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#93 HEALTH HOME AGENCY REGULATIONS

April 28, 1967

David P. Cohen
April 28, 1967
New Haven, CT 06510

Dear Nancy:

As I indicated to you when we spoke, NYHA staff have researched the issues raised by your letter of March 13. To the best of our ability to determine the following are the facts concerning the qualifications of the administrator of a home health agency:

- (1) Chapter 529 of the Public Health Law of 1964, in relation to certified home health agencies, was implemented through Department of Health regulations found in Chapter 9 of the official Compilation of Codes and Regulations of the State of New York.
- (2) Prior to passage of the Chapter 529 law (1964) the code requirement for a certified home health agency administrator specified that minimum qualifications of a certified home health agency administrator were:
 - (a) Certified home health agency administrator shall mean a person who is responsible to the governing authority for the administrative operation of a certified home health agency and who meets the following minimum qualifications:
 - (i) is a currently registered professional nurse meeting the qualifications for the position of director of patient services of a certified home health agency or long-term home health care program as described in the Chapter; or
 - (ii) possesses a currently registered license as a physician in the State of New York; or
 - (iii) possesses a master's degree in a health-related field from an approved program with a minimum of four years of professional experience in related health programs which include at least two years in a responsible administrative position.

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April 28, 1967
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- (iii) A certified registered nurse anesthetist or registered nurse anesthetist or nurse anesthetist shall mean a registered professional nurse licensed and currently registered with the New York State Education Department who:
- (3) Enforcement by passage of the Chapter 529 law (1964) the regulations were proposed (October, 1965). The Association proposed amendments to the regulations concerning these proposed regulations (May 1966). The amendments proposed for the home health agency administrator were minimum qualifications of a qualification for a licensed physician. There are no changes in qualifications pertaining to the nurse:
 - (a) Certified home health agency administrator shall mean a person who is responsible to the governing authority for the administrative operation of a certified home health agency and who meets the following minimum qualifications:
 - (i) is a currently registered professional nurse meeting the qualifications for the position of director of patient services of a certified home health agency or long-term home health care program as described in this Chapter; or
 - (ii) possesses a post-baccalaureate degree in a business, health-related or home services field from an approved program with a minimum of two years of professional experience in related health programs which include at least two years in a responsible administrative position;
 - (iii) A certified registered nurse anesthetist or registered nurse anesthetist or nurse anesthetist shall mean a registered professional nurse licensed and currently registered with the New York State Education Department who:

Given these facts as we understand them, I would greatly appreciate further explanation of what you understand to be the problem under attack.

The Functional Unit of Directors, Associates and Associates, and the Community Health Nursing Clinical Executive Unit have discussed the matter at length, and will invite Mr. Gullinger and other interested persons to their next meeting, May 3-9.

Please be assured that NYHA intends to respond to the special concerns of any nurse, including administrators. If you believe there are issues which we have not addressed, please let us know as soon as possible.

Sincerely yours,

Barbara L. Orr, M.D., M.P.H.
Executive Director

MLD/ln

NYHA
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NYHA

#93 HEALTH HOME AGENCY REGULATIONS

Original Law -
Chapter 959
re certification
of home health
agencies, 1984



Constituent of The American
Nurses Association

NEW YORK STATE NURSES ASSOCIATION
100 West 42nd Avenue, Guilderland, N.Y. 12084, (518) 456-5371

A. 11069-A

MEMORANDUM OF SUPPORT

S. 9871-A

AN ACT to amend the public health law and insurance law, in relation to certified home health agencies and making appropriations

The New York State Nurses Association urges passage of A.11069-A, S.9871-A which requires by April 1, 1986 licensure of home care service agencies and defines certification for home health agencies.

Nurses have long recognized the need and have provided home health care in order to promote health, prevent illness and improve the health and wellbeing of persons of all ages. The cost effectiveness of home care as an alternative to hospitalization and nursing home placement is well documented.

It is paramount that home health agencies are regulated by the State relative to quality care as are other health agencies in order to protect the consumer. Currently the public health law regulates only the voluntary and not for profit certified home care agencies. This current practice is not only unequal but jeopardizes the health and safety of the consumer by exempting the proprietary home care agencies from any State monitoring or regulation. A.11069-A, S.9871-A will allow the State to assume its responsibility to ensure that basic standards are met by all home care agencies.

Certification of home health agencies is needed for planned development of home care. Maintenance of already established public and voluntary home care services will be ensured because proprietary home care services will be certified only when a documented substantial need for services is demonstrated.

CLT/cg
7/13/84



CHAPTER 959
LAWS OF 1984

STATE OF NEW YORK

11069--A

IN ASSEMBLY

March 30, 1984

Introduced by M. of A. TALLON, SIEGEL, WINNER, SCHIMMINGER, PORDUM --
Multi-Sponsored by M. of A. BARRAGA, BIANCHI, BRAGMAN, BRODSKY,
CATAPANO, CONNELLY, CONNERS, DIAZ, DUANE, DUGAN, ENGEL, FERRIS, GOLD-
STEIN, GRANNIS, GRIFFITH, HARENBERG, HARRISON, HEALEY, HEVEST,
HINCHEY, HOYT, JACOBS, KOPPELL, LASHER, LIPSCHUTZ, MacNEIL, MAR-
CHISELLI, McPHILLIPS, MURPHY, MURTAUGH, PASSANNANTE, PATTON, PROUD,
RIVERA, ROBLES, W. J. RYAN, SANDERS, SEMINERIO, SPANO, E. C. SUL-
LIVAN, TONKO, VANN, WEINSTEIN, WERTZ, YOUNG, ZIMMER -- read once and
referred to the Committee on Health -- reported and referred to the
Committee on Ways and Means -- committee discharged, bill amended, or-
dered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the insurance law, in relation
to certified home health agencies and making an appropriation therefor

