



April 27, 2020

Dr. Randall Williams
Missouri Department of Health and Senior Services
912 Wildwood
PO Box 570
Jefferson City, MO 65102-0570

Dear Dr. Williams:

The Missouri Alliance for Home Care (MAHC) and the Missouri Hospice and Palliative Care Association (MHPCA) want to thank you for your leadership in this time of extraordinary challenge for Missouri and our entire country. The providers we represent are all focused solely on doing what is best for our patients, their families, and our program staff and volunteers during this challenging time. Because over 95% of our services are delivered in homes and other places where people live (such as long-term care facilities), it is vital to maintain access to high-quality hospice and home health care during this emergency.

While we have a list of issues that have been or are being addressed through 1135 waiver requests, we wanted to express an ongoing concern we have related to a memo released by the Division of Regulation and Licensure, Section for Long Term Care Regulation and Bureau of Home Care and Rehab Standards within the Department of Health and Senior Services.

During the initial onset of the COVID-19 pandemic, for weeks, Hospice and Home Health providers statewide were being denied access to nursing and assisted living facilities citing visitation guidance released by CMS. After concerns from the industry, **REVISED guidance** ([CMS version](#)) was issued on March 13 by both CMS and DHSS ([DHSS version](#)). Portions of that revised guidance included:

*Facilities should restrict visitation to all visitors and non-essential health care personnel, **except** for certain compassionate care situations, such as an end-of-life situation.*

For individuals that enter in compassionate situations (e.g. end-of-life care), facilities should require visitors to perform hand hygiene and use Personal Protective Equipment (PPE),.....

Exceptions to restrictions:

• **Health care workers:** Facilities should follow CDC guidelines for restricting access to health care workers found at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/quidancerisk-assesment-hcp.html>. This also applies to other health care workers, such as hospice workers, EMS personnel, or dialysis technicians, that provide care to residents. They **should be permitted** to come into the facility as long as they meet the CDC guidelines for health care workers.

When visitation is necessary or allowable (e.g. in end-of-life scenarios) facilities should make efforts to allow for safe visitation for residents and loved ones.....

While this revised guidance did help alleviate some of the denied entries, it became clear from providers reaching out to our respective associations, that long-term care facilities were continuing to turn away hospice and home health care providers. We reached out to both the Bureau of Home Care and Rehab Standards and the Section for Long-Term Care related to our continued concerns. We were advised to notify our providers to reach out directly with facility specific information related to denied entry. They would handle on a case-by-case basis and contact the facilities where this continued to occur.

On Friday, March 20th a memo was sent from the Bureau of Home Care and Rehab Standards, the Section of Long-Term Care and Regulation (SLCR), and the Division of Regulation and Licensure to all Missouri Hospice agencies and Long-Term Care facilities regarding new Missouri [Guidance on Hospice Care in Long-Term Care facilities](#). We were only notified of this memo a day prior to its release and expressed our immediate concerns related to the information. In our conversations with DHSS staff, it was indicated that recent events of increased infections in other state's long-term care facilities was the reason for this action. CDC's guidance already addresses this with the following: *Facilities experiencing an increased number of respiratory illnesses (regardless of suspected etiology) among patients/residents or healthcare personnel should immediately contact their local or state health department for further guidance.* We did not agree with the course of action referenced in the memo but, unfortunately, the memo was sent with no changes related to our concerns.

While we agree with their stance that the utmost importance is ensuring each resident receive appropriate care while limiting the number of people entering the facilities, we do not agree that this should apply to hospice and home health care agencies.

Hospice and home health care workers are **not visitors** who are untrained on infection prevention and control. Permitting facility access by properly trained and equipped hospice and home health staff to conduct essential in-person healthcare visits is consistent with direction and guidance from the Centers for Medicare and Medicaid Services (CMS) and the Centers for Disease Control and Prevention (CDC).

