

NOTE: This sample agreement has not been approved by CMS or any other federal/state agency. This document is not intended as legal advice and should not be used as or relied upon as legal advice. It is for general informational purposes only in light of the new requirement for a written agreement between a hospice and a nursing center at 42 C.F.R. §483.75(t)(Hospice services) and may not be substituted for legal advice. Specific legal advice is crucial when preparing for or negotiating any contract that could have significant financial and legal consequences. ALWAYS SEEK THE ADVICE OF KNOWLEDGEABLE COUNSEL TO PROVIDE ADVICE THAT IS TAILORED TO THE ACTUAL FACTS AND CIRCUMSTANCES AND TAKES INTO ACCOUNT ALL RELEVANT LAW.

Sample Draft 8/16/13

HOSPICE SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“Agreement”) is entered into as of _____, 201__ (the “Effective Date”) by and between _____ located at _____ (“Hospice”), and _____ located at _____ (“Facility”).

RECITALS

- A. Facility is a nursing facility and is certified to participate in Medicare and/or Medicaid as a provider of skilled nursing facility services and/or nursing facility services to its residents (“Residents”).
- B. From time to time, Residents may elect to receive hospice services.
- C. Facility desires to arrange for the provision of hospice services to Residents through an agreement with one or more Medicare-certified hospices.
- D. Hospice is a Medicare-certified hospice.
- E. Facility is located within Hospice’s service area.
- F. The parties have determined to enter into this Agreement so that Residents electing to receive hospice services have the option to receive such services from Hospice.

AGREEMENT

The parties hereto agree as follows:

- 1. **RESPONSIBILITIES OF HOSPICE**
 - a) Hospice shall be solely responsible for determining a Resident’s eligibility for admission to, and discharge from, hospice care in accordance with applicable law, and shall process such admissions and discharges as well as all Resident elections of hospice care, and revocations of elections of hospice care as applicable.
 - b) Hospice shall be solely responsible for initially certifying, and recertifying as necessary, the Resident’s terminal illness in accordance with applicable law.

- c) Hospice shall be solely responsible for conducting initial and comprehensive assessments upon a Resident's election of hospice care as provided in 42 C.F.R. §418.54 and for designating an interdisciplinary group as provided in 42 C.F.R. §418.56.
- d) Hospice shall be responsible for determining, and modifying as necessary, the appropriate hospice plan of care as specified in 42 C.F.R. 418.112(d). Such hospice plan of care shall encompass all issues related to the terminal illness and related conditions. Hospice shall communicate with the Resident, family members, Facility staff, and the attending physician to develop and update the content of the hospice plan of care.
- e) Hospice shall determine the appropriate course of hospice care for Residents who are under Hospice's care, including any determination to change the level of services provided to such Residents.
- f) With respect to Residents who are under Hospice's care, Hospice shall be responsible for providing the following in accordance with applicable law: medical direction and management; nursing; counseling (including spiritual, dietary, and bereavement); social work; medical supplies, durable medical equipment, and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions; and all other hospice services that are necessary for the care of the Resident's terminal illness and related conditions in accordance with the hospice plan of care and applicable law, including but not limited to: hospice aide, volunteer, and homemaker services; physical therapy, occupational therapy, and speech-language pathology services; transportation (including by ambulance) if necessary; 24-hour continuous care services when necessary to achieve palliation or management of acute medical symptoms during a crisis; and short-term inpatient care. To the extent that Facility will provide any of the foregoing hospice items or services on behalf of Hospice under arrangement with Hospice, the parties shall enter into a separate written agreement, which may be in the form of an addendum to this Agreement, addressing the provision of and payment for such items or services.
- g) Hospice shall provide services to Residents who are under Hospice's care at the same level and to the same extent as those services would be provided if the Resident were in his or her own home.
- h) Hospice shall deliver hospice services to each Resident under Hospice's care in a timely manner.
- i) Hospice shall designate an interdisciplinary group member who shall be responsible for coordinating with Facility the provision of hospice services to each Resident under Hospice's care and communicating with Facility and other health care providers participating in the provision of care for the Resident's terminal illness and related conditions, and other conditions, to ensure quality of care for the Resident and family. Hospice shall notify Facility promptly of any change in the designated interdisciplinary group member.

