

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 Nashville Public Library Auditorium, 1st Floor, 615 Church Street, Nashville, Tennessee 37219 at 9:30 a.m. C.D.T. on the 16th day August 2005.

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 Rule

Rule 1200-13-14-.10 Exclusion is deleted in its entirety and replaced with a new rule 1200-13-14-.10 which shall read as follows:

1200-13-14-.10 EXCLUSIONS.

- (1) General exclusions. The following items and services shall not be considered covered services by TennCare:
 - (a) Items and services that are not considered medically necessary, as defined in these rules.
 - (b) Provision of medical assistance which is outside the scope of benefits as defined in these rules.
 - (c) Provision of services to persons who are not enrolled in TennCare on the date the services are delivered.
 - (d) Services for which there is no Federal Financial Participation (FFP).
 - (e) Services provided outside the geographic borders of Tennessee, including transportation to return to Tennessee to receive medical care except in the following circumstances:

1. Emergency medical services are needed because of an emergency medical condition;
 2. Non-emergency urgent care services are requested because the recipient's health would be endangered if he were required to travel, but only upon the explicit prior authorization of the MCC;
 3. The covered medical service would not be readily available within Tennessee if the enrollee was physically located in Tennessee at the time of need. Covered services are explicitly authorized by the enrollee's TennCare MCC; or
 4. The out-of-state provider is participating in the enrollee's MCC network.
- (f) Investigative or experimental services or procedures including, but not limited to:
1. Drug or device lacks FDA approval except when medically necessary as defined by TennCare, or
 2. Drug or device lacks approval of facility's Institutional Review Board, or
 3. Requested treatment is the subject of Phase I or Phase II clinical trials or the investigational arm of Phase III clinical trials, or
 4. Prevailing opinion among experts is that further study is required to determine safety, efficacy, or long-term clinical outcomes of requested service.
- (g) Services which are delivered in connection with, or required by, an item or service not covered by TennCare, including the transportation to receive such non-covered services.
- (h) The reversal and/or treatment of associated complications of any medical procedure when such procedure is itself excluded from coverage, pursuant to any provision of this section except subsection (c), except for emergency services to treat a complication to the extent that these emergency services are covered for the individual enrollee.
- (i) Items or services furnished to provide a safe surrounding, including the charges for providing a surrounding free from exposure that can worsen the disease or injury.
- (j) Non-emergency services (other than prescription drugs for dual eligibles, until January 1, 2006) that are ordered or furnished by an out-of-network provider and which have not been approved by the enrollee's MCC for out-of-network care.
- (k) Services that are free to the public, with the exception of services delivered in the schools pursuant to the Individuals with Disabilities in Education Act (IDEA).

- (l) Items or services ordered, prescribed, administered, supplied, or provided by an individual or entity that has been excluded from participation in the Medicaid program under the authority of the United States Department of Health and Human Services or the Bureau of TennCare.
 - (m) Items or services ordered, prescribed, administered, supplied, or provided by an individual or entity that is no longer licensed by their licensing board.
 - (n) Items or services outside the scope and/or authority of a provider's specialty and/or area of practice.
 - (o) Items or services to the extent that Medicare or a third party payer is legally responsible to pay or would have been legally responsible to pay except for the enrollee's or the treating provider's failure to comply with the requirements for coverage of such services.
- (2) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115(a) waiver program and the TennCare Section 1915(b) waiver program. Some of these services may be covered outside TennCare under a Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with Rules 1200-13-1-.25, 1200-13-1-.26, and 1200-13-1-.27.
- (a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21
 1. Audiological therapy or training; prescribing, fitting, or changing hearing aids
 2. Augmentative communication devices
 3. Chiropractor's services
 4. Convalescent care
 5. Ear plugs, except for children with tympanostomy tubes ordered by an ENT doctor
 6. Electrically powered adjustable hospital beds, including variable height beds
 7. Floor standers
 8. Food supplements, except as medically necessary for treatment of metabolic disorders in children under age 21 and as required for PKU treatment by Tennessee law
 9. Hearing aids
 10. Maintenance services (physical, occupational, and speech therapy) unless required to prevent regression or deterioration of a child's condition.

