



Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-21-01-Hospice

DATE: October 5, 2020

TO: State Survey Agency Directors

FROM: Director
Quality, Safety & Oversight Group

SUBJECT: Nursing Shortage as an “Extraordinary Circumstance” per 42 CFR 418.64 *Core Services*

Memorandum Summary

- **Extraordinary Circumstances as Related to Hospice Staffing Requirements:** A hospice may use contracted staff, if necessary, to supplement hospice employees in order to meet the needs of patients under extraordinary or other non-routine circumstances. The regulation allows the hospice to utilize these services temporarily without a waiver or exemption from the State Survey Agency (SA) or the CMS Location.
- **Compliance Determination:** CMS is updating previous guidance that the hospice agency must notify the CMS of its use of contracted staff during extraordinary circumstances and submit justification for such use to its SA or CMS Location. This notification/justification is not required by 42 CFR 418.64. Compliance with the regulation for use of contracted staff is reviewed as a part of the routine survey process.
- **Hospice Responsibility:** When contract services are utilized, the hospice agency maintains all professional, financial and administrative responsibility for the services.
- **This policy memorandum supersedes previously issued SC17-01-Hospice.**

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. In isolated instances, a hospice agency may find that this shortage of nurses creates a temporary impact on its ability to provide nursing services to patients and as a result may create an access to care concern for hospice beneficiaries.

The regulation allows the hospice to use contract staff, if necessary, to supplement hospice employees in order to meet the needs of patients under extraordinary or other non-routine circumstances without a waiver or exemption from the SA or CMS Location.

Discussion

The hospice requirement at 42 CFR 418.64 (Condition of Participation: Core Services) states:

“A hospice must routinely provide substantially all core services directly by hospice employees. These services must be provided in a manner consistent with acceptable standards of practice. These services include nursing services, medical social services, and counseling. The hospice may contract for physician services as specified in paragraph (a) of this section. A hospice may use contracted staff, if necessary, to supplement hospice employees in order to meet the needs of patients under extraordinary or other non-routine circumstances. A hospice may also enter into a written arrangement with another Medicare certified hospice program for the provision of core services to supplement hospice employee/staff to meet the needs of patients. Circumstances under which a hospice may enter into a written arrangement for the provision of core services include: Unanticipated periods of high patient loads, staffing shortages due to illness or other short-term temporary situations that interrupt patient care; and temporary travel of a patient outside of the hospice's service area.”

A hospice, in these intermittent and/or temporary situations, does not require a waiver or exemption from the SA or the CMS Location. The regulation allows the provider to utilize these services temporarily. However, surveyors should be alert to any situations where a provider is utilizing contracted nursing services in lieu of direct nursing services, which would be a violation of 42 CFR 418.64.

When utilizing contract nurses secondary to extraordinary circumstances, the hospice is responsible for requirements at 42 CFR 418.100 (Condition of Participation: Organization and administration of services). The hospice must organize, manage, and administer its resources to provide the needed hospice care and services. Furthermore, the hospice is responsible for its continuing efforts to secure direct nursing employees and the extent to which any contract nurses are trained in the hospice philosophy and the effective provision of services based upon the established plan of care.

Contact: QSOG_Hospice@cms.hhs.gov for questions or concerns.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/

David R. Wright

cc: Survey and Operations Group Management