

§ 418.112 Condition of Participation: Hospices that Provide Hospice Care to Residents of SNF/NF or ICF/IID

The guidance provided in this document is intended to give an overview in comparing the Conditions of Participation for hospice and nursing facilities relationships from a historical basis. It is not a comprehensive review, but rather to assist hospice providers in understanding the basic requirements for the relationship.

Historical Perspective

The Hospice Conditions of Participation, at 42 CFR § 418.112, for care to residents of Skilled Nursing Facility/Nursing Facility (SNF/NF) was not implemented until December 2008. Prior to that date, although hospice providers were providing care in facilities, there was not any guidance. As a consequence, hospice providers were left up to their own as to how the relationship was structured.

It wasn't until August 2013 that guidance would be passed for the facility providers. In the timeframe between 2008 and 2013, extensive conversations were held with CMS to ensure that the subsequent NF guidance at § 483.75 would complement what had already been implemented for hospice providers. When the guidance for each provider is compared, the two are complimentary, rather than contradictory.

With guidance for both providers in place, there was little surveyor scrutiny of the relationship. That, however, changed with the publishing of the Nursing Facility Surveyor guidance in August 2017. Since then, providers have seen more scrutiny of the relationship. Even more intense scrutiny is anticipated as the Office of Inspector General (OIG) continues to publish reports questioning quality of care issues for hospice providers and CMS is implementing a more robust hospice survey process in 2021 and beyond.

As hospice providers are increasingly involved in relationships with nursing facility providers, staff for both providers should be educated on the expectations in [§ 418.112](#) and [§ 483.70](#) (o), Hospice Services. Additionally, staff of both providers should be familiar with the [Hospice and End of Life Care and Services Critical Element Pathway](#) (CMS 20073) Nursing Facility Surveyor computerized interview that all surveyors, in all states, utilize when hospice is providing care. A copy of both providers' conditions of participation and NF surveyor interview of hospice patients/residents are included in the guidelines accompanying this instruction.

Written Agreement

The first step in establishing the relationship is the development of a mutual contract. When a Nursing Facility is undergoing their annual survey, surveyors will ask to see a copy of the written agreement between the facility and the hospice. This agreement must be reviewed and signed by both parties before a resident is admitted for hospice care. In some cases, Facility Administration will sign a one-time specific contract for a resident. One-time patient agreements can be awkward and delay admission; therefore, it is preferable to have a facility agreement.

A facility is not required to have a contract with a hospice or can have multiple agreements (483.75). Since the NF Administrator is ultimately responsible for the care delivered to their residents, it is their decision designating which hospice they will contract with to utilize their services. If a resident requests services from a hospice that does not have a contract with the facility and is not willing to do a one-time specific contract for a resident, the facility is required to assist in transfer to a facility of the resident's choice.

If hospice care is furnished in a NF, "the facility must ensure that the hospice services meet professional standards". It is not uncommon when a facility is in their "survey window" to request the credentials of hospice staff to have available for surveyor review.

Hospice requirements for the written agreement § 418.112(c)(4) states that "it is the SNF/NF responsibility to continue to furnish 24 hour room and board care, meeting the personal care and nursing needs that would have been provided by the primary caregiver at home at the same level of care provided before hospice care was elected." The "hospice's responsibility to

provide services at the same level and to the same extent as those services would be provided if the SNF/NF resident were in his or her own home." Likewise, Nursing Facility requirements (§ 483.75 G) state that it is the "facility's responsibility to furnish 24 hour room and board care, meet the resident's personal care and nursing needs in coordination with the hospice representative."

As mentioned in the beginning of this document, there were no regulatory guidance when the relationship began. It is not uncommon for hospice providers to provide personal aide services that replace care that would normally be provided by the facility aide. Staff shortages due to COVID have increased the substitution of hospice aides for services of NF aides. This is not congruent with the regulations and may become problematic with increased citations as the relationship receives more surveyor scrutiny. This is definitely an issue that is "ripe" for scrutiny and will need to be addressed by both providers.

