

Center for Medicaid and State Operations/Survey and Certification Group

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**Ref:-S&C-06-28**

**DATE:** September 14, 2006

**TO:** State Survey Agency Directors

**FROM:** Director  
Survey and Certification Group

**SUBJECT:** Impact of Nursing Shortage on Hospice Care

**Letter Summary**

- This memorandum extends the period of time for hospice agencies to qualify for an “extraordinary circumstance” exemption when they believe that the nursing shortage has affected their ability to directly hire sufficient numbers of nurses.
- This policy exemption was first outlined in S&C 02-44 and again in S&C 05-02.
- The effective date of this policy has been extended from September 30, 2006 to September 30, 2008.

The purpose of this memorandum is to address the impact of the current nursing shortage on access to hospice care. Many hospices and their associations have notified us that the shortage of nurses is having a significant impact on access to hospice services and that hospices have had to deny services to eligible patients because they do not have adequate staff to provide nursing services. Hospices have continued to request that the Centers for Medicare & Medicaid Services (CMS) designate the current nursing shortage as an "extraordinary circumstance," as referenced in the regulations at 42 CFR 418.80, in order to allow hospices affected by the shortage to utilize contracted nursing staff.

**Background**

With the exception of physician services, a hospice must ensure that substantially all the core services are routinely provided directly by hospice employees. Nursing is a core hospice service. The regulations allow a hospice to use contracted staff, if necessary, to supplement hospice employees in order to meet the needs of patients during periods of peak patient loads or under extraordinary circumstances. If contracting is used, the hospice must maintain professional, financial, and administrative responsibility for the services.

## **Discussion**

We are aware that nursing shortages have been documented across the country. We also believe that not all hospices will experience this shortage at the same time. We are continuing a temporary measure (which we instituted in October, 2002 via S&C-02-44 and extended in October 2004 via S&C 05-02) to allow individual hospices to contract for nurses until September 30, 2008 if the hospice can demonstrate that the nursing shortage is creating an extraordinary circumstance that prevents it from hiring an adequate number of nurses directly. This temporary measure, which allows hospices to contract for nursing services, does not extend to counseling services and medical social services, which are the other core hospice services.

## **Qualifying for an “Extraordinary Circumstance” Exemption**

In order to qualify for an “extraordinary circumstance” exemption, a hospice must notify the State Survey Agency (SSA) responsible for licensing and certification that it intends to elect an exception under the "extraordinary circumstance" authority. This may be accomplished by providing written notification to the SSA that the nursing shortage has become an "extraordinary circumstance" and it is affecting the hospice's ability to hire nurses directly. The notification must estimate the number of nurses that the hospice believes it will need to employ under contract. The notification may be made through September 30, 2008, and should specifically address the following:

- a. Provide an estimate of the number of patients that the agency has not been able to admit during the past three months due to the nursing shortage and the current and desired patient/nurse ratio for the agency;
- b. Include all evidence that the hospice has made a good faith effort to hire and retain nurses, including:
  - Copies of advertisements in local newspapers that demonstrate recruitment efforts;
  - Copies of reports of telephone contacts with potential hires, professional schools and organizations, recruiting services, etc.;
  - Job descriptions for nurse employees;
  - Evidence that salary and benefits are competitive for the area;
  - Evidence of any other recruiting activities (e.g., recruiting efforts at health fairs, educational institutions, health care facilities, and contacts with nurses at other providers in the area); and
  - Ongoing self-analyses of the hospice's trends in hiring and retaining qualified staff.
- c. The hospice must also demonstrate that it has a training program in place to assure that contracted staff is trained in the hospice philosophy and the provision of palliative care prior to patient contact.

- d. The hospice must assure that contracted staff provides care that is consistent with the hospice philosophy and the patient's plan of care.
- e. Contracted nurses are used to supplement the hospice nurses employed directly. Contracted nurses may not be used exclusively to provide the continuous nursing level of care or on call service.
- f. The hospice is expected to continue its recruitment efforts during the period that it is contracting for nurses.

**Monitoring the Need for Exemption**

The SSA will maintain copies of each exception notification and validate the hospice's stated need for an exemption during complaint and standard surveys. Of particular importance will be the extent to which the contracted hospice nurses have been trained in the hospice philosophy and are able to effectively provide care that is consistent with the plan of care established by the attending physician, the medical director or physician designee and interdisciplinary group.

CMS will reevaluate the employment market for nurses during the summer of 2008 to see if this policy should be extended.

If you have any questions regarding this memorandum, please contact Kim Roche of my staff at 410-786-3524.

**Effective Date:** This policy will be effective until September 30, 2008.

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

/s/

Thomas E. Hamilton