Testimony of the Home Care Alliance of Massachusetts
Joint Committee on Health Care Financing

H.1028, An Act Relative to a Certificate of Need for Home Health Agencies

Chairman Walsh, Chairman Welch, Members of the Joint Committee on Health Care Financing, and staff, thank you for the opportunity to offer comments on behalf of the Home Care Alliance of Massachusetts, in strong support of H.1028, An Act Relative to a Certificate of Need for Home Health Agencies.

The Home Care Alliance is a trade association of 200 home care agencies that are both Medicare-certified – authorized to provide medical services for reimbursement from Medicare and MassHealth – and privately paid supportive services. From maternal and child health services to chronic disease management to physical therapy at home following a surgery, our members provide a versatile array of services that help people remain in their place of residence.

The bill we are focused on today relates to the certified agencies, of which we have seen rapid growth. People start an agency and work through the process of getting certified by the Centers for Medicare and Medicaid Services (CMS) with the idea that it is a reliable venture given the aging population. Indeed, the Administration on Aging estimates that the number of persons 65 and older will double by 2030 and the Bureau of Labor Statistics has placed home care and home health aides as two of the top five fastest-growing job opportunities over the next decade. However, the context those facts fit into changes everything about the facts themselves.

Many start-up agencies are unprepared for the rigorous federal regulatory requirements as well as payment and billing arrangements. More importantly for patients, they lack a commitment to quality and safety that puts people at risk, costs Medicare and MassHealth, and threatens the reputation of quality home health providers in Massachusetts.

The Home Care Alliance’s request for a certificate of need is not based on an interest in protecting existing businesses, but on protecting patients. Massachusetts is one of only five states without either licensure or a certificate of need process for home health, which changes the way we look at the aging population and job growth numbers. People prefer to receive care at home rather than a nursing facility or going to the hospital. Sometimes that more intensive level of care is necessary, but when home health is appropriate, we should make sure that a baseline exists where new agencies commit to providing safe, quality care and following the same rules as other home health providers.

Roughly eight years ago, the federal government decreased funding to states to handle oversight of new home health agencies and outsourced the responsibility to private companies like the Community Health Accreditation Program (CHAP) and the Joint Commission. The standards these companies use are relatively weak and the timeframes that they are required to follow in terms of certification are far too loose.
Once an entity has paid one of these private entities for certification and passed some minimal standards around billing capacity and staffing, they are accredited. The agencies are not required to be re-surveyed and have no limits on how fast they can grow for another three years. Based on complaints, the Home Care Alliance filed a Freedom of Information Act request to obtain some operation surveys on new entrants into the Massachusetts market after their three-year survey. Attached to my testimony are some of the pages from these reaccreditation surveys in which these agencies have been cited for behavior that indicates extremely poor care at best and a failure to follow basic standards in ways that border on Medicare fraud.

For example:

- Failure of the agency to follow federal requirements, or even their own policy, for conducting worker training and documenting workers’ competencies.
- Not following a physician’s orders – either providing more visits than required thereby committing fraud, or not providing enough visits. This endangers patients and puts them at risk of re-hospitalization.
- Beginning care without physician authorization.
- Use of physical therapy assistants for the duration of the care episode without the required supervision of a licensed physical therapist.
- Regular use of LPN’s for continued periods without a required RN assessment as is clearly called for in both agency policy and according to the changing patient’s condition.
- Failure to adequately document patient medication orders or communicate with physicians and receive their approval for changes to complex hypertension or other medications.

Despite these deficiencies, agencies continue to get recertified. The Home Care Alliance has written – directly and through the state’s Congressional delegation – to the federal Secretary of Health and Human Services asking for a temporary moratorium on new federally-certified home health agencies, which is outlined broadly in the Affordable Care Act. The Alliance has also asked the Medicare Payment Advisory Commission (MedPAC) to rewrite and strengthen standards for entering the home health market. We see neither of these actions happening anytime soon. Meanwhile, agencies like those referenced threaten the tradition of quality care to which we are accustomed.

Visiting Nurse Associations started in Massachusetts and many of those left standing are 100 years old or more, like Home Health VNA of Lawrence, the VNA of Boston, VNA of Greater Lowell, AllCare VNA of Lynn, and Community VNA of Attleboro. All continue to be innovative agencies and all continue to provide high quality care that keeps people independent at home. We should ensure that any new agency has that same commitment and can provide a valuable and reliable set of services to those in need.

Thank you for your consideration of our comments.

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