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437.401: Introduction

130 CMR 437.000 governs the provision of hospice services under MassHealth. All hospices participating in MassHealth must comply with MassHealth regulations, including but not limited to MassHealth regulations set forth in 130 CMR 437.000 and 450.000.

437.402: Definitions

The following terms used in 130 CMR 437.000 have the meanings given in 130 CMR 437.000 unless the context clearly requires a different meaning.

Attending Physician – a doctor of medicine or osteopathy who is identified by the member at the time of election of hospice services as having the most significant role in the determination and delivery of the member’s medical care.

Bereavement Counseling – emotional, psychosocial, and spiritual support and services provided before and after the death of the member to assist with issues related to grief, loss, and adjustment.

Election Period – one of three or more periods of care for which a MassHealth member may elect to receive MassHealth coverage of hospice services. The periods consist of an initial 90-day period, a subsequent 90-day period, and an unlimited number of subsequent 60-day extension periods.

Employee – 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 appropriately trained and assigned to the hospice unit. An employee may also be a volunteer under the direction of the hospice.

Hospice – a public agency or private organization or subdivision of either of these that is primarily engaged in providing care to terminally ill individuals and meets the requirements of 130 CMR 437.000. The hospice model of care is based on a coordinated program of home and inpatient care, employing an interdisciplinary team to meet the special needs of terminally ill members.

Hospice Care – a comprehensive set of services identified and coordinated by an interdisciplinary team to provide for the physical, psychosocial, spiritual, and emotional needs of a terminally ill member or family members as delineated in a specific member plan of care.

Hospice Inpatient Facility – a palliative-care facility that cares solely for hospice members requiring short-term, general inpatient, or respite care and is owned and operated directly by a licensed hospice pursuant to 105 CMR 141.000.

Hospice Interdisciplinary Team – the interdisciplinary team of professionals who attend to the physical, medical, psychosocial, emotional, and spiritual needs of both the hospice member and the hospice member’s family. Requirements for the composition and duties of the interdisciplinary team are provided at 130 CMR 437.421(C).

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Licensed Professional – a person licensed to provide patient-care services by the state in which the services are delivered.

Nursing Facility – a facility that meets all criteria and certification requirements of 130 CMR 456.404 or 456.405.

Palliative Care – member- and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, and spiritual needs and facilitating member autonomy, access to information, and choice.

Personal Care Attendant (PCA) Program – a MassHealth program under which personal care management services, fiscal intermediary services, and PCA services are available to MassHealth members.

Personal Care Attendant (PCA) Services – physical assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs) provided to a member by a PCA in accordance with the member’s authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410.

Physician Designee – 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.

Representative – an individual who has the authority under state law to authorize or terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill member who is mentally or physically incapacitated.

Terminal Illness – a condition in which the member has a medical prognosis of a life expectancy of six months or less if the illness runs its normal course.

437.403: Eligible Members

- (A) (1) MassHealth Members. The MassHealth agency covers hospice services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in MassHealth regulations. MassHealth regulations at 130 CMR 450.105 specifically state, for each MassHealth coverage type, which services are covered and which members are eligible to receive those services.
- (2) Members of the Emergency Aid to the Elderly, Disabled and Children Program. For information on covered services for recipients of the Emergency Aid to the Elderly, Disabled and Children Program, see 130 CMR 450.106.
- (B) For information on verifying member eligibility and coverage type, see 130 CMR 450.107.

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437.404: Provider Eligibility

Payment for the services described in 130 CMR 437.000 is made only to hospices participating in MassHealth on the date of service.

- (A) In State. To participate in MassHealth, a Massachusetts hospice must
- (1) be certified as a provider of hospice services under the Medicare program, as defined in 42 CFR Part 418; and
  - (2) be licensed as a hospice program by the Massachusetts Department of Public Health pursuant to M.G.L. c 111, Sec. 57D and 105 CMR 141.000.
- (B) Out of State. To participate in MassHealth, an out-of-state hospice must
- (1) be certified as a provider of hospice services under the Medicare program, as defined in 42 CFR Part 418;
  - (2) be licensed by the appropriate licensing agency in its state (as applicable); and
  - (3) participate in the Medicaid program in its own state.

