NHPCO Regulatory Alert:
Long Term Care Facility Final Rule on Hospice Care in Nursing Homes
July 25, 2013

Summary at a Glance

CMS issued the final rule for long term care facilities providing requirements when the facility enters into an agreement with a hospice to offer hospice services to residents of the long term care facility. NHPCO has completed extensive analysis of the final rule and has released the following Regulatory Alert, a side-by-side chart detailing the roles and responsibilities for each provider type, and a “clean” copy of the final LTC regulations at 42 CFR §483.75(t). Hospice providers may wish to use the resources NHPCO has created to share with nursing facilities in their area as they discuss implementation of this final rule. Hospices should also pay particular attention to their nursing home contractual agreements to ensure that they also cover these new regulations for long term care facilities and have them in place by August 26, 2013.


This final rule is the long awaited companion to §418.112 of the Hospice Conditions of Participation, published in June 2008, that set forth the requirements for hospices when hospice care is provided in a SNF/NF or ICF/MR. This newly published final rule outlines the parallel regulations for long term care facilities (LTC facilities) when hospice care is provided to a LTC facility resident. CMS intent was to make the facility rule (§483.75(t)) as consistent with the hospice rule (§418.112) as possible to provide “regulatory clarity for both providers to eliminate duplication of and/or missing services.”

CMS states that the purpose of this rule is to “ensure the coordination of care for LTC facility residents who elect hospice services. The coordination of care is anticipated to result in better outcomes related to quality of care and quality of life for residents. With appropriate coordination of care, we anticipate

---

1 “Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Hospice Services; Final Rule,” 78 Federal Register 124 (27 June 2013) p. 38596
improved outcomes through more efficient coordination of care between the LTC facility staff and hospice staff, a decrease in duplication of services provided, and improved resident care."\(^2\)

LTC facilities are surveyed annually. Surveyors are instructed to include hospice patients in the sample. Once selected, “If a resident is receiving services from a Medicare certified hospice and the hospice was advised of concerns by the facility and failed to address and/or resolve issues related to coordination of care or implementation of appropriate services, refer the concerns as a complaint to the State Agency responsible for oversight of this hospice, identifying the specific resident(s) involved and the concerns identified.” A hospice provider is at risk of a complaint survey when a survey occurs in one of their contracted providers.

There are several major components to the final rule:

1. **LTC Facility Choice**

   The final rule spells out that the LTC facility (LTCF or “facility”) can **choose** whether or not to offer hospice services to its residents through a contract with a hospice. If the facility chooses not to offer hospice services and a resident wishes to have hospice care, then the final rule specifies that the facility “assist[s] the resident in transferring to a facility that will arrange for the provision of hospice services when a resident requests a transfer.” (§483.75(t)(1)(ii)).

   Additional CMS guidance was issued to nursing facility surveyors on September 27, 2012 regarding a new F tag 309 for quality of care at the end of life. The implementation date was November 30, 2012.\(^3\) **This language in the guidance does not only address the choice to have hospice, but also the choice of a particular hospice.** A citation of F tag 309 may be cited for non-compliance.

   A Medicare beneficiary with Part A who is certified by a physician as being terminally ill, with a prognosis of six months or less if the illness runs its normal course, may elect the Medicare hospice benefit. If a resident requests hospice care, and a facility does not offer or contract for hospice or with the particular hospice requested, the facility must either (1) arrange with a Medicare certified hospice to provide care to the individual resident, or (2) help the resident and/or the resident’s legal representative arrange for a transfer of the resident to a facility that provides the hospice care and/or services the resident desires.\(^4\)

2. **Written Agreement**

   This final rule specifies, for the facility, what the written agreement with the hospice should address. It is important to note that not every requirement of the new rule must be in the written agreement. Only the following obligations set forth in § 483.75(t)(2)(ii) are specifically required to be included in the agreement:

---

\(^2\) “Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Hospice Services; Final Rule,” 78 Federal Register 124 (27 June 2013) p. 38605


© NHPCO, 2013.
A. The services the hospice will provide
B. The hospice’s responsibilities for determining the hospice plan of care
C. The services the LTC facility will continue to provide, based on each resident’s plan of care
D. A communication process, including how communication will be documented between the LTC facility and hospice
E. That the LTC facility must immediately notify the hospice about:
   - Significant change in the resident’s physical, mental, social or emotional status;
   - Clinical complications that suggest a need to alter the plan of care;
   - Need to transfer the resident from the facility for any condition; or
   - Resident’s death
F. That the hospice assumes responsibility for determining the appropriate course of hospice care, including level of care
G. The LTC facility’s role in providing 24-hour room and board care to meet the resident’s personal care and nursing needs, in coordination with the hospice representative
H. The hospice’s responsibilities for services, including, but not limited to:
   - Medical direction and management of the patient
   - Nursing
   - Counseling (including spiritual, dietary and bereavement)
   - Social work
   - Supplies, DME and drugs
   - All other hospice services that are necessary for the care of the resident’s terminal illness and related conditions
I. That LTC facility personnel may assist in the administration of prescribed therapies when permitted by state law and specified by the facility
J. That the LTC facility must immediately report all alleged violations involving mistreatment, neglect, abuse, misappropriation of patient property by hospice personnel to the hospice administrator
K. The responsibilities of the hospice and the LTC facility to provide bereavement to LTC staff

