

1 Department of Human Services

2

3 Adopted Permanent Rules Relating to Medical Assistance Hospice
4 Care Services

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6 Rules as Adopted

7 9505.0297 HOSPICE CARE SERVICES.

8 Subpart 1. **Applicability.** Parts 9505.0297 and 9505.0446
9 must be read in conjunction with United States Code, title 42,
10 section 1396a, and Code of Federal Regulations, title 42, part
11 418.

12 Subp. 2. **Definitions.** For purposes of this part and part
13 9505.0446, the following terms have the meanings given them.

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

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

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

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

26 E. "Hospice" has the meaning given to hospice program
27 in Minnesota Statutes, section 144A.48, subdivision 1, clause
28 (4).

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

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

35 H. "Inpatient facility" means a hospital, long-term

1 care facility, or facility of a hospice that provides care 24
2 hours a day.

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

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

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

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

15 M. "Social worker" means a person who has at least a
16 bachelor's degree in social work from a program accredited or
17 approved by the Council of Social Work Education and who
18 complies with Minnesota Statutes, sections 148B.21 to 148B.28.

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

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

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

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

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

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

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

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

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

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

15 A. designation of the hospice that will provide care;

16 B. the recipient's acknowledgement that the recipient
17 fully understands that the hospice provides palliative care
18 rather than curative care with respect to the recipient's
19 terminal illness;

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

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

24 E. the recipient's signature.

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

29 Subp. 8. Notification of the election. The hospice must
30 mail or deliver a copy of the election statement required by
31 subpart 6 to the local agency of the recipient's county of
32 service, as defined by part 9505.0015, subpart 27, within two
33 business days after the date the hospice receives the signed
34 election statement.

35 Subp. 9. Waiver of other benefits. A recipient who elects
36 hospice care under subpart 6 or for whom a representative elects

1 hospice care under subpart 7 waives the right to medical
2 assistance payments during the recipient's hospice stay for the
3 following services:

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

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

12 (1) provided by the designated hospice;

13 (2) provided by another hospice under
14 arrangements made by the designated hospice; and

15 (3) provided by the recipient's attending
16 physician if that physician is not employed by the designated
17 hospice or receiving compensation from the hospice for those
18 services.

19 C. Personal care services, under part 9505.0335.

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

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

29 A. a signed statement that the recipient or
30 representative revokes the recipient's election of medical
31 assistance coverage of hospice care; and

32 B. the date that the revocation is to be effective,
33 which must be no earlier than the date on which the revocation
34 is signed.

35 Subp. 12. Notification of revocation. The hospice must
36 mail or deliver a copy of the revocation statement submitted

1 under subpart 11 to the local agency of the recipient's county
2 of service, as defined by part 9505.0015, subpart 27, within two
3 business days after the date that the hospice receives the
4 signed statement revoking the election.

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

8 A. is no longer covered under medical assistance for
9 hospice care;

10 B. resumes medical assistance coverage of the
11 benefits waived under subpart 9; and

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

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

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

27 B. the date the change is to be effective.

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

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

34 B. in compliance with Minnesota Statutes, sections
35 144A.43 to 144A.49, and with the rules adopted under Minnesota
36 Statutes, section 144A.48; and

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

3 Subp. 16. Covered services. As required by the
4 recipient's plan of care, the services listed in items A to D
5 must be provided directly by hospice employees, except that the
6 hospice may contract for these services under the circumstances
7 provided for in Code of Federal Regulations, title 42, section
8 418.80. As required by the recipient's plan of care, the
9 services listed in items E to I must be provided directly or be
10 made available by the hospice.

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

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

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

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

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

32 F. Inpatient care, as a means of providing respite
33 for the recipient's family or other persons caring for the
34 recipient at home, provided in a Medicare or medical assistance
35 certified hospital, skilled nursing facility, or hospice unit
36 that provides inpatient care, or in a medical assistance

1 certified intermediate care facility, subject to subpart 18.

2 G. Medical equipment and supplies, including drugs.

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

13 H. Home health aide services and homemaker services.

14 Home health aides may provide personal care services as
15 described in part 9505.0335, subparts 8 and 9. Home health
16 aides and homemakers may perform household services to maintain
17 a safe and sanitary environment in areas of the home used by the
18 recipient, such as changing the recipient's bed linens or light
19 cleaning and laundering essential to the comfort and cleanliness
20 of the recipient. Home health aide services must be provided
21 under the supervision of a registered nurse.

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

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

35 Subp. 18. Respite care. A hospice may provide respite
36 care to a recipient only on an occasional basis and may not be

1 paid for more than five consecutive days of respite care at a
2 time. A hospice shall not provide respite care to a recipient
3 who resides in a long-term care facility.

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

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

13 9505.0446 HOSPICE CARE PAYMENT RATES AND PROCEDURES.

14 Subpart 1. Rate categories. Providers of hospice care as
15 described in part 9505.0297 are paid at one of four fixed daily
16 rates that apply to each of the four categories of services in
17 subpart 3. The fixed daily rates apply to all services, except
18 for certain physician services as described in subpart 5, and
19 room and board in a long-term care facility as described in
20 subparts 6 and 7.

21 Subp. 2. Long-term care facility as residence. For
22 purposes of this part, a recipient who resides in a long-term
23 care facility is considered to live at home.

