**Disclaimer:** The answers provided in this document are the result of the Texas and New Mexico Hospice Organization’s research and analysis. If you have specific questions on rules and our interpretation, contact the Texas Health and Human Services Commission (HHSC) Regional or State Offices.

**Question:** Can I provide hospice services to someone residing in an assisted living facility (ALF)?
**Answer:** Yes, a hospice provider can provide hospice services to a resident at an ALF.

**Question:** Do I have to have a contract/agreement with the ALF?
**Answer:** There is no relationship on the provision of services between the two providers. Federal, state law and rules do not require a hospice and ALF to enter into a contract/agreement. The contract/agreement is between the hospice provider and the resident at the ALF. The resident has a right to choose their own healthcare professional and hospice provider.

**Question:** Who pays for ALF care?
**Answer:** Private pay, insurance and Medicare are the primary payors for ALF services. There are a few ALF providers that are involved with waiver services to individuals in ALF.

**Question:** Can a hospice have an office at an ALF?
**Answer:** By law and rule, hospices can only have a parent or branch office, alternate delivery sites and administrative support sites. The first two have to be licensed by the state and meet all requirements. An administrative support site can only be used for administrative and other support functions but does not provide direct home health, hospice or personal assistance services. It cannot be used as an operational place of business, have a sign on the door with the hospice name, hours of operation and who to contact. Therefore, a hospice cannot open an office and conduct business of any kind in an ALF unless that office is licensed as a parent/branch or alternate delivery site. Hospices contract with the residents not ALF’s. Thus it would be improper to enter into any agreement with an ALF where a specific hospice would be the preferred provider. It is also improper for any hospice to be involved in admission/intake procedures of an ALF as it is each resident's right to choose their health care provider.

**Question:** What does the ALF need to share with the hospice provider and what information does the AL need to keep in the resident’s record?
**Answer:** The ALF must ensure the health and safety of the people residing in the ALF and adhere to all the rules. The ALF needs to know what medications the hospice recipient is on and how they are stored. In addition, 40 Texas Administrative Code (TAC) §92.41 (e) has specific admission policies, which include information sharing between the ALF and outside resources. 40 TAC §92.41 (h) Resident Records outlines the information that is kept in the resident’s ALF record. §92.41(e) Admission policies.

1. A facility must not admit or retain a resident whose needs cannot be met by the facility, or who cannot secure the necessary services from an outside resource. As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility
remains responsible for all care provided at the facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured shall be the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all Life Safety Code requirements based on each resident's evacuation capabilities, except as provided in subsection (f) of this section.

(2) There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services. If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.

(3) A facility must share a copy of the facility disclosure statement, rate schedule, and individual resident service plan with outside resources that provide any additional services to a resident. Outside resources must provide facilities with a copy of their resident care plans and must document, at the facility, any services provided, on the day provided.

(4) Each resident must have a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record.

(5) Each assisted living facility must secure at the time of admission of a resident the following identifying information:
   (A) full name of resident;
   (B) social security number;
   (C) usual residence (where resident lived before admission);
   (D) sex;
   (E) marital status;
   (F) date of birth;
   (G) place of birth;
   (H) usual occupation (during most of working life);
   (I) family, other persons named by the resident, and physician for emergency notification;
   (J) pharmacy preference; and
   (K) Medicaid/Medicare number, if available.

§92.41 (h) Resident records.
1. (1) Records that pertain to residents must be treated as confidential and properly safeguarded from unauthorized use, loss, or destruction.
2. (2) Resident records must contain:
   (A) information contained in the facility's standard and customary admission form;
   (B) a record of the resident's assessments;
   (C) the resident's service plan;
   (D) physician's orders, if any;
   (E) any advance directives;
   (F) documentation of a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record. Christian Scientists are excluded from this requirement; and
   (G) documentation by health care professionals of any services delivered in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.
3. (3) Records must be available to residents, their legal representatives, and DADS staff.

Question: Is the ALF required to provide medical staff and care?
Answer: The ALF does not provide nor should they provide medical personnel and care. An ALF may employ a nurse to provide certain services in an ALF. The ALF may provide medication administration as outlined under 40 TAC §92.41 (j).
Question: Does the ALF provide medication administration?
Answer: Yes, the ALF may provide medication administration. If an outside resource provides medication, the ALF staff must be advised of all the medications the hospice recipient is on and how they are stored. See 40 TAC §92.41 (j).

Question: Can a hospice provider delegate to ALF staff?
Answer: Yes; however, it should be noted that ALF employees are limited in the services they may provide.

Question: If the hospice can delegate, how does that work in terms of the ALF staff, liability etc?
Answer: The hospice provider will enter into a contractual agreement with the ALF. The contract will specify the fee to the ALF from the hospice for the services rendered. The services that ALF employees may perform are limited. An ALF may employ a nurse to provide certain services in an ALF. If a registered nurse (RN) chooses to utilize their license and follows the nurse delegation rules for delegation purposes HHSC does not regulate fees or charges for this arrangement. The liability is on the delegating RN.