Services without which the child's condition would remain unchanged are not considered maintenance services.

11. Methadone clinic services
 12. Orthodontic services, except under the conditions described elsewhere in these rules.
 13. Purchase, repair, or replacement of materials or equipment when the reason for the purchase, repair, or replacement is the result of enrollee abuse
 14. Purchase, repair, or replacement of materials or equipment that has been stolen or destroyed except when the following documentation is provided:
 - (i) Explanation of continuing medical necessity for the item, and
 - (ii) Explanation that the item was stolen or destroyed, and
 - (iii) Copy of police, fire department, or insurance report if applicable
 15. Radial keratotomy
 16. Reimbursement to a provider or enrollee for the replacement of a rented durable medical equipment (DME) item that is stolen or destroyed
 17. Repair of DME items not covered by TennCare
 18. Repair of DME items covered under the provider's or manufacturer's warranty
 19. Repair of a rented DME item
 20. Sitter services
 21. Speech, language, and hearing services to address speech problems caused by mental, psychoneurotic, or personality disorders
 22. Standing tables
- (b) Services, products, and supplies that are specifically excluded from coverage under the TennCare program.
1. Alcoholic beverages
 2. Animal therapy including, but not limited to:
 - (i) Dolphin therapy
 - (ii) Equine therapy

- (iii) Hippo therapy
- (iv) Pet therapy
- 3. Art therapy
- 4. Autopsy
- 5. Bariatric surgery including, but not limited to, gastric stapling, intestinal bypass surgery, banding, and body remodeling
- 6. Bathtub equipment and supplies including, but not limited to:
 - (i) Action Bath Hydro Massage, or similar devices
 - (ii) Aero massage, or similar devices
 - (iii) Aqua Whirl, or similar devices
 - (iv) Bed baths
 - (v) Century Bed Baths
 - (vi) Eaton E-Z baths
 - (vii) Nolan Bath Chairs, or similar devices
 - (viii) Paraffin baths
 - (ix) Sauna baths
 - (x) Sitz baths, or similar devices
- 7. Beds and bedding equipment such as:
 - (i) Adjust-a-Beds, or similar devices
 - (ii) Air flotation beds, powered
 - (iii) Air fluidized beds (including Clinatron beds)
 - (iv) Bead beds, or similar devices
 - (v) Bed boards
 - (vi) Bedding and bed casings
 - (vii) Hospital beds, unless specifically documented by the treating physician to handle a specific condition that requires

repositioning that cannot be accomplished by the use of a conventional bed

- (viii) Lounge beds
 - (ix) Ortho-prone beds
 - (x) Oscillating beds
 - (xi) Pillows, hypoallergenic
 - (xii) Springbase beds
 - (xiii) Vail beds
 - (xiv) Vasculating beds
 - (xv) Waterbeds
8. Bioenergetic therapy
9. Biofeedback
10. Body adornment and enhancement services including, but not limited to:
- (i) Body piercing, or removal of body piercing
 - (ii) Breast augmentation
 - (iii) Breast capsulectomy
 - (iv) Breast implant removal
 - (v) Ear piercing, or repair of ear piercing
 - (vi) Hair transplantation, and agents for hair growth
 - (vii) Tattoos or removal of tattoos
 - (viii) Tongue splitting or repair of tongue splitting
 - (ix) Wigs or hairpieces
11. Breathing equipment such as:
- (i) Intrapulmonary Percussive Ventilators (IPVs)
 - (ii) Spirometers
 - (iii) Vaporizers

