Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's Proposed Changes Blog.

OHCA COMMENT DUE DATE: September 2, 2021

The proposed policy is an Emergency Rule. The proposed policy was presented at the May 4, 2021 Tribal Consultation. Additionally, this proposal is scheduled to be presented to the Medical Advisory Committee on September 9, 2021 and the OHCA Board of Directors on September 20, 2021.

REFERENCE: APA WF 21-21 Emergency Rule

SUMMARY:
Hospice benefit for expanded population – The proposed rule will add hospice services as a covered benefit for the adult expansion population as described per the Code of Federal Regulations (CFR) Title 42 Section 435.119. The proposed rule changes will outline hospice coverage, eligibility, reimbursement, provider qualifications/requirements, and prior authorization requirements.

LEGAL AUTHORITY:
The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Title 42 of the Code of Federal Regulations Section 435.119.

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY

SUBJECT: Rule Impact Statement
APA WF # 21-21

A. Brief description of the purpose of the rule:

The proposed rule will add hospice services as a covered benefit for the adult expansion population as described per the Code of Federal Regulations (CFR) Title 42 Section 435.119. The proposed rule changes will outline hospice coverage, eligibility criteria, reimbursement, provider qualifications/requirements, and prior authorization requirements.

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B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

   No classes of person will be affected by the proposed rule.

C. A description of the classes of persons who will benefit from the proposed rule:

   The proposed rule will benefit the adult expansion population as described per the Code of Federal Regulations (CFR) Title 42 Section 435.119, who meet the eligibility criteria by receiving comprehensive comfort care, support, and quality of life during the final stages of a member's illness.

   Hospice providers will also benefit from the proposed rule as these services were not previously a covered or reimbursable service for applicable members.

D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

   There is no probable impact of the proposed rule changes upon any classes of persons or political subdivisions.

E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

   The proposed rule to add hospice as a covered service for expansion adults may result in an estimated total cost of $584,135.13, with $58,413.51 in state share for SFY2022; and a total cost of $778,846.84, with $77,884.68 in state share for SFY2023.

F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

   The proposed rule changes will not have an economic impact on

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any political subdivision.

G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The proposed rule changes will not an adverse effect on small businesses.

H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The Agency has taken measures to determine that there is no less costly or non-regulatory method or less intrusive method for achieving the purpose of the proposed rule.

I. A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule should have no adverse effect on the public health, safety, and environment.

J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:

The Agency does not believe there is a detrimental effect on the public health and safety if the rule is not passed. The agency believes that the approval of the rule will have a positive effect on access to care and health outcomes for Oklahomans.

K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared: July 19, 2021
Modified: August 16, 2021

RULE TEXT

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

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PART 58. NON-HOSPITAL BASED HOSPICE

317:30-5-530. Eligible providers

~~Non-Hospital Affiliated Hospice entities must be appropriately licensed and have a contract with the Oklahoma Health Care Authority to provide Hospice services.~~

(a) Providers of hospice services will meet applicable state and federal licensing requirements and meet Medicare certification requirements to provide hospice services.

(b) Providers of hospice services will enter into a contractual agreement with the State Medicaid agency, Oklahoma Health Care Authority (OHCA).

317:30-5-531. Coverage for adults

~~There is no coverage for hospice services provided Medicaid eligible adults except for the hospice provision provided through the ADvantage Waiver.~~

Coverage for hospice services is provided to Medicaid eligible expansion adults only. For medical review purposes, all hospice services will be authenticated in accordance with OAC 317:30-3-30. For information regarding hospice provision provided through waivers, refer to Oklahoma Administrative Code (OAC) 317:30-5-763, 317:30-5-1200, and 317:30-5-1202.

(1) **Definition.** Hospice is palliative and/or comfort care provided to the member and his/her family when a physician certifies that the member has a terminal illness and has a life expectancy of six (6) months or less. A hospice program offers palliative and supportive care to meet the special needs resulting from the physical, emotional, and spiritual stresses which are experienced during the final stages of illness and death. Hospice services must be related to the palliation and management of the member's illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills.

(2) **Eligibility.**

(A) Expansion adults defined by 42 Code of Federal Regulations § 435.119 who are age nineteen (19) or older and under sixty-five (65), at or below one hundred thirty-three percent (133%) of the federal poverty level (FPL), and who are not categorically related to the aged, blind, or disabled eligibility group are eligible for hospice services.

(B) Hospice care eligibility requires physician certification that the member is terminally ill and includes a medical prognosis with a life expectancy of six (6) months or less if the illness runs its normal course. The terminal prognosis also must be supported by clinical documentation in the

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medical record.

(3) **Levels of care.** There are four (4) levels of care for hospice:

(A) **Routine hospice care.** Member is at home and not receiving hospice continuous care.

(B) **Continuous home care.** Member is not in an inpatient facility and receives hospice on a continuous basis at home; primarily consisting of nursing care to achieve palliation and management of acute medical symptoms during a brief period of crisis only as necessary to maintain the terminally ill patient at home. If less skilled care is needed on a continuous basis to enable the person to remain at home, this is covered as routine hospice care.

(C) **Inpatient respite care.** Member receives care in an approved facility on a short-term basis for respite.

(D) **General inpatient care.** Member receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management that cannot be managed at home.

(5) **Approval criteria.** All services must be prior authorized, and a written plan of care must be established before services are rendered.

(A) **General.** Hospice care services:

(i) Are provided in lieu of curative care for the terminal illness. The member or authorized representative must sign an election statement, and by doing so waives his or her right to other Medicaid benefits, except for care not related to the terminal illness and care provided by the attending physician.

(I) The member signs a statement choosing hospice care instead of routine medical care with the objective to treat and cure the member's terminal illness.

(II) Once the member has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the terminal illness.

(ii) Include nursing care; physician services; medical equipment and supplies; drugs for symptom control and pain relief; home health aide services; personal care services, physical, occupational and/or speech therapy; medical social services; dietary counseling; and grief and bereavement counseling to the member and/or family.

(iii) May be revoked by the member or representative at any time. Upon revoking the election of Medicaid coverage of hospice care for a particular election period, the member resumes Medicaid coverage of the benefits waived when hospice care was elected. The member may at any time elect to receive hospice coverage for any other hospice election periods for which he or she is eligible.

(B) **Frequency.** Hospice care services:

(i) Are available for an initial two (2) ninety-day (90-day) certification periods. After the two (2) initial ninety-day (90-day) periods, a member is allowed an unlimited number of sixty-day (60-day) certification periods during the remainder of the member's lifetime. Each certification period requires a new prior authorization.

(ii) Require a hospice physician or nurse practitioner to have a face-to-face encounter with the member to determine if the member's terminal illness necessitates continuing hospice care services. The encounter should take place prior to the one hundred eightieth (180th) day recertification and each subsequent recertification thereafter; and attest that such visit took place.

(C) **Documentation.** Initial documentation requirements for requesting services, documentation requirements for continuation of services, and the full hospice guidelines can be found at OHCA's website, https://oklahoma.gov/ohca.

(6) **Reimbursement.** All hospice care related services are reimbursed at a predetermined rate for each day in which a member receives the respective type and intensity of service. A description of the payment for each level of care is described in the Oklahoma Medicaid State Plan.

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