



Department of Health

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HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

November 13, 2020

DAL: DHCBS 20-13
Subject: Guidance for Hospices during COVID-19
pandemic

Dear Administrator:

In recognition of the current blanket federal waivers granted to hospice providers by the Centers for Medicare & Medicaid Services (CMS) described below, the Department of Health will exercise enforcement discretion when conducting surveillance surveys for those hospice agencies which are acting in accordance with the requirements of the federal waivers detailed below, but are not acting in accordance with the commensurate state regulations:

- **10 NYCRR §793.7(a)(6)(v)(b)**, which requires that volunteers provide services in an amount that, at a minimum, equals 5 percent of the total patient care hours of all paid hospice employees and contract staff.
 - Related federal regulation and waiver: 42 CFR §418.78(e), which requires hospices to use volunteers (including at least 5 percent of patient care hours). This federal regulation has been waived by CMS because it is anticipated that hospice volunteer availability and use will be reduced related to COVID-19 surge and potential quarantine. (Retroactively waived to March 1, 2020.)
- **10 NYCRR §793.7(n)**, which requires a registered nurse to make an on-site visit to the patient's home no less frequently than every 14 days to assess the quality of care and services provided by the aide and to ensure that services ordered by the hospice interdisciplinary group meet the patient's need. Provided, however, that in order for the Department of Health to consider exercising enforcement discretion with respect to this regulation, the hospice provider must assess the quality of care every 14 days through means of telehealth and must conduct an on-site visit every 21 days.
 - Related federal regulation and waiver: 42 CFR §418.76(h) which requires a nurse to conduct an onsite visit every two weeks, including waiving the requirement for a nurse or other professional to conduct an onsite visit every two weeks to evaluate if aides are providing care consistent with the care plan, as this may not be physically possible for a period of time. (Retroactively waived to March 1, 2020.)
- **10 NYCRR §793.3(e)**, which requires the hospice interdisciplinary group to update the comprehensive assessment in collaboration with the individual's attending physician, if any, as frequently as the condition of the patient requires, but no less frequently than every 15 days.

- Related federal regulation and waiver: 42 CFR §418.54(d), only to the extent necessary to modify the timeframes for updates to the comprehensive assessment by extending the time necessary to complete the required assessments from 15 to 21 days. (Retroactively waived to March 1, 2020.)

LIMITED EFFECTIVE PERIOD: This exercise of enforcement discretion will end once the public health emergency has ended, whether by decree by the Governor of the State of New York or expiration of the State of Emergency declared under Executive Order 202, or upon the expiration of the CMS blanket waivers set forth above, whichever is sooner. Thereafter, Department of Health surveys will be conducted pursuant to all effective state laws and regulations.

For a current list of all CMS blanket waivers, please visit:

<https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>.

CMS waivers specific to hospice can be found at: <https://www.cms.gov/files/document/covid-hospices.pdf>.

Sincerely,



Carol Rodat, Director
Division of Home and Community Based Services