STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

March 9, 2010

MEMORANDUM

TO: Recipients of the 2004-2007 *Alabama State Health Plan*

FROM: Alva M. Lambert
Executive Director

SUBJECT: Amendments to the 2004-2007 *Alabama State Health Plan*

Enclosed are amendments to sections 410-2-3-.10 and 410-2-4-.15 of the *Alabama State Health Plan*, along with a notice covering the application of these two sections to the Certificate of Need Rules and Regulations.

Please replace the appropriate sections

AML/blw

Enclosure: As stated

MAILING ADDRESS: P.O. BOX 303025, MONTGOMERY, ALABAMA 36130-3025
PHONE: (334) 242-4103 FAX: (334) 242-4113

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

March 9, 2010

MEMORANDUM

TO: Recipients of the 2004-2007 *Alabama State Health Plan*, All Hospice Providers

FROM: Alva M. Lambert
Executive Director

SUBJECT: Non-substantive Hospice Applications pursuant to Section 410-2-3-.10

On February 1, 2010, Governor Riley approved an amendment under Section 410-2-3-.10 of the *2004-2007 Alabama State Health Plan* which, among other things, authorized the filing of Certificate of Need ("CON") applications by certain in-home hospice providers who were not eligible to seek a CON under the prior Statewide Health Coordinating Council ("SHCC") Emergency Rule, 410-2-3-.10ER. Under ALA. ADMIN. CODE r. 410-2-3-.10(6)(f)(3), providers are eligible to seek a CON if they:

(1) were licensed by the Alabama Department of Public Health ("ADPH") to provide home health services in a county, but had not provided service in the twelve (12) months leading up to May 13, 2009; or

(2) had a pending active ADPH licensure application, based on a letter of non-reviewability issued by SHPDA on or before July 7, 2006.

This SHCC amendment contains other restrictions applicable to the aforementioned applications which you should review carefully. The amendment became effective on March 8, 2010.

The Agency contemplates reducing the filing fee for these new applications to $250.00, the same imposed for prior applications under the Emergency SHCC Rule, and to allow such filings to be considered under the "non-substantive" review procedures of

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the SHPDA rules. To do so, however, SHPDA must adopt a regulation under the Alabama Administrative Procedure Act.

An emergency rule addressing the filing fee and CON application procedure is on the CON Review Board's March 17, 2010 agenda. Upon adoption of an emergency rule, the Agency will publish the necessary application forms for those carriers that meet the requirements of the *State Health Plan* amendment, which will include those providers who already have pending applications for other counties under the former Emergency Rule. **The Agency will be unable to accept any applications based on the reduced filing fee until such rule is adopted.** Please contact Deputy Director James E. Sanders at 334-242-4103 with any questions.

AML/blw

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

January 25, 2010

Honorable Bob Riley, Governor
State of Alabama
State Capitol
Montgomery, Alabama 36130

Dear Governor Riley:

At the January 21, 2010 meeting of the Statewide Health Coordinating Council (SHCC), the SHCC adopted the attached amendment to Section 410-2-3-.10, Hospice Services, of the *2004-2007 Alabama State Health Plan.* The amendment formalizes requirements for the provisioning of in-home hospice services, following the passage of Alabama Act 2009-492 on May 13, 2009, and replaces an emergency rule adopted by the SHCC on August 20, 2009, governing those services. The emergency rule expired on December 28, 2009. The permanent rule prohibits, with specified exceptions, the authorization of new hospice providers until the accumulation of data and the application of a formula to determine long-term need. The only exceptions are for providers already providing service as of the date of the new law, or those providers that properly filed an application for licensure with the Alabama Department of Public Health by the July 7, 2006 filing deadline provided under the former provisions of ALA. CODE § 22-21-29(d) (1975 as amended), but who had not yet been able to commence service in a license area. The Board received several comments from providers indicating that they had been delayed in commencing service in some counties due to delays in getting approval of such license applications.