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

Sec.
3602

- 1 Section 1. Subdivision three of section three thousand six hundred two
- 2 of the public health law, as amended by chapter seven hundred forty-
- 3 seven of the laws of nineteen hundred eighty-one, is amended to read as
- 4 follows:
- 5 3. "Certified home health agency" means a [public or voluntary non-
- 6 profit] home care services agency which possesses a valid certificate of
- 7 approval issued pursuant to the provisions of this article, or a resi-
- 8 dential health care facility or hospital possessing a valid operating
- 9 certificate issued under article twenty-eight of this chapter which is
- 10 authorized under section thirty-six hundred ten of this article to
- 11 provide a long term home health care program. Such an agency, facility,
- 12 or hospital must be qualified to participate as a home health agency un-
- 13 der the provisions of [title] titles XVIII and XIX of the Federal Social
- 14 Security Act and shall provide, directly or through contract arrange-
- 15 ment, a minimum of the following services which are of a preventive,
- 16 therapeutic, rehabilitative, health guidance and/or supportive nature to
- 17 persons at home: nursing services; home health aide services; medical

EXPLANATION--Matter in italics (underscoring) is new; matter in brackets
[] is old law to be omitted.

LS011743-10-4

See pp 899

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1 6. Neither public need, tax status nor profit-making status shall be
2 criteria for licensure.
3 7. An agency licensed pursuant to this section shall be authorized to
4 provide nursing services, home health aide services or personal care
5 services.
6 8. Agencies licensed pursuant to this section but not certified pur-
7 suant to section three thousand six hundred eight of this article, shall
8 not be qualified to participate as a home health agency under the provi-
9 sions of title XVIII or XIX of the federal Social Security Act provided,
10 however, an agency which has a contract with a state agency or its
11 locally designated office may receive reimbursement under title XIX of
12 the federal Social Security Act.
13 § 3605-a. Proceedings involving the license of a home care services
14 agency. 1. A license of a home care services agency may be revoked,
15 suspended, limited or annulled by the commissioner on proof that it has
16 failed to comply with the provisions of this article or rules and regu-
17 lations promulgated thereunder.
18 2. No such license shall be revoked, suspended, limited, annulled or
19 denied without a hearing. However, a license may be temporarily
20 suspended or limited without a hearing for a period not in excess of
21 thirty days upon written notice to the agency following a finding by the
22 department that the public health or safety is in imminent danger.
23 3. The commissioner shall fix a time and place for the hearing. A copy
24 of the charges, together with the notice of the time and place of the
25 hearing, shall be served in person or mailed by registered or certified
26 mail to the agency at least twenty-one days before the date fixed for
27 the hearing. The agency shall file with the department not less than
28 eight days prior to the hearing, a written answer to the charges.
29 4. All orders or determinations hereunder shall be subject to review
30 as provided in article seventy-eight of the civil practice law and
31 rules. Application for such review must be made within sixty days after
32 service in person or by registered or certified mail of a copy of the
33 order or determination upon the applicant or agency.
34 § 4. Section thirty-six hundred six of such law, as added by chapter
35 eight hundred ninety-five of the laws of nineteen hundred seventy-seven,
36 subdivision one as amended by chapter seven hundred forty-seven of the
37 laws of nineteen hundred eighty-one, subdivision two as amended by chap-
38 ter four hundred thirty-three of the laws of nineteen hundred eighty, is
39 amended to read as follows:
40 § 3606. Establishment of certified home health agencies. 1. The
41 commissioner shall not issue a certificate of approval to any home care
42 services agency except with the written approval of the public health
43 council. However, a residential health care facility or hospital making
44 application to the commissioner solely for authorization to provide a
45 long-term home health care program shall be deemed to have met such
46 requirement, provided that the facility or hospital possesses a valid
47 operating certificate under article twenty-eight of this chapter.
48 2. An application for approval of the proposed certified home health
49 agency shall be filed with the public health council together with such
50 other forms and information as shall be prescribed by, or acceptable to,
51 the public health council. Thereafter, the public health council shall
52 forward a copy of the proposed application for establishment and accom-
53 panying documents to the state hospital review and planning council and
54 the health systems agency having geographical jurisdiction of the area
55 where the services of the proposed certified home health agency are to

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1 be offered. The public health council shall act upon such application
2 after the state hospital review and planning council and the health sys-
3 tems agency have had a reasonable time to submit their recommendations.
4 At the time members of the public health council are notified that an
5 application is scheduled for consideration, the applicant and the health
6 systems agency shall be so notified in writing. The public health coun-
7 cil shall not take any action contrary to the advice of either the state
8 hospital review and planning council or the health systems agency until
9 it affords to either an opportunity to request a public hearing and, if
10 so requested, a public hearing shall be held. If the public health
11 council proposes to disapprove the application it shall afford the ap-
12 plicant an opportunity to request a public hearing. The public health
13 council may hold a public hearing on the application on its own motion.
14 Any public hearing held pursuant to this subdivision may be conducted by
15 the public health council or by any individual designated by the public
16 health council.
17 The public health council shall not approve an application for esta-
18 blishment unless it is satisfied, insofar as applicable, as to (a) the
19 public need for the existence of the certified home health agency at the
20 time and place and under the circumstances proposed; (b) the character,
21 competence, and standing in the community, of the proposed incorpora-
22 tors, directors and sponsors; (c) the financial resources of the
23 proposed certified home health agency and its sources of future reve-
24 nues; and (d) such other matters as it shall deem pertinent.
25 Neither the tax status nor profit-making status of proposed certified
26 home health agencies shall be criteria for establishment.
27 3. An application for establishment by a home care services agency in
28 existence and operating on the effective date of this section shall be
29 acted upon by the public health council within twelve months of the sub-
30 mission of such application.
31 § 5. Subdivision one of section three thousand six hundred eight of
32 such law, as added by chapter eight hundred ninety-five of the laws of
33 nineteen hundred seventy-seven, is amended to read as follows:
34 1. The commissioner shall issue a certificate of approval to any
35 [public or voluntary non-profit] home care services agency qualified to
36 participate as a home health agency under [title] titles XVIII and XIX
37 of the federal Social Security Act applying therefor which complies with
38 the provision of this article and the rules and regulations promulgated
39 pursuant thereto, in accordance with the standards and procedures
40 adopted by the state hospital review and planning council. [No such pu-
41 blic or voluntary non-profit home care services agency shall be operated
42 unless it shall possess such valid certificate of approval.]
43 § 6. Such law is amended by adding a new section three thousand six
44 hundred eleven to read as follows:
45 § 3611. Operation of home care services agency. 1. Any home care ser-
46 vices agency which seeks licensure pursuant to section three thousand
47 six hundred five of this chapter or a certificate of approval pursuant
48 to section three thousand six hundred six of this chapter and which
49 would be operated by a person, partnership, or a corporation any of the
50 members of which are not natural persons or which would be operated by a
51 corporation any of the stock of which is owned by another corporation
52 shall:
53 (a) establish a corporation within the state;

