Hospice Patients Living in Long-Term Care or ICF/MR Facilities

Regulatory Reference:
Focus of hospice surveys is compliance with the hospice conditions of participation (Conditions of Participation at 42 CFR 418.3 through 42CFR 418.116)

Condition of Participation at 42CFR 418.112, "Hospices that provide hospice care to residents of a SNF/NF or ICF/MR," L tags 759-782 and the standard at 42CFR 418.56(e), "Coordination of services," L tags 554-558. For patients who reside in assisted living facilities, group homes, or boarding homes (42CFR 418.56(e) applies.

Key Hospice Regulatory Points:

L762 - §418.112(b) Standard: Professional management.
The hospice must assume responsibility for professional management of the resident's hospice services provided, in accordance with the hospice plan of care and the hospice conditions of participation, and make any arrangements necessary for hospice-related inpatient care in a participating Medicare/Medicaid facility according to §418.100 and §418.108.

Interpretive Guidelines §418.112(b)
The term "professional management" for a hospice patient who resides in a SNF/NF or ICF/MR has the same meaning that it has if the hospice patient were living in his/her own home. Professional management involves assessing, planning, monitoring, directing and evaluating the patient's/resident's hospice care across all settings.

*The professional services provided by the hospice to the patient in his/her home should continue to be provided by the hospice to the patient in a facility, or other place of residence. **Hospice core services must be routinely provided by the hospice, and cannot be delegated to the facility.** Hospices should specify that facility staff should immediately notify the hospice of these unplanned interventions. In the contract between the hospice and the facility, potential crisis situations and temporary emergency measures should be addressed and determined how they will be handled by facility staff.*

Hospice is responsible for providing all hospice services including:

- *Ongoing assessment, care planning, monitoring, coordination, and provision of care by the Hospice IDG.*
- *Assessment, coordination, and provision of any needed general inpatient or continuous care.*
- *Consultation about the patient's care with facility staff.*
- *Coordination by the hospice RN for the implementation of the plan of care for the patient.*
- ***Provision of hospice aide services, if these services are determined necessary by the IDG to supplement the nurse aide services provided by the facility.***

L763 - §418.112(c) Standard: Written agreement.
The hospice and SNF/NF or ICF/MR 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/MR before the provision of hospice services.

L764 - L772 §418.112(c) - The written agreement must include at least the following (please note this is not an all inclusive regulatory list, this only includes key points related to today's discussion):

(1) The manner in which the SNF/NF or ICF/MR 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 stating that the hospice assumes responsibility for determining the appropriate course of hospice care, including the determination to change the level of services provided.

(3) - An agreement that it is the SNF/NF or ICF/MR 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.

Interpretive Guidelines §418.112(c)(4):
In entering into an agreement with each other, each provider retains responsibility for the quality and appropriateness of the care it provides in accordance with their respective laws and regulations. Both providers must comply with their applicable conditions/requirements for participation in Medicare/Medicaid. The facility's services must be consistent with the plan of care developed in coordination with the hospice, (the hospice patient residing in a facility should not experience any lack of services or personal care because of his/her status as a hospice patient); and the facility must offer the same services to its residents who have elected the hospice benefit as it furnishes to its residents who have not elected the hospice benefit. If a patient is receiving services from a Medicare/Medicaid certified nursing facility or ICF/MR, and the facility was advised of concerns by the hospice and failed to address and/or resolve issues related to coordination of care or implementation of appropriate services, the hospice surveyor will refer the concerns as a complaint to the State Agency responsible for oversight of the facility identifying the specific patient(s) involved and the concerns identified.

(4) - 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/MR resident were in his or her own home.

Interpretive Guidelines §418.112(c)(5)
Regardless of where a patient resides, a hospice is continually responsible for furnishing core services, and may not delegate these services to the facility staff.

(5) - 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.

(6) - A provision that the hospice may use the SNF/NF or ICF/MR nursing personnel where permitted by State law and as specified by the SNF/NF or ICF/MR 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.

L773 - L782** §418.112(d): **Hospice plan of care.

(1) - A written hospice plan of care must be established and maintained in consultation with SNF/NF or ICF/MR representatives. All hospice care provided must be in accordance with this hospice plan of care.

(2) - 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.

***NOTE**: The providers must have a procedure that clearly outlines the chain of communication between the hospice and facility in the event a crisis or emergency develops, a change of condition occurs, and/or changes to the hospice portion of the plan of care are indicated. Based on the shared communication between providers, both providers' portion of the plan of care should reflect the identification of:*

- *A common problem list;*
- *Palliative interventions;*
- *Palliative outcomes;*
- *Responsible discipline;*
- *Responsible provider; and*
- *Patient goals.*

L514** - §418.52 (c)(3) - **Patient Right to Refuse care or treatment;
While patients have the right to refuse services, probe further if you find a particular trend where a majority or all patients are refusing a particular service (e.g., social work, spiritual counseling, volunteers, etc.,) to assure that patients are fully informed of the service they are refusing and that the hospice is fully prepared to provide the service with qualified personnel.

Referrals:
If potential **LTC or ICF/MR** deficient practice(s) or concern(s) are identified, initiate a complaint with the state agency responsible for LTC or ICF/MR surveys, respectively. Some examples include:
- Failure to meet basic personal care and nursing needs
- Failure to administer medications (to relieve pain and other symptoms), treatments, interventions, or services delineated in the care plan

If potential **hospice** deficient practice(s) or concerns are identified, initiate a complaint with the state agency responsible for hospice surveys. Some examples include:
- Lack of a written contract delineating responsibilities
- Failure of the hospice to provide professional management
- Lack of coordinated care plan
- Failure of hospice to provide medications, treatments and supplies needed for management of the terminal illness and related conditions
- Failure of hospice to provide needed **supplemental** personal care

Refer issues of **potential fraud** to the OIG or MFCU. Some examples include:
- LTC or ICF/MR has substantial number of hospice patients with lengths of stay exceeding one year
- Predominant terminal diagnoses such as "failure to thrive" without evidence of progressive decline

Potential anti-Kickback issues: *Adapted from the Anti-Kickback Statute, Federal Register / Vol. 73, No. 190 / Tuesday, September 30, 2008 / Notices & OIG FRAUD AND ABUSE IN NURSING HOME ARRANGEMENTS WITH HOSPICES, March 1998.*

- Could one purpose of any arrangement be to induce or reward generation of business?
- Does any arrangement or practice have a potential to interfere with or skew clinical decision-making?
- Does any arrangement or practice have the potential to increase costs to Federal health care beneficiaries?
- Does any arrangement or practice have a potential to increase the risk of overutilization or inappropriate utilization of benefits?
- Does any arrangement or practice raise patient safety or quality care concerns?

FROM: DHW Licensing & Certification Division – 9/2011
Non-Long Term Care Page, Hospice Agencies