



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

NOTICE OF INTENDED ACTION

AGENCY NAME: STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
(Statewide Health Coordinating Council)

RULE NO. & TITLE: 410-2-3-.10 Hospice Services

INTENDED ACTION:

The State Health Planning and Development Agency and the Statewide Health Coordinating Council proposes to amend the above styled section of the *Alabama State Health Plan*.

SUBSTANCE OF PROPOSED ACTION:

To address health planning concerns relating to hospice services provided in the patient's place of residence.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

In response to this Proposed Rule, all interested persons are invited to submit data, views, comments and/or arguments, orally or in writing. Any and all such data, comments, arguments and/or requests to orally address the Statewide Health Coordinating Council (SHCC) shall be made in writing on or before, January 4, 2010, and shall be made to:

James E. Sanders, Deputy Director
State Health Planning and Development Agency
P. O. Box 303025
Montgomery, Alabama 36130-3025

On January 21, 2010, at 10:00 a.m., the SHCC shall conduct a public hearing in the in the auditorium of the Alabama State Capitol Building on Dexter Avenue in Montgomery, Alabama, at which time it shall consider the Proposed Rule along with all written and oral submissions in respect to the Proposed Rule. Only those interested persons who have made timely written requests will be afforded the opportunity to speak.

Copies of the proposed changes are available for review at 100 North Union Street, RSA Union Building, Suite 870, Montgomery, Alabama. Phone (334) 242-4103 or visit the office Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding State holidays.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

January 4, 2010

CONTACT PERSON AT AGENCY:

James E. Sanders
100 North Union Street
RSA Union, STE 870
Montgomery, AL 36104
(334) 242-4103


Alva M. Lambert, Executive Director

410-2-3-.10 ~~In-Home Hospice Services~~ Hospice Services

(1) Discussion

(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 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) ~~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. 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 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. 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) ~~"Administrator." The person who is responsible for medical care of the hospice patient. 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.~~

(c) ~~"Attending Physician." The physician who is responsible for medical care of the hospice patient.~~

~~(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.~~

(3) Recommendation. Availability and Accessibility

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

(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.

(i) 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.

(ii) Need Assessment for Hospice Services¹

(iii) The need for additional Hospice Services shall be calculated as follows:

$$\text{HPR} = \text{Hospice Deaths by County} / \text{Total Deaths by County}$$

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.

(iv) Review Criteria

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

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

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

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

3) Only one (1) application may be approved in each county during any approval cycle as defined by the Statewide Health Coordinating Council, or a 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:

(a) 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

(b) 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.

(f) (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. Notwithstanding the forgoing, each entity that established itself with the Alabama State Health Planning and Development Agency by filing for a non-reviewability determination letter under 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”), 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 permitted under the Certificate of Need Review Board emergency rule 410-1-5C-.01ER.

(3) 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.

(4) 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: Effective