

MEMORANDUM

Texas Department of Human Services * Long Term Care/Policy

TO: LTC-R Regional Directors & Program Managers
State Office Section/Unit Managers
HCSSA Program Administrators

FROM: Jim Lehrman
Associate Commissioner
Long Term Care-Regulatory & HCSSA
State Office MC: E-340

SUBJECT: Medicaid Hospice - S&CC #00-11

DATE: October 24, 2000

Long Term Care Policy and Long Term Care Regulatory (LTC-R) staff have been meeting with Medicaid hospice and nursing facility (NF) providers to discuss regulatory issues regarding the election of the Medicaid hospice benefit by an NF resident. Based on these discussions and the solicitation of issues and concerns from LTC-R field staff, the department has addressed the issues in this memorandum.

Medicaid Hospice:

The Texas Department of Human Service (TDHS) administers the Medicaid Hospice Program through provider enrollment contracts with hospice agencies. These agencies must be licensed by the department and certified by the Health Care Financing Administration (HCFA), Department of Health and Human Services. Hospice care is an optional benefit under the Medicaid program. In order to be eligible to elect hospice care under Medicaid, an individual must be certified by a physician as terminally ill. An individual is considered terminally ill if the individual has a medical prognosis that his or her life expectancy is six months or less, if the illness runs its normal course.

Election and Revocation of hospice care:

An individual may elect and revoke hospice benefits. If the individual is incompetent to make health care decisions, a designated representative may elect/revoke hospice benefits (pursuant to law). The election form must state the individual's or representative's acknowledgment that he or she has a full understanding of the palliative rather than the curative nature of hospice care, as it relates to the individual's terminal condition.

Only an individual or their representative may revoke the election of hospice (42 CFR §418.28/Texas Medicaid Hospice Provider Manual (TMHPM), page 9). For a Medicaid recipient, the individual and a hospice representative must sign the Recipient Election/Cancellation Notice to cancel hospice coverage.

Certification of a terminal illness:

A person must be certified by the medical director/physician of the hospice or by their attending physician with a **prognosis** that their life expectancy is six months or less. There are no specific diagnosis' a person must have to become a hospice recipient.

Discharge from the hospice program:

A hospice recipient can be discharged only for the following reasons:

- by death,
- revocation,
- moving out of the service area, or
- extended prognosis.

The decision to elect the hospice benefit has significant financial ramifications because the beneficiary waives the right to receive benefits under Medicare Part A. The rules for discharge are strict to avoid discharge of patients when the cost of providing care exceeds the hospice per diem under the under the Perspective Payment System (PPS).

A hospice recipient may not be forced to revoke their election by an administrator, a trustee, a surveyor, or hospice staff. This is an individual's decision and right. A hospice must not be forced to discharge a recipient, as this is the individual's choice. A physician may sign and date a statement that a Medicaid hospice recipient is not suitable for the hospice program. The recipient may appeal the discharge through their Medicaid eligibility worker or may have another physician sign a certification of terminal illness with a prognosis of a life expectancy of six months or less. The recipient must also sign another election of hospice form.

Election Periods:

For Medicare (42 CFR §418.21), an individual may elect hospice during one or more of the following election periods:

- An initial 90-day period,
- A subsequent 90-day period,
- A subsequent 30-day period,
- A subsequent extension period of **unlimited duration** during the individual's lifetime.

For Medicaid (TMHPM), the Texas Medicaid Hospice Program has **unlimited benefit periods of unlimited duration at six month increments of time** for Medicaid hospice recipients. A physician must recertify the recipient for hospice every six months.

The Provision of Services by Hospice and Nursing Facility (NF) Staff:

42 CFR §418.56 states that a Medicare hospice employees must provide core services. The hospice organization may contract with other entities to furnish services. There must be a written agreement between the entities which includes the following. It:

- identifies the services to be provided.
- stipulates that the services may be provided only with the express authorization of the hospice.
- describes the manner in which contracted services are coordinated, supervised, and evaluated by the hospice.

- delineates the roles of the hospice and the contractor in admission, resident/family assessments, and interdisciplinary group care conferences.
- describes requirements for documentation of services furnished.

The TMHPM (page 13) states that core hospice services must be routinely provided directly by hospice employees. It further states that hospice providers may contract with others to provide supplemental services. The TMHPM (page 5) states that when a hospice recipient is in an NF, the Hospice Program pays the hospice provider a hospice-nursing facility rate, which is 95% of the Texas Index for Level of Effort (TILE) rate that would be paid to the NF. TDHS pays the hospice provider, which in turn pays the NF.

State Operations Manual (SOM) instructions on hospice (§2082) states that a hospice may furnish routine or continuous care to a Medicare beneficiary who resides in a SNF, NF, ICF/MR, or any residence or facility not certified by Medicare or Medicaid. The facility is considered the beneficiary's place of residence. The hospice assumes full responsibility for the professional management of the individual's hospice care and makes any arrangements necessary for inpatient care in a participating Medicare or Medicaid facility. The NF Conditions of Participation (CoP) are applicable to all residents of the nursing facility. Neither statute nor regulations exempt hospice patients in the NF from these regulations.

