

LEGAL, REGULATORY AND RISK MANAGEMENT ISSUES FOR HOSPICE VOLUNTEERS

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The fact that the federal regulations specifically require a level of volunteer activity at each hospice participating in the federal Medicare and Medicaid programs speaks to the uniqueness of the hospice model within the health care system. Caring and dedicated volunteers are important assets to any successful hospice program, and their contributions are a big reason why more and more individuals are turning to hospices for their end-of-life care. There are a series of obligations and issues to consider, however, when structuring a volunteer program to comply with the federal and state requirements.

Discussed below are the volunteer requirements in the Medicare conditions of participation, advice as to what hospice surveyors look for when examining a volunteer program, and suggestions to manage risk in your volunteer program. Remember that this only serves as an overview of federal requirements; individual states may have their own sets of obligations for hospice licensure.

I. Medicare Volunteer Requirements

Volunteers are required by federal regulations to provide administrative or direct patient care that adds up to 5 percent of the total patient care hours performed by all paid hospice staff. A hospice must document the ongoing activity of its volunteers in order to prove compliance with this 5 percent requirement. In addition, the hospice must be able to document the cost savings it achieves through the use of volunteers.

The hospice is required to show that volunteers are given sufficient training and orientation for the tasks that they are going to perform within the hospice, and the hospice must be able to document ongoing efforts to recruit and retain volunteers.

Finally, federal regulations require that the hospice gives residents a reasonable opportunity to visit with clergy or other members of religious organizations.

II. What the Volunteer Requirements Mean for the Hospice and Volunteer Coordinator

The Medicare State Operations Manual, Appendix M (the "Manual") gives surveyors guidance as they perform their survey visits to hospices for initial certification and re-certification. Surveyors are asked to evaluate how the hospice uses volunteers and to ensure that volunteers are qualified to perform the tasks they are given. The Manual concentrates on two main aspects of the volunteer requirements: The training of volunteers and proper documentation of the various volunteer requirements.

A. Training of Volunteers

Volunteers are supposed to receive training consistent with the specific tasks that the volunteers perform. To ensure appropriate training, surveyors are asked to look for evidence that volunteers are aware of the following:

- Their duties and responsibilities.
- The persons to whom they report.
- The persons to contact if they need assistance.
- Instructions regarding the performance of their duties and responsibilities.
- Hospice goals, services and philosophy.
- Confidentiality and protection of the patient's and family's rights.
- Family dynamics, coping mechanisms and psychological issues surrounding terminal illness.
- Procedures to follow in an emergency.
- Procedures to follow after the death of a patient.
- Guidance related specifically to their individual responsibilities.

B. Documentation

The federal regulations require a significant amount of documentation with respect to volunteers. All hospices should keep documentation on the following:

- A written description of the role and duties assigned to each volunteer.

- Volunteer activities. The type and duration of volunteer activities performed. As mentioned above, this is especially important in showing compliance with the 5 percent requirement.
- Recruitment efforts. The Manual lists copies of advertisements in local newspapers, bulletins, flyers or announcements as examples of satisfactory documentation.
- Cost savings. The Manual states that although there is no minimum cost savings that a hospice must realize through the use of volunteers, the hospice must document the cost savings it does realize. Documentation includes the types of necessary positions occupied by volunteers, the time that volunteers spend working in these necessary positions (not to include time spent attending educational meetings, fundraising activities or support meetings), and an estimate of the cost that the hospice would have incurred had the positions been staffed by paid and not volunteer staff.

III. Liability Issues For Volunteers and Hospices

A. Liability of Hospice

Generally, a hospice is liable for the acts and omissions of its volunteers, just as it is liable for acts and omissions of its employees. While volunteers have specific protections under the Volunteer Protection Act, the same cannot be said of hospices. In fact, the doctrine of charitable immunity that once protected charitable organizations such as hospices from liability has largely disappeared. Some states do provide protections for charitable organizations or health care organizations.

B. Personal Liability of Volunteers

The Federal Volunteer Protection Act of 1997 attempts to immunize volunteers at charitable and nonprofit organizations from liability for their acts and omissions if performed within their duties as a volunteer. The idea was to promote volunteer participation by trying to remove the fear of being sued for actions arising out of volunteer activities. The act preempts all state laws unless the state law provides more protection to volunteers than the federal act. In order to enjoy the protections under the federal act, all of the following are required:

- The volunteer must have been acting within the scope of his or her responsibilities when the act or omission occurred.
- If appropriate or required, the volunteer must have been properly licensed, certified, or authorized by the appropriate authorities in the state in which the harm occurred.
- The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.
- The harm was not caused by the volunteer operating a motor vehicle for which the state requires the operator to possess an operator's license or maintain insurance.

The statute does not apply to any misconduct which:

- Constitutes a crime of violence or an act of international terrorism.
- Constitutes a hate crime.
- Involves misconduct for which the defendant has been found to have violated a civil rights law.
- Involves a sexual offense.
- Involves the volunteer's use of alcohol or any other drug at the time of the misconduct.

IV. Risk Management Suggestions for Hospices

Liability insurance, while obviously an important piece in any risk management plan, is not the only consideration. As hospices depend heavily on the support of the public both in the form of monetary donations and volunteers, any mistake can bring unwanted publicity that could prove far more damaging in the long run than any legal damages that may arise out of the incident. The goal should be to reduce the incidents that give rise to any legal liability. The following are things to consider when implementing a risk management plan that contemplates a hospice volunteer program:

- Ensure that liability insurance extends to actions or omissions of volunteers. If it does not, a separate policy should be available to cover volunteers.
- Require volunteers to have a valid driver's license and automobile insurance if part of the volunteer's duties will involve driving. Have a system for monitoring this. (If volunteers are transporting patients, some carriers will specifically require a certain level of personal liability limits.)
- Have a detailed written job description for each volunteer. Liability often hinges upon whether the volunteer was acting within the scope of his or her

responsibilities. In addition, if a volunteer's job description is clear, volunteers will be less likely to act outside of their assigned duties.

- Be certain that when volunteer assignments require a professional license or certification that the volunteer maintains that active license or certification.
- Perform background checks on all potential volunteers.
- Document all aspects of the volunteer program. This is not only required by the Medicare conditions of participation, it is also an effective way to minimize risk.
- Closely supervise volunteer activities.
- Encourage volunteers to ask questions.
- Provide opportunities for volunteer training, both initially and on a continuing basis.
- Review any compensation arrangements you might have with volunteers. The Volunteer Protection Act does not apply to a volunteer if the volunteer is paid more than \$500 annually, and state protections may have similar provisions.
- Treat volunteers as you would paid staff, in terms of job descriptions, assignments and supervision.

V. Conclusion

Volunteers are vital to the success of any hospice organization. They provide enthusiasm, expertise, and a unique perspective that adds tremendous value to the organization. They also provide their own challenges. Hospices must comply with federal regulations while protecting the hospice and the volunteers from legal liability. This article has attempted to highlight the major federal volunteer requirements and pitfalls to avoid when setting up a hospice volunteer program.