437.405: Out-of-State Hospice Services

The MassHealth agency pays for out-of-state hospice services in accordance with the criteria described in 130 CMR 450.109.

437.406: Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services

The MassHealth agency pays for all medically necessary hospice services for EPSDT-eligible members in accordance with 130 CMR 450.140 et seq., without regard to service limitations described in 130 CMR 437.000, and with prior authorization.

(130 CMR 437.407 through 437.410 Reserved)

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437.411: Certification of Terminal Illness

(A) Obtaining Certification. Within two calendar days after the beginning of hospice services, the hospice must obtain certification of the member's terminal illness from either the medical director of the hospice or the physician member of the hospice interdisciplinary team, and from the member's attending physician, if the member has an attending physician.

(B) Recertification for Subsequent Periods. For the subsequent 90-day and 60-day extension periods, the hospice must obtain, at the beginning of the period, a written certification statement from either the medical director of the hospice or the physician member of the hospice interdisciplinary team. The new certification must be on file in the member's clinical record before the submission of a claim.

(C) Contents of the Certification Statement. The certification must state that the member's life expectancy is six months or less and must be signed by the physicians specified in 130 CMR 437.411(A) and (B). This certification is valid for the first 90 days of hospice coverage. The certification must include a brief narrative explaining the clinical findings that support a life expectancy of six months or less as part of the certification or recertification as specified in 130 CMR 437.411(A) and (B). The narrative must be located immediately before the physician's signature and must include a statement attesting that by signing, the physician confirms that the narrative was composed personally by the physician based on his or her review of the member's medical record or, if applicable, his or her examination of the member. The narrative must reflect the member's individual clinical circumstances and may not contain checkboxes or standard language used for all members.

437.412: Electing Hospice Services

(A) Eligibility for Hospice Services.

(1) MassHealth members, including members with both Medicare and MassHealth coverage in a nursing facility, but not including those identified in 130 CMR 437.412(A)(2), are eligible for hospice services if

- (a) their coverage type as set forth in 130 CMR 450.105 covers hospice services; and
- (b) they fulfill the following requirements:
  - (i) are certified as terminally ill in accordance with 130 CMR 437.411;
  - (ii) agree to waive certain MassHealth benefits in accordance with 130 CMR 437.412(B); and
  - (iii) elect to receive hospice services in accordance with 130 CMR 437.412(C).

(2) MassHealth members under age 21 who have elected the hospice benefit will have coverage for curative treatment and all medically necessary services for which they are eligible. For such members, the hospice provider remains responsible for all hospice services as described in 130 CMR 437.423.

(3) For members enrolled in a MassHealth-contracted managed care organization (MCO) who choose hospice services, the hospice must comply with the MCO's requirements for the delivery of hospice services. However, if an MCO member chooses to receive hospice services outside the managed care plan, the member must disenroll from the MCO and meet the eligibility requirements listed in 130 CMR 437.412(A)(1). See also 130 CMR 437.424(D).

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(B) Waiver of Other Benefits. With the exception of members described in 130 CMR 437.412(A)(2), upon electing to receive hospice services, a member waives all rights to MassHealth benefits for the following services for the duration of the election of hospice services:

- (1) hospice services provided by a hospice other than the one designated by the member on the hospice form submitted to the MassHealth agency;
- (2) any MassHealth services that are related to the treatment of the terminal illness for which hospice services were elected, not including room and board in a nursing facility (see 130 CMR 437.424(B)); and
- (3) any MassHealth services that are equivalent to or duplicative of hospice services, except for
  - (a) the MassHealth Personal Care Attendant Program (130 CMR422.400), when used to the extent that the hospice would routinely use the services of a member's family in implementing the plan of care. PCA services must be coordinated with any in-home support services that the member is receiving or is eligible to receive, from a home and community-based services network; and
  - (b) physician services provided by the member's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services.

