

Center for Medicaid and State Operations/Survey and Certification Group

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DATE: February 12, 2004

FROM: Director
Survey and Certification Group
Center for Medicaid and State Operations

Director
Clinical Standards Group
Office of Clinical Standards and Quality

SUBJECT: Impact of Section 946 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) on the Hospice Core Services Requirement

TO: State Survey Agency Directors

The purpose of this memorandum is to clarify recent legislation enacted by Section 946 of the MMA as it applies to the survey and certification of Medicare hospice services and to provide guidance on assessing compliance with these new provisions. These provisions were effective on December 8, 2003, upon enactment of the legislation.

A. Waiver of Certain Staffing Requirements. -- Section 1861(dd)(5) of the Social Security Act has been modified to permit a hospice program to enter into arrangements with another hospice program for the provision of nursing services, medical social services, and counseling in extraordinary, exigent, or other non-routine circumstances. Examples of such extraordinary circumstances might include unanticipated periods of high patient loads, staffing shortages due to illness, or other short term temporary events or temporary travel of a patient outside the hospice's service area. The hospice that contracts with another hospice for services must maintain professional management responsibility for all services provided under arrangement or contract at all times and in all settings. Existing regulations at 42 CFR 418.56 discuss the professional management of the hospice for services provided under arrangement.

Hospices must maintain evidence of the extraordinary events that required them to contract for the core services and comply with the following:

- (a) The hospice must assure that contracted staff is providing care that is consistent with the hospice philosophy and the patient's plan of care.
- (b) Hospices may not routinely contract for a specific level of care (e.g., continuous care) or during specific hours of care (e.g., evenings and week-ends.)

B. Contracting for Highly Specialized Services.-- A hospice program may contract for the services of a registered professional nurse if the services are highly specialized and are provided non-routinely and so infrequently that the provision of such services directly would be impracticable and prohibitively expensive. Highly specialized services are determined by the nature of the service and the nursing skill level required to be proficient in the service. Continuous care is not a highly specialized service, because while time intensive, it does not require highly specialized nursing skills.

Since the hospice conditions of participation have not yet been revised to reflect the changes of the MMA, a hospice should not be cited for a deficiency at 42 CFR 418.80 for services provided on December 8, 2003 or later, solely because a hospice contracted for nursing services, counseling services, or medical social services under the extraordinary circumstances mentioned in the law. In addition, the hospice should not be cited for a deficiency solely because it contracted for a registered professional nurse to perform a highly specialized service non-routinely and infrequently.

Effective Date: This policy is effective December 8, 2003.

Training: This policy should be shared with all survey and certification staff, their managers and the State/RO training coordinator.

If you have any questions regarding this memorandum, please contact Mavis Connolly at 410-786-6707 or mconnolly@cms.hhs.gov for survey and certification questions or Mary Rossi-Coajou at 410-786-6051 or mrossicoajou@cms.hhs.gov for condition of participation (policy) questions. Thank you for your interest and cooperation.

/s/
Thomas E. Hamilton

/s/
Rachael B. Weinstein

cc: Survey and Certification Regional Office Management