

BE AWARE OF:

Long Term Care Facility Hospice Companion Rule

HOSPICE FUNDAMENTALS SUBSCRIBER EMAILS -- July 10, 2013

The Least You Need to Know: *Since December 2008, hospices have been required to meet the regulations found in the Conditions of Participation (CoPs) at §418.112 (**Hospices that provide hospice care to residents of a SNF/NF or ICF/MR**). At that time, CMS said that they planned to issue a companion rule for nursing homes and implied that it would happen quite quickly. Their optimism was unfounded; the long-awaited final rule was not released until June 27, 2013. This Be Aware provides a summary of that rule.*

Additional Information:

Prior to the release of the 2008 Medicare Hospice Conditions of Participation, there were no regulations specific to the provision of hospice care to residents of LTC (skilled nursing facility or nursing facility) facilities. To address that void, the new CoPs included a condition and six standards specific to the LTC and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs, formerly called ICF/MRs).

Hospices immediately recognized that, absent mirroring regulations for LTC facilities, it could be difficult to achieve total compliance with the requirements. CMS agreed and, in fact, had already set the wheels in motion to promulgate them. It took a bit longer than they had anticipated. The proposed rule updating LTC Conditions of Participation was published in the Federal Register in October 2010; the final rule was published on June 27, 2013.

Relevance to Existing Hospice Regulations

In the Federal Register narrative accompanying the final rule, CMS notes that their intent is to ensure that the new requirements are in accord with the existing hospice requirements at §418.112 and explains that although the language “largely parallels the language and intent of the hospice requirements...there are, however, instances where employing the same language will not reflect the distinct roles of each entity or where we believe it is important to provide clarity and detail without disturbing the substance or the proper interpretation of the requirements.” (78 FR 38595).

There is a link to a side-by-side comparison of the two sets of regulations in the Additional Materials section.

Surveyor Guidance

CMS expects that updates reflecting the new rule will be made to LTC surveyor guidelines “shortly.” We will get them to you as soon as they are published.

Implementation Date

LTC facilities must be in compliance with the requirements by August 26, 2013. Although some commenters had requested more time, CMS noted that they believed that the timeframe was adequate since hospices already have to meet the requirements.



HOSPICE FUNDAMENTALS

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Four Areas of Note – Four areas to pay special attention to; one is neutral, one could possibly be troubling, one should be helpful, and one is an opportunity to show what a good partner you are.

REGULATORY LANGUAGE	OBSERVATIONS
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(t) Hospice services.

1. A long-term care (LTC) facility may do either of the following:

1. Arrange for the provision of hospice services through an agreement with one or more Medicare-certified hospices.
2. Not arrange for the provision of hospice services at the facility through an agreement with a Medicare-certified hospice and assist the resident in transferring to a facility that will arrange for the provision of hospice services when a resident requests a transfer.

The Neutral: CMS has long made it clear that the LTC has the right to decide how it will proceed with regard to contracting with a Medicare-certified hospice – it could choose to have no contracts, one contract or more than one.

This language formalizes the position and makes it clear that, should a facility choose not to contract with a Medicare-certified hospice, it will still be required to assist any resident wishing to access hospice services by facilitating transfer to another facility.

2. If hospice care is furnished in an LTC facility through an agreement as specified in paragraph (t)(1)(i) of this section with a hospice, the LTC facility must meet the following requirements:

1. Ensure that the hospice services meet professional standards and principles that apply to individuals providing services in the facility, and to the timeliness of the services.

The Possibly Troubling: This section includes two areas in which the LTC, in order to be compliant, will be called upon to make determinations of a hospice's performance with regard to meeting professional standards and principles and timeliness of services.

Through the written agreement and individual discussions, it will be important for hospices to clarify the expectations of the LTC in these two areas and insure that there is a means for immediate communication if there is any performance problem.

(2)(ii) (E) A provision that the LTC facility immediately notifies the hospice about the following:

3. A need to transfer the resident from the facility for any condition.

The Helpful: To be compliant, the facility is required to immediately notify the hospice of any need to transfer the patient, regardless of if the reason is related to the terminal diagnosis or not. Having this in the LTC regulatory language should add some teeth.

This is an improvement from the proposed rule that came about due to comments that were submitted.

2. (v) Ensuring that the LTC facility staff provides orientation in the policies and procedures of the facility, including patient rights, appropriate forms, and record keeping requirements, to hospice staff furnishing care to LTC residents.

The Opportunity to Show What A Good Partner You Are
Ask your LTC partner to assemble the materials and offer to complete the training for each one of your staff members, keep the training records and be ready to provide them to the facility at any moment.



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Actions of a Prudent Hospice™

This is a great opportunity to demonstrate why your hospice should be the "hospice partner of choice" for your LTC facilities. They are highly regulated and frequently surveyed, will take these new regulations very seriously and appreciate that you do too.

ONE. Compare the two rules and be prepared to discuss them with your facility partners. You may wish to share the side-by-side document so they can see how closely their new requirements mirror what hospices are already required to do (if you would like a set in a Word document, drop an e-mail to susan@hospicefundamentals.com)

TWO. Discuss and clarify expectations related to their new requirement to "ensure that the hospice services meet professional standards and principles that apply to individuals providing services in the facility, and to the timeliness of the services." You are shooting for absolute clarity and immediate communication if there is any problem.

THREE. Review your written agreements to make certain that they meet the all the requirements for both parties (if your contracts were properly updated to meet all requirements of the 2008 COPs, you should be OK).

Additional Materials:
The Final Rule and Side-by-Side Comparison LTC – Hospice Regulations

