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TEMPORARY ADMINISTRATIVE RULES

Oregon Health Authority, Division of Medical Assistance

Programs

410

Agency and Division

Administrative Rules Chapter Number

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Upon filing.

Adopted on

05/01/2013 thru 10/28/2013

Effective dates

RULE CAPTION

Implement Federal and state requirements in nursing facility with payment rate changes rule language clarification

Not more than 15 words

RULEMAKING ACTION

ADOPT:

AMEND: 410-142-0020, 410-142-0290

SUSPEND:

Srat. Auth.: ORS 413.042, 414.065, Federal statute, Title XIX (Sec. 1902 [42 U.S.C. 139a(a) & Sec. 1905(c) (3)]

Other Auth.: None

Stats. Implemented: ORS 414.065

RULE SUMMARY

This program will be implemented May 1, 2013. The Division needs to amend the rules listed to incorporate federal compliance requirements for payment when a client resides in a nursing facility (NF) and elects hospice care; make rate changes, clarify language, and update definitions based on provider, stakeholder, and Oregon Hospice Association participation and input in the Rules Advisory Committee (RAC) held on March 28, 2013.

**STATEMENT OF NEED AND JUSTIFICATION**

The amendment of 410-142-0020 "Definitions" and 410-142-0290 "Hospice Services in a Nursing Facility."

In the Matter of

Federal Statute, Title XIX (Sec. 1902.[42U.S.C. 139a (a) and Sec 1905(c)(3)]; RAC meeting notes; and OAR 411-070.

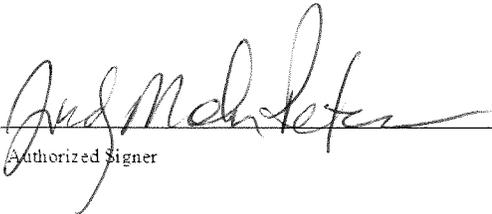
Documents Relied Upon, and where they are available

This program will be implemented on May 1, 2013. The Division needs to amend the rules listed above to incorporate federal compliance requirements for payment when a client resides in a nursing facility (NF) and elects hospice care; clarify language; make rate changes, and update definitions based on provider, stakeholder, and Oregon Hospice Association participation and input in the Rules Advisory Committee (RAC) on March 28, 2013.

Need for the Temporary Rule(s)

The program will be implemented 5/1/2013 for Federal compliance, and the rate changes and language clarification must be in rule by that date.

Justification of Temporary Rules

  
Authorized Signer

Judy Moore PETERSON  
Printed Name

4/9/2013  
Date

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## 410-142-0020 Definitions

(1) Accredited/Accreditation: A designation by an accrediting organization that a hospice program has met standards that have been developed to indicate a quality program.

(2) Ancillary staff: Staff that provides additional services to support or supplement hospice care.

(3) Assessment: Procedures by which strengths, weaknesses, problems, and needs are identified and addressed.

(4) Attending physician: A physician who is a doctor of medicine or osteopathy and is identified by the client, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the client's medical care.

(5) Bereavement counseling: Counseling services provided to the client's family before and after the client's death. Bereavement counseling is required to be offered per the Conditions of Participation and is a non-reimbursable hospice service.

(6) Bundled Rate: the Nursing Facility (NF) rate as defined in 411-070-0085.

(76) Client-family unit includes a client who has a life threatening disease with a limited prognosis and all others sharing housing, common ancestry or a common personal commitment with the client.

(87) Conditions of Participation (CoPs): The applicable federal regulations that hospice programs are required to comply with in order to participate in the federal Medicare and Medicaid programs.

(98) Coordinated: When used in conjunction with the phrase "hospice program," means the integration of the interdisciplinary services provided by client-family care staff, other providers and volunteers directed toward meeting the hospice needs of the client.

(109) Coordination of Care (COC): The federal regulations for coordination of client care between the hospice and the nursing facility that hospice programs are required to comply with in order to serve hospice clients in a nursing facility and participate in the federal Medicare and Medicaid programs.

(1140) Coordinator: A registered nurse designated to coordinate and implement the care plan for each hospice client.

(124) Counseling: A relationship in which a person endeavors to help another understand and cope with problems as a part of the hospice plan of care.

