



Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-08-37

DATE: September 19, 2008

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Impact of Nursing Shortage on Hospice

Memorandum 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 and 06-28.
- The effective date of this policy has been extended from September 30, 2008 to September 30, 2010.

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 CMS designate the current nursing shortage as an "extraordinary circumstance," as referenced in the regulations at 42 CFR 418.80 (and 42 CFR 418.64 effective 12/02/08), 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 and September 2006 via S&C-06-28) to allow individual hospices to contract for nurses until September 30, 2010 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 also core hospice services.

Qualifying for an “Extraordinary Circumstance” Exemption

In order to qualify for an “extraordinary circumstance” exemption, a hospice must notify the SA 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 SA 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, 2010, 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 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. 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

No approval action is required on the SA's part when it receives written notification from a hospice for an exemption, as long as the hospice provides the appropriate information. The SA will maintain copies of each exception notification and validate the hospice's stated need for an exemption during complaint and re-certification 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 patients consistent with the patient specific plan of care established by the Interdisciplinary Group.

CMS will reevaluate the employment market for nurses during the summer of 2010 to see if this policy should be extended.

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

Effective Date: This policy will be effective until September 30, 2010.

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

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management