

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 10th day of November, 2011.

AGENCY NAME: State Health Planning and Development Agency

RULE NO. AND TITLE: 410-2-4-.15-.01ER Inpatient 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, November 14, 2011.

EXPIRATION DATE: The Agency desires the Emergency Rule to remain in effect for 120 days, through March 12, 2012.

NATURE OF EMERGENCY:

Effective March 8, 2010, the Statewide Health Coordinating Council ("SHCC") adopted an inpatient hospice services need methodology by adding Section 410-2-4-.15 of the *2004-2007 Alabama State Health Plan* ("SHP"). Although Section 410-2-4-.15(6) provides for the need methodology to be applied to multi-county regions, a list of the regions was inadvertently omitted from the SHP. Without immediate correction of this omission, providers will be delayed in seeking a certificate of need to meet the need for additional inpatient hospice care in certain areas of the state, representing an immediate threat to the health, safety and welfare of hospice patients and their families. Accordingly, the SHCC adopted this emergency provision and the attached chart, listing "Inpatient Hospice Regional County Listings," as Appendix "A" to Section 410-2-4-.15.

STATUTORY AUTHORITY: §§ 41-22-5, 22-21-260(6) and -264, Code of Alabama, 1975.

SUBJECT OF RULE TO BE ADOPTED ON PERMANENT BASIS

YES NO

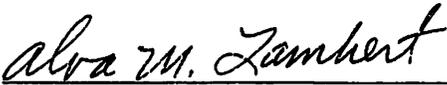
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LEGISLATIVEREFSERVICE

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FILING DATE
(For APA Use Only)

410-2-4-15-.01ER 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, 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 reports are received, compiled, and published 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.

6. An applicant for an inpatient hospice facility may provide supplemental evidence in support of its application from other data reported by licensed hospices on an annual basis to the State of Alabama or the Federal Government.

(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.

(7) Inpatient Hospice Regions

Effective March 8, 2010, the Statewide Health Coordinating Council ("SHCC") adopted an inpatient hospice services need methodology by adding Section 410-2-4-.15 of the 2004-2007 Alabama State Health Plan ("SHP"). Although 410-2-4-.15 (6) provides for the need methodology to be applied to multi-county regions, a list of the regions was inadvertently omitted from the SHP. Without immediate correction of this omission, providers will be delayed in seeking a certificate of need to meet the need for additional inpatient hospice care in certain areas of the state, representing an immediate threat to the health, safety and welfare of hospice patients and their families. Accordingly, the attached chart, listing "Inpatient Hospice Regional County Listings" is hereby adopted as Appendix "A" to Section 410-2-4-.15.

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; Emergency amendment adopted November 10, 2011; effective November 14, 2011.

Appendix A

Inpatient Hospice Regional County Listings

<u>Region 1</u>	<u>Region 2</u>	<u>Region 3</u>	<u>Region 4</u>
Madison	Jackson Marshall DeKalb Cherokee	Morgan Limestone Cullman	Lauderdale Colbert Franklin Lawrence
<u>Region 5</u>	<u>Region 6</u>	<u>Region 7</u>	<u>Region 8</u>
Blount St. Clair Etowah	Marion Winston Lamar Fayette Walker	Tuscaloosa Pickens	Calhoun Cleburne Talladega Clay Randolph
<u>Region 9</u>	<u>Region 10</u>	<u>Region 11</u>	<u>Region 12</u>
Jefferson	Shelby	Coosa Tallapoosa Chambers Elmore	Lee Macon Bullock Russell
<u>Region 13</u>	<u>Region 14</u>	<u>Region 15</u>	<u>Region 16</u>
Montgomery	Bibb Chilton Perry Autauga Dallas	Greene Hale Sumter Choctaw Marengo Clarke Washington	Wilcox Lowndes Monroe Butler Conecuh Escambia
<u>Region 17</u>	<u>Region 18</u>	<u>Region 19</u>	<u>Region 20</u>
Crenshaw Pike Coffee Covington Geneva	Barbour Dale Henry Houston	Mobile	Baldwin

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