

NEW YORK STATE DEPARTMENT OF HEALTH

INTEROFFICE MEMORANDUM

TO: Members of the Establishment Committee
Public Health Council

FROM: Mark Kissinger, Deputy Commissioner
Office of Long Term Care

Mark H. Kissinger

DATE: June 18, 2008

SUBJECT: Certified Home Health Agency Charity Care Report

Attached please find the Department's report on Certified Home Health Aide Charity Care as requested. This is for distribution and discussion at the Establishment Committee meeting on June 24, 2008

Certified Home Health Agency Charity Care Report

Background

The regulations implementing Chapter 959 of the Laws of 1984 which became effective in 1986 included provisions for certified home health agencies (CHHAs) to provide minimal levels of charity care. The charity care requirements promulgated in 1986 (Section 763.11(a)(11) of Title 10 of the New York Codes, Rules and Regulations (NYCRR) assured that new agencies, both voluntary and for-profit, provide their fair share of charity care cases. Subsequent to the promulgation of the regulations in 1986, the Department reviewed applications from 75 new home care agencies some of which were for-profit organizations including some publicly traded companies. These requirements, outlined below, were added to the Certificate of Need (CON) methodology for any new agencies and program requirements were revised to place a charity care standard on all agencies.

The basic definition of charity care is found in Section 763.11(a)(11) of Title 10 of the New York Codes, Rules and Regulations (NYCRR):

(11) for certified home health agencies only, ensure the provision of charity care in each fiscal year of the agency in an amount no less than two percent (2%) of the total operating costs of the agency in that fiscal year for not-for-profit and for-profit agencies and agencies operated by public benefit corporations and three and one-third percent (3-1/3%) of total operating costs of the agency for public agencies. Charity care is care provided at no charge or reduced charge for the services the agency is certified to provide to patients who are unable to pay full charges, are not eligible for covered benefits under title XVIII or XIX of the Social Security Act, are not covered by private insurance, and whose household income is less than two hundred percent (200%) of the federal poverty level. Adjustments to the required percentages of charity care may be made by the department upon recommendation of the appropriate health systems agency to reflect significant county variations from the state average with respect to the proportion of indigent and medically uninsured persons to the total population.

A baseline report on the provision of charity care by CHHAs was developed by the Department in 1990. The report was presented to the State Hospital Review and Planning and Public Health Councils (SHRPC and PHC respectively). The Department and Councils concluded that most of the new agencies were not yet operational and that proceeding with penalties did not make sense at that time. Therefore, for the period 1987-1989 a better level of

compliance was sought through plans of correction from agencies not meeting the minimum requirements. It was further determined that a later report would be conducted on the provision of charity care.

A 1991 report was conducted and shared with the SHRPC and PHC in 1993 and included the following highlights:

- \$22 million in CHHA charity care was provided during 1990 representing 3.8 percent of CHHA operating costs.
- 65 percent or 106 of all agencies were in compliance with minimum requirements.
- 35 percent or 57 agencies were not in compliance (35 voluntary; 16 for-profit, 6 public).
- Based on the standards set by the regulations, there was a \$1.2 million shortfall by agencies not in compliance. Agencies which existed prior to 1988 demonstrated a reduction in the provision of charity care (1987 – 1990).

However, there were some positive trends during this period:

- A redistribution of the burden was reported. New agencies absorbed a portion of the burden and for-profits did slightly better than new not-for-profits.
- During the period 1987-90, 88 out of 163 agencies reported increases in the gross dollar value of charity care provided.
- By 1990, 50 percent of those not in compliance provided at least one-half of the required amount. A review of 1987 indicates 25 percent of those reporting would not have been in compliance if the requirements had been in effect.

