

MEMORANDUM

Department of Aging and Disability Services (DADS)
Regulatory Services Policy * Survey and Certification Clarification (S&CC)

TO: Regulatory Services
Regional Directors, Regional Program Managers and State Office
Managers

FROM: Veronda L. Durden
Assistant Commissioner
Regulatory Services

SUBJECT: S&CC 09-03 – Hospice Inpatient Respite Services

APPLIES TO: Home and Community Support Services Agencies (HCSSAs) Providing
Hospice Services and Nursing Facilities (NFs) with Hospice Respite
Care Contracts

DATE: September 11, 2009

Purpose

This memorandum addresses the difference in state and federal requirements relating to hospice inpatient respite services provided in nursing facilities.

Background

On December 2, 2008, the Centers for Medicare and Medicaid Services (CMS) adopted new hospice Medicare conditions of participation. The adoption of the new Medicare conditions created several differences between state licensing standards for hospice agencies in Texas and the federal Medicare hospice regulations. The most prominent of these conflicts involves inpatient service requirements for consumers receiving core hospices services, including respite services.

State regulations at Texas Administrative Code (TAC) Title 40, Part 1, Chapter 97, §97.403(v) require the hospice to have on-site, 24-hour nursing services provided by registered nurses (RNs) and licensed vocational nurses (LVNs) sufficient in number to meet total nursing needs regardless of the level of services provided. These services must be in accordance with the client's plan of care, with a RN available on each shift during the respite patient's stay.

The Medicare hospice conditions at Code of Federal Regulations (CFR) Title 42, Part 418, §418.108 require inpatient respite services in a nursing facility to have 24-hour availability of nursing services in accordance with the Medicare hospice standard at 42 CFR §418.110(b), which states:

“If at least one patient in the hospice facility is receiving general inpatient care, then each shift must include a registered nurse who provides direct patient care.”

However, CMS guidance in Appendix M of the State Operations Manual for the Medicare hospice conditions states:

“The general inpatient care provided in a facility for pain control or acute or chronic symptom management, which cannot be managed in other settings, is a different level of care than respite care. It is not automatically necessary to have an RN assigned to every shift to provide direct patient care **if the only hospice patients in a facility are receiving the respite or routine levels of care.** Staffing for a facility solely providing the respite or routine home care levels of care to hospice patients should be based on each patient’s care needs.”

DADS’ Position

Effective immediately and to ensure basic inpatient respite services are available across the state, agencies may follow the Medicare hospice conditions and guidelines as they relate to inpatient respite only nursing coverage. To ensure appropriate compliance, DADS surveyors will ask hospice providers during the entrance conference about respite clients on the agency’s client list to determine the level of services provided in inpatient respite settings. Surveyors conduct home visits in each identified care setting, including nursing facilities and hospital inpatient facilities, to determine if the appropriate nursing coverage is provided and is “based on each patient’s care needs” and required staffing levels. Surveyors will not automatically cite an agency for failure to comply with 40 TAC §97.403(v)(1) when the agency is providing only inpatient respite services to clients under contract in a nursing facility.

Guidance

Question 1:

Does this guidance allow an agency to ignore the state licensing standards for hospice in total?

Response:

No. Agencies must continue to adhere to all Texas state licensing standards under 40 TAC Chapter 97, including those in 40 TAC §97.403 specific for hospice services and in Subchapter C as applicable to all agencies. This guidance applies to hospice inpatient respite services only. Agencies must ensure compliance with the more stringent standard in all other areas where differences exist until state rules are amended and adopted. If even one client placed in a facility by the hospice agency is receiving more than routine respite care, including pain and symptom management or services resulting from an acute need, the agency must ensure RN coverage on each shift.

Question 2:

When can state licensing rules be expected?

Response:

Staff are in the process of developing rule revisions and will seek to adopt changes as soon as possible. This guidance is intended to address consumer needs until rule amendments are adopted.

Question 3:

What are the levels of inpatient care?

Response:

Hospice inpatient respite care is one of the core services that a hospice must provide to the consumer. There are two levels of inpatient hospice care. The first is general inpatient care, which requires registered nurse supervision for all shifts on a 24-hour basis. The second is respite care only, which in accordance with newly issued guidance for adopted Medicare hospice conditions of participation does not require 24-hour RN supervision for all patients.

Question 4:

What is respite care or routine services? How does that differ from general inpatient care?

Response:

Respite care or routine services includes services for a hospice consumer provided in an inpatient setting that affords the family and primary caregivers a rest from caregiving.

Question 5:

What if the patient is not in a stable or predictable condition?

Response:

A patient who is not in a stable or predictable condition would not be receiving only respite care. The agency is expected to maintain and ensure 24-hour registered nurse coverage for services and supervision.

Question 6:

Does this guidance apply to nursing facility residents who are not placed in the facility by the hospice agency?

Response:

No. This guidance only applies to the patients receiving hospice respite services by the nursing facility under contract with the hospice.

Question 7:

Is DADS' position that the agency would not have to ensure that a nurse is on duty at all?

Response:

No. The facility would still be required to provide at least LVNs on each shift. An RN must be available for supervision each day, but not on each shift.

Question 8:

What about RN coverage for other patients in the facility?

Response:

The DADS HCSSA surveyor will determine that the hospice agency ensures appropriate staffing levels according to the patient's plan of care and the level of inpatient care the patient is receiving, respite or general inpatient care. The agency must ensure licensed nursing coverage is provided 24 hours a day for all patients regardless of the level of care provided. If even one patient under the hospice contract with the facility has a need for pain control or symptom management, the agency must ensure that the facility has an RN working on each shift during the patient's inpatient stay. This is in addition to 24-hour nursing coverage provided by LVNs.

Question 9:

If the agency is not required to have RNs on each shift, how is the patient's care supervised?

Response:

Patient care must be supervised by the hospice supervising nurse and portions of the supervision may be assigned to other registered nursing staff as appropriate. Supervision may be accomplished by an RN who is available to the agency and facility by telephone or in person.

Question 10:

Does this course of action relax the requirements to follow the patient's plan of care for nursing services?

Response:

No. The agency must provide all services in accordance with each individual patient's plan of care.

If you have any question regarding this memorandum, please contact a policy specialist in the Policy, Rules and Curriculum Development unit at 512-438-3161.