907 KAR 1:330. Hospice services.

RELATES TO: KRS 205.520, 42 C.F.R. 418.3, 418.20-418.30, 42 U.S.C. 1395d, 1395x(dd)(2), 1396d(o)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY:[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program[of medical assistance in accordance with Title XIX of the Social Security Act]. KRS 205.520(3) authorizes[empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes[sets forth] the terms and conditions under which the Medicaid Program shall[cabinet will] provide hospice care to both the categorically and medically needy.

Section 1. Definitions[Definition of Hospice Care]. (1) "Department approved system" means a technology system in which:
(a) Providers electronically submit and track level of care (LOC) requests through a self-service portal;
(b) The system triggers LOC tasks as reminders to providers and allows them to submit reassessments electronically; and
(c) Information is exchanged electronically with Kentucky's:
1. Medicaid Enterprise Management System (MEMS); and
2. Integrated eligibility system.
(2) "Hospice care" means[the care described in Section 1905(o) of the Social Security Act. Summarized, hospice care may be described as] a package of palliative and supportive services:
(a) Provided by a hospice program to a terminally ill Medicaid recipient and the recipient's[his] family to:
1. Alleviate the recipient's[patient's] pain and suffering; and
2. Assist the recipient[patient] and the recipient's[his] family to cope with dying and the circumstances surrounding terminal illness; and
(b) The hospice package of services is Provided in lieu of the[certain] benefits established in 42 U.S.C. 1395d(d)(2)(A)[described in Section 1812(d)(2)(A) of the Social Security Act] and services provided by an intermediate care facility for individuals with an intellectual disability[services].
(3) "Representative" means an individual who:
(a) Has the authority under state law (whether by statute or pursuant to an appointment by a court of law) to authorize or terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill recipient who is mentally or physically incapacitated; and
(b) May be the recipient's legal guardian.
(4) "Terminally ill" is defined by 42 C.F.R. 418.3.
Section 2. General Provisions. (1) The recipient or the recipient’s representative shall voluntarily elect the hospice care if hospice care is to be provided.

(2) Institutionalized hospice care may be provided to an individual in a skilled nursing or intermediate care facility but in that circumstance coverage does not exist under the program for skilled nursing and intermediate care facility services, i.e., a payment may be made for only the hospice care.

(3) Non-institutionalized hospice care shall be provided to an individual in a home or hospice facility.

(4) Hospice care shall only be provided by an appropriately licensed, accredited, and certified hospice program as defined by 42 U.S.C. 1395x(dd)(2) in Section 1861(dd)(2) of the Social Security Act, participating in both Medicare and Medicaid.

(5) Agency staff and participating providers of hospice services may review the federal Medicaid hospice regulations located in 42 C.F.R. part 418 for additional benefit descriptions and operating instructions relating to hospice services care.

Section 3. Voluntary Election. (1) Any terminally ill Medicaid recipient or recipient’s representative may elect hospice coverage if hospice care is provided by a participating hospice program in the county service area in accordance with procedures and using such forms as may be prescribed by the cabinet.

(2) Each recipient shall have the following items completed in the department approved system:
   (a) MAP-374, Election of Medicaid Hospice Benefits, to authenticate voluntary selection; and
   (b) MAP-377, Physician’s Statement for Medicaid Hospice Service, which is in writing, and must present a statement from a physician to show that the recipient’s illness is terminal and that death is expected to occur within six (6) months.

Section 4. Covered Services. (1) To be covered, hospice services shall be reasonable and medically necessary for the palliation or management of the terminal illness as well as related conditions.

(2) Covered services shall include:
   (a) Nursing care and services by or under the supervision of a registered nurse;
   (b) Mental health, nutritional, dietary, and bereavement counseling services for the recipient and the family;
   (c) Physical therapy;
   (d) Occupational therapy;
   (e) Speech language pathology;
   (f) Home health aide that performs simple procedures as an extension of:
      1. Therapy services;
      2. Personal care;
      3. Ambulation and exercise;
      4. Household services essential to health care at home;
      5. Assistance with medications that are ordinarily self-administered;
      6. Reporting changes in the patient’s condition and needs; and
      7. Completing appropriate records;
   (g) Medical supplies and appliances;
   (h) Short term inpatient care for pain control and symptom management;
   (i) Medical social services;
   (j) Respite care;
(k) Physician services;
(l) Pharmacy services for drugs related to the recipient's terminal illness;
(m) Room and board if the recipient is residing in a long term care facility; and
(n) Bed reservation days if in a long term care facility.

Section 5[3]. Duration of Benefits. (1)[Effective January 1, 1989.] There shall not be a limit on the number of days an individual may participate in the hospice program if the days fall within a covered benefit period as established in subsection (2) of this section.

(2)[Effective June 1, 1990.] Hospice benefits shall consist of these benefit periods:
(a) Two (2) ninety (90) day periods; and
(b) Additional sixty (60) day periods that last until revocation or termination for other reasons such as ineligibility or death.

