

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

Paragraph (23) Home Health Services of rule 1200-13-16-.01 Definitions is amended by deleting subparagraph (c) in its entirety and replacing it with a new subparagraph (c) so as amended paragraph (23) shall read as follows:

(23) 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.

Subparagraph (d) of paragraph (4) of rule 1200-13-16-.05 Medical Necessity Criteria is amended by deleting part 2. in its entirety and replacing it with a new part 2. so as amended subparagraph (d) shall read as follows:

(d) Home health services.

1. Home health aide services are necessary to treat an enrollee's medical condition only if such services;
 - (i) Are of a type that the enrollee cannot perform for himself or herself;
 - (ii) Are of a type for which there is no caregiver able to provide the services; and
 - (iii) Consist of hands-on care of the enrollee.
2. All other home health services are necessary to treat an enrollee's medical condition only if they are ordered by the treating physician, are pursuant to a plan of care, and meet the requirements described at subparagraph (a), (b), or (c) immediately above or (f) immediately below. Services that do not meet these requirements, such as general child care services, cleaning services or preparation of meals, are not required to treat an enrollee's medical condition and will not be provided. Because children typically have other non-medical care giving needs which must be met, to the extent that home health services or private duty nursing services are provided to a person under 18 years of age, a responsible adult (other than the healthcare provider) must be present at all times in the home during provision of home health or private duty nursing services unless all of the following criteria are met:
 - (i) The child is non-ambulatory; and
 - (ii) The child has no or extremely limited ability to interact with caregivers; and
 - (iii) 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 or private duty nurse is in the home without the presence of another responsible adult; and
 - (iv) No other children will be present in the home during the time the home health provider or private duty nurse would be present in the home without the presence of another responsible adult.

3. Private Duty Nursing services are separate services from home health services. When private duty nurses are authorized by the MCC to provide home health aide services pursuant to rule 1200-13-13-.04(14)(c) or 1200-13-14-.04(14)(c), these services must meet the requirements described at part 1. immediately above.
4. Home health services may not be denied on any of the following grounds:
 - (i) Because such services are medically necessary on a long term basis or are required for the treatment of a chronic condition;
 - (ii) Because such services are deemed to be custodial care;
 - (iii) Because the enrollee is not homebound;
 - (iv) Because private insurance utilization guidelines, including but not limited to those published by Milliman & Robertson or developed in-house by TennCare managed care contractors, do not authorize such health care as referenced above;
 - (v) Because the enrollee does not meet coverage criteria for Medicare or some other health insurance program, other than TennCare;
 - (vi) Because the home health care that is needed does not require or involve a skilled nursing service;
 - (vii) Because the care that is required involves assistance with activities of daily living;
 - (viii) Because the home health service that is needed involves home health aide services;
 - (ix) Because of a numerical limit unrelated to medical necessity;
 - (x) Because the enrollee meets the criteria for receiving Medicaid nursing facility services; or
 - (xi) On the grounds that such medically necessary home health care is not a covered service.

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 06-12-07, DBID 651)