

DRAFT EMERGENCY SHCC RULE

410-2-3-.10 "In-Home Hospice Services" is replaced in its entirety by the following:

410-2-3-.10 In-Home Hospice Services

(1) 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 provides 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.

(2) Methodology

(a) 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 SHPDA by July 7, 2006 and filed an application for licensure as a hospice with ADPH within twelve (12) months thereafter. Since this time, the Legislature has passed a resolution clarifying its intent that licensed hospice service providers as of May 13, 2009, be allowed to continue operations for their then existing service areas pursuant to a non-substantive review process at SHPDA. In addition, 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.

(b) It is critical that existing patients of such providers continue to be provided with much needed health care, and this emergency rule is necessary to address an immediate danger to the public health and welfare. For this reason, need will be presumed for any existing in-home hospice service provider that demonstrates that it was providing such care under ADPH licensure in a particular county as of May 13, 2009 or the proceeding twelve months.

(c) Providers who meet the requirements of 410-2-3-.10(2)(b) above should file an application for a Certificate of Need ("CON") with SHPDA on or before November 1, 2009, to be granted a CON before May 1, 2010, which shall be the date after which all in-home hospice providers existing as of the effective date of the Act must have a CON under this provision. SHPDA shall seek assistance from ADPH for assistance in verifying that such applicants were providing in-home hospice care as of May 13, 2009. Applicants that meet the aforementioned criteria and certify that their application does not involve a capital expenditure in excess of \$500,000 shall have their applications considered as part of a non-substantive review process providing for direct review and approval by the Certificate of Need Review Board. The SHCC recommends that SHPDA adopt an emergency rule providing for a reduction in the minimum filing fee associated with such CON applications for existing providers. The grant of a CON under this provision shall be conditioned on timely compliance with any data request issued on an annual basis by the SHPDA Staff in conjunction with the adoption of long-term need methodology, including any request for 2007 and 2008 information that may be required as part of the application process.

(d) An existing provider that obtains a CON that subsequently fails to substantially comply on a timely basis (as may be defined by the SHCC, with 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 thirty day period until such time as the provider complies fully with all outstanding SHPDA data requests. Any provider that has deemed to have ceased operations under this chapter shall be prohibited from submitting any CON application for additional authority or from seeking consideration by SHPDA 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 operations 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.

(e) Existing hospice providers obtaining a CON pursuant to 410-2-3-.10(2)(b) and (c) above shall be granted a single CON encompassing all of the counties served. Such CON authority may not be subsequently divided, e.g., a hospice provider may not separate such authority into separate CONs for future disposition. This restriction shall not apply to CONs granted outside of the provisions of 410-2-3-.10(2)(b) and (c). 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.

(f) Hospice providers that have obtained CON authority as a result of the relocation of administrative offices since May 13, 2009 shall not be required to obtain a new CON for the counties addressed in such CONs as of May 13, 2009, but shall be otherwise subject to compliance with the data collection requirements of section (b) above.

(g) Within six (6) months of the effective date of this rule, the SHCC shall adopt a permanent rule adopting a long-term need methodology for in-home hospice care. Except as provided herein, no new CONs for hospice services shall be granted except as may be authorized in such future long-term need methodology.

Author: Statewide Health Coordinating Council (SHCC)

Statutory Authority: §§ 41-22-5, 22-21-260(6), (13) and (15), Code of Alabama, (1975)

History: Effective _____, 2009 (Emergency Rule).