Plan of Care in the Nursing Facility (NF) Setting:

SOM §2082 states that when a resident of an NF elects the Medicare hospice benefit, the hospice and the NF MUST communicate, establish and agree upon a coordinated plan of care for both providers which reflects the hospice philosophy and is based on the resident's needs and unique living situation in the NF. The plan of care must be written in accordance with 42 CFR §418.56 and include the individual's current medical, physical, psychosocial, and spiritual needs. The hospice must designate an RN from the hospice to coordinate the implementation of the plan of care. The plan of care should reflect the participation of the hospice, the NF, and the resident to the extent possible. The hospice and the NF must communicate with each other when any changes are indicated to the plan of care and each provider must be aware of the other's responsibilities in implementing the plan of care

The plan of care must include directives for managing pain and other uncomfortable symptoms and be revised and updated as necessary to reflect the individual's current status. The NF resident should not experience any lack of NF services or personal care because of his/her status as a hospice recipient. The NF must offer the same services to the residents on hospice as it offers to its residents who have not elected hospice.

Nurse Aide Supervision:

When the hospice is providing the nurse aide, they must supervise the care provided. Appendix M states that the hospice registered nurse must make an onsite visit to the residence of the patient no less frequently than every two weeks. The onsite visit does not have to be made while the aide is furnishing services.

Do Not Resuscitate (DNR):

Hospice recipients are not required to have a Do Not Resuscitate order (DNR). To force an individual to accept a DNR order would be a violation of their rights. Individuals who qualify for hospice may not be accepting of the prognosis and may want "heroic" efforts made if they experience a life-threatening event. Some individuals think that if their heart stops, they are

having a heart attack, not dying from their disease. Just because they are hospice recipients doesn't mean that they want to die. Each person copes with the dying process in a different way. Some become very passive and accepting and others fight to the bitter end.

In an April 20, 2000, letter on Advance Directives and Do Not Resuscitate in Medicare Hospice B clarification, HCFA states that Medicare certified hospice providers may not refuse to have staff skilled in resuscitation or refuse to revive a patient who desires to be resuscitated.

Documentation by Hospice Staff in Nursing Facility Clinical Records:

Hospice documentation must be part of the current clinical record. There must be an interdisciplinary care plan and documentation of the coordination of care between the NF and the hospice agency. At a minimum, documentation will include the current and past:

- Texas Medicaid Hospice Recipient Election/Cancellation form
- Texas Medicaid Hospice- Nursing Facility Assessment form
- Physician Certification of Terminal Illness form
- Medicare Election Statement, if dually eligible
- Verification that the recipient does not have Medicare Part A
- Hospice Interdisciplinary Assessments
- Hospice Plan of Care
- Current interdisciplinary notes, which include:
 - Nurses' notes and summaries,
 - Physician orders and progress notes,
 - Medication and treatment sheets during the hospice certification period.

Home and Community Support Services Agencies (HCSSA) survey and the Nursing Facility (NF):

Home health surveyors will see hospice recipients in NFs, if the recipient is identified in a complaint. They are also part of the hospice sample selection. Appendix M - Hospice Survey Procedures and Interpretative Guidelines identifies individuals who receive hospice benefits who reside in a SNF/NF as a category of patients that must receive a home visit during a survey. If the hospice has a contract with the NF, TDHS survey staff always make a visit to at least one resident during the survey. This is to verify that the care has been coordinated with the NF staff.

Time frames for investigating complaints about hospice agencies:

Health and safety issues with an immediate threat of injury or death to a client are performed within two days. If the client is transferred, it is performed within 120 days. If the client has skin breakdown, it will be performed between 15 and 45 days.

If a surveyor has concerns regarding the quality or type of service provided to a hospice recipient, they can call 1-800-228-1570 and file a complaint or they can contact the Home and Community Support Services Agencies (HCSSA) local Zone office (TDHS HCSSA survey staff) for information and answers.

Hospice Regulations

TDHS is responsible for the state licensure of hospice agencies and HCFA is responsible for the Medicare certification of hospice agencies. TDHS uses the state regulations (40 TAC §97) and federal hospice Medicare regulations (42 CFR §418) as the basis for the Texas hospice licensure and certification requirements. Home health agencies with a hospice service designation and any agency/facility calling itself a hospice that is not fully licensed and Medicare certified as a hospice agency are not eligible to participate in the Texas Medicaid Hospice Program. Medicaid hospice providers must comply with the above regulations in addition to 40 TAC §30 Medicaid Hospice.

Sources for Hospice Regulations and Guidelines:

- State Operations Manual (SOM) - §2082 -- The Certification Process - Hospices
- Appendix M - Hospice Survey Procedures and Interpretative Guidelines -- SOM
- 42 CFR §418 -- Hospice Care
- Health and Safety Code §142.007 -- Home Health Services Licenses
- 40 TAC §30 -- Medicaid Hospice
- 40 TAC §97 -- Home and Community Support Services Agencies
- Texas Medicaid Hospice Program Provider Manual
- HCFA Memorandum dated April 20, 2000 - Advance Directives and Do Not Resuscitate (DNR) in Medicare Hospice -- Clarification
- RS&C Letter 98-10 -- Specific Practices Involving Long Term Care Nursing Facilities and Hospices Which May Be Kickbacks
- TDHS Hospice Provider Letter 99-01 -- Medicaid Fraud and Recipient Rights in Nursing Facilities

Additional Hospice Provider letters can be obtained from the Long Term Care Policy Website at <http://ltc.dhs.state.tx.us/Policy/ltc-pol.htm>.

If you have any questions or require additional information, please contact Dee Sandefur, R.N., M.S., Professional Services at (512) 438-2321, Mary Jo Grassmuck, Program Administrator, HCSSA at (512) 438-2183 or Maxcine Tomlinson, Medicaid Hospice Program Manager at (512) 438-3169.

{Original Signature on File}

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