BEHAVIOR SERVICES PROTOCOL

FOR BEHAVIOR ANALYST OR BEHAVIOR SPECIALIST SERVICES

A. Behavior Services Assessment

NOTE: Any time that a Behavior Services assessment is approved in accordance with this protocol, the corresponding behavior plan development (including the training of staff on the plan during the first 30 days following its approval) based on the assessment may also be authorized if requested, up to the maximum of six (6) hours. If a Behavior Support Plan is developed, presentation of behavior information at human rights committee meetings, behavior support committee meetings, and planning meetings may be authorized up to the maximum of five (5) hours per year per provider.

1. Is the service recipient age 21 years or older?

   If **YES**, proceed to Question #2.

   If **NO**, stop and deny based on the waiver being the **payor of last resort**. Include the following statement in the denial letter: "Medically necessary Behavior Services are covered under the TennCare Program for children under age 21. Federal law says that we can't pay for care under the waiver that is covered under the TennCare Program [42 CFR, Section 440.180; State Medicaid Manual, Section 4442.1]."

2. Is the request for an initial assessment after enrollment in the waiver or after an interval of *at least* 12 months since the last Behavior Assessment?

   If **YES**, skip to Question #4.

   If **NO**, proceed to Question #3

3. Is a new Behavior Services assessment needed because the service recipient was discharged from services by a Behavior Services provider who withdrew from participation as a waiver services provider?

   If **YES**, proceed to Question #4.

   If **NO**, skip to Question #5.

4. Is there sufficient information in the Individual Support Plan (ISP) to document that the service recipient currently has behavioral issues that (1) place the service recipient or others at imminent risk of harm; (2) have resulted in significant damage to property; or (3) significantly impair the service recipient's ability to live in the home and community setting or participate in normal community activities?

   If **YES**, skip to Question #6.

   If **NO**, stop and deny as **not medically necessary**. The unmet medical necessity criteria and the applicable prongs of medical necessity must be specified in the denial letter. Applicable prongs of medical necessity may include:

   - "Not necessary to treat;"
   - "Not safe and effective" (*"The type, scope, frequency, intensity, and duration of a medical item or service must not be in excess of the enrollee's needs."*); and
   - "Not the least costly adequate alternative."

   In addition, deny as a **non-covered service** any Behavior Services assessment requested which *exceeds* the waiver service limit of two (2) assessments per service recipient per program year.

   NOTE: To the extent there is a medically necessary waiver-covered service alternative, such service will be specified in the denial notice.

5. Is there documentation in the ISP that the service recipient has recently developed new behavioral issues that (1) place the service recipient or others at imminent risk of harm; (2) have resulted in significant damage to property; or (3) significantly impair the service recipient's ability to live in the home and community setting or participate in normal community activities?

   If **YES**, proceed to Question #6.

   If **NO**, stop and deny as **not medically necessary**. The unmet medical necessity criteria and the applicable prongs of medical necessity must be specified in the denial letter. Applicable prongs of medical necessity may include:

   - "Not necessary to treat;"
   - "Not safe and effective" (*"The type, scope, frequency, intensity, and duration of a medical item or service must not be in excess of the enrollee's needs."*); and
   - "Not the least costly adequate alternative."

   In addition, deny as a **non-covered service** any Behavior Services assessment requested which *exceeds* the waiver service limit of two (2) assessments per service recipient per program year.

   NOTE: To the extent there is a medically necessary waiver-covered service alternative, such service will be specified in the denial notice.

6. Has the waiver service limit of two (2) Behavior Services assessments per service recipient per year been exceeded for the current program year?

   If **YES**, stop and deny as a **non-covered service** based on the waiver service limit of two (2) Behavior Services assessments per service recipient per program year.

   If **NO**, stop and approve the assessment.

B *Initial* Behavior Services (excluding assessment)

NOTE: This section applies to service recipients who are **not** currently approved for Behavior Analyst or Behavior Specialist Services through the waiver.

1. Is the service recipient age 21 years or older?

   If **YES**, proceed to Question #2.

