



COMMISSIONER
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August 19, 2014

To: Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions Providers
Hospice Providers

Subject: **Information Letter 14-43/Provider Letter 14-23** – Contracts, Roles, and Responsibilities between an Intermediate Care Facility/Individuals with an Intellectual Disability and Hospice Provider
(Replaces IL14-43/PL14-04 and PL06-16/06-31)

The Department of Aging and Disability Services (DADS) is re-issuing this letter to correct broken web links, correct outdated contact information and to update the requirements found in DADS rules at Texas Administrative Code (TAC), Title 40, Part 1, Chapter 97, Subchapter H, [§97.880](#), *Providing Hospice Care to a Resident of a Skilled Nursing Facility, Nursing Facility, or Intermediate Care Facility for Individuals with an Intellectual Disability (ICF/IID) or Related Conditions (between an ICF/IID and hospice provider)*.

DADS would like to remind providers of their roles and responsibilities when electing to contract for hospice services. DADS encourages providers to make this a good working relationship through ongoing education and communication. Long-term care and hospice providers may want to consider the federal [Survey and Certification \(S&C\) 02-29](#), “Promising Practices for Implementing the Medicare Hospice Benefit for Nursing Home (NH) Resident” when entering into a contract. This letter includes links to state and federal references and resources. Please take time to read this letter to ensure that systems are in place for effective coordination of care.

Contracts

Can a Medicaid recipient elect hospice care if they are residing in an ICF/IID?

Yes, a Medicaid recipient living in an ICF/IID may elect to receive hospice care in an ICF/IID that has a contract with a Medicaid hospice provider.

Is an ICF/IID and hospice provider required to enter into contracts with each other?

Yes, 42 Code of Federal Regulations (CFR) §483.410(d)(1) (W117) requires an ICF/IID and an outside service provider (in this case a hospice) to enter into a written agreement with each other. Per 42 CFR §483.410(d)(2)(i), the written agreement must contain the responsibilities, functions, objectives, and other terms agreed to by both parties. The decision to enter into any particular contract is made by the parties to the contract, (i.e., by the ICF/IID and the hospice provider). Per 40 TAC §97.880, the agreement must be signed by both the hospice provider and the ICF/IID before hospice services are provided.

What should an ICF/IID do if it does not contract for any hospice services or with a specific hospice provider requested by an individual?

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Based on the individual's personal choice, the ICF/IID must assist the individual in locating an ICF/IID which contracts for hospice services.

If an ICF/IID enters into a contract with a hospice provider, must the ICF/IID provider continue to comply with Medicare and Medicaid requirements?

Yes, the ICF/IID provider must continue to comply with the Medicare and Medicaid program requirements that apply to them; however, if the individual elects the Medicaid hospice benefit, the active treatment requirement is waived as the individual's abilities decrease. The hospice provider is responsible for the management of the terminal illness whether the individual remains in the facility or is moved to another setting (e.g., family's residence, inpatient hospice.)

What must the contract between the ICF/IID and hospice provider contain?

- A description of the hospice provider's role in the admission process and individual and family assessment.
- A description of the hospice provider and the ICF/IID provider's role in interdisciplinary team meetings.
- A description of the services to be provided by both providers. The ICF/IID does not relinquish its responsibility for meeting the non-terminal illness needs of the individual, which are covered by the room and board payments made by the hospice provider. Room and board includes the performance of personal care services, including assistance in the activities of daily living, socializing activities, administration of medication, maintaining the cleanliness of an individual's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies. The hospice provides services at the same level as those provided to an individual residing in his/her home. The providers are responsible for performing each of their respective functions, as agreed.
- A stipulation that services related to the terminal illness may be provided only with the express authorization of the hospice provider.
- The manner in which the ICF/IID and the contracted hospice provider are to communicate with each other and document such communications to ensure that the needs of the individual are addressed and met 24 hours a day.
- Requirements for documenting services that are provided in accordance with the contract.
- Qualifications of staff providing hospice and ICF/IID services.
- The provision that non-core hospice services (40 TAC [§§97.840-846](#)) can be delegated to ICF/IID staff by hospice staff.
- A provision that requires the ICF/IID provider to immediately notify the hospice provider of a significant change in the individual's physical, mental, social or emotional status; clinical complications that suggest a need to alter the plan of care; a need to transfer the individual; and the individual's death.
- The responsibilities of the hospice provider, which must include the professional management of an individual's hospice care, the provision of all hospice services on a timely basis as indicated on the Medicaid hospice plan of care, and collection and management of the co-pay.
- A stipulation that the hospice provider maintain the hospice plan of care, including the services provided by hospice staff, in the individual's current ICF/IID record.
- A stipulation that the hospice provider ensure that the ICF/IID provider has copies of the [DADS Form 3071](#), "Texas Medicaid Hospice Election/Discharge Cancellation Notice," and

