



physician, physician assistant, or nurse practitioner, who shall document the medical necessity of the services and specify the nature and frequency of the nursing services. The enrollee who receives Medical Residential Services shall require direct skilled nursing services on a daily basis and at a level which **cannot for practical purposes be provided through two or fewer daily skilled nursing visits**. The service includes direct assistance as needed with activities of daily living, household chores essential to the health and safety of the enrollee, budget management, attending appointments, and interpersonal and social skills building to enable the enrollee to live in a home in the community. It also may include medication administration as permitted under Tennessee's Nurse Practice Act.

(nn) **Support Coordination** - case management services that assist the Enrollee in identifying, selecting, obtaining, coordinating and using both paid services and natural supports to enhance the Enrollee's independence, integration in the community and productivity as specified in the Enrollee's Plan of Care. **Support Coordination shall be person-centered** and shall include, but is not limited to, ongoing assessment of the Enrollee's strengths and needs; development, evaluation and revision of the Plan of Care; assistance with the selection of service providers; provision of general education about the Waiver program, including Enrollee rights and responsibilities; and **monitoring implementation of the plan of care and initiating individualized corrective actions as necessary (e.g., reporting, referring, or appealing to appropriate entities)**.

**(7) Plan of Care.**

(b) To ensure that Waiver Services and other services are being appropriately provided to meet the Enrollee's needs, **the Plan of Care shall be reviewed on an ongoing basis and shall be updated**

**(9) Waiver Administration.**

The Operational Administrative Agency shall be responsible for the administration of the day-to-day operations of the Waiver under the oversight of the State Medicaid Agency and shall ensure that Covered Services are provided in accordance with state and federal laws, rules, regulations and policies established by the State Medicaid Agency. The Operational Administrative Agency shall be responsible for the following activities, whether provided directly or through subcontract:

**(m) Assurance of a statewide provider network adequate to meet the needs of Enrollees;**

(o) Ensuring that Waiver Services providers have a signed provider agreement which includes a requirement for **compliance with the Division of Mental Retardation Services Provider Manual in the delivery of waiver services;**

**(p) Assurance of the health and safety of Enrollees** through the implementation of a comprehensive quality monitoring program;

**(t) Ensuring that providers and subcontractors comply with the quality monitoring guidelines and requirements** established by the State Medicaid Agency, by the Operational



Administrative Agency, and by the Centers for Medicare and Medicaid Services, and with other state and federal laws, rules, and regulations affecting the provision of Waiver Services;

**2.2 GRANT AGREEMENT BETWEEN THE STATE OF TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION DIVISION OF TENNCARE AND DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**

A.29 The Contractor shall comply with state and federal rules, laws and regulations, all applicable federal and state court orders including, but not limited to, those set forth in **CMS HCBS Settings and Person-Centered Planning Rules** in 42 C.F.R. § 441 .301 (c), TennCare policies and procedures in the administration of the Waiver, and requirements as outlined in the Statewide Transition Plan.

A.31 The Contractor shall operate the Waivers in a manner that comports with all federal waiver assurances and sub-assurances as specified in 42 C.F.R. § 441 .302 and as approved in the Statewide Waiver (waiver control #0128), **Comprehensive Aggregate Cap (CAC) Waiver (waiver control #0357)**, and Self-Determination Waiver (#0427) including, but not limited to, compliance with administrative authority, level of care, service plan, health and welfare, qualified providers, and financial accountability.

**E.20. Nondiscrimination Compliance Requirements.**

a. Contractor agrees that it shall comply with the applicable federal and State civil rights laws and regulations, which may include, but are not limited to, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116. As part of this compliance no person on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classifications protected under federal or state laws shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of Contractor's obligation under its agreement with TennCare or in the employment practices of the Contractor.

**2.3 TENNESSEE MEDICAID COMPREHENSIVE AGGREGATE CAP (CAC) Home and Community Based Services (HCBS) Waiver under the authority of §1915(c) of the Social Security Act, Waiver Control #TN.0357.R04.00 approved effective date of 01/01/20 (CAC HCBS Wavier).**

**2.4 PROVIDER AGREEMENT CONTRACTS, Tennessee Department of Intellectual and Developmental Disabilities with D&S Community Services and Engstrom Services AKA Community Connections.**

**2.5 POLICIES AND PROCEDURES, Tennessee Department of Intellectual and Developmental Disabilities.**

**Authorization of Services Policy # 80.3.4, December 7, 2015, VI. PROCEDURES:**

A. Individual Support Plan Review

**7. The ISC/CM shall review the ISP no less frequently than once each calendar**

**month**, and shall document each review on the Support Coordination/Case Management Monthly Documentation Form with a dated signature.

**8. The ISC/CM is responsible for ensuring that the ISP is amended (i.e., updated or revised) when warranted by changes in the needs or medical condition of the person supported.**

**Community Transition Policy # 80.4.7, 8/1/2017, VI. PROCEDURES:**

A. General Guidelines:

**2. The person supported has the right to choose services and providers as well as where and with whom he or she resides. The person supported leads the person centered planning process, to the fullest extent possible.**

**2.6 PROVIDER MANUAL, Tennessee Department of Intellectual and Developmental Disabilities March 15, 2014.**

**CHAPTER 2 RIGHTS APPLICABLE TO ALL PEOPLE WITH INTELLECTUAL DISABILITIES**

**2.8.c. Provider Responsibilities Related to Eligibility Appeals. ISCs and CMs are required to assist applicants/people supported in appealing eligibility denials or terminations of eligibility as necessary.** This may involve explaining any denial notices received, explaining the appeals process, assisting the applicant/person supported in submission of a timely appeal request, assisting the applicant/person supported in preparing for the appeal hearing, assisting in making arrangements for a telephone or “inperson” hearing, assisting the applicant/person supported in obtaining legal representation and/or providing testimony regarding needs and capabilities during an appeal hearing. **Other providers may be required to provide records, information or hearing testimony that allows the judge to determine if eligibility criteria or requirements are met.**

**2.8.d. Service Appeals.** Service appeals are related to the ability to receive a particular service within a program that may offer a variety of different service options. The Grier Revised Consent Decree (Grier order) is a court-ordered settlement which was the result of a class action lawsuit called Grier vs. Wadley. The Grier order outlines requirements which ensure adequate notice and **procedural protection** upon the denial of Medicaid services to an eligible person. The Grier order is also available on the TennCare web site.

