

**9505.0297 HOSPICE CARE SERVICES.**

Subpart 1. **Applicability.** Parts 9505.0297 and 9505.0446 must be read in conjunction with United States Code, title 42, section 1396a, and Code of Federal Regulations, title 42, part 418.

Subp. 2. **Definitions.** For purposes of this part and part 9505.0446, the following terms have the meanings given them.

A. "Business days" means every day except Saturday, Sunday, and legal holidays in Minnesota.

B. "Cap amount" means the limit on overall hospice reimbursement provided by part 9505.0446, subpart 4, and Code of Federal Regulations, title 42, sections 418.308 and 418.309, as amended through October 1, 1987.

C. "Employee" means an employee of the hospice or, if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is assigned to the hospice unit. Employee also includes a volunteer under the supervision of the hospice.

D. "Home" means the recipient's place of residence.

E. "Hospice" has the meaning given to hospice program in Minnesota Statutes, section 144A.48, subdivision 1, clause (4).

F. "Hospice care" means the services provided by a hospice to a terminally ill recipient under this part.

G. "Inpatient care" means the services provided by an inpatient facility to a recipient who has been admitted to a hospital, long-term care facility, or facility of a hospice that provides care 24 hours a day.

H. "Inpatient facility" means a hospital, long-term care facility, or facility of a hospice that provides care 24 hours a day.

I. "Interdisciplinary group" has the meaning given to interdisciplinary team in Minnesota Statutes, section 144A.48, subdivision 1, clause (5).

J. "Palliative care" has the meaning given in Minnesota Statutes, section 144A.48, subdivision 1, clause (6).

K. "Representative" means a person who, because of the terminally ill recipient's mental or physical incapacity, may execute or revoke an election of hospice care on behalf of the recipient under Minnesota law.

L. "Respite care" means short-term inpatient care provided to the recipient only when necessary to relieve the family members or other persons caring for the recipient.

M. "Social worker" means a person who has at least a bachelor's degree in social work from a program accredited or approved by the Council of Social Work Education and who complies with Minnesota Statutes, sections 148B.21 to 148B.289.

N. "Terminally ill" means that the recipient has a medical prognosis that life expectancy is six months or less.

Subp. 3. **Provider eligibility.** A provider of hospice services is eligible for medical assistance payments if the provider is:

A. licensed or registered as a hospice under Minnesota Statutes, section 144A.48 or 144A.49; and

B. certified as a provider of hospice services under Medicare, in accordance with title XVIII of the Social Security Act, and Code of Federal Regulations, title 42, part 418.

Subp. 4. **Recipient eligibility.** To be eligible for medical assistance coverage of hospice care, a recipient must be certified as being terminally ill in the manner required by subpart 5.

Subp. 5. **Certification of terminal illness.** Within two calendar days after hospice care is initiated, the hospice must obtain written statements certifying that the recipient is terminally ill, signed by:

A. the medical director of the hospice or the physician member of the hospice's interdisciplinary group; and

B. the recipient's attending physician, if the recipient has one.

Within two calendar days after the recipient's first 90 days of hospice care and within two calendar days after the beginning of each subsequent 90-day period, the hospice must obtain a written statement certifying that the recipient is terminally ill, signed by the medical director of the hospice or the physician member of the hospice's interdisciplinary group.

Subp. 6. **Election of hospice care.** A recipient who is eligible for hospice care under subpart 4 and elects to receive hospice care, must submit an election statement to the hospice. The statement must include:

A. designation of the hospice that will provide care;

B. the recipient's acknowledgment that the recipient fully understands that the hospice provides palliative care rather than curative care with respect to the recipient's terminal illness;

C. the recipient's acknowledgment that the services under subpart 9 are waived by the election;

D. the effective date of the election, which must be no earlier than the date that the election is signed; and

E. the recipient's signature.

Subp. 7. **Election by representative.** A representative of the recipient may make the election and sign and submit the election statement to the hospice for the recipient according to subpart 6.

Subp. 8. **Notification of the election.** The hospice must mail or deliver a copy of the election statement required by subpart 6 to the local agency of the recipient's county of service, as defined

by part 9505.0015, subpart 27, within two business days after the date the hospice receives the signed election statement.

Subp. 9. **Waiver of other benefits.** A recipient who elects hospice care under subpart 6 or for whom a representative elects hospice care under subpart 7 waives the right to medical assistance payments during the recipient's hospice stay for the following services:

A. Hospice care provided by a hospice other than the hospice designated by the recipient or the recipient's representative, unless the care is provided under arrangements made by the designated hospice.

B. Health services related to treatment of the terminal illness for which hospice care was elected or a condition related to the terminal illness, or services that are equivalent to hospice care, except for services:

- (1) provided by the designated hospice;
  - (2) provided by another hospice under arrangements made by the designated hospice;
- and
- (3) provided by the recipient's attending physician if that physician is not employed by the designated hospice or receiving compensation from the hospice for those services.

C. Personal care services, under Minnesota Statutes, section 256B.0659.

Subp. 10. **Duration of hospice services.** A recipient may receive hospice care until the recipient revokes the election under subpart 11 or no longer is eligible for hospice care under subpart 4.

