



November 6, 2008

HAND DELIVERY

Sonia D. Chambers, Chair
West Virginia Health Care Authority
100 Dee Drive
Charleston, WV 25311-1600

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WV HEALTH CARE
AUTHORITY

**Re: Home Health Services Certificate of Need Standards
Written Comments – LHC Group, Inc.**

Dear Ms. Chambers:

Thank you for the opportunity to provide written comments in addition to the discussion occurring at the public meeting held Tuesday, October 7, 2008, at the West Virginia Health Care Authority's office in Charleston, West Virginia. The West Virginia Health Care Authority ("Authority") asked those attending the public meeting to submit written recommendations and comments regarding the current Home Health Services Certificate of Need Standards approved by the Governor on November 13, 1996.

The LHC Group, Inc. ("LHC Group") is one of the largest providers of home nursing services in the United States providing quality, cost effective healthcare services to patients in fifteen states, including West Virginia. Home health services are regulated by certificate of need in seven of the fifteen states in which the LHC Group operates agencies.

Home health services are, and will continue to be one of the fastest growing health services in the United States. The LHC Group supports the continued certificate of need review and oversight of home health services in West Virginia by the Authority. The certificate of need process in West Virginia has worked well to allow for a balanced health planning approach to meet the home health needs of West Virginians. The certificate of need process in West Virginia requires anyone interested in developing new home health services to go through a deliberate process to determine whether there is a need for home health services in a particular area, whether the new service will impact existing providers, whether the projected need allows the proposed home health agency to be financially feasible and whether the proposed home health agency meets certain standards for quality. It is our belief that West Virginia's existing certificate of need program successfully ensures availability and access to economical home health services in all counties within the state. Deregulation of home health services in West Virginia, by removing home health services from the list of reviewable certificate of need services, will not have a positive impact on the level of services provided to home health patients in West Virginia.

The LHC Group's position that certificate of need review should continue is well founded given the experience of other states deregulation of certificate of need. To date, some thirty six states maintain a form of certificate of need review for home health services even though the federal

law mandating health planning and resource development has been repealed for over twenty years. Of the fourteen state eliminating certificate of need after repeal of the federal law, all retained some form of regulation regarding cost and duplication of services. In fact two states, Indiana and Pennsylvania, are currently attempting to reinstate certificate of need oversight. As recently as 2006, both Georgia and Missouri reviewed their certificate of need statutes and recommended retaining these regulations.

When the state of Missouri was reconsidering their certificate of need regulation, Thomas R. Piper, Director of the Missouri Health Facilities Review Committee, provided an analysis on the impact of certificate of need deregulation in his report to the Missouri State Senate Interim Committee on Certificate of Need, August 1, 2006, while simultaneously recommending that Missouri should continue certificate of need regulation.

Mr. Piper maintains that deregulation proponents fail to consider several factors inherent to health care markets and the actual impact of deregulation on costs, access and quality. First and foremost, capital costs in health care are passed on to consumers. Secondly, competition in health care does not lead to lower charges because providers, not consumers control supply and demand. Thirdly, increased capacity leads to higher delivery charges since capital costs are passed though to consumers. Fourthly, consumers do not pay most of the cost – third party payers do – and these payers rather than consumers negotiate with providers for payment. Finally, providers have little or no direct incentive to lower charges or utilization. The experience in Ohio after the first four years of certificate of need elimination while anecdotal is none-the-less quite telling. Nineteen new hospitals were built, fifteen of which were long term care hospitals; outpatient dialysis centers increased by one hundred thirty seven percent; radiation therapy procedures increased by two hundred eighty percent; freestanding MRIs increased by five hundred forty eight percent; and there was a six hundred percent explosion in ambulatory surgery center procedures.

The Big-Three automakers (Ford, Chrysler, and GM) solicited a study to explore health care costs in non-certificate of need versus certificate of need states. That study found that costs ranged between eleven and thirty nine percent lower and were on average some twenty percent lower in certificate of need states. Charges for ambulatory surgery centers were over twenty five percent lower in certificate of need states. Mortality rates were lower for coronary artery bypass grafting surgeries in certificate of need states with differences as high as twenty percent.

Although conclusions with regard to home health cannot be drawn from other health care services, recent events in Florida provide evidence of the potential impact when deregulation of certificate of need occurs. A newspaper article by Julie Appleby, "Rampant Medicare fraud suspected in Miami," published October 6, 2008, in USA Today is revealing (*see attached*). Florida eliminated certificate of need for home health some five years ago. In the last five years, home health care charges submitted to Medicare have risen to twenty times the national average prompting a federal investigation of suspected fraudulent billing. Miami-Dade County is on track to cost Medicare nearly 1.3 billion dollars for home health care services, representing a thirteen hundred percent increase in just five years. These massive increases in cost and volume of home health services in Florida are occurring at a time when the population has increased only 10.2 percent. Nationally, Medicare expenditures only increased some sixty five percent in the past five years.