As a result of this report, the Department and Councils determined that plans of correction were only minimally successful in gaining compliance. Enforcement actions would be taken against agencies whose provision of charity care did not meet at least one-half of one percent of operating costs. There were 21 enforcement actions as a result of this policy. The enforcement actions resulted in fines to those agencies of \$2,000 per year for each year of non-compliance between 1987-90. The stipulation and orders that resulted from the fines also required Department approval of all compliance plans. In 2002 a review of 2000 data indicated that 79 voluntary and proprietary agencies were not in compliance.

Current Status

On December 19, 2007 a Dear Administrator Letter (Attached) was sent to all CHHAs, which stated that beginning in 2003 the certified cost report would be utilized for determining charity care instead of the non-certified data previously reported to the Department on form DOH 519.

A review of the cost report data on charity care for calendar year 2004 indicates:

- \$14.7 million of charity care services were delivered in 2004 representing 0.8 percent of CHHA operating costs.
- 15 percent or 22 of all agencies were in compliance with minimum requirements. Eighty-five (85) percent or 126 agencies were not in compliance. This is a major reduction from the 65 percent compliance in 1990. (Please note the 1990 data is based solely on statistical data reported in DOH 519 form as opposed to cost report data now required).
- Overall Compliance in 2004 was 14% for the Voluntary, 23% for the Public and 4% for the For-Profit agencies.
- Provision of charity care ranged from a low of 0.1 percent in the Finger Lakes region to a high of 2.2 percent in the Northeast region.
- Compared to 1990, compliance by sponsor has shifted dramatically as indicated in the following table.

PERCENT OF AGENCIES IN COMPLIANCE

<u>Community Based</u>	<u>1990*</u>	<u>2004**</u>
Voluntary	70%	8%
Public	89%	23%
For-Profit	16%	0%

<u>Facility Based (Hospital or SNF)</u>		
Voluntary	51%	26%
Public	100%	0%

Special Need

Voluntary	0%	0%
For-Profit	0%	25%

*utilizing 519 data

**utilizing cost report data

- The shortfall in the provision of charity care services was \$27.0 million in 2004 as compared to \$1.2 million in 1990 when compared to required targets by operating costs reported.
- While 36 percent of agencies increased the amount of charity care provided during this period, 64 percent experienced decreases in gross dollars of charity care provided.
- During this period, the number of free care visits declined by over 50,000. Partial pay visits declined to 12,408 visits a dramatic reduction from the 137,361 visits reported in 1990.
- 48 percent of agencies not meeting the charity care targets also reported deficits on their cost reports in 2004.

Discussion

The data from the agencies cost reports for 2004 show that 85% of CHHA providers do **not** meet the requirements for the provision of charity care (2% for voluntary and for-profit agencies, and 3.3% for public agencies). It should be noted that there have been agencies during this period that have increased the provision of charity care. However given the significant level of noncompliance, it is necessary to review relevant issues that impact the entire industry. The following are issues that need to be further explored by Department staff with input from the Councils and the industry.

- Changes in enrollment and access to other programs that serve to the needs of the population under the current regulatory definition of charity care such as Child Health Plus and Family Health Plus. Have these programs reduced the number of individuals in need of charity care?
- Increases in operating costs and the fixed percentage approach of the requirement. Has the 1986 standard become obsolete?
- Changes in accounting practices. Has there been an impact on the calculation or collection of information?

- Lack of recent enforcement activities by DOH. Has this resulted in a lack of compliance by providers?
- Historically most charity cases were referred from hospitals. What changes in referrals or types of cases have reduced the provision of charity care?
- Agency internal policies and referral mechanisms. Do the agencies have in place mechanisms to seek and or provide outreach to provide charity care? Are County Health Departments knowledgeable about the charity care provisions?
- WillCare's Charity Care Study is currently underway in Western New York and the Hudson Valley with an anticipated completion date of June 30, 2008. This study may provide insight from a single provider that should be duplicated by other providers.

