

Hospice and Palliative Care Resources for the Coronavirus Disease (COVID-19)



NHPCO COVID-19 Update – 04/01/20

NHPCO has created this update for hospice and palliative care providers to share recent news and helpful links.

“You are there for your community. NHPCO is there for you.”

Policy Updates

NHPCO/HAN Advocate for Hospice Funding

On March 31, 2020 NHPCO sent a [letter to Vice President Pence, Secretary Azar and Administrator Verma](#) requesting that some funding from the new \$100 billion Public Health and Social Services Emergency Fund that was created in the \$2.2 trillion *Coronavirus Aid, Relief, and Economic Security (CARES) Act* be set aside for hospice providers. Hospice providers across the nation, including in “hot spots,” are serving the most vulnerable people during this national emergency and as a result have incurred considerable expenses (PPE, Labor/staffing costs) and lost revenue directly related to their COVID-19 response efforts. NHPCO estimates that hospices will need approximately \$800 million to \$1.1 billion to cover costs directly attributable to COVID-19 and not reimbursable by any other sources. Under the CARES Act, hospices are limited in accessing funding sources which will be made available to other providers including hospitals. In some cases, hospitals are eligible for enhanced payments from FMAP and add-on payments for COVID-19 patients during the emergency period, none of which will help the hospice community.

Hospice Care in the Nursing Home Question Answered on CMS Stakeholder Call, 03/31/2020:

CMS held two stakeholder calls on the recent release of 1135 blanket waivers and the interim final rule and were available to answer caller questions. On the 12:00 p.m. call on March 31, a caller from a long-term care community asked the question below about allowing hospice to come into the facility. The exchange is posted here from the transcript of the call:

COVID-19 National Stakeholder Call 12:00 PM EST. | 03/31/2020

>>Caller: Does this also include Hospice if we decide to -- because Hospice people, we have asked them not to come into our long-term care community, due to the fact that they travel to multiple homes and multiple nursing homes. And they're telling me that they have a 14-day required search. Is that also going to be waived?

>>CMS Representative: That 14-day on site recertification has been waived in terms of in person. Those can be done through telehealth.

>>Caller: And if they're not set up for telehealth, that's the criteria that we issued is to ask them to do telehealth only. And they said they have not been approved. Is there a fast track for those Hospice to be approved?

>>CMS Representative: There's not a formal approval. It's if they have the means to be able to conduct those visits with whatever technology they have available.

>>Caller: Okay. So just for clarity, we can issue a -- that we are refusing Hospice insurance due to the risk of COVID-19 in our community that is pretty prevalent, and that they can refer to telehealth for the waiver for the 14-day.

>>CMS Representative: The one thing we want to stress, any healthcare workers are going in to provide direct care should still be able to do so as long as they have appropriate PPE and meet whatever screening you have in place at your facility. We still want healthcare workers to be able to provide direct care to their patients if for example they're being provided Hospice care they should be able to receive direct care, but the recertifications we've waived and providing other options for that to occur.

Billing for Physician Visits

By Jean Acevedo or Acevedo Consulting

Q: The hospice physician or NP does direct medical care as a part of f2f. And now it is telehealth. How do they bill?

A: The physician or NP would document, code and bill as they would prior to this PHE for the medically necessary component of the F2F visit. The only difference would be that the ub04 claim to part a would have modifier 95 on the line with the billable e/m code.

Q: Under what circumstances would the hospice doc bill Part A? Does the telehealth part of this matter on the Part A side?

A: As was the case prior to the PHE and the 1135 waivers, a hospice employed or contracted physician's medically necessary visits (those for care and treatment outside of regulatory-required visits) are billed to part A on the hospice claim. The only difference is that, to indicate that the visit was provided via telehealth versus in-person, modifier 95 would be appended on the claim to the doctor's E/M code.

