State of Tennessee
Department of Finance and Administration
Bureau of TennCare
Division of Long Term Care
310 Great Circle Road
Nashville, TN 37243

Date: July 1, 2011

To: Administrators, Intermediate and Skilled Nursing Facilities

From: Patti Killingsworth, Assistant Commissioner
Chief of Long Term Care

ADDITIONAL CLARIFICATION Pertaining to
June 23, 2011 Memo RE: Violations of the Medicaid False Claims Act

Since issuing the June 23, 2011 memo pertaining to potential violations of the Medicaid False Claims Act, we have received several questions. This memo provides additional information regarding questions we have received.

Neither the implementation of the CHOICES program nor the June 23 memo impacted program requirements or processes pertaining to Medicaid eligibility for patients who admit to a NF in order to receive hospice services. A PAE has never been required for hospice services, as **hospice services are not a LTC benefit**.

When a person admits to a NF specifically for purposes of receiving hospice (rather than NF services), the person may nonetheless qualify in an institutional eligibility category once s/he has been "continuously confined" in the facility for a period of at least 30 days. Because a PAE is not required and should not be submitted for hospice services, DHS cannot use the PAE to prospectively establish "continuous confinement." However, upon conclusion of a 30-day stay in the NF for receipt of hospice services, DHS may apply institutional income standards in determining eligibility for Medicaid services, including hospice. DHS will not authorize Medicaid payment for LTC services; nor will a person receiving hospice in the NF be enrolled into CHOICES, since hospice services are not LTC services. A copy of the Bureau's hospice benefit policy is attached and is also available online at https://tn.gov/assets/entities/tenncare/attachments/ben07001.pdf

As was the case prior to CHOICES, for persons receiving hospice in a NF, DHS will determine patient liability. Facilities are obligated pursuant to federal law to collect patient liability for hospice patients receiving hospice in a NF, and to use such payments to offset the cost of room and board billed to the hospice agency.

A PAE should be submitted ONLY for persons seeking **Medicaid** reimbursement of **Nursing Facility** (not hospice) services. If a patient admits to the facility **for NF services**, facilities continue to be advised to submit a PAE as soon as you determine that Medicaid reimbursement will be needed, but no later than 10 days after the requested effective date of reimbursement. As you know**, the earliest date of Medicaid reimbursement for NF services is the date that *ALL* of the following criteria are met:**

- Completion of the PASRR process;
- Effective date of level of care eligibility by TennCare (i.e., effective date of the PAE), which cannot be more than 10 days prior to date of submission of the approvable PAE;
- Effective date of Medicaid eligibility (in most cases, the date of DHS application); and
- Date of NF admission.

Further, in order to facilitate CHOICES enrollment and payment for NF services, you must submit in TPAES a Medicaid Only Payer Date (MOPD). This is the date the facility certifies that Medicaid reimbursement *for NF services* will begin because the person has been admitted to the facility and all other sources of reimbursement (including Medicare and private pay) have been exhausted. As advised in the June 23 memo, this date must be ***known*** (and not estimated) because it may result in establishment of eligibility for LTC services and in many cases, eligibility for Medicaid, and in payment of a capitation payment as well as payments for Medicaid (including but not limited to LTC) services received. To the extent that a facility submits a MOPD that is incorrect, overpayments may be made to the MCO as a result of the NF's actions, resulting in a violation of the False Claims Act.

The MOPD does **not** have to be submitted at the same time as the PAE. If you do not know the MOPD when the PAE is submitted, **leave it blank**. The PAE will still be processed. You can come back and complete the MOPD once it is known. However, do not forget to come back and enter this date when it is known. If a MOPD is not entered, the person will not be enrolled into CHOICES, and you will not be reimbursed for NF services.

If a person appropriately enrolled into CHOICES for receipt of NF services *subsequently* elects to receive hospice services, the facility should **not** withdraw the MOPD in TPAES. Nor should the facility attempt to withdraw the original PAE. The PAE and MOPD are required in order for the facility to be reimbursed for NF services received prior to hospice election. Rather, **the facility must submit to the MCO a CHOICES Discharge/Transfer/Hospice Form** so that overpayments will not be made to the MCO since the person is no longer receiving NF services. The person who has elected hospice will be disenrolled from CHOICES, but not from Medicaid, so long as he continues to receive hospice services in the NF. The capitation payment will be adjusted accordingly.

Members who withdraw their election of hospice services may request to enroll in the CHOICES Program. We would expect that such occurrences are rare, since hospice is by definition "end of life" care. An approved PAE will be required to facilitate this enrollment. However, a **new** PAE will not be required **IF** the resident: 1) was receiving NF services and had a valid PAE at the time hospice was elected; 2) was not discharged from the nursing facility during the hospice stay; and3) continues to meet the level of care and require the same level of reimbursement (level 1 or 2) specified in the approved unexpired PAE. In such instances, the MCO should contact the LTC Enrollment Unit and request that the existing PAE be used to re-enroll the member into the CHOICES Program. The MCO must confirm that the person was not discharged home during the hospice stay and continues to meet level of care and require the same level of reimbursement specified in the approved unexpired PAE. The MCO will also be expected to provide explanation regarding the circumstances under which the person has withdrawn their hospice election. On the other hand, if the member was discharged home from the facility, no longer meets level of care requirements or requires a different level of care or reimbursement, a new PAE would be required.

Since overpayments pertaining to the issues identified in the June 23 memo may have begun when the State began paying CHOICES capitation payments, our review of potential overpayments pertaining to these issues will go back to the effective date of CHOICES implementation in each region (March 1, 2010 in Middle Tennessee and August 1, 2010 in East and West Tennessee). To the extent that any of these errors were made by the NF during that period of time, the actions

advised in the June 23 memo should be completed in order to correct any overpayments that may have been made.

If you have any questions regarding these additional clarifications, please contact Pat Santel, Deputy of Long Term Care Operations at (615)507-6777 or Tony Mathews, Assistant Deputy of Long Term Care Operations at (615)507-6027.