Recommendation

In consideration of the substantial lack of compliance related to the current charity care regulatory provisions, the Department will be notifying agencies of their noncompliance and requiring them to develop and submit an explanation of why charity care has not been provided and plans for complying with this regulatory requirement. These plans of correction are expected to be a source of information about the problems associated with this requirement.



STATE OF NEW YORK DEPARTMENT OF HEALTH

161 Delaware Avenue Delmar, NY 12054-1393

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

December 19, 2007

DAL: HCBC 07-13
Subject: Charity Care

Dear Administrator:

The purpose of this letter is to clarify and confirm Health Department policy and regulatory interpretation as applied to payments to Certified Home Health Agencies (CHHAs) from the Bad Debt/Charity Care (BDCC) Pool as authorized pursuant to Public Health Law (PHL) § 3614(5). Regulations controlling the computation of these payments are contained in 10 NYCRR Part 86-1.47. In addition, 10 NYCRR 763.11(a)(11) imposes a minimum 2% charity care expenditure standard on non-public CHHAs (3 1/3% for public CHHAs) in order to qualify for any BDCC payments under PHL § 3614(5).

The Department has historically relied on the certified cost report data as annually submitted by each free-standing CHHA, to compute the payments authorized under 10 NYCRR 86-1.47. However, prior to the 2003 cost year the Department utilized non-certified data contained in the DOH-519 form, as submitted annually to the Department, to determine provider threshold eligibility under the 2% and 3 1/3% charity care expenditure standards. Commencing in the 2003 and 2004 rate years this changed and the Department started utilizing the certified cost report data to determine threshold eligibility for these payments as well to compute the payment amounts. Objections were raised concerning this change in policy and payments under this program for subsequent years have been held in abeyance while a review of the matter was conducted. That review has now been completed and the revised policy has been confirmed as lawful and appropriate. The Department's Bureau of Long Term Care Reimbursement will therefore proceed to issue BDCC payments in accordance with this policy for all periods subsequent to 2004.

The definition of charity care required to be utilized by CHHAs in completing their annual cost reports, which is consistent with the definition of charity care as outlined in 10 NYCRR Section 763.11(a)(11), reads: Charity care is provided at no charge or reduced charge for the services the agency is certified to provide to patients who are unable to pay full charges, are not eligible for covered benefits under Title XVIII or XIX of the Social Security Act, are not covered by private insurance, and whose household income is less than 200 percent of the federal poverty level. Providers are reminded to carefully conform their charity care expenditure reporting, in both their cost reports as well as in the DOH-519 form, with this definition. Any previous guidance issued by the Department which is or may be understood as inconsistent with this definition of eligible charity care should be disregarded. Only those services that meet the above quoted definition may be employed to determine compliance with the charity care requirements as established by regulation.

Please also note that hospital-based CHHAs will continue to have their eligibility and payment computations based on the data contained in their DOH-519 forms until such time as the hospital cost report forms can be amended to provide for the collection of the necessary BDCC care data. The definition of charity care quoted above should also be used by hospital-based CHHAs when reporting charity care expenditures in their DOH-519 forms. Any previous clarifications to the definition of charity care issued by the Department in the completion of this form are no longer applicable.

Any questions regarding this DAL should be submitted in writing to Chris Gimbrone, Division of Home and Community Based Services, 161 Delaware Avenue, Delmar, N.Y. 12054.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark H. Kissinger". The signature is written in a cursive style and is positioned above a horizontal dotted line.

Mark Kissinger
Deputy Commissioner
Office of Long Term Care



March 5, 2008

Douglas Reilly
Bureau of Licensure and Certification
New York State Department of Health
161 Delaware Ave.
Delmar, N.Y. 12054

RE: Project No. 061218 - Charity Care Compliance Plan

Dear Doug:

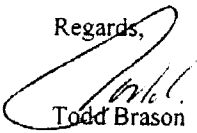
In an effort to keep you apprised of our progress and to follow-up on our conversation, the enclosed document is an outline of our Work Plan to revise and implement our Charity Care Compliance plan as requested by the Department of Health in conjunction with the recommendation of the Public Health Council.

