

5160-56-02

**Hospice services: eligibility and election requirements.**

This rule sets forth the criteria that must be met for an individual eligible for medicaid to receive the Ohio medicaid hospice benefit.

(A) To be covered under Ohio medicaid, the designated hospice must ensure the following criteria are met prior to furnishing hospice care:

- (1) The designated hospice has a certification of the terminal illness on behalf of the individual, obtained in accordance with 42 C.F.R. 418.22 (October 1, 2017). ODM will allow this requirement to be met via telehealth where face-to-face interactions are required;
- (2) A hospice election statement, completed by the individual, has been obtained by the designated hospice pursuant to paragraphs (B) and (C) of this rule;
- (3) The individual has a hospice plan of care initiated, pursuant to paragraph (F) of this rule;
- (4) Other applicable criteria are met which pertain to the individual and the election of hospice:
  - (a) The designated hospice shall ensure an individual eligible for both medicare and medicaid hospice elects the hospice benefit under both programs. Hospice services furnished to individuals who are dual eligible shall be billed to medicare first.
  - (b) If the individual has or later obtains third-party coverage of hospice, the individual must elect the third-party coverage of hospice to cover the same days the medicaid hospice benefit covers in order to ensure medicaid is the secondary payor. If the individual revokes his or her third-party coverage of hospice, the medicaid hospice benefit must be revoked at the same time.
  - (c) If the individual is a participant in the program of all-inclusive care for the elderly (PACE), the individual must access hospice services through the PACE site's network of providers.
  - (d) If the individual is enrolled in a medicaid managed care plan (MCP), the individual must access hospice services through the MCP's network of providers.
  - (e) If the individual is enrolled in a home and community based services (HCBS) waiver, the designated hospice shall assist the individual in

coordinating concurrent care and waiver services in accordance with rule 5160-56-04 of the Administrative Code.

(B) At the time hospice is elected, the designated hospice must:

- (1) Assist the individual with the election process; and
- (2) Provide the individual with the following materials and written information:
  - (a) A copy of the agency's grievance procedures;
  - (b) Information regarding advance directives in accordance with Chapter 2133. of the Revised Code; and
  - (c) Any policies the hospice has regarding the implementation of advance directives, including ensuring the individual's right to formulate an advance directive, and the right to request a "do not resuscitate" order. The hospice must maintain the individual's advance directive in an accessible part of the individual's current hospice record and include a notation in the individual's plan of care.

(C) The designated hospice shall maintain a record of the election statement completed by the individual.

- (1) The election statement shall be in writing and a notice of the election filed by the designated hospice in accordance with 42 C.F.R. 418.24 (October 1, 2017). The medicaid election statement may be combined with the medicare election statement or on a separate form, provided it is clear the form denotes medicaid hospice has been elected.
- (2) The election statement shall contain the following:
  - (a) Documentation that the individual elected the medicaid hospice benefit;
  - (b) The identity of the designated hospice responsible for providing hospice care to the individual;
  - (c) The individual's acknowledgment that he or she has been given a full explanation of the palliative rather than curative nature of hospice care as it relates to the individual's terminal illness and the provisions and limitations of services as specified in this chapter;

- (d) Acknowledgment that the individual understands that certain medicaid services are waived by the election, except when the individual is under age twenty-one;
  - (e) The identification of the individual's attending physician (if any) with an acknowledgment that the identified attending physician was the individual's own choice;
  - (f) The individual's acknowledgment that the attending physician was the individual's choice;
  - (g) The effective date of the election which may be the first day of hospice care or a later date, but shall be no earlier than the date of the election statement;
  - (h) The individual's signature; and
  - (i) The date the election statement was signed.
- (3) A copy of the completed election statement shall be scanned and uploaded to the medicaid information technology system (MITS) pursuant to rule 5160-56-03.3 of the Administrative Code. The original form as completed, shall remain on file with the designated hospice.
- (4) The election statement shall remain in effect as long as the individual continues to meet all eligibility requirements of this rule.
- (D) While a hospice election is in effect, the designated hospice shall commence hospice care to the individual, beginning with enrolling the individual in the appropriate benefit period as defined in rule 5160-56-01 of the Administrative Code and pursuant to the remainder of this rule.
- (1) The initial benefit period shall commence with hospice care on or after the date of election and end on the ninetieth day, unless a discharge pursuant to rule 5160-56-03 of the Administrative Code disrupts hospice care.
  - (2) If at the end of the initial ninety day period, the individual is recertified as terminally ill, the designated hospice shall ensure the individual is enrolled in the second subsequent ninety-day benefit period, continuing hospice services uninterrupted until the end the second ninety-period, to the one-hundred eightieth day, unless a discharge pursuant to rule 5160-56-03 of the Administrative Code disrupts hospice care.

- (3) If at the end of the subsequent ninety day period, the individual is recertified as terminally ill, the designated hospice shall ensure the individual is enrolled in a subsequent sixty day benefit period, and shall continue hospice services uninterrupted for increments of sixty additional days as recertifications occur, unless a discharge pursuant to rule 5160-56-03 of the Administrative Code disrupts hospice care.
- (E) For the duration of the election of hospice care, the individual must waive medicaid services if the services:
- (1) Are provided by a hospice other than the hospice designated by the individual, unless provided under arrangement made by the designated hospice;
  - (2) Are related to the curative treatment of the terminal condition for which hospice care was elected or a related condition, except for the individual under age twenty-one; or
  - (3) Are equivalent to hospice care such as non-waiver services provided through home health and private duty nursing services.
- (F) The designated hospice shall follow the requirements as prescribed in this rule for an individual previously discharged from hospice, who has subsequently re-elected hospice care in accordance with paragraph (A)(3) of rule 5160-56-03 of the Administrative Code.

Effective: 6/12/2020

CERTIFIED ELECTRONICALLY

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Certification

06/12/2020

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Date

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