

Tennessee Department of Finance and Administration

Bureau of TennCare

Chapter 1200-13-16

Medical Necessity

Statement of Necessity Requiring Public Necessity Rules

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare ("TennCare"), for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209.

Effective July 22, 2008, TennCare received approval from the Centers for Medicare and Medicaid Services ("CMS") to amend the TennCare II 1115 Demonstration Waiver (No. 11-W-00151/4). This Waiver Amendment #6 places certain limits on the coverage of home health services and private duty nursing services for adults enrolled in the TennCare Program.

Pursuant to T.C.A. § 4-5-209(a)(3), the Commissioner is authorized to promulgate public necessity rules when required by an agency of the federal government and adoption of the rules through ordinary rulemaking procedures might jeopardize the loss of a federal program or funds.

I have made a finding that in order to prevent the loss of federal funds, these rule amendments are required to be adopted as public necessity rules pursuant to T.C.A. §§71-5-105, 71-5-109 and 4-5-209(a)(3), to assure that the TennCare rules are in compliance with Amendment #6 to the TennCare II 1115 Demonstration Waiver.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

Darin J. Gordon
Director, Bureau of TennCare

Public Necessity Rules
of
Tennessee Department of Finance and Administration
Bureau of TennCare
Chapter 1200-13-16
Medical Necessity
Amendments

Paragraph (23) of rule 1200-13-16-.01 is deleted in its entirety and replaced with a new paragraph (23) which shall read as follows:

(23) Home Health Services shall mean those services as defined at 1200-13-13-.01 and 1200-13-14-.01.

Part 3. of subparagraph (d) of paragraph (4) of rule 1200-13-16-.05 Medical Necessity Criteria is amended by deleting the citations "1200-13-13-.04(14)(c) or 1200-13-14-.04(14)(c)" and replacing them with the citations "1200-13-13-.04(7)(f) or 1200-13-14-.04(8)(f)" so as amended part 3. shall read as follows:

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(7)(f) or 1200-13-14-.04(8)(f), these services must meet the requirements described at part 1. immediately above.

Part 4. of subparagraph (d) of paragraph (4) of rule 1200-13-16-.05 Medical Necessity Criteria is amended by deleting subparts (ix) and (xi) and renumbering remaining subparts accordingly so as amended part 4. shall read as follows:

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; or
 - (ix) Because the enrollee meets the criteria for receiving Medicaid nursing facility services.

Statutory Authority: T.C.A. 4-5-209, 71-5-105, 71-5-109.

The Public Necessity rules set out herein were properly filed in the Department of State on the 8th day of September, 2008, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 20th day of February, 2009. (FS 09-05-08; DBID 3060)

