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## Memorandum on Nursing Shortage

1 message

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Regulatory Alert for NHPCO members



# NHPCO REGULATORY ALERT

## CMS Posts Memorandum on Nursing Shortage

*To: NHPCO Provider Members*  
*From: NHPCO Regulatory Team*  
*Date: October 6 2020*

CMS posted QSO-21-01-Hospice: Nursing Shortage as an "Extraordinary Circumstance" per 42 CFR 418.64 Core Services on October 5, 2020. This policy memorandum supersedes previously issued SC17-01-Hospice and is **effective immediately**.

CMS states that findings from the Bureau of Labor Statistics continue to forecast a shortage of nurses through 2024 with a job growth rate that is faster than the average. In remote instances, a hospice provider may find that a shortage of nurses creates a temporary impact on its ability to provide nursing services to patients and as a result may create an access to care concern for hospice beneficiaries.

### What has changed?

1. **Using contracted staff during extraordinary circumstances:** A hospice may use contracted staff, if necessary, to supplement hospice employees in order to meet the needs of patients under extraordinary or other non-routine circumstances. The regulation allows the hospice to utilize these services temporarily **without a waiver or exemption** from the State Survey Agency (SA) or the CMS Location.
2. **Notification:** CMS is updating previous guidance that the hospice agency must notify CMS of its use of contracted staff during extraordinary circumstances and submit justification for such use to its State Agency (SA) or CMS location. This notification/justification is not required by 42 CFR 418.64.
3. **Survey process:** Compliance with the regulation for use of contracted staff is reviewed as a part of the routine survey process.

### The regulatory requirements

42 CFR 418.64 (**Subpart B: Condition of Participation: Core Services**) allows a hospice provider to use contract staff, if necessary, to supplement hospice employees in order to meet the needs of patients under extraordinary or other non-routine circumstances without a wavier or exemption from the SA or CMS Location. Surveyors should be alert to any situations where a provider is utilizing contracted nursing services in lieu of direct nursing services, which would be a violation of 42 CFR 418.64.

### Hospice responsibility

- When contract services are utilized, the hospice agency maintains all professional, financial and administrative responsibility for the services.
- When utilizing contract nurses secondary to extraordinary circumstances, the hospice is responsible for requirements at 42 CFR 418.100 (Subpart D: Condition of Participation: Organization and administration of services). The hospice must organize, manage, and administer its resources to provide the needed hospice care and services.
- The hospice is responsible for its continuing efforts to secure direct nursing employees and the extent to which any contract nurses are trained in the hospice philosophy and the effective provision of services based upon the established plan of care.

NHPCO members with questions should email [regulatory@nhpco.org](mailto:regulatory@nhpco.org) with **Nursing Shortage** in the subject line.