**2.8.e. Denials of Waiver Benefits or Services.** The Grier order applies when a person enrolled in the waiver program experiences an “adverse action” regarding Medicaid benefits or services. An **“adverse action” refers to a delay, denial, reduction, suspension or termination of Medicaid benefits or services, as well as, any acts or omissions which impair the quality, timeliness or availability of such benefits or services.** The Grier order contains specific appeal rights, notice requirements, procedural guidelines and compliance requirements to ensure that every denial of a Medicaid benefit or service is processed in the same manner.



### III. COURT ORDERS

**Linton v. Commissioner of Health & Environment**, 65 F.3d 508, 520 (6th Cir. 1995) (Finding characterizing Medicaid recipients as "third party beneficiaries" to contracts between the state and nursing facilities).

**Hinds v. Blue Shield of Tennessee**, No. 3:95-0508, slip op. at 5, 17-19 (M.D. Tenn. Jan. 3, 1996) (Findings "TennCare enrollees are the intended third party beneficiaries of these [managed care] contracts and are entitled to remedies accorded to third party beneficiaries under law"; and also found plaintiff had standing as a third party beneficiary to enforce specific contract provisions between BC/BS and TennCare regarding covered services).

**PEOPLE FIRST OF TENNESSEE, et al. v. CLOVER BOTTOM DEVELOPMENTAL CENTER, et al.**, No. 3:95-1227 (cons. w/ 3:96-1056) (M.D. Tenn. Jan. 29, 2015) (Findings The State agreed to undertake obligations under an "Exit Plan" which included a Freedom of Choice form providing a right to receive services through the CAC HCBS Waiver using an Individual Support Plan "To choose any available qualified provider for my services".)

**Grier v. Wadley**, No. 79-3107 (M.D. Tenn.)  
(Finding outlines requirements which ensure adequate notice and procedural protection upon the denial of Medicaid services to an eligible person.)

**Daniels v. Wadley**, No. 3:79-3107-NA-CV (M.D. Tenn., May 15, 1996) AKA Grier Revised Consent Decree (Findings following motion for contempt, includes numerous provisions to improve and protect due process rights of individuals enrolled in TennCare.)

### IV. STATEMENT OF FACTS AND PETITIONER'S DESCRIPTION

#### **4.1 CBDC CLASS MEMBER, ARLINGTON MR WAVIER AND CAC HCBS WAVIER PARTICIPANT**

Petitioner is eligible to receive services from TennCare under TN. COMP. RULES & REGS. 1200-13-01-.28, Arlington MR Waiver, which he has been enrolled in since 10/31/1997. Additionally, Petitioner is a member of the Clover Bottom Class ("CBDC class member") in *People First of Tennessee, et al., v. Clover Bottom Developmental Center, et al.*, No. 3:95-1227 (cons. w/ 3:96-1056) United States District Court, Middle District of Tennessee and is entitled to receive medical services from the Medicaid Comprehensive Aggregate Cap (CAC) Home and Community Based Services (HCBS) Waiver under the authority of §1915(c) of the Social Security Act (Waiver Control #TN.0357.R04.00).

#### **4.2 TENNCARE SELECT MEMBER**

Petitioner is eligible to receive TennCare Select services from Bluecare of Tennessee.

#### **4.3 PETITIONER'S MEDICALLY FRAGILE CONDITION**

Petitioner is in need of uninterrupted indefinite in home skilled Nursing Services due to multiple chronic serious health conditions. He requires treatment for the following diagnosed medical conditions:

COPD, Chronic airway obstruction, Chronic Aspiration pneumonia of both lungs, Bronchitis, Chronic Centrilobular Emphysema, Chronic Cough, Recurrent Respiratory Failure with Hypoxia, Sleep Apnea, Chronic Pharyngoesophageal Dysphagia, Epiglottis Dysfunction, Hiatal Hernia, Ileus, GERD, Intellectual Disability and Pervasive Developmental Delay Disorder with Cognitive-Communication Impairment and Impulsivity, Fahr's Syndrome/Bilateral Basal Ganglia Degeneration with Calcification, Tourette syndrome/Tics, Involuntary Movements, Periodic Limb Movement Disorder, Thrombocytopenia, Macrocytosis and risk for methicillin resistant Staphylococcus Aureus infection.

Since the May 12, 2018 DIDD SLP services discharge, the Petitioner has experienced declining health resulting in a medically fragile condition requiring his physician to order palliative care services which have continued since November 2018. Additionally, Petitioner has been admitted to the hospital emergency room on the following dates: 7/7/2018, 11/2-5/2018, 11/9-13/2018, 12/13/2018, 1/14-17/2019, 2/5/2019, 2/21-26/2019, 4/26/2019, 4/27/2019, 6/2-7/2019, 7/16/2019, 7/17-26/2019, 10/22/2019, 12/2-10/2019.

Due to the lack of uninterrupted in home nursing services, he continues to be at a high risk of death from preventable chronic aspiration pneumonia. Also, the lack of uninterrupted in home nursing services has resulted in Petitioner suffering through regular recurring and numerous hospital emergency room admissions. These multiple recurring hospital admissions requiring IV antibiotics are causing him to unnecessarily develop an antibiotic immunity that could result in death. In order to prevent recurring aspiration pneumonia, provide nutrition services, treatment for GI, respiratory and neurological conditions Petitioner requires indefinite nursing care in his home.