12. Carbon dioxide therapy
13. Care facilities or services, the primary purpose of which is non-medical, including, but not limited to:
 - (i) Day care
 - (ii) Evening care centers
 - (iii) Respite care
 - (iv) Rest cures
 - (v) Social or diversion services
14. Carotid body tumor, excision of, as treatment for asthma
15. Chelation therapy, except for the treatment of heavy metal poisoning or secondary hemochromatosis in selected settings. Chelation therapy for treatment of arteriosclerosis or autism is not covered. Chelation therapy for asymptomatic individuals is not covered. In the case of lead poisoning, the lead levels must be extremely high. For children, a minimum level of 45 ug/dl is recommended. Because chelation therapy and its after-effects must be continuously monitored for possible adverse reactions, chelation therapy is covered only in inpatient or outpatient hospital settings, renal dialysis facilities, and skilled nursing facilities. It is not covered in an office setting, an ambulatory surgical center, or a home setting.
16. Clothing, including adaptive clothing, with the exception of mastectomy bras
17. Cold therapy devices
18. Comfort and convenience items including, but not limited to:
 - (i) Arch supports
 - (ii) Corn plasters
 - (iii) Garter belts
 - (iv) Incontinence products (diapers/liners/underpads) for persons younger than 3 years of age
 - (v) Incontinence products other than disposable diapers, including pull-up pants, for persons 3 years of age and older
 - (vi) Non-prescription ointments
 - (vii) Support stockings other than Jobst supports

19. Computers, personal, and peripherals including, but not limited to printers, modems, monitors, scanners, and software, including their use in conjunction with an Augmentative Communication Device
20. Cosmetic dentistry, cosmetic oral surgery, and cosmetic orthodontic services
21. Cosmetic prosthetic devices
22. Cosmetic surgery or surgical procedures primarily for the purpose of changing the appearance of any part of the body to improve appearance of self-esteem, including scar revision. The following services are not considered cosmetic services:
 - (i) Reconstructive surgery to correct the results of an injury or disease
 - (ii) Surgery to treat congenital defects (such as cleft lip and cleft palate) to restore normal bodily function
 - (iii) Surgery to reconstruct a breast after mastectomy that was done to treat a disease, or as a continuation of a staged reconstructive procedure
 - (iv) In accordance with Tennessee law, surgery of the non-diseased breast following mastectomy and reconstruction to create symmetrical appearance
 - (v) Surgery for the improvement of the functioning of a malformed body member
 - (vi) Reduction mammoplasty, except that reduction mammoplasty will only be deemed medically necessary if the minimum amount of breast material to be removed is equal to or greater than the 22nd percentile of the Schnur Sliding Scale based on the individual's body surface area.
23. Cushions, pads, and mattresses including, but not limited to:
 - (i) Aquamatic K Pads
 - (ii) Elbow protectors
 - (iii) Heat and massage foam cushion pads
 - (iv) Heating pads
 - (v) Heel protectors
 - (vi) Lamb's wool pads

- (vii) Steam packs
- 24. Dance therapy
- 25. Dental implant services including implant supported prosthesis
- 26. Dental services for adults age 21 and older
- 27. Educational services including, but not limited to:
 - (i) Academic performance testing
 - (ii) Educational tests and training programs
 - (iii) Habilitation
 - (iv) Job training
 - (v) Lamaze classes
 - (vi) Lovaas therapy
 - (vii) Picture illustrations
 - (viii) Remedial education
 - (ix) Sign language instruction
 - (x) Special education
- 28. Encounter groups or workshops
- 29. Environmental modifications including, but not limited to:
 - (i) Air cleaners or purifiers
 - (ii) Air conditioners, central or unit
 - (iii) Dehumidifiers
 - (iv) Humidifiers, central or room
 - (v) Micronaire environmentals, and similar devices
 - (vi) Pollen extractors
 - (vii) Portable room heaters
 - (viii) Vacuum systems for dust filtering

