



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

January 25, 2019

DAL: DHCBS 19-03
Subject: Hospice Nursing Contract
Exemption

Dear Administrator:

The purpose of this letter is to inform hospices that the Centers for Medicare & Medicaid Services (CMS) has extended its designation of the national nursing shortage as an “extraordinary circumstance” for an additional two years, through September 30, 2020. This designation allows hospices which are unable to employ a sufficient number of nurses due to the national nursing shortage, to utilize contracted staff in addition to their full-time nursing staff, in order to meet the needs of its patients. This does NOT apply to counseling services, medical social services, and other core hospice services. The CMS directive, QSO-19-03-Hospice can be accessed at: <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions.html>.

Background

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.”

“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. ... 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.”

Qualifying for an “Extraordinary Circumstance” Exemption

Per 42 CFR §418.64 in these intermittent and/or temporary situations the hospice provider is allowed to utilize contract staff to supplement direct staff and a waiver or exemption from CMS or the Department of Health is not required. CMS is eliminating the previous requirement that hospices must submit justification to the Department to qualify for the exemption based on the national nursing shortage. However, hospices continue to be required under 10 NYCRR §793.7(c) to notify the Department of Health when there are extraordinary or other non-routine circumstances other than the national nursing shortage and nursing contracting is needed.

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. Hospices must maintain professional, financial, and administrative responsibility when contract services are utilized. Compliance with these requirements will be reviewed as part of the routine survey process.

If you have any questions or to notify the Department of the need to contract for nurses, please contact the Division of Home and Community Based Services at homecare@health.ny.gov.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Fuller Gray". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Rebecca Fuller Gray
Director
Division of Home and Community Based Services