#### **4.4 PCP ORDER FOR INDEFINITE SKILLED NURSING SERVICES**

On 6/19/2019 Dr. Lydia Speer, Petitioner's Primary Care Physician (PCP), issued an order for indefinite skilled nursing services due to D & S Community Services, a TennCare/DIDD Residential Services Provider, only providing non-nursing qualified caregivers which had resulted in 10 hospital admissions over the last 12 months, attached as **Exhibit 1**.

#### **4.5 ISC/SUPPORT COORDINATION PROVIDER NON-COMPLIANCE**

The TennCare/DIDD ISC/Support Coordination Provider, Engstrom Services AKA Community Connections, is not ensuring that the ISP is amended (i.e., updated or revised) when warranted by changes in the needs or medical condition of the person supported. There is not sufficient information in the Individual Support Plan (ISP) to document that the service recipient has a medical diagnosis requiring the provision of skilled nursing services (excluding nursing assessment and oversight) by a registered nurse or licensed practical nurse on a daily basis and at



a level which cannot for practical purposes be provided through two or fewer daily skilled nursing visits. The Plan of Care/Individual Support Plan is not being reviewed on an ongoing basis and updated. Support Coordination services are not providing person-centered monitoring and implementation of the plan of care nor initiating individualized corrective actions as necessary (e.g., reporting, referring, or appealing to appropriate entities). The Support Coordination Provider is not assisting the person supported in appealing eligibility denials or terminations of eligibility as required by provisions of the TennCare/DIDD Provider Manual Chapter 2.8, pages 2-10 & 2-11. Petitioner's Freedom of Choice rights for Home and Community-Based services are not being supported by the Support Coordination Provider. As a result of the Support Coordination Provider's non-compliance the Petitioner is experiencing delays, denials, reductions and suspensions of Medicaid benefits and services, as well as, acts and omissions which are impairing the quality, timeliness and availability of his benefits and services. These "adverse actions" are not in compliance with The Grier Revised Consent Decree (Grier order).

There have been numerous meetings, emails and discussions about Petitioner's denials of and gaps in medical care for his chronic serious medical conditions with the Support Coordination Provider, Engstrom Services AKA Community Connections. These numerous meetings have not resulted in Petitioner receiving the medical care that he is entitled to receive and have only served to delay, as well as, deny Petitioner's receipt of the medical care. False reports are routinely made about Petitioner and false guidance about his TennCare benefits that sabotages efforts to obtain the best quality care. The ISC provider has created confusion about Mark's medical care needs and benefits.

The Support Coordination Provider is delaying Petitioner's start of nursing services by submitting improperly prepared ISP amendments and refusing to submit ISP amendments when proper doctor's orders were issued. The ISP Annual Update for 7/22/2019-7/21/2020 which was approved and signed by the Legal Representative has not been entered into Mark's TennCare records. The Support Coordination Provider substituted and submitted an unapproved, as well as, unsigned ISP which has been improperly entered into Petitioner's TennCare records. Engstrom Services AKA Community Connections continues to refuse to correct Mark's TennCare records by withdrawing the unsigned ISP and entering the approved ISP.

The primary barrier to Petitioner's receipt of medical care continues to be the fact that, Jennifer Myers, ISC, never submitted the Annual ISP Update which was signed by the Legal Conservator and emailed to her on 6/24/2019 to DIDD. Instead, she substituted an unapproved ISP, which was not signed or approved, and deceptively sent it to DIDD. The unsigned ISP she continues to use contains outdated, extremely negative, false, unnecessary and misleading information. The improper information contained in this unsigned ISP, which Ms. Myers is providing to others, is preventing new Residential Service providers from positively considering Mark for transition to their agencies. Petitioner's Conservator has provided written consent via email to the Support Coordination Provider, Engstrom Services AKA Community Connections, permitting them to identify and contact available providers with the approved ISP.

#### **4.6 TENNCARE MEDICAL APPEAL AND FAIR HEARING REQUEST**

On 9/2/2019 a 11 page TennCare Medical Appeal & Fair Hearing Request document was faxed to TennCare Solutions. The issues in this appeal were clearly stated in the NARRATIVE BASIS FOR APPEAL:

##### **“MEDICAL CARE REQUESTED**

Expedited appeal request for In-Home Nursing/LPN Services on a daily basis more than twice a day up to 12 hours per day for an indefinite period or transfer to a Medical Residential Services/SL-5 supportive living provider as appropriate.”

##### **“NURSING TASKS REQUIRED**

Mr. Earl has a nebulizer which he previously used for the administration of respiratory medications. Due to Mr. Earl’s difficulties with the use of aerosol inhalers, his Pulmonologist stated that the effectiveness of medication administration with inhalers is questionable and that the use of a nebulizer would be a more beneficial method of medication administration. According to his pulmonologist, Mr. Earl would also benefit medically from the nursing administration/adjustment of nocturnal oxygen.”

##### **“RETAILATION, HARASSMENT, DISCRIMINATION, NEGLECT & ABUSE**

The fact that professionals involved with Mr. Earl’s medical care are not assisting him with obtaining obviously needed medical care is evidence of retaliation, harassment, discrimination, neglect and abuse. Mr. Earl, as well as, his family has been retaliated against by acts of discrimination, intimidation, coercion, harassment, neglect and abuse for filing complaints and taking actions to obtain quality medical care. Persons involved with Mr. Earl’s medical services have attempted to re-institutionalize him by forcing him to give up CAC Wavier, as well as, SSD benefits”

##### **“DENIAL OF DUE PROCESS**

DIDD, BlueCare and their contracted providers continue to violate provisions of the Grier vs. Wadley court-ordered settlement also referred to as The Grier Revised Consent Decree (Grier Order). Mr. Earl continues to experience adverse actions from delays, denials, reductions, suspensions and terminations regarding his Medicaid, TennCare and CAC Wavier Program services, as well as, acts and omissions which are impairing the quality, timeliness and availability of his benefits and services. There continues to be denials of and gaps in Mr. Earl’s receipt of regular ongoing In-Home SLP and Skilled Nursing services from the TennCare, BlueCare and DIDD CAC Wavier Program.”

