REPORT OF THE
DEPARTMENT OF HEALTH

Licensure of Agencies Offering Health or Health-Related Services to Patients in Their Homes

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

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LICENSURE OF AGENCIES OFFERING HEALTH OR HEALTH-RELATED SERVICES TO PATIENTS IN THEIR HOMES REPORT TO THE GENERAL ASSEMBLY

I. INTRODUCTION

The following actions have been taken by the Virginia Department of Health in accordance with the requirements of House Joint Resolution 317 of the 1985 Virginia General Assembly.

1. A survey of agencies offering health or health-related services to patients in their homes has been conducted.

2. The following report has been prepared and contains the recommendation and rationale of the Department of Health regarding the requirement for licensure of such agencies and organizations to protect the health and safety of the citizens of the Commonwealth.

II. BACKGROUND

The Site of Care in Transition Until the emergence, in the last sixty years, of the hospital as the center for the delivery of health care, physicians made house calls and the home of the patient was the primary setting for medical treatment. Medical care moved into the hospital under the impetus of the Flexner Report of 1910 and the Hospital Facilities Construction Act of 1946 (Hill-Burton). In the past 20 years home care has enjoyed a renaissance in the nation's health care system.

Medicare With the passage of the Social Security Amendments of 1965 home health became a part of the Title XVIII-Medicare health care system. Medicare viewed home health services as a complement to hospital care for acutely ill patients. The policies of the Medicare program have significantly affected the delivery of home health services. For example, until recently only publicly supported agencies, such as local health departments, or non-profit organizations, such as visiting nurse associations could be reimbursed for the delivery of home health services to Medicare patients. Proprietary, for-profit, organizations were excluded by the federal law. By 1970 the Social Security Administration estimated that there were only 4,276 home health aides employed by 1,042 reimbursement-eligible agencies to serve approximately 20 million eligible people. In spite of the exclusion from Medicare reimbursement, a proprietary home health industry did emerge and by 1972 the National Council of Homemaker-Home Health Aide Services estimated that there were 30,000 home health aides employed. The existence of an unmet need for home health services was evident in the estimated need for 300,000 home health aides to serve Medicare and all other patients needing home care. The unmet need for professional care providers of other categories was also considered to be large. The proprietary industry organized to exploit a key exception in the Medicare law.

Home Health Agency Licensure In states which had a home health licensure law in force, the Medicare law provided for reimbursement of licensed proprietary agencies. Although very few states had such a law when Medicare was enacted in 1965, through the concerted efforts of the proprietery industry, licensure laws were passed in many states. The Virginia law was passed in 1979 and licensing authority was vested in the State Health Department.

Federal Certification In 1983 the federal government eliminated state licensure as a condition of certification and reimbursement for qualified home health services provided to patients under Medicare and other federal programs. The Virginia licensure law was repealed in 1984 without opposition on the part of the Department of Health. It was considered that the purpose for which the law had been enacted no longer existed and that the law had a major flaw. The law did not mandate that all agencies which provide health services in the home be licensed. Under the federal certification laws only those agencies which provide skilled nursing plus one other health service are eligible for certification. Only those agencies which seek reimbursement for care provided to Medicare or other patients eligible for federal programs are required to obtain certification. Home health agency certification for Medicare is optional, not mandatory. In 1985 the General Assembly repealed the requirement that home health agencies obtain a Certificate of Public Need. The home health service establishment which includes public, non-profit and for-profit organizations, provides essential medically-directed services, enhances the quality of life for patients and contributes to the containment of health care costs by reducing the need for hospital and nursing home care. There is no state law regulating this important segment of the health care establishment in Virginia.

III. FACTORS IN THE INCREASED DEMAND FOR HOME HEALTH SERVICE

The increasing cost of hospital and nursing home care needs no elaboration in this report. Programs aimed at containing these costs at the federal, state and private sector levels are well documented elsewhere. Two such programs which contribute significantly to the increased demand for home health service are described below.

Changed Reimbursement Systems With the advent of prospective reimbursement systems which compensate hospitals for patient care on a flat-rate per diagnosis basis rather than a cost-basis, a powerful incentive now exists for hospitals to treat patients economically and to discharge them as soon as possible. It is not intended to suggest that less than adequate care is provided because of these reimbursement systems, however current experience indicates a trend toward patients being cared for at home whose condition requires a level of medically directed treatments and support services which previously would have been considered sufficient to warrant continued hospitalization.

Community-Based Care of Medicaid Patients In 1982 the Virginia General Assembly mandated the Department of Medical Assistance Services (Medicaid) to expand the 1977 nursing home pre-admission screening program which covered patients residing in their homes, to include patients being released from acute care settings. The purpose of screening is to identify and divert to home care those patients whose needs could be met through home health services. In 1984 the Medicaid Program obtained the approval of the Social Security Administration to reimburse for personal care services provided to patients in their homes.

