

**10-144 C.M.R. Chapter 101, MaineCare Benefits Manual  
Chapter II, Section 43 (Hospice Services)  
Chapter III, Section 43 (Allowances for Hospice Services)**

**Summary of Public Comments and the Department’s Responses  
And List of Changes Made to the Final Rule**

The Department of Health and Human Services (Department) provided a public hearing on September 5, 2023. Written and verbal comments were accepted from August 16, 2023, through September 15, 2023.

Comments were received from the following people:

**Table of Commenters**

1. Laurie Belden, Executive Director, Home Care & Hospice Alliance of Maine
2. Patricia (Patsy) Aprile, President, MaineHealth Home Health and Hospice Services; also representing CHANS and MaineHealth Care at Home
3. Joe Kellner, VP Finance, Operations & Strategy Northern Light Home Care & Hospice
4. Nick Paquette, Finance and HealthCare Operations Director, Hospice of Southern Maine
5. RJ Gagnon, Chief Financial & Operating Officer, Androscoggin Home Healthcare + Hospice
6. Colleen Hilton, Senior Vice President, Northern Light Home Care and Hospice; also interim President, Maine Home Care and Hospice Alliance of Maine

**Summary of Comments and Responses**

1. **Comment:** Regarding Chapter II, § 43.06-7.

Commenter 1 expresses support for most of the adjustments outlined, noting singular concern for the proposed EVV requirements. They share the 21st Century Cures Act does not require the implementation of Electronic Visit Verification (EVV) for Hospice Services, and the inclusion of Hospice was proposed at the discretion of MaineCare. Commenter 1 states “There are specific challenges and considerations that make its (EVV) implementation for Hospice more complex and less suitable.” Challenges which would make implementation of EVV difficult or inappropriate include the interdisciplinary team of providers, less structured service delivery model compared to other healthcare services, per diem rate as the primary reimbursement methodology (regardless of quantity of services rendered on a given day), varied/unpredictable service delivery schedule, focus on quality of care, and regulatory challenges. Commenter 1 notes EVV systems are designed for more routine care and are not compatible with Hospice service variables. The Centers for Medicare & Medicaid Services (CMS) approval to mandate EVV reporting for Hospice was obtained without notice, support, or input from Maine’s Hospice provider community. Additionally, Commenter 1 notes Maine would be one of the only states in the nation to require EVV for Hospice providers “in the manner that is currently proposed.”

Commenter 2 supports most of the proposed changes and urges OMS to remove the EVV component from the proposed rulemaking. They express concern about their ability to receive timely reimbursement; the state’s software system previously did not support EVV visit format

matching with the per diem Hospice reimbursement model, and no known changes have since been made to the system. Commenter 2 shared required use of EVV for Hospice Services would negatively impact the agency's fiscal processes. Commenter 2 supports the written comments submitted by the Home Care & Hospice Alliance of Maine as it relates to EVV for Hospice, and questions why implementing EVV for Hospice would be put in place when Hospice is not paid per visit.

Commenter 3 opposes proposed EVV requirements for Hospice services. They questioned why EVV would be implemented as the service is not paid for by visit, except in unique circumstances in the final days of a member's life when a Service Intensity Add-on (SIA) may be requested. Hospice payments are designed to cover not only visits, but all services a patient needs related to their terminal diagnosis (e.g., medications, DME, on-call services). Commenter 3 shares their agency would be forced to institute a system workaround to force the EVV system to pay, even on days a visit was not made. They continue to say the purpose of EVV, to prevent fraud and waste, is not applicable to Hospice, and such reporting requirements would have no effect on fraud prevention or enhance care to members. Commenter 3 shared the recent application of EVV requirements to the agency's home care services (HHCS) has become almost a full-time position, costing the agency approximately \$50,000 annually with no increase in MaineCare reimbursement to offset increased administrative costs.

