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W. Mark Russo
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December 18, 2012

Raymond Rusin
Rhode Island Department of Health
3 Capitol Hill
Providence, RI 02908

RE: ***Charles S. Kinney v. Westerly Hospital Healthcare, Inc., et al***
C.A. No. 2011-0781
Request for Declaratory Letter Ruling

Dear Mr. Rusin:

I am the Court-appointed Special Master for the Westerly Hospital. Since the inception of the Mastership, we have worked diligently to reduce losses at the Westerly Hospital by re-positioning expenses and pro-actively pursuing new lines of revenue that benefit both the Hospital and the community.

Early on in the proceeding, the Westerly Hospital Area Residents Committee and myself had indicated that we would be undertaking a concerted effort to introduce a swing bed program to the Westerly Hospital and we now have qualified for such a program under Section 1883 of the Social Security Act (the "Act") and those requirements set forth under 42 C.F.R. 482.66.

A swing bed is a regular acute-care bed which is already licensed at the Westerly Hospital, wherein the acute-care patient changes his or her level of care without the necessity of changing beds. A medical order entered into the chart by the treating physician is required to change status from acute care to swing-bed status, because the patient is being discharged from acute care and admitted to swing-bed status within the licensed, acute-care facility. This is necessary for reimbursement purposes, because the billing and reimbursement changes or "swings". Accordingly, the facility is given a sub-provider number for billing swing-bed services.

From a licensing perspective, there are also benefits as there is no long-term care licensure required. Please note, we are not seeking any approval for a limited number of beds for long-term care. Thus, Section 2037(f) of the State Operating Manual does not apply. Similarly, there is no acute rehabilitation licensure required. The swing bed does not require adding facility beds in the State of Rhode Island. Rather, we are simply using already licensed and available, acute-care beds.

Accordingly, we view this as a licensure issue that is allowed under the Westerly Hospital's existing acute care hospital license and existing Federal law and regulation.

Nevertheless, it is important to request and secure a declaratory letter ruling that the proposed Swing Bed Program does not require a Certificate of Need as pursuant to R.I. Gen. Laws §23-15-1 et. seq. and the Rules and Regulations for Determination of Need For New Health Care Equipment And New Institutional Health Care Services [R23-15-CON].

In furtherance of our request, the Swing Bed Program does not require new health care equipment and it is not a new institutional health care service. The services that would be provided under the program are currently provided at the Hospital. Rather, it is a licensure issue which allows the existing services to be provided under the existing acute care Hospital license on an in-patient basis, in a manner that is reimbursable. Moreover, it will not require operating expenses in excess of the statutory \$1.5M level.

Furthermore, by analogy to R23-15-CON, §3.19(d), the Swing Bed Program will not exceed the capacity of ten (10) beds or ten percent (10%) of facility licensed bed capacity, whichever is greater. The Westerly Hospital would reserve the right to track performance and to seek to expand the program in the future. However, for the purposes of this request for a declaratory letter ruling, the Swing Bed Program will not exceed said, stated capacity.

Based upon the Westerly Hospital's current status, it is important that we secure a response to our request as soon as possible. As the Department is aware, we are starting program training and would not have the availability to replicate that training program again until very late in the calendar year 2013. Accordingly, for the Swing Bed Program to be effective in regard to the turnaround of the Westerly Hospital, a response is respectfully requested as soon as possible.

Sincerely,



W. MARK RUSSO

WMR/gd

Cc: Michael Fine, M.D., Director

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