident has a serious mental illness;
- a statement that the resident’s mental health needs can be adequately met in the facility; and
- a statement that the assessor has conducted a face to face examination within 30 days of the date of admission, or for annual evaluations, within 30 days of the report.
- As proposed, the mental health evaluation eliminates the requirement to provide a statement that the resident is not mentally unsuited for care in the facility.

The Association raised concern about certain proposed aspects of the mental health evaluation, which were duplicative of the components of the medical evaluation, and requested information that the mental health evaluator may not be privy to. To avoid confusion or delays in service,

LeadingAge New York recommended certain aspects be eliminated. We are happy to report that the final regulation *omits* the proposed requirements to include:

- a statement of the resident's need, if any, for supervision and assistance with activities of daily living;
- whether the resident is receiving or has ever received services from a mental hygiene provider licensed, operated or funded by OMH, and if so, a description of these services, including their dates; and
- the prescribed medication regimen, including information regarding the resident's ability to self-administer medications.

Records and Reports

LeadingAge New York raised concern about the proposed changes to Section 487.10 (e) that require additional recordkeeping for all adult homes that serve anyone with a serious mental illness. DOH *agreed* that maintaining a weekly roster of individuals with serious mental illness seems unnecessary and overly burdensome, and it was thus eliminated.

While we did not support the concept of quarterly reporting, LeadingAge New York is pleased to see that the final regulation clarifies that a quarterly statistical information report regarding people with serious mental illness apply to facilities that meet *or are close to the* definition of a transitional adult home:

(3) for facilities with a certified capacity of 80 beds or more in which twenty percent or more of the resident population are persons with serious mental illness as defined in subsection 487.2 (c) of this Part, a quarterly statistical information report which must: identify the quarter being reported on; (ii) contain a census report, which shall include a roster of residents who are persons with serious mental illness as defined in subsection 487.2(c) of this Part; (iii) for any residents admitted during the quarter reported on, the prior residence, and for any residents discharged during the quarter being reported on, the discharge location; and (iv) contain the number of resident deaths which occurred during the quarter being reported on.

The final regulation maintains the proposals:

- that the operation must maintain copies of the resident's mental health evaluations;
- to add the Mental Health Evaluation to the list of mandated DOH forms; and
- aforementioned record keeping cannot be made public.

Transitional Adult Homes

The final regulations include the proposed entirely new section, 487.13, on "Transitional Adult Homes." Much of the proposed language remains intact with the exception of timeframes, discussed later in this document.

A transitional adult home is defined as: *an adult home with a certified capacity of 80 beds or more, in which 25 percent or more of the resident population are persons with serious mental illness.* The proposed regulation would limit the percentage of residents with serious mental illness in adult homes with a certified capacity of eighty or more to less than 25 percent of the resident population. An operator would be prohibited from admitting another person with serious mental illness if already at that capacity.

The operator of every transitional adult home has to submit a compliance plan to DOH about how to bring the mental health census under 25 percent of the total population over a “reasonable period of time. Residents must be discharged with “appropriate community services to alternative community settings.”

An alternative community setting is any setting other than a transitional adult home that is designed to promote independence and economic self-sufficiency, including, but not limited to:

- supported housing, including scattered site apartments and single site apartments;
- supported single room occupancy;
- supportive housing, including community residence single room occupancy;
- community residences;
- apartment treatment,
- senior housing;
- enriched housing programs; and
- other housing alternatives as are clinically appropriate.

Community services means services and supports provided in the state that assist individuals with mental illness to live in the community, including, but not limited to:

- assertive community treatment;
- intensive case management;
- case management;
- personalized recovery oriented services;
- continuing day treatment; and
- Medicaid benefits for which a resident is eligible, including home and community based services waivers, clinic services, certified home health care, personal care assistance and rehabilitative services.

The fundamental change in regulation accepts our recommendations regarding timeframes for providers and for DOH and OMH. A transitional adult home provider now has 120 calendar days to develop a compliance plan, increased from the proposed 60 days after the regulations are in effect. In addition, a timeframe of 90 calendar days has been imposed on DOH and OMH to review the compliance plan and either approve or require modification of the plan, which will be due within 30 days. If a plan is not submitted or is unacceptable after modification, DOH will impose a compliance plan on the operator.

As proposed, the compliance plan must include:

- how and by when the operator will achieve a mental health census that is under 25 percent of the resident population;
- how the operator will address the needs of its residents, in particular those residents who are persons with serious mental illness, while the reduction in mental health census is being achieved, including but not limited to:
 - ensuring the development of independent living skills;
 - ensuring access to and quality of mental health services;
 - encouraging community involvement and integration; and
 - fostering a homelike atmosphere.