Question: Can respite be done in an ALF if they are not a licensed nursing facility.
Answer: No. Regulations stipulate that respite care can only be provided to a hospice recipient under arrangement with a Medicare or Medicaid facility that meets certain guidelines. Please note the following state and federal regulations:

§97.861 Hospice Short-term Inpatient Care
(a) A hospice must make inpatient care available when needed for pain control, symptom management, and respite purposes.
(b) A hospice must ensure that inpatient care for pain control and symptom management is provided in either:
   (1) a hospice inpatient unit that meets the additional standards in Division 7 of this subchapter (relating to Hospice Inpatient Units) and the Medicare Conditions of Participation for providing inpatient care directly as specified in 42 CFR §418.110; or
   (2) a Medicare-certified hospital or skilled nursing facility that also meets:
      (A) the licensing standards specified in §97.870(b)(1)-(2) of this subchapter (relating to Staffing in a Hospice Inpatient Unit) and §97.871(d)(1)-(4) of this subchapter (relating to Physical Environment in a Hospice Inpatient Unit) regarding 24-hour nursing services and client areas; and
      (B) the federal Medicare standards specified in 42 CFR §418.110(b) and (e) regarding 24-hour nursing services and patient areas.
(c) A hospice must ensure that inpatient care for respite purposes is provided either by:
   (1) a facility specified in subsection (b)(1) or (2) of this section; or
   (2) a Medicare- or Medicaid-certified nursing facility that also meets the licensing standards specified in §97.871(d)(1) - (4) of this subchapter regarding client areas and the federal Medicare standards specified in 42 CFR §418.110(e) regarding patient areas.
(d) A facility providing respite care must provide 24-hour nursing services that meet the nursing needs of all clients and are furnished in accordance with each client's plan of care. Each client must receive all nursing services as prescribed and must be kept comfortable, clean, well-groomed, and protected from accident, injury, and infection.
(e) In addition to the requirements in §97.289(b) of this chapter (relating to Independent Contractors and Arranged Services), if a hospice has an agreement with a facility to provide for inpatient care, there must be a written contract coordinated by the hospice that specifies:
   (1) that the hospice supplies the facility with a copy of the client's plan of care and specifies the inpatient services to be furnished;
that the facility has established client care policies consistent with those of the hospice and agrees to abide by the palliative care protocols and plan of care established by the hospice for its clients;

(3) that the facility's clinical record for a hospice client includes documentation of all inpatient services furnished and events regarding care that occurred at the facility;

(4) that a copy of the discharge summary be provided to the hospice at the time of discharge;

(5) that a copy of the inpatient clinical record is available to the hospice at the time of discharge;

(6) that the facility has identified a person within the facility who is responsible for the implementation of the provisions of the agreement;

(7) that the hospice retains responsibility for ensuring that the training of personnel who will be providing the client's care in the facility has been provided and that a description of the training and the names of those giving the training are documented; and

(8) a method for verifying that the requirements in paragraphs (1) - (7) of this subsection are met.

§ 418.108 Condition of participation: Short-term inpatient care.
Inpatient care must be available for pain control, symptom management, and respite purposes, and must be provided in a participating Medicare or Medicaid facility.

(a) Standard: Inpatient care for symptom management and pain control. Inpatient care for pain control and symptom management must be provided in one of the following:

(1) A Medicare-certified hospice that meets the conditions of participation for providing inpatient care directly as specified in §418.110.

(2) A Medicare-certified hospital or a skilled nursing facility that also meets the standards specified in §418.110(b) and (e) regarding 24-hour nursing services and patient areas.

(b) Standard: Inpatient care for respite purposes. (1) Inpatient care for respite purposes must be provided by one of the following:

(i) A provider specified in paragraph (a) of this section.

(ii) A Medicare or Medicaid-certified nursing facility that also meets the standards specified in §418.110(e).

1. (2) The facility providing respite care must provide 24-hour nursing services that meet the nursing needs of all patients and are furnished in accordance with each patient's plan of care. Each patient must receive all nursing services as prescribed and must be kept comfortable, clean, well-groomed, and protected from accident, injury, and infection.

