



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 12, 2020

DAL: ACF 20-05, HCBS 20-02

Subject: Medication Administration in Adult Care Facilities (ACFs) for Residents Receiving Hospice Services Who Can No Longer Participate or Receive Assistance with the Self-Administration of Medication from ACF Staff

Dear Adult Care Facility Administrator:

The purpose of this letter is to update and clarify the policies of the Department of Health ("Department") pertaining to the administration of medications for Adult Care Facility (ACF) residents who are no longer able to participate or receive assistance with the self-administration of medication from the ACF. Consistent with DAL HCBC 07-21, ACF residents receiving hospice services may continue to reside in an ACF without need for an approved waiver, even when their life-limiting condition exceeds established retention standards, if they are subject to a plan of care agreeable to both the hospice and ACF.

The majority of residents receiving hospice services will continue to be able to receive assistance with the self-administration of medications from the ACF until shortly before death. For residents who continue to be able to participate or receive assistance with the self-administration of medications, current Department policy remains unchanged. The Department would like to honor residents' wishes to remain in their homes at the end of life and enable them to receive the medication(s) they need to manage pain and other distressing symptoms, while ensuring the proper administration, storage, and maintenance of medication records to prevent diversion of medication(s), particularly controlled substances. The policies outlined in this letter are intended to guide ACFs, hospice programs, residents, and their families in the provision of services under these circumstances, and when all parties agree that the resident's needs can continue to be safely met in the ACF.

The Hospice Plan of Care and Medication Administration for ACF Residents

As described in DAL HCBC 07-21, and consistent with 42 CFR §418.56(b), when an ACF resident elects hospice, a hospice plan of care will be developed by the hospice program, the hospice patient, and the patient's family. Hospice programs rely on the patient's definition of "family" and may include a range of individuals in care planning.

An ACF resident may continue to reside in the ACF under hospice care when they can no longer participate or receive assistance with the self-administration of medication only to the extent that they have designated caregivers that may include family or other caregivers (paid or unpaid), available to administer their medications. If they do not have such supports or such supports are unavailable, the resident must be discharged to a more appropriate or higher level of care.

The hospice plan of care will be reviewed by the ACF and implemented and overseen by the hospice interdisciplinary team. The plan of care must take into consideration the resident's goals for care, the likely trajectory of the resident's condition, the resident's present care needs and care needs as the illness progresses, and the resources necessary and available to address those needs over the course of the resident's illness. The hospice plan of care must be reviewed every fifteen (15) days per federal hospice regulations at 42 CFR §418.56(d). As the resident's condition declines and their needs change, the hospice interdisciplinary team, in consultation with the patient, the patient's family, designated caregivers, and the ACF, must determine if the resident's goals for care and needs can continue to be safely met in the ACF.

The resident's plan of care must address the steps to be taken if the resident can no longer participate or receive assistance with the self-administration of medication from the ACF. If the resident or family has identified a limited number of designated caregivers available and willing to assist, the hospice plan of care may assign those designated caregivers a role in medication administration. Based on the plan of care, the hospice program will train those individuals to secure, administer, dispose of medications, and to properly maintain medication records. Record of such training must be maintained in the hospice plan of care.

As long as the resident's end-of-life needs can continue to be safely managed through a combination of hospice staff and designated caregivers, the ACF will continue to provide personal care services, meals, housekeeping and housing. The ACF, hospice, family and designated caregivers must coordinate closely to ensure that the resident's needs and goals are met as the resident's condition changes. If the ACF determines that the resident does not have designated caregivers available to carry out the medication administration components of the plan of care, and symptoms cannot be appropriately managed in the ACF, the hospice interdisciplinary team, including the patient, if able, and the family shall meet to discuss the resident's discharge to an alternative setting or a higher level of care where their needs and goals for care can be met.

Following is a description of each party's responsibilities in providing care and services to the hospice patient. Coordination between the ACF, hospice, family and the designated caregivers is **critical**. Further guidance on these responsibilities can be found in DAL HCBC 07-21.

Roles and Responsibilities of Hospice

The ACF is legally deemed to be the resident's home as defined in Adult Care Facility Directive No. 3-90, August 29, 1990. As such, hospice regulations and policies governing the delivery of services in the community apply to services provided to ACF residents. Hospice will act as the professional care manager for the resident's medical care. The hospice plan of care must provide for appropriate medications and proper medication administration to enable symptom management. Accordingly, medication administration for hospice patients living in an ACF are governed by the same regulations and policies that apply to hospice patients living in private homes.