CMS has indicated these regulations for the written agreement are intended to be "equivalent to" the hospice obligations in § 418.112 that have been in effect since 2008. If hospices have existing agreements with LTC facilities that address the requirements in §418.112 regarding a written agreement, it is unlikely these agreements will need to be revised. However, whether revisions are needed will be dependent on the specific language used in a hospice’s agreement. For example, a hospice’s contract may only require the hospice to notify the LTC facility of violations involving a patient and allow 24 hours for such notification. Under the new rule, the LTC facility is also obligated to make such notifications and do so immediately. We recommend that hospices closely review their agreements with LTC facilities to ensure they meet the new requirements.

3. Staff Coordination

In the hospice CoPs, in §418.112(e), the regulations specify that the hospice designate a member of the interdisciplinary group who is responsible for providing overall coordination of the hospice care with the SNF/NF or ICF/MR representatives, as well as communicating with all representatives participating in the provision of care.

---

5 “Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Hospice Services; Final Rule,” 78 Federal Register 124 (27 June 2013) p. 38604
In the LTC facility regulations, the facility designates a LTC staff member who coordinates care with the hospice and must have a clinical background. They must be able to assess the resident, or have access to someone who does, must collaborate with hospice representatives and other external providers, and ensure that the LTC staff communicate with the hospice medical director, the patient’s attending physician and other practitioners involved in care.

4. Plan of Care

In the hospice CoPs, the hospice is required to establish and maintain a written hospice plan of care, in consultation with the facility representatives. All hospice care must be provided in accordance with the hospice plan of care. The plan of care must identify which provider is responsible for providing the functions specified in the plan of care, and the plan reflects the participation of the hospice, the facility and the patient and family, as possible. §418.112(d)

In the LTC facility regulations, the facility must ensure that each resident’s written plan of care includes the **most recent hospice plan of care** and a description of services furnished by the LTC facility in order to maintain the resident’s highest practicable physical, mental and psychosocial well-being.

5. Orientation

In the hospice CoPs, the hospice staff must assure orientation of LTC facility staff on hospice philosophy, hospice policies and procedures, principles of death and dying etc. [§418.112(f)]

In the LTC facility regulations, the facility staff must provide orientation on the policies and procedures of the facility, including patient rights, appropriate forms, and record keeping requirements to hospice staff furnishing care to LTC residents. [§483.75(t)(3)(v)]

6. Effective Date for LTC Facility Regulations

   August 26 2013

7. Resources

   NHPCO has prepared several resources for hospice providers to ensure that providers have the most up to date information on the requirements of **both** hospices and LTC facilities when hospice care is provided to residents of a LTC facility.

   - [Side-by-side comparison chart detailing regulatory roles and responsibilities for each provider type](#)
   - [“Clean” copy of LTC facility regulations at 42 CFR §483.75(t)](#)
   - [Nursing Home Surveyor guidance in Appendix PP for F309, Quality of Care.](#)
   - [Survey and Certification Letter 12-48 NH](#)
   - [Nursing Home Surveyor guidance in Appendix PP for F155, Advance Directives](#)
8. What Your Hospice Should Do

1. Review the new LTC regulations for the hospice/LTC facility relationship.
2. Review your hospice’s nursing home contracts to ensure that they address the elements specifically required in the LTC facility regulations. While many hospices may not need to change their contracts, this determination will be dependent on the particular language used in the hospice’s agreement.
3. Share the information on this final rule with your nursing home partners so that they know what the new requirements for the hospice/nursing home relationship are today.
4. Ensure that both providers are familiar with the end of life language in the nursing home surveyor guidelines. The language, along with a PowerPoint for educating surveyors can be found at: http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-12-48.pdf. A deficiency tag of F 309 for quality of care may be cited for non-compliance.
5. Ensure that both providers are familiar with the advance directive language in the nursing home surveyor guidelines. The language, along with a PowerPoint for educating surveyors can be found at: http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-12-47.pdf. A deficiency tag of F 155 for advance directives may be cited for non-compliance.
6. Guidance to surveyors in F309 cites 17 other potential tags for additional investigation which include rights, transfer & discharge, accommodation of needs, activities, comprehensive assessments, care plans, activities of daily living, unnecessary drugs, sufficient staff, physician supervision, and medical director.

Members with questions should direct inquiries to regulatory@nhpco.org.