- j) Hospice shall ensure that the hospice interdisciplinary group communicates with the Facility medical director, the Resident's attending physician, and other physicians participating in the provision of care to the Resident as needed to coordinate the hospice care of the Resident with the medical care provided by other physicians.
- k) Hospice shall provide Facility with the following information immediately upon the information becoming available to Hospice: (i) the most recent hospice plan of care specific to each Resident under Hospice's care; (ii) each Resident's hospice election form; (iii) physician certification and recertification of the terminal illness specific to each Resident under Hospice's care; (iv) names and contact information for Hospice personnel involved in hospice care of each Resident; (v) instructions on how to access Hospice's 24-hour on-call system; (vi) hospice medication information specific to each Resident; and (vii) Hospice physician and attending physician (if any) orders specific to each Resident.
- l) Hospice shall report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of Resident property by anyone unrelated to the hospice, to the Facility administrator immediately upon becoming aware of such alleged violation.
- m) Upon execution of this Agreement, Hospice shall assure that Facility staff furnishing care to Residents who are under Hospice's care are educated in the hospice philosophy, including 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 applicable record keeping requirements.
- n) Hospice shall, at the request of Facility, provide bereavement counseling to those Facility staff directly involved in caring for Residents who are under Hospice's care, who desire to receive such bereavement counseling.

2. RESPONSIBILITIES OF FACILITY

- a) Facility shall be solely responsible for admitting and discharging Residents to Facility as appropriate in accordance with Facility's policies and procedures.
- b) Facility shall maintain responsibility for care planning for any Resident conditions that are not related to the Resident's terminal illness.
- c) Facility shall immediately notify Hospice about the following: a significant change in the Resident's physical, mental, social, or emotional status; clinical complications that suggest a need to alter the plan of care; a potential need to transfer the Resident from Facility for any condition; the Resident's death.
- d) Facility shall furnish 24-hour room and board care to Residents who are under Hospice's care.

- e) Facility shall meet the Resident's personal care and nursing needs in accordance with the Hospice representative, and ensure that the level of care provided is appropriately based on the individual Resident's needs.
- f) When Facility personnel are directed by Hospice to administer prescribed therapies to Residents who are under Hospice's care, including those therapies determined appropriate by Hospice and delineated in the hospice plan of care, Facility personnel shall administer the therapies in accordance with applicable law and Facility policies and procedures.
- g) Facility shall report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of Resident property by Hospice personnel, to the Hospice administrator immediately upon becoming aware of such alleged violation.
- h) Facility shall designate a member of Facility's interdisciplinary team who is responsible for working with Hospice to coordinate care provided by Facility staff and Hospice staff to any Resident under Hospice's care. Such interdisciplinary team member shall be responsible for the following: (i) collaborating with Hospice and coordinating Facility staff participating in the hospice care planning process for those Residents who are under Hospice's care; (ii) communicating with Hospice and other healthcare providers participating in the provision of care for the terminal illness, related conditions, and other conditions, to ensure quality of care for the Resident and family; (iii) ensuring that Facility communicates with the Hospice medical director, the Resident's attending physician, and other practitioners participating in the provision of care to the Resident as needed to coordinate the hospice care with the medical care provided by other physicians; (iv) obtaining the following information from Hospice: (A) the most recent hospice plan of care specific to each Resident; (B) hospice election form (C) physician certification and recertification of the terminal illness specific to each Resident; (D) names and contact information for Hospice personnel involved in hospice care of each Resident; (E) instructions on how to access the hospice's 24-hour on-call system; (F) hospice medication information specific to each Resident; (G) hospice physician and attending physician (if any) orders specific to each Resident; (v) ensuring that the Facility provides to Hospice an orientation with respect to the policies and procedures of the facility, including Resident rights, appropriate forms, and record keeping requirements. Facility shall notify Hospice promptly of any change in the designated interdisciplinary team member.
- i) Facility shall ensure that each Resident's written plan of care includes both the most recent hospice plan of care if applicable, and a description of the services furnished by Facility to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required by 42 C.F.R. § 483.25.
- j) Facility shall continue to provide to Residents who are under Hospice's care, notwithstanding their admission to Hospice, all services normally provided to Residents who are not under Hospice care, based on each Resident's plan of care, except those services that are otherwise being provided pursuant to the hospice plan of care.

- k) Facility shall provide an appropriate care setting for Residents who are under Hospice's care.
- l) Facility shall grant Hospice staff 24-hour access to Facility for purposes of providing hospice services to Residents who are under Hospice's care.

