

CLIENT - ALERT



TO: Health Care Providers

RE: Long-Term Care Facilities and Hospice Coordination

DATE: July 11, 2013

This Client Alert addresses new requirements for long-term care facilities who provide hospice care. To review Client Alerts and other resources dealing with this topic, please visit our firm website.¹

I. Overview

On June 27, 2013, the Centers for Medicare and Medicaid Services (“CMS”) published its final rule (the “Rule”),² to ensure that hospice and long-term care (“LTC”) facilities clearly delineate *who* will play *what* role in providing care for terminally ill patients.³ The CMS’ goal was to eliminate the potential for duplicate services.⁴ The Rule aims to accomplish this goal by revising what an institution must do to qualify as a Medicare “skilled nursing facility” or a Medicaid “nursing facility”.

II. What Is Required of LTCs

In addition to existing requirements,⁵ LTCs desiring to provide terminal care must:

1. Have a single, *written agreement* with *each* hospice provider.⁶ (*Not* an agreement with the provider for each *individual* patient served, but with each provider.)
2. Include each of the following:
 - a. *Descriptions/delineation* of all services necessary for such care, including:
 - i. Providing medical direction, medical supplies, and drugs.
 - ii. Nursing.
 - iii. Counseling, social work, and providing bereavement services.
 - b. The hospice’s responsibility for determining the *plan of care*.
 - c. The hospice’s ability to *use LTC personnel*, as specified by the LTC.
 - d. The *communication process* between the hospice/LTC, including *how* the communication will be documented.
 - e. The LTC’s *obligation to report* alleged violations by hospices’ employees, to hospice administrators, *when the LTC becomes aware* of them.
3. Designate a “*point of contact*” from the LTC’s “interdisciplinary team” to coordinate care with the hospice, including:
 - a. *Collaborating* with the hospice and LTC staff in forming the plan of care.

¹ <http://gilpingivhan.com/>

² See 78 Fed Reg. 124 (2013).

³ See *id.* (ensuring that LTCs and hospice providers “have in place a written agreement ... that *specifies the roles and responsibilities of each entity.*”) (emphasis added).

⁴ See *id.* (“We believe that a clear division of responsibilities and increased communication required by this rule will help eliminate duplication of and/or missing service.”).

⁵ See 73 Fed. Reg. 32088 (2008).

⁶ See 42 CFR 418.112(c).

- b. *Communicating* patients' condition/medication to hospice staff.
- c. *Obtaining* pertinent information from the hospice, for the LTC.
- d. *Ensuring* that other LTC staff:
 - i. Communicate needed information to the hospice.
 - ii. Orientate hospice staff who are providing care to LTC patients.
- e. The point of contact/representative *must*:
 - i. Have a clinical background *and*
 - ii. Be able to assess the patient.
- 4. Notify the hospice about any significant change in the patient's physical, mental, social, or emotional status; the need to alter the plan of care; or the patient's death. (Including the need to *transfer* a patient from the facility for any reason.)
- 5. Discuss with the patient, *and* include in their written plan of care, *who* will be providing *what* hospice services, *when* the patient requests to utilize them.
 - a. *Hospices* are also responsible for all decisions related to terminal care; and communicating with patient/LTC in making those decisions.
 - b. The *LTC* is responsible for all other care decisions.
- 6. Ensure that the hospice services meet professional standards and are timely provided; while continuing to provide 24-hour room & board, coordinating with hospice.

III. When It Is Required

The Rule will go into effect *August 26th, 2013*. Although some have expressed concern over the short timeframe, CMS noted that LTCs should be able to execute the required agreement(s) by the effective date since hospices already have to meet many of the aforementioned requirements.⁷

IV. Conclusion

In order to provide hospice care LTCs must now specify, in writing, *who* will provide *what* care to terminally ill patients. Facilities are encouraged to appoint their representative and execute agreements with hospice providers as soon as possible in order to comply with the new condition of participation.

PLEASE BE ADVISED: This Client – Alert intended only to provide an overview of the matters addressed herein and does not constitute legal advice. If you have questions regarding a specific arrangement, please seek appropriate legal counsel.

Authors and Contributors:

[John W. Weiss, Esq.](#)

Ben Hardison

⁷ See 42 CFR 418.112(e)