



State of Tennessee
Department of Finance and Administration
Bureau of TennCare
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Phil Bredesen
Governor

M.D. Goetz, Jr.
Commissioner

Date: October 30, 2007

To: Intermediate Care Nursing Facilities (Level 1)
Skilled Care Facilities (Level 2)

From: Patti Killingsworth, Assistant Commissioner
Chief of Long Term Care Operations

Subject: **AMENDED** Policy Regarding Patient Liability for Nursing Facility
Residents Electing Hospice Care

On September 17, 2007, you received a cover memo and policy that sets forth how federal regulations regarding post-eligibility provisions apply when a Nursing Facility resident elects to receive hospice care.

Following issuance of that clarification, we received a number of questions that have prompted us to amend that policy to further clarify certain points.

The most common question pertains to the effective date of the policy. As advised in the cover memo which accompanied the original policy and in the follow-up memo issued that same day regarding effective date, the policy simply explains what federal regulations require and how federal regulations must be applied. Accordingly, the policy was effective upon issuance (and, in fact, *prior to* issuance since these regulations have been in place for a number of years).

Certainly, we would expect that in the last six (6) weeks, you have had ample time to ensure that you are in compliance with these requirements.

In addition, the amended policy seeks to clarify the Nursing Facility's obligation to notify the Hospice Agency of the amount of the person's Patient Liability, as determined by DHS, and to apply consistent policy regarding Patient Liability to all Nursing Facility residents, including those who elect to receive the hospice benefit. This includes applying Patient Liability retroactively to the effective date of coverage where applicable,

and pro-rating the portion of Patient Liability that should be reflected as a credit against hospice room and board. Further, the amended policy clarifies that MCOs must accept the State's PAE assessment regarding medical necessity for Level II (Skilled Nursing Facility) care and negotiate a rate of reimbursement for such residents that is at least 95% of the facility's rate for Level II care when such person elects hospice care. Finally, the amended policy clarifies that the hospice agency may submit charges to the MCO prior to receipt of a bill from the nursing facility, so long as such charges reflect applicable patient liability as a credit on the hospice agency's invoice.

Please be advised that the Department of Human Services (DHS) will soon be completing a desk review of all cases where a person is in a Nursing Facility and has elected to receive hospice services to ensure that: 1) Patient Liability has been appropriately determined; and 2) the person continues to meet all Medicaid eligibility requirements, including applicable resource limitations. If a person is determined to no longer qualify for Medicaid because amounts that should have been contributed toward Patient Liability have been held in a Nursing Facility or personal account, in order to help the person maintain TennCare eligibility during this critical end-of-life time (and in accordance with applicable federal requirements), the Nursing Facility will be asked to collect Patient Liability (that should have been collected but was not) and submit an adjustment to hospice claims that have been submitted to the Hospice Agency. The Hospice Agency will then adjust its claim to the MCO to ensure that *only* the balance (not covered by Patient Liability) is reimbursed by Medicaid.

This amended policy has been signed effective 10/30/2007. The signed policy can be accessed from the TennCare website at: <http://state.tn.us/tenncare/forms/pay07001.pdf>.

If you have any further questions regarding hospice policy, please let us know. Again, we thank you for your prompt assistance in ensuring compliance with these requirements.

C: Pat Santel, Director of Long-Term Care, Elderly and Disabled Services