- (ix) Water purifiers
 - (x) Water softeners
30. Exercise equipment including, but not limited to:
- (i) Exercise equipment
 - (ii) Exercycles (including cardiac use)
 - (iii) Functional electrical stimulation
 - (iv) Gravitronic traction devices
 - (v) Gravity guidance inversion boots
 - (vi) Parallel bars
 - (vii) Pulse tachometers
 - (viii) Tilt tables
 - (ix) Training balls
 - (x) Treadmill exercisers
 - (xi) Weighted quad boots
31. Footwear and orthotics, including all forms and types of shoes and shoe inserts, except for the following:
- (i) Therapeutic shoes for treatment or prevention of foot complications associated with diabetes mellitus, as required by Tennessee law
 - (ii) Shoes that are an integrated part of a leg brace.
32. Grooming services including, but not limited to:
- (i) Barber services
 - (ii) Beauty services
 - (iii) Electrolysis
 - (iv) Hairpieces or wigs
 - (v) Manicures
 - (vi) Pedicures

33. Hair analysis
34. Home improvements and furnishings including, but not limited to:
 - (i) Decks
 - (ii) Electric powered recliners, elevator seats, and lift chairs
 - (iii) Elevators
 - (iv) Enlarged doorways
 - (v) Environmental accessibility modifications such as grab bars and ramps
 - (vi) Fences
 - (vii) Furniture, indoor or outdoor
 - (viii) Handrails
 - (ix) Meals, home delivered
 - (x) Minor home modifications
 - (xi) Overbed tables
 - (xii) Plexiglass
 - (xiii) Plumbing repairs
 - (xiv) Porch gliders
 - (xv) Rollabout chairs
 - (xvi) Room additions and room expansions
 - (xvii) Stair glides
 - (xviii) Telephone alert systems
 - (xix) Telephone arms
 - (xx) Telephone service in home
 - (xxi) Televisions
 - (xxii) Tilt tables
 - (xxiii) Toilet trainers

35. Homemaker services not performed by a licensed home health agency
36. Hospital inpatient items that are not directly related to the treatment of an injury or illness (such as radios, TVs, movies, telephones, massage, guest beds, haircuts, hair styling, guest trays, etc.)
37. Hotel charges, unless pre-approved in conjunction with a transplant or as part of a non-emergency transportation service
38. Hypnosis or hypnotherapy
39. Icterus index
40. Infant/child car seats, except that adaptive car seats may be covered for a person with disabilities such as severe cerebral palsy, spina bifida, muscular dystrophy, and similar disorders who meets all of the following conditions:
 - (i) Cannot sit upright unassisted, and
 - (ii) Infant/child care seats are too small or do not provide adequate support, and
 - (iii) Safe automobile transport is not otherwise possible.
41. Infertility or impotence services including, but not limited to:
 - (i) Artificial insemination services
 - (ii) Purchase of donor sperm and any charges for the storage of sperm
 - (iii) Purchase of donor eggs, and any charges associated with care of the donor required for donor egg retrievals or transfers of gestational carriers
 - (iv) Cryopreservation and storage of cryopreserved embryos
 - (v) Services associated with a gestational carrier program (surrogate parenting) for the recipient or the gestational carrier
 - (vi) Fertility drugs
 - (vii) Home ovulation prediction kits
 - (viii) Services for couples in which one of the partners has had a previous sterilization procedure, with or without reversal
 - (ix) Reversal of sterilization procedures

- (x) Any other service or procedure intended to create a pregnancy
 - (xi) Testing and/or treatment, including therapy, supplies, and counseling, for frigidity or impotence
42. Lamps such as:
- (i) Heating lamps
 - (ii) Lava lamps
 - (iii) Sunlamps
 - (iv) Ultraviolet lamps
43. Lifts including, but not limited to:
- (i) Automobile van lifts
 - (ii) Burke bed elevators
 - (iii) Cheney safety bath lifts
 - (iv) Electric powered recliner and elevating seats
 - (v) Elevators
 - (vi) Hoyer lifts, except when:
 - (I) The enrollee's condition is such that periodic movement is necessary to effect improvement or to arrest or retard deterioration; and
 - (II) Transfer between bed and chair, wheelchair, or commode requires the assistance of more than one person; and
 - (III) Without the use of a lift, the enrollee would be confined to bed; and
 - (IV) Medical records contain documentation which supports medical necessity.
 - (vii) Lift chairs
 - (viii) Liko maneuvering lift or Liko ceiling track lift systems, except when:
 - (I) Enrollee's condition is such that periodic movement is necessary to effect improvement or to arrest or retard development; and