the [DADS Form 3074](#), “Physician Certification of Terminal Illness.” These forms must be in the current record of the ICF/IID individual.

- Agreement by the ICF/IID provider to provide certain services to the individual receiving Medicaid hospice on a timely basis that complement and support the hospice services under the Medicaid hospice plan of care.
- A provision stating that the hospice assumes responsibility for determining the course of hospice care, including the determination to change the level of services it provides.
- A provision requiring the hospice to report “an alleged violation involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of client property by non-hospice personnel” to the ICF/IID administrator within 24 hours after the hospice becomes aware of the alleged violation [40 TAC [§97.880\(b\)\(9\)](#)].
- Although not a requirement of the contract between the ICF/IID provider and the hospice provider, the ICF/IID may require a provision requiring the hospice to report knowledge or suspicion of abuse, neglect and exploitation, including misappropriation of client property and including injuries of unknown source, to the ICF/IID administrator immediately or within one hour of knowledge or suspicion. This provision is to reflect the reporting requirements that apply to an ICF/IID provider, which include:
 - all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, immediately to the ICF/IID administrator or to other officials in accordance with State law through established procedures [42 CFR §483.420(d)(2) (W153)];
 - knowledge or suspicion of allegations of abuse, neglect, and exploitation to the Texas Department of Family and Protective Services within one hour, as required by:
 - ✓ 40 TAC [§3.302\(a\)](#) for state supported living centers (SSLCs);
 - ✓ 40 TAC [§4.554\(d\)\(1\)\(A\)](#) for community centers;
 - ✓ 40 TAC [§90.212\(a\)](#) for licensed ICFs/IID; and
 - reportable incidents to DADS within one hour after suspecting or learning of each incident, in accordance with 40 TAC [§90.213\(b\)\(1\)-\(8\)](#) for licensed ICFs/IID and 40 TAC [§9.225\(b\)\(1\)-\(8\)](#) for community centers and SSLCs.
- A delineation of the responsibilities of the hospice provider and the ICF/IID to provide bereavement services to ICF/IID staff.
- A statement that the Medicaid hospice provider will pay the ICF/IID provider a rate that is 95 percent of the ICF/IID rate for each individual on hospice in an ICF/IID. When the individual elects out of the ICF/IID program and into the Medicaid hospice program, all Medicaid payments to the ICF/IID provider cease. DADS will pay the hospice provider a room and board payment that is 95 percent of the Medicaid per diem rate for each Medicaid individual in the ICF/IID. The hospice provider passes on the room and board payment to the ICF/IID. The hospice provider may pay up to an additional 5 percent of the Medicaid per diem rate to the ICF/IID. Regional survey staff will report any payment over 100 percent (95 percent + 5 percent) of the Medicaid per diem rate as Medicaid fraud.

Hospice providers are required to collect and manage the individual’s co-pay, which is figured into the room and board rate. While the hospice provider pays for room and board, the ICF/IID provider is still responsible for meeting all the needs of the individual. See 40 TAC Chapter 30, Subchapter F, [§30.60](#), Medicaid Hospice Payments and Limitations.

Providers are reminded that room and board payments cannot be made to a hospice provider prior to hospice services being given to an individual.

