



## Long-Term Care Regulatory Provider Letter

<b>Number:</b> PL 2022-33
<b>Title:</b> Guidance for HCSSAs Wanting to Provide Supportive Palliative Care
<b>Provider Types:</b> Home and Community Support Services Agencies (HCSSA)
<b>Date Issued:</b> December 21, 2022

### 1.0 Subject and Purpose

The 86th Legislature, Regular Session, passed Senate Bill [916](#) which was effective on June 10, 2019. The legislation created [Texas Health and Safety Code \(HSC\) Chapter 142A](#) (relating to Supportive Palliative Care) establishing a law for supportive palliative care, indicating that any reference of palliative care in the Texas Administrative Code (TAC) means supportive palliative care. The statute did not establish a license category of services for supportive palliative care in any care delivery setting.

The purpose of this letter is to provide interpretive guidance for HCSSAs with a license to provide home health services who want to provide supportive palliative care services delivered in-home or in community settings.

### 2.0 Policy Details & Provider Responsibilities

#### 2.1 Supportive Palliative Care Services

The licensing standards define supportive palliative care as physician-directed, interdisciplinary patient- and family-centered care provided to a patient [client] with a serious or chronic illness without regard to the patient's age or terminal prognosis that:

- can be provided concurrently with methods of treatment or therapies that seek to cure or minimize the effects of the patient's illness; and
- seeks to optimize the quality of life for a patient with a life-threatening or life-limiting illness and the patient's family through various methods, including methods that seek to:
  - anticipate, prevent, and treat the patient's total suffering related to the patient's physical, emotional, social, and spiritual condition;
  - address the physical, intellectual, emotional, cultural, social, and spiritual needs of the patient; and
  - facilitate treatment options, education, informed consent, and expression of desires.

Supportive palliative care treatments focus on symptom and pain management and, unlike hospice services, can be provided in coordination with curative measures and treatments.

An agency with a licensed home health category that admits clients for supportive palliative care must assess the client's and family's needs and ensure coordination of care among the client's providers of supportive palliative care. An agency must utilize this assessment to determine what agency staffing and service provisions are needed to meet the client's and family's supportive palliative care needs.

## **2.2 Supportive Palliative Care Providers**

Aside from specific exemptions granted under [HSC §142.003](#), providers of in-home supportive palliative care services must hold a HCSSA license with a licensed home health category. Supportive palliative care services share significant overlap in the service array for home health. These include nursing, therapies, medical social services, and intravenous therapies to an individual under a physician's direction.

If a licensed HCSSA has a primary category of service of hospice and wants to provide supportive palliative care to clients, the agency must also add a licensed home health category to its HCSSA license and must be in compliance with all regulations at [Title 26, Part 1, Chapter 558, Subchapter C](#) and [§558.401](#) regarding Standards Specific to Licensed Home Health Services. If a client is currently being served under the hospice category of service and would like to receive supportive palliative care, the client must be discharged or transferred to the licensed home health category.

### **2.3 Supportive Palliative Care Versus Hospice Care**

Supportive palliative care differs from hospice care because the client is not eligible for or has chosen not to elect hospice services for palliation of care and symptoms related to a terminal or chronic, life-limiting or life-threatening illness. Supportive palliative care can be provided by an agency with a home health category of service while the client, of any age, continues to receive curative measures and treatments in coordination with all practitioners ordering and providing services for the client. In supportive palliative care, the client can receive life-prolonging medications.

In hospice care, the majority of payor sources will not cover curative treatments for adults. Although hospice is palliative in nature, hospice as defined in statute is a service that is not curative and is elected by patients with a limited prognosis. Further, hospice rules at [26 TAC §558.858](#) require that the hospice's medical director certify (and recertify if necessary) that each client's life expectancy is anticipated to be six months or less if the client's terminal illness runs its normal course.

In hospice, concurrent care, or care that provides both palliation and curative methods and treatments, is only available to pediatric clients.

### **2.4 Concurrent Care**

Concurrent care is intended to be available in supportive palliative care for clients of all ages and diagnoses. An agency with a licensed home health category providing supportive palliative care must be able to explain this philosophy to potential and existing clients. The agency

must explain treatment options to the client at admission and when the client's health status changes in the course of disease progression.

## **2.5 Service Provision and Client Care Policies**

In accordance with 26 Texas Administrative Code (TAC) [§558.401\(c\)](#), an agency with a licensed home health category must ensure staff provide at least one home health service as defined in [26 TAC §558.2\(53\)](#). In accordance with [26 TAC §558.281](#), an agency must have policies and procedures to govern client care, which include those needs unique to a client and family receiving supportive palliative care. Although an agency with an licensed home health category is not required to provide more than one service or to provide the full array of supportive palliative care services directly, an agency providing supportive palliative care is expected to coordinate palliative care among all disciplines for the client and family in accordance with [26 TAC §558.288](#).

