

**Public Necessity Rules
of
The Tennessee Department of Human Services
Division of Medical Services**

**Chapter 1240-03-01
General Rules**

**Chapter 1240-03-02
Coverage Groups Under Medicaid**

**Chapter 1240-03-03
Technical And Financial Eligibility
Requirements For Medicaid**

Statement of Necessity Requiring Public Necessity Rules

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) [Public Law 104-193] enacted on August 22, 1996 created the federal Temporary Assistance to Needy Families (TANF) welfare-to-work program (42 USCA §§ 601 et seq.) to replace the federal Aid to Families with Dependent Children (AFDC) cash assistance program. Prior to its enactment, eligibility for cash assistance from the AFDC program created categorical eligibility for Medicaid, meaning that approval for eligibility for AFDC meant automatic eligibility for TennCare/Medicaid. One effect of PRWORA was to remove the automatic eligibility and create TennCare/Medicaid coverage groups for persons who met income and resource standards applicable to the AFDC program as of July 16, 1996 under Section 1931 of the Social Security Act [42 USCA § 1396u-1].

However, the Department of Human Services' welfare reform waiver, Section 2.2, issued by the U.S. Department of Health and Human Services on July 25, 1996, prior to the enactment of PRWORA, continued Medicaid eligibility for recipients of cash assistance in Tennessee's welfare program, known as Families First, in the same manner as existed prior to the granting of the waiver so that approval for Families First cash assistance still constituted approval for TennCare/Medicaid during the term of the waiver. (See Tn. Comp. Rules and Regs. Chapter 1240-1-55-.01) Effective July 1, 2007 under Section 1.3 of the waiver, the waiver will expire, thus requiring the Department to conform to the provisions of PRWORA and thereby de-linking eligibility for Families First from eligibility for TennCare/Medicaid. Because of the de-linking of TennCare/Medicaid from eligibility for Families First, persons seeking TennCare/Medicaid coverage will be required to affirmatively apply, and be determined eligible, for TennCare/Medicaid. If they only apply for Families First, then that is the only program for which they will be tested for eligibility.

These public necessity rules, being promulgated in accordance with the requirements of T.C.A. § 4-5-209(a)(3), are required to effectuate, in regulatory format, the change in eligibility criteria in order to comply with the provision of PRWORA and to avoid the loss of federal funds provided under Titles IV-A and XIX of the Social Security Act if the Department fails to comply with the provisions of PRWORA or Title XIX which could occur if there is a delay in promulgation of implementing regulations through the regular process required for rulemaking hearing rules. In addition to the potential loss of federal funding or federal financial penalties that may be incurred, the Department is further authorized by Tennessee Code Annotated § 71-3-158(d)(2)(D) to implement any changes to comply with termination of the waiver or that are necessary to maintain federal funding or compliance with federal regulations that have not been waived, and is further authorized by Acts 2007, Chapter 31, § 11 to implement the requirements of the Act by public necessity rule by July 1, 2007. Section 10 of the Act deletes the requirements of Tennessee Code Annotated for the continuation of TennCare coverage contained in the original Families First Act of 1996. In addition, these rules are necessary under Section 10 of the Act to make conforming amendments in conjunction with changes being made to Tn. Comp. Rules

and Regs. Chapter 1240-1-55-.01 in the Families First rules that are being made simultaneously with these rules.

The modifications to the Families First law were not enacted until April 17, 2007, and, therefore, compliance with standard rulemaking procedures will not permit the Department to enact the necessary rules to implement the modifications by July 1, 2007.

For a complete copy of these public necessity rules, contact: Phyllis Simpson, Assistant General Counsel, Tennessee Department of Human Services, Citizens Plaza Building, 400 Deaderick Street, 15th Floor, Nashville, TN 37248-0006, telephone number (615) 313-4731.

Virginia T. Lodge
Commissioner
Tennessee Department of Human Services

**Public Necessity Rules
of
The Tennessee Department of Human Services
Division of Medical Services**

**Chapter 1240-03-01
General Rules**

Amendments

Rule 1240-03-01-.02 Definitions, is amended by deleting the rule in its entirety and by substituting instead the following language, so that, as amended, the rule shall read as follows:

1240-03-01-.02 Definitions.