#### **4.7 PCP LETTER OF MEDICAL NECESSITY FOR NURSING SERVICES**

On 11/19/2019 Dr. Lydia Speer, PCP, issued a Letter of Medical Necessity for skilled nursing services detailing Petitioner’s medical history and prescribing a Treatment Plan of Care, attached as **Exhibit 2**. Dr. Speer wrote in the letter:

“I am writing on behalf of my patient, Mark Earl, to document medical necessity for indefinite In-Home Skilled Nursing Services. I have been his primary care physician since 11/8/2016. Nursing services are indicated for treatment of his multiple serious health conditions and



prevention of frequent recurrent hospitalizations. In the absence of such care there is a reasonable medical probability of significant complications leading to the onset of serious health problems.”

**“Treatment Plan:**

The plan is to provide for 27 hours per week skilled nursing through his BlueCare, TennCare Select and 43 hours per week skilled nursing through his TennCare HCBS Wavier services to give him 10 hours per day 7 days per week to ensure he has a skilled nurse available during all meals and to be available for medication administration, respiratory assessments, administration of breathing treatments, shallowing assessments and suctioning as needed.”

**4.8 PCP ORDER FOR SKILLED NURSING TASKS**

On 12/30/2019 Dr. Lydia Speer, PCP, issued an order for skilled nursing services detailing specific nursing tasks and prescribing a Treatment Plan of Care, attached as **Exhibit 3**.

The doctor ordered Nursing Services Treatment Plan is to provide for 27 hours per week skilled nursing through his BlueCare, TennCare Select and 43 hours per week skilled nursing through his TennCare HCBS CAC Wavier services to give him 10 hours per day 7 days per week for 52 weeks each year to ensure he has a skilled nurse available to perform the following tasks:

1. PRN medication administration
2. Nebulizer administration of medication
3. Administration of a Respiratory Suction Machine as needed during all meals to prevent choking and aspiration
4. Administration & adjustment of nighttime oxygen
5. Respiratory assessments
6. Daily pulse oximetry checks for low oxygen saturation levels
7. Nurse Swallow Screen Testing
8. Monitor need for chest x-ray, lab testing, antibiotics and other medications
9. Monitor Vital signs and lung sounds for Tachypnea/Dyspnea

**4.9 MD ORDER FOR NURSING TASK MORE THAN TWICE A DAY**

On 12/30/2019 Dr. Jigme Sethi, Petitioner’s Pulmonologist, issued an order prescribing the performance of a specific skilled nursing task 4 times per day, attached as **Exhibit 4**.

**4.10 RESIDENTIAL SERVICES PROVIDER NON-COMPLIANCE**

D & S Community Services (D&S), the agency presently serving as the Petitioner’s TennCare/DIDD Residential Services supported living provider, is currently approved by DIDD to provide Medical Residential and in home skilled nursing services to CAC HCBS Wavier participants, attached as **Exhibit 6**. D&S has been a TennCare/DIDD CAC HCBS Wavier Medical Residential and in home skilled nursing services provider since Petitioner transitioned to D&S in February 2017. A concentrated effort has been made to create confusion and misinformation about this fact in communications to Petitioner’s family, hospital discharge case managers, as well as, others involved with Petitioner’s services. In a 1/14/2020 email D&S

offered to relocate Petitioner to one of their Medical Residential homes, attached as **Exhibit 5**, and then promptly withdrew the offer. As no one has identified any new TennCare Medical Residential Service Provider's able to accept Petitioner; there is currently no other available provider.

Medical Residential and in home skilled nursing services are bundled services to be delivered by Petitioner's current Residential Services Provider. Based on TennCare/DIDD Procedures the Petitioner has the right to choose services and providers, as well as, where and with whom he or she resides. Also, the Petitioner, person supported, leads the person centered planning process. D & S has retaliated against Petitioner for making service complaints by denials of care, issuing and attempting to Involuntary Transfer or discharge him. D&S has not provided records, information or hearing testimony for determining if eligibility criteria or requirements are met for nursing services as required by provisions of the TennCare/DIDD Provider Manual Chapter 2.8. As a result of the Residential Services Provider's non-compliance the Petitioner is experiencing delays, denials, reductions and suspensions of Medicaid benefits and services, as well as, acts and omissions which are impairing the quality, timeliness and availability of his benefits and services. These "adverse actions" are not in compliance with The Grier Revised Consent Decree (Grier order).

#### **4.11 SUMMARY**

Since the time the appeal was filed, Petitioner's doctor has issued new orders on 1/24/2020 which qualify him for Prior Authorization of skilled Nursing Services in an SL4 home, as well as, Medical Residential Services Level 5 and meets Medical Necessity Criteria. As demonstrated by the above referenced materials, the Support Coordination Provider, Engstrom Services AKA Community Connections and the Residential Services Provider, D & S Community Services both continue to be in non-compliance with TennCare service requirements.


### **V. DESCRIPTION OF REQUESTED RULING**

TennCare shall approve Prior Authorization for payment effective on (date of declaratory order) for Petitioner to receive Medical Residential Services (Level 5) as described in DIDD Wavier Services Definitions. In the event that Level 5 services are not immediately available, as a lower level temporary alternative, TennCare shall approve payment effective on (date of declaratory order) for Petitioner to receive in home skilled Nursing Services up to 12 hours per day in a Supported Living Level 4 (SL4) home as described in DIDD Wavier Services Definitions until Level 5 services are started.

