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SUGGESTED REPLY
October 30, 1972

Honorable Leo T. McCarthy
State Assembly
State Capitol
Sacramento, California 95814

Dear Mr. McCarthy:

This is in response to your request of October 6, 1972, for information relating to the certification of nursing homes under the Medi-Cal program by the Department of Health Care Services.

As you requested, attached is a copy of the latest report received from the Long Term Care Survey team from the regional office of the Bureau of Medical Services Administration, Social and Rehabilitation Services, Department of Health, Education, and Welfare (HEW) (Attachment A). A response to the Federal inspection is now being prepared by the Department of Health Care Services (DHCS). A copy will be forwarded to you upon completion.

Assigned staff within the Department of Health Care Services is currently concentrating their efforts in the area of nursing home certification both in fully implementing Federal and State requirements and in maintaining the usual day-to-day processes of nursing home certification. The Department of Health Care Services has and is making substantial progress in meeting full compliance with Federal standards.

General Procedures and Specific Action Regarding Nursing Home Certification

Seventy-five days prior to the deadlines for renewal of nursing home participation agreements, the State Department of Public Health (DPH) is notified by DHCS as to which nursing homes require resurveys and they then conduct on-site inspections.

The DPH survey reports of inspection are analyzed by the Department of Health Care Services, Provider Standards Bureau, as well as quarterly staffing reports submitted by the nursing homes and reports of inspection from the Department's Medical-Social Review teams. A determination is then made as to the nursing home's compliance with standards of participation in the Medi-Cal program (Section 51215, Title 22, California Administration Code). Agreements are entered into on a six-month or twelve-month basis; a six months' period if deficiencies from regulatory standards needing correction are disclosed by the survey, or for a full twelve months if no deficiencies are found. Waivers are granted under the twelve month agreements only in relationship to a facility not having a separate room for purposes of physical examination of patients.

The following special actions have been taken to improve conditions of 1233 nursing home facilities' patient care and safety:

1. Each of the 353 nursing homes participating in the Medical program only received an intensive survey for compliance with revised standards; 197 Medicare/Medi-Cal participating nursing homes received a similar intensive inspection. Reports of inspection for the remaining 683 facilities were desk reviewed for standards of compliance. This was possible since Medicare standards which had been in effect were essentially the same as the revised Medi-Cal regulations and the 683 facilities had been inspected within the prior six months.
2. Short-term conditional provider agreements of up to six months have been entered into by DHCS with 980 nursing homes having deficiencies that were correctable and not dangerous to the health and safety of

patients. The Department obtained from these nursing homes documented plans for their correction of existing deficiencies. They were advised that a second six-month agreement could be entered into if all prior deficiencies were corrected or if substantial progress has been made to rectify these deficiencies at the time of resurvey. Additionally, the Department advised the nursing homes that no additional agreements can be made if any deficiencies remain. These procedures are consistent with Federal standards set forth in accordance with regulations under the Title XIX program.

3. The Department has obtained from each nursing home an agreement for the efficient transfer to a hospital of patients requiring emergency or other specialized care.
4. Quarterly staffing reports, a Federal regulatory requirement, have been obtained from each nursing home to determine whether the average numbers and types of personnel are in accordance with staffing requirements.
5. The State Fire Marshal's office was contracted by DHCS and has surveyed 353 nursing homes have been similarly surveyed by the Fire Marshal under a Medicare contract.
6. Reports from the Department's Medical-Social Review teams are reviewed by staff for reports of sub-standard care provided to patients. Such reports became a part of the consideration for certification and payment for services, as well as causing special visits by the State Department

of Public Health consultants and their inspection staff.

The Department of Health Care Services, by July 1, 1972, completed the job of certifying all participating nursing homes in accordance with Federal regulations.

The Department of Health Care Services continues to closely monitor the activities of nursing homes through complaints from the public, reviews of on-site inspection and consultants reports from the State Department of Public Health and reports from the department's Medical-Social Review teams. Since February, 1972, 36 nursing homes have been suspended or have withdrawn from the Medi-Cal program. Complaints from the public are given priority within the Department and are investigated by the Department of Public Health, DHCS investigators and Medical-Social Review teams.

Change of Rate Schedules

The current nursing home rates are found in Section 51511 of Title 22 of the California Administrative Code. They were adopted effective April 1, 1972 after a fifteen month public hearing per court instructions for the resetting of rates from March 1, 1966 forward. Instructions were recently issued by the fiscal intermediary (Blue Cross) to the nursing homes of the proper applications of the new rates. These instructions were based upon the Department's notification to the Medi-Cal Intermediary Operations Coordinator. Copies of the rate schedules and notification are enclosed. (Attachments B and C).

Recommendations for Closure of Certain Facilities

The Department of Health Care Services cannot close a nursing home. The closure of a facility can only be accomplished by the Departments of Mental Hygiene and Public Health under their licensing procedures. They can also close facilities

where major infractions of Title 9 (Private Institutions Licensing Act) and Title 17 (Hospital Licensing Act) regulations are involved.

On the other hand, if by closure it is meant suspension from the Medi-Cal program, the Department must follow suspension procedures as prescribed under Section 51453, Title 22 of the California Administrative Code. This section directs that the proceedings must commence in accordance with the Administrative Procedures Act under Chapter 2 of the Government Code. Additionally, if a nursing home fails to meet standards for participation, as specified by regulation, we are prohibited from signing a participation agreement. Many nursing homes voluntarily withdraw from participation in the program because of their failure to meet the standards.

Fire Safety Requirements

One of the areas of major importance to the nursing home industry at this time is the Department's implementation of "Life Safety Code", 1967 Edition, National Fire Protection Association (NFPA No. 101) as required in Title 45, Code of Federal regulations, Section 249.33 (a) (1) (vii), and in 1902 (a) (28) (F) (i) of the Social Security Act. The Federal Department of Health, Education, and Welfare adopted the "Life Safety Code", 1967 Edition, as the basic fire code for all Medicare and Medicaid nursing homes. Up to August 4, 1972 California's Fire Safety Code was accepted by HEW in lieu of the Life Safety Code.

Currently, the Department is working with the Federal Bureau of Health Insurance (Title XVIII) and Social Rehabilitative Services (Title XIX) as well as the Office of State Fire Marshal and the State Department of Public Health, towards the implementation of this requirement. The State Fire Marshal will continue to conduct Life Safety Code surveys of all nursing homes throughout the State. These inspections are made by staff of the State Fire Marshal under direct contract with DHCS and Medicare.

October 30, 1972

A preliminary review by the State Fire Marshal on Medicare/Medi-Cal participating nursing homes indicated that the large majority have deficiencies under the Life Safety Code standards. It was, incidentally, in anticipation that the waiver might be withdrawn by HEW that the Department requested the earlier State Fire Marshal survey. In order to assure continuance of services to the patients in these facilities, it no doubt will be necessary to establish immediate plans for corrections and consideration of certain waivable requirements under the Code which would not endanger the safety of the patients involved. The areas in which waivers can be considered will have to be clarified with and understood by all concerned.

I hope that the above information will be helpful to you and the committee. If you have further questions or need additional information regarding this matter please let me know.

Sincerely,

EARL W. BRIAN, M.D.
Secretary

RLM:bb
Attachments

bcc: Department of Health Care Services
Program Surveillance Division