Roles and Responsibilities

What is the ICF/IID provider's responsibility when contracting with a hospice provider?

The ICF/IID must:

- Execute a contract with a hospice provider and establish the amount the hospice provider will pay the ICF/IID for the individual's room and board. The rate paid by DADS to the hospice provider will be 95 percent of the Medicaid rate the ICF/IID would have received if the individual did not go on hospice. The rate paid by the hospice provider to the ICF/IID can go up to 100 percent, but the extra 5 percent will be paid by the hospice provider. Room and board includes performance of personal care services, including assistance with activities of daily living, administration of medication, maintaining the cleanliness of an individual's room, and supervision and assistance with durable medical equipment and prescribed therapies. The contract must require the hospice provider and the ICF/IID to develop a plan of care for the resident.
- Review, with the hospice, the resident's intellectual disability/related condition (ID/RC) Assessment to determine if a revision to the resident's level of need (LON) is needed.
- Notify DADS that the individual has elected to receive hospice services.
- Manage the trust fund for the individual on hospice.
- If applicable, ensure that a new Inventory for Client and Agency Planning (ICAP) and LON assessment are completed.
- Ensure that all hospice documentation is maintained in a separate section of the individual's ICF/IID record. At a minimum, the ICF/IID record will include the current and past:
 - [DADS Form 3071](#), LON assessment, and ICAP scores (original);
 - [DADS Form 3074](#);
 - Hospice interdisciplinary assessments;
 - Hospice plan of care; and
 - Current interdisciplinary notes, which include the following:
 - a. Nurses notes and summaries;
 - b. Physician orders and progress notes; and
 - c. Medication and treatment sheets during the hospice certification period.
- Ensure all hospice documentation is part of the current clinical record. At a minimum, the permanent documentation should include the current and past:
 - [DADS Form 3071](#)
 - [DADS Form 3074](#)
 - Medicare Election Statement, if dually eligible;
 - Verify that the individual does not have Medicare Part A by calling the Texas Medicaid Healthcare Partnership (TMHP) General Inquiries at 800-925-9126 (select option #2, then option #1);
 - Hospice interdisciplinary assessments;
 - Hospice plan of care; and
 - Current interdisciplinary notes, which include the following:
 - a. Nurses notes and summaries;

- b. Physician orders and progress notes; and
- c. Medication and treatment sheets during the hospice certification period.
- Continue to provide services to an individual receiving hospice care in the ICF/IID. Hospice staff will not be considered facility staff to establish or maintain staff-to-individual ratios.
- Pay a quality assurance fee.
- Immediately notify the hospice provider of any significant changes in the individual's condition.
- Comply with all requirements for participation in the Medicare and Medicaid programs.

What is the hospice provider's responsibility when contracting with an ICF/IID?

When a Medicaid ICF/IID individual elects hospice, the hospice provider is responsible for:

- The Medicaid hospice election and cancellation process.
- Working with the ICF/IID staff to discharge the individual and arrange the individual's admission into a hospice inpatient care facility or nursing facility, if applicable.
- Working with the ICF/IID staff to ensure all forms are completed in order to start, continue, or cancel the hospice program.
- Notifying the Social Security Administration (SSA) when an individual on Supplemental Security Income (SSI) elects hospice.
- Retaining the professional management responsibility for the provision of hospice care, according to the hospice plan of care, by qualified health care professionals, which includes:
 - Designation of a hospice registered nurse to coordinate the implementation of the plan of care;
 - Provision of a substantial amount of core services (physician, nursing, medical social work, and counseling services) that must be routinely provided directly by the hospice employees and cannot be delegated to the ICF/IID, as outlined in 42 Code of Federal Regulations [§418.64](#);
 - Provision of drugs and medical supplies and any other service, as needed, for palliation and management of the terminal illness and related conditions; and
 - Involvement of ICF/IID personnel in assisting with the administration of hospice non-core services in the plan of care to the extent that the hospice would routinely use the services of an individual's family or caregiver in the home setting. According to DADS rules at 40 TAC [§97.840\(a\)-\(b\)](#), a hospice provider must provide the following non-core services in a manner consistent with accepted standards of practice and directly through a written contract:
 - physical therapy services;
 - occupational therapy services;
 - speech-language pathology services;
 - hospice aide and hospice homemaker services; and
 - volunteers.
- Maintaining a separate section in the individual's current ICF/IID record (either paper or electronic) that contains documentation of all the hospice services provided by hospice staff; hospice admission assessments; copies of the [DADS Form 3071](#), which includes updates and cancellations; copies of the [DADS Form 3074](#); documentation on Medicaid eligibility; advance directives; and other legal documents.
- Collecting and managing the co-pay for an individual on hospice.