Subp. 11. **Revoking the election.** A recipient or the recipient's representative may revoke the election of medical assistance coverage of hospice care at any time. To revoke the election, the recipient or representative must submit a statement to the hospice that includes:

- A. a signed statement that the recipient or representative revokes the recipient's election of medical assistance coverage of hospice care; and
- B. the date that the revocation is to be effective, which must be no earlier than the date on which the revocation is signed.

Subp. 12. **Notification of revocation.** The hospice must mail or deliver a copy of the revocation statement submitted under subpart 11 to the local agency of the recipient's county of service, as defined by part 9505.0015, subpart 27, within two business days after the date that the hospice receives the signed statement revoking the election.

Subp. 13. **Effect of revocation.** A recipient, upon revoking the election of medical assistance coverage of hospice care under subpart 11:

- A. is no longer covered under medical assistance for hospice care;
- B. resumes medical assistance coverage of the benefits waived under subpart 9; and

C. may elect to receive medical assistance coverage of hospice care at a later time, if eligible under this part at that time.

Subp. 14. **Change of hospice.** A recipient or the recipient's representative may change the designation of the hospice from which the recipient will receive hospice care. The change of the designated hospice is not a revocation of the election of medical assistance coverage of hospice care. To change the designation of the hospice, the recipient or the recipient's representative must submit both to the hospice where care has been received and to the newly designated hospice a signed statement that includes the following information:

A. the name of the hospice where the recipient has received care and the name of the hospice from which the recipient plans to receive care; and

B. the date the change is to be effective.

Subp. 15. **Requirements for medical assistance payment.** To be eligible for medical assistance coverage, hospice care must be:

A. reasonable and necessary for the palliation or management of the terminal illness and conditions related to the terminal illness;

B. in compliance with Minnesota Statutes, sections 144A.43 to 144A.49, and with the rules adopted under Minnesota Statutes, section 144A.48; and

C. consistent with the recipient's plan of care, established by the hospice.

Subp. 16. **Covered services.** As required by the recipient's plan of care, the services listed in items A to D must be provided directly by hospice employees, except that the hospice may contract for these services under the circumstances provided for in Code of Federal Regulations, title 42, section 418.80. As required by the recipient's plan of care, the services listed in items E to I must be provided directly or be made available by the hospice.

A. Nursing services provided by or under the supervision of a registered nurse.

B. Medical social services provided by a social worker under the direction of a physician.

C. Services performed by a physician, dentist, optometrist, or chiropractor.

D. Counseling services provided to the terminally ill recipient and the family members or other persons caring for the recipient at the recipient's home. Counseling, including dietary counseling, may be provided both to train the recipient's family or other caregiver to provide care, and to help the recipient and those caring for the recipient adjust to the recipient's approaching death.

E. Inpatient care, including procedures necessary for pain control or acute or chronic symptom management provided in a Medicare or medical assistance certified hospital, skilled nursing facility, or hospice unit that provides inpatient care. Inpatient care must conform to the written plan of care. A hospice that provides inpatient care must meet the standards in Code of Federal Regulations, title 42, sections 418.100(a) and (f), as amended through October 1, 1987.

F. Inpatient care, as a means of providing respite for the recipient's family or other persons caring for the recipient at home, provided in a Medicare or medical assistance certified hospital, skilled nursing facility, or hospice unit that provides inpatient care, or in a medical assistance certified intermediate care facility, subject to subpart 18.

G. Medical equipment and supplies, including drugs. Only drugs approved by the commissioner under part 9505.0340, subpart 3, item A, and used primarily to relieve pain and control symptoms of the recipient's terminal illness are covered. Medical equipment includes durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the recipient's terminal illness. Medical equipment must be provided by the hospice for use in the recipient's home while the recipient is under hospice care. Medical supplies include those specified in the written plan of care.

H. Home health aide services and homemaker services. Home health aides may provide personal care services as described in Minnesota Statutes, section 256B.0659, subdivision 2. Home health aides and homemakers may perform household services to maintain a safe and sanitary environment in areas of the home used by the recipient, such as changing the recipient's bed linens or light cleaning and laundering essential to the comfort and cleanliness of the recipient. Home health aide services must be provided under the supervision of a registered nurse.

I. Physical therapy, occupational therapy, and speech-language pathology services provided to control symptoms or to enable the recipient to maintain activities of daily living and basic functional skills.

Subp. 17. **Services provided during a crisis.** A hospice may provide nursing services, including homemaker or home health aide services, to a recipient on a continuous basis for as much as 24 hours a day during a crisis as necessary to maintain a recipient at home. More than half of the care during the crisis must be nursing care provided by a registered nurse or licensed practical nurse. A crisis is a period in which the recipient requires continuous care for palliation or management of acute medical symptoms.

Subp. 18. **Respite care.** A hospice may provide respite care to a recipient only on an occasional basis and may not be paid for more than five consecutive days of respite care at a time. A hospice shall not provide respite care to a recipient who resides in a long-term care facility.

Subp. 19. **Bereavement counseling.** Bereavement counseling services must be made available by the hospice to the recipient's family until one year after the recipient's death. For purposes of this subpart, family includes persons related to the recipient or those considered by the recipient to be family because of their close association.

Subp. 20. **Medical assistance payment for hospice care.** Medical assistance shall be paid to a hospice for covered services according to part 9505.0446.

**Statutory Authority:** *MS s 14.3895; 256B.02*

**History:** *13 SR 1861; L 1997 c 193 s 47; 48 SR 487*

**Published Electronically:** *November 29, 2023*