TEXAS
Health and Human
Services

Texas Health and Human Services Commission

Cecile Erwin Young
Executive Commissioner

Long-Term Care Regulation Provider Letter

Number: PL 2023-29
Title: Overview of L-tag Changes
Provider Types: Hospice
Date Issued: April 10, 2023

1.0 Subject and Purpose

The Centers for Medicare and Medicaid Services (CMS) have issued **QSO-23-08** regarding revised surveyor guidance for hospice agencies. QSO-23-08 notifies providers and surveyors of changes to the hospice survey process to refine the focus on quality of care.

The following attachment is an overview of the changes to the L tags of Appendix M from the CMS State Operations Manual (SOM). Please read **QSO-23-08** and Appendix M of the SOM for a full description of changes.

2.0 Policy Details & Provider Responsibilities

CMS published these updates in Appendix M of the SOM to help surveyors, hospices and the public understand how compliance will be assessed with an emphasis on quality of care. This approach prioritizes the surveyors' time and attention to those elements that impact the quality of care provided directly to the patient and their family.

While these changes are directed to the surveyor process, providers are encouraged to take the training available in the Quality, Safety, and Education Portal (QSEP), which will explain the updates and changes to the regulations and guidance.

3.0 Background/History

The intent of **QSO-23-08** is to promote efficiency and effectiveness in the hospice survey process and identify deficiencies resulting in a low quality of care.

Detailed guidance was added to Part I-Investigative Procedures, and the Information Gathering Task has been divided into two phases. Phase I identifies CoPs that contribute to understanding the quality of care delivered directly to patients, their caregivers, and families. Phase II identifies CoPs that focus more on the administrative functions and operations of hospice services.

4.0 Contact Information

If you have any questions about this letter, please contact the Policy and Rules Section by email at LTCRPolicy@hhs.texas.gov or call (512) 438-3161.

Overview of Appendix M and L-Tag Changes

Effective 1/27/2023

Please refer to Appendix M of the SOM for full details and complete understanding of the revisions.

***Please note that all new/revised language is in red.**

Pg #	Title	Summary of Changes
Pg. 28	Tasks in the Survey Protocol	*All hospice initial certification and recertification surveys are full surveys, i.e., surveys that evaluate compliance with all CoPs.*
Pg. 29-30	Types of Hospice Surveys	This section provides expanded information on the six types of hospice surveys including how an abbreviated survey can become a full standard survey based on additional information and the surveyor's on-site concerns.
Pg. 36	Entrance Conference	Form CMS-417, Hospice Request for Certification in the Medicare Program *and CMS 643, Hospice Survey and Deficiencies Report*, are to be completed by the hospice within an hour of the entrance conference.
Pg. 39	Sample Representativeness	*In order to evaluate the care and services provided by a hospice, the survey sample must include patients receiving care in each setting (patient care setting, or PCS) to the extent possible. The sample must include patients who received care in the following settings, when applicable:* *• Private home;* *• Long term care facilities, including SNFs, NFs, and ICF/IIDs;* *• Inpatient hospice facilities;*

		• *Hospitals and long-term acute hospitals; and Assisted Living Facilities*
Pg. 39	Hospice Parent and Multiple Locations	*Hospices also provide care from multiple locations associated with the "parent" agency under a single provider number. The sample must include at least one record from each location. Surveyors must make an effort to conduct a home visit to patients from each hospice location. If this is not feasible, review at least one record (active or closed) from the parent and each location. It may be necessary to increase the sample size to include at least one record review of each location.*
Pg. 63	Table 1: Medical Director Responsibilities Compared to all Hospice Physicians, Nurse Practitioners and Physician Assistants	Table 1 details the differences in responsibilities for Medical Director Only, Nurse Practitioner Only and Physician Assistant Only with regards to discharges, orders, certification of a terminal illness, etc.
Pg. 78	§418.74 Waiver of requirement-physical therapy, occupational therapy, speech language pathology and dietary counseling	Specific documentation requirements for the waiver have been deleted and replaced with *"evidence that the hospice made efforts to secure the needed services."*

L-Tag Revisions

Tag #	Summary of Changes
L520	Tag combined language from L521.
L521	Deleted.
L536	Tag combined language from L537 and L538.