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(c) **Standard: Written agreement.** The hospice and SNF/NF or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) must have a written agreement that specifies the provision of hospice services in the facility. The agreement must be signed by authorized representatives of the hospice and the SNF/NF or ICF/IID before the provision of hospice services. The written agreement must include at least the following:

- (1) The manner in which the SNF/NF or ICF/IID and the hospice are to communicate with each other and document such communications to ensure that the needs of patients are addressed and met 24 hours a day.
- (2) A provision that the SNF/NF or ICF/IID immediately notifies the hospice if -
 - (i) A significant change in a patient's physical, mental, social, or emotional status occurs;
 - (ii) Clinical complications appear that suggest a need to alter the plan of care;
 - (iii) A need to transfer a patient from the SNF/NF or ICF/IID, and the hospice makes arrangements for, and remains responsible for, any necessary continuous care or inpatient care necessary related to the terminal illness and related conditions; or
 - (iv) A patient dies.
- (3) A provision stating that the hospice assumes responsibility for determining the appropriate course of hospice care, including the determination to change the level of services provided.
- (4) An agreement that it is the SNF/NF or ICF/IID responsibility to continue to furnish 24 hour room and board care, meeting the personal care and nursing needs that would have been provided by the primary caregiver at home at the same level of care provided before hospice care was elected.
- (5) An agreement that it is the hospice's responsibility to provide services at the same level and to the same extent as those services would be provided if the SNF/NF or ICF/IID resident were in his or her own home.
- (6) A delineation of the hospice's responsibilities, which include, but are not limited to the following: Providing medical direction and management of the patient; nursing; counseling (including spiritual, dietary and bereavement); social work; provision of medical supplies, durable medical equipment and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions; and all other hospice services that are necessary for the care of the resident's terminal illness and related conditions.
- (7) A provision that the hospice may use the SNF/NF or ICF/IID nursing personnel where permitted by State law and as specified by the SNF/NF or ICF/IID to assist in the administration of prescribed therapies included in the plan of care only to the extent that the hospice would routinely use the services of a hospice patient's family in implementing the plan of care.
- (8) A provision stating that the hospice must report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by anyone unrelated to the hospice to the SNF/NF or ICF/IID administrator within 24 hours of the hospice becoming aware of the alleged violation.

- (9) A delineation of the responsibilities of the hospice and the SNF/NF or ICF/IID to provide bereavement services to SNF/NF or ICF/IID staff.

Hospice Plan of Care

When you examine the most frequent citations made by surveyors of hospice and nursing facilities, care plans are usually in the top 10 cited deficiencies. Providers have difficulty meeting surveyor expectations when they are surveyed independently, so it is not surprising that this is a major area for improvement by both providers.

The most difficult obstacle to overcome is that the problem list for both providers often does not “match up”. It becomes challenging to develop a common language. Equally challenging is that electronic care planning tools for each provider have different interventions and goals. The hospice software generates palliative interventions and goals, whereas the nursing facility software has interventions and goals that are curative in nature. It takes a concerted effort to get both providers on the “same page”. This collaboration not only occurs on admission, but periodically as care evolves. Care plan meetings are an ideal time to compare the care plans to ensure they are compatible and clear in direction.

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(d) **Standard: Hospice plan of care.** In accordance with [§ 418.56](#), a written hospice plan of care must be established and maintained in consultation with SNF/NF or ICF/IID representatives. All hospice care provided must be in accordance with this hospice plan of care.

- (1) The hospice plan of care must identify the care and services that are needed and specifically identify which provider is responsible for performing the respective functions that have been agreed upon and included in the hospice plan of care.
- (2) The hospice plan of care reflects the participation of the hospice, the SNF/NF or ICF/IID, and the patient and family to the extent possible.
- (3) Any changes in the hospice plan of care must be discussed with the patient or representative, and SNF/NF or ICF/IID representatives, and must be approved by the hospice before implementation.

Coordination of Services

The Nursing Facility and the Hospice must designate a member of each interdisciplinary team to coordinate the care. The appointed individual of the Nursing Facility must have the ability to solve patient care issues. During survey, staff may be asked to identify the appropriate individual to solve patient care issues. Surveyors will also question the resident/patient and their family members as to whether they have had any care issues. If so, who was the person they consulted to reach resolution?

Several times throughout the NF interpretative guidelines, in the CMS State Operations Manual, [Appendix PP](#), there are expectations that the physicians/medical directors will work through any patient care issues together.

Hospice documentation in the nursing facility record is critical and an easy citation for the surveyor. On the NF chart binder, there should be nothing on the outside that can be used to identify a hospice patient. This is considered a breach of confidentiality. Likewise, there should be no signage in the resident’s room that indicates they are on hospice or a DNR.

