



COMMISSIONER
Jon Weizenbaum

April 11, 2014

To: All Licensed and Medicare-certified Hospice Agencies

Subject: **Provider Letter 14-06** – Clarification to Hospice Agencies Providing Inpatient Care Directly

The purpose of this letter is to clarify the policy for a hospice agency that provides inpatient care directly, using its own staff, as described in the Centers for Medicare & Medicaid Services (CMS) State Operations Manual (SOM) at 2084A. CMS SOM 2084A specifies that when a hospice provides inpatient care directly, the hospice may do so in either:

- space that it owns or leases; or
- *space shared* with a Medicare-certified hospital, a skilled nursing facility (SNF), or a Medicaid-certified nursing facility (NF).

CMS provided clarification to the Texas Department of Aging and Disability Services (DADS) and the Texas Department of State Health Services (DSHS) which states that a hospice may provide inpatient care directly in *space shared* with a Medicare-certified hospital, a SNF, or a Medicaid-certified NF in accordance with 2084A.

However, CMS also clarified that if there are state laws or regulations that govern a hospice's ability to provide inpatient care directly in *space shared* with a Medicare-certified hospital, a SNF, or a Medicaid-certified NF, the hospice must meet the more stringent requirement. DADS defines "*space shared*" as designated space that a hospice leases or occupies in a Medicare-certified hospital, a SNF or a Medicaid-certified NF. The Texas Health and Safety Code Chapter 142 (relating to Home and Community Support Services) and the Texas Administrative Code (TAC), Title 40, Part 1, Chapter 97 (relating to the Licensing Standards for Home and Community Support Services Agencies) allow a hospice to provide inpatient care directly using its own staff in *space shared* as described in the CMS SOM 2084A and as defined by DADS **only** if the hospice complies with DADS licensing requirements for a hospice inpatient unit.

For example, if a licensed and Medicare-certified hospice agency leases or occupies designated space in a Medicare-certified hospital, a SNF or a Medicaid-certified NF (that is not at the parent location) to provide inpatient services directly, the hospice is providing inpatient services in its own unit and the hospice must apply for an alternate delivery site license with an inpatient unit. The hospice also must comply with the Code of Federal Regulations (CFR), Title 42, Part 1,

Chapter §418, in §418.108 (relating to Short-term Inpatient care) and §418.110 (relating Hospices that provide inpatient care directly).

Title 42 CFR §418.110 sets forth the requirements for a hospice that provides inpatient care directly with hospice staff in its own inpatient unit. Hospice staff includes employees, volunteers and contract staff working under the hospice's control.

If a licensed and Medicare-certified hospice agency does not make inpatient care available directly in its own inpatient unit and with its own staff, it must make inpatient care available under arrangements with a Medicare-participating hospital or SNF, a Medicaid-participating NF (for respite care only), or an inpatient unit of another Medicare-certified hospice agency as described in 42 CFR §418.108. As specified in the CMS SOM 2084, if inpatient services are provided under such arrangements, the hospice must ensure that the services provided fully comply with all applicable standards in 42 CFR §418.108 and §418.110.

For further guidance on providing inpatient services directly in a hospital, a Medicare-certified hospice agency may refer to the DSHS letter "[Guidance for Hospitals Providing Hospice Services](#)." In addition, you may contact Patrick Waldron, Branch Manager, Health Facility Compliance Group, with DSHS at: 512-834-6700 x 2625 or via e-mail at: Patrick.Waldron.dshs.state.tx.us for further clarification regarding this matter.

If you have questions regarding the content of this letter, you may contact a HCSSA policy specialist in the Policy, Rules and Curriculum Development unit at 512-438-3161.

Sincerely,

[signature on file]

Mary T. Henderson
Assistant Commissioner
Regulatory Services

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