IV. ENUMERATION OF HOME HEALTH SERVICE PROVIDERS

Federally Certified Agencies The State Health Department Division of Licensure and Certification has currently certified 156 agencies. Each of these must provide skilled nursing plus one other health service of their choice. In most cases the second service is home health aide. In the 18 months since the expiration of the previous licensure law the number of certified agencies has increased by 67.

Non-certified Agencies The records of the six regional Information and Referral Services of the state were examined and an additional 30 agencies were identified which provide skilled nursing plus one other service but are not certified for Medicare. In addition, agencies which provide one or more services, not including skilled nursing, as directed by a written plan of treatment devloped by a qualified health professional to patients in their places of residence were also identified. The services provided include the following therapy services: speech, occupational, physical, respiratory, enterostomal and intravenous. Agencies which provide the following non-medical support services were also identified: social worker, nutrition, homemaker and chore services.

Estimated Number of In-Home Service Providers There are approximately 300 entities in Virginia offering to provide services to patients in their homes in return for financial compensation. These:

may be individuals or organizations,
may be for profit or not for profit,
may be Medicare certified or not,
may provide skilled nursing plus other services,
or may provide therapy or support services alone or in combination.

V. RECOMMENDATIONS

State government is mandated to protect the health and safety of its citizens. Providers of personal and health care in the home serve some of the more vulnerable and dependent citizens of the Commonwealth: the elderly and infirm, the disabled, and the ill. Economic pressures exist which result in more patients who are marginally able to be cared for at home being required to

receive care at home in lieu of a hospital or nursing home. The risks are higher; services such as renal dialysis, which only a few years ago were new to the hospital,today are provided at home. Patients and families are poorly qualified as consumers of in-home services. No universal state government program exists to regulate this important and growing segment of the health care delivery system in Virginia. Professional licensure of individual providers, e.g. nurses, does not protect the patient from harm or economic loss resulting from the actions of an organization. It is therefore the recommendation of the Department Of Health that legislation be enacted to require that in-home health and health related service providers be licensed.

The following features of a licensure law are recommended:

1. Licensing Authority
   The Department of Health should be the State Agency required to administer the home health services licensing law. The State Board of Health should be authorized and directed to promulgate regulations which provide the breadth and depth of the provisions of the law as enacted by the General Assembly.

2. Mandatory Participation
   The law should require all agencies, organizations and persons engaged in the business of providing in-home services in accordance with a specific plan for home services developed by a physician to be licensed. The source of payment for services should not be a factor in determining the applicability of the law.

3. Penalty For Violators
   The State Health Commissioner, the State Board of Health and the Attorney General of Virginia should each be authorized to enjoin in any Circuit Court an unlicensed provider of in-home services as defined under the this act. Additionally, any unlicensed provider of in-home services should be determined to be guilty of a misdemeanor and subject to an appropriate fine.

4. Liability Insurance and Surety Bond
   The licensee must maintain in force adequate insurance to compensate patients for injuries and losses resulting from the negligence or criminal acts of itself and its employees.

5. Employee Qualifications,Training and Records
   The licensee must establish, in accordance with regulations adopted by the State Board of Health, a system of documentation of the licensure of all employees for which licensure is required for the duties assigned and documentation of the training and qualifications of all other personal care providers. Employee records must include results of health

screening tests, references, performance evaluations, work assignments, complaints and grievances.

6. Informed Consent Contract
In accordance with regulations adopted by the State Board of Health, each licensee must enter into an informed consent contract with each patient and/or guardian of the patient. The contract must identify the nature and frequency of services to be provided and must be signed by the patient and/or the patient's guardian.

7. Complaint Handling System
Each licensee must establish and maintain a standard complaint-handling system in accordance with regulations adopted by the Board.

8. Inspection, Requirements for Record Keeping
The licensing agency shall be required to annually inspect the records of each licensee at its place of business. A representative sample of patients currently receiving services from the licensee are to be visited in their homes to determine the licensee's compliance with applicable laws and regulations. Each licensee shall maintain and have available at its place of business for inspection by the licensing agency a complete medical record of each patient served.

VI. ESTIMATE OF COST AND METHOD OF FINANCING

Development of regulations to carry out the licensing program described above in accordance with the Virginia Administrative Process Act, recruitment and training of staff, development of forms and other administrative matters would require a period of approximately 18 months and funding of approximately $40,000.

A program of one annual on-site inspection, one on-site complaint investigation and one inspection visit to the home of a patient would be required for adequate monitoring of a licensee. This inspection frequency would result in a assignment of approximately 50 licensees per inspector. With an estimated 300 licensees to be inspected, the projected annual cost of operation of the program, based on 6 inspectors, 1 supervisor and 1 clerk, is $250,000.

It is considered that the licensing program should be self-supporting and that a license fee of not more than $500 combined with revenue from the federal certification contract would generate sufficient revenue to cover the annual cost of operation of the program. Prospective licensees contacted considered a license fee of $500 to be acceptable.

APPENDIX A

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