Rulemaking Hearing Rules
of
Tennessee Department of Finance and Administration

Bureau of TennCare

Chapter 1200-13-13
TennCare Medicaid

Amendments

Paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new paragraph (1) which shall read as follows:

(1) Benefits covered under the managed care program

(a) TennCare managed care contractors (MCCs) shall cover the following services and benefits subject to any applicable limitations described herein.

(i) Any and all medically necessary services may require prior authorization or approval by the MCC, except where prohibited by law.

There are two instances in which an MCC may not refuse to pay for a service solely because of a lack of prior authorization. These instances are as follows:

(I) EPSDT services. In the event a service requiring prior authorization is delivered without prior authorization and is proven to be a medically necessary covered service, the MCC cannot deny payment for the service solely because the provider did not obtain prior authorization or approval from the enrollee's MCC.

(II) Emergency services. MCCs shall not require prior authorization or approval for covered services rendered in the event of an emergency, as defined in these rules. Such emergency services may be reviewed on the basis of medical necessity or other MCC administrator requirements, but cannot be denied solely because the provider did not obtain prior authorization or approval from the enrollee's MCC.

(ii) MCCs shall not impose any service limitations that are more restrictive than those described herein; however, this shall not limit the MCC's ability to establish procedures for the determination of medical necessity.

(iii) Services for which there is no federal financial participation (FFP) are not covered.

(iv) Non-covered services are non-covered regardless of medical necessity.

(b) The following physical health and mental health benefits are covered under the TennCare managed care program. There are some exclusions to these benefits. The exclusions are listed in this rule and in Rule 1200-13-13-.10.

SERVICE	**BENEFIT FOR PERSONS UNDER AGE 21**	**BENEFIT FOR PERSONS AGED 21 AND OLDER**
1. Ambulance Services.	See "Emergency Air and Ground Transportation" and "Non-Emergency Ambulance Transportation."	See "Emergency Air and Ground Transportation" and "Non-Emergency Ambulance Transportation."
2. Bariatric Surgery, defined as surgery to induce weight loss.	Covered as medically necessary and in accordance with clinical guidelines established by the Bureau of TennCare.	Covered as medically necessary and in accordance with clinical guidelines established by the Bureau of TennCare.
3. Chiropractic Services [defined at 42 CFR §440.60(b)].	Covered as medically necessary.	Not covered.
4. Community Health Services, [defined at 42 CFR §440.20(b) and (c) and 42 CFR §440.90].	Covered as medically necessary.	Covered as medically necessary.
5. Convalescent Care [defined as care provided in a nursing facility after a hospitalization].	Upon receipt of proof that an enrollee has incurred medically necessary expenses related to convalescent care, TennCare shall pay for up to and including the one hundredth (100^{th}) day of confinement during any calendar year for convalescent facility room, board, and general nursing care, provided that: (A) a physician recommends confinement for convalescence; (B) the enrollee is under the continuous care of a physician during the entire period of convalescence; and (C) the confinement is required for other than custodial care.	Not covered.
6. Dental Services [defined at 42 CFR §440.100].	Preventive, diagnostic, and treatment services covered as medically necessary. Dental services under EPSDT, including dental screens, are provided in accordance with the state's periodicity schedule as determined after consultation with	Not covered, except for orthodontic treatment when an orthodontic treatment plan was approved prior to the enrollee's attaining 20 ½ years of age, and treatment was initiated prior to the enrollee's attaining 21 years of age; such treatment may continue as long as the enrollee remains eligible for