(C) Hospice Form. Each time a MassHealth member who meets the requirements of 130 CMR 437.412(A) seeks to elect hospice services, revoke hospice services, or change hospices, the hospice must complete the MassHealth agency's hospice form according to the instructions on the form and submit the form to the MassHealth agency.

- (1) Hospice Election. When a MassHealth member elects to receive hospice services, the hospice must ensure that the member or the member's representative signs and dates the hospice form. The hospice must inform the member that hospice services are palliative rather than curative and that access to some MassHealth services will be limited to those provided through the hospice.
- (2) Hospice Revocation. The member or the member's representative may revoke the election of hospice services at any time during the election period. The hospice must ensure that the member or the member's representative signs and dates the hospice form. Upon revocation of hospice services for a particular election period, the member
  - (a) resumes coverage for the MassHealth benefits waived upon election of hospice services; and
  - (b) may at any time elect to receive hospice services for any other election periods for which the member is eligible.
- (3) Hospice Change. A member may change hospices once in each election period. To change hospices, a hospice form must be submitted to the MassHealth agency according to the instructions on the form. A member does not revoke election of hospice services by changing hospices.

(D) Effective Date for Hospice Services.

- (1) The effective date for hospice election, hospice revocation, or changing hospices is the effective date entered by the hospice on the hospice form submitted to the MassHealth agency.
- (2) The effective date for hospice services may not be earlier than the date the member or the member's representative signed the hospice form.

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(E) Duration of Hospice Services. Election periods for hospice services correspond to the certification periods in 130 CMR 437.411. The two 90-day election periods must be used before the subsequent 60-day extension periods. A member may continue to receive hospice services through the initial election period and the subsequent election periods without interruption if the member remains in the care of the hospice and does not revoke the election under 130 CMR 437.412(C)(2).

(130 CMR 437.413 through 437.420 Reserved)

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437.421: Administration and Staffing Requirements

(A) Governing Body. The hospice must have a governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the hospice's total operation. The governing body must designate a person who is responsible for the day-to-day management of the hospice program.

(B) Medical Director. The medical director must be a doctor of medicine or osteopathy and assume overall responsibility for the medical component of the hospice's patient-care program.

(C) Hospice Interdisciplinary Team. The hospice must designate a hospice interdisciplinary team composed of hospice personnel, including a registered nurse, whose role is to provide coordination of care, including in-home supports, continuous assessment of member and family needs, and implementation of the interdisciplinary plan of care.

(1) Composition of Team. The hospice interdisciplinary team must include at least the following individuals who are employees of the hospice, except in the case of the physician described in 130 CMR 437.421(C)(1)(a), who may be under contract with the hospice:

- (a) a doctor of medicine or osteopathy;
- (b) a registered nurse;
- (c) a social worker; and
- (d) a pastoral or other counselor.

(2) Role of Team. The hospice interdisciplinary team must provide the care and services offered by the hospice. The team in its entirety must supervise care and services, including

- (a) establishing a written, individualized plan of care for members and families that includes all services necessary for the palliation and management of the terminal illness and related conditions;
- (b) ensuring that the plan of care is coordinated with any services the member may be authorized to receive from the MassHealth Personal Care Attendant Program and any in-home support services available to the member from a home- and community-based service network;
- (c) reviewing and revising the individualized plan of care no less than every 15 calendar days; and
- (d) establishing the policies governing the day-to-day provision of hospice services to members, families, and caregivers.

