NURSING SERVICES PROTOCOL

A. *New* Request for Nursing Services

(NOTE: This section applies to service recipients who are **not** currently approved for Nursing 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 as a **non-covered service** based on the waiver service definition **AND** based on the waiver being the **payor of last resort**. Include the following in the denial letter:

   - "Nursing care for children under age 21 is not covered under the waiver. The approved waiver says that all nursing care for children is provided through the TennCare Program." Cite the page number of the waiver service definition from the applicable waiver.
   - "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. Does the request for nursing services include the following services which are excluded from coverage by the waiver service definition:

   a. Nursing assessment; **OR**

   b. Nursing oversight/supervision; **OR**

   c. Non-nursing functions which are not required to be performed by a registered nurse or licensed practical nurse?

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

   If **NO**, skip to Question #4.

3. Is the request for nursing services solely for services which are excluded from coverage by the waiver service definition (i.e., nursing assessment; nursing oversight/supervision; or non-nursing functions)?

   If **YES**, stop and deny as **non-covered** based on the waiver service definition.

   If **NO**, proceed to Question #4.

4. Medical necessity review questions:

   a. Is there an order by a physician, physician assistant, or nurse practitioner for skilled nursing services which specifies the specific skilled nursing functions to be performed and the frequency such skilled nursing functions are requested; **AND**

   b. Is there sufficient information in the Individual Support Plan (ISP) to document that the service recipient has a medical diagnosis and treatment needs that would justify the provision of skilled nursing services by a registered nurse or licensed practical nurse, (excluding nursing assessment and nursing oversight and supervision)?

   If **YES** ***to both*** of the criteria specified in "4.a" through "4.b" above, proceed to Question #5.

   If NO to either criterion specified in "4.a" through "4.b" above, stop and deny the Nursing Services as **not medically necessary**. The unmet medical necessity criteria from "4.a" through "4.b" above and the applicable prongs of medical necessity must be specified in the denial letter. Applicable prongs of medical necessity may include:

   - "Not ordered by the treating physician;"
   - "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 portion of the Nursing Services requested which is outside the scope of the waiver service definition (e.g., nursing assessment, nursing oversight and supervision, and non-nursing functions which are not required to be performed by a registered nurse or licensed practical nurse).

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

5. Except as specified below, is the frequency (per day, per week, per month, etc.), amount (# of units) and duration (# of weeks or months) of Nursing Services requested *consistent with* and not *in excess of* the amount of services needed to perform *only* those skilled nursing functions ordered by the treating physician, physician assistant, or nurse practitioner (excluding nursing assessment and nursing oversight and supervision) which state law requires to be performed by a registered nurse or licensed practical nurse?

   NOTE: When skilled nursing functions, as specified above, are medically necessary on an intermittent or scheduled basis, and the frequency of such intermittent or scheduled skilled nursing functions is such that a waiver Nursing Services provider cannot be secured to provide Nursing Services at the frequency at which they are needed (generally *at least* every 2-3 hours), approval may be granted for the nurse to remain in the home for a continuous period of time *only* as required to perform the skilled nursing functions at the frequency with which they are medically necessary.

   While skilled nursing services will be authorized *only* as medically necessary to perform skilled nursing functions, or for a continuous period of time when required to perform the skilled nursing functions at the frequency with which they are medically necessary, as specified above, a nurse who is in the home to perform skilled nursing functions may also perform non-skilled services for the service recipient, such as hands-on assistance with activities of daily living, so long as such care can be appropriately provided while also ensuring that the service recipient's nursing needs are safely and effectively met. It is not medically necessary to have both a nurse and a personal assistant present at the same time if the nurse is able to meet both the nursing and non-nursing needs of the service recipient. A nurse that is providing skilled nursing services to a service recipient receiving residential services may also assist residential staff in meeting the personal care needs of the service recipient, so long as such assistance can be appropriately provided while also ensuring that the service recipient's nursing needs are safely and effectively met.

If **YES**, stop and approve the amount of Nursing Services requested. Such approval may specify that concurrent review will be conducted after a specified period of time to ensure that Nursing Services continue to be medically necessary. Such determination shall be based on current medical records provided by a registered nurse or licensed practical nurse and/or physician, physician assistant, or nurse practitioner in response to the request for concurrent review.

