

Adopt He-W 544.01 – 544.16, cited and to read as follows:

CHAPTER He-W 500 MEDICAL ASSISTANCE

PART He-W 544 HOSPICE SERVICES

He-W 544.01 Definitions.

(a) “Agent” means an adult to whom authority to make health care decisions is delegated under an activated durable power of attorney for health care executed in accordance with RSA 137-J.

(b) “Attending physician” means the doctor of medicine or osteopathy or the advance practice registered nurse who is identified by the recipient at the time of election of hospice care as having the most significant role in the determination and delivery of medical care to the recipient.

(c) “Bereavement counseling” means emotional, psychosocial, and spiritual support and services provided before and after death of the recipient to assist with issues related to grief, loss, and adjustment.

(d) “Continuous home care” means hospice care consisting of primarily nursing care provided by hospice personnel on a continuous basis at home.

(e) “Day” means the 24-hour period starting at 12:00AM and ending at 11:59PM of the same day.

(f) “Department” means the New Hampshire department of health and human services.

(g) “Dietary counseling” means education and interventions provided to the recipient and family regarding appropriate nutritional intake as the recipient’s condition progresses and provided by qualified individuals including a registered nurse, dietician, or nutritionist, when identified in the recipient’s plan of care.

(h) “Election period” means one or more periods for which a recipient may elect to receive medicaid coverage for hospice care, as follows:

- (1) Two 90-day periods; and
- (2) An unlimited number of subsequent 60-day periods.

(i) “Employee” means:

- (1) An employee of the hospice;
- (2) If the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and assigned to the hospice unit; or
- (3) A volunteer under the jurisdiction of the hospice.

(j) “General inpatient care” means hospice care received in an inpatient facility for pain control or symptom management, which cannot be managed in other settings.

(k) “Healthy kids-gold” means the program administered by the department under which the assistance authorized by Title XIX of the Social Security Act is made available to eligible individuals under the age of 19.

(l) “Hospice” means a comprehensive set of services described in section 1861(dd)(1) of the Social Security Act, identified and coordinated by an interdisciplinary group to provide for the physical, psychosocial, spiritual, and emotional needs of a terminally ill recipient and/or family members, as delineated in a specific recipient plan of care.

(m) “Medicaid” means the Title XIX program administered by the department which makes medical assistance available to eligible individuals age 19 and over.

(n) “Palliative care” means recipient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate recipient autonomy, access to information, and choice.

(o) “Physician” means “physician” as defined in 42 CFR 410.20.

(p) “Quarter” means one of 4 calendar periods ending March 31, June 30, September 30, and December 31.

(q) “Recipient” means any individual who is eligible for and receiving medical assistance under programs entitled healthy kids-gold or medicaid.

(r) “Respite care” means short-term inpatient care provided to the recipient only when necessary to relieve the family members or other persons caring for the recipient.

(s) “Room and board services” includes performance of personal care services, including assistance in the activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident’s room, and supervision and assistance in the use of durable medical equipment and prescribed therapies.

(t) “Routine home care” means hospice care received at the place of residence and which is not continuous home care as defined in (d) above.

(u) “Terminally ill” means a condition for which the recipient has a medical prognosis of a life expectancy of 6 months or less if the illness runs its normal course.

(v) “Title XIX” means the joint federal-state program described in Title XIX of the Social Security Act and administered in New Hampshire by the department under programs entitled healthy kids-gold and medicaid.

He-W 544.02 Recipient Eligibility Requirements.

(a) To be eligible to receive hospice care, a recipient shall:

(1) Be certified as terminally ill in accordance with He-W 544.06;

(2) Elect hospice care in accordance with He-W 544.04; and

(3) Upon election of hospice care pursuant to (2) above, agree to waive all rights to the following Title XIX services:

- a. Hospice care provided by a hospice other than the one designated by the recipient on the hospice care provider's hospice election form, unless provided under arrangements made by the designated hospice;
- b. Title XIX services that are:
 1. Related to the treatment of the terminal illness for which hospice care was elected;
 2. Related to the treatment of a condition or complication related to the terminal illness for which hospice care was elected; or
 3. Equivalent to, or duplicative of, hospice services; and
- c. Title XIX home and community-based care waiver services that are equivalent to, or duplicative of, hospice services.