The memo **implies** that a long-term care facility has the **option** to deny entry to hospice provider staff and gives them the option to “**hopefully**” meet the patients end-of-life needs with **offsite** consultation and coordination with the hospice provider, such as virtual communications (phone, video-communication, etc.).

The Governor's own [order](#), released Saturday, March 21, **allows** those to enter who provide critical assistance. To release a memo that now implies that it gives the discretion to allow nursing homes, long-term care facilities, retirement homes or assisted living facilities in MO to deny hospice and home health care provider staff (or those who provide critical assistance) entry **and** goes against CMS guidance and the Governor's recent order is very concerning.

During this same time period, the denied entries also put Hospice agencies out of compliance with certain Medicare regulations. Thankfully, some of those issues have now received waiver approval from CMS but not all are resolved. One issue is related to the face-to-face requirement for hospice recertification. A CMS waiver approved telecommunication to meet this requirement, however it does require the use of two-way audio/video. There are many rural areas where internet connection and signal strength do not allow for this option and/or there are limitation to facility staff's time in helping with the telecommunication process.

We continue to appreciate the support of the Bureau for Home Care and Rehab Standards staff who have verbally stated they will work with providers during this unique time and that providers should

document the situation, however, we have not received guidance from CMS or the fiscal intermediary on how they will address claims that don't meet the requirements. This action continues to put hospice providers at an unnecessary risk with CMS, and again, goes against CMS guidance and Governor Parson's recent order.

The memo also states *"during compassionate care situations, such as when end of life is imminent, facilities should ensure residents receive appropriate care and **MAY** allow hospice staff, including non-essential health care personnel (such as clergy, hospice social workers, etc.) access during this time"*. While most nursing homes provide appropriate care to their residents, most are not prepared or have trained staff to care for the specific needs of a hospice patient and should not be allowed to make this decision alone.

When a nursing home resident is referred for care under the Medicare Hospice Benefit, the hospice assumes responsibility for the professional management of many interdisciplinary services that supplement the usual care provided by nursing home staff. The process of delivering end-of-life care continues within the dual regulations of the nursing home and the hospice. Thus, the care plan must reflect hospice philosophy and must be based on an assessment of the patient's needs and specific living arrangement in the nursing home

In a nursing home setting, hospice helps patients, families and nursing home staff by providing regular visits by a hospice Registered Nurse who has special training and expertise in end-of-life care. The hospice nurse visits the patient as needed and is on call, with other hospice nurses, 24 hours a day, seven days a week, for support of the nursing home staff, the terminally ill patient and the patient's family.

As leaders and healthcare providers, we are all aware of certain regulatory flexibilities and waiver requests, etc. during this pandemic period, but we feel we are all forgetting the most important people affected by this decision, the person facing near death and their families. Families in need of hospice care should be able to concentrate on the comfort and care of their loved one without the worry of unacceptable safety and medical standards. We already know the devastation that our families are experiencing by not being allowed to visit their loved ones during the pandemic and we can only imagine the fear and despair these end-of-life patients are facing being alone during this journey. To deny them the comfort of their hospice provider is inhumane, especially when CMS guidance and the Governor's order **does not** require this.

Since the memo's release on March 20, both MAHC and MHPCA, along with the Bureau of Home Care & Rehab Standards continues to receive numerous calls and emails from hospice providers who have been denied entry, as well as some of the hospice patients' families reporting their family member in certain long-term care facilities are not even having their basic needs met such as bathing, eating, and receiving timely pain medications; one complaint related to the hospice patient dying and no contact was made to the hospice agency. These families have indicated that they felt some comfort from the hospice nurses and aides that had been providing services being their eyes and ears during this time, but now feel there is not much communication about their loved ones which is only adding to their stress and anxiety.