The Support Coordination Provider shall amend Petitioner's ISP Sections A. and B. to contain the narrative wording as approved by Petitioner's Legal Conservator.

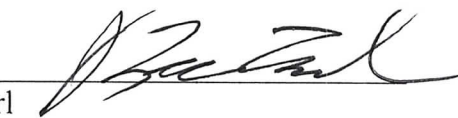


Respectfully submitted this the 1<sup>st</sup> day of April 2020.

By:   
Lee Earl  
Legal Conservator for Petitioner, Mark Earl  
4420 Oakwood Drive, Unit 16067  
Chattanooga, TN 37416-2392  
Telephone: (423) 894-5972  
Facsimile: (423) 709-8779

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Petition for Declaratory Order and 6 Exhibits were emailed to the Respondent at Leslie.Bruce@tn.gov and to the Tennessee Department of State - Administrative Procedures Division at APD.Filings@tn.gov on this 1<sup>st</sup> day of April 2020.

By:   
Lee Earl  
Legal Conservator for Petitioner, Mark Earl  
4420 Oakwood Drive, Unit 16067  
Chattanooga, TN 37416-2392  
Telephone: (423) 894-5972  
Facsimile: (423) 709-8779



EMG PRIMARY CARE AT EAST  
1751 Gunbarrel Road  
Suite 201  
Chattanooga TN 37421-7177  
Dept: 423-778-8909  
Dept Fax: 423-778-8910

June 19, 2019

Patient: **Mark Earl**  
Date of Birth: **2/19/1958**  
Date of Visit: **6/19/2019**

To whom this concerns:

My name is Dr. Lydia Speer. I am Mark Earl's primary care physician. I am writing to petition that you allow Mr. Earl to have indefinite skilled nursing services due to his recurrent hospitalizations from aspiration pneumonia. He has been admitted to the hospital 10 times over the last 12 months. In an effort to reduce his risk for aspiration, he needs more one on one nursing care in his group home. The caregivers that are present are not medically trained so are limited in how they can care for Mark in this way. He needs a skilled nurse to be present while he eats to monitor how he is taking in his food to help keep his airway clear and increase the surface area for oxygen absorption. It would be helpful if that nurse could have suction readily available if Mark gets choked on his food/liquids. A nurse would also be helpful in monitoring Mark's vitals routinely to be able to tell if he is starting to get ill again and then initiate care sooner to hopefully avoid re-hospitalization. Due to Marks' medical conditions, that include Basal ganglia degeneration, behavioral disturbances due to cognitive impairment, recurrent aspiration pneumonia, COPD, recurrent respiratory failure with hypoxia I believe he will benefit greatly from skilled nursing.

I appreciate your assistance in his care. Please let me know if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lydia Speer".

Lydia Speer, DO





EMG PRIMARY CARE AT EAST  
1751 GUNBARREL ROAD  
SUITE 201  
CHATTANOOGA TN 37421-7177  
Dept: 423-778-8909  
Dept Fax: 423-778-8910

November 19, 2019

BlueCare of Tennessee, TennCare Select  
Attention: Utilization Management Department  
1 Cameron Hill Circle  
Chattanooga TN 37402  
Fax: 1-800-292-5311

Re: Letter of Medical Necessity for In Home Nursing Services

BlueCare Member: Mark Earl  
DOB: 2/19/1958  
TennCare Select ID No: ZEDM12654383  
TennCare HCBS Waiver Control#: TN.0357.R03.00  
Member's Legal Conservator: Lee Earl, Phone: (423) 894-5972

To whom this concerns:

I am writing on behalf of my patient, Mark Earl, to document medical necessity for indefinite In-Home Skilled Nursing Services. I have been his primary care physician since 11/8/2016. Nursing services are indicated for treatment of his multiple serious health conditions and prevention of frequent recurrent hospitalizations. In the absence of such care there is a reasonable medical probability of significant complications leading to the onset of serious health Problems.

#### History of Present Illness:

A MBSS on 6/27/2017 showed a significant increased risk for choking and aspiration that was not present in prior SLP assessments. As a result of these findings in home SLP services were prescribed on 8/27/2017 for 11 months of twice weekly feeding therapy, swallowing exercises and caregiver education. On 5/12/2018 in-home SLP services were abruptly discontinued followed by a decline in Mr. Earl's health. Unsuccessful appeals were filed to reestablish ongoing in home SLP services. Subsequently, due to the lack of continuous in home SLP and skilled nursing services, during the period 7/7/2018 thru 10/22/2019 Mr. Earl had 13 hospital ER admissions. Additionally, Mr. Earl's weight went from a high of 195 lbs. on 9/6/16 to a low of 119 lbs. on 7/16/2019. His healthy ideal weight for his height of 66" is 148 pounds. The frequent recurring hospital emergency room admissions and abnormal weight loss are evidence of medical necessity for indefinite In-Home Skilled Nursing Services.

**Patient Medical History:**

Mark Earl is a 61 year old male patient diagnosed with Pervasive Developmental Delay, Moderate Intellectual Disability, Moderate to Severe Cognitive-Communication Impairment and Impulsivity secondary to hypoxia at birth. These mental incapacities limit his ability to self-report symptoms. Physical exam reveals a thin Caucasian male with moderate intellectual disability and unusual affect with motor and vocal tics. Mr. Earl has a history of binge eating disorder, PICA, and obsessive behaviors surrounding foods. From a facial standpoint, he has a wide smile, large ears, small head, and down slanting palpebral fissures. His musculoskeletal exam is remarkable for 2/3 toe syndactyly and a surgical scar from prior 3/4 finger syndactyly. His left fifth toe overlaps the fourth toe. He has bilateral mild pes planus, a pectus carinatum and mild kyphosis. During neurological exam he displayed an abnormal reflex, coordination abnormal, frequent motor tics, 3-4 + DTR's, essential tremor to hands bilaterally and a wide based gait. He has developed an essential tremor, unusual wide-based gait with falls, worsening tics and periods of confusion.

