APA-1
11/96

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control 410 Department or Agency State Health Planning and Development Agency (Statewide Health Coordinating Council)
Rule No. 410-2-3-.10
Rule Title: In Home Hospice Services
_____ New X Amend _____ Repeal _____ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

* *

Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

* *

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Alva M. Lambert

Date 11-2-12

DATE FILED
(STAMP)

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 In Home Hospice Services

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

SUBSTANCE OF PROPOSED ACTION:
To provide that no determination of need for in-home hospice services shall be made by the Statewide Health Coordinating Council (SHCC) until December 31, 2013, following an analysis of the need methodology using data reported annually to the State Health Planning and Development Agency by Alabama hospice providers.

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 SHCC shall be made in writing on or before January 3, 2013, and shall be made to:

Nicole Horn, Executive Secretary
State Health Planning and Development Agency
P. O. Box 303025
Montgomery, Alabama 36130-3025

On January 25, 2013, at 10:00 a.m., the SHCC shall conduct a public hearing in the Old Archives Chamber, 2nd Floor, Alabama State Capitol, Montgomery, Alabama, at which time it shall consider the Proposed Rule, along with all written and oral submissions with 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 3, 2013

CONTACT PERSON AT AGENCY:
Nicole Horn
100 North Union Street
RSA Union, STE 870
Montgomery, AL 36104
(334) 242-4103

Alva M. Lambert

Alva M. Lambert, Executive Director

410-2-3-.10 **In Home 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. 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 "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) 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.

(3) Availability and Accessibility

(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.

1. The SHCC approved the following methodology with the understanding that additional data is required in order to conduct a thorough investigation of both the appropriateness and accuracy of any need projections derived from it. To properly analyze the methodology, no determination of need will be made by SHPDA until ~~January, 2013~~ December 31, 2013. SHPDA staff will utilize this time to analyze the methodology using data obtained through all Alabama Hospice Providers who are required, through this section, to collect and provide data as required by SHPDA on an annual basis. SHPDA will present to the SHCC a preliminary finding of projected need based on the aforementioned methodology prior to the end of the aforementioned 3 year period, to allow the SHCC to assess the results and determine if the methodology should be further revised through an amendment to the SHP.

2. Need Assessment for Hospice Services.[1]

3. The need for additional Hospice Services shall be calculated as follows:

HPR = Hospice Deaths by County/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.

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

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

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

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

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

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:

1. 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

2. 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.

3. Each entity that (1) was licensed by the Department of Public Health to provide in-home hospice services in a county, based upon a non-reviewability determination letter issued

to the entity by the Alabama State Health Planning and Development Agency under ALA. CODE § 22-21-29(d) (1975 as amended) listing said county, but did not provide service by May 13, 2009 or during the preceding twelve months; or (2) that established itself with the Alabama State Health Planning and Development Agency by obtaining a non-reviewability determination letter by July 7, 2006 under the former provisions of 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") within twelve (12) months thereafter 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, with need presumed, using such application forms as may be required by SHPDA. Hospice providers obtaining a CON pursuant to this Section (3) shall file a single application and be granted a single CON encompassing all of the qualifying counties. For purposes of this Section only, an entity shall be considered a separate hospice provider for each Medicare Provider Number held at the time of application (e.g., if an entity has multiple hospice provider numbers, a separate application must be filed, and CON issued, for each); provided, however, that a corporate entity having multiple provider numbers shall not receive more than one CON per county. Such CON authority may not be subsequently divided, e.g., a hospice provider may not separate such authority into separate CONs for future disposition. All applications submitted pursuant to the non-substantive review provisions of 410-2-3-.10(2)(b) and (c) shall include an acknowledgement of this restriction. Any CON authority granted pursuant to this section shall be combined, under a single CON, with any other CON authority obtained under the same provider number under Certificate of Need Review Board emergency rule 410-1-5C-.01ER.

4. 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.

5. 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: November 22, 2004. Amended: Filed February 1, 2010; effective March 8, 2010.
Amended: January 24, 2012; effective: February 28, 2012.