## **2.6 Physician-Direction**

An agency with a licensed home health category providing supportive palliative care must ensure services in the array are physician-directed. The regulations define a practitioner as inclusive of physician's assistants and advance practice registered nurses. The agency must have or contract with a physician who has experience with, or training in, hospice or palliative medicine, and ensure supportive palliative care services are planned and executed in accordance with regulations for physician-delegated services policies and receipt of physician orders. Refer to 26 TAC [§558.296](#) and [§558.297](#).

## **2.7 SPC Client Care Conferences**

An agency that provides supportive palliative care must utilize client care conferences to ensure coordination of supportive palliative care for a client and family. An SPC client care conference is a conference that takes an interdisciplinary approach to address a client's needs and both coordinates and supports objectives outlined in the plan of care or care plan. SPC client care conferences are like case conferences and interdisciplinary team meetings in that they utilize all those disciplines

involved in a client's care to address changes or updates to a client's needs or services and must be documented in the client's record.

SPC client care conferences are intended to accomplish care goals for palliation of pain and symptoms related to a client's chronic or terminal condition. An agency must conduct SPC client care conferences at regular intervals, as frequently as the client's condition requires, and as ordered by a physician or practitioner. The agency must address the expectation for the frequency of SPC client care conferences in their policies and procedures. SPC client care conferences may be held in-person or virtually, if virtual meetings are effective for the purpose of the discussion.

### **3.0 Determining Compliance with In-home Supportive Palliative Care**

During a licensure survey of the HCSSA, a Long-term Care Regulation surveyor will seek to determine compliance with the minimum standards. When an agency indicates in the entrance conference that it provides supportive palliative care to adult or pediatric clients, the surveyor will use observation, interview, and record review in a representative sample of the agency's clients and families receiving supportive palliative care.

#### **3.1 Correct Category of Services for Supportive Palliative Care**

The surveyor will examine the agency's license and organizational structure to determine the license holder has the correct category of services on the license: licensed home health, licensed home health with dialysis, licensed and certified home health, or licensed and certified home health with dialysis.

#### **3.2 Supportive Palliative Care Philosophy**

The surveyor will determine that the agency has staffing and client care policies and procedures consistent with providing supportive palliative care to the client and family. This must include methods that allow the agency to assist the client with protecting and promoting

rights, allow for self-determination and consent to treatment, ensure physician-direction, and staff training in explaining the fundamental differences between supportive palliative care and hospice care and services.

### **3.3 Staffing Qualifications, Experience, Supervision, and Training**

In accordance with licensing standards in [26 TAC §558.246](#), an agency with a licensed home health category of service must ensure all employees, volunteers and contractors have a personnel record that contains documentation of the individual's qualifications for the position accepted. Agencies with a supportive palliative care program must develop job descriptions and qualifications that include experiential and competency-based training for provision of supportive palliative care services.

In accordance with coordination of care requirements and the supportive palliative care philosophy, as described, the agency must demonstrate compliance with an interdisciplinary team approach to care as needed by the client. Interdisciplinary team members must be qualified to contribute to development of the client's care plan or plan of care and to supervise services under the palliative plans and goals.

A HCSSA with both licensed home health and hospice categories of service must prepare and maintain the HCSSA's organizational structure in accordance with [26 TAC §558.242](#) (relating to Organizational Structure and Lines of Authority). The document can be either in the form of a chart or a narrative that clearly delineates the lines of authority between the categories of services provided by the agency under its HCSSA license.

### **3.4 Future Planning and Transfer to Hospice Services**

A HCSSA with a licensed home health category that is providing supportive palliative care must be able to demonstrate compliance with the development of future goals for the client to ensure appropriate transfer to hospice services when necessary and when client-determined, based on a terminal prognosis. Clients with a chronic condition or diagnosis might not always have a need for

hospice planning; however, an agency's policies and procedures must address the interdisciplinary decision-making conference that would lead to a hospice referral.

#### **4.0 Resources**

The relevant statutes are referenced below:

- Texas Health and Safety Code Sec. 142.006 for a HCSSA
- Texas Health and Safety Code Sec. 142A. for Supportive Palliative Care

See the following websites for additional resources, as well as annual training opportunities:

1. <https://www.hhs.texas.gov/services/health/palliative-care/supportive-palliative-care>
2. <https://www.hhs.texas.gov/services/health/palliative-care>
3. <https://www.hhs.texas.gov/about/leadership/advisory-committees/palliative-care-interdisciplinary-advisory-council>

#### **5.0 Contact Information**

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