This rule was processed in accordance with the *State Health Plan* and the Alabama Administrative Procedure Act. Rule 410-2-5-.04(4)(e) of the *State Health Plan* provides that a plan amendment shall be deemed disapproved by the Governor if not acted upon within fifteen (15) days.

You have the approval/disapproval authority for the *State Health Plan* and all amendments/adjustments thereto. We recommend approval.

Call me at 242-4103 if you have questions about this proposed amendment.

Sincerely,

Alva M. Lambert

Alva M. Lambert
Executive Director

Attachment: as stated

APPROVED Bob Riley
Gov. Bob Riley

Date 2/1/2010

DISAPPROVED _____
Gov. Bob Riley

Date _____

410-2-3-.10 **Hospice Services**

(1) Discussion

(a) Hospice care is a choice made to enhance end of life. Hospice focuses on caring and comfort for patients and not curative care. In most cases, care is provided in the patient's place of residence. It is the intent of this section to address health planning concerns relating to hospice services provided in the patient's place of residence. For coverage of hospice services provided on an inpatient basis, please see Section 410-2-4-.15.

(2) Definitions

(a) Hospice Program. A "Hospice Program" is defined as a public agency, private organization, or subsidiary of either of these that is primarily engaged in providing Hospice Care to the terminally ill individual and families and is separately licensed by the State of Alabama and certified by Centers for Medicare/Medicaid Services (CMS) for the provision of all required levels of Hospice Care.

(b) Hospice. "Hospice" is a coordinated program providing a continuum of home and inpatient care for the terminally ill patient and family and/or significant other. It employs an interdisciplinary team acting under the direction of an identifiable hospice administration. The program provided palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social and economic stresses which are experienced during the final stages of illness and bereavement. The care is available twenty-four hours a day, seven days a week.

(3) Availability and Accessibility

(a) Hospice services must be obtainable by all of the residents of the State of Alabama. The care must be available to all terminally ill persons and their families without regard to age, gender, national origin, disability, diagnosis, cost of care, ability to pay or life circumstances.

(b) Physicians and other referral sources may be unfamiliar with the total scope of services offered by hospice; accessibility may be limited due to a lack of awareness. Every provider should provide an active community informational program to educate consumers and professionals to the availability, nature, and extent of their hospice services provided.

(4) Inventory

(a) As of this date, hospice services are believed to be available in all 67 counties. Hospice programs are licensed by the Alabama Department of Public Health.

(5) Quality

(a) Quality is that characteristic which reflects professionally and technically appropriate patient services. Each provider must establish mechanisms for quality assurance including procedures for resolving concerns identified by patients, physicians, family members, or others in patient care or referral. Providers should also develop internal quality assurance and grievance procedures.

(b) Providers are encouraged to achieve a utilization level, which promotes cost effective service delivery.

(c) Hospice programs are required to meet or exceed the current Medicare Hospice Conditions of Participation, as adopted by CMS, and codified in the Code of Federal Regulations, along with State Licensure Regulations of the Department of Public Health. Licensed programs are required to meet the data collection requirements addressed in section 6 (f) (1) of this document.

(6) In Home Hospice Services Need Methodology

(a) Purpose. The purpose of this in home hospice services need methodology is to identify, by county, the number of hospice providers needed to assure the continued availability, accessibility, and affordability of quality care for residents of Alabama. A corporate entity must obtain a CON for each office, branch or parent. However, relocation, within the same county of an already established office that has previously obtained a CON and is not expanding services, does not require applying for a new CON.

(b) General. Formulation of this methodology was accomplished by a committee of the Statewide Health Coordinating Council (SHCC). The committee, which provided its recommendations to the SHCC, was composed of providers and consumers of health care, and received input from the hospice providers and other affected parties. Only the SHCC, with the Governor's final approval, can make changes to this methodology, except that SHPDA staff shall annually update statistical information to reflect more current population and utilization. Such updated information is available for a fee upon request. Adjustments are addressed in paragraph (e) below.

(c) Basic Methodology.