Similar to hospice plans of care for patients living in private homes, hospice plans of care for ACF residents will provide a role for a limited number of designated caregivers in the administration of medications in the event a resident can no longer participate or receive assistance with the self-administration of medication from the ACF. The hospice will collaborate with the ACF, the patient, family, legal guardian (if applicable), and health care agent in determining whether remaining at the ACF is a safe and appropriate plan of care for the patient. If the resident can remain safely in the ACF, the hospice will document the plan to include the

names of the limited caregivers who will assume responsibility for safeguarding and administering medications, the maintenance of a log of medication administered, the site of storage of the medications, and who will be responsible for picking up prescriptions. The plan will also include considerations for ensuring the hospice patient's needs are met if this arrangement is, at any point, no longer possible. The plan should be signed by the patient if the patient has capacity, and if not, their guardian, health care agent or authorized representative, the ACF, and the hospice nurse. The primary care physician will be informed through the interdisciplinary hospice process and must agree to provide the necessary medication orders.

The hospice will be responsible for providing training to the designated caregivers in the administration of medication and will coordinate with the caregivers to assume responsibility for the administration of medication, consistent with 42 CFR §418.56(b). The training must include secure custody and disposal of medications by the designated caregivers, location of and how to safely store the medications, medication disposal either by the designated caregiver or by the hospice nurse, and documentation of the medication administration and disposal by the designated caregivers. Regulatory guidance provided in DAL HCBC 05-07 confirms that the designated caregivers of a resident in hospice who are no longer able to receive assistance with the self-administration of medication from the ACF are responsible for securely storing medications in the resident's unit or for otherwise maintaining custody of the medications. The designated caregiver may keep the medications on their person, or in the resident's room in a locked storage unit that is affixed or not portable. Only the hospice and the designated caregivers may have access (e.g., a key) to the storage unit.

The hospice nurse will review the medication administration logs at each visit and will count the remaining medications to assess for proper use. To limit the supply of medications that must be secured by the designated caregiver, the hospice will order a maximum of a five (5) day supply of any controlled substance medication.

Roles and Responsibilities of ACF

As indicated in DAL HCBC 07-21, the ACF is responsible for working with the hospice program to address the resident's needs and to review the resident's hospice plan of care and any changes to the plan. The ACF retains the responsibility to provide care to the resident as required by its existing category of licensure and/or certification and the resident's signed admission/residency agreement. However, once the resident can no longer participate or receive assistance with the self-administration of medication from the ACF, any medications included in the hospice plan of care will no longer be in the custody or control of the ACF; they will not be stored, dispensed or administered under the ACF's controlled substance Class 3A Institutional Dispenser, Limited License (with the exception of some Enhanced Assisted Living Residences as illustrated within this letter).

The ACF will develop policies and procedures to include provisions that the hospice resident's designated caregiver(s) will assume responsibility for the resident's medication in the event the resident is no longer able to participate to receive medication administration assistance from the ACF. Upon survey, the ACF must be prepared to share its policy and procedures and be able to identify which residents have such a plan in place.

Upon enrollment in hospice, the resident's physician will discontinue the previous medication order(s) and the hospice will obtain new prescription(s) for the resident. The ACF should document in its case notes that the responsibility for assistance with medications for the resident has transitioned to the responsibility of hospice as of the date of hospice enrollment. At that time, any controlled substances will be destroyed in accordance with the ACF's Class 3a

License, and any other medications will be disposed of according to current policy. Moving forward, the designated caregiver(s) will have custody of the medications in accordance with the hospice plan of care.

The staff of the ACF will collaborate with hospice as they work with the patient, family, legal guardian, health care agent and facility staff in determining if staying at the facility is a safe and appropriate plan of care for the patient. The ACF staff and caregivers will sign the hospice plan of care that will include the names of the limited caregivers who will assume responsibility for safeguarding and administering medications, as well as the contact information of each named caregiver, to include each named caregiver's address, telephone number, and e-mail address, and the plan for the patient if this arrangement is no longer possible.

When a hospice resident can no longer participate or receive assistance with self-administration of medication from the ACF, the hospice, via the designated caregivers and consistent with the hospice plan of care, will assume responsibility for governing the administration, record-keeping, and disposal of the medications, including the controlled substances and any other medications the patient requires. In this circumstance only, the ACF will not be responsible for the medication assistance or administration, record-keeping, or disposal of any medications in the hospice plan of care. Consistent with 18 NYCRR §§487.7, 488.7 and 490.7, the ACF will ensure the availability of safe and secure storage for medications.