   If **NO**, stop and deny based on the waiver being the **payor of last resort**. Include the following statement in the denial letter: "Medically necessary Behavior Services are covered under the TennCare Program for children under age 21. Federal law says that we can't pay for care under the waiver that is covered under the TennCare Program [42 CFR, Section 440.180; State Medicaid Manual, Section 4442.1]."

2. Medical necessity review questions:

   a. Is there sufficient information in the Individual Support Plan (ISP) to document that the service recipient currently has behavioral issues that (1) place the service recipient or others at imminent risk of harm; (2) have resulted in significant damage to property; or (3) significantly impair the service recipient's ability to live in the home and community setting or participate in normal community activities; **AND**

   b. Is there sufficient information in the ISP and/or supporting documentation to conclude that, based on the service recipient's behavioral issues, the behavioral needs cannot be adequately met without Behavior Services provided by a Behavior Analyst or Behavior Specialist (i.e., paid and unpaid caregivers would not otherwise be able to adequately meet the specified behavioral treatment needs); **AND**

   c. Is there sufficient documentation in the ISP and/or supporting documentation to conclude that the provision of Behavior Services can be reasonably expected to achieve measurable and sustained functional gains for the service recipient; **AND**

   d. Are there clearly defined measurable Behavior Services goals in the ISP and/or supporting documentation which are reasonable and appropriate given the person's current age and health status?

   If **YES** ***to all four*** of the criteria specified in "2.a" through "2.d" above, proceed to Question #3.

   If **NO to *any*** criterion specified in "2.a" through "2.d" above, stop and deny as **not medically necessary**. All of the unmet medical necessity criteria from "2.a" through "2.d" above and the applicable prongs of medical necessity must be specified in the denial letter. Applicable prongs of medical necessity may include:

   - "Not necessary to treat;"
   - "Not safe and effective" (*"The type, scope, frequency, intensity, and duration of a medical item or service must not be in excess of the enrollee's needs."*); and
   - "Not the least costly adequate alternative."

3. Is the frequency (per week, per month, etc.), amount (# of units) and duration (# of weeks or months) of Behavior Services requested *consistent with* and not *in excess of* the amount of services needed to achieve measurable and sustained functional gains for the service recipient?

   NOTE: To the maximum extent possible and appropriate, Behavior Services by a Behavior Analyst or Behavior Specialist should be utilized to develop a behavior plan that can be implemented by caregivers (including, but not limited to family members, paid personal assistants, and residential services staff) across activities and settings in order to achieve the maximum therapeutic benefit.

Periodic services by the Behavior Analyst or Behavior Specialist should be authorized *only* as necessary to support the ongoing implementation of the behavior plan, or to modify the behavior plan in response to the changing behavioral needs of the service recipient.

If **YES**, stop and approve the amount of Behavior Services requested. Such approval may specify that concurrent review will be conducted after a specified period of time (see attached guidelines) to ensure that Behavior Services continue to be medically necessary. Such determination shall be based on current medical records provided by the Behavior Analyst or Behavior Specialist in response to the request for concurrent review.

If **NO**, approve that portion of the total amount of Behavior Services requested that is *consistent with* the amount of Behavior Services needed to achieve measurable and sustained functional gains for the service recipient. Deny as **not medically necessary** that portion of the total amount of Behavior Services requested that is *in excess of* the amount of services needed to achieve measurable and sustained functional gains for the service recipient. The unmet medical necessity criteria and the applicable prongs of medical necessity must be specified in the denial letter. Applicable prongs of medical necessity may include:

- "Not necessary to treat;"
- "Not safe and effective" (*"The type, scope, frequency, intensity, and duration of a medical item or service must not be in excess of the enrollee's needs."*); and
- "Not the least costly adequate alternative."

If Behavior Services are approved for a lesser duration of service than requested, include the following in the denial letter: "Based on the medical records we have now, we can only tell that you need this care for ___ days. We must see if the care we have approved helps you before we can decide if you need more care. What if you think you will need this care for *more* than ___ days? Before the ___ days are over, you can ask for more care. OR, if you think your *current* medical records already show that you will need the care for *more* than ___ days, you can appeal.

