VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF HEALTH PROFESSIONS

Workplan for the Review of the Advisability of Permitting the Use of Medication Aides in Nursing Homes

Background & Authority

By virtue of its statutory authority in §54.1-2510 of the *Code of Virginia* to advise the Governor, the General Assembly, and the Department Director on matters related to the regulation and level of regulation of health care occupations and professions, the Board is reviewing the advisability of allowing medication aides in nursing homes pursuant to House Joint Resolution No. 90 (2010) (see attached).

To govern evaluative reviews, the Board has developed formal criteria and policies referenced in its publication, *Policies and Procedures for the Evaluation of the Need to Regulate Health Occupations and Professions, 1998.* Among other things, the criteria assess the degree of risk from unregulated practice, the costs and benefits of the various levels of regulation, and the advantages and disadvantages of the various alternatives to regulation that might protect the public. By adopting these criteria and application policies, the Board has endorsed a consistent standard by which to judge the need to regulate any health profession. The aim of this standard is to lead decision-makers to consider the least governmental restriction possible that is consistent with the public's protection. This standard is in keeping with regulatory principles established in Virginia law and is accepted in the national community of regulators.

Study Scope & Methodology. The Regulatory Research Committee of the Board will study the matter and make final recommendations to the full Board. The general scope of this study will be to provide an evaluative review of the policy literature, pertinent state and federal laws, malpractice and disciplinary data, potential economic impact, and public comment concerning the regulation of medication aides in Virginia. In accordance with the requirements of the resolution, this study will (i) research the prevalence of medication aides in nursing homes in other states, (ii) examine the potential for such additional level of staff in nursing homes to enhance team care and extend licensed nursing care for residents, (iii) consider the regulatory protections and safeguards needed if medication aides were permitted to administer certain medications in nursing homes in the Commonwealth, and (iv) consult with nursing home, pharmacy, and nursing professionals in each aspect of the study.

The following steps are recommended:

1. Conduct a review of the general policy literature related to the regulation of the respective group.
2. Conduct a review of the current relevant federal and states' laws and regulations.
3. Review malpractice insurance coverage data (if it is found to exist) in conjunction

with other data to address Criterion One - Risk of Harm to the Public.

4. Review available reimbursement data to develop an estimate of how regulating this group may affect costs to address Criterion Five – Economic Impact
5. Prepare an initial draft report to the Board for public comment.
6. Conduct a hearing on the issue of the state regulation of this occupation, including any public health and safety issues germane to current practices as well as the potential fiscal impact which may result from such regulation.
7. Review all public comment, apply the Board's criteria and policies, and consider recommendations for changes in Virginia statute.
8. Prepare a draft with recommendations to the full Board.
9. Review the report and recommendations by the Board, and publish a draft report for consideration by the Department Director and Secretary.
10. If required based on recommendations by the Department Director and Secretary, amend the report and prepare a final report for their approval.

TENTATIVE TIMETABLE

May 4, 2010	- Review and Approval of the Workplan
Jul. 1, 2010	- First Draft Report to the Regulatory Research Committee
Jul., 2010 (TBD)	- Public Hearing
Mid-Jul. 2010 (TBD)	- Second Report with Summary of Public Comment to the Committee for Review and Consideration of Policy Options
Aug., 2010 (TBD)	- Public Comment on Resulting Report and Recommendations
Sept., 2010 (TBD)	- Regulatory Research Committee Meeting to Review Final Report and Make Final Recommendations to the Full Board. Full Board to Vote on Final Report and Recommendations
Oct., 2010 (TBD)	- Final Report to the Department Director and Secretary of Health and Human Resources
Nov. 2, 2010	- Final Report Due to Legislative Services

Resources Required. The resources for this review are included in the FY 2010-11 Budgets of the Board of Health Professions. It is estimated that the review will require the services of a consulting policy researcher and 1/10th of the time of the Executive Director and general support from the Senior Regulatory Analyst and Board's Research Assistant and Administrative Assistant. The total cost associated for this project, to include staff time, telephone charges, photocopying, office materials, and court reporter, is estimated to be $5,000.

HOUSE JOINT RESOLUTION NO. 90

Requesting the Department of Health Professions to study the advisability of permitting the use of medication aides in nursing homes. Report.

Agreed to by the House of Delegates, February 8, 2010
Agreed to by the Senate, March 2, 2010

WHEREAS, in 2005 Virginia enacted laws providing for the qualification, registration, and regulation of medication aides who administer medications that would otherwise be self-administered to residents in an assisted living facility licensed by the Department of Social Services; and

WHEREAS, the Commonwealth authorizes any person who has completed a training program approved by the Board of Nursing and who administers medications in accordance with the prescriber's instructions and in accordance with regulations promulgated by the Board of Pharmacy relating to security and recordkeeping, including licensed and unlicensed staff, to administer medications that would normally be self-administered to persons receiving services in a program licensed by the Department of Behavioral Health and Developmental Services or an adult day care center or children's residential facility licensed by the Department of Social Services; and

WHEREAS, twenty states have enacted laws allowing medication aides to administer medications to residents of nursing homes when medication aides act under the supervision of a licensed professional nurse; and

WHEREAS, nursing homes in states that have authorized the administration of medications by medication aides acting under the supervision of licensed professional nurses report that the addition of trained medication aides allows licensed nurses to devote more time to professional nursing assessment and judgment and the delivery of direct nursing care to residents; and

WHEREAS, greater use of "care teams" for the delivery of care in nursing homes has created new demands upon nursing home staff, resulting in new staffing needs; and

WHEREAS, the inclusion of medication aides authorized to administer medications that would normally be self-administered by residents of a nursing home under the supervision of a licensed professional nurse would enhance nursing home "care teams" and the quality of services delivered to residents of nursing homes; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Health Professions be requested to study the advisability of permitting the use of medication aides in nursing homes.

In conducting its study, the Department of Health Professions shall work together with nursing home, pharmacy, nursing professionals, and other stakeholders to determine (i) the nature and scope of the role of medication aides in nursing homes in other states; (ii) potential benefits that might result from the use of medication aides in nursing homes in Virginia, including but not limited to benefits associated with enhanced team care and extended licensed nursing care for nursing home residents; and (iii) the nature and scope of regulatory protections and safeguards necessary to ensure the safe and effective use of medication aides in nursing homes, including but not limited to the types of medications that medication aides may administer in nursing homes and type and level of supervision that should be required.

All agencies of the Commonwealth shall provide assistance to the Department of Health Professions for this study, upon request.

The Department of Health Professions shall complete its meetings by November 30, 2010, and shall submit to the Governor and the General Assembly an executive summary and a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2011 Regular Session of the General Assembly and shall be posted on the General Assembly's website.