



Bureau of TennCare

Policy Manual

Policy No: PAY 07-001 (rev 2)	
Subject: Hospice & Patient Liability	
Approval:	Date: 1/5/2009

PURPOSE OF POLICY STATEMENT:

The purpose of this policy is to explain how patient liability should be treated when patients who are receiving TennCare-reimbursed Nursing Facility (NF) care elect the hospice benefit. All other hospice payment-related issues are covered in Policy BEN 07-001.

DISCUSSION:

When a TennCare enrollee elects the hospice benefit, he may receive hospice services in either his home or a Nursing Facility (NF). These services are delivered by his MCO. When he elects to receive hospice services in a NF, the MCO is responsible for paying for his room and board in the NF, rather than the Bureau of TennCare. The hospice payment to the NF for the provision of services, taking into account the room and board furnished by the facility, is to be at least 95% of the NF's Medicaid-established per diem.¹

Sometimes an enrollee who elects the hospice benefit is already receiving Medicaid-reimbursed NF care at the time he elects the hospice benefit. A TennCare enrollee who has acquired eligibility in an institutional category and who is living in a NF does not lose his institutional eligibility when he elects hospice. In most cases, this is the only eligibility category in which the person will continue to qualify for Medicaid coverage. The State is required to apply the same federal post-eligibility provisions to institutionally eligible individuals living in NFs that are receiving hospice care as are applied to other institutionally eligible individuals receiving NF care.² This means that patient liability (the amount contributed by the individual to the cost of his NF care, as

¹ 42 USC § 1396(a)(13)(B); Policy BEN 07-001

² State Medicaid Manual §3584

patient liability (the amount contributed by the individual to the cost of his NF care, as determined by DHS) must be collected by the NF to offset the cost of hospice services, including amounts for room and board, that are paid to the NF.

In addition to federal requirements regarding continued collection of patient liability for hospice patients in NFs, it is critical that collection of patient liability continue when a NF resident elects hospice care, since without a patient liability deduction, an enrollee could accumulate enough income and resources to potentially make him ineligible for TennCare.

A NF cannot keep both the patient liability and the full amount of the negotiated per diem from the hospice, since to do so would mean that the Nursing Facility is out of compliance with the requirement that providers participating in TennCare must accept TennCare payment, plus any applicable copays and amounts paid in lieu of TennCare payments by third party payers (Medicare, insurance) as payment in full.³

Once an individual has elected to receive the hospice benefit, he has made the choice to receive palliative care, rather than curative care, for his terminal illness. Therefore, TennCare will not pay for curative services, including drugs, relating to the treatment of the individual's terminal illness. Nor are the expenses for such services available as Item D deductions from the amount the Medicaid-eligible patient is otherwise required to contribute to the cost of his care in a Nursing Facility.

POLICY:

1. For an enrollee already residing in a NF who elects hospice care, the MCO assumes the responsibility for provision of hospice services to this individual on the first day that the hospice sees the enrollee.

Example: On Tuesday, Mrs. Jones notifies the NF that she wants to receive hospice care. The hospice agency is unable to send anyone until that Friday. The NF remains responsible for Mrs. Jones through Thursday. When the hospice agency begins providing services on Friday, the MCO assumes the responsibility for her care in the NF.

2. The Bureau of TennCare will continue to make payments to the NF up to the day hospice care is initiated. (In the example above, the Bureau would make NF payments through Thursday.) On the day a hospice agency begins providing services, the MCO will be responsible for hospice services, including the patient's room and board at the NF.
3. Once hospice care has begun, the hospice agency will negotiate a rate with the NF for the provision of services, taking into account the room and board furnished by the facility, that is equal to at least 95% of the rate that would have been paid by the State for NF services in that facility for that individual.

³ Ibid

4. If the patient already has patient liability that is being paid to the NF, the NF must continue to collect the patient liability from the patient after the patient has begun receiving hospice care.
5. The NF will invoice the hospice for the negotiated per diem. (See #3 above.) On the invoice, the NF shall show a credit for the patient liability amount that the nursing facility is responsible for collecting.
6. The hospice's payment obligation will then be at least 95% of the NF's Medicaid-established per diem payment, times the number of days the patient was in hospice care, less the amount of patient liability, where applicable, that the NF is responsible for collecting. This will be the amount submitted in the hospice's claim to the MCO.
7. Total reimbursement to the NF shall consist of the hospice payment for at least 95% of the Medicaid-established per diem for the NF, which constitutes payment in full according to TennCare Rules and Regulations. There are no copays for hospice or nursing facility services.

