

Hospice Open Door Forum (November 29, 2023) Questions and Answers Document

On November 29, 2023, CMS hosted a Hospice Open Door Forum call. On that call, several questions were asked regarding the new requirements for marriage and family therapists and mental health counselors that became effective January 1, 2024. The responses below are offered as a resource to stakeholders.

1. Are hospices required to hire a marriage and family therapist (MFT) or mental health counselor (MHC)?

Response: No, hospices are not required to hire a marriage and family therapist (MFT) or mental health counselor (MHC). However, if they choose to hire an MFT or MHC, the MFT and MHC must be direct employees (W-2) and may be employed full time, part time, or per diem. (See Chapter 9.20.1 of the Medicare Benefit Policy Manual for additional details regarding the requirements of direct employees).

2. Are hospices required to have a MFT, MHC, and social worker (SW) disciplines available to act as members of the interdisciplinary group (IDG)?

Response: Hospices are required to have at least one of the three practitioners listed (SW, MFT, or MHC) as a member of the IDG. Note that a hospice must employ a SW as medical social services furnished by a qualified social worker are considered a core service under the Condition of Participation (see 42 C.F.R. § 418.64(c)). Please see the 2008 final rule, “Medicare and Medicaid Programs: Hospice Conditions of Participation” for details regarding medical social services at <https://www.federalregister.gov/documents/2008/06/05/08-1305/medicare-and-medicaid-programs-hospice-conditions-of-participation> (73 FR 32088).

3. If the hospice chooses to have at least one MFT or at least one MHC as a member of the IDG, the MFT/MHC must be employed directly by the hospice (except for temporary exceptional circumstances).

Response: Correct. CMS has determined that MFTs and MHCs provide “counseling services,” which is a core service under the Condition of Participation, defined at § 418.64(d) (88 FR 78818, 79298) and are therefore subject to the “core services” direct employment requirement. The MFT/ MHC must therefore be a direct employee of the hospice. IDG membership does not change this requirement. MFTs and MHCs, like other core services practitioners, can only be hired as contracted staff under exceptional circumstances. See page 117 of the hospice state operations manual: https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/som107ap_m_hospice.pdf.

4. Can a hospice have a volunteer MFT/MHC if the individual meets all the necessary requirements?

Response: Yes, an MFT/MHC can volunteer if they meet the requirements defined at § 410.53 “Marriage and family therapist services” and § 410.54 “Mental Health counselor services.” A volunteer MFT/MHC who meets all of these requirements (§ 410.53 and § 410.54) is considered an employee under the jurisdiction of the hospice, as defined in § 418.3.

5. Will the hospice be cited in survey if they cannot demonstrate evidence of access to an MFT or MHC (W-2 or contract)?

Response: If a hospice decides to employ an MFT or MHC, the MFT or MHC must be a W-2 employee who is employed full time, part time, or per diem; who meets all the requirements of an MFT or MHC (in § 410.53 and 410.54, respectively). As previously discussed, we refer readers to Chapter 9.20.1 of the Medicare Benefit Policy Manual and the definition of employee at § 418.3 for additional details regarding requirements for employees.

6. Is the scope of service (the “work”) of the MFT/MHC is not part of social worker services? Is the scope of service/interventions of the MFT/MHC different than that of social work services and can they be considered a part of social services?

Response: The work of the MFT and MHC are not part of social work services, or medical social services (see § 418.64(c)). MFTs, MHCs, and social workers each have their own scope of practice and licensure requirements. Please refer to § 410.53 “Marriage and family therapist services” and § 410.54 “Mental Health counselor services” for detailed information regarding the requirements for MFTs and MHCs. While all three professions can provide counseling services, social workers can also provide other services, such as case management, or refer patients to other services and resources. CMS considers the work of the MFT or MHC to fall under counseling services (88 FR 78818), which is defined at § 418.64(d) and must include, but are not limited to, bereavement, dietary, and spiritual counseling under the Condition of Participation. For additional information on the requirements for MFT and MHC, please see the definitions of MFT and MHCs as defined at § 410.53 and § 410.54 for marriage and family therapists and mental health counselors, respectively.

7. Must an MFT/MHC be registered in the Medicare Provider Enrollment, Chain, and Ownership System (PECOS) given that they are considered counseling, and therefore a part of the hospice per-diem payment? Can an MFT or MHC bill Part B for services provided while acting as an employee of a Medicare certified hospice? Why does an MFT/MHC have to register in PECOS and why do they need to have that information if there is no way to bill Part B services for that individual?

