October 30, 2006

VHCA COMMENTS ON COPN

The Virginia Health Care Association believes Virginia should retain Certificate of Public Need (COPN) for nursing beds. COPN has served Virginia well in maximizing access to care, controlling health care costs, and developing an efficient and effective health care system. Controlling the number of nursing facility beds in each planning district has been extremely important both to the state and to nursing facility providers. Unplanned and unregulated increases in nursing beds would lower bed occupancy, make it even more difficult to hire and retain adequate staff, and create the very real possibility of lower quality care in Virginia's nursing facilities. Continued COPN regulation furthers the state's interest in (1) access to care, (2) fiscal integrity for the Medicaid program, (3) efficient use of resources, (4) financial stability for facilities, (5) quality of care, and (6) avoidance of a two-class system, one for private pay and one for Medicaid patients.

ACCESS TO CARE

The Commonwealth is responsible for assuring that Virginia citizens have access to nursing beds in every area of the state. Many existing nursing facilities in rural Virginia communities would not be there without COPN. States that have abolished COPN for nursing beds have found that beds are built where they will be most profitable; not where they are needed the most. These states generally have had to use other regulations to restrict beds. One can look to the unregulated development of Assisted Living beds to see where developers, without regulatory oversight, would likely build nursing beds—in urban areas and resort areas where people with individual financial resources would like to retire, and not in rural areas where those of more modest means may want to stay.

FISCAL INTEGRITY OF THE MEDICAID PROGRAM

Over the years DMAS has, for the most part, supported COPN for nursing beds. It has always been assumed that controlling the number of nursing beds built would assist in

budgeting for and controlling the growth of Medicaid funding. Medicaid is the payer for almost 70 percent of the nursing facility patients in Virginia. Medicaid is an entitlement program, which means if you qualify for Medicaid, you are "entitled" to the services at government expense. The government must pay if the service is available. The interest of the taxpayer is supposed to be protected through responsible fiscal management of the Medicaid program. One way of accomplishing this is by controlling the number of beds to ensure that we do not build more beds than we can afford.

EFFICIENT USE OF RESOURCES

Virginia's Medicaid program has forced nursing facilities to operate efficiently and economically by requiring a high occupancy standard to achieve full Medicaid reimbursement. If a facility does not meet the occupancy standard, it is penalized by not receiving full Medicaid reimbursement for the Medicaid patients residing in the facility. Controlling the number of beds in a planning district encourages high occupancy and efficient use of resources.

Another critical resource that must be managed efficiently is the availability of nurses in each area of the state. It would be inefficient to spread our limited numbers of nurses over more facilities that are all operating at lower occupancies. Across the health care continuum, from home health to acute care, providers are confronting severe nursing staff shortages. Elimination of COPN would exacerbate the nurse staff shortage by allowing more facilities to be built which will have to be staffed. More competition for nurses will also increase costs.

FINANCIAL STABILITY OF FACILITIES

Unregulated development of beds will lower occupancy rates, creating less efficient operations. Currently, as mentioned above, Medicaid enforces a high occupancy standard for full reimbursement. Unregulated development of beds would dilute occupancy. The state would face a dilemma: Maintain the high occupancy standard despite the reality of lower occupancies, therefore guaranteeing that reasonable cost is not reimbursed. Or eliminate the occupancy standard and pay the full cost of care for Medicaid patients, thereby increasing Medicaid funding. The first is unfair; the second costly. It is a simple business axiom—services not paid for cannot be delivered.

States that abolished COPN found that nursing facility costs increased because occupancies were reduced. This typically resulted in large increases in the state Medicaid budget, or providers going bankrupt or otherwise being forced out of business. Several states experienced rapid increases in Medicaid expenditures and then responded by enacting a moratorium on new beds.

Virginia's nursing facilities continue to depend on Medicare and privately paying residents to supplement the cost of care for Medicaid residents. In 2004 (the latest data that we currently have), Virginia nursing facilities, on average, were losing more than $10 a day on each Medicaid resident. Repeal of COPN would place nursing facilities in financial jeopardy.

QUALITY OF CARE

Virginia's Request for Applications process for new nursing beds allows the Department of Health to review the track record of competing applicants and deny a proposal by an applicant with a poor quality record. The financial instability caused by insufficient occupancy is detrimental to quality of care. Financially impaired providers cannot produce quality care. In an examination of the relationship of COPN and quality of care a few years ago, national statistics showed that quality of care was lower in states that abolished COPN. In these states, the relaxation of restrictions on nursing bed development appeared to parallel an increase in regulatory enforcement regarding quality of care. States that had neither COPN nor other restrictions on development (e.g. a moratorium) had statistically higher percentage of nursing home surveys that resulted in substandard quality of care than either Virginia or the nation as a whole. One reason may have been that real estate speculators replaced experienced, conservative providers, causing quality of care to deteriorate.

AVOIDANCE OF A TWO-CLASS SYSTEM

It has always been the intent of the Medicaid program to prevent a two-class system, one for private pay patients and another for Medicaid patients. In years, providers were able to subsidize low Medicaid payments by maintaining a percentage of Medicare skilled nursing care patients and private pay patients. Elimination of COPN will encourage developers to build high cost facilities exclusively for the more affluent patients. Hospitals will use their excess beds to care for Medicare skilled nursing care patients to maximize their reimbursement. Existing nursing facilities will become Medicaid-only facilities. Does the Commonwealth want to return to the days of the "poor house?"

STATES WITHOUT COPN DEVELOPED ALTERNATIVES TO RESTRICT BEDS

Studies indicate that, in almost every case, states that do not have COPN have in some other way restricted the number of nursing beds in their system. They do this either by establishing a statutory moratorium on the construction of beds or by regulations restricting the licensure or certification of beds. An overwhelming majority of states restrict in some manner the construction or licensure of nursing facility beds.

Virginia actually experimented with the equivalent of a no-COPN policy for nursing home beds in the early 1980s when the Commissioner of Health approved virtually every application that was filed. Over 8000 additional beds where approved in a short period of time. The General Assembly responded with a nursing bed moratorium that lasted for almost a decade. Fiscally responsible Virginia legislators acted quickly to avert financial instability for nursing facilities and avoided the situation that occurred in Texas. When Texas eliminated its COPN law, the result was a flood of beds being built, low occupancies, and bankruptcies. By both industry and regulatory assessments, quality of care suffered. Texas finally responded with regulatory restrictions on development of new nursing beds.

MAINTAIN RFA FOR NURSING FACILITY BEDS

For the reasons outlined above, the Virginia Health Care Association strongly urges continuance of Virginia's Request for Applications (RFA) procedure. With this RFA procedure the Commissioner of Health analyzes the need for nursing beds in each planning district and confers with the Department of Medical Assistance Services to ensure sufficient Medicaid funds will be made available for any new beds needed. Only after careful analysis is completed does the Commissioner issue the Request for Applications. All providers desiring to supply the beds needed must compete with each other. In reviewing applications the Health Department assesses each company's past history in quality of care and efficiency of operations. This review has served the Commonwealth's interests well for the past decade.

ACTION NEEDED IF COPN FOR NURSING BEDS IS ELIMINATED

If the General Assembly were to repeal COPN for nursing beds, it should do so responsibly to ensure providers can continue to care for Medicaid patients and to ensure all citizens have adequate access to care. The following actions must be taken:

1. Eliminate the occupancy standard for full Medicaid reimbursement.
2. Pay the full cost of care for Medicaid patients.
3. Develop incentives to encourage developers to build beds where needed in rural areas of Virginia.
4. Develop effective incentives to increase the numbers of registered nurses, LPNs, and CNAs.