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Cathy Weiss  
Program Manager  
Center for Health Care Facilities Planning and Development  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215

BY EMAIL TO CATHY.WEISS@MARYLAND.GOV

RE: State Plan for Facilities and Services: Home Health Agency Services  
COMAR 10.24.16

Dear Ms. Weiss:

Thank you for allowing public comment on this proposed change in regulation. We appreciated the opportunity to participate in this process through the stakeholder workgroup and we are happy also to be able to provide written feedback to your draft for public comment here. We believe that issuing a new round of Certificates of Need will not only increase consumer choice and competition within the industry, driving efficiency and higher quality for consumers, but will also provide the access to care that is so vital to keeping Marylanders healthy and in their homes. Choosing new providers to care for Marylanders with Medicare must be done carefully to ensure quality will be provided from the start. We are happy to be able to assist you and the Maryland Health Care Commission (the "Commission") in determining the most effective measurement of provider quality and making this important decision.

Maxim Healthcare Services ("Maxim" or the "Company") is a nationwide provider of skilled nursing services, employing more than 65,000 nurses across 41 states. Maxim provides home healthcare, personal assistance services, live-in care, medical staffing, corporate and population wellness screens and vaccinations, school nursing, occupational health, and transitional care in addition to other services designed to meet

local needs. The Company was founded in Maryland more than 27 years ago and maintains its national headquarters in Columbia, where hundreds of people are employed.

In Maryland, Maxim is licensed as a Residential Service Agency (“RSA”). Maxim has not yet obtained a Certificate of Need through Home Health Agency (“HHA”) acquisition. Consequently, in Maryland, the Company focuses primarily on home healthcare for medically complex, medically fragile pediatric patients, many of whom rely on technology to sustain life. Providing the care that these patients need in the home allows these children to remain with their families, participate in community activities and, in large part, avoid infections and complications that could interfere with their health and safety. In recent years, Maxim has endeavored to partner with other medical providers, technology companies, and our regulators to improve the quality of care available in the more than 300 communities we serve.

Maxim provides the following comments in response to specific sections of the proposed regulation:

### **.03 Issues and Policies: Home Health Agency Services**

#### **C. Home Health Agency Quality Measures and Performance**

The Commission proposes to measure CON applicants and current HHAs wishing to expand their approved service areas using various quality measures including the Star-Rating System developed by the Centers for Medicare and Medicaid Services (“CMS”). While the adoption of these measures has certainly brought a necessary and positive increased focus on quality service across the home health industry, these measures have taken some factors into account that do not apply to certain populations and have failed to measure other factors that would be more appropriate to those with certain disabilities and illnesses. Maxim is currently working with CMS to re-evaluate certain aspects of CMS’s Star-Rating methodology for Home Health to take into account the variation in types of patients covered by Medicare and to develop a more accurate assessment of quality in the provision of varied, appropriate types of care per patient type. As an example, a patient with a primary diagnosis of ALS will not likely show “improvement in ambulation” or “improvement in bathing” because of the symptoms of that disease. It would be more appropriate to measure the providers caring for this type of patient not on these measures but perhaps on others such as frequency of device-related infections or presence of pressure ulcers to accurately assess whether high quality care has been provided. This is just one example, but there are other instances where CMS’ current methodology does not always reflect the quality of care being provided to certain populations – particularly those with progressive diseases.

As the Commission evaluates potential new entrants to Medicare certification, it should consider this potential issue relating to the CMS Star-Rating system. If the Commission determines to use the CMS Star-Rating scores as a measure of quality in the provision of Home Health services under Medicare, we would suggest that it allow providers to also provide detailed written explanation of scores. This is particularly

important as you consider the potential pathway to evaluate current RSAs that are Medicare-certified in other states as candidates for future CONs, given that these agencies may frequently care for the types of patients that receive continuous skilled care and who may not be expected to see their condition improve.

Alternately, the Commission may wish to rely upon other reliable measures of quality provision of home health services, such as those the Commission has suggested, including accreditation by a reputable accrediting organization; internal quality assurance and quality improvement procedures; outcome measures such as rates of preventable hospitalization, infection, or reportable incidents; measures appropriate to providing high-quality services as a Maryland RSA; or other demonstration that it has a strong quality of care track record.

#### **.04 Need Determination for Home Health Agency Services**

The Commission proposes to choose which areas of the state will be open to new providers based upon a measure of whether there is sufficient consumer choice within a county or region using its stated measures of concentration of providers.