1. There shall be no finding of need until SHPDA has collected data for a three-year period following adoption of this section, sufficient to allow for the three-year planning horizon provided for herein.
2. Need Assessment for Hospice Services[1]
3. The need for additional Hospice Services shall be calculated as follows:

HPR = Hospice Deaths by County/Total Deaths by County

[1] Obtained through all Alabama Hospice providers who are required, through this section, to collect and provide data to SHPDA on an annual basis.

Whereas:
HPR = The Hospice Penetration Rate

Hospice Deaths by County is defined as the total deaths of those served in hospice care for the specific county. Data shall be obtained through all licensed Alabama Hospice providers who are required, through this document, to collect and provide data to SHPDA annually.

Total Deaths by County is defined as the total deaths from all causes in the specific county. Data shall be obtained from the Alabama Department of Public Health Center for Health Statistics.

This formula is recommended by the National Hospice and Palliative Care Organization which utilizes this formula to report national hospice penetration rates. In completing the formula to establish need, SHPDA will match the year of hospice deaths with the most recent year of total deaths as provided by the Alabama Department of Public Health Center for Health Statistics.

4. Review Criteria
An application to establish or expand hospice services in a county shall be consistent with this Plan if:

(i) The Hospice penetration rate in the proposed county is less than forty (40) percent.

(ii) Each approved hospice agency in the proposed county has been operational for at least thirty six (36) months; and

(iii) Only one (1) application may be approved in each county during any approval cycle as defined by the Statewide Health Coordinating Council, or as implemented by SHPDA;

(d) Planning Policies

1. SHPDA staff shall collect data from all licensed hospice providers on an annual basis, on a survey instrument to be developed by SHPDA Staff with input from the Alabama Hospice Organization. The survey instrument shall be designed to collect all data necessary to support the In Home Services Need Methodology discussed above and in order to maintain their CON and their good standing with SHPDA, licensed hospice providers shall respond as directed.

2. Hospice need projections will be based on a three-year planning horizon.

3. Planning will be on a countywide basis.

(e) Adjustments. The need for hospice providers, as determined by the methodology, is subject to adjustments by the SHCC. SHCC may adjust the need for hospice services in an

individual county or counties if an applicant documents the existence of at least one of the following conditions:

> 1. Absence of services by a hospice certified for Medicaid and Medicare in the proposed county, and evidence that the applicant will provide Medicaid and Medicare-certified hospice service in the county; or
>
> 2. Absence of services by a hospice in the proposed county that serves patients regardless of the patient's ability to pay, and evidence that the applicant will provide services for patients regardless of ability to pay.

1. There were numerous in-home hospice service providers providing services under Alabama Department of Public Health ("ADPH") licensure as of the May 13, 2009 effective date of Alabama Act 2009-492 (the "Act"), which amended ALA. CODE § 22-21-260(6) (1975 as amended) to include "hospice service providers" within the definition of a health care facility. The Act also amended ALA. CODE § 22-4-2(7) (1975 as amended) to include "hospice services" within the definition of a "health care facility" and amended ALA. CODE § 22-21-29 (1975 as amended) by eliminating the provision that had placed a moratorium on ADPH's licensing of hospices, except for those applicants that had obtained a letter of non-reviewability from SHDPA by July 7, 2006 and filed an application for licensure as a hospice with ADPH within twelve (12) months thereafter. On August 17, 2009 the Alabama Attorney General issued an Opinion that while existing providers are required to obtain a Certificate of need ("CON") to Continue operations, SHPDA may adopt an emergency rule allowing such providers to continue to operate within an expedited timeframe that allows consideration of their CON applications upon a finding of an immediate danger to the public health, safety or welfare.

2. On August 31, 2009 Governor Riley approved Rule 410-2-3-.10ER, which had been passed by the Statewide Health Coordinating Council ("SHCC"). Pursuant to this emergency rule, in-home hospice service providers in existence as of the effective date of Alabama Act 2009-492 were allowed to obtain CONs under a non-substantive review procedure, thus preventing any unnecessary disruption of services in authorized counties. The rule also provided for the collection of data needed for the development of a long-term need methodology. Need was presumed for any provider that demonstrated that it was providing service under ADPH license in a particular county as of May 13, 2009 or during the preceding twelve months.

