



TEXAS & NEW MEXICO HOSPICE ORGANIZATION

FAQ: Hospice and Assisted Living Facilities

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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 and insurance 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 must 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: Can the hospice pay room and board to the ALF?

Answer: No. Federal and state laws and rules do not allow for this. Room and board is ONLY paid to nursing facilities and ICFIID providers. The resident pays for the ALF care and services as private pay or private insurance.

Question: Can the ALF provide respite for a person on hospice in the community?

Answer: No. Per the Code of Federal Regulations (CFR) and Appendix M Guidance to Surveyors only limited, short-term, intermittent, inpatient respite care (IRC) can be provided because of the absence or need for relief of the family or other caregivers. Respite care must be provided in one of the following settings:

- Medicare-certified hospice that provides inpatient care directly;
- Medicare-certified hospital; or
- SNF that meets §418.110(b) and (e) regarding 24-hour nursing and patient areas.

Question: What does the ALF need to share with the hospice provider and what information does the ALF 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, 26 Texas Administrative Code (TAC) §553.259 has specific admission policies, which include information sharing between the ALF and outside resources. 26 TAC §553.265 Resident Records and Retention outlines the information that is kept in the residents ALF record. https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=553&interface=VIEW_TAC&part=1&subchapter=E&title=26.

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 26 TAC §553.261 (a). https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=553&interface=VIEW_TAC&part=1&subchapter=E&title=26.

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 26 TAC §553.261.

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:

- 26 TAC §558.863 Hospice Short-term Inpatient Care: https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=558&division=6&interface=VIEW_TAC&part=1&subchapter=H&title=26
- 42 CFR § 418.108 Condition of participation: Short-term inpatient care: <https://www.govinfo.gov/content/pkg/CFR-2011-title42-vol3/pdf/CFR-2011-title42-vol3-sec418-108.pdf>.
- The Medicare State Operations Manual Section 2084 Hospice Inpatient Services and 2084B Hospice Provides Inpatient Services Under Arrangement: <https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/bp102c09.pdf#:~:text=Only%20care%20provided%20by%20%28or%20under%20arrangements%20made,input%20from%2C%20the%20patient%27s%20attending%20physician%20%28if%20any%29>.

- Appendix M: https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap_m_hospice.pdf.

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 26 TAC Chapter 553.259 (e) at: https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=553&interface=VIEW_TAC&part=1&subchapter=E&title=26

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 26 TAC §553.259(e).

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:

<https://www.hhs.texas.gov/sites/default/files/documents/providers/communications/2012/letters/PL2012-09.pdf>

and §553.259 (e) at:

[https://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=26&pt=1&ch=553&rl=259](https://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=26&pt=1&ch=553&rl=259).

The hospice provider should work in conjunction with the ALF to educate the family on what will happen when the ALF can no longer offer services to or allow the resident to live there due to the decline in their condition or a waiver not be granted by HHSC.

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 (AAA) that have certified ombudsmen. The location of the AAA's can be accessed at: https://apps.hhs.texas.gov/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 (if applicable. The ALF does not need to follow Chapter 46 unless they are dealing with a program that has a contract. If the facility doesn't have someone in the building who is contracting with one of those programs, they wouldn't need to follow Chapter 46).
- Texas Administrative Code, Title 26, Part 1, Chapter 553: Licensing Standards for Assisted Living Facilities
- Texas Administrative Code, Title 26, Part 1, Chapter 560: Denial or Refusal of a License

- 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

The links for these sites are located at: <https://www.hhs.texas.gov/providers/long-term-care-providers/assisted-living-facilities-alf>.