



**Center for Clinical Standards and Quality/Survey & Certification Group**

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**Ref: S&C: 17-01- Hospice**

**DATE:** October 21, 2016  
**TO:** State Survey Agency Directors  
**FROM:** Director  
Survey and Certification Group  
**SUBJECT:** Impact of Nursing Shortage on Hospice Care

**Memorandum Summary**

- **Extraordinary Circumstances due to Nursing Shortage:** The period of time has been extended for a hospice agency to elect an exemption to allow for the contracting of nurses pursuant to “extraordinary circumstance” as noted at 42 CFR 418.64 when it believes that the nursing shortage has affected its ability to directly hire sufficient numbers of nurses.
- **Extension:** This policy is effective through September 30, 2018.

**Background**

Findings from the Bureau of Labor Statistics continue to forecast a shortage of nurses through 2024, with a job growth rate that is faster than the average (16 percent, compared to 7 percent for all occupations). In isolated instances, a hospice agency may find that this current shortage of nurses may create a temporary impact on its ability to provide nursing services to patients and as a result create an access to care concern for the hospice beneficiaries. Medicare hospice agencies 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 418.64, in order to allow hospices affected by the shortage to utilize contracted nursing staff for the provision of nursing services.

**Discussion**

With the exception of physician services, a hospice agency must ensure that substantially all the core services are routinely provided directly by hospice employees, as nursing is a core hospice service. The regulations allow a hospice agency 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.

Based upon its review of current Labor statistics, CMS finds that it is necessary to continue to allow hospice agencies to elect this exemption to contract for nurses if the agency 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 is being extended through September 30, 2018, does not include counseling services and medical social services, the other core hospice services.

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

In order to elect an extraordinary circumstance exemption, a hospice agency must notify the State Survey Agency (SA) responsible for licensing and certification that it intends to elect an exception under the “extraordinary circumstance” authority. This notification must be submitted in writing and must include an estimate of the number of nurses that it will need to employ under contract. All requests for exemption must address the following:

- a. 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. Evidence that the agency has made a good faith effort to hire and retain nurses, including:
  - Copies of advertisements in local newspapers and Web postings 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. Evidence that it has a training program in place to assure that contracted staff are trained in the hospice philosophy and the provision of palliative care prior to patient contact;
- d. A plan for how the agency will assure that contracted staff are providing care that is consistent with the hospice philosophy and the patient’s plan of care;
- e. Evidence that contracted nurses are used to supplement the hospice nurses who are directly employed by the agency and are not used solely to provide a specific level of care (e.g., continuous nursing care, on call service) or during specific hours of care such as evening and weekends; and
- f. Evidence of continuing recruitment efforts by the agency throughout the period that it will be contracting nurses.

**Monitoring the Need for Exemption**

Consistent with the State Operations Manual at 2080C.3 the SA is not required to provide written approval of the notification of exemption. At the time the notification is submitted, the SA reviews evidence submitted by the hospice agency and requests additional information if necessary.

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

The CMS will reevaluate the employment market for nurses prior to the expiration of this notice to determine future need for extension.

**Contact:** If you have any questions regarding this memorandum, please contact Jennifer Milby at [Jennifer.Milby@cms.hhs.gov](mailto:Jennifer.Milby@cms.hhs.gov) or 410-786-8828.

**Effective Date:** Immediately. This policy will be effective until September 30, 2018. Please ensure all appropriate staff is fully informed within 30 days of the date of this memorandum. This policy should be shared with all survey and certification staff, their managers and the State/RO training coordinator.

/s/

David R. Wright

cc: Survey and Certification Regional Office Management

*The contents of this letter support activities or actions to improve patient or resident safety and increase quality and reliability of care for better outcomes.*