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**Rules of**  
**Department of Social Services**  
**Division 70—MO HealthNet Division**  
**Chapter 50—Hospice Services Program**

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## Title 13—DEPARTMENT OF SOCIAL SERVICES

### Division 70—MO HealthNet Division Chapter 50—Hospice Services Program

#### 13 CSR 70-50.010 Hospice Services Program

*PURPOSE: This rule establishes the regulatory basis for administration of a medical assistance program of hospice care as mandated by House Bill 1139, 84th General Assembly, section 208.152, RSMo. More specific details of the conditions for provider participation, criteria, and methodology of provider reimbursement, participant eligibility, and amount, duration, and scope of services covered are included in the provider program manual. The Missouri Title XIX Hospice Services Program is similar to the Title XVIII Medicare Hospice Services program as defined and prescribed in Title 42, Code of Federal Regulations part 418.*

*PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.*

(1) Administration. The Hospice Program shall be administered by the Department of Social Services, MO HealthNet Division. The medical services covered and not covered, the program limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by the MO HealthNet Division and shall be included in the MO HealthNet Hospice Provider Manual, which is incorporated by reference and made part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at [www.dss.mo.gov/mhd](http://www.dss.mo.gov/mhd), November 1, 2013. This rule does not incorporate any subsequent amendments or additions. Hospice services covered by the MO HealthNet program shall include only those that are clearly shown to be medically necessary. The division reserves the right to affect changes in

services, limitations, and fees with proper notification to MO HealthNet hospice providers.

(2) Persons Eligible. Participants eligible for medical assistance benefits from the Department of Social Services are certified by a physician to be terminally ill with a medical prognosis of life expectancy of six (6) months or less if the illness runs its normal course and who elects hospice benefits is eligible. The individual must agree to seek only palliative care for the duration of the hospice enrollment with the following exception:

(A) Hospice services for a child under twenty-one (21) years of age may be concurrent with the care related to curative treatment of the condition for which a diagnosis of a terminal illness has been made.

(3) Enrollment of Participant. The components involved in hospice enrollment are—physician certification; election procedures, including election statement, revocation, and change; the assignment of an attending physician; and the development of the plan of care.

(A) Physician Certification. The hospice must obtain the certification that an individual is terminally ill in accordance with the following procedures:

1. Prior to billing for the first period of hospice coverage (ninety (90) days), the hospice must obtain, written certification statements signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician (if that attending physician is other than a hospice staff member). The certification must include the statement that the individual's medical prognosis is a life expectancy of six (6) months or less if the illness runs its normal course and the signature(s) of the physician(s). If the hospice does not obtain written physician certification within two (2) days of the initiation of hospice care, a verbal physician certification must be obtained within the two (2) days. Payment will not be made for days prior to the written certification if the verbal certification requirement is not met.

2. For any subsequent period of hospice coverage, the hospice must obtain, no later than two (2) calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group. The certification must include the statement that the individual's medical prognosis is a life expectancy of six (6) months or less if the illness runs its normal course and the signature of the physician. The

hospice must maintain the certification statements.

(B) Election Procedures. To elect hospice services, an individual must file a Hospice Election Statement with a MO HealthNet participating hospice provider. An election may also be filed by a representative acting pursuant to state law. With respect to an individual granted the power of attorney for the participant, state law determines the extent to which the individual may act on the patient's behalf.

1. Election period. An election to receive hospice care will be considered to continue through the initial election period and through any subsequent election periods without a break in care as long as the individual remains in the care of the hospice and does not revoke the election.

2. Waiver of MO HealthNet fee-for-service payments related to the terminal illness. In order to elect hospice services, the individual must waive all rights to MO HealthNet payments for services that would be covered under the Medicare program for the duration of the election of hospice care for the following services:

A. Hospice care provided by a hospice other than the hospice designated by the individual (unless provided under arrangements made by the designated hospice); and

B. Any MO HealthNet services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition, or that are equivalent to hospice care except for services—

(I) Provided (either directly or under arrangement) by the designated hospice;

(II) Provided by another hospice under arrangements made by the designated hospice;

(III) Provided by the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services; or

(IV) Provided to a child under twenty-one (21) and such services are curative-treatment services for the condition for which a diagnosis of terminal illness has been made, as required by the federal Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, section 2302.

3. Election, revocation, and change of hospice.

A. Election periods. An individual may elect to receive hospice care during one (1) or more of the following election periods:

(I) An initial ninety- (90-) day period;



(II) A subsequent ninety- (90-) day period; and

(III) Unlimited subsequent sixty- (60-) day periods.