- (II) Transfer between bed and chair, wheelchair, or commode requires the assistance of more than one person; and
 - (III) Without the use of a lift, the enrollee would be confined to bed; and
 - (IV) Medical records contain information which supports medical necessity; and
 - (V) Structural modification to the dwelling is minor, limited primarily to installment of equipment, and does not involve major renovation (e.g., moving walls, enlarging passageways, strengthening ceilings and supports).
- (ix) Stairway lifts, stair glides
 - (x) Wheel-O-Vators
44. Ligation of mammary arteries, unilateral or bilateral
45. Megavitamin therapy
46. Medical supplies, over-the-counter, including, but not limited to:
- (i) Alcohol, rubbing
 - (ii) Antiseptics
 - (iii) Band-aids
 - (iv) Bandages
 - (v) Cotton balls
 - (vi) Cotton swabs
 - (vii) Creams, medicated, over-the-counter
 - (viii) Dressings
 - (ix) Eyewash
 - (x) Gauze
 - (xi) Peroxide
 - (xii) Q-tips
 - (xiii) Tape

- (xiv) Wound dressing material for home use
47. Motor vehicle parts and services including, but not limited to:
 - (i) Automobile controls
 - (ii) Automobile repairs or modifications
 48. Music therapy
 49. Nail analysis
 50. Naturopathic services
 51. Necropsy
 52. Nerve stimulators, except for vagus nerve stimulators after conventional therapy has failed in treating partial onset of seizures
 53. Nutritional supplements and vitamins, over-the-counter, except for prenatal vitamins and folic acid for pregnant women
 54. Organ and tissue transplants that have been determined experimental or investigational
 55. Organ donor services provided in connection with organ or tissue transplants, including, but not limited to:
 - (i) Transplants from a donor who is a living TennCare enrollee and the transplant is to a non-TennCare enrollee
 - (ii) Donor services other than the direct services related to organ procurement (such as, hospitalization, physician services, anesthesia)
 - (iii) Hotels, meals, or similar items provided outside the hospital setting for the donor
 - (iv) Any costs incurred by the next of kin of the donor
 - (v) Any services provided outside of any "bundled rates" after the donor is discharged from the hospital
 56. Oxygen, except when provided under the order of a physician and administered under the direction of a physician
 57. Oxygen, preset system (flow rate not adjustable)
 58. Certain pharmacy items, including:

- (i) Agents to promote smoking cessation
 - (ii) Agents to promote hair growth
 - (iii) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or his designee
 - (iv) DESI, LTE, and IRS drugs
 - (v) Over-the-counter drugs for which there is no prescription
 - (vi) Prescriptions filled that exceed the quantity limits established through prior authorization
59. Play therapy
60. Primal therapy
61. Psychodrama
62. Psychogenic sexual dysfunction or transformation services
63. Purging
64. Recertification of patients in Level 1 and Level II Nursing Facilities
65. Recreational therapy
66. Religious counseling
67. Retreats for mental disorders
68. Rolfing
69. Routine health services which may be required by an employer; or by a facility where an individual lives, goes to school, or works; or by travel plans
- (i) Drug screenings
 - (ii) Employment and pre-employment physicals
 - (iii) Fitness to duty examinations
 - (iv) Immunizations related to travel or work
 - (v) Insurance physicals
 - (vi) Job related illness or injury covered by workman's compensation