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	recognized dental organizations and at other intervals as medically necessary. Orthodontic services must be prior approved and are limited to individuals under age 21 requiring these services: (1) because of a severe handicapping malocclusion or another developmental anomaly or injury resulting in severe misalignment or severe handicapping malocclusion of teeth, documented by at least 28 points on the Salzmann Scale, or any other method that is approved by TennCare; or (2) following repair of an enrollee's cleft palate. Orthodontic treatment will not be authorized for cosmetic purposes. Orthodontic treatment will be paid for by TennCare only as long as the individual remains eligible for TennCare. If the orthodontic treatment plan is approved prior to the enrollee's attaining 20 ½ years of age, and treatment is initiated prior to the enrollee's attaining 21 years of age, such treatment may continue as long as the enrollee remains eligible for TennCare. The MCO is responsible for the provision of transportation to and from covered dental services, as well as the medical and anesthesia services related to the covered dental services.	TennCare.
7. Durable Medical Equipment [defined at 42 CFR §440.70(b)(3) and 42 CFR §440.120(c)].	Covered as medically necessary.	Covered as medically necessary.
8. Emergency Air and Ground Transportation [defined at 42 CFR §440.170(a)(1) and	Covered as medically necessary.	Covered as medically necessary.

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
(3)].		
9. EPSDT Services, [defined at 42 CFR 441, Subpart B].	Screening and interperiodic screening covered in accordance with federal regulations. (Interperiodic screens are screens in between regular checkups which are covered if a parent or caregiver suspects there may be a problem.) Diagnostic and follow-up treatment services covered as medically necessary and in accordance with federal regulations. The periodicity schedule for child health screens is that set forth in the latest "American Academy of Pediatrics Recommendations for Preventive Pediatric Health Care." All components of the screens must be consistent with the latest "American Academy of Pediatrics Recommendations for Preventive Pediatric Health Care."	Not applicable. (EPSDT is for persons under age 21.)
10. Home Health Care [defined at 42 CFR §440.70(a), (b), (c), and (e)].	Covered as medically necessary. All home health care must be delivered by a licensed Home Health Agency, as defined by 42 CFR §440.70. A home health visit includes any of the following: Skilled Nursing, Physical Therapy, Occupational Therapy, Speech Pathology and Audiology Services, and Home Health Aide.	Covered as medically necessary. All home health care must be delivered by a licensed Home Health Agency, as defined by 42 CFR §440.70. A home health visit includes any of the following: Skilled Nursing, Physical Therapy, Occupational Therapy, Speech Pathology and Audiology Services, and Home Health Aide.
11. Hospice Care [defined at 42 CFR, Part 418].	Covered as medically necessary. Must be provided by an organization certified pursuant to Medicare Hospice requirements.	Covered as medically necessary. Must be provided by an organization certified pursuant to Medicare Hospice requirements.
12. Inpatient and Outpatient Substance Abuse Benefits [defined as services for the treatment of	Covered as medically necessary.	Covered as medically necessary, with a maximum lifetime limitation of ten (10) detoxification days and $30,000 in substance abuse benefits (inpatient, residential, and outpatient). Persons who are

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substance abuse that are provided (a) in an inpatient hospital (as defined at 42 CFR §440.10) or (b) as outpatient hospital services (see 42 CFR §440.20(a)].		determined to be Severely and/or Persistently Mentally Ill are exempt from these lifetime limitations. When medically appropriate and cost effective as determined by the BHO, services in a licensed substance abuse residential treatment facility may be provided as a substitute for inpatient substance abuse services.
13. Inpatient Hospital Services [defined at 42 CFR §440.10].	Covered as medically necessary. Preadmission and concurrent reviews allowed.	Covered as medically necessary. Preadmission and concurrent reviews allowed. Inpatient Rehabilitation Facility services may be covered when determined to be a cost effective alternative by the MCO.
14. Inpatient Rehabilitation Facility Services.	See "Inpatient Hospital Services."	See "Inpatient Hospital Services."
15. Lab and X-ray Services [defined at 42 CFR §440.30].	Covered as medically necessary.	Covered as medically necessary.
16. Medical Supplies [defined at 42 CFR §440.70(b)(3)].	Covered as medically necessary.	Covered as medically necessary.
17. Mental Health Case Management Services [defined as services rendered to support outpatient mental health clinical services].	Covered as medically necessary.	Covered as medically necessary.
18. Mental Health Crisis Services [defined as services rendered to alleviate a psychiatric emergency].	Covered as medically necessary.	Covered as medically necessary.
19. Methadone Clinic Services [defined as services provided by a methadone clinic].	Covered as medically necessary.	Not covered.