South Florida could represent the consequences of eliminating certificate of need oversight in home health. The experience in Ohio and other states is that elimination of certificate of need results in over capacity which causes staffing shortages. This staffing shortage, in and of itself, lowers quality and fragments delivery networks. Deregulation can and does decrease access in underserved and low income areas while simultaneously creating high profit niche markets like ambulatory surgery and diagnostic imaging. These niche markets promote unnecessary utilization and costs for third party and private payers. Deregulation also results in supply driving demand which results in areas in a state with development of niche markets that provide more health care services and an increase in spending on health care per person in that area. Health care costs are increasing at eight per cent per annum compared to three percent inflation for other services. Health care spending represents some sixteen percent of gross domestic product in the United States and will reach some twenty percent by 2015. In West Virginia, employer insurance premiums have increased some ten percent because of increased health care costs.

The negative experience of states that have deregulated demonstrate that certificate of need regulation is essential and necessary. It is essential because certificate of need regulation promotes equal access and improves quality in underserved and low income areas. Certificate of need provides for community input into service delivery systems and ensures provider equity in all counties. In West Virginia, certificate of need regulation responds to the realities of the health care market and discourages monopolistic practices and market segmentation though "cherry picking" while promoting quality of services though review of best practices and high quality standards in lieu of licensure. Finally, the West Virginia certificate of need regulation promotes fiscal responsibility by requiring the use of sound economic and planning principles.

For these reasons, the LHC Group supports and recommends without equivocation that the state continue regulation of home health services through certificate of need in West Virginia. Although the LHC Group recommends continuing the certificate of need review requirements for home health services, it also recommends that the Authority undertake a thorough review of the existing Home Health Standards last reviewed and approved by the Governor in 1996. The Home Health Standards should be reviewed and updated to reflect a more current approach to health planning in the area of home health services. The LHC Group would welcome the opportunity to participate and provide the Authority with its recommendations regarding the updating of the existing Home Health Standards.

Should you have questions or require additional information, please do not hesitate to contact me. We look forward to continuing to work with the West Virginia Health Care Authority to help provide quality home health services to West Virginians.

Best Regards,



Richard A. McMillan
Senior Vice President and
General Counsel

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Rampant Medicare fraud suspected in Miami

By Julie Appleby, USA TODAY

Home health care costs charged to Medicare in the Miami area have risen 20 times the national average in the past five years, prompting a federal investigation of suspected fraudulent billing.

Miami-Dade County is on track to cost Medicare a projected \$1.3 billion for home health care services this fiscal year, up 1,300% in just five years, government data show.

SLEUTHS: Going door to door to sniff out fraud

Investigators suspect that fraud is helping to drive the increase because the population of Medicare beneficiaries in the county grew only 10.2% between 2004 and 2007, the latest government data show.

"You definitely have a problem down here," says Randall Culp, an FBI supervisory special agent who oversees a team that works with a Medicare Fraud Strike Force in Miami.

In South Florida, investigators say, some agencies are billing Medicare for millions of dollars in services that are unnecessary, overused or not provided at all.

Investigators elsewhere are paying attention because South Florida is a bellwether for scams that later surface in other large cities, such as Los Angeles and Houston. Scams involving fake AIDS treatments, for example, popped up in Detroit and several other cities after a crackdown in Miami, Culp and others say.

"Typically, Miami is ground zero. Then we see it move to the other high-fraud areas," says Suzanne Bradley, an investigator with the Centers for Medicare and Medicaid Service's field office in Miami.

Home health agencies send nurses and aides to assist homebound elderly and disabled beneficiaries. Nationally, Medicare expects to spend \$16.5 billion on home health care this year, up 65% from five years ago.

Medicare spent six times more on home health care services in Miami-Dade County during the first five months of this year than in Los Angeles County, where the Medicare population is three times larger, agency data show.

"It jumps off the page as out of proportion," says Kirk Ogrosky, deputy chief in the Criminal Division's Fraud Section of the Justice Department.

Today, acting Medicare chief Kerry Weems says he will announce new anti-fraud efforts, some targeted at home care agencies in Miami.

"It does affect everyone because everyone is paying into Medicare," says Peggy Sposato, a nurse investigator with the U.S. attorney in the Southern District of Florida, who combs through data looking for unusual billings.

Find this article at:

http://www.usatoday.com/news/health/2008-10-05-home-health-fraud_N.htm

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