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1 (b) submit to a character and competence review of any stockholder
2 holding ten percent or more of the stock in said corporation, as well as
3 of any parent or health related subsidiary corporation;
4 (c) grant authority to the New York state corporation to have full
5 legal authority over the operation of the home health services agency;
6 (d) disclosure of information relative to stockholders as may be
7 required by the commissioner to determine character and competence; and
8 (e) designate an agent for service of process pursuant to section
9 three hundred five of the business corporation law.
10 2. The public health council shall not act upon an application for
11 licensure or a certificate of approval for any agency referred to in
12 paragraph one of this section unless it is satisfied as to the charac-
13 ter, competence and standing in the community of the proposed incorpora-
14 tors, directors, sponsors, controlling persons, principal stockholders
15 of the parent corporation, health related subsidiary corporation and the
16 New York state corporation established pursuant to paragraph (a) of sub-
17 division one of this section. For the purposes of this section the pub-
18 lic health council may adopt rules and regulations relative to what
19 constitutes parent and subsidiary corporations.
20 § 7. Subdivisions two, three and four of section three thousand six
21 hundred twelve of such law are renumbered subdivisions three, four and
22 five and a new subdivision two is added to read as follows:
23 2. The commissioner shall have the power to conduct periodic inspec-
24 tions of licensed home care services agencies with respect to the stan-
25 dards of service and care, qualifications of personnel and the clinical
26 records maintained by such agency.
27 § 8. Section three thousand six hundred twelve of such law is amended
28 by adding a new subdivision six to read as follows:
29 5. The commissioner shall adopt and may amend rules and regulations to
30 effectuate the provisions and purposes of this article as to licensed
31 home care services agencies with regard to (a) uniform standards for
32 quality of care and services to be provided and (b) the establishment of
33 a uniform statewide system of reports relating to the quality of ser-
34 vices offered.
35 § 9. Such law is amended by adding a new section three thousand six
36 hundred eleven-a to read as follows:
37 § 3611-a. Change in the operator or owner. 1. Any change in the person
38 who or partnership which is the operator of a licensed home care ser-
39 vices agency or a certified home health agency shall be approved by the
40 public health council in accordance with the provisions of subdivision
41 four of section three thousand six hundred five of this chapter relative
42 to licensure or subdivision two of section three thousand six hundred
43 six of this chapter relative to certificate of approval.
44 2. Any transfer, assignment or other disposition of ten percent or
45 more of the stock or voting rights thereunder of a corporation which is
46 the operator of a licensed home care services agency or a certified home
47 health agency, or any transfer, assignment or other disposition of the
48 stock or voting rights thereunder of such a corporation which results in
49 the ownership or control of more than ten percent of the stock or voting
50 rights thereunder of such corporation by any person shall be subject to
51 approval by the public health council in accordance with the provisions
52 of subdivision four of section three thousand six hundred five of this
53 chapter relative to licensure or subdivision two of section three
54 thousand six hundred six of this chapter relative to certificate of

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1 approval. In the absence of such approval, the license or certificate of
2 approval shall be subject to revocation or suspension.
3 § 10. Such law is amended by adding a new section three thousand six
4 hundred nineteen to read as follows:
5 § 3619. Exempt agencies. Only an agency licensed pursuant to section
6 thirty-six hundred five or certified pursuant to section thirty-six hun-
7 dred eight of this chapter or exempt from the licensure requirements of
8 section thirty-six hundred five of this chapter because the agency
9 provides personal care or home care services exclusively to individuals
10 pursuant to a program administered, operated or regulated by another
11 state agency shall hold itself out or call itself a home health services
12 agency, a home health agency or a home care services agency.
13 § 11. Section three thousand six hundred four of such law is amended
14 by adding a new subdivision seven to read as follows:
15 7. The council may from time to time recommend to the governor and
16 legislature whether services other than those specified in section three
17 thousand six hundred five of this chapter shall require licensure. In
18 making such recommendations the council shall provide information
19 relevant to its recommendation.
20 § 12. Paragraph (a) of subsection ten of section one hundred sixty-two
21 of the insurance law, as separately amended by chapters one hundred
22 sixty-six and eight hundred ninety-five of the laws of nineteen hundred
23 seventy-seven, is amended to read as follows:
24 (a) Every insurer issuing a group policy for delivery in this state
25 which provides coverage for in-patient hospital care shall provide cov-
26 erage for home care to residents in this state, except that this provi-
27 sion shall not apply to a policy which covers persons employed in more
28 than one state or the benefit structure of which was the subject of col-
29 lective bargaining affecting persons who are employed in more than one
30 state. Such home care coverage shall be included at the inception of
31 all new policies and added to all such policies and to policies issued
32 before April first, nineteen hundred seventy-six, at the first annual
33 anniversary date thereafter, without evidence of insurability and at any
34 subsequent annual anniversary date, subject to evidence of insurability.
35 Such coverage may be subject to an annual deductible of not more than
36 fifty dollars for each person covered under the policy and may be sub-
37 ject to a coinsurance provision which provides for coverage of not less
38 than seventy-five per cent of the reasonable charges for such services.
39 Home care shall mean the care and treatment of a covered person who is
40 under the care of a physician but only if (i) hospitalization or con-
41 finement in a skilled nursing facility as defined in title XVIII of the
42 Social Security Act would otherwise have been required if home care was
43 not provided, and (ii) the plan covering the home health service is es-
44 tablished and approved in writing by such physician. Home care shall be
45 provided [(i) by a hospital possessing a valid operating certificate,
46 and certified to provide home health services or (ii)] by a [non-profit
47 or public] certified home health [service or] agency possessing a valid
48 certificate of approval issued pursuant to [articles twenty-eight or]
49 article thirty-six of the public health law and shall consist of one or
50 more of the following: (a) part-time or intermittent home nursing care
51 by or under the supervision of a registered professional nurse (R.N.),
52 (b) part-time or intermittent home health aide services which consist
53 primarily of caring for the patient, (c) physical, occupational or
54 speech therapy if provided by the home health service or agency, and (d)
55 medical supplies, drugs and medications prescribed by a physician, and

