Tennessee Department of Finance and Administration
Bureau of TennCare

Chapter 1200-13-13
TennCare Medicaid

Statement of Necessity Requiring Public Necessity Rules

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209, and 2004 amendments to the Medical Assistance Act, T.C.A. §§ 71-5-101, *et seq.*

This rule is being amended to allow the Bureau of TennCare to implement a special exemption "soft limits" process for prescription drugs. The Bureau of TennCare shall maintain special exemption drugs that may be approved for enrollees who have already met an applicable benefit limit.

Tennessee Code Annotated, Section 71-5-134, states that in order to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required to conform the current TennCare Medicaid rules to reflect changes resulting from the amendment of the TennCare waiver.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

Darin J. Gordon
Deputy Commissioner
Tennessee Department of Finance
and Administration

Public Necessity Rules
of
Tennessee Department of Finance and Administration

Bureau of TennCare

Chapter 1200-13-13
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Amendment

Part 26. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.04 Covered Services is amended by adding a new paragraph after the third paragraph and revising the fourth paragraph in (B) of the "Benefit for Persons Aged 21 and Older" column so as amended part 26. shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
26. Pharmacy Services [defined at 42 CFR §440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].	Covered as medically necessary. Certain drugs (known as DESI, LTE, IRS drugs) are excluded from coverage. Persons dually eligible for Medicaid and Medicare will receive their pharmacy services through Medicare Part D. Pharmacy services are the responsibility of the PBM, except for pharmaceuticals supplied and administered in a doctor's office. For persons who are not dually eligible for Medicare and Medicaid, pharmaceuticals supplied and administered in a doctor's office are the responsibility of the MCO. For persons who are dually eligible for Medicare and Medicaid, pharmaceuticals supplied and administered in a doctor's office are the responsibility of the MCO if not covered by Medicare.	Covered as medically necessary, subject to the limitations set out below. Certain drugs (known as DESI, LTE, IRS drugs) are excluded from coverage. Persons dually eligible for Medicaid and Medicare will receive their pharmacy services through Medicare Part D. Pharmacy services are the responsibility of the PBM, except for pharmaceuticals supplied and administered in a doctor's office. For persons who are not dually eligible for Medicare and Medicaid, pharmaceuticals supplied and administered in a doctor's office are the responsibility of the MCO. For persons who are dually eligible for Medicare and Medicaid, pharmaceuticals supplied and administered in a doctor's office are not covered by TennCare. (A) Pharmacy services for individuals receiving TennCare-reimbursed services in a Nursing Facility, Intermediate Care Facility for the Mentally Retarded, or a Home and Community Based Services waiver have no quantity limits on the number of prescriptions per month. (B) Subject to (A) above, pharmacy services for Medicaid adults age 21 and older are limited to five (5) prescriptions and/or refills per enrollee per month, of which no more than two (2) of the five (5) can be brand name drugs. Additional drugs for individuals in (B) shall not be covered. Prescriptions shall be counted beginning on the first of each calendar month. Each prescription and/or refill counts as one (1). A prescription or refill can be for no more than a thirty-one (31) day supply. The Bureau of TennCare shall maintain a "Pharmacy Short List" of pharmacy services which shall not count against such limit. The Pharmacy Short List may be modified at the discretion of the Bureau

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		of TennCare. The most current version of the Pharmacy Short List will be made available to enrollees via the internet from the TennCare website and upon request by mail through the DHS Family Service Assistance Centers. Only drugs that are specified on the version of the Pharmacy Short List that is available on the TennCare website located on the World Wide Web at www.state.tn.us/tenncare and indicated as current as of the date of service shall be considered exempt from applicable pharmacy limits. The Bureau of TennCare shall also maintain special exemption "Soft Limits" drugs that may be approved for enrollees who have already met an applicable benefit limit only if the prescribing professional seeks and obtains a special exemption. The State may include certain drugs or categories of drugs on the list, and may maintain, and make available to physicians, providers, pharmacists, and the public, a list that shall indicate the drugs or types of drugs the State has determined to so include. In order to obtain a special exemption, the prescribing provider must submit an attestation as directed by TennCare regarding the urgent need for the drug. TennCare will approve the prescribing provider's determination that the criteria for the special exemption are met, without further review, within 24 hours of receipt. Enrollees will not be entitled to a hearing regarding their eligibility for a special exemption if (i) the prescribing provider has not submitted the required attestation or (ii) the requested drug is not on the special exemption list. Unless specified on the version of the Pharmacy Short List which is current as of the date of the pharmacy service and special exemption Soft Limit, pharmacy services in excess of five (5) prescriptions and/or refills per enrollee per month or

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
		two (2) brand name drugs per enrollee per month are non-covered services. (C) Over-the-counter drugs for Medicaid adults are not covered even if the enrollee has a prescription for such service, except for prenatal vitamins for pregnant women.

Statutory Authority: T.C.A. 4-5-209, 71-5-105, 71-5-109, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 26th day of January, 2007, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the10th day of July, 2007. (FS 01-31-07, DBID 2322)