3. COMMUNICATION

- a) General. Hospice and Facility shall communicate regarding the provision of care to each Resident under Hospice's care.
- b) Communication Protocol. Prior to the admission of any Resident to Hospice, Hospice and Facility shall work together to develop a written communication protocol governing how they will communicate all information needed for the Resident's care (such as physician orders, and medication information), including how such communication will be documented to ensure that the needs of Residents are addressed and met 24 hours a day. The communication protocol shall include, among other things, a procedure that clearly outlines the chain of communication between the parties in the event a crises or emergency develops, a change of condition occurs, and/or changes to the Hospice plan of care are indicated, and it must also address how hospice physician orders will be communicated to Facility staff. Such protocol shall be distributed to all Hospice and Facility staff involved in the Resident's care.
- c) Care Planning. Hospice and Facility shall permit each other to attend care planning meetings involving any Resident under Hospice's care. Each party may reasonably request that a care planning meeting be held with the other to the extent such party has identified specific concerns involving the care of a Resident under Hospice's care.

4. BILLING/REIMBURSEMENT FOR SERVICES [*Not intended to address 42 C.F.R. § 483.75(t). Customize or replace the sample language in this section as desired/appropriate.*]

- a) General. Each party shall bill the appropriate payer, and/or the Resident as appropriate, for covered and non-covered items and services rendered by such party to any Resident under Hospice's care, in accordance with applicable law, [with the exception of any portion of the room and board provided by Facility that is covered by Medicaid, which shall be billed to Medicaid by Hospice, and reimbursement for such room and board shall be passed through to Facility, subject to state law]. Any hospice items or services that are to be provided to a Resident under Hospice's care by Facility under arrangement with Hospice shall be governed by a separate written agreement, which may be in the form of an addendum to this Agreement, that requires all compensation for such items or services to be consistent with fair market value.
- b) Billing/Payment Procedures. Facility shall bill Hospice on a monthly basis for each month during the Initial Term and any applicable Renewal Terms for any amounts due to Facility from Hospice. Facility shall provide Hospice with an invoice for the amounts due by the last day of the month immediately following the month in which the items or services were provided by Facility. Such invoice shall include information sufficient for

Hospice to verify the services. Hospice shall pay Facility for services provided by Facility under this Agreement within [thirty (30)] days for such services. In the event this Agreement is terminated, Hospice shall pay for all services provided by Facility to Residents who are under Hospice's care prior to the termination date.

5. No Payments for Referrals. Payments by Hospice to Facility for room and board shall not exceed the amount Facility otherwise would have received had Resident not been under Hospice's care. Hospice shall make no additional payments to Facility for services that are generally considered included in the payer's room and board payment to Hospice. **[Note: need to consult state law/applicable payer rules.]** Except for any purchased items or services as otherwise governed by a separate written agreement pursuant to Sections 1(f) and 4(a), this Agreement covers all of the items and services to be provided by Facility to Hospice, and all payments to be made by Hospice to Facility therefor.
6. **TERM AND TERMINATION [Not intended to address 42 C.F.R. § 483.75(t). Customize or replace the sample language in this section as desired/appropriate.]**
 - a) The term of this Agreement shall commence as of the Effective Date and shall continue in effect, unless sooner terminated as herein provided, until _____, 20___. Upon the expiration of the initial term and each renewal term, the term of this Agreement shall automatically be renewed for an additional term of _____ (__) years unless either party shall have given written notice of non-renewal to the other party not less than _____ (__) days prior to the expiration of the initial term or any renewal term then in effect, as applicable.
 - b) If either party defaults in any of its obligations under this Agreement, and such default is not cured within [sixty (60)] days following delivery of written notice from the non-defaulting party to the defaulting party (i) specifying such breach in reasonable detail, and (ii) expressly stating that such notice is a notice of breach pursuant to this Section ____, the non-defaulting party may terminate this Agreement with [thirty (30)] days advance written notice to the other party.
7. **REPRESENTATIONS AND WARRANTIES**
 - a) Hospice hereby represents and warrants to Facility that Hospice understands Facility's professional standards and principles that apply to individuals providing services in Facility, and to the timeliness of services to Residents, and that Hospice meets such standards.
 - b) Facility hereby represents and warrants to Hospice that the interdisciplinary team member designated pursuant to 42 C.F.R. § 483.75(t)(3) has a clinical background, functions within the applicable scope of practice act, and has the ability to assess the resident or has access to someone that has the skills and capabilities to assess the resident.
 - c) **[Not intended to address 42 C.F.R. § 483.75(t). Customize or replace the sample language in this paragraph as desired/appropriate.]** Each party represents and warrants to the other party that it is a corporation or other recognized legal business entity duly

organized, validly existing, and in good standing under the laws of the state in which it is organized, incorporated, and/or operating.

