



July 7, 2014

Claudia Schlosberg
Interim Medicaid Director
District of Columbia Department of Health Care Finance
441 4th Street, NW
Suite 900
Washington, DC 20001
VIA EMAIL: DHCFPubliccomments@dc.gov

Dear Ms. Schlosberg:

The Legal Aid Society of the District of Columbia respectfully submits the following comments in response to proposed Section 989 of Chapter 9, Title 29 of the District of Columbia Municipal Regulations, published in the D.C. Register on June 6, 2014, titled “Long Term Care Services and Supports Assessment Process” (“Section 989”). Legal Aid supports the District’s standardized, no wrong door approach to providing long-term care services and supports (“LTCSS”) assessments to District residents. However, in its current state, Section 989 has several flaws, discussed below, that must be addressed before it is finalized to ensure that the LTCSS assessment process benefits the disabled and elderly District residents who need those critical health services.

1. DHCF Or Its Designated Agent Should Be Required To Consult An Applicant’s Medical Provider(s) And/Or Medical Records As Part Of The Assessment Process.

Section 989.5 requires that DHCF or its designated agent conduct an assessment based on the standardized assessment tool. That tool relies heavily on the applicant or “other respondent” to provide information about the applicant’s medical history and ability to perform activities of daily living (“ADLs”) during a one-time, face-to-face meeting. While physicians/clinicians are included on the list of individuals that may provide information during an assessment, Legal Aid’s understanding is that assessments are usually conducted at an individual’s place of residence and that physicians/clinicians are not required to be consulted as part of the assessment process.

The registered nurse conducting a face-to-face assessment should be required, if the applicant’s consent is obtained, to consult with an applicant’s medical team and/or medical records during the assessment process. An individual’s medical team has a fuller and more accurate understanding of that individual’s medical condition and limitations than a registered nurse conducting a one-time assessment. Moreover, an assessment may be conducted on an individual’s “good day” or “bad day,” which may distort the overall picture of the individual’s abilities and disabilities. In addition, an individual or that individual’s relative, guardian, or caretaker may not be able to fully and accurately articulate the applicant’s medical diagnoses and limitations. As a result, it is important that DHCF include the medical team and/or medical

records as part of the assessment process, if the applicant consents. This will produce a more accurate assessment and reduce unnecessary and improper denials of LTCSS.

2. Section 989 Should Include Timeframes.

Sections 989.4, 984.6, and 989.11 do not include the period of time under which DHCF or its designated agent must schedule an assessment, conduct the assessment, and issue a notice of results. Individuals in need of Medicaid-covered LTCSS should have an idea of when they can expect to begin receiving LTCSS, and a completed assessment is the first step in that process. Timeframes are also an important accountability tool, demonstrating that DHCF is properly performing its task of assessing individuals and informing them of their eligibility for LTCSS.

3. Section 989 And The Standardized Assessment Tool Should Be Consistent With Other District Regulations Governing Eligibility For LTCSS.

The numerical scores listed in Section 989.9 and provided in the standardized assessment tool may conflict with other District regulations governing eligibility for LTCSS. In the “Functional Assessment” section of the standardized assessment tool, an individual receives a numerical score associated with various ADLs based on whether that individual is never, sometimes, usually, or always able to perform the listed ADLs. Each level of frequency corresponds with a numerical score that is added to the scores in other sections of the tool to create a total score. The total score is used to determine whether an individual qualifies for LTCSS, as set forth in Section 989.9.

Because other District regulations contain eligibility criteria that are different from that in Section 989 and the standardized assessment tool, however, the proposed regulation may create situations in which an individual may qualify for LTCSS under one regulation but be determined ineligible under Section 989. For example, under the current standardized assessment tool an individual who is unable to perform one ADL may not qualify for personal care aide (“PCA”) services. The current tool provides that an individual who always requires only a one-to-one physical assist with bathing, dressing, mobility, toileting, or continence—but never or sometimes requires assistance with one or more other ADLs—warrants a total score of three (3). Based on the numerical scores in Section 989.9, that individual would not qualify for any LTCSS, including PCA services (which require a minimum score of four (4)).

This criteria conflicts with District regulations governing Medicaid reimbursement of personal care aide (“PCA”) services, which provide that an individual who is “unable to independently perform *one or more* activities of daily living,” has a prescription for PCA services, and has a service authorization, is eligible for PCA services. 29 D.C.M.R. § 5002.1 (emphasis added). In addition to the standards governing Medicaid PCA services, District regulations also set forth separate criteria that govern services under the Elderly and Physically Disabled (“EPD”) Waiver Program. *See* 29 D.C.M.R. § 4220.

By creating standards that may conflict with current District regulations, Section 989 undermines the purpose of having a standardized assessment process by creating confusion about

whether or not a person qualifies for LTCSS. As a result, DHCF must take a closer look at all of the numerical scores listed in Section 989.9 to ensure that they are consistent with federal and District laws and regulations that govern eligibility for LTCSS.

4. DHCF Should Provide More Specific Definitions Of The Terms “Sometimes” And “Usually.”

The definitions for “sometimes” and “usually” in the standardized assessment tool do not include details specifying how often (*e.g.*, percentage, number of times per day) an individual must require assistance in order to fall into one or the other category. The absence of specificity leaves room for arbitrary and erratic scoring. Accordingly, DHCF should revise the definitions of these terms and require that the registered nurse conducting the assessment notate his or her reasons for marking “sometimes” or “usually.”

Conclusion

DHCF’s adoption of a standardized assessment tool for LTCSS is a step in the right direction, but the LTCSS assessment process, as articulated in Section 989, requires a number of changes in order to serve its stated purpose. Legal Aid requests that DHCF make the changes discussed above before adopting Section 989 and welcomes the opportunity to meet with you or your staff to discuss our comments in more detail. Feel free to contact Stephanie Akpa at (202) 386-6687 with any questions regarding these comments.

Sincerely,

Legal Aid Society of the District of Columbia