In evaluating this issue, there are a few exceptions to be considered for dual-eligibles, patients who are covered by both Medicare and Medicaid. As a Maryland-licensed RSA, Maxim cares for many of these consumers for their Medicaid-only covered services. We see two themes that ought to be considered as the Commission develops its regulations: care coordination and care continuity.

Some dual-eligible consumers concurrently receive both Medicare services and Medicaid services. Where the consumer's chosen provider is unable to provide both types of care, there is an increased burden of care coordination between the two providers. We have seen, at times, consumers choose to forego the services their chosen provider is unable to provide rather than open their homes and their trust to another provider. In some of these cases, and to ensure all consumers are able to be comfortable in obtaining their full amount of prescribed services, it would be greatly preferable to allow a dually-eligible patient to be able to choose to receive all of their services from their chosen Medicare-certified provider, despite geographical restrictions within the state on a provider agency's ability to practice.

Other consumers receive care through a Medicaid waiver while under the age of 21 and must transition to receiving care through Medicare over the age of 21. This transition is inherently disruptive but is even more so when the consumer must separate from the provider they and their families have trusted over years of care and begin receiving care from a new provider agency and a new set of caregivers. The Commission may want to consider allowing consumers aging out of a waiver program to retain their trusted caregivers, enhancing this care continuity, as long as their existing chosen provider is Medicare-certified in another jurisdiction.

**.06 Certificate of Need Application Acceptance Rules: Home Health Agency Services**

**C. Qualifications for All Applicants**

*(3) "Has received at least satisfactory findings reflecting no adverse citations on the most recent two survey cycles from its respective state agency or accreditation organization, as applicable..."*

Maxim urges the Commission to adopt more definite criteria for this element of qualification, such as maintaining accreditation through a state-recognized deeming authority, including Joint Commission, Accreditation Commission for Health Care, or Commission on Accreditation for Home Care. As such, providers will have clear guidance on whether they are in a position to apply for a CON.

**.07 Establishment of HHA Quality Measures and Performance Levels for Applicants**

**C. Quality Measures for Non-Maryland Medicare-Certified HHAs**

As discussed above, Maxim urges the Commission to consider the fact that the CMS Star-Rating system does not take fully into account all types of patients, using several measures that are inappropriate to assess whether high quality home care services have been provided for certain types of patients, and failing to use other, more appropriate, measurements of quality processes and outcomes (see our comment in .03 above).

**.11 Acquisition of a Home Health Agency**

Maxim proposes that a prospective seller and an intended purchaser of an HHA participate in any investigation by the Commission into whether the intended purchaser will acquire all of the rights and duties possessed by the prospective seller. This would ensure that purchaser gains all that it expects from the seller and would also assure that the purchaser will be approved by the state, prior to the closing of a deal.

**F. Information Required for a Determination of Coverage for an HHA Acquisition**

*(1) "A purchaser shall affirm that the services historically provided by the HHA being acquired will not change as a result of the proposed acquisition..."*

Maxim requests that the Commission consider that some changes in this area are positive, for instance, if an HHA proposing to be acquired is not fully serving its

permitted geographic region or all patient types within its license and the intended purchaser plans to do so. We recommend that this section be amended to read, "The purchaser shall disclose whether there will be any change to the services historically provided by the HHA being acquired as a result of the proposed acquisition..."

(4) *"A purchaser shall disclose any record of Medicare or Medicaid fraud or abuse..."*

Maxim urges the Commission to adopt a more definitive standard, such as "A purchaser shall disclose any record of a court or regulatory body's final determination of any Medicare or Medicaid fraud or abuse within the last five years..."

(7) *"If the purchaser is an existing provider of Medicare-certified HHA services, whether in Maryland or another state, it shall disclose deficiencies cited by the applicable state agency or accreditation organization for the most recent two survey cycles and document completion of any required plan of correction. . ."*

Maxim suggests that the Commission adopt a standard whereby providers disclose any involuntary terminations of either Medicare or Medicaid provider agreements occurring in the five (5) year period preceding the application to the Commission. This will alleviate the Commission having to review potentially burdensome amounts of information from larger providers and will make the process fair for large and small providers alike.

We appreciate the opportunity to comment on this proposed change in regulations and for the Commission's continued partnership with stakeholders in the industry in considering these changes. We look forward to continued partnership with the Commission through this process and into the future. If there is any other information we can offer as you design this policy, we would welcome the opportunity to discuss these matters in more detail. Thank you again for your consideration of our views on this proposal.

Very Respectfully,



Andy Friedell