

Notice of  
Rulemaking Hearing  
Tennessee Department of Finance and Administration  
Bureau of TennCare

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1<sup>st</sup> Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 19<sup>th</sup> day March 2007.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

Substance of Proposed Rules

Paragraph (22) of rule 1200-13-13-.01 Definitions (Cost-effective Alternative Service) is deleted in its entirety and replaced with a new paragraph (22) which shall read as follows:

- (22) COST-EFFECTIVE ALTERNATIVE SERVICE shall mean a service that is not a covered service but that is approved by TennCare and CMS and provided at an MCC's discretion. TennCare enrollees are not entitled to receive these services. Cost-effective alternative services may be provided because they are either (1) alternatives to covered Medicaid services that, in the MCC's judgment, are cost-effective or (2) preventative in nature and offered to avoid the development of conditions that, in the MCC's judgment, would require more costly treatment in the future. Cost-effective alternative services need not be determined medically necessary except to the extent that they are provided as an alternative to covered Medicaid services. Even if medically necessary, cost effective alternative services are not covered services and are provided only at an MCC's discretion.

Paragraph (45) of rule 1200-13-13-.01 Definitions (Home Health Services) is deleted in its entirety and replaced with a new paragraph (45) which shall read as follows:

- (45) HOME HEALTH SERVICES shall mean:
  - (a) Any of the following services ordered by a treating physician and provided by a licensed home health agency pursuant to a plan of care at an enrollee's place of residence:
    1. Part-time or intermittent nursing services;
    2. Home health aide services; or
    3. Physical therapy, occupational therapy, or speech pathology and audiology services.

- (b) Medical supplies, equipment, and appliances ordered by a treating physician and suitable for use at an enrollee's place of residence.
- (c) Home health providers may only provide services to the recipient that have been ordered by the treating physician and are pursuant to a plan of care and may not provide other services such as general child care services, cleaning services or preparation of meals, or services to other household members. For this reason and to the extent that home services are provided to a person under 18 years of age, a responsible adult (other than the home healthcare provider) must be present at all times in the home during provision of home health services.

Paragraph (62) of rule 1200-13-13-.01 Definitions (Medical Records) is deleted in its entirety and replaced with a new paragraph (62) which shall read as follows:

- (62) MEDICAL RECORD shall mean all medical histories; records, reports and summaries; diagnoses; prognoses; records of treatment and medication ordered and given; x-ray and radiology interpretations; physical therapy charts and notes; lab reports; other individualized medical documentation in written or electronic format; and analyses of such information.

Paragraph (66) of rule 1200-13-13-.01 Definitions (Medically Necessary) is deleted in its entirety and replaced with a new paragraph (66) which shall read as follows:

- (66) MEDICALLY NECESSARY is defined by Tennessee Code Annotated, Section 71-5-144, and shall describe a medical item or service that meets the criteria set forth in that statute. The term "medically necessary," as defined by Tennessee Code Annotated, Section 71-5-144, applies to TennCare enrollees. Implementation of the term "medically necessary" is provided for in these regulations, consistent with the statutory provisions, which control in case of ambiguity. No enrollee shall be entitled to receive and TennCare shall not be required to pay for any items or services that fail fully to satisfy all criteria of "medically necessary" items or services, as defined either in the statute or in the Medical Necessity regulations at 1200-13-16.

Paragraph (74) of rule 1200-13-13-.01 Definitions (Personal Care Services) is deleted in its entirety and replaced with a new paragraph (74) which shall read as follow:

- (74) PERSONAL CARE SERVICES shall refer to an optional Medicaid benefit defined at 42 CFR 440.167 that, per the Tennessee Medicaid State Plan, Tennessee has not elected to include in the TennCare benefit package. To the extent that such services are available to children under the age of 21 when medically necessary under the provisions of EPSDT, the Bureau of TennCare designates home health aides as the providers qualified to deliver such services. When medically necessary, personal care services may be authorized outside of the home setting when normal life activities temporarily take the recipient outside of that setting. Normal life activity for a child under the age of 21 means routine work (including work in supported or sheltered work settings); licensed child care; school and school-related activities; religious services and related activities; and outpatient health care services (including services delivered through a TennCare home and community based services waiver program). The home health aide providing personal care services may accompany the recipient but may not drive. Normal life activities do not include non-routine or extended home absences.

Paragraph (81) of rule 1200-13-13-.01 Definitions (Private Duty Nursing Services) is deleted in its entirety and replaced with new paragraph (81) which shall read as follows:

- (81) PRIVATE DUTY NURSING SERVICES shall mean nursing services for recipients who require continuous skilled nursing care. Skilled nursing care is provided by a registered nurse or

licensed practical nurse under the direction of the recipient's physician to the recipient and not to other household members. An individual who needs eight (8) or more hours of skilled nursing care during a 24-hour period shall be determined to need continuous skilled nursing care. As a general rule, only an individual who is dependent on technology-based medical equipment requiring frequent interventions will be determined to need continuous care. An individual who needs less than eight (8) hours of skilled nursing care will receive those services as an intermittent service under home health. If it is determined by the MCO to be cost effective, non-skilled services may be provided by a nurse rather than a home health aide. Furthermore, if it is determined by the MCO to be cost effective, the nurse may remain in the home during the intervals in between the delivery of intermittent services, rather than traveling back and forth to the home. However, it is the total number of hours of skilled nursing services, not the number of hours that the nurse is in the home, which determines whether the nursing services shall be considered continuous or intermittent. To the extent that private duty nursing services are provided to a person under 18 years of age, a responsible adult (other than the private duty nurse) must be present at all times in the home during the provision of the private duty nursing services in order to assure the child's non-healthcare needs are addressed. General childcare services and other non-hands on assistance such as cleaning and meal preparation will not be provided by a private duty nurse.