3. Each entity that (1) was licensed by the Department of Public Health to provide in-home hospice services in a county, based upon a non-reviewability determination letter issued to the entity by the Alabama State Health Planning and Development Agency under ALA. CODE § 22-21-29(d) (1975 as amended) listing said county, but did not provide service by May 13, 2009 or during the preceding twelve months; or (2) that established itself with the Alabama State Health Planning and Development Agency by obtaining a non-reviewability determination letter by July 7, 2006 under the former provisions of ALA. CODE § 22-21-29(d) (1975 as amended), and timely filed its application for licensure as a hospice provider with the Alabama Department of Public Health in particular counties ("the contemplated service area") within twelve (12) months thereafter and is not deemed to have abandoned its licensure application, shall be entitled to file for a Certificate of Need for the contemplated service area under the non-

substantive review process, with need presumed, using such application forms as may be required by SHPDA. Hospice providers obtaining a CON pursuant to this Section (3) shall file a single application and be granted a single CON encompassing all of the qualifying counties. For purposes of this Section only, an entity shall be considered a separate hospice provider for each Medicare Provider Number held at the time of application (e.g., if an entity has multiple hospice provider numbers, a separate application must be filed, and CON issued, for each); provided, however, that a corporate entity having multiple provider numbers shall not receive more than one CON per county. Such CON authority may not be subsequently divided, e.g., a hospice provider may not separate such authority into separate CONs for future disposition. All applications submitted pursuant to the non-substantive review provisions of 410-2-3-.10(2)(b) and (c) shall include an acknowledgement of this restriction. Any CON authority granted pursuant to this section shall be combined, under a single CON, with any other CON authority obtained under the same provider number under Certificate of Need Review Board emergency rule 410-1-5C-.01ER.

4. Following adoption by SHCC of the Hospice Services Need Methodology, all hospice providers which did not receive a CON pursuant to the non-substantive review process are required to undergo full Certificate of Need review.

5. Any hospice services provider which obtains a CON, either pursuant to the non-substantive review process or after full Certificate of Need Review, that subsequently fails to substantially comply on a timely basis (subject to any authorized extensions) to an annual data request from the SHPDA staff adopted in conjunction with long-term need methodology shall be assumed to have ceased operations as of the end of such period until such time as the provider complies full with all outstanding SHPDA data request. Any provider that is deemed to have ceased operating under this chapter shall be prohibited from submitting any CON application for additional authority or from seeking consideration by SHDPA of such facility's utilization data to oppose another provider's CON application. In accordance with Rule 410-1-11-.08(2), should such cessation of operation continue for an uninterrupted period of twelve months or longer, the provider's CON shall be deemed abandoned. SHPDA shall file a report with the Alabama Department of Public Health of any provider who is deemed to have abandoned its CON under this section.

Author: Statewide Health Coordinating Council (SHCC).
Statutory Authority: § 22-21-260(4), Code of Alabama, 1975.
History: November 22, 2004. Amended: **February 1, 2010;** effective March 8, 2010

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104
January 25, 2010

Honorable Bob Riley, Governor
State of Alabama
State Capitol
Montgomery, Alabama 36130

Dear Governor Riley:

At the January 21, 2010 meeting of the Statewide Health Coordinating Council (SHCC), the SHCC adopted the attached rule, creating Section 410-2-4-.15, Inpatient Hospice Services, to the *2004-2007 Alabama State Health Plan.* The amendment sets forth the requirements for the provisioning of inpatient hospice services, following the passage of Alabama Act 2009-492 on May 13, 2009. The rule contains no substantive changes from the one originally published for comment.

This rule was processed in accordance with the *State Health Plan* and the Alabama Administrative Procedure Act. Rule 410-2-5-.04(4)(e) of the *State Health Plan* provides that a plan amendment shall be deemed disapproved by the Governor if not acted upon within fifteen (15) days.

You have the approval/disapproval authority for the *State Health Plan* and all amendments/adjustments thereto. I recommend your approval.

Call me at 242-4103 if you have questions about this proposed Amendment.