In further conversations with the Division Director of Licensure and Regulation, Dean Linneman, we continued to express our concerns. The response we were given was to work with our hospice agencies to limit the number of hospice staff entering long term care facilities. Since the onset of the COVID-19 pandemic and with the release of various CMS guidance, hospice agencies have been working with facilities and reducing the number of their hospice staff from entering facilities. Many of those on the hospice interdisciplinary team such as social workers, chaplains and volunteers have been doing their

best to communicate and coordinate services via telephone, video connection, etc. Nurses have even reduced the number of visits if the patient's needs continue to be met. We fully feel our hospice providers have already limited their staff's entry into long-term care facilities as much as possible. Now requesting to limit the hospice nurse even further is not the answer nor asking hospice agencies to transfer patients among each other to allow only one hospice to serve all hospice patients within a facility.

We were also asked to reach out to the long-term care associations for their help in communicating with their providers related to our concerns. The following is the response we received – *"We feel that DHSS has provided guidance to LTC facilities regarding hospice services in LTC communities and we have sent that guidance out as well to our members but understandably many providers are concerned about allowing anyone in their community other than staff. Allowing outside agencies that are in multiple locations rightfully concern many providers. With that said, if you have specific facilities/situations that we can help with we will try to assist in these communications but obviously we cannot force them."*

We were also informed by Mr. Linneman that the memo does not tell long term care facilities to deny hospices from entering. Again, as we referred to earlier, we feel the memo clearly **implies** this. We are not asking for the state to "force" facilities to allow entry, merely to clear up the unintended consequences the memo has caused. The memo states "..... **"hopefully"** meet the patients end-of-life needs with **offsite** consultation and coordination with the hospice provider, such as virtual communications (phone, video-communication, etc.). Also, based on the number of calls and complaints the Department has received and continues to receive, it is a **clear** indication that some long-term care facilities have interpreted the memo as guidance to restrict entry of hospice agencies, no matter which discipline of staff. In further conversations with Mr. Linneman, we requested that a clarification memo be sent out to alleviate the wide misinterpretation of the guidance. We were denied this request and were told each long-term care facility that the Section for Long Term Care was made aware of "misunderstanding/misinterpreting" the memo, would be called individually to explain the intent.

The March 13 revised CMS and DHSS guidance and a clarification memo released on March 20 by CMS in [QSO-20-20 Prioritization of Survey Activities](#) where CMS again, emphasizes on page 8, Section: **Access for Healthcare Staff**: *CMS is aware that some providers (nursing homes, assisted living facilities, etc.) have significantly restricted entry for staff from other Medicare/Medicaid certified providers who are providing direct care to patients. In general, if the staff is appropriately wearing PPE, and do not meet criteria for restricted access, they should be allowed to enter and provide services to the patient (interdisciplinary hospice care, dialysis, organ procurement, home health, etc.) should all be considered.* As a matter of fact, the QSO-20-20's clarification refers to the full interdisciplinary hospice care team and home health staff.

Requiring Section for Long Term Care staff to be spending countless hours contacting facilities individually to make them aware of the intent of the memo seems to be a waste of state resources, especially during this crisis.

More recently, we have continued to inquire with DHSS staff about recent updated/revised CMS guidance memos where CMS continues to address the need to allow hospice and home health into long-term care facilities. Specifically, [QSO-20-18-HHA](#) revised April 23rd and [QSO-20-28-NH](#) issued April 24th both address this issue and reiterate that home health and hospice staff are NOT visitors and should be allowed to enter and provide services to the patient.

Therefore, we respectfully request that the Department of Health and Senior Services, with the input from MAHC and MHPCA release updated guidance to clear up any misinterpretation of the March 20 memo. The guidance should address the complaints of basic care needs not being met, and at a minimum, make it clear that hospice and home health nurses and aides should be allowed into long-term care facilities when appropriately wearing PPE. Again, hospice and home health care workers are **not visitors** and are trained on infection prevention and control.

We appreciate the opportunity to share our concerns with you and stand ready to work on a solution to this important issue. Please know that MAHC and MHPCA are alongside you in the urgent work to flatten the curve and save the lives of those we care for.

Respectfully,



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CC: Dean Linneman
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