

# Pennsylvania Association of Elder Law Attorneys

*A State Chapter of the National Academy of Elder Law Attorneys*

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February 5, 2008

Office of Long Term Living  
Attention: Listening Sessions  
P.O. Box 2675  
Harrisburg, PA 17105

Submitted via email to [ra-acwrenewal@state.pa.us](mailto:ra-acwrenewal@state.pa.us)

Re: Listening Session Written Comments regarding PA Aging Waiver (Home and Community-Based Services Waiver of Individuals Age 60 and Over) renewal.

Thank you for this opportunity to comment on the renewal of the Pennsylvania Aging Waiver.

The Pennsylvania Association of Elder Law Attorneys (PAELA) is an association of elder law attorneys who represent aging consumers in Pennsylvania. PAELA attorneys serve many consumers who qualify for Medicaid funded long term care services through Home and Community Based Services Waiver programs. Our members help families with the problems they encounter in attempting to access needed services in the home. We believe our consumer oriented perspective gives us a singular ability to assist the Office of Long Term Living in re-balancing the long term care delivery system. We welcome any opportunity to do so.

Although operational statewide in Pennsylvania for nearly 10 years, the success of the Aging Waiver has been impeded by complication, confusion, dysfunctional limitations, and delay. Delay is particularly destructive since the need for services is usually immediate, but immediate delivery is generally available only in an institution. As a result, the program has failed to fully realize its potential in helping the state realign the delivery of Medicaid funded long term living services away from its traditional institutional bias.

We encourage the state to view the renewal application as an opportunity to improve access to Aging Waiver services. PAELA requests that the Office of Long Term Living consider the following recommendations in preparing its renewal application.

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(1) The PA waiver renewal application should include coverage for intermediate care as ordered by or provided under the direction of a physician under circumstances where, because of a mental or physical disability, the individual requires nursing and related health and medical services in the context of a planned program of health care and management.

The Department of Aging's recent imposition of a skilled care limitation for eligibility (APD #07-01-01 issued March 28, 2007) is not only inconsistent with federal standards, it also has reduced access to Waiver services, impacted the quality of care, increased reliance on solely state funded assistance, and increased the risk of consumer institutionalization. Pennsylvania should return to utilizing level of care eligibility criteria that include both skilled and intermediate care.

(2) The application should seek to implement the recommendations of the PA Intra-Governmental Council on Long Term Care's "Home and Community-Based Barriers Elimination Work Group Report 2002" as updated in January 2008. A copy of that report is attached. Little has yet been done to eliminate wholly the 22 barriers identified six years ago and the state must not let this opportunity to do so pass it by.

(3) Pennsylvania should seek to exempt the Aging Waiver from the recently proposed Targeted Case Management (TCM) rules (72 Fed. Reg. 68077). Some of the TCM rule changes appear to go well beyond the requirements of the Deficit Reduction Act. Privatization of case management services will add to the delays already plaguing the home delivery system and will undermine the local area agencies of aging's ability to protect elderly Medicaid eligible consumers from neglect, abuse, and fraudulent activity.

The proposed TCM rules will also impede efforts to transition consumers from institutional to home and community settings. The reduction of Medicaid transition services from 180 days of coverage to only 60 days would indisputably limit the ability of consumers to transition home from institutional settings and further obstruct rebalancing efforts.

Consumer freedom of choice of case management provider (and the ability to choose no provider) will further fragment access to Aging Waiver services and limit Pennsylvania's ability to control and streamline their delivery. To improve access and utilization, the program needs simplification rather than further fragmentation.

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Pennsylvania's Aging Waiver renewal application should seek an exception for this program from the new TCM rules at least until Pennsylvania can integrate the TCM changes into a comprehensive strategy that supports the shift from institutional to home and community-based care. If the Aging Waiver cannot be exempted from the interim TCM rules, the implementation of those rules should be delayed until they can be effectively implemented as part of Pennsylvania's overall re-balancing strategy.

Please feel free to contact either Marielle Hazen or Jeffrey Marshall at the addresses below if you have any questions or need clarification regarding these comments.

Sincerely,

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