70. Sensitivity training or workshops
71. Sensory integration therapy and equipment used in sensory integration therapy including, but not limited to:
 - (i) Ankle weights
 - (ii) Floor mats
 - (iii) Mini-trampolines
 - (iv) Poof chairs
 - (v) Sensory balls
 - (vi) Sky chairs
 - (vii) Suspension swings
 - (viii) Trampolines
 - (ix) Therapy balls
 - (x) Weighted blankets or weighted vests
72. Sensory stimulation services
73. Services provided by immediate relatives, i.e., a spouse, parent, grandparent, stepparent, child, grandchild, brother, sister, half brother, half sister, a spouse's parents or stepparents, or members of the recipient's household
74. Sex change or transformation surgery
75. Sexual dysfunction or inadequacy services and medicine, including drugs for erectile dysfunctions and penile implant devices
76. Speech devices including:
 - (i) Phone mirror handivoice
 - (ii) Speech software
 - (iii) Speech teaching machines
77. Sphygmomanometers (blood pressure cuffs)
78. Stethoscopes
79. Supports

- (i) Cervical pillows
 - (ii) Orthotrac pneumatic vests
- 80. Thermograms
- 81. Thermography
- 82. Time involved in completing necessary forms, claims, or reports
- 83. Tinnitus maskers
- 84. Toy equipment such as:
 - (i) Flash switches (for toys)
- 85. Transportation costs such as:
 - (i) Transportation to a provider who is outside the geographical access standards that the MCC is required to meet when an network provider is available within such geographical access standards
 - (ii) Use of a private vehicle when transportation services have been offered through the MCC
- 86. Transsexual surgery
- 87. Vision services for persons 21 years of age and older that are not needed to treat a systemic disease process including, but not limited to:
 - (i) Eyeglasses, sunglasses, and/or contact lenses for persons aged 21 and older, including eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, sunglasses, and/or contact lenses; procedures performed to determine the refractive state of the eye(s).
 - (ii) LASIK
 - (iii) Orthoptics
 - (iv) Vision perception training
 - (v) Vision therapy
- 88. Vitamins, except for prescription prenatal vitamins for prenatal patients, fluoride vitamins for children, and folic acid for prenatal patients
- 89. Weight loss or weight gain and physical fitness programs including, but not limited to:

- (i) Dietary programs of weight loss programs, including, but not limited to, Optifast, Nutrisystem, and other similar programs or exercise programs. Food supplements will not be authorized for use in weight loss programs or for weight gain.
 - (ii) Health clubs, membership fees (e.g., YMCA)
 - (iii) Marathons, activity and entry fees
 - (iv) Swimming pools
90. Wheelchairs, specialized, such as:
- (i) Amigo motorized wheelchairs, or similar devices
 - (ii) Rollabout chairs
 - (iii) Scooters
 - (iv) Standing wheelchairs
91. Whirlpools and whirlpool equipment such as:
- (i) Action bath hydro massage
 - (ii) Aero massage
 - (iii) Aqua whirl
 - (iv) Aquasage pump, or similar devices
 - (v) Hand-D-Jets, or similar devices
 - (vi) Jacuzzis, or similar devices
 - (vii) Turbojets
 - (viii) Whirlpool bath equipment
 - (ix) Whirlpool pumps

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

D1115180

I certify that this is an accurate complete representation of the intent and scope of rulemaking proposed by the Tennessee Department of Finance and Administration.

[Signature]
J. D. Hickey
Deputy Commissioner
Tennessee Department of Finance and
Administration

Subscribed and sworn to me this the 30th day of June, 2005.

[Signature]
Notary Public

My Commission Expires on the 14th day of March,
2007.

The notice of rulemaking set out herein was properly filed in the Department of State on the
30 day of June, 2005.

[Signature]
Riley C. Darnell
Secretary of State

BY: [Signature]

D1115180

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SECRETARY OF STATE
RILEY C. DARNELL