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1 laboratory services by or on behalf of a certified home health agency to
2 the extent such items would have been covered under the contract if the
3 covered person had been hospitalized or confined in a skilled nursing
4 facility as defined in title XVIII of the Social Security Act. For the
5 purpose of determining the benefits for home care available to a covered
6 person, each visit by a member of a home care team shall be considered
7 as one home care visit; the contract may contain a limitation on the
8 number of home care visits, but not less than forty such visits in any
9 calendar year or in any continuous period of twelve months, for each
10 person covered under the contract; four hours of home health aide ser-
11 vice shall be considered as one home care visit.

12 § 13. Paragraph (a) of subsection seven-f of section one hundred
13 sixty-four of such law, as separately amended by chapters one hundred
14 sixty-six and eight hundred ninety-five of the laws of nineteen hundred
15 seventy-seven, is amended to read as follows:

16 (a) Every insurer issuing a policy of accident and sickness insurance
17 for delivery in this state which provides coverage for in-patient hospi-
18 tal care shall provide coverage for home care to residents in this
19 state. Such home care coverage shall be included at the inception of
20 all new policies and added to all such policies and to policies issued
21 before April first, nineteen hundred seventy-six, at the first annual
22 anniversary date thereafter, without evidence of insurability and at any
23 subsequent annual anniversary date, subject to evidence of insurability.
24 Such coverage may be subject to an annual deductible of not more than
25 fifty dollars for each person covered under the policy and may be sub-
26 ject to a coinsurance provision which provides for coverage of not less
27 than seventy-five per cent of the reasonable charges for such services.
28 Home care shall mean the care and treatment of a covered person who is
29 under the care of a physician but only if (i) hospitalization or con-
30 finement in a skilled nursing facility as defined in title XVIII of the
31 Social Security Act would otherwise have been required if home care was
32 not provided, and (ii) the plan covering the home health service is es-
33 tablished and approved in writing by such physician. Home care shall be
34 provided [(i) by a hospital possessing a valid operating certificate,
35 and certified to provide home health services or (ii)] by a [non-profit
36 or public] certified home health [service or] agency possessing a valid
37 certificate of approval issued pursuant to [articles twenty-eight or]
38 article thirty-six of the public health law and shall consist of one or
39 more of the following: (a) part-time or intermittent home nursing care
40 by or under the supervision of a registered professional nurse (R.N.),
41 (b) part-time or intermittent home health aide services which consist
42 primarily of caring for the patient, (c) physical, occupational or
43 speech therapy if provided by the home health service or agency, and (d)
44 medical supplies, drugs and medications prescribed by a physician, and
45 laboratory services by or on behalf of a certified home health agency to
46 the extent such items would have been covered under the contract if the
47 covered person had been hospitalized or confined in a skilled nursing
48 facility as defined in title XVIII of the Social Security Act. For the
49 purpose of determining the benefits for home care available to a covered
50 person, each visit by a member of a home care team shall be considered
51 as one home care visit; the contract may contain a limitation on the
52 number of home care visits, but not less than forty such visits in any
53 calendar year or in any continuous period of twelve months for each per-
54 son covered under the contract; four hours of home health aide service
55 shall be considered as one home care visit.

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1 § 14. The opening paragraph of subdivision one of section two hundred
2 fifty of such law, as separately amended by chapters five hundred fifty
3 and eight hundred ninety-five of the laws of nineteen hundred seventy-
4 seven, is amended to read as follows:

