

Notice of Rulemaking Hearing

Tennessee Department of Finance and Administration Bureau of TennCare

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 16th day August 2007.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

Substance of Proposed Rules

Chapter 1200-13-13 TennCare Medicaid

Paragraph (44) Home Health Services of rule 1200-13-13-.01 Definitions is amended by deleting subparagraph (c) in its entirety and replacing it with a new subparagraph (c) so as amended paragraph (44) shall read as follows:

(44) Home Health Services shall mean:

- (a) Any of the following services ordered by a treating physician and provided by a licensed home health agency pursuant to a plan of care at an enrollee's place of residence.
 - 1. Part-time or intermittent nursing services;
 - 2. Home health aide services; or
 - 3. Physical therapy, occupational therapy, or speech pathology and audiology services.
- (b) Medical supplies, equipment, and appliances ordered by a treating physician and suitable for use at an enrollee's place of residence.
- (c) Home health providers may only provide services to the recipient that have been ordered by the treating physician and are pursuant to a plan of care and may not provide other services such as general child care services, cleaning services or preparation of meals, or services to other household members. Because children typically have other non-medical care giving needs which must be met, to the extent that home services are provided to a person under 18 years of age, a responsible adult (other than the home healthcare provider) must be present at all times in the home during provision of home health services unless all of the following criteria are met:
 - 1. The child is non-ambulatory; and

2. The child has no or extremely limited ability to interact with caregivers; and
3. The child would not reasonably be expected to have needs that fall outside the scope of medically necessary TennCare covered benefits (e.g. the child has no need for general supervision or meal preparation) during the time the home health provider would be present in the home without the presence of another responsible adult; and
4. No other children will be present in the home during the time the home health provider would be present in the home without the presence of another responsible adult.

Paragraph (80) Private Duty Nursing Services of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new paragraph (80) which shall read as follows:

(80) Private Duty Nursing Services shall mean nursing services for recipients who require continuous skilled nursing care. Skilled nursing care is provided by a registered nurse or licensed practical nurse under the direction of the recipient's physician to the recipient and not to other household members. An individual who needs eight (8) or more hours of skilled nursing care during a 24-hour period shall be determined to need continuous skilled nursing care. As a general rule, only an individual who is dependent on technology-based medical equipment requiring frequent interventions will be determined to need continuous care. An individual who needs less than eight (8) hours of skilled nursing care will receive those services as an intermittent service under home health. If it is determined by the MCO to be cost effective, non-skilled services may be provided by a nurse rather than a home health aide. Furthermore, if it is determined by the MCO to be cost effective, the nurse may remain in the home during the intervals in between the delivery of intermittent services, rather than traveling back and forth to the home. However, it is the total number of hours of skilled nursing services, not the number of hours that the nurse is in the home, which determines whether the nursing services shall be considered continuous or intermittent. General childcare services and other non-hands on assistance such as cleaning and meal preparation will not be provided by a private duty nurse. Because children typically have other non-medical care giving needs which must be met, to the extent that private duty nursing services are provided to a person under 18 years of age, a responsible adult (other than the private duty nurse) must be present at all times in the home during the provision of the private duty nursing services unless all of the following criteria are met:

- (a) The child is non-ambulatory; and
- (b) The child has no or extremely limited ability to interact with caregivers; a
- (c) The child would not reasonably be expected to have needs that fall outside the scope of medically necessary TennCare covered benefits (e.g. the child has no need for general supervision or meal preparation) during the time the private duty nurse would be present in the home without the presence of another responsible adult; and
- (d) No other children will be present in the home during the time the private duty nurse would be present in the home without the presence of another responsible adult.

Statutory Authority: T.C.A. 4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of June, 2007. (FS 06-10-07, DBID 649)