The regulations further state that the operator will then implement the compliance plan and “cooperate with the community transition coordinator, housing contractors, and health home and managed long term care plan assessors and shall provide, without charge, space for residents to

meet privately with such individuals or entities. The operator shall not attempt to influence or otherwise discourage individual residents from meeting with such entities and individuals.”

Housing contractors are defined as housing providers that have contracted with OMH to provide residents with information regarding housing alternatives and community services and make community housing available to residents.

Community transition coordinator means a contractor retained by DOH to facilitate the transition of residents to alternative community settings.

The regulations maintain the penalties for each new regulation, the most significant of which is \$1,000 per day for violation of the transitional adult home regulations.

As noted above, transitional adult homes or homes nearing that definition must submit quarterly statistical reports.

Regulatory Analysis Points of Interest

According to the regulatory analysis, approximately 61 of the State’s 384 licensed adult homes will be required by the regulations to submit a compliance plan to DOH. A list of these homes will be made publically available.

The final analysis continues to dispute the relatively low costs projected for adult homes to comply with these mandates, and low costs projected for lost revenue for an empty bed. Costs are also projected related to the development of new supportive housing units, and an assumption is made that as residents move into community housing with appropriate services, their Medicaid costs will go down. The analysis acknowledges that some adult homes will go out of business; however they maintain that the regulations allow flexibility for an orderly transition for both the individual and the adult home.

The analysis referenced concerns we raised about the state requiring an adult home operator to deny housing to someone based on their disability, and how this could violate the federal Fair Housing Act. DOH asserted their authority to limit the number of individuals admitted to certain types of facilities or units if the attempt to provide services to more than that number of individuals would negatively impact health, safety and well-being - even if the limitation means that some individuals will not be able to receive services at the facility of their choice. DOH also asserted their authority to promulgate such specific standards in regulation under the current statutory authority.

Office of Mental Health Regulations

OMH also issued final regulations in the [State Register](#) which work in tandem with the DOH regulations. The changes would apply to all OMH licensed psychiatric hospitals and units, prohibiting the discharge of a serious mentally ill patient to a transitional adult home unless the patient was a resident of the home immediately prior to his or her current period of hospitalization.

The final regulations are modified only slightly, and the fundamental intent remains the same. In the *Regulatory Analysis*, the State Register discusses the concerns that were raised over the advisory to OMH providers regarding this issue, which was sent out prior to regulation

promulgation. A second advisory was issued on October 1, 2012, noting that the advisory would not take effect until the regulations were promulgated, as they are now are. The advisory was also amended to mirror the regulations, as the scope was initially broader.

Related Developments: OMH RFP

The [Medicaid Redesign Team \(MRT\) Affordable Housing Workgroup](#) has been focusing a great deal of attention on the development of increased supportive housing. Conversations during the Thurs., Jan. 10 meeting focused on recommendations for funding priorities, as well as ways to streamline processes and make the development of such programs simpler.

In addition, the group has discussed developing some kind of model to allow short term “step-down” services for people who might not be ready to be in the community and no longer need to be in the hospital, which may-if implemented- in part address the need LeadingAge New York raised for flexibility for individuals whose stability may fluctuate. That being said, the regulations do not include flexibility with regard to what is considered a transitional adult home. The group will reconvene, continue discussions and make recommendations for the final budget on Fri., Feb. 22.

This [presentation](#) on the MRT Affordable Housing Workgroup website has information on programs and projects supported by MRT Affordable Housing funding. One such program was an OMH [Request for Proposals \(RFP\)](#) targeting 1,050 units of supported housing in Queens and Brooklyn “as part of an effort to facilitate the transition to alternative community settings for individuals with serious mental illness currently residing in transitional adult homes.” Those with a serious mental illness residing in “transitional adult homes” will be enrolled in a health home linked with a Medicaid Managed Care Plan or a Managed Long Term Care Plan, which will assess individuals’ needs and develop care plans to facilitate transitions. Contracts have already been awarded for this RFP.

Conclusion

To review the adult home regulation changes, summary and analysis, go to page 4 of the [State Register](#). The OMH regulations are in the same document beginning on page 13. If you have any questions or comments about the contents of this memo or require assistance, contact Diane Darbyshire at ddarbyshire@leadingageny.org or 518-867-8828.