5 A membership corporation may be organized under the not-for-profit
6 corporation law, and a consumers' cooperative stock corporation may be
7 organized under article two of the cooperative corporations law, for the
8 purpose of furnishing medical expense indemnity, dental expense indem-
9 nity, hospital service, or health service or, upon compliance with the
10 applicable provisions of paragraph (b) of subdivision four of this sec-
11 tion, both medical expense indemnity and hospital service to persons who
12 become subscribers under contracts with such corporations. Medical ex-
13 pense indemnity shall consist of reimbursement for medical care provided
14 through duly licensed physicians, dental care provided through duly
15 licensed dentists, optometric care provided through duly licensed opto-
16 metrists, podiatric care provided through duly licensed podiatrists,
17 chiropractic care provided through duly licensed chiropractors, psychia-
18 tric or psychological services or for the diagnosis and treatment of
19 mental, nervous or emotional disorders and ailments, however defined in
20 the contract of insurance, provided through physicians, psychiatrists or
21 duly certified and registered psychologists, physical therapy care
22 provided through duly licensed physical therapists upon the prescription
23 of a physician, for nursing service and of furnishing necessary applian-
24 ces, drugs, medicines and supplies and, in addition, may consist of
25 reimbursement for bio-analytical or clinical laboratory examinations and
26 reports thereof reported to a physician, osteopath, dentist, opto-
27 metrist, podiatrist, chiropractor or physical therapist made by any
28 privately operated bio-analytical or clinical laboratory. It is not
29 mandatory that a subscriber contract shall provide for and offer ser-
30 vices as defined in section seventy-one hundred one of the education
31 law, but if it does so provide, the subscriber shall have freedom of
32 choice to select either a physician or an optometrist to render such
33 services. It is not mandatory that a subscriber contract shall provide
34 for and offer reimbursement for psychiatric or psychological services or
35 for the diagnosis and treatment of mental, nervous or emotional disor-
36 ders and ailments, but if it does so provide, the subscriber shall have
37 the option to select either a physician, psychiatrist or a certified and
38 registered psychologist with respect to psychiatric or psychological
39 services or diagnosis and treatment when the services to be rendered are
40 within the lawful scope of their practice. Unless such subscriber con-
41 tract shall otherwise provide there shall be no reimbursement for oph-
42 thalmic materials, lenses, spectacles, eyeglasses, and/or appurtenances
43 thereto. Every such plan shall be open to the participation of duly
44 licensed physicians, duly licensed podiatrists, duly licensed chiroprac-
45 tors, duly licensed optometrists, duly licensed physical therapists and
46 duly licensed dentists, certified and registered psychologists without
47 discrimination against schools of medical practice, podiatry practice,
48 chiropractic practice, optometric practice, physical therapy practice,
49 dental practice and psychological training as defined in the education
50 law. Dental expense indemnity shall consist of reimbursement for dental
51 care provided through duly licensed dentists and of furnishing necessary
52 appliances, drugs, medicines, and supplies, prosthetic appliances, ort-
53 hodontic appliances, precious metal and ceramic restorations. Hospital
54 service shall consist of in-patient hospital care and out-patient hospi-
55 tal care (including, but not limited to, pre-admission procedures) when

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1 such hospital care is provided through a hospital which is maintained by
2 the state or any of its political subdivisions, or maintained by a cor-
3 poration organized for hospital purposes under the laws of this state,
4 or such other hospitals as shall be designated by the state department
5 of health, and hospitals of other states subject to the supervision of
6 such other state, convalescent care provided by any convalescent insti-
7 tution, or nursing care provided by any nursing home. A hospital ser-
8 vice corporation may also provide reimbursement for expenses incurred
9 outside of the hospital, convalescent institution or nursing home, for
10 nursing service, necessary appliances, drugs, medicines, supplies, and
11 any other services which would have been available in the hospital, con-
12 valescent institution or nursing home (excluding physicians' services),
13 whether or not provided through a hospital, convalescent institution or
14 nursing home. A hospital service corporation may also furnish reimbur-
15 sement for ambulance service expenses. Every contract issued by a
16 hospital service corporation or health service corporation which
17 provides coverage for in-patient hospital care shall also provide cov-
18 erage for home care to residents in this state, except that this provi-
19 sion shall not apply to a contract issued pursuant to subsection six of
20 section two hundred fifty-three which covers persons employed in more
21 than one state or the benefit structure of which was the subject of col-
22 lective bargaining affecting persons who are employed in more than one
23 state. Such home care coverage shall be included at the inception of
24 all new contracts and added to all such contracts and to contracts is-
25 sued before April first, nineteen hundred seventy-six, at the first an-
26 nual anniversary date thereafter, without evidence of insurability and
27 at any subsequent annual anniversary date, subject to evidence of
28 insurability. Such coverage may be subject to an annual deductible of
29 not more than fifty dollars for each covered person and may be subject
30 to a coinsurance provision which provides for coverage of not less than
31 seventy-five per cent of the reasonable cost of services for which
32 payment may be made. No such corporation need provide such coverage to
33 persons eligible for medicare. Home care shall mean the care and treat-
34 ment of a covered person who is under the care of a physician but only
35 if (i) hospitalization or confinement in a skilled nursing facility as
36 defined in title XVIII of the Social Security Act would otherwise have
37 been required if home care was not provided, and (ii) the plan covering
38 the home health service is established and approved in writing by such
39 physician. Home care shall be provided by [(i) a hospital possessing a
40 valid operating certificate, and certified to provide home health ser-
41 vices or (ii) by] a [non-profit or public] certified home health
42 [service or] agency possessing a valid certificate of approval issued
43 pursuant to [articles twenty-eight or] article thirty-six of the public
44 health law and shall consist of one or more of the following: (a) part-
45 time or intermittent home nursing care by or under the supervision of a
46 registered professional nurse (R.N.), (b) part-time or intermittent home
47 health aide services which consist primarily of caring for the patient,
48 (c) physical, occupational or speech therapy if provided by the home
49 health service or agency, and (d) medical supplies, drugs and medica-
50 tions prescribed by a physician, and laboratory services by or on behalf
51 of a certified home health agency to the extent such items would have
52 been covered or provided under the contract if the covered person had
53 been hospitalized or confined in a skilled nursing facility as defined
54 in title XVIII of the Social Security Act. For the purpose of determin-
55 ing the benefits for home care available to a covered person, each visit