- (1) Definitions of terms or phrases utilized in regulations relating to the Medical Assistance Program are as follows:
 - (a) Aid to Families with Dependent Children (AFDC). Refers to the name of the cash assistance program for Families and Children prior to the passage of the Welfare Reform Act in July 1996.
 - (b) Aid to Families with Dependent Children – Medicaid Only (AFDC-MO (Section 1931)). Refers to Section 1931 of the Social Security Act [42 U.S.C. § 1396u-1] which requires that any family group that qualifies for Medicaid based on AFDC-MO regulations prior to July 16, 1996 be tested for eligibility in this group.
 - (c) Categorically Needy. Categorically Needy individuals are entitled to the broadest scope of medical assistance benefits. All recipients of Medicaid based on Section 1931-AFDC-MO and the SSI program for the aged, blind or disabled are Categorically Needy. In addition, many adults, families, pregnant women and children who do not receive cash assistance receive the Categorically Needy level of benefits for Medicaid Only assistance.
 - (d) Code of Federal Regulations (C.F.R.). Federal regulations which transfer to regulatory form the specific requirements of Federal law.

- (e) Co-insurance. Coinsurance amounts payable by the recipient under the provisions of Title XVIII, Part B for covered medical services rendered under the Medicare Program and becoming due after satisfaction of the deductible liability. [42 U.S.C. §§ 1395j et seq.]
- (f) Deductible. Amounts payable by the recipient which fall within an aged beneficiary's deductible liability imposed by Title XVIII, Part B. Health Insurance for the Aged. [42 U.S.C. §§ 1395j et seq.]
- (g) Eligible individual. A person who has applied for medical assistance and has been found to meet all applicable conditions for eligibility pertaining to Tennessee's Medical Assistance Program.
- (h) Excess income. That portion of the income of the individual or family group, which exceeds amounts allowable to the individual or family group as disregarded income or income protected for basic maintenance and which results in a determination of ineligibility.
 1. Excess Resources. That portion of the liquid assets or other resources of the individual or family group in excess of the amounts which may be retained for the individual or family group's security and personal use, not exempted from consideration or otherwise accounted for by special specified circumstances, and which result in a determination of ineligibility.
 2. Spenddown. The process by which excess income is utilized for recognized medical expenses and which, when depleted, results in a determination of eligibility if all other eligibility factors are met.
- (i) Families First (FF) - Tennessee's TANF program (Temporary Assistance for Needy Families) which provides cash assistance to families with dependent children. [42 U.S.C. §§ 601 et seq.]
- (j) Inpatient services. Those services rendered for any acute or chronic condition, including maternal and mental health care, which cannot be rendered on an outpatient basis.
- (k) Level I care. Level I care is health care in a nursing facility which is more than room and board, but is less than skilled nursing care. (Level I care was formally called I.C.F. - Intermediate Care Facility).
- (l) Level II care. Level II care is health care in a nursing facility which is a higher level of care than Level I, but less than inpatient hospitalization. (Level II care was formally called Skilled Nursing Care.)
- (m) Medicaid. The State program of medical assistance as administered by the Department in compliance with Title XIX of the Social Security Act [42 U.S.C. §§ 1396 et seq.] and which is designed to provide for the medical care needs of Tennessee's medically indigent citizenry.
- (n) Medical assistance drug list. A listing of drugs covered under the Medical Assistance Program, which includes the drug code, description, dosage strength, covered unit form, maximum dosage covered, and per unit price.
- (o) Medically Needy – Individuals whose income or resources are under a certain limit and allows them to qualify for Medicaid by spending down their medical expenses.

