

COMPARISON OF THE MEDICARE AND MEDICAID HOSPICE BENEFITS

The following chart sets forth the ways in which the Medicare and Medicaid hospice benefits must be the same and the ways in which they may or must differ.¹ Since hospice is an optional Medicaid benefit, States may, but are not required, to offer it to their Medicaid recipients. However, those States that do choose to include hospice in their Medicaid programs must structure the benefit to meet certain statutory requirements.

MEDICARE AND MEDICAID ARE ESSENTIALLY THE SAME:

<u>Issue</u>	<u>Requirements</u>
Definition of "Hospice Care"	The Medicaid statute incorporates the Medicare definition of a "hospice program", which requires that such programs provide a full range of services, pursuant to a plan of care developed for each patient by the patient's physician and an interdisciplinary group.
Definition of "Hospice Program"	The Medicaid statute incorporates the Medicare definition of a "hospice program", which requires that such programs be primarily engaged in providing "hospice care", provide core services directly through employees, and maintain professional management responsibility for all services arranged by the hospice. Inpatient days must be limited to no more than 20 percent.
Revocation and Change of Hospice	Both Medicare and Medicaid allow patients to revoke their election of hospice at any time, and allow patients to change hospices. Although the Medicare statute includes some language that is not included in the Medicaid statute, the rules are essentially the same.

¹ This chart addresses the provisions of the Medicare and Medicaid statutes, which are included in Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act. This does not address the Medicare hospice regulations found in Part 418 of Title 42 of the Code of Federal Regulations, or the provisions included in various Medicare and Medicaid manuals.

<u>Issue</u>	<u>Requirements</u>
Payment Rates	The Medicaid statute requires that Medicaid programs pay for hospice care "in amounts no lower than the amounts, using the same methodology, used under Part A [of Medicare]". ² Therefore, <u>Medicaid programs may pay more, but not less, than the Medicare rate for hospice services.</u> [Note: this is unrelated to the room and board payment for nursing facility residents which is discussed separately]
Waiver of Other Benefits	Under both Medicare and Medicaid, patients who elect hospice must waive their right to other payment for services related to their terminal condition if those services would be covered by Medicare. Medicaid recipients do not, however, have to waive payment for other services that would be covered by Medicaid <u>but not</u> Medicare (e.g., certain personal care services). Under both Medicare and Medicaid, payment for physician services is not waived and continue to be paid separately.

MEDICARE AND MEDICAID REQUIREMENTS MAY OR MUST DIFFER:

<u>Issue</u>	<u>Medicare</u>	<u>Medicaid</u>
Eligibility for Hospice	Hospice is available to individuals who have been certified as "terminally ill", which is defined as an individual with a medical prognosis that their life expectancy is 6 months or less	The law states that hospice care is care provided to a "terminally ill individual" but does not define "terminally ill" and does not incorporate the Medicare definition. Arguably, a State could define "terminally ill" more, but not less, broadly than the Medicare definition because there is a separate Medicaid provision stating that hospice care may not be made available "in an amount, duration or scope" less than that provided under Medicare. ³

² Social Security Act § 1902(a)(13)(B).

³ Social Security Act section 1902(a)(10).

<u>Issue</u>	<u>Medicare</u>	<u>Medicaid</u>
Election of Hospice	Individuals must elect to receive hospice care provided by, or under arrangements made by, a particular hospice program instead of certain other benefits to which they would otherwise be entitled. The Medicare hospice regulations specify certain election procedures that must be followed and certain information that must be provided to beneficiaries electing hospice.	States are to establish their own procedures for electing hospice but the election must be voluntary and the procedures must be "consistent with" the procedures established under the Medicare program. Therefore, States <u>may</u> follow the Medicare election procedures, but are not required to.
Certification of Terminal Illness	At the beginning of the first 90 day period the patient's attending physician and a hospice physician must each certify in writing that the patient is terminally ill, based on their clinical judgment regarding the normal course of the individual's illness. At the beginning of each subsequent period, the attending physician or hospice physician must recertify that the patient is terminally ill.	The Medicaid statute does not address certification of terminal illness. Many States follow the Medicare rules regarding certification, but they may establish different requirements. ⁴

⁴ Some States continue to use the Medicare requirements that were in effect prior to passage of the Balanced Budget Act of 1997 ("BBA"). Although the BBA eliminated the Medicare requirement that written certification be on file within a certain number of days, States are not required to follow suit.

<u>Issue</u>	<u>Medicare</u>	<u>Medicaid</u>
Benefit Periods	Medicare provides for two benefit periods of 90 days each, followed by an unlimited number of 60 day periods.	States may establish their own benefit periods, and the length and number of these periods need not be the same as those established under the Medicare program. ⁵ However, now that Medicare has an unlimited number of benefit periods, arguably a State could not limit the total number of days that recipients could receive hospice services because of the separate Medicaid requirement that hospice care may not be made available "in an amount, duration or scope" less than that provided under Medicare. ⁶
Annual Cap on Payments	The Medicare statute establishes a limit, adjusted annually, on the total amount of Medicare reimbursement the hospice may receive during the year.	The Medicaid statute does not incorporate the Medicare cap on payments, but States have the option of establishing a Medicaid cap. "Room and board" payments for nursing facility residents are excluded from calculations regarding the hospice cap.
Hospice for Nursing Facility Residents	The Medicare hospice benefit does not include payment for residential services, but it does pay (primarily at the routine home care rate) for hospice care provided to Medicare beneficiaries who reside in a nursing facility ("NF") or intermediate care facility for the mentally retarded ("ICF/MR").	The Medicaid benefit requires States to make a separate payment to hospices to cover the "room and board" costs of individuals who have elected hospice and whose residence in a NF or ICF/MR would otherwise be covered by Medicaid. In all cases, this payment for "room and board" must be made <u>to the hospice</u> and must be "equal to at least 95 percent of the rate that would have been paid by the State under the plan for facility services in that facility for that individual." ⁷

⁵ The Centers for Medicare and Medicaid Services ("CMS") has advised States that it generally is easier to administer the Medicaid hospice benefit when the periods for the benefit are the same as under Medicare, but they have no legal authority to require States to establish any particular benefit periods.

⁶ Social Security Act section 1902(a)(10).

⁷ SSA § 1902(a)(13)(B).

<u>Issue</u>	<u>Medicare</u>	<u>Medicaid</u>
		<p><u>Dually Eligibles:</u> For individuals who (1) are eligible for both Medicare and Medicaid, (2) have elected hospice, and (3) reside in a NF or ICF/MR paid for by Medicaid, the Medicaid program must make the room and board payment to the hospice even if the State does not provide a Medicaid hospice benefit.⁸</p> <p><u>Medicaid-Only Recipients:</u> If a Medicaid program provides a hospice benefit, they must make the additional room and board payment to the hospice if the individual electing hospice is eligible for Medicaid covered services in a NF or ICF/MR and is receiving hospice care while residing in such a facility.</p>

⁸ The hospice must have entered into an agreement with the NF or ICF/MR under which the hospice takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board.