If **NO**, approve that portion of the total amount of Nursing Services requested that is *consistent with* the amount of Nursing Services needed to perform *only* those skilled nursing functions ordered by the treating physician, physician assistant, or nurse practitioner (excluding nursing assessment and nursing oversight and supervision) which state law requires to be performed by a registered nurse or licensed practical nurse, or a continuous period of Nursing Services *only* as required to perform the skilled nursing functions at the frequency with which they are medically necessary, as specified above. Deny as **not medically necessary** that portion of the total amount of Nursing Services requested that is *in excess of* the amount of services needed to perform *only* those skilled nursing functions ordered by the treating physician, physician assistant, or nurse practitioner, (excluding nursing assessment and nursing oversight and supervision) which state law requires to be performed by a registered nurse or licensed practical nurse, or which exceeds the continuous period of Nursing Services required to perform the skilled nursing functions at the frequency with which they are medically necessary, as specified above. 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 ordered by the treating physician;"
- "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 portion of the Nursing Services requested which is outside the scope of the waiver service definition (e.g., nursing assessment, nursing oversight and supervision, and non-nursing functions which are not required to be performed by a registered nurse or licensed practical nurse).

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

If Nursing Services are approved for 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, your doctor 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.

B. *Continuation* of Nursing Services

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

To ensure coordination of ongoing services through a single service provider, the following shall apply:

- If a service recipient age 20 and older is receiving waiver-funded Nursing Services and develops an acute need for additional nursing care that would otherwise be provided by the MCO, the additional Nursing Services may be approved through the waiver if medically necessary, so that all of the nursing care would be provided through the waiver.

- If a service recipient age 20 and older requires an amount of nursing services that would exceed the TennCare coverage limits (either total number of hours or number of visits per day) applicable to part-time and intermittent home health nursing services, and the service recipient does not qualify for TennCare private duty nursing based on specified coverage limitations, all medically nursing services may be covered under the waiver. To the extent that a person was receiving TennCare nursing services in excess of specified coverage limitations at the time such coverage limitations are applied, the TennCare-covered nursing services, to the extent medically necessary, may be transitioned to waiver Nursing Services, if the service recipient so desires, such that all of the nursing care would be provided through the waiver by the same provider. The service recipient may also elect to receive TennCare part-time and intermittent home health nursing services up to the specified coverage limitations, and receive additional medically necessary Nursing Services under the waiver. The **total** amount of nursing services (including both TennCare part-time and intermittent skilled nursing services and waiver Nursing Services) should be consistent with and not in excess of the level of skilled nursing services needed by the service recipient.

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

   NOTE: Pending further clarification of the waiver Nursing Services definition, if a service recipient is age 20 years (but not yet age 21), transition of Nursing Services to the TennCare MCO 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 #5.

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

2. Does the request for nursing services include the following services which are excluded from coverage in the waiver service definition):

   a. Nursing assessment; **OR**

   b. Nursing oversight/supervision; **OR**

   c. Non-nursing functions which are not required to be performed by a registered nurse or licensed practical nurse?

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

   If **NO**, skip to Question #4.

3. Is the request for nursing services solely for services which are excluded from coverage by the waiver service definition (i.e., nursing assessment; nursing oversight/supervision; or non-nursing functions)?

   If **YES**, stop and deny as **non-covered** based on the waiver service definition.

   If previously approved Nursing Services are reduced or terminated (including on the grounds that such service is non-covered based on the waiver service definition), 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 Nursing Services shall continue to be authorized and reimbursed pending such advance notice period.

   The service recipient may file a timely appeal regarding the reduction/termination of Nursing 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 previously approved Nursing Services pending resolution of the appeal. While continuation of benefits is typically not available for a non-covered service, because Nursing Services is a covered benefit and disputes often involve an issue of medical necessity as well as coverage, such previously approved Nursing Services shall continue pending notification from TennCare that the appeal has been resolved and that continuation of benefits may be stopped.

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

If **NO**, proceed to Question #4.

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

If **YES**, deny the requested ***increase*** in the frequency or amount of Nursing Services based on the waiver being the **payor of last resort**. Approve the ***continuation*** of Nursing Services at the *current* level pending transition of medically necessary Nursing Services to the TennCare MCO. Include the following statement in the denial letter: "Medically necessary Nursing 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 MCO to take over **all** of your medically necessary Nursing Services. BUT, we can't pay for more waiver services than you've been getting. If you need more Nursing Services, you must ask your MCO to pay for them. Your MCO will pay for medically necessary Nursing 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 Nursing Services, if an increase is requested and denied, initiate the process for transition of the *currently* approved level of Nursing Services to the MCO as specified below.