Families First Coronavirus Response Act: Application of the FFCRA "Health Care Provider" Exemption to Hospices

By: Erin Burns and Meg SL Pekarske, Husch Blackwell LLP

The [Families First Coronavirus Response Act](#) (“FFCRA”) goes into effect today, April 1, 2020, and applies to leave taken between April 1, 2020 and December 31, 2020. The FFCRA expands certain medical leave rights previously established by the Family and Medical Leave Act (“E-FMLA”) to provide up to twelve (12) weeks of paid, job-protected leave for employees with or school closure or childcare coverage issues related to the current coronavirus pandemic. The FFCRA also provides for two (2) weeks of paid sick leave under the Emergency Paid Sick Leave Act (“E-PSLA”) for certain COVID-19-related reasons (the E-FMLA and E-PSLA are collectively referred to as “Expanded Leave”). However, employers who employ “health care providers” may, but are not required to, exempt these individuals from Expanded Leave. Most, if not all, of a hospice’s employees will fall within the broad definition of “health care provider.” Therefore, hospices will need to evaluate who of its employees it will exempt or not, being certain to treat similarly situated employees equally and to consider the potential impact to its workforce.

What Is Expanded Leave? The FFCRA’s Expanded Leave provides employees of a public employer or private employer with fewer than 500 employees, who have been on the job for at least 30 days (except for E-PSLA leave, which is available immediately), the right to take up to 12 weeks of job-protected leave for a Public Health Emergency. The amount the employee is paid during the Expanded Leave depends on the type of leave, as well as the reason for the leave and ranges from 100% of their regular rate of pay to 2/3 of their regular rate of pay. For more on the reasons Expanded Leave is available and the applicable rate of pay, please see Question #7 of the Department of Labor’s (“DOL”) FFCRA Questions and Answers, available here.

Who Can Be Exempted from Expanded Leave? If an employee is considered a “health care provider,” and their employer chooses to exempt the employee from eligibility under the FFCRA, the employee will not be entitled to Expanded Leave. For exempted employees, leave for COVID-19-related reasons would be unpaid under traditional FMLA, unless the employee elects to use other benefits already provided by its employer (e.g., PTO/vacation).

A “health care provider” is defined broadly as “anyone employed at any doctor’s office, hospital, health care center, clinic, . . . nursing facility, retirement facility, nursing home, home health care provider, . . . or any similar institution, employer, or entity.” (See Question #56 of the DOL’s FFCRA Questions and Answers, available here) (emphasis added). A hospice is a “similar institution” to a home health care provider, and therefore its employees would fall within this broad definition, and in turn, gives hospices the option to exempt its employees from the Expanded Leave.

What Does a Hospice Need to Do? Hospices should consider taking the following action:

1. Confirm the hospice is an employer to whom the FFCRA applies. If unsure, the hospice should consult a labor and employment attorney.
2. Decide if the hospice will exempt its employees who meet the definition of “health care provider” from Expanded Leave. Whether to exempt these employees from Expanded Leave is up to the discretion of each hospice and, ultimately, a business decision. Either way, hospices are encouraged to develop and implement a policy that is uniformly applied, clearly demonstrating the hospice’s position on the FFCRA’s Expanded Leave, and whether and to whom the “health care provider” exemption applies.

For additional guidance related to labor and employment questions, please check out the [Husch Blackwell Labor and Employment Team’s Workplace Issues and COVID-19 page](#).

Provider Updates

NEJM Article

We share a link to an article from the *New England Journal of Medicine*, [Perspective: Novel Coronavirus and Old Lessons — Preparing the Health System for the Pandemic](#) (Mar 2020).

Resources

New Resource from the CDC

- [Decontamination and Reuse of Filtering Facepiece Respirators using Contingency and Crisis Capacity Strategies](#)

NHPCO COVID-19 Discussion of Latest Updates - April 16

Join NHPCO on Thursday, April 16 from 12:30 – 1:30 pm ET for the next free COVID-19 webinar. NHPCO is offering a complimentary webinar to update the field on topics such as emergency preparedness, a review of the latest CDC recommendations, and relevant public policy implications. A recording of the webinar will also be available to registrants so you can tune in as your schedule permits. [Register online](#).

Previous NHPCO Webinar Recordings and Slides

If you missed the two free webinars that NHPCO put out in March, you can find the presentation recording and the slides linked on the nhpc.org/coronavirus page, just scroll to the March Webinars section.

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