Specific LTC Survey Pathway – Hospice and End-of-Life

Nursing facilities are surveyed annually, and a summary of the citations can be viewed on the Medicare Compare website when viewing the data for a specific facility. In order for the survey process to be standardized across all states and comparable from one facility to another, CMS developed a computerized survey process for gathering information, called “LTC Survey Pathways.” There is specific surveyor guidance for patient care issues such as: hospice/end-of-life, pain management, pressure ulcers, respiratory care, unnecessary medications, hydration, and incontinence. When surveying a

nursing home's hospice, palliative care and end of life care patients, surveyors will use the [Hospice and End of Life Care and Services Critical Element Pathway \(CMS 20073\)](#) (Scroll down to the link for LTC Survey Pathways. Other nursing home survey information is also available at this link.)

When a NF is in their survey window, it is advisable for the hospice to do a chart audit to ensure that all the information is there and current. The documents listed below in (3) are duplicated in the NF regulations at [483.70 \(3\)\(iv\)](#).

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(e) **Standard: Coordination of services.** The hospice and SNF/NF or ICF/IID must have a written agreement that specifies the provision of hospice services in the facility. The agreement must be signed by authorized representatives of the hospice and the SNF/NF or ICF/IID before the provision of hospice services. The written agreement must include at least the following:

- (1) Designate a member of each interdisciplinary team that is responsible for a patient who is a resident of a SNF/NF or ICF/IID. The designated interdisciplinary team member is responsible for:
 - (i) Providing overall coordination of the hospice care of the SNF/NF or ICF/IID resident with SNF/NF or ICF/IID representatives; and
 - (ii) Communicating with SNF/NF or ICF/IID representatives and other health care providers participating in the provision of care for the terminal illness and related conditions and other conditions to ensure quality of care for the patient and family.
- (2) Ensure that the hospice IDT communicates with the SNF/NF or ICF/IID medical director, the patient's attending physician, and other physicians participating in the provision of care to the patient as needed to coordinate the hospice care of the hospice patient with the medical care provided by other physicians.
- (3) Provide the SNF/NF or ICF/IID with the following information:
 - (i) The most recent hospice plan of care specific to each patient;
 - (ii) Hospice election form and any advance directives specific to each patient;
 - (iii) Physician certification and recertification of the terminal illness specific to each patient;
 - (iv) Names and contact information for hospice personnel involved in hospice care of each patient;
 - (v) Instructions on how to access the hospice's 24-hour on-call system;
 - (vi) Hospice medication information specific to each patient; and
 - (vii) Hospice physician and attending physician (if any) orders specific to each patient.

Orientation and Training of Staff

This section of the rules lists the training hospice provides to nursing facility staff. If a NF has multiple hospices providing care to their residents, the same basic hospice in-services do not need to be repeated multiple times.

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(f) **Standard: Orientation and training of staff.** Hospice staff, in coordination with SNF/NF or ICF/IID facility staff, must assure orientation of such staff furnishing care to hospice patients in the hospice philosophy, including hospice policies and procedures regarding methods of comfort, pain control, symptom management, as well as principles about death and dying, individual responses to death, patient rights, appropriate forms, and record keeping requirements.

Compliance Suggestions for Hospice Providers

- Review and revise written agreements between the hospice and the SNF/NF or ICF/IID on a regular basis.
 - Ensure that lines of authority and responsibility are established in order to better coordinate quality care. Implement addendums or new contracts.
- Develop a model of communication between the hospice and the SNF/NF or ICF/IID to minimize confusion of responsibilities and duplication of services.
- Incorporate education about hospice in a facility requirements into your orientation program and continuing education for physicians.

Please note that hospice providers need to comply with the most stringent regulatory requirements (Federal or State).

Resources

- NHPCO Regulatory & Compliance Center, [Facility Based Care](#)
- [Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Hospice Services](#) (June 27, 2013)

References

- Nursing Facility Rules for Hospice: [42 CFR 483.70](#) (o) Hospice Services
- CMS State Operations Manual: [Appendix PP](#), Nursing Homes
- Nursing Facility Surveyor Guidance on Hospice/End-of-Life patients: [Hospice and End of Life Care and Services Critical Element Pathway \(CMS 20073\)](#) (Scroll to the download section for the link for LTC Survey Pathways. Other nursing home survey information is also available at this link.)