nonwage component of $39.50 to arrive at the adjusted rate of $98.41. The adjusted rate should then have been divided by .95 to figure the rate for inpatient respite care including the coinsurance ($103.59) and multiplied by .05 to arrive at a cost-share of $5.18.

Comment 5. Several commenters felt that the combining of core service and 24-hour availability requirements caused confusion and led to the interpretation that drugs and biologicals, as non-core service, did not have to be routinely available on a 24-hour basis.

The core service and 24-hour availability requirements have been separated in order to alleviate the apparent confusion over drugs and biologicals. Refer to section 199.4 paragraphs (e)(19)(ii) through (iv) for revisions.

Comment 6. One commentor pointed out the draft CHAMPUS regulatory language does not say exactly what the Medicare regulations do concerning core services, substantially all of which must be routinely provided by employees of the hospice, and those services the hospice must make routinely available on a 24-hour basis. The commentor felt that these subtle distinctions/differences might cause confusion and differing interpretations.

Section 199.4, paragraphs (e)(19)(ii) and (iv) have been revised to reflect current Medicare language regarding core service and 24-hour availability requirements.

Comment 7. Several commentors indicated that section 199.4, paragraphs (e)(19)(iv) and (v)(B)(1) of the proposed rule did not say that the benefit periods may be elected separately at different times as specified in the Medicare hospice regulations. It was recommended that language be added to the referenced sections to clarify that breaks between benefit periods will also be allowed under CHAMPUS.

Section 199.4, paragraph (e)(19)(vi)(B)(*1*) has been revised to indicate that periods of care may be elected separately at different times.

Comment 8. One commentor expressed concern that the preamble language, as well as the proposed regulatory language, left uncertainty regarding whether OCHAMPUS will adopt future changes to the Medicare hospice benefit for its own CHAMPUS benefit so that the two benefits remain nearly identical. It was felt that a divergence in standards between the two programs could cause confusion and adversely affect a hospice's ability to serve CHAMPUS patients.

It is OCHAMPUS' intent to maintain a hospice benefit similar to, if not identical to, that of Medicare. This includes the adoption of all future changes in the Medicare hospice conditions of participation.

Comment 9. One commentor felt that it was important that OCHAMPUS confirm that it intends to use the most current Medicare rates to reimburse hospices for services provided to CHAMPUS beneficiaries and to adopt changes in the Medicare reimbursement methodology as they occur; e.g., Medicare's adoption of an updated, more accurate wage index. The commentor recommended that regulatory language be added to section 199.14, paragraph (g) confirming CHAMPUS' intent to adopt future changes in the Medicare reimbursement methodology.

It is CHAMPUS' intent to use the most current Medicare rates to reimburse hospices for services to CHAMPUS beneficiaries and to adopt all changes to the Medicare reimbursement methodology as they occur. Regulatory language has been added to section 199.14 confirming CHAMPUS' intention of adopting future changes in the Medicare reimbursement methodology (refer to section 199.14, paragraph (g)(2)).

Comment 10. Several commentors felt there was an inconsistency between the preamble and proposed regulatory language regarding the patient's initial certification. It was pointed out that while section 199.4, paragraph (e)(19)(v)(A) requires the patient's initial certification to be provided in writing by the patient's attending physician (if there is one) *and* the hospice medical director or a physician member of the hospice interdisciplinary group, the preamble indicated that written certification must be provided in writing by the attending physician and/or the hospice medical director or a physician member of the hospice interdisciplinary group. The commentor felt that the use of ''and/or'' incorrectly suggested that either the attending physician or the medical director's certification is sufficient for the initial certification.

The patient's initial 90-day certification must be provided in writing by both the patient's attending physician (if there is one) *and* the hospice medical director or physician member of the hospice interdisciplinary group. For subsequent periods the only requirement is certification by the medical director of the hospice or the physician member of the hospice interdisciplinary group.

Comment 11. One commentor recommended that the definition of hospice care at § 199.2, paragraph (b) and at § 199.4, paragraph (e)(19) be amended to add ''palliative care'' to the sentence: ''This type of care emphasizes [palliative care] and supportive service * * *.''

The recommendation has been adopted and incorporated into the final rule.

Comment 12. Several commentors recommended that the term ''nursing home'' be changed to Medicaid-certified nursing facility in § 199.4, paragraph (e)(19)(i)(H).

The commentors' recommendation was adopted and incorporated into the final rule.

Comment 13. One commentor felt that a cross-reference to the Medicare home health agency conditions of participation, 42 CFR 484.36, would be helpful in defining the term ''qualified'' aides in § 199.4, paragraph (e)(19)(i)(E).

A cross-reference has been provided in a note following § 199.4, paragraph (e)(19)(i)(E) which will help in defining the term ''qualified'' home health aide.

Comment 14. One commentor felt that the last sentence in proposed § 199.4, paragraph (e)(19)(i)(F) was not necessary and would only cause confusion since each of the covered services enumerated in § 199.4, paragraphs (e)(19)(i) (A)–(H) are covered only if the service or item is included in the patient's plan of care.

The last sentence has been deleted from the final rule.

Comment 15. One commentor pointed out that Medicare policy defines ''terminal'' as six months or less if the disease runs its normal course.

The definition of ''terminal'' has been expanded wherever cited in the final regulation.

Comment 16. One commentor recommended that the requirement that the hospice must maintain professional management of the patient at all times be expanded to include ''and in all settings.''

The recommendation was adopted and incorporated into the final rule.

Comment 17. One commentor wanted clarification regarding the word ''participating'' in § 199.4, paragraph (e)(19)(i)(H).

A hospice program must be Medicare approved (i.e., a state agency must certify to the Department of Health and Human Services that a hospice meets the conditions of participation established in 42 CFR Part 418—Hospice Care) in order to participate in the CHAMPUS program. The hospice will only be allowed to participate (enter into a participation agreement with CHAMPUS) if there is proof that it is a Medicare approved facility. Respite care is the only type of inpatient care that may be provided in a nursing