Section 6[4]. Concurrent Medicare Coverage. If a Medicaid eligible individual with concurrent eligibility for hospice services under Medicare wishes to enroll in a hospice program under Medicaid, he shall enroll in the Medicare hospice program.

Section 7[5]. Disenrollment, Reenrollment, and Transfers. (1)(a) A recipient may disenroll from a hospice program at any time.

(b) In accordance with 42 C.F.R. 418.28, a recipient who disenrolls during any benefit period shall lose the unused portion of that benefit period but may still be eligible for the remaining benefit period(s), if any. He may reenroll at such time as he may desire (subject only to the usual participation requirements).

(2) If an enrolled individual revokes his or her Medicare enrollment, the Medicaid enrollment shall be revoked simultaneously to the extent possible.

(3) If a county is served by two (2) or more hospice programs, or if the recipient moves his county of residence to a county serviced by a different hospice, the recipient may transfer between hospice programs.

Section 8. Admission, Reassessment, and Discharge. (1) Prior to or on admission, a hospice provider shall submit on the department approved system the information required by the following forms, either by using the forms listed in paragraphs (a) and (b) of this subsection or by using a document developed by the hospice provider that includes the same information:
(a) MAP-374; and
(b) MAP-377.

(2) For reassessment, a hospice provider shall complete on a department approved system a MAP-377 prior to or on the date of expiration of the current authorization period.

(3) The discharge date shall be entered into a department approved system on or before the date of discharge.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) MAP-374, "Election of Medicaid Hospice Benefits", 1/18; and
(b) MAP-377, "Physician's Statement for Medicaid Hospice Service", 1/18.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:
(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky,
Monday through Friday, 8:00 a.m. to 4:30 p.m.; or
(b) Online at the department’s Web site at https://chfs.ky.gov/agencies/dms/Pages/mapforms.aspx.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: February 11, 2019
FILED WITH LRC: February 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until March 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the terms and conditions under which the Medicaid Program shall provide hospice care to both the categorically and medically needy.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program coverage policies for hospice services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid program coverage policies for hospice services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the Medicaid program coverage policies for hospice services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to 907 KAR 1:330 updates citations and makes other changes to comply with the drafting and formatting requirements of KRS Chapter 13A; establishes a definition for “department ap-
proved system" and "representative"; clarifies the difference between institutionalized and non-institutionalized hospice care; requires the completion of forms in the department approved system, rather than using paper forms, to elect hospice care, for admission, and for reassessment; changes the length of the hospice benefit periods to align with 42 C.F.R. 418.21; requires the discharge date to be entered in the department approved system on or before the date of discharge; and incorporates by reference MAP-374, Election of Medicaid Hospice Benefits, and MAP-377, Physician's Statement for Medicaid Hospice Service.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to update the hospice care requirements, including changes necessary to transition paper forms to a new electronic self-service portal.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by updating the requirements for hospice care, including changes necessary to transition paper forms to a new electronic self-service portal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Medicaid recipients receiving hospice services and hospice providers will be affected by this administrative regulation. According to the 2016 Kentucky Annual Hospice Services Report published by the CHFS Office of Health Policy, in 2016, there were 33 hospice agencies operating in Kentucky. Those agencies admitted 19,382 patients.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will be transitioned from paper forms to a new electronic self-service portal. Facilities will use the department approved system to submit and track level of care requests and the recipient’s discharge date. Hospice providers are provided with the citations to review the federal Medicaid hospice regulations located in 42 C.F.R. part 418 for additional benefit descriptions and operation instructions relating to hospice services care. Recipients are required to use the forms incorporated by reference to authenticate voluntary selection of hospice benefits and to provide a statement from a physician.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional costs for complying with this administrative regulation, as it will save hospice providers money by implementing an electronic self-service portal, rather than continuing the paper processes; additionally, there will be reduced paperwork requirements and a reduction in the possibility of data mismanagement or human error in the uploading of information.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of compliance include saving hospice providers money by implementing an electronic self-service portal, rather than continuing the paper forms; additionally, there will be reduced paperwork requirements and a reduction in the possibility of data mismanagement or human error in the uploading of information.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 418.3, 418.20-418.30, 42 U.S.C. 1395d, 1395x(dd)(2), 1396d(o)

2. State compliance standards. KRS 194A.030(2), 194A.050(1), 205.520(3)

3. Minimum or uniform standards contained in the federal mandate. Hospice services are an optional rather than mandatory Medicaid benefit; however, if a Medicaid program elects to cover hospice services, the reimbursement must equal the Medicare rate for hospice services and the requirements established in 42 C.F.R. Part 418 must be met.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
None
(c) How much will it cost to administer this program for the first year? Nothing
(d) How much will it cost to administer this program for subsequent years? Nothing
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain
the fiscal impact of the administrative regulation.
  Revenues (+/-):
  Expenditures (+/-):
  Other Explanation: