

Long-Term Care Survey Alert

Compliance: Hospice on the Horizon: Will New Rule Bring Opportunity -- or a Survey Storm?

Tip: Agreement must spell out circumstances requiring hospice notification.

A new final rule regarding nursing homes' partnerships with Medicare-certified hospices could foster more collaborative end-of-life care in the long-term care setting, palliative care advocates say. But nursing homes intent on staving off citations should proceed with caution: Don't open your doors to a hospice provider until you are certain you are ready for a new layer of scrutiny from surveyors.

The final rule, published June 27 and effective August 26, is positive in that it spells out for the first time from the nursing facility perspective the details of what's expected in the legal agreement between nursing homes and hospice, says **Janet Feldkamp, RN**, an attorney with **Bensch** in Columbus, Ohio.

Until now, such partnerships were guided primarily by a hospice-focused rule (Section 418.112 of the hospice conditions of participation) published in 2008, leaving many legal and regulatory gray areas for nursing facilities. The new rule effectively revises nursing facility conditions of participation, Section 483.75(t).

The new rule complements the earlier hospice rule, and the forthcoming interpretative guidance for long-term care surveyors is likely to be informed by the companion hospice document as well.

Review These Agreement Basics

The new rule makes clear that nursing homes must respond to each resident's request for hospice care in a meaningful way — either partnering with a certified hospice to provide care in the facility or helping to arrange the resident's transfer to a setting where hospice care can be provided.

Essential first step: A hospice cannot legally provide care within your facility until you finalize your written agreement covering the points contained in the final rule, with authorized parties from both the facility and hospice signing the document.

Only one written agreement is required for each hospice that provides services in the facility, notes **Evie Munley**, a spokesperson for Leading Age.

The written agreement must, at a minimum, outline the following:

- The services the hospice will provide, including the stipulation that the hospice is responsible for devising an appropriate hospice plan of care.
- An outline of the services that the nursing facility will continue to provide, based on each resident's plan of care.
- A long term care facility's agreement to provide 24-hour room and board care, collaborating with the hospice representative to meet the resident's "personal care and nursing care needs." Significantly, this provision includes CMS's expectation that the LTC facility will "ensure that the level of care provided is appropriately based on the individual resident's needs."
- An overview of the communication process — including a process of documenting communications — ensuring that nursing facility and hospice are able to collaborate effectively and meet the resident's needs 24 hours a day.

- A requirement for bereavement services, potentially shared by the nursing facility and hospice.
- Furthermore, the final rule stipulates that the agreement must spell out the responsibility of the nursing facility to notify the hospice immediately of a significant change in a resident's physical, mental, social, or emotional status; a clinical complication that suggests a need to alter the plan of care; a need to transfer the resident from the facility for any condition; and the death of a resident.

The hospice must assume responsibility for determining the appropriate course of hospice care, CMS notes, including any change in the level of hospice services provided. Other responsibilities, which must be outlined in the agreement letter, include medical direction and management of the patient, nursing, counseling, social work, providing medical supplies, equipment, and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions.

Knowing Nursing Facility's Role

Responsibilities that fall to the nursing facility include administration of prescribed therapies, reporting alleged violations, including injuries, neglect, and abuse.

The buck stops here. Although the hospice is charged with administering the hospice care plan, the LTC facility must ensure that the hospice care plan □ together with the facility's description of services □ are designed to help the facility "attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being," cautions the **American Medical Directors Association**.

A recent report from the **Office of Inspector General** (OIG) revealed that "the number of hospice providers that are not equipped to provide [higher general inpatient] level of care proved to be an area of concern," says **Howard J. Young**, attorney with **Morgan Lewis** in Washington, DC.

Safeguard: If you are considering a contract with a hospice, document up front the agency's ability to provide all 4 CMS-defined levels of hospice care.

Who's On First? Choose Your Point Person

The final rule stipulates that the nursing facility must designate an individual □ a clinical member of the interdisciplinary team □ as the point person for coordinating and communicating with the hospice. This person will collaborate with the hospice on care planning and be responsible for ensuring adequate communication.

Learn From Past Mistakes

Facilities trying to bolster their survey defenses before contracting with a hospice should consider CMS's 2012 list of the 10 most common hospice deficiencies:

- L543 □ §418.56(b) Standard: Plan of care
- L629 □ §418.76(h) Standard: Supervision of hospice aides
- L545 □ §418.56(c) Standard: Content of the plan of care
- L530 □ §418.54(c)(6) □ Drug profile
- L555 □ §418.56(e)(2) □ Ensure that the care and services are provided in accordance with the plan of care
- L591 □ §418.64(b) Standard: Nursing services
- L552 □ §418.56(d) Standard: Review of the plan of care
- L596 □ §418.64(d) □ Counseling services
- L615 □ §418.76(c) Standard: Competency evaluation
- L523 □ §418.54(b) Standard: Timeframe for completion of the comprehensive assessment

Can't-miss resource: With those trouble spots in mind, review CMS surveyor guidance available at:

www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-44.pdf.

Beware These Potential F-tags

For nursing facilities, the F-tag of top concern will be F-309 (Quality of Care). CMS's latest interpretative guidance is available at

www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-12-48.pdf.

Another F-tag likely to remain in play in assessing the care of a residents receiving hospice include F353 (Sufficient Staff). Current guidance tells surveyors to determine whether the facility had qualified nursing staff in sufficient numbers to assure the resident was provided necessary care and services 24 hours a day, based upon the comprehensive assessment and care plan.

Depending on the level of hospice care provided, this could mean 24-hour on-site care by a registered nurse, with documentation of skilled care at the general inpatient level.

Good idea. Although the responsibility is not among those noted in the final rule, facilities should be sure to inform residents electing hospice of the potential effect on their out-of-pocket expenses, coaches **Terry Berthelot**, senior attorney with the **Center for Medicare Advocacy**.