

EXHIBIT H

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

SUBJECT: Hospice 2-11 and Arkansas State Plan Amendment #2012-004

DESCRIPTION: Section 2302 of the Affordable Care Act requires all states to remove the prohibition of receiving curative treatment upon the election of the hospice benefit by or on behalf of a Medicaid or CHIP eligible child. The State Plan along with section 210.100 and section 214.000 of the Hospice Provider Manual are being updated to incorporate the provision for continuation of treatment for the terminal illness, for eligible Medicaid beneficiaries under the age of 21, in addition to selecting to receive hospice benefit. Criteria for enrolling in hospice are unchanged.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 13, 2012. Jim Petrus, CEO of Peachtree Hospice, commented in support of this rule. The proposed effective date is January 1, 2013.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT:

Economic Impact Statement:

1. The type or types of small businesses that will be directly affected by the proposed rule, bear the cost of the rule, or directly benefit from the proposed rule.

Medicaid enrolled hospice service providers.

2. A description of how small businesses will be adversely affected.

Medicaid enrolled hospice providers will not be adversely affected but will receive additional (estimated annual \$400,000 in the aggregate for all providers) Medicaid reimbursement annually.

3. A reasonable determination of the dollar amounts the proposed rule will cost small businesses in terms of fees, administrative penalties, reporting, recordkeeping, equipment, construction labor, professional services, revenue loss, or other costs associated with compliance.

There is no cost associated with compliance. It is projected that Medicaid enrolled hospice providers will receive additional (estimated annual \$400,000 in the aggregate for all providers) Medicaid reimbursement annually.

4. A reasonable determination of the dollar amounts of the costs to the agency of implementing the proposed rule, as well as the financial benefit to the agency of implementing the rule.

It is projected that the department will pay out an additional \$400,000 annual to these affected Medicaid enrolled hospice service providers.

5. Whether and to what extent alternative means exist for accomplishing the objectives of the proposed rule that might be less burdensome to small businesses and why such alternatives are not being proposed.

Not applicable.

6. A comparison of the proposed rule with federal and state counterparts.

Not applicable.

LEGAL AUTHORIZATION: Arkansas Code § 20-76-201 authorizes the Department of Human Services to administer programs for the indigent and to "make rules and regulations" pertaining to the administration of those programs. Arkansas Code § 20-77-107 specifically authorizes the department to "establish and maintain an indigent medical care program."

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Medical Services
DIVISION DIRECTOR Andrew Allison, PhD
CONTACT PERSON Brett Hays
ADDRESS P.O Box 1437, Slot S295, Little Rock, AR 72203
PHONE NO. 682-8859 FAX NO. 682-2480 E-MAIL brett.hays@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Marilyn Strickland
PRESENTER E-MAIL marilyn.strickland@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

- 1. What is the short title of this rule?
Hospice-2-11 and Arkansas State Plan Amendment #2012-004
- 2. What is the subject of the proposed rule?
Hospice Concurrent Care for Children in Medicaid and the Children's Health Insurance Program (CHIP)
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes X No ____.
If yes, please provide the federal rule, regulation, and/or statute citation.
Section 2302 of the Affordable Care Act, entitled "Concurrent Care for Children".
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes ____ No X .
If yes, what is the effective date of the emergency rule?
When does the emergency rule expire?
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes ____ No ____

5. Is this a new rule? Yes ___ No X If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes ___ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes X No ___ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.

Arkansas Statute 20-76-201

7. What is the purpose of this proposed rule? Why is it necessary?

The purpose of the proposed rule is to allow individuals under the age of 21 to receive treatment for a terminal illness in addition to hospice services. The proposed rule is necessary to comply with §2302 of the Affordable Care Act.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

<https://www.medicaid.state.ar.us/InternetSolution/general/comment/comment.aspx>

9. Will a public hearing be held on this proposed rule? Yes ___ No X.
If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

October 13, 2012

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

January 1, 2013

12. Do you expect this rule to be controversial? Yes ___ No X If yes, please explain.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Medical associations, interested providers, and advocacy organizations. Their positions for or against is not known at this time.

