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WV HEALTH CARE  
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November 3, 2008

Dayle D Stepp, Director, Certificate of Need Program  
West Virginia Health Care Authority  
100 Dee Drive  
Charleston WV 25311

Dear Mr Stepp,

This letter, on behalf of the members of the West Virginia Council of Home Care Agencies, Inc., presents the written comments in support of the certificate of need process for home health agencies in the State of West Virginia.

The West Virginia Council of Home Care Agencies, Inc. is the professional trade association for home health agencies serving West Virginians. The Council has been in operation since 1973 representing Medicare/Medicaid certified home health providers in the areas of legislative and regulatory issues, public education, provider education and quality assurance programs. Presently we represent 48 of the states 61 providers presently listed with the WV Office of Health Facilities Licensure and Certification.

When the WV Health Care Authority announced the intent to hold public meetings concerning the certificate of need process for those providers currently under review we discussed with our members their feelings concerning the CON process for home health. Did they believe the CON process should be abolished or did they wish to see the retention of the current standards and methodology? We also asked that they offer comment concerning the current standards and methodology if they chose to see the CON maintained.

One must note that the Council represents all types of home health providers to include proprietary, not for profit, publicly owned, privately owned, free standing and hospital based.

In response to our request the consensus of the provider group was that they would support the retention of the certificate of need process for home health services in West Virginia. The most offered comments centered on for the need of review and revision of the current standards and methodology employed to determine the certificate of need.

The Council offers the following comments in support of our member's response to the CON process.

## **Current state of the home health industry in West Virginia - Does West Virginia need more providers of home health services?**

Presently there are 61 home care agencies serving West Virginians. In the mid 1990s West Virginia had 125 home health providers. At the time the reimbursement for home health services was based on fee for service. Medicare then developed a new prospective payment system for home health services. During the implementation of that system over 50% of the agencies providing service closed. During the remaining years we have seen closure of other agencies in the state. Very few new start ups have occurred and new providers who have entered the arena have done so through purchases and mergers. While we believe in the concept of free enterprise one must ask what the indication for more providers in the market place might be. Data from the 2007 Health Care Authority survey of home health agencies indicates that home health agencies overall in West Virginia operated at a negative 2.8% margin. This does not support a need for more providers in the market place.

The majority of patients receiving services from home health agencies are Medicare recipients, thus Medicare is the primary source of revenue for home health agencies. As noted above Medicare moved to a prospective payment system for home health services. As in any prospective payment system revenues are greatly based on the volume of patients served. Data from the CMS Health Care Information System and the CMS Medicare Enrollment Reports indicate that the number of Medicare enrollees in WV in 2006 was 361,000. From 2003- 2006 the number of Medicare home health patients in West Virginia has been 20,000 patients per year and the number of agencies has dropped from 66 in 2003 to 61 in 2006.

In review of recent data from the WV Health Care Authority the unduplicated patient count for home health decreased from 2006 to 2007 from 30,138 to 28,659 respectively.

As agencies are dependent on the volume of patients served in order to support their operations one must wonder if the addition of more providers to the current market place might dilute revenues to a point that agencies would begin to sacrifice in order to survive. The possibility of decreased services, decreased service areas, loss of staff and many other cost savings initiatives are not outside the realm of possibility.

Currently no county in West Virginia is without the services of a home health agency. Among the members of the WV Council of Home Care Agencies, 48 in total, consumers in all 55 counties have at least a choice of at least 2 agencies with the average being 5 agencies per county. The CON standards in West Virginia require that a home health agency "must cover the geographic area of an entire county and must serve residents throughout the entire county."

In answer to the concern by managed care companies that there are not enough agencies to meet the needs of their patients one must identify why many agencies are unable to justify the establishment of a contract between their operation and the managed care company. While the main goal of any home health provider is the provision of quality services to their patients it must be noted that as with any company one need be able to cover the cost of the provision of that care. Often managed care contracts are offered at rates significantly below rates that cover the cost of the provision of services. Medicare, although now paying at a prospective payment system, has within their system identified rates for patients who fall outside the parameters of a typical prospective payment. The services for those patients are then reimbursed to the agency on a fee for service rate. Many managed care companies offer a fee for service rate that falls

well below the Medicare rate. Home health providers expect a fee that is fair and equitable for their services and are more than willing to provide services to these patients for acceptable reimbursement.

### **The Quality Issue**

The concern arises that limiting the number of providers of home health services might affect the quality of the services provided to home health care recipients. Competition does offer the need for the provider to offer the best service possible in order to be the agency that is most often the chosen by referral sources and patients alike. Home health agencies are among some of the most regulated and scrutinized of the health care providers. Our Medicare required assessment tool alone takes on average 2 hours to complete. Home health agencies have rigorous standards and their quality outcomes are publicly reported. All agencies must adhere to an internal quality monitoring program in order to be in compliance with the Medicare regulations. Soon Medicare will be moving toward a "pay for performance" reimbursement system for home health agencies. All agencies in order to receive compensation will be required to meet certain quality indicators. While competition to drive quality is a good thing we cannot overlook the many requirements that home health agencies are held to that demand quality services.

An increase in the total number of service providers does not necessarily mean that quality will increase in all providers. In some states where CON is not applicable the OIG has recently launched a large investigation into fraud and abuse among home health providers. Florida was forced to enact a tough licensure law in order combat fraud and abuse in that state. Such infringements require the use of more resources and tougher regulations increasing the burden for all providers. We believe the steps the CON process requires in order for an agency to do business in West Virginia helps deter the possibility of fraud and abuse down the line.

### **Current CON Standards and Methodology**

We believe that a review and a revision of the current standards and methodology for certificate of need in West Virginia would offer an avenue for those providers who would seek to do business in West Virginia to receive just consideration of their request. The current standards and methodology written in 1996 are outdated in reflection of the current industry. Since the time of their development the number of agencies has decreased by over 50% and the manner in which agencies do business has greatly changed. Also the current standards and methodology leave much room for subjective interpretation. While the standards outline a set of requirements under "Quality and Access" we would question what method is used to assure that these requirements continue to be met. We believe that assurance of these requirements would do much to alleviate concerns about accessibility to services that bring people to believe a need exists. Also we would respectfully request that representatives from the home health industry in West Virginia be included in the review and revision. We have always appreciated your willingness to work with us as an industry in all past efforts.

In closing we would like to offer our appreciation for the opportunity to attend the public meeting and to offer these written comments. Our goal as an industry is to defend and strengthen programs which avoid duplicative, unneeded and costly home health services but at the same time assure that there is access to timely, quality home health services for all West Virginians.

If you would like to discuss our comments further please do not hesitate to contact our office.  
As always I am more than willing to offer any clarification you may require.

Best Regards,

A handwritten signature in cursive script that reads "Laura Friend".

Laura Friend  
Executive Director