(b) A recipient shall not be required to waive rights to the following services, which shall be covered in addition to hospice services:

- (1) Services provided by the recipient's Title XIX attending physician if that physician is not an employee of the designated hospice or is not receiving compensation from the hospice for those services; and
- (2) Room and board services provided by a nursing facility if the recipient meets nursing facility level of care.

He-W 544.03 Provider Participation. Each participating hospice provider shall:

- (a) Be medicare certified as a hospice provider;
- (b) Be a NH enrolled Title XIX provider;
- (c) Hold a current NH state license as a home hospice care provider or hospice house in accordance with RSA 151:2 and He-P 823 or He-P 824, or be licensed as such by the state in which they practice; and
- (d) Notify the department of a recipient's discharge from the hospice provider due to the recipient's death, within 5 state business days of the recipient's death, via Form 282A, "Medicaid Hospice Care Notification Form," incorporated by reference in He-W 544.17.

He-W 544.04 Election of Hospice Care.

- (a) If a recipient seeks to elect hospice care, the hospice provider shall obtain an election statement via the hospice care provider's hospice care election form signed and dated by the recipient or his or her agent or legal guardian.

(b) The election statement obtained by the hospice provider on the hospice care provider's hospice benefit election form shall:

- (1) Specify the hospice provider designated by the recipient to provide care;
- (2) Specify the effective date of the election, which shall not be earlier than the date the recipient or his or her agent or legal guardian signs the election statement; and
- (3) Specify that by waiving rights in accordance with He-W 544.02(a)(3), the recipient or the recipient's agent or legal guardian acknowledges that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the recipient's terminal illness specified on the form.

(c) If a recipient elects hospice care in accordance with (a) and (b) above, the designated hospice provider shall notify the department of the effective date of the election in (b)(2) above, within 5 state business days of the election, via the applicable sections of Form 282A, "Medicaid Hospice Care Notification Form," incorporated by reference in He-W 544.17.

He-W 544.05 Hospice Election Periods.

(a) The recipient shall be allowed hospice coverage divided into election periods as follows:

- (1) An initial 90-day period;
- (2) A subsequent 90-day period; and
- (3) An unlimited number of subsequent 60-day periods.

(b) Election of hospice care in accordance with He-W 544.04 shall be considered to continue through the election periods specified in (a) above without a break in care if the recipient:

- (1) Remains in the care of the hospice provider; and
- (2) Does not revoke the election under the provisions of He-W 544.08.

He-W 544.06 Certification of Terminal Illness. The hospice provider shall obtain certification of terminal illness as follows:

(a) For the first 90-day election period, the hospice provider shall obtain, within 2 calendar days after hospice care is initiated, written certification of terminal illness signed and dated by:

- (1) The medical director of the hospice provider or the physician member of the hospice interdisciplinary group; and
- (2) The recipient's Title XIX attending physician, if the recipient has an attending physician, except that an advance practice registered nurse shall not be allowed to sign;

(b) For subsequent election periods of coverage specified in He-W 544.05(a)(2) and (3) above, the hospice provider shall obtain, within 2 calendar days after the beginning of each election period, a written certification of terminal illness signed and dated by the medical director of the hospice provider or the physician member of the hospice interdisciplinary group;

(c) If the written certification in (a) or (b) above cannot be obtained within 2 days, a verbal certification shall be:

- (1) Obtained within 2 days;
- (2) Documented in the recipient's medical records; and
- (3) Followed by a written certification pursuant to (a) or (b) above within 30 calendar days; and

(d) No Title XIX payment shall be made for days prior to certification in accordance with (a) – (c) above.

He-W 544.07 Change in Designated Hospice Provider.

(a) A recipient or his or her agent or legal guardian may change the designated hospice provider once in each of the election periods specified in He-W 544.05(a).

(b) The recipient or his or her agent or legal guardian shall complete the hospice care provider's change of designated provider form and provide it to the current hospice provider and the newly designated hospice provider.

(c) The recipient's current hospice provider shall notify the department within 5 state business days of a recipient changing his or her designated hospice provider via the applicable sections of Form 282A, "Medicaid Hospice Care Notification Form," incorporated by reference in He-W 544.17

(d) The recipient's current hospice provider shall forward the following to the newly designated hospice provider:

- (1) A copy of the election statement obtained by the current hospice provider in accordance with He-W 544.04; and
- (2) A copy of the certification of terminal illness obtained by the current hospice provider in accordance with He-W 544.06.