Arkansas Medicaid met with the Hospice Association and representatives of the Palliative Care Clinic from Arkansas Children's Hospital who support this change and believe it is important to establish the Hospice relationship as early as possible with the family and child prior to end of life.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Medical Services

PERSON COMPLETING THIS STATEMENT Tom Show

TELEPHONE NO. 683-2483 **FAX NO.** 682-2480 **EMAIL:** tom.show@arkansas.gov

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE – Hospice-2-11 and Arkansas State Plan Amendment #2012-004

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes X No

2. Does this proposed, amended, or repealed rule affect small businesses?
Yes X No

If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

Next Fiscal Year

General Revenue \$57,148

General Revenue \$117,173

Federal Funds \$134,432

Federal Funds \$277,482

Cash Funds

Cash Funds

Special Revenue

Special Revenue

Other (Identify)

Other (Identify)

Total \$191,580

Total \$394,655

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year

Next Fiscal Year

ECONOMIC IMPACT STATEMENT
(As Required under Arkansas Code § 25-15-301)

Department: Arkansas Department of Human Services
Division: Medical Services
Person Completing this Statement: Tom Show
Telephone Number: 501-682-2483 **Fax Number:** 501-682-3889
EMAIL: Tom.Show@Arkansas.gov

Short Title of this Rule: Hospice Care to be Provided for Children Under Age 21 in Concurrence with Medicaid Covered Curative Treatment Services

- (1) The type or types of small businesses that will be directly affected by the proposed rule, bear the cost of the proposed rule, or directly benefit from the proposed rule.
Medicaid Enrolled Hospice Service Providers

- (2) A description of how small businesses will be adversely affected.
Medicaid Enrolled Hospice Providers will not be adversely affected but will receive additional (estimated annual \$400,000 in the aggregate for all providers) Medicaid reimbursement annually.

- (3) A reasonable determination of the dollar amounts the proposed rule will cost small businesses in terms of fees, administrative penalties, reporting, recordkeeping, equipment, construction labor, professional services, revenue loss, or other costs associated with compliance.
There is no cost associated with compliance. It is projected that Medicaid Enrolled Hospice Providers will receive additional (estimated annual \$400,000 in the aggregate for all providers) Medicaid reimbursement annually.

- (4) A reasonable determination of the dollar amounts of the costs to the agency of implementing the proposed rule, as well as the financial benefit to the agency of implementing the rule.
It is projected that the Department will pay out an additional \$400,000 annually to these affected Medicaid Enrolled Hospice Service Providers.

- (5) Whether and to what extent alternative means exist for accomplishing the objectives of the proposed rule that might be less burdensome to small businesses and why such alternatives are not being proposed.
Not Applicable

- (6) A comparison of the proposed rule with federal and state counterparts.
Not Applicable

Summary for
Hospice-2-11 and Arkansas State Plan Amendment #2012-004

Section 2302 of the Affordable Care Act requires all states to remove the prohibition of receiving curative treatment upon the election of the hospice benefit by or on behalf of a Medicaid or CHIP eligible child. The State Plan along with section 210.100 and section 214.000 of the Hospice Provider Manual are being updated to incorporate the provision for continuation of treatment for the terminal illness, for eligible Medicaid beneficiaries under the age of 21, in addition to selecting to receive Hospice benefit. Criteria for enrolling in Hospice are unchanged.



Division of Medical Services
Program Development & Quality Assurance

P.O. Box 1437, Slot S-295 - Little Rock, AR 72203-1437
501-682-8368 • Fax: 501-682-2480



TO: Arkansas Medicaid Health Care Providers - Hospice
DATE: January 1, 2013
SUBJECT: Provider Manual Update Transmittal HOSPICE-2-11

PROPOSED

Table with 4 columns: REMOVE Section, REMOVE Date, INSERT Section, INSERT Date. Rows include 210.100 (10-13-03), 214.000 (11-1-06), 210.100 (1-1-13), and 214.000 (1-1-13).