L537	Deleted.
L538	Deleted.
L559	Tag combined language from L560.
L560	Deleted.
L577	Tag combined language from L578.
L578	Deleted.
L587	Tag combined language from L588 and L589.
L588	Deleted.
L589	Deleted.
L601	Tag combined language from L602.
L602	Deleted.
L603	Tag combined language from L604.
L604	Deleted.
L607	Tag combined language from L608.
L608	Deleted.
L614	§418.76(c) Standard: Competency evaluation. An individual may furnish hospice aide services on behalf of a hospice only after that individual has successfully completed a competency evaluation program as described in this section. §418.76(c)(1) The competency evaluation must address each of the subjects listed in paragraph (b)(3) of this section. Subject areas specified under paragraphs (b)(3)(i), (iii), (ix), (x), and (xi) of this section must be evaluated by observing an aide's performance of the task with a patient *or pseudo-patient.* The remaining subject areas may be evaluated through written examination, oral examination, or after observation of a hospice aide with a patient *or a pseudo-patient during a simulation.*
L623	*Language added to interpretive guidance:* The required 2 years of nursing experience for the instructor should be "hands on" clinical experience such as providing care and/or supervising nursing services or teaching nursing skills in an organized curriculum or in-service program. The required 2 years of nursing experience may be in home care or in hospice care. "Other individuals" who may help with hospice aide training would include health care professionals such as physicians, physical therapists, occupational therapists, medical social workers, and speech-language pathologists. *Dieticians,* pharmacists, lawyers and consumers might also be teaching resources.

L631	§418.76(h)(1)(iii) If an area of concern is verified by the hospice during the on-site visit, then the hospice must conduct, and the hospice aide must complete, a competency evaluation *of the deficient skill and all related skill(s)* in accordance with §418.76(c).
L641	Tag combined language from L642.
L642	Deleted.
L648	Tag combined language from L649.
L649	Deleted.
L664	Tag combined language from L665.
L665	Deleted.
L670	Tag combined language from L671.
L671	Deleted.
L688	Tag combined language from L689.
L689	Deleted.
L690	§418.106(b) Standard: Ordering of drugs. *Drugs may be ordered by any of the following practitioners:(i) A* physician as defined by Section 1861(r)(1) of the Act, (ii) A nurse practitioner in accordance with state scope of practice requirements. *(iii)A physician assistant in accordance with the state scope of practice requirements and hospice policy who is: (A) The patient's attending physician; and (B) Not an employee of or under arrangement with the hospice.*
L704	Tag combined language from L705.
L705	Deleted.
L759	Tag combined language from L760.
L760	Deleted.
L782	§418.112(f) Standard: Orientation and training of staff. Hospice staff, in coordination with SNF/NF or ICF/IID facility staff, must assure orientation of such staff furnishing care to hospice patients in the hospice philosophy, including hospice policies and procedures regarding methods of comfort, pain control, symptom management, as well as principles about death and dying, individual responses to death, patient rights, appropriate forms, and record keeping requirements. Interpretive Guidelines §418.112(f) It is a shared responsibility of the hospice in conjunction with the SNF/NF or ICF/IID to assess the need for staff training and coordinate the staff training with representatives of the facility, and to determine how frequently training needs to be offered in order to

	ensure that the facility staff furnishing care to hospice patients are oriented to the philosophy of hospice care. Facility staff turnover rates should be a consideration in determining training frequency. §418.113 Condition of participation: Emergency preparedness. (Rev.) Interpretive Guidelines: § 418.113 Hospice programs must comply with the applicable emergency preparedness requirements referenced in Appendix Z of the State Operations Manual. For all applicable requirements, guidance, and survey protocol related to Emergency Preparedness in hospice programs, please refer to Appendix Z.
L797	Tag combined language from L789.
L798	Deleted.
L833	*§418.110(j) Standard: Infection control.* *The hospice must maintain an infection control program that protects patients, staff and others by preventing and controlling infections and communicable disease as stipulated in §418.60.* *Interpretive Guidelines §418.110(j)* *The hospice inpatient facility must have an active surveillance program that includes specific measures for prevention, early detection, control, education, and investigation of infections and communicable diseases in the hospice. There must be a mechanism to evaluate the effectiveness of the program(s) and take corrective action when necessary. The program must include implementation of nationally recognized systems of infection control guidelines to avoid sources and transmission of infections and communicable diseases (e.g., the CDC's Healthcare Infection Control Guidelines, the CDC Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Settings, OSHA regulations, and APIC guidelines on infection control, etc.).* *The active infection control program should have policies that address the following:* *• Definition of nosocomial infections and communicable diseases;*