- (p) Medicare. The Federal program under Title XVIII of the Social Security Act [42 U.S.C. §§ 1395 et seq.] providing medical benefits to persons receiving Social Security Retirement payments or who have received Social Security benefits based on disability for a period of twenty-four (24) consecutive months.
 - 1. Part A of Title XVIII. Hospital Insurance Benefits provides hospital care, nursing home care, and home health visits, subject to deductibles and co-insurance. [42 U.S.C. § 1395c]
 - 2. Part B of Title XVIII. Supplementary Medical Insurance provides additional medical benefits to those persons eligible for Part A or any person sixty-five (65) years of age, but only if enrolled in the program and paying the monthly premium. [42 U.S.C. § 1395j]
- (q) Nursing Facility (NF). A facility certified by the State to provide nursing care in what was formally called Intermediate Care Facility (I.C.F.) and Skilled Nursing Facility (S.N.F.).
- (r) Outpatient services. Services provided, in other than inpatient circumstances, for any condition detrimental to the individual recipient's physical or mental health which cannot be taken care of in the home situation.
- (s) Poverty Groups – Assistance groups whose gross income does not exceed various percentages of the Federal Poverty Level Income Standard.
- (t) Supplemental Security Income (SSI) – A federal income supplement program funded by general tax revenues and is designed to help aged, blind and disabled individuals who have little or no income. Applications for SSI benefits are filed at the Social Security office. Individuals who are eligible for SSI are automatically entitled to Medicaid. [42 U.S.C. §§ 1382 et seq.]
- (u) Temporary Assistance for Needy Families (TANF) – Program which was created by the Welfare Reform Law of 1996. TANF became effective July 1996 and replaced what was then commonly known as the AFDC program. [42 U.S.C. §§ 601 et seq.]

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105(12), 71-3-158(d)(2)(D), 71-5-101, 71-5-103 and 71-5-111; Acts 2007, Ch 31, § 11; 42 U.S.C. § 423, 42 U.S.C. §§ 601 et seq.; 42 U.S.C. §§ 1382 et seq.; 42 U.S.C. §§ 1395 et seq.; 42 U.S.C. §§ 1396 et seq., 42 U.S.C. § 1396a(e)(4); 42 U.S.C. § 1396r, 42 U.S.C. § 1396u-1; 42 C.F.R. § 435.4; PL 101-508 § 5103(e); PL 98-21 § 134 and PL 100-203 § 9116, and PL 104-193.

Public Necessity Rules
of
The Tennessee Department of Human Services
Division of Medical Services

Chapter 1240-03-02
Coverage Groups Under Medicaid

Amendments

Rule 1240-03-02-02 Coverage Of The Categorically Needy, is amended by deleting subparagraph (a) and parts 1, 2, and 3 under paragraph (1) in their entirety and by substituting instead the following language so that, as amended, paragraph (1), subparagraph (a) shall read as follows:

- (a) All individuals receiving foster care maintenance payments or adoption assistance payments under Title IV-E of the Social Security Act are deemed eligible for Medicaid.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105(12), 71-3-158(d)(2)(D), 71-5-102, 71-5-106 and 71-5-109; Acts 2007, Chapter 31, § 11; 42 U.S.C. § 608(a)(2), 42 U.S.C. § 608(a)(6), 42 U.S.C. § 608(a)(11), 42 U.S.C. § 672(h), 42 U.S.C. § 673(b), 42 U.S.C. § 1315, 42 U.S.C. §§ 1396 et seq., 42 U.S.C. § 1396a(a)(10)(A)(i), 42 U.S.C. § 1396a(a)(10)(A)(i)(1V), 42 U.S.C. § 1396a(a)(10)(E); 42 U.S.C. § 1396a(e)(1), 42 U.S.C. § 1396a(e)(4)(5) and (6), 42 U.S.C. 1396a(l)(1)(D), 42 U.S.C. § 1396a(aa), 42 U.S.C. § 1396n(c), 42 U.S.C. § 1396r, 42 U.S.C. § 1396r-6, 42 U.S.C. § 1396u-1; 42 C.F.R. §§ 435.4, 435.100, 42 C.F.R. 435.200, and 42 C.F.R. 435.831; and PL 94-566 § 503; PL 98-21 § 134; PL 99-509 § 9401; PL 100-203 § 9116; PL 101-508 § 5103(e), PL 104-193 § 103 and PL 109-171 § 7101.