Mr. Earl has difficulty raising and clearing secretions secondary to dysfunction of his swallowing muscles and epiglottis. He has been diagnosed with Chronic Pharyngoesophageal Dysphagia, Hiatal Hernia and GERD. A Speech-Language/Swallowing Assessment on 6/18/2014 initially identified an aspiration risk and SLP mealtime instructions were developed for non-medically trained in home caregivers known as Direct Support Professionals (DSP). A MBSS on 6/27/2017 found a significant deterioration in his swallowing requiring monitoring of all PO intake. New mealtime instructions were issued increasing PO intake restrictions and controlling his access to food in the home. Mr. Earl also has a significant history of being a smoker for several years and is in need of ongoing treatment for diagnoses of COPD, Chronic Centrilobular Emphysema and Hypoxemia. A C-Pap, in home oxygen and a nebulizer have all been used in the past for treatment of his respiratory conditions. Due to the lack of ongoing in home skilled nursing prescribing these treatment options has been restricted. Consequently, he has experienced frequent UTIs, abnormal weight loss, constipation, dehydration, chronic aspiration pneumonia of both lungs and hypoxemia requiring multiple hospitalizations.

**Social History:**

Mr. Earl resides in a single family home with two other disabled housemates. He has his own bedroom and sleeps in a hospital bed that is elevated at a 35 degree angle due to GERD and aspiration precautions. The three housemates pay their own rent and share in the cost of other living expenses. A TennCare/DIDD contract agency provides in home caregivers known as DSPs, who are not medically trained, to assist the three housemates 24/7 with ADLs in their home. Access to food and drink is controlled in the home as Mr. Earl has PO intake restrictions. He will also hoard and hide these items. He is motivated by food and money, even small amounts of change. Mr. Earl smoked cigarettes for approximately 35 years until quitting in May 2016. He has no alcohol or smokeless tobacco use history. Mr. Earl requires assistance with making routine decisions and most ADLs. His brother, Lee Earl, is his court appointed Legal Conservator.

**Diagnostic Studies:**

Psychological Evaluation on 12/20/1996 shows findings on the WAIS-R of a Full Scale IQ of 58 and an Adaptive Age Equivalence of 10.29 years on CABS testing.

EGD on 11/8/2001 shows findings of a Hiatal Hernia.

Speech-Language/Swallowing Assessment on 6/18/2014 had the following findings:

Identification of Risks/Health & Safety Issues - Mealtime Instructions must be developed and implemented on an ongoing basis.



**Receptive Communication Skills/Cognition** - Mr. Earl demonstrates good comprehension of phrases and sentences during conversation regarding the immediate person, place, time. He does not remember this information a few minutes later. He follows 2-step verbal requests without difficulty but does not retain the information minutes later. He demonstrates good ability to follow simple, immediate instructions such as those needed for effective assistance with Mealtime Instructions.

**Expressive Communication Skills** - Mr. Earl communicates his basic needs and wants through verbalizations, including phrases and short sentences. The intelligibility of his speech is mildly decreased, due to rapid speech patterns. He will readily repeat his verbalizations when asked. He frequently verbalized subjects which were not warranted in the immediate conversational setting. The Listening Comprehension and Oral Expression subtests of the Oral and Written Language Scales (OWLS) were administered. On the Listening Comprehension, he received a score of 43 out of 59 items correct; On the Oral Expression subtest, he received a score of 31 out of 50 items correct. Analysis of these scores indicated that he is functioning as an individual of 7-8 years of age. On the Written Language subtest of the OWLS, he demonstrated the ability to legibly write his first and last name. He was able to copy 2 simple words. He was unable to write the names of objects (cap, cup, ball), probably due to decreased reading/spelling skills. He did not demonstrate the ability to match or read simple words.

Optometric exam on 8/11/2016 shows findings of nuclear sclerotic cataracts OU.

MBSS at Parkridge Hospital on 6/27/2017 summary states, "There was penetration with thin liquids from the cup rim in a single sip, but no aspiration. Regular/Mech Soft foods were given with a large amount of residue in the valleculae after the swallow, but no penetration or aspiration. Thin liquids were given again to follow the foods with penetration and silent aspiration. There was an eventual cough several minutes after the study was complete. The patient was given nectar thick liquids from the cup rim in single sips with inconsistent penetration, but no aspiration. (This was directly following another regular food trial)."

Brain CT on 7/12/2017 findings shows dense bilateral basal ganglia calcifications.

Renal Ultrasound on 8/22/2017 shows findings of mild irregular bladder wall thickening with scattered echogenic debris in the bladder lumen, correlate for evidence of infection. Please note, ultrasound is suboptimal in evaluating bladder malignancy. Focal lobular outpouching at the interpolar left kidney, favored dromedary hump. Underlying solid renal lesion felt less likely, this could be confirmed with contrast-enhanced CT. Normal sonographic appearance of the right Kidney.

Brain CT on 12/14/2017 shows findings of mild diffuse parenchymal volume loss and dystrophic calcifications in the globi pallidi. Gray-white matter differentiation is well preserved. There is no intracranial hemorrhage, edema, midline shift or mass effect. The sinuses and mastoids are Clear.

Speech Therapy Evaluation on 8/27/2018 at Siskin Hospital found a moderate to severe cognitive communication impairment.

MBSS on 9/17/2018 at Erlanger Hospital shows findings of aspiration into the airway and Pharyngoesophageal Dysphagia.