Sincerely,

Alva M. Lambert

Alva M. Lambert
Executive Director

Attachment: as stated

APPROVED Bob Riley Date 2/1/2010
Gov. Bob Riley

DISAPPROVED _____ Date _____
Gov. Bob Riley

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410-2-4-.15 Inpatient Hospice Services

(1) Discussion

(a) Hospice care is a choice made to enhance end of life. Hospice focuses on caring and comfort for patients and not curative care. In most cases, care is provided in the patient's place of residence.

(b) It is the intent of this section to address health planning concerns relating to hospice services provided on an inpatient basis. For coverage of hospice services provided primarily in the patient's place of residence, please see Section 410-2-3-.10.

(c) A hospice program is required by federal statutes as a Condition of Participation for hospice care (Title 42- Public Health; Chapter IV – CMS, Department of Health and Human Services; Part 418 – Hospice care; Section 418.98 or successors) and state statutes and regulations (Alabama State Board of Health, Department of Public Health; Administrative Code, Chapter 420-5-17; Section 420-5-17-.01 or successors) to provide general inpatient level of care and inpatient respite level of care as two of the four levels of hospice care. As per the Medicare Condition of Participation (418.108), the total number of inpatient days used by Medicare beneficiaries who elected hospice coverage in a 12-month period in a particular hospice may not exceed twenty (20) percent of the total number of hospice days consumed in total by this group of beneficiaries.

(d) A hospice program per federal statute must provide the inpatient levels of care that meets the conditions of participation specified. The approved locations for inpatient hospice care are a hospital, a skilled nursing facility ("SNF") or an inpatient hospice facility.

(e) A hospice program may provide the inpatient levels of care in a freestanding inpatient facility/unit which the hospice program owns and manages, through beds owned by either a hospital or a skilled nursing facility ("SNF") but leased and managed by a hospice program or through contracted arrangements with another hospice program's inpatient facility/unit.

(2) Definitions.

(a) All definitions included in Section 410-2-3-.10 are incorporated herein by reference.

(b) Inpatient hospice facility. An "Inpatient Hospice Facility" is defined as a freestanding hospice facility or a designated unit, floor or specific number of beds located in a skilled nursing facility or hospital that is leased or under the management of a hospice services provider.

(c) General Inpatient Level of Care: The general inpatient ("GIP") level of hospice care is intended for short term acute care for pain control and symptomatic management. It is not intended for long term care, residential or rehabilitation.

(d) Inpatient Respite Level of Care: The inpatient respite level of care is limited per Medicare and Medicaid to a maximum of 5 days per episode for the purpose of family respite.

(3) Availability and Accessibility

(a) Hospice services must be obtainable by all of the residents of the State of Alabama.

(b) Physicians and other referral sources may be unfamiliar with the total scope of services offered by hospice; accessibility may be limited due to lack of awareness. Every provider should provide an active community informational program to educate consumers and professionals to the availability, nature, and extent of their hospice services provided.

(c) In order for a SNF to provide the inpatient levels of care for hospice patients, the SNF must meet the standards specified by CMS, which have included at least the following: (a) *twenty-four-hour nursing services with each shift requiring a registered nurse who provides direct, on site patient care* and (e) patient areas that provide comfort and privacy for the patient and family; allows for private patient/family visiting; accommodations for family privacy for family members to remain with patient throughout the night, accommodations for family privacy after a patient's death, homelike décor, and allows visitors, including children at any hour. (Currently the Alabama Licensure rules for hospice dictate a RN must be on site for both GIP and Inpatient Respite levels of care. However, the updated federal Condition of Participation which were implemented December 2008 eliminated the requirement for a RN for Inpatient Respite care. At the time the Alabama Licensure rules are updated to mirror the federal Conditions of Participation, that rule will be applied to this document without additional document changes required by SHCC.)

(d) At the time this section was adopted, many SNF facilities do not meet these minimum requirements.