	• Measures for identifying, investigating, and reporting nosocomial infections and communicable diseases; *• Measures for assessing and identifying patients and health care workers, including hospice personnel, contract staff (e.g., agency nurses, housekeeping staff) and volunteers, at risk for infections and communicable diseases;* *• Measures for the prevention of infections;* *• Measures for prevention of communicable disease outbreaks, such as airborne diseases (TB, SARS, etc.), food borne diseases (Hepatitis A, Salmonella, etc.), blood borne diseases (HIV, Hepatitis B, etc.), and others (VRE, MRSA, pseudomonas, etc.);* *• Provision of a safe environment consistent with nationally recognized infection control precautions, such as the current CDC recommendations for the identified infection and/or communicable disease;* *• Isolation procedures and requirements for infected or immunosuppressed patients;* *• Use and techniques for standard precautions;* *• Education of patients, family members and caregivers about infections and communicable diseases;* *• Techniques for hand washing, respiratory protections, asepsis as well as other means for limiting the spread of contagion;* *• Orientation of all new hospice personnel to infections, communicable diseases, and to the infection control program;* *• Measures for the screening and evaluation of health care workers, including all hospice staff, contract workers (e.g., agency nurses, housekeeping staff, etc.), and volunteers, for communicable diseases, and for the evaluation of staff and volunteers exposed to patients with non-treated communicable diseases; and*

	• Employee health policies regarding infectious diseases and when infected or ill employees, including contract workers and volunteers, must not render patient care and/or must not report to work.
L 834	*§418.110(k) Standard: Sanitary environment.* *The hospice must provide a sanitary environment by following current standards of practice, including nationally recognized infection control precautions, and avoid sources and transmission of infections and communicable diseases. Interpretive Guidelines §418.110(k)* *"Sanitary" includes, but is not limited to, preventing the spread of disease-causing organisms by keeping patient care equipment clean and properly stored. Patient care equipment includes, but is not limited to, toothbrushes, dentures, denture cups, glasses, water pitchers, emesis basins, hairbrushes, combs, bed pans, urinals, and positioning or assistive devices.*
L835	*§418.110(l) Standard: Linen.* *The hospice must have available at all times a quantity of clean linen in sufficient amounts for all patient uses. Linens must be handled, stored, processed, and transported in such a manner as to prevent the spread of contaminants.*
L836;	*§418.110(m) Standard: Meal service and menu planning.* *The hospice must furnish meals to each patient that are—* *Interpretive Guidelines §418.110(m)* *The intent of this regulation is to assure that the nutritive value of food is not compromised and destroyed because of prolonged food storage, light, and air exposure.* *Food should be palatable, attractive, and served at the proper temperature as determined by the type of food.* *• Food-palatability refers to the taste and/or flavor of the food.* *• Food attractiveness refers to the appearance of the food when served.*