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1 by a member of a home care team shall be considered as one home care
2 visit; the contract may contain a limitation on the number of home care
3 visits, but not less than forty such visits in any calendar year or in
4 any continuous period of twelve months, for each covered person; four
5 hours of home health aide service shall be considered as one home care
6 visit. Every contract issued by a hospital service corporation or
7 health service corporation which provides coverage supplementing part A
8 and part B of title XVIII of the Social Security Act must be available
9 and, if requested by a subscriber holding a direct payment contract or
10 by all subscribers in a group remittance group or by the contract hol-
11 der in the case of group contracts issued pursuant to [subdivision] sub-
12 section six of section two hundred fifty-three of this chapter, provide
13 coverage of supplemental home care visits beyond those provided by part
14 A and part B, sufficient to produce an aggregate coverage of three hun-
15 dred sixty-five home care visits per contract year. Such coverage shall
16 be provided pursuant to regulations prescribed by the superintendent.
17 § 15. The sum of four hundred thousand dollars (\$400,000), or so much
18 thereof as may be necessary, is hereby appropriated to the department of
19 health from any moneys in the state treasury in the general fund to the
20 credit of the state purposes account and not otherwise appropriated to
21 defray the expenses of the department, including personal services,
22 operation and maintenance in carrying out the provisions of this act.
23 § 16. The commissioners or the directors of the state agencies which
24 administer, operate or regulate a program which provides personal care
25 or home care services and is exempt from the licensure requirements of
26 subdivision one of section three thousand six hundred five of the public
27 health law, shall, in consultation with the commissioner of health,
28 develop to the degree possible uniform standards regarding personal care
29 or home care services including, but not limited to, staff qualifica-
30 tions and training and standards for care. The commissioners or direc-
31 tors of the state agencies shall submit a report to the governor and
32 legislature by March first, nineteen hundred eighty-five. The report
33 shall include information pertaining to actions taken to implement uni-
34 form standards, specific areas where uniform standards may not be appro-
35 priate, and a plan for further implementation of uniform standards.
36 § 17. This act shall take effect October first, nineteen hundred
37 eighty-four, except that after April first, nineteen hundred eighty-six,
38 no person, except for persons who have filed applications for licensure
39 by October first, nineteen hundred eighty-five, which are awaiting
40 disposition by the commissioner of health, shall operate a home care
41 services agency without a license or a certificate of approval issued by
42 such commissioner. If the federal government or any court rules that
43 licensure pursuant to section three thousand six hundred five of the pu-
44 blic health law as added by this act makes the licensed home care ser-
45 vices agency qualified to participate as a home health agency under
46 title XVIII or XIX of the federal Social Security Act without being is-
47 sued a certificate of approval pursuant to section thirty-six hundred
48 eight of the public health law, the provisions of this act shall have no
49 force and effect and the provisions of the public health law as they ex-
50 isted immediately prior to the enactment of this act shall be restored
51 and deemed to be in full force and effect, provided, however, that such
52 rulings by the federal government or courts shall not affect the valid-
53 ity of certificates of approval issued after the effective date of this
54 act and prior to such rulings.

#93 HEALTH HOME AGENCY REGULATIONS

the administrator of a hospital, or has served a minimum of seven years as an associate or assistant administrator of a hospital which would meet the standards for hospital certification.

(18) A *community health nurse* shall mean a nurse whose primary functions, under qualified nursing supervision, are to plan, provide, direct and evaluate nursing care in a variety of settings and offer instruction and guidance in health practice for individuals and families. Such nurse shall have the following qualifications:

- (i) limited permit to practice or a license and current registration to practice as a registered professional nurse in New York State; and
- (ii) a baccalaureate degree in nursing from an approved program; or
- (iii) a baccalaureate degree in nursing from a nonapproved program supplemented by content which can be equated to the approved program.

(19) A *supervising community health nurse* shall mean a nurse whose primary functions, under qualified nursing direction, are to supervise, instruct and guide nursing and auxiliary personnel in providing high quality nursing services. Such nurse shall have qualifications required for community health nurse as defined in paragraph (18) of this subdivision and:

- (i) two years' satisfactory experience as a community health nurse in a certified home health agency or a long-term home health care program; or
- (ii) a combination of education and experience which is equivalent to the experience requirement of subparagraph (i) of this paragraph.

(20) *Director of patient services* shall mean a nurse whose primary functions are to plan, organize, direct, coordinate and evaluate the certified home health agency or long-term home health care program. Such nurse shall have the qualifications required for supervising community health nurse as defined in this Chapter and:

- (i) two years' satisfactory experience as a supervising community health nurse in a certified home health agency or long-term home health care program; or
- (ii) a combination of education and experience which is equivalent to the experience requirement of subparagraph (i) of this paragraph.

For a certified home health agency or long-term home health care program with more than 30 full-time or equivalent budgeted professional staff positions, a master's degree in nursing or a field relevant to community health nursing administration and two years' satisfactory nursing experience in a supervisory capacity in a certified home health agency or long-term home health care program is required.

(21) *Certified home health agency administrator* shall mean a person who is responsible to the governing authority for the administrative operation of a certified home health agency and who meets the following minimum qualifications:

- (i) is a currently registered professional nurse meeting the qualifications for the position of director of patient services of a certified home health agency or long-term home health care program as described in this Chapter; or
- (ii) possesses a currently registered license as a physician in the State of New York; or
- (iii) possesses a master's degree in a health-related field from an approved program with a minimum of four years of professional experience in related health programs which include at least two years in a responsible administrative position.

(22) A *certified registered nurse anesthetist* or *registered nurse anesthetist* or *nurse anesthetist* shall mean a registered professional nurse licensed and currently registered with the New York State Education Department who:

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the administrator of a hospital, or has served a minimum of seven years as an associate or assistant administrator of a hospital which would meet the standards for hospital certification.

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(21) *Certified home health agency administrator* shall mean a person who is responsible to the governing authority for the administrative operation of a certified home health agency and who meets the following minimum qualifications:

- (i) is a currently registered professional nurse meeting the qualifications for the position of director of patient services of a certified home health agency or long-term home health care program as described in this Chapter; or
- (ii) possesses a post-baccalaureate degree in a business, health-related or human services field from an approved program with a minimum of four years of professional experience in related health programs which include at least two years in a responsible administrative position.