Explanation of Updates

Sections 210.100 and 214.000 are updated to comply with a CMS mandate that individuals under the age of 21 may receive treatment for a terminal illness in addition to hospice services. Section 214.000 is also updated to clarify language.

The paper version of this update transmittal includes revised pages that may be filed in your provider manual. See Section I for instructions on updating the paper version of the manual. For electronic versions, these changes have already been incorporated.

If you have questions regarding this transmittal, please contact the HP Enterprise Services Provider Assistance Center at 1-800-457-4454 (Toll-Free) within Arkansas or locally and Out-of-State at (501) 376-2211.

If you need this material in an alternative format, such as large print, please contact our Americans with Disabilities Act Coordinator at 501-682-6453 (Local); 1-800-482-5850, extension 2-6453 (Toll-Free) or to obtain access to these numbers through voice relay, 1-800-877-8973 (TTY Hearing Impaired).

Arkansas Medicaid provider manuals (including update transmittals), official notices, notices of rule making and remittance advice (RA) messages are available for downloading from the Arkansas Medicaid website: www.medicaid.state.ar.us.

Thank you for your participation in the Arkansas Medicaid Program.

Handwritten signature of Andrew Allison, PhD, Director

TOC not required

PROPOSED

210.100

Program Purpose

1-1-13

Hospice is a continuum of care, directed by professionals, designed to optimize the comfort and functionality of terminally ill patients for whom curative medicine has exhausted its possibilities. Hospice emphasizes relief from distress for the patient without actively shortening or prolonging life. Relief from distress includes palliation of physical, psychological and psychosocial symptoms of distress and a regular regime for alleviation of physical pain. All efforts are directed to the enrichment of living during the final days of life and to the provision of ongoing opportunities for the patient to be involved in life.

Hospice services are defined as reasonable and medically necessary services, palliative and supportive in nature, provided to the terminally ill for the management of the terminal illness and related conditions.

Individuals under the age of 21 may receive treatment for a terminal illness in addition to hospice services.

214.000

Election

1-1-13

- A. A patient electing hospice care must file an election statement with the designated hospice.
 1. The provider must furnish a printed statement that meets all the conditions of this section.
 2. The patient must sign and date the election statement.
- B. An election to receive hospice care continues through the initial election period and through any subsequent election periods without a break in care as long as the patient remains in the care of the hospice.
- C. A patient must designate an effective date for the election period.
 1. The effective date may be the first day of hospice care or any subsequent day of hospice care.
 2. A patient may not designate an effective date that is earlier than the date on which the election is made.
- D. A patient must waive all rights to Medicaid coverage of the following services for the duration of the election of hospice care:
 1. Hospice care provided by a hospice other than the hospice designated by the patient, unless provided under arrangements made by the designated hospice
 2. Any Medicaid services that are related to treatment of the terminal condition for which hospice care was elected or of a related condition; or that are equivalent to hospice care except for:
 - a. Services provided (either directly or under arrangement) by the designated hospice
 - b. Services provided as room and board by a nursing facility or ICF/MR if the individual is a resident
 - c. Services provided by the patient's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services
 - d. Treatment of the terminal illness for Medicaid eligible individuals under the age of 21
 3. Home Health Program services and drugs and biologicals obtained through the Arkansas Medicaid Pharmacy Program for the palliation and management of symptoms related to the patient's terminal illness

- E. Individuals under the age of 21 electing hospice and receiving treatment for a terminal illness must meet all program criteria and guidelines established for both hospice and the treatment of the terminal illness.
- F. When an election period ends, the patient's waiver of other Medicaid benefits expires and regular Medicaid coverage is possible if the patient revokes hospice care for the subsequent election period.
- G. An individual eligible for both Medicare and Medicaid must elect the hospice benefit simultaneously under both programs.
- H. When a hospice discharges a patient because the patient's condition is no longer considered terminal, the patient's waiver of other Medicaid benefits expires immediately and regular Medicaid coverage is possible.

PROPOSED

AMOUNT, DURATION AND SCOPE OF MEDICAL
AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

15. Services in an intermediate care facility for the mentally retarded, as defined in Section 1905(d), (other than in an institution for mental diseases) for individuals who are determined, in accordance with Section 1902(a)(31)(A), to be in need of such care.