(D) Contracted Services. A hospice may arrange for the provision of certain services on a contract basis, including highly specialized nursing services that are provided so infrequently that the provision of such services by direct hospice employees would be impractical and prohibitively expensive. These services may not include routine nursing services, medical social services, and counseling services specified in 130 CMR 437.000. If the other covered services listed in 130 CMR 437.423 (physician services; physical, occupational, and speech/language therapy; homemaker/home health aide services; drugs; durable medical equipment and supplies; and short-term inpatient care) are provided by contract personnel, the hospice must meet the following requirements.

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- (1) Written Agreement. The hospice must have a written agreement with the contractor that
    - (a) identifies the services to be provided on a contract basis;
    - (b) stipulates that services may be provided only with the express authorization of the hospice;
    - (c) states how the contracted services will be coordinated, supervised, and evaluated by the hospice;
    - (d) delineates the role of the hospice and the contractor in the admission process, member/family assessment, and the interdisciplinary team-care conferences;
    - (e) specifies requirements of documenting that the contracted services are furnished in accordance with the agreement; and
    - (f) details the required qualifications for contract personnel.
  - (2) Professional Management Responsibility. The hospice must ensure that contracted services are furnished in a safe and effective manner by qualified personnel in accordance with each member's plan of care.
  - (3) Financial Responsibility. The hospice is responsible for paying contract personnel who have provided hospice-approved services according to the member's plan of care.
  - (4) Inpatient Care. The hospice must ensure that inpatient care is furnished in a MassHealth-participating facility that meets the requirements specified in 42 CFR 418.98 or is a hospice inpatient facility as defined in 130 CMR 437.402. The hospice must have a written agreement with the facility that specifies
    - (a) that the hospice must furnish the inpatient provider with a copy of the member's plan of care that specifies the inpatient services to be provided;
    - (b) that the inpatient provider has established policies consistent with those of the hospice and agrees to abide by the patient-care protocols established by the hospice for its patients;
    - (c) that the medical record includes a record of all inpatient services and events and that a copy of the discharge summary and, if requested, a copy of the medical record are provided to the hospice;
    - (d) the party responsible for the implementation of the provision of the agreement; and
    - (e) that the hospice retains responsibility for appropriate hospice-services training of personnel providing hospice services under the agreement.
  - (5) Room and Board in a Nursing Facility. The hospice and the nursing facility must enter into a written agreement under which the hospice takes full responsibility for the professional management of the member's hospice services and the nursing facility agrees to provide room and board to the member. Room and board includes performance of personal care services, including assistance in activities of daily living, socializing activities, administration of medication, maintaining the cleanliness of the member's room, and supervision and assistance in the use of durable medical equipment and prescribed therapies.
- (E) Volunteer Services. The hospice must use volunteers in administrative or direct patient-care roles. The hospice must appropriately train volunteers and document its ongoing efforts to recruit and retain volunteer staff.
- (1) Level of Activity. A hospice must document that it maintains a volunteer staff sufficient to provide administrative or direct patient care that, at a minimum, equals five percent of the patient-care hours of all paid hospice employees and contract staff. The hospice must document the continuing level of volunteer activity and must record any expansion of care and services achieved through the use of volunteers, including the type of services and the time worked.

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- (2) Proof of Cost Savings. The hospice must document
- (a) positions occupied by volunteers;
  - (b) work time spent by volunteers occupying those positions; and
  - (c) estimates of the dollar costs that the hospice would have incurred if paid employees occupied the volunteer positions.
- (3) Availability of Clergy. The hospice must try to arrange for visits of clergy or other members of religious organizations in the community for members who request such visits. The hospice must also inform members of the availability of this service.

437.422: Plan of Care

(A) Establishment of Plan. The hospice interdisciplinary team in collaboration with the attending physician, hospice medical director, physician designee, member or representative, and primary caregiver must establish and follow an individualized written plan of care in accordance with the member's needs.