- Ensuring continuity of individual/family care.
- Payment to the ICF/IID for room and board.

Are there roles and responsibilities that the ICF/IID and hospice provider do jointly to ensure smooth coordination of care?

Yes. According to 40 TAC §[97.880](#) both providers must:

- Maintain ongoing communication regarding an individual's care and changes in condition.
- Maintain hospice records in the individual's clinical record that reflect the individual's current condition.
- Coordinate any changes in the individual's hospice plan of care with the ICF/IID staff.
- Have joint procedures for ordering medications that ensure the proper payor is billed and for reconciling billing between the ICF/IID and hospice provider, including:
 - Contacting the hospice prior to filling a new prescription.
 - Ensuring that all drugs related to the terminal illness and related conditions are ordered through the appropriate pharmacies (See [Part D Payment for Drugs for Beneficiaries Enrolled in Medicare Hospice](#), issued July 18, 2014.)
 - Ensuring that drugs unrelated to the terminal illness are billed appropriately.
 - Ensuring that the first three prescriptions unrelated to the terminal illnesses are billed to the Medicaid card in all ICF/IIDs, with the exception SSLCs. The ICF/IID must pay for any medications over three prescriptions.

NOTE: Individuals residing in SSLCs, regardless of their Medicaid coverage, are not entitled to vendor drugs unrelated to the terminal illness. Room and board payments cover the costs of the medications unrelated to the terminal illness for the individual on hospice.

Texas References and Resources:

- 40 TAC [Chapter 30](#), Medicaid Hospice Program
- 40 TAC Chapter 9, Subchapter E §[9.274](#), ICF/IID Hospice Services
- 40 TAC [Chapter 97](#), Licensing Standards for Home and Community Support Services Agencies (HCSSAs)
- [Texas Medicaid Hospice Program Provider Manual](#)
- [Long-term Care Policy Provider Communications](#)

Federal References and Resources:

- 42 Code of Federal Regulations, [Part 418](#), Hospice Care
- State Operations Manual, [Chapter 2](#), §2082, Election of Hospice Benefit By Resident of Skilled Nursing Facility (NF), ICF/IID, or Non-Certified Facility,
- Regional Survey and Certification (RS&C) Letter [98-10](#), Specific Practices Involving Long-term Care Nursing Facilities and Hospices Which May Be Kickbacks (applicable to all long-term care providers)

Who do I contact if I have a question?

For Medicaid hospice policy questions contact please email a Medicaid Hospice Program Specialist, hospice@dads.state.tx.us.

- *Mail continuous home care extension, reconsideration requests and overnight mail to*
Department of Aging and Disability Services
Attn: Hospice UMR MC W335
701 West 51st Street
Austin, TX 78751

For billing and payment questions, contact the DADS Provider Claims Services hotline at 512 438-2200 (select option #1.) Questions can also be sent to the Provider Claims email box at <http://hhsportal.hhs.state.tx.us/wps/portal>.

Address hospice billing questions to the TMHP Help Desk at 800-626-4117 (select option #1).

If you have any hospice or ICF/IID questions, please contact a policy specialist in the Regulatory Services Policy, Rules and Curriculum Development unit at 512-438-3161.

Sincerely,

[signature on file]

Mary T. Henderson
Assistant Commissioner
Regulatory Services

MTH/DJ:cg

[signature on file]

Donna Jessee
Director
Center for Policy & Innovation