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## HOSPICE CONTRACTS WITH ASSISTED LIVING FACILITIES

When the new hospice Conditions of Participation (CoPs) became effective in December of 2008 there was a provision in the CoPs stating a hospice must have an agreement with a nursing home if the hospice provides services in the nursing home. While it was a standard business practice for hospices to have agreements with nursing homes prior to enactment of the CoPs, the CoPs were specific as to what must be included in the agreement.

One of the questions we continue to get is whether a hospice is required to have an agreement with an assisted living facility ("ALF")? Legally speaking there is no requirement for the hospice to have an agreement with an ALF. Practically speaking we believe it is a good idea.

From a legal perspective CMS stated, in commentary to the CoPs, that a hospice is only required to have agreements with nursing homes that participate in either Medicare and/or Medicaid and ICFs/MR. The rationale of CMS was that ALFs are not Medicare-certified and therefore do not receive Medicare funding which would exempt them from the CoP requiring an agreement. Therefore, there is no legal obligation for a hospice to have an agreement with an ALF.

From a practical perspective, we generally advise that a hospice have an agreement with an ALF. First of all, it is good business practice that defines the role of the hospice and the ALF in the provision of hospice services. Another good reason for an agreement is that many states license ALFs and the applicable state regulations may require an agreement. Finally, since the same surveyors often times conduct surveys in both nursing homes and ALFs, it can avoid confusion by the surveyors over whether an agreement is required.

Should you have questions, please contact Todd Selby at 317.977.1440 or [tsselby@hallrender.com](mailto:tsselby@hallrender.com), Brian Jent at 317.977.1402 or [bjent@hallrender.com](mailto:bjent@hallrender.com), David Bufford at 502.568.9368 or [dbufford@hallrender.com](mailto:dbufford@hallrender.com), or your regular Hall Render attorney.