(e) The newly designated hospice provider shall comply with all requirements of He-W 544, except that the forms forwarded pursuant to (d) above may be used in place of completing new documents.

He-W 544.08 Revocation of Hospice Care.

(a) The recipient or his or her agent or legal guardian may revoke the recipient's election of hospice care at any time by completing and signing the hospice care provider's hospice care revocation form.

(b) If the revocation form in (a) above cannot be signed at the time of revocation, the following shall occur:

(1) The recipient or his or her agent or legal guardian shall verbally revoke the recipient's election of hospice care, the date of which shall be documented in the recipient's medical record; and

(2) The recipient or his or her agent or legal guardian shall complete and sign the revocation form in (a) above.

(c) A recipient or his or her agent or legal guardian shall not designate a revocation effective date earlier than the date the revocation is made as allowed in (a) and (b)(1) above.

(d) Within 5 state business days of a recipient revoking his or her election of hospice care, the designated hospice shall notify the department of the date that the revocation is to be effective, via the applicable sections of Form 282A, "Medicaid Hospice Care Notification Form," incorporated by reference in He-W 544.17.

(e) Effective with the revocation date specified, the recipient shall no longer be covered under the hospice benefit and shall resume eligibility for all Title XIX benefits previously waived pursuant to He-W 544.02(a)(4).

(f) A recipient who revokes his or her election of hospice care shall be eligible to elect hospice care for any remaining election periods in accordance with He-W 544.04.

He-W 544.09 Covered Hospice Services.

(a) The designated hospice provider shall create a plan of care for the recipient in accordance with 42 CFR 418.56 a.2(b) that specifies the services to be provided to the recipient, which are reasonable and necessary for the palliation or management of the symptoms of the terminal illness and conditions or complications related to the terminal illness.

(b) Services covered as part of the hospice benefit shall include:

(1) Nursing care provided by or under the supervision of a registered nurse;

(2) Medical social services provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician;

(3) The following services performed by hospice physicians:

a. General supervisory services of the medical director;

b. Participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care, and establishment of governing policies by the physician member of the interdisciplinary group; and

c. Physician services described in He-W 544.16(b)(2)a.;

(4) Counseling services, including dietary counseling, provided to the recipient, family members, and others caring for the recipient for the purpose of training the recipient's family or caregivers to provide care;

- (5) General inpatient care as follows:
 - a. Such care shall be provided in a Title XIX enrolled hospice house, licensed in accordance with RSA 151 and He-P 824, hospital, or nursing facility that meets that meets the requirements in 42 CFR 418.110 regarding staffing and patient areas; and
 - b. Care shall be for pain control or symptom management which cannot be provided in an outpatient setting;
- (6) Inpatient respite care provided to the recipient as follows:
 - a. Only for recipients who are not residing in a nursing facility;
 - b. Only when necessary to relieve the family members or other caregivers of caring for the recipient;
 - c. Not for more than one period of 5 consecutive days at a time per election period, except that the sixth and any subsequent consecutive days shall be covered and paid at the routine home care rate; and
 - d. Only in those intermediate care facilities that meet the requirements of 42 CFR 418.100 (a) and (e) regarding 24-hour nursing and patient areas;
- (7) Durable medical equipment and supplies for self help and personal comfort related to the palliation or management of the recipient's terminal illness or conditions related to the terminal illness while the recipient is under hospice care;
- (8) Drugs for the palliation and management of the recipient's terminal illness or conditions related to the terminal illness;
- (9) Home health aide and homemaker services;
- (10) Physical therapy, occupational therapy, and speech language pathology services for the purpose of symptom control or to enable the recipient to maintain activities of daily living and basic functional skills;
- (11) Ambulance and wheelchair van transportation;
- (12) Any other service that is specified in the recipient's plan of care as reasonable and necessary for the palliation and management of the recipient's terminal illness and related conditions; and
- (13) Continuous home care, which shall be:
 - a. Provided only during a period of crisis, which is a period in which a recipient requires continuous care which is primarily nursing care to achieve palliation or management of acute medical symptoms;
 - b. Provided by a registered nurse or licensed practical nurse, who shall provide care for more than half the period of care; and

c. A minimum of 8 hours of care during a 24-hour day, which shall not be required to be consecutive hours.

(c) The recipient's plan of care shall include bereavement counseling for the recipient's family after the recipient's death.

