

APA-4  
10/91

**CERTIFICATION OF EMERGENCY RULES  
FILED WITH LEGISLATIVE REFERENCE SERVICE  
JERRY L. BASSETT, DIRECTOR**

Pursuant to Code of Alabama 1975, §§ 41-22-5(b) and 41-22-6.

I certify that the attached emergency amendment is a copy as promulgated and adopted on the 20<sup>th</sup> day of August, 2009.

AGENCY NAME: State Health Planning and Development Agency  
(Statewide Health Coordinating Council)

RULE NO. AND TITLE: 410-2-3-.10ER In-Home Hospice Services

EFFECTIVE DATE OF RULE: The Agency desires the Emergency Rule to become effective on the date of filing with the Legislative Reference Service-that is, August 31, 2009

EXPIRATION DATE: The Agency desires the Emergency Rule to remain in effect for 120 days, through December 28, 2009.

NATURE OF EMERGENCY:

On May 13, 2009, Alabama Act 2009-492 (the "Act") was signed into law. The Act amended ALA. CODE §22-21-260(6) (1975 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 the Alabama Department of Public Health's licensing of hospices. It is critical that existing patients of such providers continue to receive hospice services and that these services continue to be available to new patients. This emergency rule is necessary to address an immediate danger to the public health and welfare.

STATUTORY AUTHORITY: §§ 22-21-260 (6), (13), (15), Code of Alabama, 1975.

SUBJECT OF RULE TO BE ADOPTED ON PERMANENT BASIS

       YES                      X   NO

**REC'D & FILED**

**AUG 31 2009**

**LEGISLATIVE REF SERVICE**

NAME, ADDRESS, AND TELEPHONE NUMBER OF PERSON TO CONTACT FOR COPY OF RULE:

James E. Sanders, Deputy Director  
State Health Planning and Development Agency  
100 North Union Street  
P. O. Box 303025  
Montgomery, AL 36130-3025  
(334) 242-4103

Alva M. Lambert  
Alva M. Lambert  
Executive Director

FILING DATE  
(For APA Use Only)



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870

MONTGOMERY, ALABAMA 36104

August 25, 2009

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

Dear Governor Riley:

At the August 20, 2009 meeting of the Statewide Health Coordinating Council ("SHCC"), the SHCC adopted the attached emergency rule regarding In-Home Hospice Services. The emergency rule, upon your approval, will replace the current provisions of Section 410-2-3-.10 of the 2004-2007 Alabama State Health Plan for a period of one hundred and twenty (120) days, as permitted under ALA. CODE § 41-22-5(b) (1975 as amended).

You have the approval/disapproval authority for the *State Health Plan* and all amendments/adjustments thereto. In accordance with ALA. ADMIN. CODE r. 410-2-5-.04(4)(c) (2007), this plan adjustment shall be deemed disapproved if not acted upon by September 4, 2009. I recommend your approval.

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

Sincerely,

Alva M. Lambert  
Executive Director

Attachment: as stated

APPROVED:

Gov. Bob Riley

Date Aug 31, 2009

DISAPPROVED:

\_\_\_\_\_

Gov. Bob Riley

Date \_\_\_\_\_

## 410-2-3-10ER In-Home Hospice Services

### (1) Discussion Definitions

(a) ~~Hospice care is a choice you make to enhance life for a dying person. Hospice focuses on caring, not curing and, in most cases, care is provided in the patient's home. Hospice care also is provided in freestanding hospice centers, hospitals, and nursing homes and other long-term care facilities. Hospice services are available to patients of any age, religion, race, or illness. Hospice care is covered under Medicare, Medicaid, most private insurance plans, HMOs, and other managed care organizations.~~ 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) ~~Members of the hospice staff make regular visits to assess the patient and provide additional care or other services. Hospice staff is on call 24 hours a day, seven days a week. The hospice team develops a care plan that meets each patient's individual needs for pain management and symptom control. Emotional and spiritual support is also provided to meet the patient's needs and wishes as well as that of the family.~~ 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 provides 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.

