

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

Chapter 1200-13-13
TennCare Medicaid

Amendments

Rule 1200-13-13-.01 Definitions is amended by adding a new paragraph (34) to replace the current public necessity paragraph (34) which shall read as follows:

- (34) ESCORT shall mean an individual who accompanies an enrollee to receive a medically necessary service. For the purpose of determining whether an individual may qualify as an escort who may be transported without cost to the enrollee as a covered TennCare benefit, the following criteria apply:
- (a) Any person over the age of twelve (12) selected by the enrollee;
 - (b) Any person under the age of twelve (12) is presumed to be too young to serve as an escort. At the time of request for transportation, this presumption can be overcome by specific facts provided by the enrollee, which would demonstrate to a reasonable person that the proposed escort could in fact be of assistance to the enrollee; and
 - (c) Any person under the age of six (6) is excluded in all cases from the role of escort.

Subparagraph (b) of paragraph (1) of rule 1200-13-13-.04 Covered Services is amended by adding the new part 21. to replace the current public necessity part 21. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGE 21 AND OVER
<p>21. Non-Emergency Transportation [defined at 42 CFR §440.170(a)(1) and (3)].</p>	<p>Covered as necessary for enrollees lacking accessible transportation for covered services. Emphasis shall be placed on the utilization of fixed route and/or public transportation where appropriate and available.</p> <p>The travel to access primary care and dental services must meet the requirements of the TennCare demonstration project terms and conditions. The availability of specialty services as related to travel distance should meet the usual and customary standards for the community. However, in the event the MCC is unable to negotiate such an arrangement for an enrollee, transportation must be provided regardless of whether the enrollee has access to transportation.</p> <p>If the enrollee is a minor child, transportation must be provided for the child and an accompanying adult. However, transportation for a minor child shall not be denied pursuant to any policy which poses a blanket restriction due to enrollee's age or lack of parental accompaniment. Any decision to deny transportation of a minor child due to an enrollee's age or lack of parental accompaniment must be made on a case-by-case basis and must be based on the individual facts surrounding the request. As with any denial, all notices and actions must be in accordance with the appeals process.</p> <p>Tennessee recognizes the "mature minor exception" to permission for medical treatment.</p> <p>The provision of transportation to and from covered dental services is the responsibility of the MCO.</p>	<p>Covered as necessary for enrollees lacking accessible transportation for covered services. Emphasis shall be placed on the utilization of fixed route and/or public transportation where appropriate and available.</p> <p>The travel to access primary care and dental services must meet the requirements of the TennCare demonstration project terms and conditions. The availability of specialty services as related to travel distance should meet the usual and customary standards for the community. However, in the event the MCC is unable to negotiate such an arrangement for an enrollee, transportation must be provided regardless of whether the enrollee has access to transportation.</p> <p>For persons dually eligible for Medicare and Medicaid, non-emergency transportation to access medical services covered by Medicare and delivered by Medicare providers is covered by TennCare within the same access standards as those applicable for enrollees who are eligible for Medicaid only.</p> <p>One escort is allowed per enrollee if the enrollee requires assistance. Assistance is defined for purposes of this rule as help provided to the enrollee that enables the enrollee to receive a medically necessary service. Examples of assistance are: physical assistance such as holding</p>

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

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 8th day of January, 2008 and will become effective on the 23rd day of March, 2008. (FS 01-04-08; DBID 2806).

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. **Name of Bureau:** Bureau of TennCare
2. **Rulemaking hearing date:** November 15, 2007
3. **Types of small businesses that will be directly affected by, bear the cost of, and/or directly benefit from the proposed rules:** Private sector non-emergency transportation providers will, in part, be affected by the new rules if those businesses do not meet the necessary safety and driver standards (e.g., drivers must go through a sexual registry check before being allowed to transport enrollees) established by the TennCare Bureau. This new rule is a part of an overall effort of the TennCare Bureau to increase efficiencies and reduce the costs of providing non-emergency transportation to its enrollees.
4. **A description of how small businesses will be adversely impacted:** The TennCare Bureau expects a minimum, if any, impact on small businesses that currently provide non emergency transportation services to enrollees. The proposed rule simply clarifies the need to utilize fixed route/ public transportation where applicable. Since many enrollees cannot use fixed route transportation for health reasons, we do not anticipate that the majority of small businesses currently providing this service will be adversely affected.
5. **Whether, and to what extent, alternative means exist for accomplishing the objectives of the proposed rule that might be less burdensome to small businesses, and why such alternatives are not being proposed:** The proposed rule is consistent with the Deficit Reduction Act of 2005 and Executive Order 13330 of the President of the United States of America. Other states, such as Texas, have instituted programs, where a state government agency has provided all non-emergency transportation. Under this approach, the service will continue to be provided by the private sector, recognizing the need to utilize fixed route transportation where appropriate and available.
6. **A comparison of the proposed rule with federal or state counterparts:** Twenty one states, such as Texas (cited in question 5) have specific transportation coordination statutes. Sixteen states, including Tennessee have broad transportation coordination statutes. Tennessee's approach allows for more participation by small business in the delivery of non emergency transportation service to enrollees.

The rule also points out that, for persons dually eligible for Medicare and Medicaid, non-emergency transportation to access medical services covered by Medicare and delivered by Medicare providers is covered by TennCare within the same access standards as those applicable for enrollees who are dually eligible for Medicaid only. Federal law states that, "Freedom of choice does not require you [State] to provide transportation at unusual or exceptional cost to meet a recipient's personal choice of provider." (State Medicaid Manual 2113 TRANSPORTATION TO PROVIDERS OF SERVICES).

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