Response: The MFT and MHC would not need to separately enroll in Medicare through PECOS if they are only working for the hospice. However, if the MFT/MHC wants to provide services to Medicare Beneficiaries outside of the hospice benefit and bill Medicare directly, then they would need to enroll in Medicare through PECOS.

8. If MFTs and MHCs are not members of the IDG, are they able to complete the comprehensive assessment and develop the plan of care?

Response: If an MFT or MHC is not a member of the IDG, they are not able to complete the comprehensive assessment and develop the plan of care. The IDG members are responsible for the assessment of the patient. In this case, the SW would be responsible for the comprehensive assessment and the plan of care. Section 418.54 of our rules requires that the hospice IDG, in consultation with the individual's attending physician (if any), must complete the comprehensive assessment no later than 5 calendar days after the election of hospice care in accordance with § 418.24. As the assessment must include all areas of hospice care related to the palliation and management of the terminal illness and related conditions, we encourage the MFT and/or MHC to participate in IDG meetings and provide their clinical perspective in the development and update of the comprehensive assessment, if applicable. The hospice may choose to have the SW as well as the MFT and/or MHC serve on the IDG.

9. If a social worker also meets the qualifications of either the MFT or MHC, will that satisfy the requirement?

Response: The hospice may use a SW as the member of the IDG at any time. We note that the specific qualifications of MFTs and MHCs are separate from SW qualifications and are defined at § 410.53 and § 410.54, respectively.

10. If an MFT or MHC is providing services for a patient, should they be included in the IDG meeting or does the hospice need to demonstrate evidence of collaboration with the IDG and should it be documented in the clinical record if they are not present at the meeting?

Response: The hospice appoints members of the IDG, including a SW, MFT, or MHC. If the MFT or MHC is not selected as formal member of the IDG, the expectation is that the hospice will use its system of communication and integration policies and procedures, as required at § 418.56(e), to outline how information will be shared. This may include having the MFT and/or MHC join the IDG meetings to share information and their perspectives.

11. Will there be any adjustment to the content of the comprehensive assessment with the addition of MFT or MHC services?

Response: At this time, there are no plans for regulatory amendments to the initial and comprehensive assessment Condition of Participation at § 418.54. However, hospices always have the option to make changes to their comprehensive assessment as long as they meet the regulatory requirements at § 418.54(c).

12. What discipline is appropriate to provide oversight to an MFT or MHC?

Response: The discipline to provide oversight of an MFT or MHC will be a policy decision of the hospice. We understand that each hospice may have unique needs based on their locality or patient population. Therefore, we are not proposing any requirements regarding the supervision of MFTs or MHCs.

13. Is an MFT/MHC bachelor's considered a degree related to social work, and if that is the case, would they need to hire a social worker?

Response: A hospice must provide both counseling and social work services. All social work services must be provided by, or under the supervision of a qualified social worker with a Master of Social Work (MSW) degree. To provide social work services under the supervision of an MSW, a hospice may choose to hire a person that has a baccalaureate degree in psychology, sociology, or other field related to social work (if permitted by State and local laws). A degree which qualifies for licensure or certification as an MFT or MHC may be considered to be a field related to social work. If a hospice chooses to hire a social worker with a baccalaureate level or non-MSW degree related degree, the employee will need to meet all of the qualifications outlined below at the time of hiring to be qualified as a hospice social worker:

- The person meets the requirements at § 418.114(a) which specifically states that the person “must be legally authorized (licensed, certified or registered) in accordance with applicable Federal, State and local laws, and must act only within the scope of his or her State license, or State certification, or registration. All personnel qualifications must be kept current at all times.”
- Be supervised by an MSW as described in [paragraph \(b\)\(3\)\(i\)\(A\)](#) of this section.
- Have one year of social work experience in a healthcare setting.

Of note, the SW provisions in this standard require that the employee must not exceed the scope of practice and act in accordance with the State licensure requirements for a SW. The hospice must also defer to State law regarding social work requirements. If State requirements are more stringent, the hospice must comply with the State requirements. For example, if the State requires a social worker to have a BSW or an MSW, the hospice may not employ a person with a baccalaureate degree in psychology, sociology, or other field related to social work to work as a hospice social worker. Additionally, if an individual does not have a Masters level degree, they must be supervised by an MSW, as described in paragraph 418.114(b)(3)(i)(A).

14. What is the timeline for the release of the revised Condition of Participation and interpretive guidelines?

Response: The CMS Quality Safety and Oversight Group (QSOG) is working to release a Quality Safety and Oversight (QSO) memo as soon as possible. Readers may review previously released QSO memos at <https://www.cms.gov/medicare/health-safety->

standards/quality-safety-oversight-general-information/policy-memos-states-and-cms-locations.