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

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

b. Notify the service recipient's MCO regarding plans to transition Nursing Services. Include in such notification a copy of all relevant medical information, including the order by a physician, physician assistant, or nurse practitioner for the Nursing Services which includes the specific skilled nursing functions to be performed and the frequency such skilled nursing functions are requested, a copy of the ISP, nursing assessment(s) and plan(s) of care indicating the medical diagnosis and treatment needs that would justify the provision of skilled nursing services by a registered nurse or licensed practical nurse (excluding nursing assessment and nursing oversight and supervision) as well as therapeutic nursing 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 Nursing Services.

c. The MCO may request additional medical information as needed from the treating physician and/or registered nurse or licensed practical nurse, and may complete an in-home evaluation in order to make an individualized determination regarding the amount of Nursing Services that are medically necessary going forward. Accordingly and since such currently approved Nursing Services are being provided under the waiver, the MCO may take

additional time to make this determination and to arrange needed care. DMRS will notify TennCare regarding any unreasonable delays by the MCO in completing transition activities.

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

e. Coordinate with the MCO regarding the appropriate date to transition medically necessary care, as determined by the MCO. There should be **no gaps in service delivery**. The transition should not occur until a TennCare MCO 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 MCO under the TennCare program. Such date must allow adequate time for advance notice of termination of Nursing Services under the waiver.

f. Issue *at least* 20 days advance notice (inclusive of mail time) of termination of **waiver** Nursing 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 Nursing Services by the MCO under the TennCare program, as applicable. The legal basis for such termination is that Nursing Services for children under age 21 is a **non-covered service** based on the waiver service definition **AND** that the waiver is the **payor of last resort**. Include the following in the denial letter:

- "Nursing care for children under age 21 is not covered under the waiver. The approved waiver says that all nursing care for children is provided through the TennCare Program." Cite the page number of the waiver service definition from the applicable waiver.

- "Nursing 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** Nursing 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** Nursing 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 Nursing 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** Nursing Services pending resolution of the appeal, in which case such previously approved **waiver** Nursing Services shall continue pending notification from TennCare that the appeal has been resolved and that continuation of benefits may be stopped.

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

The service recipient may file a timely appeal regarding the termination of **waiver** Nursing 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 Nursing 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** Nursing Services pending resolution of the appeal, in which case such previously approved **waiver** Nursing 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 Nursing 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]."

5. Does the request for nursing services include the following services which are excluded from coverage in the waiver service definition:

   a. Nursing assessment; **OR**

   b. Nursing oversight/supervision; **OR**

   c. Non-nursing functions which are not required to be performed by a registered nurse or licensed practical nurse?

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

   If **NO**, skip to Question #7.

6. Is the request for nursing services solely for services which are excluded from coverage by the waiver service definition (i.e., nursing assessment; nursing oversight/supervision; or non-nursing functions)?

   If **YES**, stop and proceed as follows:

   - If the request for Nursing Services was submitted as an ISP amendment or as an annual update of the ISP, deny as **non-covered** based on the waiver service definition; **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 Nursing Services shall continue to be authorized and reimbursed pending such advance notice period.

     The service recipient may file a timely appeal regarding the reduction/termination of Nursing 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 Nursing Services pending resolution of the appeal. While continuation of benefits is typically not available for a non-covered service, because Nursing Services is a covered benefit and disputes often involve an issue of medical necessity as well as coverage, such previously approved Nursing Services shall continue pending notification from TennCare that the appeal has been resolved and that continuation of benefits may be stopped.

   If **NO**, proceed to Question #7.

7. Medical necessity review questions:

   a. Is there an order by a physician, physician assistant, or nurse practitioner for skilled nursing services which specifies the specific skilled nursing functions to be performed and the frequency such skilled nursing functions are requested; **AND**

b. Is there sufficient information in the Individual Support Plan (ISP) to document that the service recipient has a medical diagnosis and treatment needs that would justify the provision of skilled nursing services by a registered nurse or licensed practical nurse (excluding nursing assessment and nursing oversight and supervision).

If **YES *to both*** of the criteria specified in "7.a" through "7.b" above, proceed to Question #8.

