

*The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance ("The Department") on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader*

## **Kentucky Department of Insurance**

### **Advisory Opinion 98-02**

#### **In re: Hospice care coverage under health benefit plans**

**RELEVANT FACTS AND STATUTES:** It has come to my attention that there is confusion over hospice reimbursement under health benefit plans. Therefore, I feel it necessary to issue this Advisory Opinion. This opinion is advisory in nature and is intended to inform entities that issue health benefit plans how the Department views this issue.

House Bill 315 states that, "[a]ll health benefit plans shall cover hospice care at least equal to the Medicare benefits." 42 U. S. C. A. 1395d (d)(1) states:

Payment under this part may be made for  
hospice care provided with respect to an  
individual only during two periods of 90 days  
each and an unlimited number of  
subsequent periods of 60 days each during  
the individual's lifetime and only, with  
respect to each such period, if the individual  
makes an election under this paragraph to  
receive hospice care under this part  
provided by, or under arrangements made  
by, a particular hospice program instead of  
certain other benefits under this subchapter.

**THE DEPARTMENT'S POSITION:** This language indicates that there are not limits on hospice benefits. Also, the annotations support this conclusion. A 1997 amendment to the law substituted the language "and an unlimited number of subsequent periods of 60 days each" for "a subsequent period of 30 days, and a subsequent extension period".

Under Medicare, the initial period of certification for hospice care is 90 days. After the initial 90-day period, the person is re-certified as meeting the requirements for hospice care for an additional 90 days. Thereafter, every 60 days, the individual is re-certified as being eligible for hospice care. There are an unlimited number of times a person can get re-certified for a 60-day period. Based on Medicare law, health benefit plans cannot limit the number of days a person can receive hospice care.

Furthermore, Title 42 of the Code of Federal Regulations, Part 418 specifies particular services that must be covered under hospice benefits. For example, 42 C. F. R. 418.80 -418.88 relate to counseling and physician services. 42 C. F. R. §§418.90 - 418.100 relate to, among other things, physical therapy and home health aide services. 42 C. F. R. 418.200- 418.204 relate to short-term inpatient care and respite care. Pursuant to H. B. 315, these enumerated services must be covered in relation to hospice services.

Any questions concerning this matter should be directed to Shaun T. Orme, counsel for the Department (502) 564-6032.

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George Nichols III

Commissioner

Date: 6/12/98