Commenter 3 strongly recommends the Department reevaluate this policy, it will not address fraud as it doesn't work congruently with the payment mechanism that is applied to Hospice. If the Department does insist on moving forward with electronic visit verification, Commenter 3 recommends excluding per diem codes from the requirement and only apply EVV to SIA as payment is made per visit. If proposed EVV requirements remain, Commenter 3 shares their agency will have to consider if they're able to continue serving MaineCare beneficiaries due to the administrative burden. Additionally, Commenter 3 shared at least one full year would be required to implement appropriate reporting systems.

Commenter 3 stated: "If indeed the Department does insist on moving forward with electronic visit verification, our compromise suggestion would be to only apply electronic visit verification to situations where payment is made per visit, and that would be those service intensity add-ons which represent usually three to seven visits per beneficiary."

Commenter 4 states the EVV requirements in the 21st Century Cures Act addresses Personal Care Services (PCS) and HHCS which observe a structured visit service model, the act does not require EVV for other services provided in the home such as per diem Hospice and Palliative Care. Commenter 4 elaborates on the fact that EVV cannot be appropriately applied to Hospice Services, noting the interdisciplinary approach and unique patient needs. As Hospice services are reimbursed at a per diem rate, providers would be required to manually adjust claims when visits were not actually made, a very time-consuming process. Commenter 4 notes Hospice electronic medical records are not tracked this way and implementing the requirement would be both burdensome and unrealistic. Commenter 4 notes no other state requires EVV of Hospice providers considering the per diem Hospice payment structure, and they ask Maine to follow suit.

Commenter 5 questioned why MaineCare would require EVV for a service that is not included in Section 12006(a) of the 21st Century Cures Act. Commenter 5 asks "If the primary focus of EVV is to address financial integrity concerns on misuse of visits, why would MaineCare implement a visit verification program on a service that does not get paid by the visit like PCS and HHCS?" Commenter 5 reports members of their agency previously met with MaineCare representatives to discuss the implementation of EVV, they state their concerns were

not taken into consideration and they believe MaineCare does not fully understand the implications of EVV for Hospice. Commenter 5 shares the elimination of EVV for Hospice will allow providers to focus on providing high quality, compassionate care that recognizes the impending death of a terminally ill individual.

Commenter 6 stated they share the same concerns expressed by Commenter 1 and Commenter 3. Commenter 6 highlighted the administrative burden cannot be overstated, noting that it is not a process their agency is able to absorb. They fully understand why the EVV requirement would be in place for HHCS and PCS, but not for Hospice.

**Response:** The Department appreciates comments pertaining to EVV and related implementation. EVV is, at its core, technology that electronically records where, when, and to whom health care services are provided through visit records. The Department can then verify that MaineCare members are receiving the services they are meant to receive and that we are paying for, either by matching the visit records to Medicaid claims during the claims adjudication process or by reviewing visit records after the fact through Program Integrity reviews. If the information does not match, the Department can withhold, deny, or recoup payment. EVV implementation for all in-home Hospice Services, including those reimbursed at a per diem rate, will support the Department's goal of improving oversight of Hospice Services and, in turn, reduce the occurrence of fraud, waste, and abuse in home settings. The Department acknowledges the varied nature and frequency of per diem Hospice Services and recognizes the difficulty of employing electronic visit records for such services in the claims adjudication process. In response to these comments, the Department plans to vary the EVV implementation approach by service. The Department intends to utilize electronic visit records in the claims adjudication process only for Service Intensity Add-On Services and Continuous Home Care Service claims – those services that are paid per quarter hour or by an hourly rate (G0155, G0299, and T2043). Due to operational and service model challenges preventing the inclusion of per diem services in the claims adjudication process, the Department will utilize a post-payment review process to ensure these services meet EVV requirements as appropriate. The Department will publish billing guidance for each impacted service, and all claims are subject to post-payment review.

The adopted rule clarifies that Physician Services will not be subject to Hospice EVV requirements as Physician Services are delivered and billed separately as described in MBM Ch. II, Section 90. Also, the Department clarified in the first paragraph of § 43.06-7 that EVV requirements apply only to services provided in-home. EVV is not required for Hospice Services provided in facilities.