B. Election statement. The election statement must include the following items of information:

(I) Identification of the particular hospice that will provide care to the individual;

(II) The individual's or representative's acknowledgment that s/he has been given a full understanding of hospice care;

(III) The individual's or representative's acknowledgment that s/he understands that certain MO HealthNet services are waived by the election;

(IV) The effective date of the election;

(V) The name of the attending physician;

(VI) The signature of the individual or representative; and

(VII) The signature of the witness when the participant's representative signs the form.

C. Revocation. An individual or representative may revoke the election of hospice care at any time. To revoke the election of hospice care, the individual, or representative, must file a revocation of hospice benefit statement with the hospice. This statement must include a signed statement that the individual revokes the election for MO HealthNet coverage of hospice care for the remainder of that election period. The date that the revocation is to be effective is the date of the signature or may be a later date subsequent to the date of signature. The individual forfeits coverage for any remaining days in that election period. The individual or representative may not designate an effective date earlier than the date that the revocation statement is signed. Upon revoking the election of MO HealthNet coverage of hospice care for a particular election period, an individual resumes MO HealthNet coverage of the benefits waived when hospice care was elected. An individual may elect at any time to receive hospice coverage for any other hospice election period for which s/he is eligible.

D. Change of Hospice. An individual may change, once in each election period, the designation of the particular hospice from which s/he elects to receive hospice care. The change of the designated hospice is not considered a revocation of the election. To change the designation of hospice providers, the individual must file with the hospice from which s/he has received care and with the newly designated hospice a signed statement that includes the following information: the name

of the hospice from which the individual has received care, the name of the hospice from which s/he plans to receive care, and the date the change is to be effective.

(C) Attending Physician. The attending physician is a doctor of medicine or osteopathy and is identified by the individual, at the time s/he elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care. The attending physician is the participant's physician of choice who participates in the establishment of the plan of care and works with the hospice team in caring for the patient. The physician continues to give the medical orders and may have privileges in the hospice inpatient care. MO HealthNet will make payments directly to a hospice participant's attending physician if the physician is not employed by the hospice provider.

(D) Plan of Care. The hospice must conduct and document in writing a patient-specific comprehensive assessment that identifies the patient's need for hospice care and services and the patient's need for physical, psychosocial, emotional, and spiritual care. This assessment includes all areas of hospice care related to the palliation and management of the terminal illness and related conditions. The hospice registered nurse must complete an initial assessment within forty-eight (48) hours after the election of hospice care. The hospice interdisciplinary group, in consultation with the individual's attending physician (if any), must complete the comprehensive assessment no later than five (5) calendar days after the election of hospice care. The hospice must designate an interdisciplinary group or groups which, in consultation with the patient's attending physician, must prepare a written plan of care for each patient. The plan of care must specify the hospice care and services necessary to meet the patient and family-specific needs identified in the comprehensive assessment as such needs relate to the terminal illness and related conditions. The hospice interdisciplinary group (in collaboration with the individual's attending physician, if any) must review, revise, and document the individualized plan as frequently as the patient's condition requires, but no less than every fifteen (15) calendar days. The plan of care must be maintained in the patient's record and made available to the MO HealthNet Division or its agent upon request.

(4) Provider Participation. To be eligible for participation in the MO HealthNet Hospice Program, a provider must meet the following criteria:

(A) Be certified as a Medicare hospice provider;

(B) Be licensed by the Missouri State Department of Health and Senior Services as a hospice provider; and

(C) Be enrolled as a MO HealthNet hospice provider.

(5) Benefits and Limitations. All services must be performed by appropriately qualified personnel. Nursing care, medical social services, and counseling are core hospice services and must routinely be provided directly by hospice employees. A hospice must ensure that substantially all the core services are routinely provided directly by hospice employees. A hospice may use contracted staff, if necessary, to supplement hospice employees in order to meet the needs of patients during periods of peak patient loads or under extraordinary circumstances. If contracting is used, the hospice must maintain professional, financial, and administrative responsibility for the services and must assure that the qualifications of staff and services provided meet all requirements. Hospice covered services are identified in section 13 of the MO HealthNet Hospice Provider Manual which may be referenced at [www.dss.mo.gov/mhd](http://www.dss.mo.gov/mhd). The individual's plan of care must specify what hospice services are needed.

(6) Non-covered services are identified in section 13 of the MO HealthNet Hospice Provider Manual which may be referenced at [www.dss.mo.gov/mhd](http://www.dss.mo.gov/mhd).

(7) Reimbursement. Hospice services, as defined in this rule and provided by qualified providers, shall be reimbursed for dates of service beginning on or after May 15, 1989. The reimbursement rate for hospice services includes all covered services related to the treatment of the terminal illness, including the administrative and general supervisory activities performed by physicians who are employees of or working under arrangements made with the hospice. These activities would generally be performed by the physician serving as the medical director and the physician member of the hospice interdisciplinary group. Group activities would include participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care, and establishment of governing policies. The costs for these services are included in the reimbursement rates for routine home care, continuous home care, and inpatient respite care.

