A Primer on Home Health Care Services

In his Health Law column, Francis J. Serbaroli discusses how providers of home care services are licensed and regulated in New York, the types of agencies that offer these services, and how home care services are delivered. He notes that demand for home care services is increasing as an alternative to prolong stays in hospitals or nursing homes.

By Francis J. Serbaroli | Mar 26, 2018 at 03:03 PM

The provision of health care services in patients' homes has grown exponentially over the past two decades. Originally, home care services were provided mostly by local not-for-profit agencies. Home care today has grown into a highly competitive multi-billion-dollar sector with both for-profit and not-for-profit providers. This column will discuss the various types of home health care services and the agencies that provide them in New York.

Background

The history of home health care services in New York is inextricably tied to pioneering women such as Lillian Wald, who founded the Henry Street Settlement in Manhattan, and what later became the Visiting Nurse Service of New York in the late 19th Century. The concept was replicated and more of these organizations were set up as community-based providers of basic nursing care. With some government but mostly philanthropic support, they were established primarily to assist the poor and elderly in the days before there was health insurance and a social safety net with government health benefit programs. Over time, home health evolved to include a variety of levels of care, whether the patients were covered by health insurance or not, and whether they needed care after being discharged from a hospital, ongoing care for a chronic medical condition, or simply help with the activities of daily living such as feeding, bathing and housekeeping.

Article 36 of the Public Health Law (PHL) sets forth New York's comprehensive regulatory scheme for establishment and operation of home care services.

Types of Services

Home health care includes a wide range of services offered by different providers with different skills and professional qualifications to assist patients with varying medical and personal needs.

There are basically two categories of agencies. A certified home health agency (CHHA) is required to provide, at a minimum:

- nursing services
- home health services
- medical supplies, equipment and appliances suitable for use in the home
- at least one additional service, such as: physical therapy; occupational therapy; speech pathology; nutritional services; medical social services.

PHL §3602(3).

A CHHA can provide these services and bill Medicare, Medicaid, private health insurers, managed care plans (if the CHHA is a contracted provider), as well as self-pay patients.

The other category of provider is a licensed home care services agency (LHCSA). A LHCSA is primarily engaged in arranging and/or providing, either directly or through contract arrangements, one or more of the following to individuals in their homes:

- nursing services
- home health aide services
- other therapeutic and related services including but not limited to: physical therapy; speech therapy; occupational therapy; nutritional services; medical social services; personal care services; homemaker services; housekeeper or chore services.

PHL §3602(13) and (2)

A LHCSA can provide these services and bill Medicaid, private health insurers, managed care plans (if the LHCSA is an approved provider), and self-pay patients. A LHCSA generally cannot bill Medicare or other federal government health benefit plans, although it can contract to provide services to a CHHA's patients and be paid by the CHHA.

A sub-category of provider is the "Limited" home care services agency which is a certified operator of an adult home or an enriched housing program which directly provides:

- personal care services
- administration of medications and application of sterile dressings

These services may be provided only to residents of the adult home or enriched housing program having this limited license. PHL §3602(15).

It may be helpful to give an illustration of how home care services are generally ordered. For example, a patient being discharged from the hospital after hip replacement surgery will consult with her surgeon and the hospital's discharge planners. A written plan of post-discharge care will be drawn up with the patient's input, and signed by a physician. The patient will be offered a choice of home care agencies, and the chosen agency will receive the plan of care from the hospital, and assign appropriate personnel to attend the patient at home. The care provided may include physical therapy, checking vital signs like blood pressure and heart rate, wound care for the surgical site, monitoring pain medication, and such other care as the physician deems necessary in the plan of care. For patients needing home health care services for a prolonged period of time, the plan of care must be updated on a regular basis and signed by the physician or other appropriate health professional.

Article 36 delineates some specialty home care programs that are available to patients.

For example, the AIDS long-term home care program is a coordinated plan of care and services that is provided at home to HIV patients who otherwise would be medically eligible for placement in a hospital or residential health care facility. In order to qualify, a patient must have been deemed by a physician to

have been infected with the HIV virus, and have an illness, infirmity or disability associated with the HIV infection. The provider of an AIDS home care program must be a long-term home health care program that has been specifically authorized by Department of Health (DOH) to provide such a program, or an AIDS center designated by the Commissioner of the DOH. PHL §3616. The criteria for authorization to operate an AIDS home care program are set forth in PHL §3620.

Establishment

The rules governing establishment of a LHCSA are found in PHL §3605 and involve filing a certificate of need (CON) application with the Department of Health (DOH). The application is reviewed by the DOH on the basis of criteria such as the "character, competence and standing in the community of the applicant's incorporators, directors, sponsors, stockholders or operators;" adequate equipment, personnel, rules, standards of care; and ability to provide home care services compliant with all legal and regulatory requirements. PHL §3605(4)-(5). If a Health System Agency (HSA) exists in the area where the applicant purposes to provide home care services, the CON must be submitted to the HSA for the HSA's consideration and comments. After review by the DOH and HSA (if any), the application is submitted for approval or disapproval by the Public Health and Health Planning Council (PHHPC) of the DOH. The law specifically states that "Neither public need, tax status nor profit-making status shall be criteria for licensure." PHL §3605(6).

If the PHHPC proposes to disapprove a CON application for a LHCSA, it is required to notify the applicant, provide its reason for disapproval, and afford the applicant a hearing either before the PHHPC or by an individual designated by the PHHPC. Such hearings are commonly assigned by the PHHPC to an administrative law judge (ALJ) within DOH. The ALJ conducts a hearing and issues a report and recommendation to the PHHPC, which can then accept or reject the ALJ's recommendation. If the PHHPC again votes to disapprove, that is the DOH's final determination and the applicant can then appeal to the Supreme Court via a CPLR Article 78 proceeding.

The process for the establishment of a CHHA is found in PHL §3606 and is similar to that for a LHCSA. However, in considering a CON application for a CHHA, the law requires that the PHHPC not approve the application unless it is satisfied, insofar as applicable, as to:

- the public need for the existence of the [CHHA] at the time and place and under the circumstances proposed;
- the character, competence, and standing in the community, of the proposed incorporators, directors and sponsors;
- the financial resources of the proposed [CHHA] and its source of future revenues; and
- such other matters as [the PHHPC] shall deem pertinent.

As with the LHCSA, neither the tax, nor the profit-making status of the CHHA applicant are to be considered as criteria for establishment. If the PHHPC disapproves a CON application for a CHHA, the appeal process is similar to that for a LHCSA.

A hospital or residential health care facility already licensed under PHL Article 28 that wishes to operate a long-term home health care program does not have to go through the PHHPC establishment approval process. PHL §3606(1). It does have to submit an application and be approved by DOH.

There are detailed provisions on the operation and inspection of these agencies, requirements when there is any change in their owners or operators, reporting requirements, conditions for payment for home care services, available state grants and aid, and many other statutory and regulatory requirements for CHHAs and LHCSAs in PHL Article 36 and 10 NYCRR Article 7.

Conclusion

In recent years, there has been a greater emphasis on providing more health care services to patients in their homes, rather than prolonged stays in more expensive nursing homes, and on more timely discharges of patients from hospitals with follow-up home care support. Many studies have shown that patients are not only more satisfied but tend to recuperate more quickly in their own homes than when they spend longer periods in a hospital or nursing home. Consequently, the demand for home health care services should continue to grow. LHCSAs in particular have proliferated in New York and many expect that there will be more consolidations and closures of home care providers as competition increases and reimbursements decrease. It continues to be a sector of the health care industry that bears close watching.

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