



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

Ref: QSO-19-03-Hospice

DATE: December 21, 2018

TO: State Survey Agency Directors

FROM: Director
Quality, Safety & Oversight Group

SUBJECT: Extension of the Designation of the Current Nursing Shortage as an “Extraordinary Circumstance” per 42 CFR 418.64 *Core Services*

Memorandum Summary

- **Extraordinary Circumstances as Related to Hospice Staffing Requirements:** The Centers for Medicare & Medicaid Services (CMS) has extended its designation of the national nursing shortage as an extraordinary circumstance for an additional two (2) years. This designation enables those hospice agencies, which are unable to provide a sufficient number of nursing staff directly to meet the needs of its patients due to the national shortage, to utilize contracted staff *in addition* to their full time nursing staff.
- **Compliance Determination:** CMS is eliminating the previous requirement that the hospice agency must notify CMS of its use of contacted staff during extraordinary circumstances and submit justification for such use to its State Survey Agency. This notification/justification is not required by 42 CFR 418.64. Compliance with the regulation for use of contracted staff will be 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 serves as an extension and 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 may create 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. Medicare hospice agencies continue to request that CMS designate the current nursing shortage as an extraordinary circumstance under 42 CFR 418.64.

Discussion

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.”

Per the above, a hospice provider, in these intermittent and/or temporary situations, does not require any waiver or exemption from the State Survey Agency (SA) or the CMS Regional Office. 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 §418.64.

When utilizing contract nurses secondary to extraordinary circumstances, the hospice provider must maintain documentation of 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.

Based upon our review of current labor statistics, CMS finds that it is necessary to continue its designation of the national nursing shortage as an extraordinary circumstance as related to 42 CFR 418.64. This temporary measure which is being extended through September 30, 2020, does not include counseling services and medical social services, other core hospice services.

Contact: If you have questions or concerns regarding this information, please send an email to Hospice Survey and Certification program within the Division of Continuing Care Providers at SCG_Hospice@cms.hhs.gov.

Effective Date: Immediately. These guidelines 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/
Karen Tritz
Acting Director

cc: Survey and Certification Regional Office Management