



Department of Health

ANDREW M. CUOMO
Governor

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

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

November 17, 2016

DAL: **DHCBS 16-13**
Subject: **Hospice Nursing Contract
Exemption**

Dear Administrator:

The Centers for Medicare and Medicaid Services (CMS) has issued a directive to the Department extending the period of time during which hospices may qualify for an “extraordinary circumstance” exemption permitting contracting for nursing services until September 30, 2018. This directive is found in Survey and Certification Memorandum S&C-17-01 - Hospice and can be accessed at: <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions.html>

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

Based on review of current labor statistics, CMS finds that it is necessary to continue to allow hospices to elect this exemption to contract for nurses 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. CMS is continuing this temporary measure which allows hospices to contract for nursing services (instituted in October 2002) and extended now until September 30, 2018.

Qualifying for an “Extraordinary Circumstance” Exemption

In order to elect an “extraordinary circumstance” exemption, a hospice must provide written notification to the Department that it intends to elect an exemption under the “extraordinary circumstance” authority. This written notification must indicate that the nursing shortage continues or has become an “extraordinary circumstance” and it is affecting the hospice’s ability to hire nurses directly.

The request must specifically address the following:

- an estimate of the number of nurses that the hospice believes it will need to employ under contract;
- an estimate of the number of patients that the hospice 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 hospice;
- 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 and other providers in the area); and
 - ongoing self-analyses of the hospice's trends in hiring and retaining qualified staff;
- evidence of a training program to assure that contracted staff are trained in the hospice philosophy and the provision of palliative care prior to patient contact;
- assurance that contracted staff will provide care that is consistent with the hospice philosophy and the patient's plan of care;
- assurance that contracted nurses will be 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 or during specific hours of care such as evening and weekends; and
- evidence of continuing recruitment efforts throughout the period that the hospice is contracting for nurses.

The written notification and supporting documentation required to qualify for an exemption under the "extraordinary circumstance" authority may be sent to:

**New York State Department of Health
Division of Home and Community Based Services
875 Central Avenue
Albany, New York 12206
or by e-mail to: homecare@health.ny.gov**

Monitoring the Need for Exemption

No approval action is required on the Department's part when it receives written notification from a hospice for an exemption, as long as the hospice provides the required information. The Department will maintain copies of each hospice's exemption 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 consistent with the patient's specific plan of care established by the attending physician, the medical director or physician designee, and interdisciplinary group.

If you have any questions, 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 on a light-colored background.

Rebecca Fuller Gray
Director
Division of Home and Community Based Services