Pulmonary consult on 11/21/2018 reported that the patient is unable to perform PFTs and therefore there is no objective way to evaluate his COPD severity or spirometry. Cough efficacy is poor. Does qualify for oxygen based on nocturnal oximetry and would benefit from nebulizer medication administration. If his conditions do not improve an in-exsufflator to assist with expectoration will be prescribed.

ECG 12-Lead on 6/3/2019 shows findings of Normal sinus rhythm, ST & T wave abnormality, consider anterior ischemia, Abnormal ECG.

**Diagnoses:**

Mr. Earl has the following diagnoses relevant to this request:

Intellectual Disability  
Cognitive-Communication Impairment and Impulsivity secondary to hypoxia at birth  
Pervasive Developmental Delay Disorder  
Fahr's Syndrome  
Bilateral Basal Ganglia Degeneration with Calcification  
Tourette Syndrome/Tics, Involuntary Movements  
Periodic Limb Movement Disorder  
COPD  
Chronic Centrilobular Emphysema  
Nocturnal Hypoxemia  
Sleep Apnea  
Chronic Aspiration pneumonia of both lungs  
Chronic airway obstruction  
Chronic Pharyngoesophageal Dysphagia  
Epiglottis Dysfunction  
Hiatal Hernia  
GERD  
Thrombocytopenia/Reduced Palates  
Macrocytosis/Enlarged Red Cells  
Iron Deficiency Anemia  
Vitamin D Deficiency  
Low Sodium Levels  
Mixed Hyperlipidemia  
Pica  
Night-time Eating Syndrome  
Failure to Thrive  
Incontinence/ Frequent UTI  
Congenital Bilateral toe and finger syndactyly  
Osteoporosis  
Osteoarthritis

**Medical Necessity:**

Mr. Earl is a 61 year old male patient who has an extensive history of multiple serious health conditions and frequent hospitalizations. He has an intellectual disability and is not able to make safe decisions for himself. He requires assistance with all ADL's. He resides in a supportive living environment staffed with non-medical caregivers supervised by a non-medical house manager. The SLP Therapy Monthly Review dated 3/31/2018 reported that the DSP/in home caregiver "staff has not been consistent with following mealtime instructions" and continuous ongoing health services were medically necessary to "minimize risk of aspiration, choking, pneumonia and death". More recent home health agency reports have noted significant limitations with the care non-medically trained DSPs are qualified for and able to provide. There continues to be a high rate of turnover with the DSP caregivers in the home and their lack of medical training are both factors in the medical necessity for skilled nursing services.

Mr. Earl has had frequent hospital emergency room visits due to his dysphagia and frequent incidents of aspiration pneumonia. He is on a pureed diet with thickened liquids to decrease his risk of aspiration yet, still has had frequent hospitalizations for aspiration pneumonia. He requires constant supervision during meals and a suction machine close to him in the event he aspirates. He requires ongoing skilled nursing to monitor him during meals on how he is taking in his food and drink, as well as, assess his respiratory status. A skilled nurse is necessary to provide feeding therapy, assist with keeping his airway clear and increase the surface area for

oxygen absorption. When Mr. Earl gets choked on his food or liquids a medically trained nurse needs to be immediately available to properly assess his respiratory status and to correctly operate a suction machine as needed. Nursing services are necessary to be present during meals to assess his respiratory status, as well as, operate a suction machine for decreasing his risk of aspiration pneumonia and preventing frequently recurring hospitalizations. Mr. Earl also has a history of sleep apnea, requires oxygen and frequent monitoring of his saturation to ensure respiratory stability. He is cognitively unable to administer his breathing treatments independently. Due to his multiple respiratory conditions frequent monitoring of his respiratory status is required to ensure safety during meals and throughout the day.

A medically trained nurse is appropriately skilled to perform ongoing monitoring of all his vital signs which would provide immediate identification of illness and prompt treatment initiation preventing frequent recurring hospitalizations. Due to his chronic cognitive impairment Mr. Earl is unable to self-report symptoms, make safe decision for himself and depends on others to provide him with a safe environment. It is imperative and medically necessary that skilled nursing is provided for Mr. Earl, to keep him safe in his home environment and avoid frequent recurring hospitalizations.

**Treatment Plan:**

The plan is to provide for 27 hours per week skilled nursing through his BlueCare, TennCare Select and 43 hours per week skilled nursing through his TennCare HCBS Wavier services to give him 10 hours per day 7 days per week to ensure he has a skilled nurse available during all meals and to be available for medication administration, respiratory assessments, administration of breathing treatments, swallowing assessments and suctioning as needed.

Thank you for your prompt consideration, services to be provided pending insurance approval.

Sincerely,



Lydia Speer, DO

CC:

Mr. John Craven, Regional Director  
Tennessee Department of Intellectual & Developmental Disabilities  
East Tennessee Regional Office  
520 West Summit Hill Drive, Suite 201  
Knoxville, TN 37902  
Fax: (865) 558-0226



Please Use Ball Point Pen! PHYSICIANS MUST SIGN, Date and Time ALL ORDERS Please Use Ball Point Pen!

DATE/TIME	CHK'D BY	PHYSICIAN'S ORDER SHEET
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12/30/19

Please provide

In home long term continuous

Skilled nursing care.

Evaluate and treat for chronic pharyn-  
 goesophageal dysphagia and chronic  
 aspiration pneumonia. Evaluate and  
 treat for COPD, Nocturnal hypoxemia and  
 chronic centrilobular Emphysema. Evaluate  
 for administration of a respiratory suction  
 machine as needed during all meals to prevent  
 choking and aspiration. Evaluate for  
 nebulizer administration of medication.  
 Evaluate for administration & adjustment of  
 night time oxygen. Daily pulse oximetry  
 checks for low oxygen saturation levels.  
 nurse swallow screen testing and monitoring  
 of lung sounds for tachypnea/dyspnea. Evaluate  
 and treat for nutritional deficiencies.  
 strengthening exercises and monitoring medication  
 start now 12/30/19 for 10 hours per  
 provide services 7 days a week  
 day 5 2 weeks per year.