### (2) Definitions Methodology

(a) ~~"Hospice Program." A program that provides a continuum of palliative and supportive care for the terminally ill patient and his family. Hospice services must be available 24 hours a day, 7 days a week, and must be available to all terminally ill persons and their families without regard to age, gender, national origin, sexual orientation, disability, diagnosis, cost of therapy, ability to pay, or life circumstances. 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. Since this time, the Legislature has passed a resolution clarifying its intent that licensed hospice service providers as of May 13, 2009, be allowed to continue operations for their then existing service areas pursuant to a non-substantive review process at SHDPA. In addition, 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.

(b) "Administrator." The person who is responsible for medical care of the hospice patient. It is critical that existing patients of such providers continue to be provided with much needed health care, and this emergency rule is necessary to address an immediate danger to the public health and welfare. For this reason, need will be presumed for any existing in-home hospice service provider that demonstrates that it was providing such care under ADPH licensure in a particular county as of May 13, 2009 or the preceding twelve months.

(c) "Attending Physician." The physician who is responsible for medical care of the hospice patient. Providers who meet the requirements of 410-2-3-.10(2)(b) above should file an application for a Certificate of Need ("CON") with SHPDA on or before November 1, 2009, to be granted a CON before May 1, 2010, which shall be the date after which all in-home hospice providers existing as of the effective date of the Act must have a CON under this provision. SHDPA shall seek assistance from ADPH for assistance in verifying that such applicants were providing in-home hospice care as of May 13, 2009. Applicants that meet the aforementioned criteria and certify that their application does not involve a capital expenditure in excess of \$500,000 shall have their applications considered as part of a non-substantive review process providing for direct review and approval by the Certificate of Need Review Board. The SHCC recommends that SHPDA adopt an emergency rule providing for a reduction in the minimum filing fee associated with such CON applications for existing providers. The grant of a CON under this provision shall be conditioned on timely compliance with any data request issued on an annual basis by the SHPDA Staff in conjunction with the adoption of long-term need methodology, including any request for 2007-2008 information that may be required as part of the application process.

(d) "Bereavement Services." Supportive services provided to the family unit to assist it in coping with the patient's death, including follow-up assessment and assistance through the first year after death. An existing provider that obtains a CON that subsequently fails to substantially comply on a timely basis (as may be defined by the SHCC, with 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 thirty day period until such time as the provider complies fully with all outstanding SHPDA data requests. Any provider that has deemed to have ceased operations under this chapter shall be prohibited from submitting any CON application for additional authority or from seeking consideration by SHPDA 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.

(e) Existing hospice providers obtaining a CON pursuant to 410-2-3-.10(2)(b) and (c) above shall be granted a single CON encompassing all of the counties served. Such CON authority may not be subsequently divided, e.g., a hospice provider may not separate such authority into separate CONs for future disposition. This restriction shall not apply to CONs granted outside of the provisions of 410-2-3-.10(2)(b) and (c). 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.

(f) Hospice providers that have obtained CON authority as a result of the relocation of administrative offices since May 13, 2009 shall not be required to obtain a new CON for the counties addressed in such CONs as of May 13, 2009, but shall be otherwise subject to compliance with the data collection requirements of section (b) above.

(g) Within six (6) months of the effective date of this rule, the SHCC shall adopt a permanent rule adopting a long-term need methodology for in-home hospice care. Except as provided herein, no new CONs for hospice services shall be granted except as may be authorized in such future long-term need methodology.

~~(3) Recommendation:~~

~~Develop a database to monitor the development and utilization of hospice services.~~

Author: Statewide Health Coordinating Council (SHCC).

Statutory Authority: §§ 41-22-5, 22-21-260(6), (13) and (15), Code of Alabama, 1975.

History: **Effective August 31, 2009 (Emergency Rule)**