

Hospice and Palliative Care
Practice Group

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Complying with the Vendor Contracting Requirements of the New CoPs

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Hospices often contract with professionals and other entities for a wide variety of services and supplies, ranging from therapy to durable medical equipment and supplies. The new Medicare Conditions of Participation (CoPs) set forth certain minimum requirements for these arrangements in order to ensure that hospice patients receive quality care, regardless of whether the services are provided by the hospices' own employees or under arrangements with contracted providers.

Before deciding to use a vendor to provide a particular hospice service, hospices must consider whether the CoPs allow the hospice to provide the service through a contracted entity or individual, rather than providing the service directly by its own employees. The CoPs require hospices to routinely provide nursing services, medical social services, and counseling services (including dietary counseling) directly by hospice employees. However, in limited circumstances, a hospice may qualify for a waiver that allows contracting for nursing services or dietary counseling services. Notably, in commentary to the new CoPs, the Centers for Medicare and Medicaid Services (CMS) stated that it also considers services such as music therapy, art therapy, and massage therapy to be "counseling services" which must be provided by hospice employees. Many hospices have questioned this position, and it is possible CMS may provide additional clarification.

If the CoPs permit the service to be provided under contract, the hospice must ensure that the language of its vendor agreement contains the basic elements required by the CoPs. At a minimum, a hospice's contracts with its vendors who provide hospice services must include provisions requiring that all services provided be (1) authorized by the hospice, (2) furnished in a safe and effective manner by qualified personnel, and (3) delivered in accordance with the patient's plan of care. The revised CoPs also state, "Hospice contracts must require that all contracted entities obtain criminal background checks on contracted employees who have direct patient contact or access to patient records." Although there is some debate about how far this requirement extends, CMS's commentary to the CoPs suggests that it would encompass traditional vendor relationships, such as durable medical equipment suppliers and pharmacies.

In addition to these specific requirements that must be contained in the written contract, the CoPs set forth a number of obligations that touch on hospices' relationships with their vendors. Although hospices are not specifically required to address these general obligations in their contracts, they may find it helpful to do so in many cases so that the parties have a clear understanding of their mutual obligations and the hospice can help demonstrate compliance to surveyors. Examples of these requirements include:

Professional Management Responsibility (42 C.F.R. § 418.100(e)). The hospice must retain administrative and financial management and oversight of staff and services for all arranged services, to ensure the provision of quality care.

QAPI (42 C.F.R. § 418.58). The hospice's quality assessment and performance improvement program (QAPI) must involve all hospice services, including those services furnished under contract.

Training, Assessment, and Education (42 C.F.R. §§ 418.100(g); 418.60(c). The hospice must provide orientation about the hospice philosophy to all contracted staff who have patient and family contact. In addition, the hospice must assess the skills and competence of all individuals furnishing care and, as necessary, provide in-service training and education programs where required. The hospice must have written policies and procedures describing methods of assessment of competency. Finally, the hospice must provide infection control education to contracted providers.

Patient Grievances (42 C.F.R. § 418.52(b)(1). Hospice patients have the right to voice grievances regarding treatment or care that is (or fails to be) furnished and the lack of respect for property by anyone who is furnishing services on behalf of the hospice. To ensure that the hospice becomes aware of patient grievances, vendor agreements may require the vendor's personnel to report grievances to the hospice.

Caregiver Misconduct (42 C.F.R. § 418.52(b)(4). The hospice must ensure that all alleged violations involving mistreatment, neglect or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by anyone furnishing services on behalf of the hospice, are reported immediately by hospice employees and contracted staff to the hospice administrator.

The CoPs also contain requirements that must be addressed for specific types of vendors. For example, the new CoPs only permit hospices to contract for durable medical equipment (DME) services with a DME supplier that meets the Medicare DMEPOS Supplier Quality and Accreditation Standards at 42 C.F.R. § 424.57. CMS has created a limited exception for hospices that contracted with an unaccredited DME provider prior to December 2, 2008, if the hospice obtains a letter from the vendor stating that it has applied for accreditation and expects to be accredited by September 30, 2009. Other specific requirements and qualifications apply to services such as physical therapy, occupational therapy, speech language pathology, home health and homemaker services, and pharmacy services.

Reinhart's Hospice and Palliative Care Practice Group has developed the *Hospice Vendor Contracting Toolkit* to help hospices develop vendor contracts that are compliant with the revised CoPs. In addition to the nine sample vendor contracts included in the Toolkit, covering services such as therapy and pharmacy, the Toolkit contains a "Vendor Contracting Checklist" that can help hospices evaluate the compliance of their current contracts with the revised CoPs. For more information on the Toolkit, please refer to Reinhart's Web site at <http://www.reinhartlaw.com/webpages/2/Subtoolkits.aspx?id=975>.

This article provides general information about hospice and palliative care issues. It should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them. This communication may be considered advertising in some jurisdictions.