(22) A *certified registered nurse anesthetist* or *registered nurse anesthetist* or *nurse anesthetist* shall mean a registered professional nurse licensed and currently registered with the New York State Education Department who:

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#93 HEALTH HOME AGENCY REGULATIONS

TESTIMONY

PRESENTED

BY

Dorothy L. Richmond, RN, CNA
Vice Chairperson
Functional Unit of Directors, Associates and Assistants

OF

THE NEW YORK STATE NURSES ASSOCIATION

ON

The Implementation of Chapter 959 of the Laws of 1984

AND

The Proposed Department of Health Regulations
for Home Care Agencies

Legislative Office Building
Roosevelt Hearing Room C
2nd Floor
Albany, New York

October 2, 1985

GOOD MORNING. I AM DOROTHY RICHMOND, A MEMBER OF THE NEW YORK STATE NURSES ASSOCIATION AND VICE-CHAIRPERSON OF THE NEW YORK STATE NURSES ASSOCIATION'S FUNCTIONAL UNIT OF DIRECTORS, ASSOCIATES AND ASSISTANT DIRECTORS OF NURSING. THE NEW YORK STATE NURSES ASSOCIATION HAS A MEMBERSHIP OF OVER 30,000 NURSES. THIS PROFESSIONAL ASSOCIATION HAS ALWAYS BEEN COMMITTED TO ASSURING THE CONSUMER QUALITY NURSING CARE THROUGH APPROPRIATELY CREDENTIALLED NURSES, STANDARDS OF NURSING CARE AND QUALITY ASSURANCE.

WE ARE PLEASED TO HAVE BEEN PROVIDED THE OPPORTUNITY TO TESTIFY ON THE IMPLEMENTATION OF CHAPTER 959 OF THE LAWS OF 1984 AND THE PROPOSED DEPARTMENT OF HEALTH REGULATIONS FOR HOME CARE AGENCIES, BECAUSE THE PRACTICE OF NURSING IS THE CORE OF HOME CARE SERVICES. MY TESTIMONY WILL FOLLOW THE FORMAT OF THE SUGGESTED QUESTIONS TO BE ADDRESSED.

WE WOULD LIKE TO COMMEND THE LEGISLATORS FOR PROVIDING THE LEADERSHIP IN THE PASSAGE OF THE LAWS OF 1984 OF CHAPTER 959. WE BELIEVE THE LEGISLATION WAS NECESSARY TO ESTABLISH THE NECESSARY CONTROL TO ASSURE THE CITIZENS OF NEW YORK ACCESS AND PROVISION OF SAFE, COMPETENT HOME CARE FOR THE FOLLOWING REASONS:

1. THE NEW YORK STATE NURSES ASSOCIATION HAS BEEN AWARE AND CONCERNED ABOUT NON-PROFESSIONALS PERFORMING PATIENT ASSESSMENTS AND PROVIDING DIRECTION FOR PATIENT CARE PLAN IN SOME HOME CARE AGENCIES.

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2. REIMBURSEMENT CHANGES FOR ACUTE CARE HOSPITALS AND LONG TERM CARE FACILITIES AS WELL AS CHANGES IN REGULATIONS FOR THE FEDERAL PROFESSIONAL REVIEW ORGANIZATION HAVE RESULTED IN AND WILL CONTINUE TO SHORTEN HOSPITAL LENGTHS OF STAY AND DISCHARGE PATIENTS TO HOME CARE WITH A NEED FOR PROFESSIONAL NURSING CARE BASED ON PATIENT ACUITY AND INTENSITY OF ILLNESS.

3. PRESENTLY, THE HEALTH CARE SYSTEM HAS GAPS IN SERVICE FOR PATIENTS WHO ARE ON MEDICARE, DO NOT WISH TO UTILIZE MEDICAID AND HAVE LIMITED INSURANCE COVERAGE FROM COMMERCIAL PAYORS.

WE BELIEVE THE PROPOSED REGULATIONS INSURE ALL HOME CARE AGENCIES WILL PROVIDE A MINIMUM LEVEL OF QUALITY CARE. WE ARE CONCERNED THE NEED METHODOLOGY WILL NOT INSURE AVAILABILITY OF SERVICES. RELIANCE ON THE HISTORICAL USE RATE TO PROJECT UNMET NEED IS NOT ADEQUATE. THE FORTHCOMING EFFECTS OF NYPHRM II AND THE LONG TERM CARE CASE MIX REIMBURSEMENT METHODOLOGY ARE UNKNOWN.

DATA FOR THE PAST FIVE YEARS ON HOSPITAL OCCUPANCY, HOSPITAL DISCHARGES BY DRG'S, LEVEL OF PATIENT NEED BY INTENSITY OF ILLNESS, ALTERNATIVE LEVEL OF CARE PATIENT AND CHANGES IN HOSPITAL LENGTH OF STAY PER PLANNING AREA CAN PROVIDE ADDITIONAL INFORMATION NEEDED TO DETERMINE GROWTH FOR EXISTING AND NEW AGENCIES. THE MANPOWER RESOURCES NEEDED TO MEET PATIENT NEEDS AND TO ASSURE QUALITY CARE CAN THEN BE MORE APPROPRIATELY PROJECTED, UTILIZING THIS DATA IN MATCHING PATIENT NEED TO MANPOWER RESOURCES.

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A STANDARD AGENCY CASE CAPACITY IS IMPORTANT TO PROVIDE EQUAL OPPORTUNITY FOR ALL AGENCIES. THE PROBLEM WE SEE IS THE EFFECT OF THE CHANGES IN ACUTE CARE AND LONG TERM CARE REIMBURSEMENT, WILL BE OCCURRING CONCURRENTLY WITH THE GROWTH OF HOME CARE AGENCIES. THE STANDARD MAY PREVENT DEVELOPMENT OF OTHER NEEDED CERTIFIED AGENCIES. FLEXIBILITY IN THIS STANDARD SHOULD BE CONSIDERED.