(132) Curative: Medical intervention used to ameliorate the disease.

| (143) Dying: The progressive failure of the body systems to retain normal functioning, thereby limiting the remaining life span.

| (154) Family: The relatives and/or other significantly important persons who provide psychological, emotional, and spiritual support of the client. The "family" need not be blood relatives to be an integral part of the hospice care plan.

| (165) Hospice: A public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill clients, and is certified by the federal Centers for Medicare and Medicaid Services as a program of hospice services meeting current standards for Medicare and Medicaid reimbursement and Medicare Conditions of Participation; and currently licensed by the Oregon Health Authority (Authority), Public Health Division.

| (176) Hospice continuity of care: Services that are organized, coordinated and provided in a way that is responsive at all times to client/family needs, and which are structured to assure that the hospice is accountable for its care and services in all settings according to the hospice plan of care.

| (187) Hospice routine home care: Formally organized services designed to provide and coordinate hospice interdisciplinary team services to client/family in the place of residence. The hospice will deliver at least 80 percent of the care in the place of residence.

| (198) Hospice philosophy: Hospice recognizes dying as part of the normal process of living and focuses on maintaining the quality of life. Hospice exists in the hope and belief that through appropriate care and the promotion of a caring community sensitive to their needs, clients and their families may be free to attain a degree of mental and spiritual preparation for death that is satisfactory to them.

| (2049) Hospice Program: A coordinated program of home and inpatient care, available 24 hours a day, that uses an interdisciplinary team of personnel trained to provide palliative and supportive services to a client-family unit experiencing a life threatening disease with a limited prognosis. A hospice program is an institution for purposes of ORS

| (210) Hospice Program registry: A registry of all licensed hospice programs maintained by the Authority, Public Health Division.

| (224) Hospice services: Items and services provided to a client/family unit by a hospice program or by other clients or community agencies under a consulting or contractual arrangement with a hospice program. Hospice services include home care, inpatient care for acute pain and symptom management or respite, and bereavement services provided to meet the physical, psychosocial, emotional, spiritual and other special needs of the client/family unit during the final stages of illness, dying and the bereavement period.

(232) Illness: The condition of being sick, diseased or with injury.

(243) Interdisciplinary team: A group of individuals working together in a coordinated manner to provide hospice care. An interdisciplinary team includes, but is not limited to, the client-family unit, the client's attending physician or clinician and one or more of the following hospice program personnel: Physician, nurse practitioner, nurse, hospice aide (nurse's aide), occupational therapist, physical therapist, trained lay volunteer, clergy or spiritual counselor, and credentialed mental health professional such as psychiatrist, psychologist, psychiatric nurse or social worker.

(254) Medical director: The medical director must be a hospice employee who is a doctor of medicine or osteopathy who assumes overall responsibility for the medical component of the hospice's client care program.

(265) Medicare certification: Licensed and certified by the Authority, Public Health Division as a program of services eligible for reimbursement.

(276) Nursing facility: A facility licensed and certified by the Department of Human Services (Department) as a nursing facility, Seniors and People with Disabilities (SPD) and defined in OAR 411-070-0005.

(287) Nursing facility services: The bundled rate of services which incorporates all services, including room and board, for which the nursing facility is paid per OAR 411-070.

(298) Pain and Symptom Management: For the hospice program, the focus of intervention is to maximize the quality of the remaining life through the provision of palliative services that control pain and symptoms. Hospice programs recognize that when a client/family is faced with terminal illness, stress and concerns may arise in many aspects of their lives. Symptom management includes assessing and responding to the physical, emotional, social and spiritual needs of the client/family.

(3029) Palliative services: Comfort services of intervention that focus primarily on reduction or abatement of the physical, psychosocial and spiritual symptoms of terminal illness. Palliative therapy:

(a) Active: Is treatment to prolong survival, arrest the growth or progression of disease. The person is willing to accept moderate side-effects and psychologically is fighting the disease. This person is not likely to be a client for hospice;

(b) Symptomatic: Is treatment for comfort, symptom control of the disease and improves the quality of life. The person is willing to accept minor side-effects and psychologically wants to live with the disease in comfort. This person would have requested and been admitted to a hospice.

(31) Period of crisis: A period in which the client requires continuous care to achieve palliation or management of acute medical symptoms.

