

Section 1

Commissioner's letter

Any further correspondence



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH
Office of Government Relations

January 7, 2013

Senator Andres Ayala, Co-Chair
Representative Selim G. Noujaim, Co-Chair
Regulation Review Committee, Room 011
State Capitol
Hartford, CT 06106

Re: *Proposed Adoption of Emergency Regulations Permitting the Commissioner to Waive § 19-13-D68(e)(1) of the Regulations of Connecticut State Agencies*

Dear Senator Ayala and Representative Noujaim:

Pursuant to section 4-168 of the General Statutes, the Department of Public Health is submitting, for your consideration and approval, the enclosed proposal to adopt, through emergency regulation, an amendment that would authorize the Commissioner or her designee to waive § 19-13-D68(e)(1) of the Regulations of Connecticut State Agencies. Such regulation requires a home health care agency to employ one full-time supervisor of clinical services for each fifteen or less, full-time or full-time equivalent professional direct service staff. On January 2, 2014, Commissioner Jewel Mullen made a finding that there would be an imminent risk to the public health of Connecticut's citizens if these regulations were not adopted.

Should you have any questions regarding the proposed emergency regulation, please feel free to contact me at (860) 509-7246. Thank you for your assistance in this matter.

Sincerely,

Elizabeth Keyes, JD, MPA
Executive Assistant to the Commissioner



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Dannel P. Malloy
GOVERNOR
STATE OF CONNECTICUT

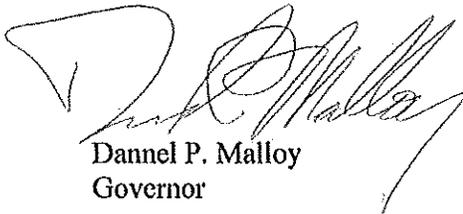
January 6, 2014

Commissioner Jewel Mullen
410 Capitol Avenue
Hartford, CT 06134

Dear Commissioner Mullen,

Thank you for your memorandum dated January 2, 2014 describing the need to adopt emergency regulations to address the shortage of continuous skilled nursing care available to the most vulnerable citizens of our state. The proposed changes to current regulations are necessary to address the capacity shortage and ensure these critical services are available to those who need them most. Pursuant to Connecticut General Statute § 4-168(f), I hereby approve your findings and authorize you to proceed with the adoption of these emergency regulations in accordance with Chapter 54 of the Connecticut General Statutes.

Sincerely,



Dannel P. Malloy
Governor

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH



Jewel Mullen, M.D., M.P.H., M.P.A.
Commissioner

Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

Office of the Commissioner

January 2, 2014

Governor Dannel P. Malloy
Office of the Governor
State Capitol
210 Capitol Avenue
Hartford, CT 06106

RE: Finding of Imminent Peril to the Public Health Necessitating the Adoption of Emergency Regulations Permitting the Commissioner to Waive § 19-13-D68(e)(1) of the Regulations of Connecticut State Agencies.

Dear Governor Malloy:

In accordance with Connecticut General Statutes § 4-168(f) and as further described below, I have made a finding that an imminent peril to the public health of the residents of Connecticut exists requiring adoption of an emergency regulation that would permit the Commissioner or her designee the authority to waive § 19-13-D68(e)(1) of the Regulations of Connecticut State Agencies, which requires a home health care agency to employ one full-time supervisor of clinical services for each fifteen or less, full-time or full-time equivalent (FTE) professional direct service staff.

I. LEGAL REQUIREMENTS FOR HOME HEALTH CARE AGENCIES

Connecticut General Statutes § 19a-490(d) defines a home health care agency, in part, as “a public or private organization, or a subdivision thereof, engaged in providing professional nursing services and the following services, available twenty-four hours per day, in the patient's home or a substantially equivalent environment: homemaker-home health aide services, physical therapy, speech therapy, occupational therapy or medical social services. The agency is required to provide professional nursing services and at least one additional service directly and all others directly or through contract. An agency shall be available to enroll new patients seven days a week, twenty-four hours per day.” A home health care agency may provide intermittent skilled nursing care or continuous skilled nursing care. “Intermittent” care is defined by the Centers for Medicare and Medicaid Services as “skilled nursing care that is either provided or needed on fewer than 7 days each week, or less than 8 hours each day for periods of 21 days or less, with extensions in exceptional circumstances when the need for additional care is finite and predictable”. “Continuous skilled nursing care” is defined as a total of 2 or more hours of skilled nursing care provided in a 24 hour period by a home health care agency licensed under Connecticut General Statutes § 19a-493. Continuous skilled nursing care is typically of a protracted duration.

Section 19-13-D68(e)(1) of the Regulations of Connecticut State Agencies requires a home health care agency to employ one full-time supervisor of clinical services for each fifteen or less, full-time or full-time equivalent (FTE) professional direct service staff. This requirement applies to both intermittent and continuous skilled nursing care



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services provided by a home health agency. The requirement presents a greater challenge to those offering continuous skilled nursing services. The largest group of patients receiving continuous skilled nursing care are children who are medically fragile. Many of these children require 23 hours a day of skilled nursing care, necessitating the agency providing continuous care in these cases to employ up to 5 FTEs for each such case. In such circumstances, a full-time supervisor of clinical services could only supervise 3 cases. By contrast, in an agency that is providing only intermittent care, the supervisor can supervise more than 50 cases.