(A) A per-diem rate for each day on which hospice services are provided will be established based on the Title XVIII Medicare rate



for the specific hospice based on the level of care provided—

1. Routine home care;
2. Continuous home care. A minimum of eight (8) hours of continuous care must be provided during a twenty-four (24)-hour period;
3. General inpatient care; and
4. Inpatient respite care. Reimbursement is limited to five (5) days per calendar month and to the mandatory inpatient day limit.

(B) Nursing Home Room and Board. MO HealthNet-eligible individuals residing in MO HealthNet-certified NFs who meet the hospice eligibility criteria may elect MO HealthNet hospice care services. In addition to the routine home care or continuous home care per diem rates, an amount may be paid to the hospice to cover the nursing home room and board costs. The hospice will reimburse the nursing home.

1. There must be a written agreement between the hospice and the nursing home under which the hospice takes full responsibility for the professional management of the individual's hospice care and the nursing home agrees to provide room and board to the individual. The hospice and the nursing home will retain a copy of the agreement.

2. For purposes of the MO HealthNet hospice benefit, a NF can be considered the individual's residence.

3. Payment for nursing facility (NF) room and board will be determined in accordance with rates established under section 1902(a)(13) of the Social Security Act. It is the responsibility of the hospice provider to be aware of the NF reimbursement rate and whether it is a final rate or if it is subject to change. The MO HealthNet Division may recoup payments made to hospice providers for NF room and board if the nursing facility reimbursement rate changes retroactively.

(C) Physician Services. MO HealthNet will reimburse the hospice provider for certain physician services, such as direct patient care services, furnished to individual patients by hospice employees and for physician services furnished under arrangements made by the hospice unless the patient care services were furnished on a volunteer basis. MO HealthNet will reimburse the hospice for attending physician services when the physician is employed by the hospice. These physician services will be reimbursed in accordance with MO HealthNet reimbursement policy for physician services based on the lower of the actual charge or the MO HealthNet maximum allowable amount for the specific service.

(D) Limitation on Payments for Inpatient Care. Payments to hospice providers for inpa-

tient care must be limited according to the number of days of inpatient care furnished to MO HealthNet patients. During the twelve- (12-) month period beginning November 1 of each year and ending October 31, the aggregate number of inpatient days (both for general inpatient care and inpatient respite care) may not exceed twenty percent (20%) of the aggregate total number of days of hospice care provided to all MO HealthNet participants during that same period. This limitation is applied once each year, at the end of the hospice's cap period (11/1–10/31). For purposes of this computation, if it is determined that the inpatient rate should not be paid, any days for which the hospice receives payment at a home care rate will not be counted as inpatient days. Any excess reimbursement will be refunded by the hospice.

(8) Cost Sharing. Hospice services shall be exempt from these Medicaid cost-sharing requirements as may be otherwise applicable to a comparable service when provided other than as a hospice service.

(9) General Regulations. General regulations of the MO HealthNet program apply to the hospice program.

(10) Records Retention. Sanctions may be imposed by the MO HealthNet agency against a provider for failing to make available, and disclosing to the MO HealthNet agency or its authorized agents, all records relating to services provided to MO HealthNet participants or records relating to MO HealthNet payments, whether or not the records are comingled with non-Title XIX (Medicaid) records in compliance with 13 CSR 70-3.030. These records must be retained for five (5) years from the date of service. Fiscal and medical records coincide with and fully document services billed to the MO HealthNet agency. Providers must furnish or make the records available for inspection or audit by the Department of Social Services or its representative upon request. Failure to furnish, reveal, or retain adequate documentation for services billed to the MO HealthNet program, as specified above, is a violation of this regulation.

*AUTHORITY: sections 208.152, 208.153, and 208.201, RSMo Supp. 2013. \* Emergency rule filed May 17, 1989, effective May 27, 1989, expired Sept. 13, 1989. Original rule filed May 17, 1989, effective Aug. 11, 1989. Amended: Filed June 18, 1991, effective Dec. 9, 1991. Amended: Filed Sept. 2, 1993, effective April 9, 1994. Amended: Filed Aug. 24, 2001, effective March 30, 2002. Amended:*

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*\*Original authority: 208.152, RSMo 1967, amended 1969, 1971, 1972, 1973, 1975, 1977, 1978, 1981, 1986, 1988, 1990, 1992, 1993; 208.153, RSMo 1967, amended 1973, 1989, 1990, 1991; and 208.201, RSMo 1987.*