For patients who are in hospice and are unable to participate in medication administration, storage of medications will be maintained within the resident's living quarters or on the person of the designated caregiver. The designated caregiver will be responsible for ensuring that medications are securely stored. If/when this aspect of care is effectuated and medication administration and documentation becomes the responsibility of the designated caregiver(s) and hospice staff, ACF staff will not have access to the medications. The limited number of designated caregivers and hospice staff will be the only individuals with access to the medications.

Upon the patient's death or discharge from the hospice program, the hospice program must offer to secure and dispose of all medications as required by New York State and federal law. The hospice will be responsible for addressing any missing medications as per its state and federal regulatory requirements.

Shared Responsibilities

Both the Hospice and the ACF share a responsibility to coordinate care and take steps to mitigate the opportunities for the diversion of narcotics. Providers should follow their policies on who to communicate any suspicion or concern that the hospice patient/resident's narcotics may be subject to diversion by any party. If such concerns arise, the hospice plan of care must be revisited and revised as necessary.

Roles and Responsibilities of Designated Caregivers

To enable ACF residents receiving hospice services to remain in their homes when they can no longer participate or receive assistance with the self-administration of medication from the ACF, a limited number of designated caregivers must agree to accept the role assigned to them under the hospice plan of care. The number of designated caregivers having access to the medications should be as few as possible, while still ensuring that the resident will have access to his or her medications, as needed. The designated caregivers must coordinate with the hospice interdisciplinary team and the ACF staff to manage the ACF resident's needs at the end

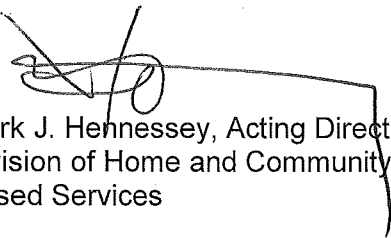
of life and must agree to participate in the training provided by hospice in the storage, administration and disposition of medications. In addition, they must agree to serve as custodians of the medications, document the administration, and properly dispose or request that the hospice nurse dispose of any unused medications upon the resident's death. The plan of care should address what will happen if the designated caregiver is unable to fulfill any of these duties, which should include multiple back-up plans. ACF staff cannot assume these responsibilities.

If the plan of care includes paid designated caregivers, the paid caregivers must have appropriate licensure in New York State that authorizes them to administer medications, including controlled substances. The resident or family is responsible for designating and/or hiring the caregivers. Neither the ACF nor the hospice may be involved in the hiring, coordinating or providing of any paid caregiver. If, however, the designated caregiver is unpaid, such licensure is not required. Unpaid caregivers, including, for example, a daughter or best friend who is not paid for providing care, may administer medications without being licensed or certified to administer medications in New York State.

Residents of Enhanced Assisted Living Residences (EALRs)

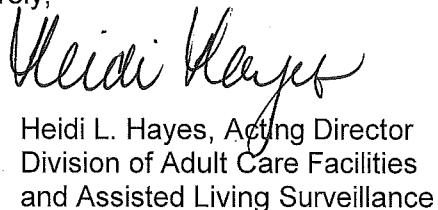
An Enhanced Assisted Living Residence (EALRs) may employ or contract with nurses to perform nursing services to meet the health care needs of residents. In this case, the EALR nurse may be able to fulfill some or all the medication administration functions for residents receiving hospice care. The EALR staffing resources available, as well as governing policies and regulations, must be considered when developing the hospice plan of care. Additionally, an EALR nurse may fulfill some or all the medication administration functions for no more than two residents who are not in the EALR program but reside in an assisted living residence or Special Needs Assisted Living Residence that is co-located with the EALR.

The coordination and cooperation between all parties is critical to ensure that the resident's preferences and dignity are honored at the end of life, while pain and symptoms are appropriately managed. If you have questions about the contents of this letter as it relates to hospice, please contact the Division of Home and Community Based Services at homecare@health.ny.gov or as it relates to the adult care facility, the Division of Adult Care Facilities and Assisted Living Surveillance at acfinfo@health.ny.gov.



Mark J. Hennessey, Acting Director
Division of Home and Community
Based Services

Sincerely,



Heidi L. Hayes, Acting Director
Division of Adult Care Facilities
and Assisted Living Surveillance

cc: V. Deetz
M. Kissinger
J. Vinciguerra
K. Leonard