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Health Care Alert: New CMS Requirements for Long-Term Care Facilities that Contract with Hospice Providers

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The Centers for Medicare & Medicaid Services (CMS) recently published a final rule entitled "Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Hospice Services." This final rule, published on June 27, 2013, adds a new Condition of Participation (CoP) that requires long-term care facilities, which are defined as skilled nursing facilities (SNFs) and nursing facilities (NFs), that choose to arrange for the provision of hospice care with one or more Medicare-certified hospice providers to have in place a written agreement with the hospice that specifies the roles and responsibilities of each entity. These new long-term care regulations will be found at 42 C.F.R. § 483.75 (t) and are meant to complement the hospice regulations enacted in 2008 that set forth contract and program requirements for a hospice providing hospice services to residents of a SNF, NF or intermediate care facility for individuals with intellectual disabilities (ICF/IID). CMS believes that the new long-term care rule will increase coordination of care, foster stronger channels of communication and eliminate duplicative and missing services. The new long-term care requirements will be effective on August 26, 2013.

According to the new long-term care regulations, a long-term care facility has two options for individuals needing hospice services. The facility may either: 1) arrange for the provision of hospice services through an agreement with one or more Medicare-certified hospices, or 2) it may 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. If the hospice care is furnished through an agreement with a Medicare-certified hospice, the agreement must be signed by an authorized representative of the hospice and the long-term care facility before hospice care is furnished to any resident. The written agreement must also set out at least the following: 1) the services the hospice will provide, 2) the hospice's responsibilities for determining the appropriate hospice plan of care, and 3) the services the long-term facility will continue to provide, based on each resident's plan of care. There are also increased communication provisions in the final long-

term care rule which require documentation between the two providers to ensure that the needs of the residents are addressed and met 24 hours a day. Long-term care facilities must also designate a member of their interdisciplinary team to be responsible for working with hospice representatives to coordinate care to the resident provided by the long-term care facility staff and hospice staff. The designated interdisciplinary team member will, for example, be responsible for ensuring that the long-term care facility staff provide orientation in the policies and procedures of the facility to hospice staff.

Many hospices already have written contracts in place with long-term care facilities that comply with the hospice conditions of participation set forth at 42 C.F.R. § 418.112. Although the language in the final long-term care rule largely parallels the language and intent of the hospice requirements, there are some different provisions in the long-term care regulations that reflect the difference in roles between these provider types. Hospices and long-term care providers, therefore, should review their current contracts and practices to ensure they comply with the new long-term care regulations prior to the August 26, 2013 effective date.

The new long-term care rule is meant to only apply to SNFs and NFs and does not affect the provision of hospice care in other types of facilities in which an individual may reside, such as ICFs/IID. However, hospice services in ICFs/IID are addressed in the current hospice regulations found at 42 C.F.R. § 418.112, and these arrangements do require a written agreement between a hospice and ICF/IID.

The final long-term care rule can be found at <http://www.gpo.gov/fdsys/pkg/FR-2013-06-27/pdf/2013-15313.pdf>. For additional information or questions about the regulations, please contact Suzanne Scrutton at (614) 464-8313 or Robin Amicon at (614) 464-5466.