

HOME HEALTH AND HOSPICE NEWS

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ADVANCE PRACTICE NURSES AS ATTENDING PHYSICIANS IN THE HOSPICE SETTING

This newsletter addresses the permissibility of, and limitations on, a licensed and certified hospice using the services of a Nurse Practitioner (“NP”), or Advanced Practice Nurse (“APN”), as the attending physician for hospice patients under the Medicare rules, Texas hospice licensing standards, the Nursing Practice Act, and Board of Nurse Examiners (“BNE”) rules.

MEDICARE RULES

Medicare rules allow hospice patients to designate a NP/APN to be their attending physician as long as: (1) state law allows it (and has established training and educational requirements to permit nurses to act in the NP capacity) and, importantly, (2) the NP is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care. This requirement that the NP must be identified by the patient as already having the most significant role in the patient's medical care at the time of election of the hospice benefit is critical because it restricts the ability of patients to select a new NP -- including a hospice-employed or contracted NP -- to act as their attending physician at the time they elect hospice. The Medicare rules were designed to allow individuals who did not have a regular physician and only saw a nurse practitioner prior to electing hospice to continue to use that NP as their attending physician in the hospice setting.

Under Medicare, there are restrictions placed on the NPs acting as attending physicians, including restrictions on certifying and recertifying the terminal illness, signing the Plan of Care as the physician, and serving as the physician member of the interdisciplinary team, etc. In addition, an NP/APN is only considered to be the attending physician when he or she furnishes services that would ordinarily be furnished by a physician, not a nurse. In other words, claims may not be submitted for ordinary nursing services furnished by an NP/APN, simply because that nurse has an NP or advance practice designation.

TEXAS HOSPICE RULES

The Texas hospice licensing statute and regulations do not specifically address (either to prohibit or to allow) the use of APNs as attending physicians in the hospice setting. The regulations at 40 T.A.C. § 97.2 define an “Advance Practice Nurse” as an RN approved by the BNE to practice as an APN and who maintains compliance with the rules of the BNE. The licensing rules also define a “Practitioner” to

include an APN. However, the rules define a “Physician” as an M.D. or D.O. only. There is no separate definition of “Attending Physician.” At present, DADS does not have any plans to update these rules to include APN in the definition of physician, or to add a definition of “attending physician” that would include an APN.

The Department of Aging and Disability Services’ (DADS) current position is that, absent specific guidance from the Board of Nurse Examiners on the requirements for an APN to act as attending, the practice is not permitted in the hospice setting. This does not mean, however, that an APN may not furnish physician services to hospice patients. APNs may serve as physician extenders in furnishing physician services to patients who have designated the physician as their attending. This practice must be conducted under a formal written collaboration arrangement between the physician and the NP, including the use of physician-directed protocols, and oversight and supervision by the physician. One question that remains unclear is whether the hospice's Medical Director may be the supervising physician for APNs acting as attending physicians.

NURSING PRACTICE ACT AND BNE RULES

The Texas Occupations Code governs the practice of nursing generally. The BNE rules define various scopes of practice for APNs, and address training and education requirements generally. However, the practice areas for the APN designation are focused on clinical areas of expertise, not the setting in which the APN may furnish services. It is unclear in the BNE rules what advanced training and education would be required for an RN to provide services to hospice patients as an “attending physician,” if at all. Because hospice patients have a variety of illnesses and accompanying needs, it appears difficult to define a scope of practice that is specific to that setting.

DADS is reportedly planning to meet with the BNE to obtain clarification of the BNE's position on APNs and, hopefully, provide additional guidance to the provider community. In the interim, hospices are cautioned that the use of an APN as an attending physician may be severely limited.

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