- d) **[Not intended to address 42 C.F.R. § 483.75(t). Customize or replace the sample language in this paragraph as desired/appropriate.]** Each party represents and warrants to the other party that it and each of its employees, agents, and contractors that will provide services under this Agreement holds and shall maintain in good standing throughout the term of this Agreement, all licenses, permits, registrations, certifications and authorizations in all applicable jurisdictions where such licenses, permits, registrations, certifications and authorizations are legally required to operate and to perform its obligations under this Agreement.
- e) **[Not intended to address 42 C.F.R. § 483.75(t). Customize or replace the sample language in this paragraph as desired/appropriate.]** Each party represents and warrants to the other party that neither such party, nor any employee, agent or contractor of such party who is expected to perform obligations under this Agreement, has been excluded from participation in any federal health care program (as defined under 42 U.S.C. Section 1320a-7b(f)).
8. **COVENANTS [Not intended to address 42 C.F.R. § 483.75(t). Customize or replace the sample language in this section as desired/appropriate.]**
- a) **Compliance with Laws.** Hospice and Facility hereby covenant that in performing their respective obligations under this Agreement, they will comply in all material respects with all applicable statutes, regulations, rules, orders, ordinances and other laws of any governmental entity to which this Agreement and the parties' obligations under this Agreement are subject (including, without limitation, Sections 1128, 1128A and 1128B(b) of the Social Security Act, as amended, 42 U.S.C. §§1320a-7, 1320a-7a and 1320a-7b(b), commonly referred to as the "Medicare and Medicaid Exclusion Statute," the "Civil Money Penalties Statute," and the "Federal Anti-Kickback Statute," respectively, and 31 U.S.C. § 3729, as amended, the statute commonly referred to as the "Federal False Claims Act," all statutes and regulations related to the possession, distribution, maintenance and documentation of controlled substances, and all statutes and regulations addressing the applicable conditions of participation in any federal health care program)("Laws"). Hospice and Facility hereby represent and warrant that, to their best knowledge, no circumstances currently exist which can reasonably be expected to result in a material violation of any Law by Hospice or Facility in connection with, or which can reasonably be expected to affect, their respective performance under this Agreement.
- b) **HIPAA Compliance.** Hospice and Facility hereby covenant that in performing their respective obligations under this Agreement, they will comply in all material respects with the Health Insurance Portability and Accountability Act and its implementing regulations (including, without limitation, the privacy regulations adopted at 45 C.F.R. Parts 160 and 164 and the code set regulations adopted at 45 C.F.R. Parts 160 and 162), as they may be amended from time to time (collectively referred to as "HIPAA").

9. INDEMNIFICATION [*Not intended to address 42 C.F.R. § 483.75(t). Customize or replace the sample language in this section as desired/appropriate.*]

Each party (in such capacity, an "Indemnifying Party") agrees to defend and indemnify the other party, its affiliates and their respective officers, directors, employees and agents (each an "Indemnified Party") against, and hold the same harmless from, all liability, losses, damages, obligations, judgments, claims, causes of action and expenses (including court costs and attorneys' fees) (collectively, a "Claim") resulting from or arising out of, directly or indirectly: (i) the negligence or willful misconduct of the Indemnifying Party; or (ii) any breach by the Indemnifying Party of any of its covenants, representations or warranties contained in this Agreement. Notwithstanding the foregoing, an Indemnifying Party shall not be obligated to defend, indemnify and hold harmless an Indemnified Party from and against a Claim to the extent that such Claim results from or arises out of the negligence or willful misconduct of any Indemnified Party or any breach by an Indemnified Party of any of its covenants, representations or warranties contained in this Agreement. Each Indemnified Party shall notify the Indemnifying Party promptly of any Claim asserted by a third party for which such Indemnified Party is or may be entitled to indemnification hereunder; provided, that the failure to promptly give such notice shall not affect the Indemnifying Party's obligation to indemnify and hold harmless the Indemnified Party except to the extent the Indemnifying Party is actually prejudiced by such failure. The Indemnifying Party shall have the right to assume the defense of any such third party Claim at its own expense, and by counsel reasonably satisfactory to the Indemnified Party, by so notifying the Indemnified Party within [ten (10)] days after the Indemnified Party notifies it of such third party Claim. If the Indemnifying Party so assumes the defense of a third party Claim, it may settle such Claim with the consent of the Indemnified Party, such consent not to be unreasonably withheld, conditioned or delayed.