(c) Standard: Inpatient care provided under arrangements. If the hospice has an arrangement with a facility to provide for short-term inpatient care, the arrangement is described in a written agreement, coordinated by the hospice, and at a minimum specifies—

(1) That the hospice supplies the inpatient provider a copy of the patient's plan of care and specifies the inpatient services to be furnished;

(2) That the inpatient provider has established patient care policies consistent with those of the hospice and agrees to abide by the palliative care protocols and plan of care established by the hospice for its patients;

(3) That the hospice patient's inpatient clinical record includes a record of all inpatient services furnished and events regarding care that occurred at the facility; that a copy of the discharge summary be provided to the hospice at the time of discharge; and that a copy of the inpatient clinical record is available to the hospice at the time of discharge;

(4) That the inpatient facility has identified an individual within the facility who is responsible for the implementation of the provisions of the agreement;

(5) That the hospice retains responsibility for ensuring that the training of personnel who will be providing the patient's care in the inpatient facility has been provided and that a description of the training and the names of those giving the training are documented; and

(6) A method for verifying that the requirements in paragraphs (c)(1) through (c)(5) of this section are met.
The Medicare State Operations Manual Section 2084 Hospice Inpatient Services and 2084B Hospice Provides Inpatient Services Under Arrangement state:

2084 - Hospice Inpatient Services
(Rev.73, Issued: 12-02-11 Effective: 12-02-11, Implementation: 12-02-11)
Hospices must make inpatient care available for pain control, symptom management, and respite purposes. This inpatient care may be provided directly by the hospice or indirectly under arrangements made by the hospice. If services are provided under arrangements, the hospice must ensure that the services are in full compliance with all applicable standards relating to inpatient care found at 42 CFR 418.110 and 42 CFR 418.108.

2084B - Hospice Provides Inpatient Services Under Arrangements
(Rev.73, Issued: 12-02-11 Effective: 12-02-11, Implementation: 12-02-11)
When the hospice provides inpatient services under arrangements with a Medicare participating hospital or SNF, a Medicaid participating NF (for respite care only), or an inpatient unit of another Medicare-certified hospice, a separate survey of each site is not required. In these cases, the SA reviews the agreement and patient files to assure that the standards in 42 CFR 418.110(b) regarding 24-hour nursing service and 42 CFR 418.110(e) regarding comfort and privacy of patient and family members are satisfied. However, if in reviewing contracts and other documentation (e.g., clinical records, plans of care), questions arise concerning the contract arrangements, the SA conducts an onsite visit to the institution providing the inpatient services to review the care provided under arrangements, not to inspect the facility. This includes hospitals that are accredited by The Joint Commission or the American Osteopathic Association that are providing inpatient services under arrangements.

Question: Can a hospice recipient living in an ALF continue to live in the ALF as their health declines?
Answer: All residents of an ALF must meet evacuation requirements outlined under 40 TAC Chapter 92.3 Types of Assisted Living Facilities at http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=1&ch=92&r=2. If a hospice recipient is determined by the ALF or HHSC to be inappropriately placed, the ALF can seek a waiver from HHSC asking that the resident be allowed to remain as outlined under 40 TAC §92.41 (f).

Question: How does the ALF handle a person who may be inappropriately placed?
Answer: The ALF must continue to meet health and safety requirements, not put the residents in jeopardy and ensure that the resident will receive adequate care at the facility according to their license or under arrangement by the resident. There are specific criteria and documentation requirements the ALF must provide to HHSC for the determination to be made. The waiver request will be specific to the individual. See Provider Letter 12-09 Inappropriately Placed Residents at: http://www.dads.state.tx.us/providers/communications/2012/letters/PL2012-09.pdf and 40 TAC 97.41 (f) at: http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=1&ch=92&r=41.

Question: HHSC has rules on vaccine preventable diseases in various sets of rules. Does this rule in the ALF licensure apply to hospice providers?
Answer: No. The resident enters into an agreement with the hospice provider not the ALF and hospice providers.

Question: What is the role of the HHSC Long Term Care Ombudsman in an ALF?
Answer: The Texas Ombudsman Program advocates for quality of life and care for residents in nursing homes and assisted living facilities. Federal and state authority mandates ombudsmen to identify, investigate and resolve complaints made by, or on behalf of, residents and to provide services to help in protecting health, safety, welfare and rights. Information and assistance in choosing the most appropriate living residence is also a valuable service. There are 28 Area
Agencies on Aging that have certified ombudsmen. The location of the AAA’s can be accessed at: https://www.dads.state.tx.us/News_info/ombudsman/.

Question: What rules are ALF’s required to comply with?
Answer: The ALF complies with the following rules:
- Texas Administrative Code, Title 40, Part 1, Chapter 46: Contracting to Provide Assisted Living and Residential Care Services
- Texas Administrative Code, Title 40, Part 1, Chapter 92: Licensing Standards for Assisted Living Facilities
- Texas Administrative Code, Title 40, Part 1, Chapter 99: Criminal Convictions Barring Facility Licensure
- Texas Health and Safety Code, Title 4, Chapter 247: Assisted Living Facilities
- Texas Health and Safety Code, Title 4, Chapter 250: Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities

Question: What ALF rules address hospice?
Answer: The following ALF rules pertain to outside resources, which includes hospice providers:
- §92.5 (b) Health Care Professional
- §92.6 (6) General Characteristics of a Resident
- §92.41 (e)(3) and (4) Admission Policies
- §92.41 (h) Resident Records