Nursing Shortage Expected to Continue Through 2024: How CMS Is Easing the Burden on Hospice Agencies

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The U.S. Department of Labor's Bureau of Labor Statistics has forecast a nursing shortage through 2024, with the United States projected to need more than half a million new nurses to replace those who leave the profession. This nursing shortage stems from a convergence of factors. First, the healthcare arena has experienced an influx of new patients due to the Affordable Care Act and an aging population, increasing the demand for healthcare services. Second, many baby boomers have already reached or will soon reach retirement age. Finally, there are barriers to education for new nurses, including a lack of programs, faculty, and clinical sites to support training needs.

Extraordinary Circumstance Designation

On December 21, 2018, the director of the Quality, Safety & Oversight Group of the Centers for Medicare & Medicaid Services (CMS) issued a memorandum that officially extends CMS's designation of the national nursing shortage as an "extraordinary circumstance." This extension will permit hospice agencies to use contract workers to provide core nursing services through September 30, 2020.

Under 42 C.F.R. 418.64, hospice agencies "must routinely provide substantially all core services" through their own employees. Hospice agencies may use contract staff in their facilities only if there are "extraordinary or other non-routine circumstances." These circumstances are generally unforeseen temporary events, such as "unanticipated periods of high patient loads, staffing shortages due to illness or other short-term temporary situations that interrupt patient care; and temporary travel of a patient outside of the hospice's service area."

CMS's designation of the nursing shortage as an "extraordinary circumstance" means that hospice agencies are exempt from the general rule requiring them to employ their own nurses to provide core nursing services. While this exemption will allow hospice agencies to hire contractors to supplement their own employee workforces, these agencies still will be responsible for all professional, financial, and administrative functions, as well as counseling, medical social services, and other core hospice services.

The memorandum also eases the paperwork burden on hospice agencies. CMS previously required that hospice agencies provide notification and a stated justification to CMS and the agency's state survey agency whenever they used contract staff during extraordinary circumstances. Under this memorandum, the
notification and justification are no longer required. Documentation, however, is still required if a hospice agency uses contract staff for other reasons and will be reviewed as part of the routine survey process.

**Key Takeaways**

This may be welcome news for hospice agencies struggling to care for patients, but there are some limitations these agencies may want to keep in mind. Notably, the "extraordinary circumstances" designation permits agencies to use contract staff only to supplement—not replace—their core nursing staff. Additionally, although hospice agencies may hire contract staff for core nursing functions, the exemption does not apply to other professional, financial, and administrative functions. Finally, hospice agencies should remember that they must still document their use of contract staff when it is due to a reason other than the nursing shortage.