Example: Mrs. Jones is living in ABC Nursing Facility and has elected hospice care, with XYZ Hospice serving as her provider. The amount owed to ABC Nursing Facility for the services provided to Mrs. Jones will be a negotiated per patient day amount that can be no less than 95% of the nursing facility's established Medicaid per diem. In this example, the negotiated per diem is \$95 (or \$2,859 per 30-day month) which is 95% of the nursing facility's established Medicaid per diem of \$100 per day (or \$3,000 per 30-day month). Mrs. Jones, however, has a patient liability of \$500 per month that must be collected by the nursing facility and reflected as a credit towards the hospice bill. When ABC Nursing Facility bills XYZ Hospice its monthly charge of \$2,850 for Mrs. Jones' room and board for the month of August, ABC Nursing Facility will show the patient liability amount of \$500 as a credit against the hospice charge of \$2,850. XYZ Hospice will be responsible for paying ABC Nursing Facility \$2,350.

Entity Responsibility

- **Enrollee/Patient**
 - Notify NF that hospice care has been elected, including waiver of right to Medicaid payment for services related to the treatment of the terminal condition for which hospice care was elected or treatment of a related condition as specified in *State Medicaid Manual* § 4305.2.
 - Notify hospice agency [must be in MCO's network of providers]
 - Continue to make DHS-determined patient liability payments to the NF to be applied to room & board charges.

- **Nursing Facility**
 - Terminate submission of claims to TennCare for provision of NF room and board services as of the date hospice care is initiated. (In *rare* instances where a hospice patient is not dually eligible, the NF may continue to bill TennCare *only* for medically necessary non-hospice related service or medications that are outside the scope of treatment for the terminal illness or a condition related to the terminal diagnosis, e.g., insulin.)
 - Notify the Bureau's Long Term Care Division of enrollee's decision to initiate hospice care via patient status code change to 05 via the claims submission process.
 - Provide room and board services as specified in the Medicare Policy Benefits Manual, consisting of performance of personal care services, including but not limited to:
 - Assistance in activities of daily living (ADLs);
 - Administration of medication;
 - Maintaining cleanliness of the enrollee's room; and
 - Supervision and assisting in the use of DME and prescribed therapies
 - Continue to collect patient liability (as applicable).
 - Bill the hospice agency for the cost of room and board provided to the hospice patient, reflecting patient liability as a credit against room and board charges.

- **MCO:**
 - Pay the hospice agency according to the MCO/provider contract.

- **Hospice Agency:**
 - Provide hospice services to the enrollee.
 - Receive bill from NF and pay NF for the provision of services, taking into account the room and board furnished by the facility, which shall be at least 95% of Medicaid-established per diem rate [where applicable, the patient liability is reflected as a credit on the NF's invoice].
 - Bill the MCO according to the MCO/provider contract, reflecting patient liability as a credit against room and board charges.

- **Bureau of TennCare:**
 - Stop Long-Term Care payments to the NF as of the day hospice care is initiated (i.e., the last date of NF payment shall be the day *before* hospice care begins).
 - Enrollee remains in the institutional Medicaid eligibility category while in the Hospice Program, as long as the enrollee resides in the NF and continues to meet the medical and financial criteria for that institutional category.

DEFINITIONS:

Patient Liability: the amount that a Medicaid-eligible patient is required to contribute to the cost of his care in a Nursing Facility, as determined by DHS in accordance with 42 CFR 436.832.

OFFICES OF PRIMARY RESPONSIBILITY:

TennCare Office of Networks
TennCare Division of Long Term Care

REFERENCES:

http://www4.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00001396---a000-.html
(42 USC §1396(a)(13)B)

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=af36e448e90f019a0c5fe2a9f6db3d31&rgn=div5&view=text&node=42:4.0.1.1.6&idno=42>
(42 CFR §§ 435.27, 435.217, 435.725, 435.733, 435.882, & 42 CFR 436.832)

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(*State Medicaid Manual* §§ 3529 & 3584)

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(*State Medicaid Manual* §4305.2)

<http://www.tennessee.gov/sos/rules/1200/1200-13/1200-13-13.20081102.pdf>
(TennCare Rule 1200-13-13-.08)

<http://www.tennessee.gov/sos/rules/1200/1200-13/1200-13-14.20081102.pdf>
(TennCare Rule 1200-13-14-.08)

<http://www.state.tn.us/tenncare/forms/ben07001.pdf>
(Policy Statement BEN 07-001 – Hospice)

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