PROHIBITED ABBREVIATIONS

PROHIBITED:	INSTEAD WRITE	PROHIBITED:	INSTEAD WRITE
MS, MgSO <sub>4</sub>	magnesium sulfate	Q.D.	daily
MS, MSO <sub>4</sub>	morphine sulfate	Q.O.D.	every other day
U	units	.5 mg	0.5 mg - always use zero before decimal
IU	International units	5.0 mg	5 mg - never use trailing zeroes

Revised: 12/2007

ERLANGER Health System  
 Chattanooga, Tennessee

PHYSICIAN'S ORDER SHEET

THE PHARMACY IS AUTHORIZED TO DISPENSE DRUGS FOR ADMINISTRATION OF  
 ANOTHER GENERICALLY EQUIVALENT BRAND, IDENTICAL IN STRENGTH, DOSAGE  
 FORM, AND CONTENT OF ACTIVE THERAPEUTIC INGREDIENT(S).



PO2300  
 Physician Orders

Patient Identification

Mark Earl  
 2-19-58

Dr. Lydia Speer DO  
 423-778-8909  
 423-778-8910

**ipratropium (ATROVENT) 0.02 % nebulizer solution [79537988]** Order Details

Dose: **500 mcg**      Route: **nebulization**      Frequency: **Every 6 hours**  
Dispense Quantity: 450      Refills: 0      Fills remaining: --  
mL

Sig: Take 2.5 mL (500 mcg total) by nebulization every 6 (six) hours.

Written Date: --      Expiration Date: --      Ordering Date: 01/24/20  
Start Date: 01/24/20      End Date: --

Ordering Provider: --      Phone: --      Fax: --  
Address: --      NPI: --

Authorizing Provider:      Phone: 423-778-9101      Fax: 423-778-9190  
Jigme Sethi, MD  
Address: 979 EAST THIRD      NPI: 1891760708  
STREET SUITE C-735,  
CHATTANOOGA TN  
37403

Ordering User: Jigme  
Sethi, MD

Diagnosis Association: Centrilobular emphysema (CMS/HCC) (J43.2)

Original Order: ipratropium (ATROVENT) 0.02 % nebulizer solution [79537987]

Pharmacy: McFarland      Phone: 423-581-1118      Fax: 423-581-1104

Pharmacy - Morristown,  
TN - 167 West Main

Street

Address: 167 West Main

Street, Morristown TN

37814

Pharmacy Comments: --

Fill quantity remaining: --      Fill quantity used: --      Next fill due: --

**Orders with any of the following pharmaceutical classes:**

**ANTICHOLINERGICS, ORALLY INHALED SHORT ACTING**

Name	Dose	Frequency	Start Date	End Date	Medication Warnings	Interventions?	Order Mode
ipratropium (ATROVENT) 0.02 % nebulizer solution	500 mcg	Every 12 hours	01/23/20	01/24/20			Outpatient

Name	Dose	Frequency	Start Date	End Date	Medication Warnings	Interventions?	Order Mode
ipratropium (ATROVENT) 0.02 % nebulizer solution	500 mcg	Every 8 hours	01/21/20	01/23/20			Outpatient

**Warnings History**

No Interaction Warnings Shown

**Pharmacist Clinical Review History**

This prescription has not been clinically reviewed.

**Order Reconciliation Actions**

Order Reconciliation Actions

**E-Prescribing Status**

**Outpatient Medication Detail**

ipratropium (ATROVENT) 0.02 % nebulizer solution

Sig: Take 2.5 mL (500 mcg total) by nebulization every 6 (six) hours.

Class: Historical Med

Route: nebulization

**Event History**

Event History

**Tracking Links**

Cosign Tracking

Order Transmittal Tracking

**Outpatient Medication Detail**

	Disp	Refills	Start	End
ipratropium (ATROVENT) 0.02 % nebulizer solution	450 mL	0	1/24/2020	

Sig - Route: Take 2.5 mL (500 mcg total) by nebulization every 6 (six) hours. - nebulization



Class: Historical Med

Disp

Refills

Start

End

Print Trail

\*\* No Print Trail Recorded \*\*

TN SOS-APD Thu, Apr 02, 2020 08:15 AM : 22 of 23 pages received

Ex, 5

**From:** Regina Porterfield <rporterfield@dsccommunity.com>**To:** jlxz@aol.com <jlxz@aol.com>**Cc:** Melinda Briant <Melinda.Briant@dsccommunity.com>; 'Dan Fribourg' <Dan.Fribourg@tn.gov>; Jennifer Myers <JMyers@engstromservices.org>; Telsa Henson <Telsa.Henson@dsccommunity.com>**Subject:** Skill nursing for M Earl**Date:** Tue, Jan 14, 2020 4:46 pm

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Good afternoon Mr. Lee Earl,

We received the orders from Dr. Jigme Sethi; it appears that Mark now qualifies for skilled nursing services. With that being said, in order for us to provide these services, Mark will have to relocate to my Medical Supportive Living home. We will need to set-up meet and greets with the other ‘persons supported’, their conservators, you and Mark and the ISC(s). We will need to get these meetings set-up ASAP in order to begin services. I will await a response from you agreeing to these terms before contacting the other families.

Thanks..

## **Regina Porterfield**

### **Executive Director**

### **D & S Community Services**

6116 Shallowford Road, Suite 106, Chattanooga, TN 37421

office: 423.553.7334 | cell: 615.686.3693 | fax: 423.553.1464

[www.dsccommunity.com](http://www.dsccommunity.com)

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