Rule 1240-03-02-02 Coverage Of The Categorically Needy, is amended by deleting subparagraph (a) under paragraph (2) in its entirety and by substituting instead the following language so that, as amended, paragraph (2), subparagraph (a) shall read as follows:

- (a) Effective July 1, 2007, Medicaid and Families First de-linked. Eligibility for Families First will no longer mean automatic entitlement to Medicaid coverage. Families First applicants and recipients who also desire Medicaid must apply and have eligibility determined separate and apart from Families First.
- 1. Medicaid eligibility for Families First applicants and recipients as well as Medicaid eligibility for those who are not applying for Families First will first be considered in the AFDC-MO category. AFDC-MO – provides Medicaid under Section 1931 of Title XIX of the Social Security Act [42 U.S.C. § 1396u-1] which allows individuals who are eligible to receive Medicaid based on AFDC eligibility requirements in effect prior to July 16, 1996 in accordance with Tennessee State Plan amendments.
 - (i) An AFDC-MO case terminated for earnings or increased earnings will continue eligible for Medicaid Only for an additional twelve (12) calendar months beginning with the month in which the family becomes ineligible for assistance except for the caretaker who is sanctioned for failure to comply with child support services. [42 U.S.C. § 608(a)(11), 42 U.S.C. § 1315, 42 U.S.C. § 1396u-1, 42 U.S.C. § 1396r-6 and 42 U.S.C. § 1396a(e)(1)]
 - (ii) Effective July 1, 2007 an AFDC-MO case terminated for receipt of spousal or child support will continue eligible for Medicaid Only for an additional twelve (12) months beginning with the month the family becomes ineligible for assistance.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105(12), 71-3-158(d)(2)(D), 71-5-102, 71-5-106 and 71-5-109; Acts 2007, Chapter 31, § 11; 42 U.S.C. § 608(a)(2), 42 U.S.C. § 608(a)(6), 42 U.S.C. § 608(a)(11), 42 U.S.C. § 1315, 42 U.S.C. §§ 1396 et seq., 42 U.S.C. § 1396a(a)(10)(A)(i), 42 U.S.C. § 1396a(a)(10)(A)(i)(1V), 42 U.S.C. § 1396a(a)(10)(E); 42 U.S.C. § 1396a(e)(1), 42 U.S.C. § 1396a(e)(4)(5) and (6), 42 U.S.C. 1396a(l)(1)(D), 42 U.S.C. § 1396a(aa), 42 U.S.C. § 1396n(c), 42 U.S.C. § 1396r, 42 U.S.C. § 1396r-6, 42 U.S.C. § 1396u-1; 42 C.F.R. §§ 435.4, 435.100, 42 C.F.R. 435.200, and 42 C.F.R. 435.831; and PL 94-566 § 503; PL 98-21 § 134; PL 99-509 § 9401; PL 100-203 § 9116; PL 101-508 § 5103(e), PL 104-193 § 103 and PL 109-171 § 7101.

Public Necessity Rules
of
The Tennessee Department of Human Services
Division of Medical Services
Chapter 1240-03-03
Technical And Financial Eligibility
Requirements For Medicaid

Amendments

Rule 1240-03-03-.04 Income Limitations For Categorically Needy, is amended by deleting paragraph (1) in its entirety and by substituting instead the following language so that, as amended, paragraph (1) shall read as follows:

- (1) Applicants for medical assistance as Categorically Needy in an AFDC-MO (Section 1931 of the Social Security Act [42 U.S.C. § 1396u-1]) coverage group are subject to an earned income deduction that is equal to ninety dollars (\$90) plus thirty dollars (\$30) and one-third (1/3) or the current TANF general earned income disregard, whichever is higher, for applicants and recipients. For example, for Aid Group size of one (1): the CNS for one is \$658, ninety (\$90) plus thirty (\$30) is \$120; \$658 minus \$120 is \$538 and one third (1/3) of \$538 is \$179; \$538 minus \$179 equals \$359. In order to arrive at the 1931 earned income disregard, subtract the TANF earned income disregard of \$250 from \$359 which equals \$109 - earned income disregard for AFDC-MO.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105(12), 71-3-158(d)(2)(D) and 71-5-102; Acts 2007, Chapter 31, § 11; 42 U.S.C. §§ 1396 et seq.; 42 U.S.C. § 1396u-1; and 45 C.F.R. § 233.20(11).

The public necessity rules set out herein were properly filed in the Department of State on the 2nd day of July, 2007 and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 14th day of December, 2007. (FS 07-01-07; DBID 2589 through 2591)