L837; L838; L839	• *Food temperature is food served at preferable temperature (hot foods are served hot and cold foods are served cold) as discerned by the patient and customary practice.* *§418.110(m)(1) -Consistent with the patient's plan of care, nutritional needs, and therapeutic diet;* *§418.110(m)(2) -Palatable, attractive, and served at the proper temperature; and* *§418.110(m)(3) -Obtained, stored, prepared, distributed, and served under sanitary conditions.*
L840 L841; L842; L843;	*§418.110(n) Standard: Restraint or seclusion* *All patients have the right to be free from physical or mental abuse, and corporal punishment. All patients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Restraint or seclusion may only be imposed to ensure the immediate physical safety of the patient, a staff member, or others and must be discontinued at the earliest possible time.* *§418.110(n)(1) -Restraint or seclusion may only be used when less restrictive interventions have been determined to be ineffective to protect the patient, a staff member, or others from harm.* *§418.110(n)(2) The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the patient, a staff member, or others from harm.* *§418.110(n)(3) -The use of restraint or seclusion must be-* *(i) In accordance with a written modification to the patient's plan of care; and* *(ii) Implemented in accordance with safe and appropriate restraint and seclusion techniques as determined by hospice policy in accordance with State law.*

L844;	*§418.110(n)(4) -The use of restraint or seclusion must be in accordance with the order of a physician authorized to order restraint or seclusion by hospice policy in accordance with State law.*
L845;	*§418.110(n)(5) – Orders for the use of restraint or seclusion must never be written as a standing order or on an as needed basis (PRN).*
L846;	*§418.110(n)(6) -The medical director or physician designee must be consulted as soon as possible if the attending physician did not order the restraint or seclusion.*
L847;	*§418.110(n)(7) -Unless superseded by State law that is more restrictive —* *(i) Each order for restraint or seclusion used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member, or others may only be renewed in accordance with the following limits for up to a total of 24 hours:* *(A) 4 hours for adults 18 years of age or older;* *(B) 2 hours for children and adolescents 9 to 17 years of age; or* *(C) 1 hour for children under 9 years of age; and* *After 24 hours, before writing a new order for the use of restraint or seclusion for the management of violent or self-destructive behavior, a physician authorized to order restraint or seclusion by hospice policy in accordance with State law must see and assess the patient.* *(ii) Each order for restraint used to ensure the physical safety of the non-violent or non-self-destructive patient may be renewed as authorized by hospice policy.*
L848;	*§418.110(n)(8) -Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order.*

L849;	*§418.110(n)(9) -The condition of the patient who is restrained or secluded must be monitored by a physician or trained staff that have completed the training criteria specified in paragraph (o) of this section at an interval determined by hospice policy.*
L850;	*§418.110(n)(10) -Physician, including attending physician, training requirements must be specified in hospice policy. At a minimum, physicians and attending physicians authorized to order restraint or seclusion by hospice policy in accordance with State law must have a working knowledge of hospice policy regarding the use of restraint or seclusion.*
L851;	*§418.110(n)(11) -When restraint or seclusion is used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member, or others, the patient must be seen face-to-face within 1 hour after the initiation of the intervention-* *(i) By a—* *(A) Physician; or* *(B) RN who has been trained in accordance with the requirements specified in paragraph (n) of this section.* *(ii) To evaluate—* *(A) The patient's immediate situation;* *(B) The patient's reaction to the intervention;* *(C) The patient's medical and behavioral condition; and* *(D) The need to continue or terminate the restraint or seclusion.*
L852;	

L853;	*§418.110(n)(12) -States are free to have requirements by statute or regulation that are more restrictive than those contained in paragraph (m)(11)(i) of this section.*
L854;	*§418.110(n)(13) -If the face-to-face evaluation specified in §418.110(n)(11) is conducted by a trained registered nurse, the trained registered nurse must consult the medical director or physician designee as soon as possible after the completion of the 1-hour face-to-face evaluation.*
L855	*§418.110(n)(14) -All requirements specified under this paragraph are applicable to the simultaneous use of restraint and seclusion. Simultaneous restraint and seclusion use is only permitted if the patient is continually monitored-* *i. Face-to-face by an assigned, trained staff member; or* *ii. By trained staff using both video and audio equipment. This monitoring must be in close proximity to the patient.*
	§418.110(n)(15) -When restraint or seclusion is used, there must be documentation in the patient's clinical record of the following: *i. The 1-hour face-to-face medical and behavioral evaluation if restraint or seclusion is used to manage violent or self-destructive behavior;* *ii. A description of the patient's behavior and the intervention used;* *iii. Alternatives or other less restrictive interventions attempted (as applicable);* *iv. The patient's condition or symptom(s) that warranted the use of the restraint or seclusion; and the patient's response to the*