(B) Scope of Plan. The plan of care must reflect member and family goals and interventions based on problems identified in the comprehensive assessment. The plan must include all services necessary for the palliation and management of the terminal illness and related conditions, including the coordination of all in-home supports. The plan of care must be coordinated with any services the member may be authorized to receive from the MassHealth Personal Care Attendant Program and such services may be used only to the extent that the hospice would routinely use the services of a hospice member's family in implementing the plan of care. For members under age 21, the hospice plan of care must identify any curative treatment the member is receiving.

(C) Review of Plan. The plan of care must be reviewed, revised, and documented at intervals specified in the plan of care, but no longer than 15 days, by the attending physician, the medical director or physician designee, and the hospice interdisciplinary team. These reviews must be documented in the member's clinical record.

437.423: Covered Services

The hospice must provide services for the palliation and management of the terminal illness and related conditions. All services must be performed by appropriately qualified personnel, but the nature of the service, rather than the qualifications of the person who provides it, determines the reimbursement category of the service, as defined in 130 CMR 437.424. The following services are covered hospice services.

(A) Nursing Services. Nursing services must be provided by or under the supervision of a registered nurse.

(B) Medical Social Services. Medical social services must be provided by a qualified social worker under the direction of a physician. The social worker is responsible for analyzing and assessing social and emotional factors and the member's capacity to cope with them, helping the member and the member's family follow hospice recommendations, and assisting the member's family with personal and environmental difficulties and in using community resources.

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(C) Physician Services. In addition to palliation and management of terminal illness and related conditions, physicians employed by or under contract with the hospice, including the physician member of the hospice interdisciplinary team, must also meet the general medical needs of the members to the extent that these needs are not met by the member's attending physician. Physicians may bill MassHealth for services not related to the terminal illness according to MassHealth physician regulations at 130 CMR 433.000.

(D) Counseling Services. The following counseling services must be available to the member and member's family or other persons caring for the member at home.

(1) Bereavement Counseling. An organized plan of care for bereavement counseling must be developed by a qualified professional under the auspices of the hospice. This plan of care must reflect family needs, delineate the services to be provided, and specify the frequency of service delivery. Bereavement counseling is a required hospice service, but is not reimbursable.

(2) Dietary Counseling. When needed, dietary counseling services must be provided by a qualified professional.

(3) Spiritual Counseling. Spiritual counseling must include notice to members of the availability of clergy.

(4) Additional Counseling. Additional counseling may be provided by other members of the hospice interdisciplinary team as well as by other qualified professionals as determined by the hospice.

(E) Physical, Occupational, and Speech/Language Therapy. The hospice must ensure that physical, occupational, and speech/language therapy services are provided by qualified personnel and in accordance with accepted standards of practice.

(F) Hospice Aide/Homemaker Services. The hospice must provide hospice aide and homemaker services that are ordered by the hospice interdisciplinary team, and are included in the plan of care in accordance with 42 CFR 418. Hospice aide and homemaker services may include the provision of personal care and household services. A registered nurse must visit the member's home every two weeks to assess the quality of care and services provided by the hospice aide to ensure that services ordered by the hospice interdisciplinary team meet the member's needs.

(G) Drugs and Durable Medical Equipment and Medical Supplies. The hospice must provide and be responsible for all drugs and durable medical equipment and medical supplies needed for the palliation and management of the terminal illness and related conditions, according to the member's plan of care. Any person permitted by state law to do so may administer drugs. Pharmacy and durable medical equipment providers may bill MassHealth separately only for those services not related to the member's terminal illness, according to the MassHealth pharmacy regulations at 130 CMR 406.000 and durable medical equipment regulations at 130 CMR 409.000, as applicable.

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(H) Short-Term Inpatient Care.

(1) Facilities. Short-term general inpatient care for pain control and symptom management and inpatient respite care must be provided in a facility that meets the criteria specified in 42 CFR 418.108.

(2) Limitations. During the 12-month period beginning November 1<sup>st</sup> of each year and ending October 31<sup>st</sup> of the following year, the aggregate number of inpatient days (for both general inpatient care and inpatient respite care) may not exceed 20 percent of the aggregate number of days of hospice services provided to all MassHealth members during that same period.