The Department appreciates commenters sharing EVV system implementation concerns. Since 2018, the Department has actively communicated and collaborated with hospice providers regarding anticipated EVV requirements and has worked diligently and in good faith with stakeholders to develop an approach that we believe best supports both MaineCare members and hospice providers. In October 2022, the Department initiated a “soft launch” of EVV for hospice providers to give them time to prepare their systems in anticipation of full implementation on January 1, 2023. In response to operational challenges raised by providers during this soft launch period, the Department paused EVV implementation to allow providers additional time to prepare. In parallel, in early 2023 the Department engaged in extensive discussions with hospice stakeholders to incorporate their feedback into the Department's implementation approach; the Department changed its planned approach to per diem services based on this feedback to the post-payment review approach noted in this response. During this time, the Department also moved the implementation date to January 1, 2024 to give providers additional time to prepare. As a

result of these comments on the proposed rule, the Department is moving the effective application date of this provision from January 1, 2024, to July 1, 2024, thus giving providers more time.

The Department has provided, and continues to provide, many communications, resources, and training opportunities to help all providers subject to EVV understand and implement EVV requirements. Providers experiencing difficulties with EVV systems may contact Provider Services at 1-866-690-5585 or sign up for one of the Department's weekly trainings offered on the Maine Health PAS Online Portal.

2. **Comment:** Regarding Chapter II, § 43.01-1.

Commenter 3 supports this change.

**Response:** The Department appreciates this comment. As no additional suggestions were provided, no changes were made to the rule based on this comment.

3. **Comment:** Regarding Chapter II, § 43.01-2.

Commenter 3 is neither for nor against this change.

**Response:** The Department appreciates this comment. As no additional suggestions were provided, no changes were made to the rule based on this comment.

4. **Comment:** Regarding Chapter II, § 43.07-5.

Commenter 3 is neither for nor against this change.

**Response:** The Department appreciates this comment. As no additional suggestions were provided, no changes were made to the rule based on this comment.

5. **Comment:** Regarding Chapter II, § 43.05-4(B).

Commenter 3 supports this change.

**Response:** The Department appreciates this comment. As no additional suggestions were provided, no changes were made to the rule based on this comment.

6. **Comment:** Regarding minor technical edits made throughout Chapter II, § 43.

Commenter 3 is neither for nor against these changes.

**Response:** The Department appreciates this comment. As no additional suggestions were provided, no changes were made to the rule based on this comment.

7. **Comment:** Regarding the addition of Chapter II, § 43.09 and repeal of Chapter III, § 43.

Commenter 3 is neither for nor against these changes.

**Response:** The Department appreciates this comment. As no additional suggestions were provided, no changes were made to the rule based on this comment.

### **List of Changes Made to the Final Rule**

1. In response to comments and also the OAG review, the legal effective date of the EVV provision (Section 43.06-7) has been moved from January 1 to July 1, 2024 and the first paragraph has been amended for clarity.
2. In response to OAG review, Sec. 43.09 (Allowances for Hospice Services), the Department has deleted the sentence: “Rates are based on geographic locations within the state and are updated annually.” In addition, the Department has added provisions explaining the current rate methodology, and that the rates are updated every October 1<sup>st</sup>. The Department also added a fourth column (“units of service”) to make this rule consistent with other MaineCare rules.
3. The Department made five minor technical edits to improve clarity:
  - (a) EVV system requirements described in Chapter II, § 43.06-7(C) were incorporated into Chapter II, § 43.06-7(A).
  - (b) The Department added a new provision, § 43.06-7(C), to the adopted rule, stating “Hospice Services delivered in facility settings are exempt from EVV requirements.”
  - (c) The Department added a new provision, § 43.06-7(D), to the adopted rule, stating “Physician Services are delivered and billed as described in Section 90.”
  - (d) Reimbursement increments described in Chapter II, § 43.07-2 has been updated to include “quarter hour.”
  - (e) Chapter II, § 43.07-2(A) has been updated to reflect “the MaineCare Provider Fee Schedule” as former reference to Chapter III, § 43 is no longer correct.