10. MISCELLANEOUS [*Not intended to address 42 C.F.R. § 483.75(t). Customize or replace the sample language in this section as desired/appropriate.*]

- a) Confidential Information. Each party recognizes and acknowledges that, by virtue of entering into this Agreement such party and its staff will have access to confidential information of the other party ("Confidential Information"). Each party agrees that, except as otherwise required by applicable law, neither it nor any of its employees, agents or consultants will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without the express prior written consent of the other party, any Confidential Information, except as reasonably required to perform its obligations under this Agreement.
- b) Insurance. Each party shall obtain and maintain appropriate professional liability, commercial general liability, worker's compensation and employer's liability insurance coverage in accordance with the minimum amounts required from time to time by applicable federal and state laws and regulations, but at no time shall the terms or coverage amounts of Facility's professional liability insurance be less than [\$1 million per claim and \$3 million in the aggregate]. Either party may request evidence of insurance from the other party and such other party shall provide such evidence to the requesting party in a timely manner. Each party shall ensure that the other party receives at least

[thirty (30)] days' notice prior to the termination of any insurance policy required by this Agreement.

- c) **Material Change in Law:** In the event that, after the Effective Date, there is a material change in law, rule or regulation (including, but not limited to, reimbursement levels under any governmental program) which results in this Agreement or the parties' performance of their obligations hereunder being in violation of applicable law, or which would result in the parties' continued performance hereunder having a material adverse effect on either party, the parties shall negotiate in good faith with one another to amend this Agreement so as to eliminate such result or adverse effect.
- d) **Successors and Assigns:** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and each of their respective successors and permitted assigns.
- e) **Relationship Between Parties:** Neither Hospice nor Facility is for any purpose an agent, partner or employee of the other, and this Agreement does not constitute a joint venture between the parties, their affiliates, or any of their respective successors or assigns.
- f) **Force Majeure:** If either party fails to perform its obligations hereunder (except for the obligation to pay money) because of strikes, accidents, acts of God, weather conditions, action or inaction of any governmental or other proper authority, or other causes beyond such party's control, such failure to perform will not be deemed a default hereunder and will be excused without penalty until such time as said party is capable of performing.
- g) **Notices:** Notices or communications to be given under this Agreement will be given to the respective parties in writing, and shall be deemed given if provided as set forth below to the addresses set forth below or to such other addresses and to such other persons as either party may from time to time designate by notice given as herein provided. Such notices or communications will be deemed to have been given upon (a) personal delivery, (b) [three (3) business] days after being sent by registered or certified mail, postage prepaid, or (c) one (1) business day after delivery to a reputable overnight delivery service for overnight delivery, in each case addressed as follows:

To Facility:	To Hospice:

- h) **Dispute Resolution:** The parties agree to meet and confer in good faith to resolve, through discussions between the parties, any disputes that arise from, or are related to, this Agreement.
- i) **Governing Law.** The rights and obligations of the parties under this Agreement shall be governed by and construed and enforced in accordance with the substantive law of the [State].
- j) **No Waiver.** Waiver by either party of a breach or violation of any provision of this Agreement will not operate as, or be construed to be, a waiver of any prior, concurrent or subsequent breach. None of the provisions of this Agreement will be considered waived by either party except when such waiver is given in writing.
- k) **Access to Records.** Pursuant to 42 U.S.C. § 1395x(v)(1)(I), until the expiration of four (4) years after the provision of hospice services under this Agreement, Hospice shall make available, upon written request of the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States Government Accountability Office or any of their duly authorized representatives, a copy of this Agreement, and such books, documents, and records as are necessary to certify to the nature and extent of the costs of the hospice services provided under this Agreement. Hospice agrees that in the event that it carries out any of its duties under this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization, such contract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of services pursuant to such subcontract, the related organization shall make available, upon written request, to the Secretary of the United States Department of Health and Human Services or upon request of the Comptroller General of the United States Government Accountability Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents, and records of such organization as are necessary to verify the nature and extent of such costs.
- l) **Entire Agreement.** This Agreement and any amendments or addenda hereto or thereto constitute the entire agreement between the parties regarding the subject matter hereof, and supersede all prior or contemporaneous discussions, representations, correspondence and agreements, whether oral or written, pertaining thereto.
- m) **Amendment.** This Agreement may be amended or modified only by a writing duly executed by both parties.
- n) **Severability.** If any term or provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby and each term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law, unless doing so will materially alter the rights or obligations of either party.

- o) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one and the same agreement.

[Signature page follows]

SAMPLE

The undersigned represent that they are duly authorized to execute this Agreement on behalf of the party for whom they sign; and such party shall be bound by the terms of this Agreement.

For FACILITY

For HOSPICE

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Signature: _____

Signature: _____

SAMPLE