(I) Other Covered Items and Services. Other covered items and services include those items and services that are specified in the plan of care and for which MassHealth payment may otherwise be made.

437.424: Payment for Hospice Services

(A) Type of Care. The Massachusetts Division of Health Care Finance and Policy (DHCFP) establishes the rates of payment for hospice services provided under MassHealth. Payment is based on the type of care provided rather than the qualifications of the person who provided the service. Payment rates correspond to the following four categories of care.

(1) Routine Home Care. The routine home care rate is paid for each day the member is at home or in a nursing facility, under the care of the hospice, and not receiving continuous home care. This rate is paid without regard to the volume or intensity of routine home care services provided on any given day.

(2) Continuous Home Care. The continuous home care rate is paid when a member receives hospice services consisting predominantly of nursing care on a continuous basis at home or in a nursing facility. Home health aide or homemaker services or both may also be provided on a continuous basis. Continuous home care is only furnished during brief periods of crisis as described in 42 CFR 418.204(a) and only as necessary to maintain the member at home. A minimum of eight hours must be provided in a 24-hour period to qualify for the continuous home care rate.

(3) Inpatient Respite Care. The inpatient respite care rate is paid for each day the member is in an approved inpatient facility and is receiving respite care from the hospice. Payment for inpatient respite care will be made for a maximum of five consecutive days' stay including the date of admission but not counting the date of discharge. Payment for any subsequent days will be made at the routine home care rate.

(4) General Inpatient Care. The general inpatient care rate is paid for each day the member receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management that cannot be managed in other settings. None of the other fixed payment rates will be applicable for a day on which the member receives inpatient care except for the day of discharge.

(B) Room and Board in a Nursing Facility. The MassHealth agency pays the hospice a room and board per diem amount for a member residing in a nursing facility in accordance with DHCFP regulations and in addition to either the routine home care rate (130 CMR 437.424(A)(1)) or the continuous home care rate (130 CMR 437.424(A)(2)).

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(1) The MassHealth agency does not pay a hospice the room and board per diem amount, and does not pay for medical-leave-of-absence days, for any day that a member receives inpatient respite care (130 CMR 437.424(A)(3)) or general inpatient care (130 CMR 437.424(A)(4)) from the hospice.

(2) If a member receiving hospice services in a nursing facility is hospitalized, the MassHealth agency will pay for the medical leave of absence in accordance with 130 CMR 456.000, provided that the conditions for medical leave of absence are met in accordance with 130 CMR 456.000 et seq.

(3) The MassHealth agency does not pay for room and board on the member's day of discharge from hospice, unless the member remains in the nursing facility after discharge from the hospice, or on the member's date of death.

(C) The Hospice Form. A hospice must complete the MassHealth agency's hospice form and submit the form to the MassHealth agency in accordance with 130 CMR 437.412. The MassHealth agency will not pay for hospice services provided before the effective date entered on the hospice form.

(D) MassHealth Members Enrolled in MCOs. A hospice may not bill for a MassHealth member receiving hospice services through a managed care organization (MCO).

(E) Non-Hospice Providers. Non-hospice providers may bill for the treatment of conditions not related to the member's terminal illness according to the applicable MassHealth regulations for that provider type.

#### 437.425: Recordkeeping Requirements

All hospices must maintain a clinical record that meets the criteria in 42 CFR 418.104 for each member receiving care and services and includes the following information:

- (A) the plan of care;
- (B) the member's name, MassHealth member identification number, address, gender, age, and next of kin;
- (C) completed hospice forms as described in 130 CMR 437.412(C);
- (D) pertinent medical history;
- (E) complete documentation of all services and events; and
- (F) the certification of terminal illness, as described in 130 CMR 437.411.

#### REGULATORY AUTHORITY

130 CMR 437.000: M.G.L. c. 118E, §§ 7 and 12.