

**HUMAN SERVICES**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Hospice Services Manual**

**Proposed Readoption: N.J.A.C. 10:53A**

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-1 et seq. and 30:4J-8 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Agency Control Number: 15-P-02.

Proposal Number: PRN 2015-096.

Submit comments by October 19, 2015, to:

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The agency proposal follows:

### **Summary**

Pursuant to N.J.S.A. 52:14B-5.1.c(2), N.J.A.C. 10:53A, the Hospice Services Manual chapter, will expire on January 5, 2016. The Department of Human Services (Department) proposes to readopt N.J.A.C. 10:53A, without change. The Department has reviewed the chapter and finds that it should be readopted because the rules are necessary, adequate, reasonable, efficient, understandable, and responsive to the purposes for which they were originally promulgated.

Hospice services are covered under the New Jersey Medicaid/NJ FamilyCare programs. Room and board services are also available for those Medicaid/NJ FamilyCare beneficiaries residing in a nursing facility who are eligible for hospice services. The purpose of providing hospice services is to provide supportive and palliative care and services, rather than curative care, to the terminally ill patient and/or their bereaved. Medicare-certified agencies provide these services through a medically-directed interdisciplinary team, with a plan of care, which addresses physical, psychological, social, spiritual, and other special needs.

N.J.A.C. 10:53A contains five subchapters and two appendices, as described immediately below.

N.J.A.C. 10:53A-1 contains general provisions regarding hospice services, including introductory general provisions, definitions, and information regarding contracting with physicians.

N.J.A.C. 10:53A-2 contains provider requirements regarding enrollment and billing procedures, changing from one hospice agency to another, physician certification and recertification, staffing standards, the administrative policy for admission and discharge from room and board services in a nursing facility, recordkeeping requirements, monitoring requirements, fair hearings, and advance directives.

N.J.A.C. 10:53A-3 contains beneficiary requirements regarding eligibility, the application procedure for medical and financial eligibility, benefit periods, covered hospice services, services unrelated to terminal illness, the plan of care, and fair hearings.

N.J.A.C. 10:53A-4 contains provisions related to the basis of payment including the post-eligibility treatment of the beneficiary's income, basis of payment for hospice providers and physicians, limitations on reimbursement for hospice services, and claims submission.

N.J.A.C. 10:53A-5 contains provisions regarding the Common Procedure Coding System, including an introduction to procedure codes for hospice services.

N.J.A.C. 10:53A Appendix A contains forms and documents used by beneficiaries and providers in the administration of the Hospice Care Program.

N.J.A.C. 10:53A Appendix B contains information related to the fiscal agent billing supplement.

The Department has determined that the comment period for this notice of proposal will be at least 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

## **Social Impact**

In State Fiscal Year 2014, approximately 1,031 average monthly beneficiaries received hospice services under this chapter. The rules proposed for readoption will not change the population to be covered, therefore, no significant increase or decrease in the number of beneficiaries is expected as a direct result of the proposed readoption of these rules.

The rules proposed for readoption will have a positive impact on the beneficiaries of the Medicaid/NJ FamilyCare program by ensuring that eligible beneficiaries will continue to receive hospice services in a cost-effective manner.

The providers of the services regulated by this chapter will benefit because these rules ensure continued reimbursement to hospice agencies and hospice providers who render services in accordance with this chapter.

## **Economic Impact**

During State Fiscal Year 2014, approximately 1,031 average monthly beneficiaries received services covered under this chapter at a total annual cost of \$64.7 million (State and Federal share combined).

There is no anticipated change in the economic impact on beneficiaries, providers, or the State as a result of the rules proposed for readoption because the Department is not proposing changes in the population, reimbursement, or scope of services.

The providers of the services regulated by this chapter will benefit, because these rules allow the Division to continue the covered programs, thus ensuring continued reimbursement to providers.

### **Federal Standards Statement**

The rules proposed for readoption do not exceed current Federal law or regulations related to the provision of hospice services. The Federal Medicaid program at 42 U.S.C. §1396d(o) allows states to cover hospice services. Section 1905(o)(1)(A) of the Social Security Act defines coverage of hospice care as described at Section 1861(dd)(1) of the Social Security Act.

Title XXI of the Social Security Act allows states to establish a children's health insurance program for targeted low-income children. New Jersey elected this option through implementation of the NJ FamilyCare children's program. Section 2103, 42 U.S.C. § 1397cc, provides broad coverage guidelines for the program. Hospice services are provided to beneficiaries in the NJ FamilyCare children's program in accordance with section 2110(a)(23) of the Social Security Act.

The Department has reviewed the applicable Federal statute and regulations and that review indicates that the rules proposed for readoption do not exceed Federal standards.

### **Jobs Impact**

The rules proposed for readoption concerns the provision of hospice services to Medicaid and NJ FamilyCare beneficiaries, the Department does not anticipate that the

rules proposed for re-adoption will result in the generation or loss of jobs for the providers or the State.

### **Agriculture Industry Impact**

Since the rules proposed for re-adoption concern the provision of hospice services to Medicaid and NJ FamilyCare beneficiaries, the rules proposed for re-adoption will not affect the State's agriculture industry.

### **Regulatory Flexibility Analysis**

The rules proposed for re-adoption will affect those providers who provide hospice services to Medicaid/NJ FamilyCare fee-for-service beneficiaries residing in the community, including those beneficiaries who live in nursing facilities who have elected to receive hospice benefits. Some of these providers may be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, the rules proposed for re-adoption will continue existing recordkeeping, reporting, and compliance requirements on those small businesses.

Hospice providers must be enrolled in Medicare, and must be licensed by the Department of Health (DOH) and must submit a copy of the Medicare provider enrollment agreement form and the DOH license. Hospice providers must also comply with the requirements to verify that the beneficiary is medically eligible for Medicaid/NJ FamilyCare fee-for-service hospice services and that the process for determining financial eligibility has been initiated. To this end, providers are to obtain information regarding the status of the beneficiary, including election of services, physician

certification, termination or revocation of benefits, change in provider, or death. Providers are also required to use specific billing codes for reimbursement purposes. The recordkeeping, reporting, and compliance requirements imposed by the rules proposed for readoption are not in excess of standard practice for these entities, which are also required to comply with licensing and other standards imposed by the Department of Health.

There should be no capital costs associated with the rules proposed for readoption. The professional services required are those that would be required of any hospice, whether or not the hospice is a Medicaid/NJ FamilyCare fee-for-service provider. The requirement that a physician sign a certification that the hospice service is needed by a particular patient/beneficiary is a standard requirement of most third-party payers, and not just the Medicaid/NJ FamilyCare programs. Any other professional requirements are contained in the rules of the DOH, the licensing entity.

The providers are already required to maintain records sufficient to fully disclose the name of the beneficiary who receives the service, the date of service, and any additional information as may be required by regulation and statute. The requirements must be uniform for all providers, in order to assure a consistent level of care for the beneficiaries throughout the State, and to comply with applicable statutes; therefore, no differentiation based on business size can be made in the rules proposed for readoption.

## **Housing Affordability Impact Analysis**

Since the rules proposed for readoption concern the provision of hospice services to Medicaid and NJ FamilyCare beneficiaries, the Department anticipates that the rules proposed for readoption will have no impact on the development of affordable housing in New Jersey or on the average costs associated with housing.

### **Smart Growth Development Impact Analysis**

Since the rules proposed for readoption concern the provision of hospice services to Medicaid and NJ FamilyCare beneficiaries, the Department anticipates that the proposed readoption of these rules will have no impact on smart growth or housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:53A.