C. *Continuation* of Behavior Services (excluding assessment)

NOTE: This section applies to service recipients who are *currently* approved for Behavior Analyst or Behavior Specialist Services through the waiver and who request *continuation* of Behavior Services or an *increase* in services.

1. Is the service recipient age 20 years or older?

   NOTE: If a service recipient is age 20 years (but not yet age 21), transition of Behavior Services to the TennCare Managed Care Contractor (MCC) will **not** be initiated since transition back to waiver services would likely be required upon attaining 21 years of age.

   If **YES**, skip to Question #3.

   If **NO**, proceed to Question #2.

2. Is the request for an *increase* in the frequency (per week, per month, etc.) or amount (# of units) of Behavior Services?

   If **YES**, **deny** the requested ***increase*** in the frequency or amount of Behavior Services based on the waiver being the **payor of last resort**. **Approve** the ***continuation*** of Behavior Services at the *current* level pending transition of medically necessary Behavior Services to the TennCare MCC. Include the following statement in the denial letter: "Medically necessary Behavior Services are covered under the TennCare Program for children under age 21. For now, we'll keep paying for the same amount of care you've been getting while we work with your MCC to take over **all** of your

medically necessary Behavior Services. BUT, we can't pay for more Behavior Services under the waiver than you've been getting. If you need more Behavior Services, you must ask your MCC to pay for them. Your MCC will pay for medically necessary Behavior Services. Federal law says that we can't pay for care under the waiver that is covered under the TennCare Program [42 CFR, Section 440.180; State Medicaid Manual, Section 4442.1]."

In order to facilitate a coordinated approach to the delivery of Behavior Services, if an increase is requested and denied, initiate the process for transition of the *currently* approved level of Behavior Services to the MCC as specified below.

If **NO**, **or upon denial of a requested *increase*** in the frequency or amount of Behavior Services as noted above, initiate the process for transition of **all** medically necessary Behavior Services to the TennCare Managed Care Contractor (MCC) as follows:

a. Approve the *continuation* of Behavior Services at the *current* level pending transition of medically necessary Behavior Services to the TennCare MCC. **No increases** in **waiver** Behavior Services should be authorized for children under age 20.

b. Notify the service recipient's MCC regarding plans to transition Behavior Services. Include in such notification a copy of all relevant medical information, including a copy of the ISP, behavior services assessment(s) and behavior plan(s) indicating the behavioral issues that (1) place the service recipient or others at imminent risk of harm; (2) have resulted in significant damage to property; or (3) significantly impair the service recipient's ability to live in the home and community setting or participate in normal community activities, as well as measurable therapeutic goals and objectives, service notes and other documentation supporting the service recipient's progress in meeting these goals, and any requested *increase* in the *currently* approved level of Behavior Services.

c. The MCC may request additional medical information as needed from the treating physician and/or Behavior Analyst or Behavior Specialist, and may complete an in-home evaluation in order to make an individualized determination regarding the amount of Behavior Services that are medically necessary going forward. Accordingly and since such currently approved Behavior Services are being provided under the waiver, the MCC may take additional time to make this determination and to arrange needed care. DMRS will notify TennCare regarding any unreasonable delays by the MCC in completing transition activities.

d. Prior authorization of any requested *increase* in the currently approved level of Behavior Services must be completed by the MCC within the applicable prior authorization timeline (not to exceed 14 days as specified in federal regulation).

e. Coordinate with the MCC regarding the appropriate date to transition medically necessary care, as determined by the MCC. There should be **no gaps in service delivery**. The transition should not occur until a TennCare MCC provider is identified, all applicable pre-service activities are completed, and a *specific* date is determined that the provider can begin delivering medically necessary care as authorized by the MCC under the TennCare program. Such date must allow adequate time for advance notice of termination of Behavior Services under the waiver.

