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PUBLICATIONS

STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
Office of General Counsel
310 Great Circle Road, 3 West
Nashville, TN 37243

May 16, 2017

Administrative Procedures Division
Office of Tennessee Secretary of State Tre Hargett
312 Rosa L. Parks Avenue North
8th Floor, William R. Snodgrass Tennessee Tower
Nashville, Tennessee 37243-1102

RE: *Hemophilia Preferred Care of Memphis, Inc., et al. v. State of Tennessee, Department of Finance & Administration,* Docket No. 09-15-144146A

Dear Clerk:

Please find enclosed the notice of the hearing for the first hearing in the above-referenced matter. As set forth in the notice of hearing, this hearing will address only Petitioners' request for stay. The original and two copies of the notice of hearing are enclosed. Please file the original and return a file-stamped copy of the notice of hearing to the Bureau of TennCare at the address above. Please transmit the remaining copy of the notice of hearing to the Secretary of State for publication in the notice section of the monthly administrative register, in accordance with Tenn. Code Ann. § 4-5-224.

Thank you,

Ashley Bassel Griffith
Tennessee Department of Finance & Administration
Division of Health Care Finance & Administration
Deputy General Counsel

Enclosures

cc: Gary Shockley, Kristine Roberts, Leslie Isaacman, Matthew Mulqueen, Jennie Silk

BEFORE THE COMMISSIONER OF
THE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

NOTICE OF HEARING
on a
PETITION FOR DECLARATORY ORDER

(Pursuant to Tenn. Code Ann. §§ 4-5-223 – 224)

Petitioners: Hemophilia Preferred Care of Memphis, Inc.,
First Choice Home Infusion,
InTouch Pharmacy LLC,
TwelveStone Medical, Inc., and
National Cornerstone Healthcare Services, Inc.

Petitioners' Counsel:

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Case Number: 09-15-144146A

Background:

Under the Medicaid program, states may provide coverage of prescribed drugs as an optional service under their state Medicaid plans. Tennessee provides pharmacy benefits to eligible TennCare enrollees through a Pharmacy Benefits Manager, and provider payment rates are established in accordance with its Medicaid State Plan and applicable federal law.

On February 1, 2016, the Centers for Medicare and Medicaid Services ("CMS") published a Covered Outpatient Drug Final Rule to implement provisions of the Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act) pertaining to Medicaid reimbursement for covered outpatient drugs. CMS required State Medicaid Agencies to be in compliance with the Final Rule by submitting a State

Plan Amendment to CMS by June 30, 2017, with an effective date no later than April 1, 2017.[1]

In accordance with the Final Rule, the Commissioner of the Tennessee Department of Finance and Administration issued a notice of intent to file an amendment to its Medicaid State Plan on March 31, 2017.[2] The proposed amendment reflects a change in the methodology by which pharmacies are reimbursed for providing services to TennCare enrollees. As explained in the notice, the proposed amendment revises the manner in which the cost of ingredients and the dispensing fees charged by pharmacies are calculated. Specifically, the proposed amendment requires that TennCare reimburse pharmacies for ingredient costs based on an actual acquisition cost ("AAC") methodology and introduces a new set of professional dispensing fees, both of which were calculated with data from an extensive survey administered to pharmacies participating in the TennCare network. In accordance with CMS' Final Rule, the amendment became effective April 1, 2017.

The Petitioners in this matter are four pharmacies that dispense, and one wholesaler that distributes, covered outpatient drugs to TennCare enrollees. Petitioners' petition for declaratory order challenges the reimbursement methodology applied to blood clotting factor drugs, which are used to treat bleeding disorders such as hemophilia. Petitioners contend that TennCare's revised reimbursement rates for many clotting factors are below Petitioners' cost to acquire the drugs and that TennCare's reimbursement of clotting factor is discriminatory, arbitrary and capricious, and contrary to federal law. Pursuant to Tenn. Code Ann. § 4-5-223, the Department of Finance and Administration will convene a contested case hearing and issue a declaratory order as set forth herein.

Summary of Relief Requested:

Petitioners request immediate emergency relief in the form of a stay of TennCare's implementation of the change in clotting factor reimbursement methodology and reinstatement of TennCare's previous reimbursement methodology during the pendency of this appeal. Petitioners further request a declaratory order finding that TennCare's State Plan Amendment and reimbursement methodology for clotting factor is invalid and requiring TennCare to revise its methodology so that it is consistent with applicable law.

Hearing:

By agreement of the parties, the hearing will solely address Petitioners' request for stay of TennCare's implementation of the revised clotting factor reimbursement methodology. The hearing on Petitioners' request for declaratory order will take place on a subsequent date, for which a separate notice of hearing will be issued.

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[1] *See* 81 Fed. Reg. 20, 5170 (Feb. 1, 2016).

[2] The Notice of Change in Medicaid State Plan is available at the following address: https://www.tn.gov/assets/entities/tenncare/attachments/PharmacyPublicNotice.pdf.

The hearing will be held on Friday, May 26, 2017 at 11:00 a.m. at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 in room 4 East A. Persons attending the hearing should present appropriate identification at the guard desk on the first floor and ask that the guard contact Rob Bushong in order to be escorted to the hearing room.

The hearing will be held before Commissioner's Designee Lindsey Huber, sitting as the designee of Commissioner Larry Martin. An Administrative Law Judge from the Administrative Procedures Division of the Office of the Tennessee Secretary of State shall preside at the hearing. This matter will be conducted in accordance with Tenn. Code Ann. §§ 4-5-301 *et seq.*

Certificate of Service:

A true and correct copy of the foregoing has been sent this the 16th day of May, 2017 via electronic mail and via U.S. mail postage prepaid to:

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