If **NO to *either*** criterion specified in "7.a" through "7.b" above, stop and deny as **not medically necessary**. All of the unmet medical necessity criteria from "7.a" through "7.b" above and the applicable prongs of medical necessity must be specified in the denial letter. Applicable prongs of medical necessity may include:

- "Not ordered by the treating physician;"
- "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 portion of the Nursing Services requested which is outside the scope of the waiver service definition (e.g., nursing assessment, nursing oversight and supervision, and non-nursing functions which are not required to be performed by a registered nurse or licensed practical nurse).

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

8. Except as specified below, is the frequency (per day, per week, per month, etc.), amount (# of units) and duration (# of weeks or months) of *continued* Nursing 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 needed to perform *only* those skilled nursing functions ordered by the treating physician, physician assistant, or nurse practitioner (excluding nursing assessment and nursing oversight and supervision) which state law requires to be performed by a registered nurse or licensed practical nurse?

NOTE: When skilled nursing functions, as specified above, are medically necessary on an intermittent or scheduled basis, and the frequency of such intermittent or scheduled skilled nursing functions is such that a waiver Nursing Services provider cannot be secured to provide Nursing Services at the frequency at which they are needed (generally *at least* every 2-3 hours), approval may be granted for the nurse to remain in the home for a continuous period of time *only* as required to perform the skilled nursing functions at the frequency with which they are medically necessary.

While skilled nursing services will be authorized *only* as medically necessary to perform skilled nursing functions, or for a continuous period of time when required to perform the skilled nursing functions at the frequency with which they are medically necessary, as specified above, a nurse who is in the home to perform skilled nursing functions may also perform non-skilled services for the service recipient, such as hands-on assistance with activities of daily living, so long as such care can be appropriately provided while also ensuring that the service recipient's nursing needs are safely and effectively met. It is not medically necessary to have both a nurse and a personal assistant present at the same time if the nurse is able to meet both the nursing and non-nursing needs of the service recipient. A nurse that is providing skilled nursing services to a service recipient receiving residential services may also assist residential staff in meeting the personal care needs of the service recipient, so long as such assistance can be appropriately provided while also ensuring that the service recipient's nursing needs are safely and effectively met.

To the extent that the request includes any increase in the frequency, amount, or duration of Nursing 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 Nursing Services is no longer sufficient needed to perform *only* those skilled nursing

functions ordered by the treating physician, physician assistant, or nurse practitioner (excluding nursing assessment and nursing oversight and supervision) which state law requires to be performed by a registered nurse or licensed practical nurse, or to provide a continuous period of Nursing Services *only* as required to perform the skilled nursing functions at the frequency with which they are medically necessary, as specified above?

If **YES**, stop and approve the *continuation* of Nursing 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 Nursing Services continue to be medically necessary. Such determination shall be based on medical records provided by the registered nurse or licensed practical nurse and/or physician, physician assistant, or nurse practitioner in response to the request for concurrent review.

If **NO**, approve that portion of the total amount of Nursing Services requested that is *consistent with* the amount of Nursing Services needed to needed to perform *only* those skilled nursing functions ordered by the treating physician, physician assistant, or nurse practitioner (excluding nursing assessment and nursing oversight and supervision) which state law requires to be performed by a registered nurse or licensed practical nurse, or a continuous period of Nursing Services *only* as required to perform the skilled nursing functions at the frequency with which they are medically necessary, as specified above.

- If the request for Nursing 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 Nursing Services requested that is in excess of the amount of Nursing Services needed to perform *only* those skilled nursing functions ordered by the treating physician, physician assistant, or nurse practitioner (excluding nursing assessment and nursing oversight and supervision) which state law requires to be performed by a registered nurse or licensed practical nurse, or which exceeds the continuous period of Nursing Services required to perform the skilled nursing functions at the frequency with which they are medically necessary, as specified above; **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 Nursing 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."

In addition, deny as a **non-covered service** any portion of the Nursing Services requested which is outside the scope of the waiver service definition (e.g. nursing assessment, nursing oversight and supervision, and non-nursing functions which are not required to be performed by a registered nurse or licensed practical nurse).

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

The service recipient may file a timely appeal regarding the reduction/termination of Nursing 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 Nursing Services pending resolution of the appeal, in which case such previously approved Nursing Services shall continue pending notification from TennCare that the appeal has been resolved and that continuation of benefits may be stopped.

If *continuation* of Nursing 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, your doctor 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.