In addition, I have enclosed a revised sample letter that reflects the most recent language regarding charity care regulations.

We anticipate that the survey, subsequent results and final report of our findings will be completed by June 30, 2008. If this time line does not meet your expectations or that of the Public Health Council, please let me know.

If you require additional information or have questions, please do not hesitate to contact me at 716-961-4502.

Regards,

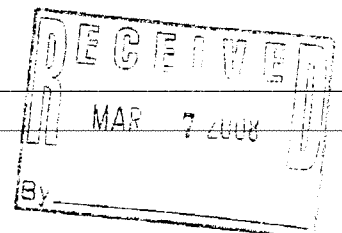

Todd Brason
CEO

Enclosures

344 DELAWARE AVENUE • BUFFALO/NEW YORK • 14202

PHONE: 716/856-7500 • FAX: 716/856-7506

WWW.WILLCARE.COM



[WILLCARE LETTERHEAD]
SAMPLE LETTER TO *HOSPITAL DISCHARGE PLANNERS*

Discharge Planner
Erie County Medical Center
462 Grider Street
Buffalo NY 14215

Re: Identifying Patients for Charity Home Care Services

Dear Discharge Planner:

WILLCARE has established a new policy for extending 'charity care' services as required by state regulation (10 NYCRR 763.11(a)(11)). As part of this new policy and initiative, WILLCARE is requesting your help in identifying patients who are eligible for free or reduced fee home health services as part of WILLCARE's charity care program. WILLCARE provides certified home health care services in Erie and Chautauqua counties. Certified home care services include nursing, physical, occupational, and speech therapy, social services, nutrition, medical equipment supply, and personal care. WILLCARE is committed to providing free or reduced fee home health services to individuals in Erie and Chautauqua counties who meet the state's eligibility criteria.

Medically necessary free or reduced fee home health care services will be provided by WILLCARE for patients who are:

1. Unable to pay full charges; or
2. Are not eligible for covered benefits under Title XVIII or XIX of the Social Security Act; or
3. Not covered by private insurance; AND
4. Whose household income is less than 200% of the federal poverty level (see 2007 federal poverty levels attached).

We are committed to providing care to patients who qualify for charity care under the state's criteria. However, it is often difficult for us to identify patients who may be eligible for such care. Given your access to patients in need of home health care services, we hope that you will be able to identify patients who qualify for WILLCARE's charity care program. If you believe someone may be eligible, please contact our Central Intake Department at 856-7500 and our staff will assist you in determining the patient's eligibility.

We appreciate your efforts on behalf of those in need of care.

Sincerely,

Todd W. Brason
President/CEO

Enclosure

<u>CHARITY CARE WORK PLAN</u>	<u>Completion Date</u>
Finalize Charity Care Policy and Procedure	DONE
Revise patient intake forms to document eligibility for the provision of charity care services or applicable costs that exceed reimbursement.	DONE
Add disclaimer to our community education materials that outlines our policy.	DONE
Appoint Charity Care Service Coordinator in both WNY and Hudson Valley to assist and monitor charity care services and provide Administrator monthly progress reports.	March 15, 2008
Create survey tool to evaluate potential needs for charity care services in WNY and Hudson Valley.	March 15, 2008
Draft and circulate letter to discharge planners, social workers, etc. for community awareness campaign.	March 30, 2008
Develop data base of hospital discharge planners, health care facilities, clinics, and related institutions that provide medical assistance and care to the indigent population that might have need or knowledge of charity care patients.	April 1, 2008
Mail survey to entire data base with return date expected of 30 days.	May 1, 2008
Draft and finalize report to document survey results. Follow-up with facilities that responded with concerns or experience difficulty in obtaining home health services for charity care eligible patients.	June 30, 2008
Develop monthly tracking tool and/or financial reports to monitor charity care program.	DONE