f. Issue *at least* 20 days advance notice (inclusive of mail time) of termination of **waiver** Behavior Services, as applicable, indicating that the services will be terminated on the 21st day from the date of the notice or upon the specific date of transition to Behavior Services by the MCC under the TennCare program, as applicable. The legal basis for such action is **payor of last resort**. Include the following statement in the denial letter: "Medically necessary Behavior Services are covered under the TennCare Program for children under age 21. Federal law says that we can't pay for care under the waiver that is covered under the TennCare Program [42 CFR, Section 440.180; State Medicaid Manual, Section 4442.1]." The previously approved level of **waiver** Behavior Services shall continue to be authorized and reimbursed pending such advance notice period.

The service recipient may file a timely appeal regarding the termination of **waiver** Behavior Services within 40 days from the date of the notice (inclusive of mail time) or *any time prior* to the effective date of the action (i.e., the date that waiver Behavior Services are terminated). If an appeal is received within 20 days from the date of notice (inclusive of mail time) or *any time prior* to the effective date of the action, the service recipient may request continuation of the previously approved **waiver** Behavior Services pending resolution of the appeal, in which case such previously approved **waiver** Behavior Services shall continue pending notification from TennCare that the appeal has been resolved and that continuation of benefits may be stopped.

g. If the MCC denies the request for coverage of Behavior Services based on medical necessity, issue a written notice of termination of Behavior Services which states that the waiver is the payor of last resort and that the MCC has determined that the service is not medically necessary.

   The service recipient may file a timely appeal regarding the termination of **waiver** Behavior Services within 40 days from the date of the notice (inclusive of mail time) or *any time prior* to the effective date of the action (i.e., the date that waiver Behavior Services are terminated). If an appeal is received within 20 days from the date of notice (inclusive of mail time) or *any time prior* to the effective date of the action, the service recipient may request continuation of the previously approved **waiver** Behavior Services pending resolution of the appeal, in which case such previously approved **waiver** Behavior Services shall continue pending notification from TennCare that the appeal has been resolved and that continuation of benefits may be stopped.

   Include the following statement in the denial letter: "Medically necessary Behavior Services are covered under the TennCare Program for children under age 21. Federal law says that we can't pay for care under the waiver that is covered under the TennCare Program [42 CFR, Section 440.180; State Medicaid Manual, Section 4442.1]."

3. Medical necessity review questions for *continuation* of the *currently* approved level of Behavior Services for an adult service recipient age 20 or older plus any requested *increase* in such services, as applicable:

   a. Is there sufficient information in the Individual Support Plan (ISP) to document that the service recipient *continues* to have behavioral issues that (1) place the service recipient or others at imminent risk of harm; (2) result in significant damage to property; or (3) significantly impair the service recipient's ability to live in the home and community setting or participate in normal community activities; **AND**

   b. Is there sufficient information in the ISP and/or supporting documentation to conclude that, based on the service recipient's behavioral issues, the behavioral needs *still* cannot be adequately met without Behavior Services provided by a Behavior Analyst or Behavior Specialist (i.e., paid and unpaid caregivers would *still* not otherwise be able to adequately meet the specified behavioral treatment needs); **AND**

   c. Is there sufficient information in the ISP and/or supporting documentation to demonstrate:

      (1) Progress toward defined behavior in terms of measurable functional gains for the service recipient that can be generalized to settings outside the immediate treatment environment (e.g., reduced instances of aggression toward other persons or property or increased participation in normal life activities with minimal behavioral disruption); **OR**

      (2) A significant and substantial increase in behavioral episodes during the past 30 days that place the service recipient or others at imminent risk of harm; **AND**

d. Are clearly defined measurable Behavior Services goals as specified in the ISP and/or supporting documentation *still* reasonable and appropriate given the person's current age and health status?

If **YES** ***to all*** of the criteria specified in "3.a" through "3.d" above, proceed to Question #4.

