

CMS EXTENDS "EXTRAORDINARY CIRCUMSTANCES" HOSPICE EXEMPTION

While hospices are required to ensure that substantially all core hospice services, including nursing services, are performed by hospice employees, hospices have been permitted to utilize contracted staff members to supplement hospice employees during periods of peak patient loads or extraordinary circumstances.

The Centers for Medicare & Medicaid Services (CMS) agrees the nation-wide shortage of hospice nurses has proven to be an "extraordinary circumstance" for many hospices, and has adopted a policy to permit the exemption for individual hospices that can demonstrate the impact of the shortage on their ability to provide care. Originally set to expire September 30, 2012, the ongoing nursing shortage has caused this policy to extend to September 30, 2014.

CMS is extending this policy until September 30, 2014 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 the other core hospice services.

In order to qualify for an "extraordinary circumstance" exemption, a hospice 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 may be accomplished by providing written notification to the SA when it believes that the nursing shortage has become an "extraordinary circumstance" in its ability to hire nurses directly, and it must estimate the number of nurses that it believes it will currently need to employ under contract. Notification may be made through September 30, 2014, and should address the following:

- 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.
- 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.
- The hospice must also demonstrate that it has a training program in place to ensure that contracted staff is trained in the hospice philosophy and the provision of palliative care prior to patient contact.
- The hospice must ensure that contracted staff is providing care that is consistent with the hospice philosophy and the patient's plan of care.
- Contracted nurses are used to supplement the hospice nurses employed directly. Contracted nurses should not be used solely to provide the continuous nursing level of care or on call service.
- The hospice is expected to continue its recruitment efforts during the period that it is contracting for nurses.

Should you have any questions, please contact:

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