(d) Bereavement counseling in (c) above shall not be billable to Title XIX nor to the recipient's family.

He-W 544.10 Documentation of Hospice Services.

(a) Hospice providers shall maintain documentation in their records to fully support each claim billed for services.

(b) Hospice providers' records shall include forms created by the providers which address the following:

- (1) Recipient election of hospice care in accordance with He-W 544.04;
- (2) Provider certification of terminal illness in accordance with He-W 544.06;
- (3) Change in designated hospice provider in accordance with He-W 544.07; and
- (4) Revocation of hospice care in accordance with He-W 544.08.

(c) Hospice provider records shall also include copies of any forms submitted to the department.

(d) Hospice providers shall maintain any other supporting records in accordance with He-W 520.

(e) Hospice providers shall submit to the department a copy of the provider's annual Medicare Cost Report, by November 30 of each year.

(f) Within 30 days following the end of each quarter, for each recipient who died within that quarter, hospice providers shall notify the department of hospice service utilization via Form 282B, "Service Utilization within Hospice by Recipient," incorporated by reference in He-W 544.17, except that this form shall not be required for dual-eligible hospice recipients who reside in a nursing facility.

He-W 544.11 Utilization Review and Control. The department's surveillance and utilization review of subsystems unit (SURS) shall monitor utilization of hospice services in accordance with 42 CFR 455, 42 CFR 456, He-W 520, and documentation of hospice services as required by He-W 544.

He-W 544.12 Third Party Liability.

(a) All third party obligations shall be exhausted before Title XIX shall be billed, in accordance with 42 CFR 433.139.

(b) Recipients who elect or revoke the medicaid hospice benefit shall also elect or revoke the hospice benefit under medicare and/or other insurance, as applicable.

He-W 544.13 Payment for Hospice Services.

(a) Hospice providers shall submit claims for payment to the department's fiscal agent.

(b) Payment for hospice care, with the exception of physician services which are paid in accordance with He-W 544.16, shall be at a per diem rate for each day that the recipient is under the care of the hospice provider.

(c) The per diem rate shall:

(1) Be determined in accordance with medicare regulations at 42 CFR 418, Subpart G;

(2) For continuous home care, be calculated based upon the number of hours of continuous home care furnished to arrive at a per diem rate, in accordance with 42 CFR 418.302(e)(4); and

(3) Be based upon the level of care as follows:

- a. Routine home care;
- b. Continuous home care;
- c. Inpatient respite care; and
- d. General inpatient care

(d) Payment for inpatient respite care shall be limited to one period of no more than 5 consecutive days in each election period.

(e) Inpatient respite care provided in excess of the 5 day limit per election period shall be paid at the routine home care rate.

(f) If there is a change in designated provider, admission status, or level of care, payment shall be made as follows:

(1) If admission occurs on the same day as discharge, revocation or death, the day shall be considered a hospice care day and the hospice shall be paid in accordance with (c) above;

(2) If the level of care changes, payment shall be made for the new level of care beginning with the day it commences;

(3) If a change of hospice provider occurs, payment shall not be made to the discharging hospice for the day of discharge, but payment shall be made to the newly designated hospice; and

(4) If the recipient is discharged from an inpatient unit, the routine home care rate shall be paid, unless the recipient dies as an inpatient, in which case the general inpatient or respite care rate shall be paid for the discharge date.

(g) If certification is not obtained in accordance with the provisions of He-W 544.06(a)-(c), payment shall not be made for days prior to certification.

(h) Bereavement counseling pursuant to He-W 544.09(c) shall not be billable to Title XIX nor to the recipient's family pursuant to He-W 544.09(d).

He-W 544.14 Hospice Payment Limitations and Adjustments.

(a) Hospice payments for inpatient care shall be limited and paid in accordance with Medicare regulations 42 CFR 418.302(f).

(b) Acquired Immunodeficiency Syndrome (AIDS) cases shall be included in the limitation calculation.

(c) On an annual basis, by November 30, hospice providers shall submit to the department a copy of their Medicare cap report.

(d) Hospice payments for inpatient care shall be considered to be interim payments with adjustments made during the end of the November 1 to October 31 cap period for any payments over the limit.

(e) Hospice providers shall refund any excess reimbursement as determined and requested by the department in accordance with (a) and (d) above.

He-W 544.15 Hospice Payment for Recipients in Nursing Facilities.

(a) No Title XIX payments shall be made directly to a nursing facility.