If **NO to *any*** criterion specified in "3.a" through "3.d" above, stop and deny as **not medically necessary**. All of the unmet medical necessity criteria from "3.a" through "3.d" above and the applicable prongs of medical necessity must be specified in the denial letter. Applicable prongs of medical necessity may include:

- "Not necessary to treat;"
- "Not safe and effective" (*"The type, scope, frequency, intensity, and duration of a medical item or service must not be in excess of the enrollee's needs."*); and
- "Not the least costly adequate alternative."

4. Is the frequency (per week, per month, etc.), amount (# of units) and duration (# of weeks or months) of *continued* Behavior Services requested plus any requested increase in such services, as applicable, *consistent with* and not *in excess of* the amount of services *still* needed to achieve measurable and sustained functional gains for the service recipient?

To the extent that the request includes any *increase* in the frequency, amount, or duration of Behavior Services, is there sufficient information in the ISP and/or supporting documentation to demonstrate that the service recipient's needs have changed and/or the previously approved frequency, amount, or duration of Behavior Services is no longer sufficient to achieve measurable and sustained functional gains for the service recipient?

NOTE: To the maximum extent possible and appropriate, Behavior Services by a Behavior Analyst or Behavior Specialist should be utilized to develop a behavior plan that can be implemented by caregivers (including, but not limited to family members, paid personal assistants, and residential services staff), across activities and settings in order to achieve the maximum therapeutic benefit. Periodic services by the Behavior Analyst or Behavior Specialist should be authorized *only* as necessary to support the ongoing implementation of the behavior plan, or to modify the behavior plan in response to the changing behavior needs of the service recipient.

If **YES**, stop and approve the *continuation* of Behavior Services and any *increase* as requested. Such approval may specify that concurrent review will be conducted after a specified period of time (see attached guidelines) to ensure that Behavior Services continue to be medically necessary. Such determination shall be based on medical records provided by the Behavior Analyst or Behavior Specialist in response to the request for concurrent review.

If **NO**, approve that portion of the total amount of Behavior Services requested that is *consistent with* the amount of Behavior Services needed to achieve measurable and sustained functional gains for the service recipient.

- If the request for Behavior Services was submitted as an ISP amendment or as an annual update of the ISP, **deny** as **not medically necessary** that portion of the total amount of Behavior Services requested that is *in excess of* the amount of Behavior Services needed to achieve measurable and sustained functional gains for the service recipient; **OR**

- If the protocol was used for a DMRS-initiated review of an ISP and cost plan (i.e., rather than review of an ISP amendment or annual ISP update), issue 20 days advance notice (inclusive of mail time) of reduction or termination of services, as applicable, indicating that the services will be reduced or terminated on the 21st day from the date of the notice. The previously approved Behavior Services shall continue to be authorized and reimbursed pending such advance notice period.

The unmet medical necessity criteria and the applicable prongs of medical necessity must be specified in the denial letter. Applicable prongs of medical necessity may include:

- "Not necessary to treat;"
- "Not safe and effective" (*"The type, scope, frequency, intensity, and duration of a medical item or service must not be in excess of the enrollee's needs."*); and

- "Not the least costly adequate alternative."

The service recipient may file a timely appeal regarding the reduction/termination of Behavior Services within 40 days from the date of the notice (inclusive of mail time) or *any time prior* to the effective date of the action (i.e., the date the services are reduced or terminated). If an appeal is received within 20 days from the date of notice (inclusive of mail time) or *any time prior* to the effective date of the action, the service recipient may request continuation of the previously approved Behavior Services pending resolution of the appeal, in which case such previously approved Behavior Services shall continue pending notification from TennCare that the appeal has been resolved and that continuation of benefits may be stopped.

If *continuation* of Behavior Services is approved for a lesser duration of service than requested, include the following in the denial letter: "Based on the medical records we have now, we can only tell that you need this care for ___ days. We must see if the care we have approved helps you before we can decide if you need more care. What if you think you will need this care for *more* than ___ days? Before the ___ days are over, you can ask for more care. OR, if you think your *current* medical records already show that you will need the care for *more* than ___ days, you can appeal.