Paragraph (114) of rule 1200-13-13-.01 Definitions (Time-Sensitive Care) is deleted in its entirety and replaced by a new paragraph (114) which shall read as follows:

- (114) TIME-SENSITIVE CARE shall mean care which requires a prompt medical response in light of the beneficiary's condition and the urgency of her need, as defined by a prudent lay person; provided, however, that a case may be treated as non-time sensitive upon written certification of the beneficiary's treating physician.

Subparagraph (d) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new subparagraph (d) which shall read as follows:

- (d) The MCC shall be allowed to provide cost effective alternative services as defined in rule 1200-13-13-.01(22). Cost effective alternative services are not covered services.

Paragraph (14) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new paragraph (14) which shall read as follows:

- (14) Prior Authorization for Home Health Nurse, Home Health Aide, and Private Duty Nursing Services.

Prior authorization by the MCO must be obtained in order to establish the medical necessity of all requested home health nurse, home health aide, and private duty nursing services.

- (a) The following information must be provided when seeking prior authorization for all home health nurse, home health aide, and private duty nursing services:
  - 1. Name of physician prescribing the service(s);
  - 2. Specific information regarding the patient's medical condition and any associated disability that creates the need for the requested service(s).
  - 3. Specific information regarding the service(s) the nurse or aide is expected to perform including the frequency with which each service must be performed (e.g., tube feeding patient 7:00 am, 12:00 pm, and 5:00 pm

daily; bathe patient once per day; administer medications three (3) times per day; catheterize patient as needed from 8:00 am to 5:00 pm Monday through Friday; change dressing on wound three (3) times per week). Such information should also include the total period of time that the services are anticipated to be medically necessary by the treating physician (e.g., total number of weeks or months).

- (b) Home health nurses and aides and private duty nurses will never be authorized to personally transport a TennCare enrollee. Home health nurses will never be authorized to accompany an enrollee outside the home. Home health aides will never be authorized to accompany an enrollee twenty-one (21) years of age or older outside the home.
- (c) Private duty nursing services are limited to services provided in the recipient's own home, with the following two exceptions:
  - 1. A recipient age twenty-one (21) or older who requires eight (8) or more hours of skilled nursing care in a 24-hour period and is authorized to receive private duty nursing services in the home setting may make use of the approved hours outside of that setting in order for the nurse to accompany the recipient to:
    - (i) Outpatient health care services (including services delivered through a TennCare home and community based services waiver program);
    - (ii) Public or private secondary school or credit classes at an accredited vocational or technical school or institute of higher education;
    - (iii) Work at their place of employment.
  - 2. A recipient under the age of twenty-one (21) who requires eight (8) or more hours of continuous skilled nursing care in a 24-hour period and is authorized to receive these services in the home setting may make use of the approved hours outside of that setting when normal life activities temporarily take him or her outside of that setting. Normal life activity for a child under the age of 21 means routine work (including work in supported or sheltered work settings); licensed child care; school and school-related activities; religious services and related activities; and outpatient health care services (including services delivered through a TennCare home and community based services waiver program). Normal life activities do not include non-routine or extended home absences.
- (d) A private duty nurse may accompany a recipient in the circumstances outlined in (c)1. and (c)2. immediately above, but may not drive.
- (e) Private duty nursing services include services to teach and train the recipient and the recipient's family or other caregivers how to manage the treatment regimen. Having a caregiver willing to learn the tasks necessary to provide a safe environment and quality in home care is essential to assuring the recipient is properly attended to when a nurse or other paid caregiver is not present, including those times when the recipient chooses to attend community activities to which these rules do not specifically permit the private duty nurse or other paid caregiver to accompany the patient.
- (f) Nursing services (provided as part of home health services or by a private duty nurse) will be approved only if the requested service(s) is of the type that must be provided by a nurse as opposed to an aide, except that the MCO may elect to have

a nurse perform home health aide services in addition to nursing services if the MCO determines that this is a less costly alternative than providing the services of both a nurse and an aide. Examples of appropriate nursing services include, but are not limited to, medication administration, catheterization, and ventilator management.

- (g) Home health aide services will only be approved if the requested service(s) meet all medical necessity requirements including the requirements of 1200-13-16-.05(4)(d). Thus, home health aide services will not be approved to provide child care services, prepare meals, perform housework, or generally supervise patients. Examples of appropriate home health aide services include, but are not limited to, patient transfers and bathing.

Statutory Authority: T.C.A. 4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of January, 2007. (FS 01-39-07, DBID 559)