The required FTE ratio of supervisor of clinical services to professional direct service staff oversight set forth in Connecticut Public Health Code is atypical. The Department has reviewed home health care agency regulations for 12 states, including three New England states, and has found that all twelve have an organizational structure that includes an Administrator and Director of Nurses or Nursing Supervisor who is responsible for the overall management of operations. However, none of the twelve mandate prescribed staffing ratios for supervision.

II. BACKGROUND

On August 28, 2013, Maxim Healthcare Services (hereinafter Maxim), a home health care agency that was providing continuous skilled nursing care to approximately 44 medically complex patients notified the Department of Public Health of its intent to close. At the time, Maxim and the Department anticipated that the care provided to these patients would be assumed by other licensed home health care agencies without challenges.

Maxim's 44 cases receive a median of 16-23 hours of continuous skilled nursing care on a daily basis with parents assuming the nursing care duties for the remaining hour(s) of the day. The patients are dependent for activities of daily living. They need mechanical respiratory ventilation and enteral nutrition. The fragility and chronicity of their medical needs requires consistent care planning and care givers. Achieving consistency is assured when one agency is providing the staff needed for continuous skilled nursing cases. While the majority of these patients are children, these patients age in the system and in most cases continue to require this high level of care throughout their lives.

Great effort has been made to transfer the care of Maxim's medically complex continuous skilled nursing cases. However, the number of agencies that are equipped either by qualified staff or competent supervisors is limited in Connecticut. Less than 10% of the licensed home health care agencies in Connecticut offer or provide this service line of care for medically involved children. Very few agencies have elected to provide continuous skilled nursing as it is cost prohibitive due to the requirement that such agencies provide one full-time supervisor for each FTE professional direct staff. As previously stated, in cases where 23 hours of continuous skilled nursing care is provided daily, compliance with the this requirement could mean that a supervisor of clinical services is providing oversight to as many as 5 professional direct service staff per case limiting that supervisor to only 3 cases. This level of supervision is not efficient and while the professional direct service staff are not only direct care providers, they are also actively engaged in case management of the patients. In an era when we are expected to do more with less and work smarter, this requirement is onerous and not resourceful. This encumbrance has not persuaded home health care agencies to provide this level of care but rather has discouraged it.

III. FINDING OF IMMINENT PERIL TO THE PUBLIC HEALTH

In support of this finding of imminent threat to the public health necessitating the adoption of an emergency regulation, I hereby state the following:

1. Section 19-13-D68(e)(1) of the Regulations of Connecticut State Agencies requires a home health care agency to employ one full-time supervisor of clinical services for each fifteen or less, full-time or full-time equivalent professional direct service staff. This regulation, which effectively requires an agency providing continuous skilled nursing care to employ one full-time supervisor of clinical services for as few as three cases, as

described above, is burdensome and cost prohibitive for home health care agencies. Consequently, Section 19-13-D68(e)(1) has negatively impacted Connecticut's capacity to provide continuous skilled nursing care.

2. Maxim, a home health care agency that was providing continuous skilled nursing care to approximately 44 medically complex patients, has provided the Department of Health with its intent to close. Maxim's closing has created the need to place its 44 patients in other licensed home care agencies. The capacity of the remaining agencies that are equipped to provide continuous skilled nursing care has been reached.

3. Delay in establishing the commissioner's authority to waive § 19-13-D68(e)(1) will lead to the following adverse effects on the public health of Connecticut's citizens:

- Without access to continuous skilled nursing care, it will be necessary to transfer patients to an acute or chronic disease hospital or the patient might remain in the home unsafely without proper care. Transfer to a hospital setting will not be consistent with state and federal initiatives that promote home and community based supportive living for persons with medically complex needs. Additionally, the damaging effects of institutional care versus family based care include an increased risk of infection. It is often the infectious process that is life threatening to children with medically complex needs. In addition, the psychological harm with transfer trauma must always be a consideration, especially in view of altering the integrity of the family when considering the transfer of a child with medically complex needs to an institutional setting.
- Currently, there is no capacity remaining in Connecticut to provide continuous skilled nursing care to any new patients that may require such care, heightening the already existing access to care burden. The need for such care is likely to increase as advances in bio-medical engineering and technology are preserving life where, previously, certain disease states often meant loss of life, necessitating a realignment of our health care regulatory system to create additional capacity.

Therefore, in light of the findings articulated herein, in order to prevent harm to the public health of the citizens of Connecticut by maintaining access to continuous skilled nursing care for medically complex patients, and in accordance with the requirements of Section 4-168(f) of the Connecticut General Statutes, I do hereby find an imminent threat to the public health of the citizens of Connecticut, justifying the emergency adoption of this regulation.

IV. CONCLUSION

For all the reasons stated above, the Department requests approval of its finding of imminent peril to the public health of the citizens of Connecticut, and requests approval of the enclosed emergency regulation. If you have any questions, please contact Barbara Cass at (860) 509-7407, or Elizabeth Keyes at (860) 509-7246.

Sincerely,



Jewel Mullen, M.D., M.P.H., M.P.A.
Commissioner