Legislative Services Agency

HANDOUTS

Long-Term Care System Task Force

September 16, 2004

Background Information
Provided by Department of Inspections and Appeals

Background Information for the Long-Term Care System Task Force from Department of Inspections and Appeals

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Overview of the Current System

The Department of Inspections and Appeals (DIA) is a multifaceted regulatory agency charged with protecting the health, safety and well being of Iowans.

Three divisions of the Department of Inspections and Appeals provide services impacting long-term care in Iowa – Health Facilities, Investigations, and Administrative Hearings.

The ***Health Facilities Division*** (HFD) is authorized under Iowa Code chapters 135C, 231B, 231C, and 231D and associated administrative rules under the Administrative Code agency numbers 321 and 481 to license/certify, inspect and provide regulatory oversight to more than 1200 health care facilities, assisted living programs, elder group homes, and adult day services programs with capacity to serve over 53,000 persons. Health care facilities include residential care facilities, nursing facilities, skilled nursing facilities, intermediate care facilities for the mentally retarded, residential care facilities for the mentally retarded, residential care facilities for persons with mental illness and intermediate care facilities for persons with mental illness. Some of these health care facilities and programs are located in hospital settings.

In addition, HFD is the "state survey agency" for the purpose of determining compliance with federal certification requirements by health care service providers, such as nursing facilities, intermediate care facilities for the mentally retarded, hospitals, home health agencies and community mental health centers, for participation in the Medicare/Medicaid programs under the jurisdiction of the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).

HFD's statutory and certification duties are discharged so as to ensure the health, safety, and welfare of those Iowans receiving services from the health care providers it licenses and certifies.

In the inspections performed in skilled nursing facilities and nursing facilities, the Division must apply the federal statute found at 42 U.S.C. 1396r et. seq. and the federal regulations found at 42 CFR parts 483 and 488. To guide the Division in the application of these complex federal laws, CMS developed the State Operations Manual for Provider Certification (SOM). The SOM is a comprehensive manual detailing the application of the federal standards and the survey/certification process. It contains literally hundreds of pages of instructions for survey staff and supervisory personnel. The SOM is provided by CMS as a tool to assist state survey agencies in determining whether nursing facilities are in compliance with federal regulations.

In Iowa, the Division applies the same detailed process in the SOM's survey protocol when determining compliance with state regulations. Licensure and certification surveys involve

on-site inspection, fact gathering, interviews, clinical record review, and direct observation of nursing care, treatment and services by field surveyors. The information gathered in the field by the HFD's trained and Surveyor Minimum Qualifications Test (SMQT) certified surveyors is transmitted to the central office for both supervisory review and, when warranted, compliance officer review.

Upon the completion of central office review, three different reports may be issued. Those reports are:

- Federally-required forms - recite the noncompliance with federal standards detected during the survey/complaint investigation, which may result in federal sanctions;
- State Citation - sets forth noncompliance with state law standards, is only issued when the Compliance Officer of HFD has determined that the state law violation is egregious enough to warrant a Class I, II, or III citation and associated fine under Iowa Code section 135C.36; and,
- State Statement of Deficiencies - recites state law violations that were detected at the time of survey, but which are not serious enough to warrant a citation.

HFD also conducts complaint investigations of health care facilities and various provider programs and entities, following the same state and federal regulations and protocol, as mentioned above.

An on-line Report Card system is available to the public at https://www.dia-hfd.state.ia.us/reportcards/. The system provides findings of health care facility inspections, re-inspections, and complaint investigations, any fining and citation action taken, and any other adverse action taken against a health care facility. The information provided by the system is helpful to persons considering available long-term care options, considering a specific health care facility, wanting to compare facilities or wanting to know the compliance status of a facility currently caring for a family member or friend. Because the system is web-based, people in Iowa and other states have access to the information 24/7.

The ***Investigations Division***, Medicaid Fraud Control Unit, conducts criminal investigations of alleged abuse and neglect of residents in long-term care facilities that receive Medicaid reimbursements from the federal government. Investigators also conduct what are known as Divestiture investigations to look into allegations that residents have been defrauded of personal funds or possessions. In addition, investigators investigate allegations of fraud by persons or entities providing goods or services being paid for by Medicaid.

When abuse or fraud is substantiated, the Investigations Division works with local law enforcement officials and state and federal prosecutors to bring the offenders to trial. This activity enhances the work of HFD related to dependent adult abuse complaints.