THE PROJECTION FOR EXPANSION OF EXISTING CERTIFIED AGENCIES SEEM APPROPRIATE. NEW AGENCIES MAY BE PENALIZED IN EXPANSION DUE TO THE FACT THAT NEW BUSINESSES NEED TIME TO BECOME ESTABLISHED AND CREDIBLE BEFORE EXPANSION OCCURS. THE CONDITIONS FOR INITIAL CERTIFICATION ARE REASONABLE TO ASSURE MINIMUM QUALITY CARE.

THE CHARITY CARE OBJECTIVE IS COMMENDABLE IN ORDER FOR ALL POPULATIONS TO HAVE ACCESS TO HOME CARE. THE REQUIREMENT THAT DIRECTS NURSING SERVICES BE PROVIDED AND AVAILABLE 24 HOURS IS A NECESSITY.

COORDINATION OF PATIENT CARE AND CONTINUITY OF NURSING CARE IS ESSENTIAL IN IMPROVING HOME CARE. PRESENTLY, FRAGMENTATION OF PATIENT CARE EXISTS DUE TO INSUFFICIENT PROFESSIONAL RESOURCES AND IN APPROPRIATE UTILIZATION OF UNLICENSED PERSONNEL. THIS REGULATION IMPLIES THE NEED FOR STAFFING PATTERNS TO BE DEVELOPED BASED ON PATIENT ACUITY, INTENSITY OF ILLNESS AND QUALIFIED MANPOWER. THE DEFINITION OF SKILLED NURSING FOR ACTIVITIES OF DAILY LIVING ARE INADEQUATE IN DEFINING PATIENT-NURSING NEEDS OF TODAY AND FOR THE FUTURE.

#93 HEALTH HOME AGENCY REGULATIONS

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THE EXPANSION OF MANDATED SERVICES IS NECESSARY TO ASSURE A COMPREHENSIVE HEALTH CARE SYSTEM, WHICH WILL PROVIDE THE NEEDED SERVICES NECESSARY IN HOME CARE. THE CHARITY CARE REGULATION PREVENTS THE SYSTEM FROM DEVELOPING A TWO-TIER APPROACH IN HEALTH CARE, ONE FOR THE POOR, AND ONE FOR THE WEALTHY.

A DIRECTOR OF PATIENT SERVICES IS ESSENTIAL TO A HOME CARE AGENCY. THE PRACTICE OF NURSING IS INHERENT IN HOME CARE. THE LAW DEFINES A CERTIFIED HOME CARE AGENCY AS ONE THAT PROVIDES A MINIMUM OF THE FOLLOWING SERVICES, WHICH ARE PREVENTATIVE, THERAPEUTIC, REHABILITATIVE, HEALTH GUIDANCE AND/OR SUPPORTIVE IN NATURE TO PERSONS AT HOME. NURSING IS LEGALLY DEFINED AS DIAGNOSING AND TREATING HUMAN RESPONSES TO ACTUAL OR POTENTIAL HEALTH PROBLEMS THROUGH SUCH SERVICES AS CASE FINDING, HEALTH TEACHING, HEALTH COUNSELING, AND THE PROVISION OF CARE SUPPORTIVE TO, OR RESTORATIVE OF LIFE AND WELL-BEING. THEREFORE, A NURSE MUST BE RESPONSIBLE FOR THE DIRECTION OF PATIENT CARE IN HOME CARE.

NURSING HAS A LONG HISTORY OF PROVIDING HOME CARE BEFORE THE DOMINANCE OF ACUTE CARE, DUE TO IT'S ESSENCE IN HOME CARE. THE ADMINISTRATORS POSITION COULD BE COMBINED INTO THE DIRECTOR OF PATIENT SERVICES, THAT IS A NURSE WITH A MASTERS IN NURSING AND ADMINISTRATIVE EXPERIENCE. IN ANY CASE IT IS IMPERATIVE TO RETAIN THE DIRECTOR OF PATIENT SERVICES IN ORDER TO ASSURE QUALITY HOME CARE.

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THE LICENSURE REGULATIONS DO ACCOMPLISH INSURING THE MINIMUM LEVEL OF QUALITY CARE AND EXISTING AGENCIES SHOULD BE ABLE TO COMPLY. THE REGULATIONS ON SOLO-PRACTITIONERS IN NURSING BEING EXEMPT SHOULD BE EXPANDED TO INCLUDE NURSES IN GROUP PRACTICE.

AS STATED ABOVE, THE PRACTICE OF NURSING IS THE ESSENCE OF HOME CARE. NURSES IN GROUP PRACTICE CAN MEET SPECIFIC HOME CARE NEEDS OUTLINED IN THE STATUTE AND SHOULD NOT HAVE TO BE LICENSED. OTHER LICENSED PROFESSIONALS, SUCH AS MEDICINE OR LAW, ARE NOT REQUIRED TO HAVE ADDITIONAL STATE LICENSURE TO PRACTICE THE PROFESSION THEY ARE ALREADY LICENSED TO PRACTICE. IF NURSES IN GROUP PRACTICE WISH TO EXPAND THEIR SERVICES TO HOME HEALTH AIDES, OR PERSONAL CARE SERVICES, THEN THEY SHOULD COME UNDER THE LICENSURE CERTIFICATION LAW.

THE NEW YORK STATE NURSES ASSOCIATION REQUESTS THE INTERPRETATION OF THIS STATUTE IN RELATIONSHIP TO THIS SECTION BE CHANGED IN ORDER TO REMOVE THIS RESTRICTION. THE NEW YORK STATE NURSES ASSOCIATION HAS OFFERED ASSISTANCE AND WISHES TO CONTINUE TO ASSIST THE LEGISLATORS AND THE DEPARTMENT OF HEALTH IN IMPLEMENTING THE QUALIFIED HOME HEALTH SERVICE FOR THE CITIZENS OF NEW YORK STATE.

THANK YOU FOR PROVIDING THIS OPPORTUNITY FOR TESTIMONY.

DR/mbh
10/01/85