(32) Physician designee: Means a doctor of medicine or osteopathy designated by the hospice who assumes the same responsibilities and obligations as the medical director when the medical director is not available.

(33) Primary caregiver: The person designated by the client or representative. This person may be family, a client who has personal significance to the client but no blood or legal relationship (e.g., significant other), such as a neighbor, friend or other person. The primary caregiver assumes responsibility for care of the client as needed. If the client has no designated primary caregiver the hospice may, according to client program policy, make an effort to designate a primary caregiver.

(34) Prognosis: The amount of time set for the prediction of a probable outcome of a disease.

(35) Representative: An individual who has been authorized under state law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill client who is mentally or physically incapacitated.

(36) Terminal illness: An illness or injury which is forecast to result in the death of the client, for which treatment directed toward cure is no longer believed appropriate or effective.

(37) Terminally Ill means that the client has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

(38) Volunteer: An individual who agrees to provide services to a hospice program without monetary compensation.

Stat. Auth.: ORS 413.042 [and 414.065](#)

Stats. Implemented: ORS 414.065

[5-1-2013](#)

## 410-142-0290 - Hospice Services in a Nursing Facility

(1) Pursuant to Title XIX, Section 1902 and 1905, federal statute prohibits the state from paying nursing facility (NF) providers directly for NF services when their Medicaid residents elect hospice care. In these instances, the Centers for Medicare and Medicaid Services (CMS) require the state to pay the hospice provider ~~thean~~ additional amount ~~equal to at least~~~~not to exceed~~ 95% of ~~the per diem rate~~ ~~what~~ the state would have paid ~~payto~~ the NF for NF services for that client in that facility.

(2) When a client resides in a NF and elects hospice care, the hospice provider and the NF must have a written contract which addresses the provision of hospice care and the method upon which the hospice will pay the NF. The hospice and the NF must maintain a copy of the completed and signed contract on file and it must be available upon request.

(3) Reimbursement when a client resides in a NF and elects hospice care:

(a) In accordance with CMS 4308.2, "when hospice care is furnished to an individual residing in a NF, the state will pay hospice an additional amount on routine home care or continuous home care days to take into account the room and board furnished by the NF. In this context, the term 'room and board' includes performance of personal care services, including assistance in the activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a residents' room, and supervision and assisting in the use of durable medical equipment and prescribed therapies," as well as any other services considered under the bundled rate for which the NF is paid pursuant to OAR 411-070.

(b) The hospice shall bill the Division of Medical Assistance Programs (Division) directly for the hospice care provided (under routine home care, Revenue code 651, or continuous home care, Revenue code 652) and for the cost of NF services at their usual and customary rate for NF services delivered in that NF for that client;

(~~cb~~) The Division shall pay the hospice provider for the hospice care provided and not to exceed ~~95% of~~ 100% of the current NF basic, complex medical, pediatric, or special contract rate according to the rate schedule for NF services delivered in that NF for that client;

(~~de~~) The hospice provider must reimburse the nursing facility according to their contract and after the hospice receives payment from the Division for that NF for that client; and

(~~ed~~) Reimbursement for services provided under this rule is available only if the recipient of the services is Medicaid-eligible, hospice-eligible, and been found to need NF care through the Pre-Admission Screening process under OAR 411-070-0040.

(4) NF Services Overpayment: Any payment received from the Division by a NF for services delivered after a client has elected hospice care shall adjust their claims from

the day the client first elected hospice care. Failure to submit an adjustment subjects the NF to potential sanctions and all means of overpayment recovery authorized under OAR chapter 410, division 120.

(5) Coordination of Care (COC) must be provided according to CMS Conditions of Participation (CoPs), 42CFR418.112 for hospice and nursing facilities.

(6) Coordinated Care Organization (CCO) and Prepaid Health Plan (PHP) Managed Care clients who reside in a NF and elect hospice care shall remain in the CCO and PHP managed care for all care other than hospice services in the NF. Hospice services for a resident in a NF shall be excluded from CCO and PHP managed care capitation and the hospice must bill the Division directly for payment of hospice and NF services.

Stat. Auth.: ORS 413.042 and 414.065

Stats. Implemented: ORS 414.065

5-1-2013