Provided: No limitations With limitations*

Not provided. PA*

16. Inpatient psychiatric facility services for individuals under 22 years of age.

Provided: No limitations With limitations*

Not provided. PA*

PROPOSED

17. Nurse-midwife services.

Provided: No limitations With limitations*

Not provided.

18. Hospice care (in accordance with section 1905(o) of the Act).

Provided: No limitations With limitations*

Not provided. Provided in accordance with section 2302 of the Affordable Care Act

*Description provided on attachment.

State/Territory: ARKANSAS

AMOUNT, DURATION AND SCOPE OF SERVICES PROVIDED
MEDICALLY NEEDY GROUP(S): All

16. Services in an intermediate care facility for the mentally retarded, as defined in Section 1905(d), (other than in an institution for mental diseases) for individuals who are determined, in accordance with Section 1902(a)(31)(A), to be in need of such care.

Provided: No limitations With limitations*

16. Inpatient psychiatric facility services for individuals under 22 years of age.

Provided: No limitations With limitations*

PA*

PROPOSED

17. Nurse-midwife services.

Provided: No limitations With limitations*

18. Hospice care (in accordance with section 1905(o) of the Act).

Provided: No limitations With limitations*

Provided in accordance with section 2302 of the Affordable Care Act

210.100

Program Purpose

10-13-03

Hospice is a continuum of care, directed by professionals, designed to optimize the comfort and functionality of terminally ill patients for whom curative medicine has exhausted its possibilities. Hospice emphasizes relief from distress for the patient without actively shortening or prolonging life. Relief from distress includes palliation of physical, psychological and psychosocial symptoms of distress and a regular regime for alleviation of physical pain. All efforts are directed to the enrichment of living during the final days of life and to the provision of ongoing opportunities for the patient to be involved in life.

Hospice services are defined as reasonable and medically necessary services, palliative and supportive in nature, provided to the terminally ill for the management of the terminal illness and related conditions.

Individuals under the age of 21 may receive treatment for a terminal illness in addition to hospice services.

214.000

Election

11-1-06

- A. A patient electing hospice care must file an election statement with the designated hospice.
1. The provider must furnish a printed statement that meets all the conditions of this section.
 2. The patient must sign and date the election statement.
- B. An election to receive hospice care continues through the initial election period and through any subsequent election periods without a break in care as long as the patient remains in the care of the hospice.
- C. A patient must designate an effective date for the election period.
1. The effective date may be the first day of hospice care or any subsequent day of hospice care.
 2. A patient may not designate an effective date that is earlier than the date on which the election is made.
- D. A patient must waive all rights to Medicaid coverage of the following services for the duration of the election of hospice care:
1. Hospice care provided by a hospice other than the hospice designated by the patient, unless provided under arrangements made by the designated hospice.
 2. Any Medicaid services that are related to treatment of the terminal condition for which hospice care was elected or of a related condition; or that are equivalent to hospice care except for services:
 - a. Services provided (either directly or under arrangement) by the designated hospice.
 - b. Services provided as room and board by a nursing facility or ICF/MR if the individual is a resident.
 - c. Services provided by the patient's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services.
 - d. Treatment of the terminal illness for Medicaid eligible individuals under the age of 21

3. Home Health Program services and drugs and biologicals obtained through the Arkansas Medicaid Pharmacy Program for the palliation and management of symptoms related to the patient's terminal illness;

E. Individuals under the age of 21 electing hospice and receiving treatment for a terminal illness must meet all program criteria and guidelines established for both hospice and the treatment of the terminal illness.

F. When an election period ends, the patient's waiver of other Medicaid benefits expires and regular Medicaid coverage is possible if the patient revokes hospice care for the subsequent election period.

F.G. An individual eligible for both Medicare and Medicaid must elect the hospice benefit simultaneously under both programs.

G.H. When a hospice discharges a patient because the patient's condition is no longer considered terminal, the patient's waiver of other Medicaid benefits expires immediately and regular Medicaid coverage is possible.