(e) Hospice agencies are limited in establishing contracts with hospitals for the inpatient levels of care. This is due to (a) the increased number of hospice providers over the past five (5) years that request contracts from the same hospitals in the same service areas and (b) the reimbursement hospitals receive from the hospice providers for the hospice inpatient levels of care.

(4) Inventory

(a) At this time, there are only three freestanding inpatient hospice facilities in the state of Alabama with a total of 30 inpatient hospice beds.

(b) The establishment of an inpatient hospice facility does not eliminate the need for contractual arrangements with hospitals or SNF for inpatient levels of care. If the inpatient hospice facility is at full capacity and a hospice patient is eligible for/requires inpatient care, the hospice remains responsible to provide that level of care at a contracted facility.

(5) Quality

(a) Quality is that characteristic which reflects professionally and technically appropriate patient services. Each provider must establish mechanisms for quality assurance, including procedures for resolving concerns identified by patients, physicians, family members, or others in patient care or referral. Providers should also develop internal quality assurance and grievance procedures.

(b) Providers are encouraged to achieve a utilization level, which promotes cost effective service delivery.

(c) Hospice programs are required to meet the most stringent or exceed the current Medicare Hospice Conditions of Participation, as adopted by CMS, and codified in the Code of Federal Regulations, along with State Licensure Regulations of the Department of Public Health.

(6) Inpatient Hospice Facility Need Methodology

(a) Purpose. The purpose of this inpatient hospice services need methodology is to identify, by region, the number of hospice providers needed to assure the continued availability, accessibility, and affordability of quality of care for residents of Alabama.

(b) General. Formulation of this methodology was accomplished by a committee of the Statewide Health Coordinating Council (SHCC). The committee, which provided its recommendations to the SHCC, was composed of providers and consumers of health care, and received input from hospice providers and other affected parties. Only the SHCC, with the Governor's final approval, can make changes to this methodology, except that SHPDA staff shall annually update statistical information to reflect more current population and utilization. Such updated information is available for a fee upon request. Adjustments are addressed in paragraph (e) below.

(c) Basic Methodology.

1. The purpose of this need methodology is to identify, by region, the number of inpatient hospice beds needed to assure the continued availability, accessibility, and affordability of quality hospice care for residents of Alabama.

2. The need methodology shall be calculated by aggregating the reported average daily censuses (ADC) for all licensed hospices in the designated Region, as

reported annually to SHDPA, the State of Alabama, or the Federal Government, and multiplying that aggregate regional ADC by 2%. The resulting figure shall be the regional need. The need cannot be established until after the most current year's completed annual report is received and compiled by SHDPA.

3. Any increase in regional need shall be limited to no more than five percent (5%) per year.

(d) Planning Policies

1. Planning will be on a regional basis. Please see the attached listing for regional descriptions as designated by the SHCC.

2. An applicant for an inpatient hospice facility must be an established and licensed hospice provider and has been operational for at least thirty-six (36) months.

3. An applicant for an inpatient hospice facility must demonstrate the ability to comply with Medicare/Medicaid regulations.

4. An applicant for an inpatient hospice facility must demonstrate that existing inpatient hospice beds in the region cannot meet the community demand for inpatient hospice services.

5. An applicant for an inpatient hospice facility must demonstrate that sharing arrangements with existing facilities have been studied and implemented when possible.

(e) Adjustments. The need for inpatient hospice beds, as determined by the methodology, is subject to adjustments by the SHCC. SHCC may adjust the need for inpatient hospice beds in a region if an applicant documents the existence of at least one of the following conditions:

1. Absence of available inpatient beds for a hospice certified for Medicaid and Medicare in the proposed region, and evidence that the applicant will provide Medicaid and Medicare-certified hospice services in the region; or

2. Absence of services by a hospice in the proposed region that serves patients regardless of the patient's ability to pay, and evidence that the applicant will provide services for patients regardless of ability to pay.

3. A community need for additional inpatient hospice services greater than those supported by the numerical methodology.

Author: Statewide Health Coordinating Council (SHCC).
Statutory Authority: § 22-21-260(4), Code of Alabama, 1975.
History: Filed February 1, 2010; effective March 8, 2010