24 Subp. 3. Categories of service. Except as otherwise
25 provided by subparts 4 to 6, no payments shall be made for
26 specific services provided by the hospice. Fixed daily rates
27 are calculated under subpart 4 for each of the following
28 categories of services:

29 A. Routine home care day, which is a day on which a
30 recipient who has elected to receive hospice care is at home and
31 is not receiving continuous care as defined in item B.

32 B. Continuous home care day, which is a day on which
33 a recipient who has elected to receive hospice care has not been
34 admitted to a facility that provides inpatient care, except when
35 a long-term care facility is the recipient's residence under

1 subpart 2, and the recipient receives hospice care consisting of
2 nursing services, including home health aide or homemaker
3 services, on a continuous basis at home, as provided by part
4 9505.0297, subpart 17. No fewer than eight hours a day of
5 nursing care must be provided by a registered nurse or licensed
6 practical nurse. Continuous home care may be furnished only
7 during periods of crisis as described in part 9505.0297, subpart
8 17, and only as necessary to maintain the terminally ill
9 recipient at home.

10 C. Inpatient respite care day, which is a day on
11 which the recipient who has elected hospice care receives
12 inpatient care in an inpatient facility certified for medical
13 assistance on a short-term basis for respite. This item is
14 subject to the limits provided by part 9505.0297, subpart 18.
15 This item does not apply to a recipient whose residence is a
16 long-term care facility under subpart 2.

17 D. General inpatient care day, which is a day on
18 which a recipient who has elected hospice care receives general
19 inpatient care in a hospital or skilled nursing facility that
20 provides inpatient care for control of pain or management of
21 acute or chronic symptoms that cannot be managed in other
22 settings. This item does not apply to a recipient who receives
23 inpatient care in a long-term care facility in which the
24 recipient is a resident under subpart 2.

25 Subp. 4. Payments and limitations. Medical assistance
26 will pay a hospice for each day a recipient is under the
27 hospice's care. Payment is in the same amounts, uses the same
28 methodology, and is subject to the same limits and cap amount
29 used by Medicare under Code of Federal Regulations, title 42,
30 sections 418.301 to 418.309, as amended through October 1, 1987,
31 except that the inpatient day limit on both inpatient respite
32 care days and general inpatient care days does not apply to
33 recipients afflicted with acquired immunodeficiency syndrome
34 (AIDS), as provided by United States Code, title 42, section
35 1396d(o)(1)(B). The rates are determined by the Health Care
36 Financing Administration (HCFA), United States Department of

1 Health and Human Services, as provided by Code of Federal
2 Regulations, title 42, section 418.306, as amended through
3 October 1, 1987, and as adjusted by HCFA for the Medicare co-pay
4 amounts not allowed under medical assistance. Payments to
5 long-term care facilities under subparts 6 and 7 are not
6 included in the cap amount. Changes in rates are announced in
7 the Federal Register. No payment will be made for bereavement
8 counseling under part 9505.0297, subpart 19.

9 Subp. 5. Payment for physician services. Physician
10 services are paid according to items A to C.

11 A. The services specified in subitems (1) and (2) are
12 included in the rates provided by subpart 4:

13 (1) general supervisory services of the hospice's
14 medical director; and

15 (2) participation in the establishment of plans
16 of care, supervision of care and services, periodic review and
17 updating of plans of care, and establishment of governing
18 policies by the physician member of the hospice's
19 interdisciplinary group.

20 B. Other than for services described in item A,
21 medical assistance shall pay the hospice for physician services
22 furnished by physicians who are employees of the hospice or who
23 provide services under arrangements with the hospice, at the
24 rate provided by part 9505.0445, item E. Payment for these
25 physician services is included in the amount subject to the cap
26 amount in subpart 4. No payment will be made to the hospice for
27 services donated by physicians who are employees of the hospice
28 or who provide services under arrangements with the hospice.

29 C. Services of the recipient's attending physician,
30 if the physician is not an employee of the hospice or is not
31 providing services under arrangements with the hospice, are not
32 considered hospice services and are not included in the amount
33 subject to the cap amount in subpart 4. These services are
34 reimbursed according to parts 9505.0345 and 9505.0445, item E.

35 Subp. 6. Payment for room and board in long-term care
36 facilities. If a recipient resides in a long-term care facility

1 under subpart 2 that is certified as a medical assistance
2 provider and the recipient has elected medical assistance
3 coverage of hospice services, the long-term care facility shall
4 not be paid by medical assistance under parts 9549.0010 to
5 9549.0080, but shall be paid by the hospice at a rate negotiated
6 by the long-term care facility and the hospice.

7 Subp. 7. Payment to hospice for residents of long-term
8 care facilities. The commissioner shall establish the payments
9 to hospices for the room and board of medical assistance
10 recipients who reside in long-term care facilities certified by
11 medical assistance, as provided by items A and B.

12 A. The daily room and board payment rate shall be
13 either:

14 (1) 83 percent of the long-term care facility's
15 daily payment rate for the recipient's resident class, as
16 determined under parts 9549.0010 to 9549.0080; or

17 (2) 83 percent of the long-term care facility's
18 daily payment rate for the recipient's certification level, if
19 the long-term care facility is not subject to parts 9549.0010 to
20 9549.0080.

21 B. The payment to the hospice is the product of the
22 hospice's daily room and board payment rate determined in item A
23 and the number of days for which the recipient resides in the
24 long-term care facility in the month, less the recipient's
25 spend-down amount for that month under part 9505.0065, subpart
26 11, item F.