In addition, the Investigations Division conducts investigations into abuses of public assistance, including food assistance, family investment program, and medical assistance, conducts audits of resident funds in health care facilities, and conducts collection efforts to recover overpaid amounts for the state and federal governments. By identifying and collecting overpayments, which go back into the programs, resources are more available to those persons eligible to receive the public assistance. This would include persons needing long-term care services in the community.

The ***Administrative Hearings Division*** conducts quasi-judicial contested case hearings involving Iowans who disagree with an administrative ruling issued by a state government agency. Hearings are conducted in accordance with Iowa Code chapter 17A and specific state or federal statutory requirements related to an action. Administrative law judges (ALJs) listen to evidence provided by the departments and the affected individuals regarding actions taken by the agency. After a thorough review of the information, the ALJ issues a proposed decision to both parties. The decision is then subject to final review by the director of the agency involved in the contested case proceeding.

Iowa Code chapters 135C, 231B, 231C, and 231D allow a health care facility or other long-term care provider/entity to appeal the denial, suspension or revocation of a state license or certification or other adverse action, such as a fine or citation.

ALJs also hear cases regarding the involuntary discharge of a resident. These cases only involve the resident and the health facility; DIA is not a party to the case.

New Initiatives/Proactive Efforts

In recent years, DIA has taken proactive steps to enhance regulatory activity and oversight.

- In September 2003, DIA hired a full time General Counsel. This allows legal services to be on ready call to assist HFD staff, provide training, and handle contested case hearings, rather than relying on limited availability of an Assistant Attorney General. The individual hired previously served as DIA's assigned Assistant Attorney General, who possesses vast experience in health care regulation. The tightening of the Division's operations with this initiative has provided positive trends

- In December 2003, DIA initiated discussions with CMS to adjust the state match rate for survey and certification expenditures. This discussion was initiated as a result of recognizing that the federal government continued to place more regulatory demands on DIA's oversight responsibilities. In March 2004, CMS agreed to adjust the state match rate effective retroactively to October 1, 2003.

- Funding generated by the adjusted match rate stretched limited state funding and permitted DIA to seek, and receive approval, to hire five dedicated complaint investigation surveyors. Existing, experienced staff has filled these positions. Vacancies created by these transfers are in process of being filled.

Dedicating experienced surveyor staff to only conduct complaint investigations has at least three positive benefits. First, since complaint investigations are time sensitive and the results can potentially immediately impact the health, safety and welfare of nursing home residents, having dedicated staff will ensure an effective regulatory presence. Second, the expertise gained from specialization in complaint processing will undoubtedly have a positive impact on consistent oversight. Third, staff responsible for conducting annual surveys will not often be called upon to also conduct complaint investigations. This should benefit DIA's ability to become more unpredictable in the frequency/timing of its surveys, as DIA will be better able to ensure a consistent presence dedicated to this regulatory mandate.

- In September 2002, the central office Complaint Unit was increased to three experienced surveyors, federally SMQT trained. Recently in 2004, decisions were made to reclassify two positions to assist in complaint intake, oversight and consistency. One position will become a coordinating point between the Complaint Unit, complaint surveyors, the Investigation Division's dependent adult abuse investigator, and DIA's General Counsel. In addition, to ensure precise tracking of cases and consistent application of regulatory standards, this position will also assist in "prosecuting" administratively the heavy informal dispute resolution and contested case hearing workload. Another position is being reclassified within the Investigation Division from "field auditor" to "investigator." This position will be assigned to the Medicaid Fraud Control Unit and will investigate provider fraud, divestitures, and dependent adult abuse referrals made from HFD.

- In July, 2003 an additional investigator was assigned to the collections efforts in the Investigations Division to provide additional resources to collect overpayments made in public assistance programs which go back to those programs to provide more resources to those people eligible to receive benefits from those programs.

- Generating a "Top 16" list of most troubling nursing facilities, and maintaining a prominent presence in them, has honed HFD's priorities and reduced serious violations at these facilities.

- Currently collaborating with the Iowa Caregivers Association and others to expand the current Nurse Aide Registry to include direct care workers.
- Currently making changes to the DIA and HFD website and database to enhance DIA's ability to be responsive to regulatory changes.

- When confronted with a near doubling of complaints, HFD reached out to retired surveyors to assist with complaint investigations. Use of experienced and SMQT trained surveyors allowed existing staff to conduct timely annual surveys, with improved ability to be unpredictable in scheduling.

- DIA will continue to pursue legislative initiatives to strengthen regulatory enforcement.