

To: All Nursing Facilities

Re: CMS Proclamation Of Right Of Access By Hospice Staff During COVID-19 Pandemic (Effective 3/13/2020)

Hospices, along with the rest of the health care community, take the COVID-19 pandemic extremely seriously, and they are following CDC guidelines to prevent the transmission of the coronavirus. Hospices and their nursing facility partners have a shared responsibility to ensure the health and safety of facility hospice patients in a manner consistent with infection prevention and control guidance from the government and national associations.

Permitting facility access by properly trained and equipped hospice staff to conduct essential in-person health care visits is consistent with direction from the Centers for Medicare and Medicaid Services (“CMS”). Further, **such access appropriately balances the need to prevent the spread of COVID-19 with the need for hospice patients to continue receiving essential end-of-life care.**

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CMS Directs You To Permit Hospice Staff Access To Your Facility. Hospice workers are essential health care providers of end-of-life care to terminally ill patients. Recent guidance from CMS **directs nursing facilities to permit hospice personnel to access the facility** to provide care to hospice patients residing at the facility:

“**[H]ealth care workers, such as hospice workers, . . . should be permitted to come into the facility** as long as they meet the CDC guidelines for health care workers,”¹ including using personal protective equipment (“PPE”) properly.

“**[H]ospice workers should be allowed entry** provided that hospice staff is following the appropriate CDC guidelines for Transmission-Based Precautions, and using PPE properly.”²

Hospice Workers Follow CDC Guidelines For Reducing The Spread Of COVID-19. As licensed health care professionals, **hospice personnel have been trained on and are following CDC guidelines for transmission-based precautions and the proper use of PPE.** Hospice workers are not visitors untrained on infection prevention and control, and they should not be subject to facilities’ visitation restrictions.

National Nursing Facility Associations Advise You To Follow CMS Direction. National associations, such as LeadingAge and the American Health Care Association (“AHCA”), have acknowledged and deferred to CMS’s proclamation to permit facility access by hospice workers.³

Hospice Patients Who Are Nursing Facility Residents Have The Legal Right To Hospice Services. As residents of nursing facilities, **hospice patients must be afforded their enforceable legal rights to receive health care visits from hospice workers** and other services identified in their plans of care. 42 C.F.R. § 483.10(c)(2)(iv).

“**The resident has a right to choose . . . health care and providers of health care services** consistent with his or her interests, assessments, [and] plan of care.” 42 C.F.R. § 483.10(f)(1).

“**The facility must provide reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident.**” 42 C.F.R. § 483.10(f)(4)(iv).

Hospice Worker Access Is Required Under Federal Regulations for Nursing Facilities. Nursing facilities that maintain hospice patients as residents are required by law to coordinate care with hospice staff. 42 C.F.R. § 483.70(o)(2),(3). This shared responsibility for the coordination of hospice patients’ care is memorialized through a written agreement between the hospice and facility.

¹ CMS Guidance for Infection Control and Prevention of Coronavirus Disease 2019 in Nursing Homes (March 13, 2020).

² CMS Guidance for Infection Control and Prevention of Coronavirus Disease 2019 by Hospice Agencies (March 9, 2020).

³ LeadingAge, CMS Announces New Visitor Restrictions (March 14, 2020); AHCA/NCAL, Taking Reasonable Efforts to Prevent COVID-19 From Entering Your Skilled Nursing Center.