	intervention(s) used, including the rationale for continued use of the intervention.
L856; L857; L858;	*§418.110(o) Standard: Restraint or seclusion staff training requirements. The patient has the right to safe implementation of restraint or seclusion by trained staff.* *§418.110(o)(1) -Training intervals. All patient care staff working in the hospice inpatient facility must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment, and providing care for a patient in restraint or seclusion—* *(i) Before performing any of the actions specified in this paragraph;* *(ii) As part of orientation; and* *(iii) Subsequently on a periodic basis consistent with hospice policy.* *§418.110(o)(2) -Training content. -The hospice must require appropriate staff to have education, training, and demonstrated knowledge based on the specific needs of the patient population in at least the following:* *(i) Techniques to identify staff and patient behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion.* *(ii) The use of nonphysical intervention skills.* *(iii) Choosing the least restrictive intervention based on an individualized assessment of the patient's medical, or behavioral status or condition.* *(iv) The safe application and use of all types of restraint or seclusion used in the hospice, including training in how to recognize and respond to signs of physical and psychological distress (for example, positional asphyxia).*

	(v) Clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary. *(vi) Monitoring the physical and psychological well-being of the patient who is restrained or secluded, including but not limited to, respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by hospice policy associated with the 1-hour face-to-face evaluation.* *(vii) The use of first aid techniques and certification in the use of cardiopulmonary resuscitation, including required periodic recertification.*
L859;	*§418.110(o)(3) -Trainer requirements. Individuals providing staff training must be qualified as evidenced by education, training, and experience in techniques used to address patients' behaviors.*
L860;	*§418.110(o)(4) -Training documentation. The hospice must document in the staff personnel records that the training and demonstration of competency were successfully completed.*
L861	*§418.110(p) -Standard: Death reporting requirements.* *Hospices must report deaths associated with the use of seclusion or restraint.* *(1) The hospice must report the following information to CMS:* *(i) Each unexpected death that occurs while a patient is in restraint or seclusion.* *(ii) Each unexpected death that occurs within 24 hours after the patient has been removed from restraint or seclusion.* *(iii) Each death known to the hospice that occurs within 1 week after restraint or seclusion where it is reasonable to assume that use of restraint or placement in seclusion contributed directly or indirectly to a patient's death. "Reasonable to assume" in this context includes, but is not limited to, deaths related to restrictions of movement for*

	prolonged periods of time, or death related to chest compression, restriction of breathing or asphyxiation. *(2) Each death referenced in this paragraph must be reported to CMS by telephone no later than the close of business the next business day following knowledge of the patient's death.* *(3) Staff must document in the patient's clinical record the date and time the death was reported to CMS.*
L862	*§418.110(q) – The standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to:* ***http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html**.* *If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the Federal Register to announce the changes.* *(1) National Fire Protection Association, 1 Battery march Park, Quincy, MA 02169, www.nfpa.org, 1.617.770.3000.* *(i) NFPA 99, Standards for Health Care Facilities Code of the National Fire Protection Association 99, 2012 edition, issued August 11, 2011.* *(ii) TIA 12–2 to NFPA 99, issued August 11, 2011.* *(iii) TIA 12–3 to NFPA 99, issued August 9, 2012.* *(iv) TIA 12–4 to NFPA 99, issued March 7, 2013.* *(v) TIA 12–5 to NFPA 99, issued August 1, 2013.* *(vi) TIA 12–6 to NFPA 99, issued March 3, 2014.* *(vii) NFPA 101, Life Safety Code, 2012 edition, issued August 11, 2011.*

	(viii) TIA 12–1 to NFPA 101, issued August 11, 2011. *(ix) TIA 12–2 to NFPA 101, issued October 30, 2012.* *(x) TIA 12–3 to NFPA 101, issued October 22, 2013.* *(xi) TIA 12–4 to NFPA 101, issued October 22, 2013.*

Note: The Condition of Participation at **§418.110 Hospices that provide inpatient care directly** has been re-designated from L719-L758 to L820-L862.