(b) When hospice services are provided to a recipient residing in a nursing facility, the hospice provider shall:

(1) Bill for, in addition to routine or continuous home care, room and board; and

(2) Be reimbursed by Title XIX at a room and board rate which is, in accordance with 1902(a)(13) of the Act, at least 95% of the per diem rate that would have been paid to the nursing facility for the recipient for the same dates of service under rates established in accordance with He-E 803.

He-W 544.16 Payment for Physicians' Services.

(a) If a recipient's attending physician, who is not an employee of the designated hospice or providing services under arrangement with the designated hospice, provides physician services related or unrelated to the treatment of the terminal illness:

(1) These physician services shall not be considered as part of the per diem rate described in He-W 544.13; and

(2) He or she shall bill for these physician services separately and be reimbursed at the regular physician services rate in accordance with He-W 531.

(b) If a recipient does not have an attending physician at the time of electing the hospice benefit, the medical director of the designated hospice provider or the physician member of the hospice interdisciplinary group shall:

(1) Be the recipient's attending physician; and

(2) Bill and receive payment as follows:

a. Physician services that are related to the treatment of the terminal illness shall be considered hospice services and be included in the per diem rate described in He-W 544.13; and

b. Physician services that are unrelated to treatment of the terminal illness shall be considered physician services and shall be billed separately by the physician and be reimbursed at the regular physician services rate in accordance with He-W 531. These services shall not be billed by the hospice provider.

(c) If a recipient's attending physician, who is not an employee of the designated hospice or providing services under arrangement with the designated hospice, requests through an order that the medical director or hospice physician provide physician services not described in He-W 544.09(b)(3), these physician services shall be billed as in (a)(1) and (2) above.

Adopt He-W 544.17 to read as follows:He-W 544.17 Required Forms.

(a) Each participating hospice provider notifying the department under He-W 544.03, 544.04, 544.07, and 544.08 shall complete, as applicable, and submit Form 282A, “Medicaid Hospice Care Notification Form” (07/2010 edition).

(b) Each participating hospice provider notifying the department under He-W 544.10 shall complete and submit Form 282B, “Service Utilization within Hospice by Recipient” (07/2010 edition).

Appendix

Rule Section	Statute Implemented
He-W 544.01	RSA 137-J, 42 CFR 418.3, SSA Sec. 1905(o)[42 USC 1396d(o)], SSA Sec. 1861(dd)[42 USC 1395x]
He-W 544.02	SSA Sec. 1812(d)(2)[42 USC 1395d], SSA Sec. 1905(o)[42 USC 1396d(o)], SSA Sec. 1861(dd)[42 USC 1395x], 42 CFR 418.20, 42 CFR 418.24
He-W 544.03	SSA Sec.1861 (dd)(1)[42 USC1395x], RSA 151:2, 42 CFR Part 418, Subparts C & D
He-W 544.04	SSA Sec. 1905(o)[42 USC 1396d(o)], 42 CFR 418, Subpart B
He-W 544.05	SSA Sec. 1905(o)(2)(B) [42 USC 1396d(o)], SSA Sec. 1812(d)(1)[42 USC 1395d], 42 CFR 418.21, 42 CFR 418.24
He-W 544.06	42 CFR 418.22
He-W 544.07	42 CFR 418.30
He-W 544.08	42 CFR 418.28
He-W 544.09	SSA, Sec. 1861(dd)[42 USC1395x], 42 CFR 418.200, 42 CFR 418.202, 42 CFR 418.204, 42 CFR 418.58
He-W 544.10	42 CFR 431.107, 42 CFR 455, 42 CFR 456
He-W 544.11	42 CFR 455; 42 CFR 456
He-W 544.12	42 CFR 433.139
He-W 544.13	SSA, Sec. 1861(dd)[42 USC1395x], SSA, Sec. 1814(a)[42 USC 1395(a)], SSA, Sec. 1905(o)[42 USC 1396d(o)], 42 CFR 418, Subpart G
He-W 544.14	SSA, Sec. 1905(o)[42 USC 1396d(o)], 42 CFR 418.302(f)
He-W 544.15	SSA, Sec. 1902(a)(13)[42 USC 1396a(a)(13)]
He-W 544.16	SSA, Sec. 1812(d)(1)[42 USC 1395d], 42 CFR 418.304
He-W 544.17	RSA 541-A:19-b