

Tennessee Department of Finance and Administration

Bureau of TennCare

Chapter 1200-13-13  
TennCare Medicaid

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, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209 and the Medical Assistance Act, T.C.A. § 71-5-134.

The State of Tennessee has received federal approval for certain eligibility amendments to the TennCare Demonstration Project (No. 11-W-0015 1/4). Approval of the project modification is granted under the authority of Section 1115 (a) of the Social Security Act. The amendments are approved through the period ending June 30, 2007. The TennCare program is a managed care program for both the Medicaid population and the expansion population.

This amendment sets forth provisions for granting fair hearings based on valid factual disputes before a Hearing Officer or Administrative Law Judge. In addition, this amendment defines clear requirements for timely submission of eligibility-based appeals and the continuation of benefits pending resolution of such appeals, including appeals related to disenrollment as a result of certain eligibility amendments to the TennCare Demonstration Project.

Tennessee Code Annotated, Section 71-5-134, states that in order to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required to conform the current TennCare Medicaid rules to reflect changes resulting from the amendment of the TennCare waiver.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 729 Church Street, Nashville, Tennessee 37247-6501 or by telephone at (615) 741-0145.

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

Public Necessity Rules  
of  
Tennessee Department of Finance and Administration  
Bureau of TennCare  
Chapter 1200-13-13  
TennCare Medicaid  
Amendment

Rule 1200-13-13-.12 Other Appeals By TennCare Applicants and Enrollees is amended by deleting paragraph (1) in its entirety and by substituting instead the following new language so that as amended paragraph (1) shall read as follows:

- (1) Appeal Rights of TennCare Medicaid Applicants or Enrollees.
  - (a) Appeal Time; Continuation of Services.
    1. TennCare Medicaid Appeals.
      - (i) TennCare Medicaid applicants or enrollees will be given the opportunity to have an administrative hearing before a Hearing Officer or an Administrative Law Judge, as determined by the Department of Human Services, regarding valid factual disputes concerning denial of his/her application, cost sharing disputes, limitation, reduction or termination of coverage, failure to act upon a request or application within required timeframes, and disputes regarding disenrollment from TennCare Medicaid. A valid factual dispute is a dispute that, if resolved in favor of the appellant, would prevent the state from taking the adverse action that is the subject of the appeal. The TennCare Bureau designates TDHS to review each request for a hearing to determine if it is based on a valid factual dispute. If TDHS determines that an appeal does not present a valid factual dispute, then TDHS will send the appellant a letter asking him or her to submit additional clarification regarding the appeal within ten (10) days (inclusive of mail time). Unless such clarification is timely received and is determined by TDHS to establish a valid factual dispute, TDHS will dismiss the appeal. TDHS' decisions with respect to determination of whether an appeal raises a valid factual dispute shall not be appealable.
      - (ii) Requests for appeals must be made within forty (40) calendar days (inclusive of mail time) of the date of the notice to the applicant/enrollee regarding the intended action, notwithstanding anything else in these rules or in the Department of Human Services' administrative procedures rules to the contrary.
      - (iii) Enrollees who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of notice or prior to the date of termination specified in the notice shall retain their eligibility (subject to any changes in

covered services generally applicable to enrollees in their TennCare category) pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first. If the appeal results in the State's action being sustained, the State reserves its right to recover from the enrollee the cost of services provided to the enrollee during the pendency of the appeal.

- (b) Such appeals will be conducted by the Department of Human Services for TennCare Medicaid applicants/enrollees under the Department of Human Services' administrative procedures rules, and in accordance with any other applicable rules, laws or court orders governing those programs.
- (c) Appeal Rights for Disenrollment Related to TennCare Medicaid Eligibility Reforms
1. TennCare Medicaid enrollees, who have not been determined eligible for open Medicaid categories pursuant to the Ex Parte Review or Request for Information processes described in 1200-13-13-.02, will have the right to request a hearing for 40 days (inclusive of mail time) from the date of the Termination Notice, notwithstanding anything else in these rules or in the Department of Human Services' administrative procedures rules to the contrary.
  2. Such appeals will be conducted by the Department of Human Services for TennCare Medicaid applicants/enrollees under the Department of Human Services' administrative procedures rules, and in accordance with any other applicable rules, laws or court orders governing those programs.
  3. Enrollees will not have the opportunity to request an extension for good cause of the forty (40) day timeframe in which to request a hearing.
  4. Enrollees who request a hearing prior to the date of termination specified in the Termination Notice shall retain their eligibility (subject to any changes in covered services generally applicable to enrollees in their TennCare Medicaid category) pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.
  5. The TennCare Bureau designates TDHS to review each request for hearing to determine if it is based on a valid factual dispute. Enrollees will be given the opportunity to have an administrative hearing before a Hearing Officer or an Administrative Law Judge, as determined by TDHS, regarding valid factual disputes related to termination. If TDHS makes an initial determination that the request for a hearing is not based on a valid factual dispute, the appellant will receive a notice which provides ten (10) days (inclusive of mail time) to provide additional clarification of any factual dispute on which his/her appeal is based. Unless such clarification is timely received and is determined by TDHS to establish a valid factual dispute, a fair hearing will not be granted.
  6. TDHS will grant hearings only for those enrollees raising valid factual disputes related to the action of disenrollment. A valid factual dispute is a dispute that, if resolved in favor of the appellant, would prevent the state from taking the adverse

action that is the subject of the appeal. Appeals that do not raise a valid factual dispute will not proceed to a hearing. Valid factual disputes include:

- (i) Enrollee received the Termination Notice in error (e.g., they are currently enrolled in a TennCare Medicaid category that is not ending);
  - (ii) TDHS failed to timely process information submitted by the enrollee during the requisite time period following the Request for Information or Verification Request;
  - (iii) TDHS granted a “good cause” extension of time to reply to the Request for Information Notice but failed to extend the time (this is the only circumstance surrounding good cause which can be appealed) ;
  - (iv) Enrollees requested assistance because of a health, mental health, learning problem or disability but did not receive this assistance; or
  - (v) The TennCare Bureau sent the Request for Information or Termination Notice to the wrong address as defined under state law.
7. When an enrollee requests a hearing prior to the date of termination as identified in the Termination Notice, benefits will continue either until TDHS determines that the enrollee has not raised a valid factual dispute or the appeal is otherwise resolved.
  8. If the enrollee does not appeal prior to the date of termination as identified in the Termination Notice, the enrollee will be terminated from TennCare Medicaid.
  9. If the enrollee is granted a hearing and the hearing decision sustains the State’s action, the State reserves its right to recover from the enrollee the cost of services provided during the hearing process.

Statutory Authority: T.C.A. 4-5-209, 71-5-105, 71-5-109, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 8th day of June, 2005, 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 November, 2005.