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20. Non-Emergency Ambulance Transportation, [defined at 42 CFR §440.170(a)(1) and (3)].	Covered as medically necessary.	Covered as medically necessary.
21. Non-Emergency Transportation [defined at 42 CFR §440.170(a)(1) and (3)].	Covered as necessary for enrollees lacking accessible transportation for covered services. The travel to access primary care and dental services must meet the requirements of the TennCare demonstration project terms and conditions. The availability of specialty services as related to travel distance should meet the usual and customary standards for the community. However, in the event the MCC is unable to negotiate such an arrangement for an enrollee, transportation must be provided regardless of whether the enrollee has access to transportation. If the enrollee is a minor child, transportation must be provided for the child and an accompanying adult. However, transportation for a minor child shall not be denied pursuant to any policy which poses a blanket restriction due to enrollee's age or lack of parental accompaniment. Any decision to deny transportation of a minor child due to an enrollee's age or lack of parental accompaniment must be made on a case-by-case basis and must be based on the individual facts surrounding the request. As with any denial, all notices and actions must be in accordance with the appeals process. Tennessee recognizes the "mature minor exception" to permission for medical treatment.	Covered as necessary for enrollees lacking accessible transportation for covered services. The travel to access primary care and dental services must meet the requirements of the TennCare demonstration project terms and conditions. The availability of specialty services as related to travel distance should meet the usual and customary standards for the community. However, in the event the MCC is unable to negotiate such an arrangement for an enrollee, transportation must be provided regardless of whether the enrollee has access to transportation.

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	The provision of transportation to and from covered dental services is the responsibility of the MCO.	
22. Occupational Therapy [defined at 42 CFR §440.110(b)].	Covered as medically necessary, by a Licensed Occupational Therapist, to restore, improve, stabilize or ameliorate impaired functions.	Covered as medically necessary, by a Licensed Occupational Therapist, to restore, improve, or stabilize impaired functions.
23. Organ and Tissue Transplant Services and Donor Organ/Tissue Procurement Services [defined as the transfer of an organ or tissue from one individual to another].	Covered as medically necessary. Experimental or investigational transplants are not covered.	Covered as medically necessary when coverable by Medicare. Experimental or investigational transplants are not covered.
24. Outpatient Hospital Services [defined at 42 CFR §440.20(a)].	Covered as medically necessary.	Covered as medically necessary.
25. Outpatient Mental Health Services (including Physician Services), [defined at 42 CFR §440.20(a), 42 CFR §440.50, and 42 CFR §440.90].	Covered as medically necessary.	Covered as medically necessary.
26. Pharmacy Services [defined at 42 CFR §440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].	Covered as medically necessary. Certain drugs (known as DESI, LTE, IRS drugs) are excluded from coverage. Pharmacy services are the responsibility of the PBM, except for pharmaceuticals supplied and administered in a doctor's office. For persons who are not dually eligible for Medicare and Medicaid, pharmaceuticals supplied and administered in a doctor's office are the responsibility of the MCO. For persons who are dually eligible for Medicare and Medicaid, pharmaceuticals supplied and administered in a doctor's office are	Covered as medically necessary, subject to the limitations set out below. Certain drugs (known as DESI, LTE, IRS drugs) are excluded from coverage. Pharmacy services are the responsibility of the PBM, except for pharmaceuticals supplied and administered in a doctor's office. For persons who are not dually eligible for Medicare and Medicaid, pharmaceuticals supplied and administered in a doctor's office are the responsibility of the MCO. For persons who are dually eligible for Medicare and Medicaid, pharmaceuticals supplied and administered in a doctor's office are

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	the responsibility of the MCO if not covered by Medicare.	not covered by TennCare. (A) Pharmacy services for individuals receiving TennCare-reimbursed services in a Nursing Facility, Intermediate Care Facility for the Mentally Retarded, or a Home and Community Based Services waiver have no quantity limits on the number of prescriptions per month. (B) Subject to (A) above, pharmacy services for Medicaid adults age 21 and older are limited to five (5) prescriptions and/or refills per enrollee per month, of which no more than two (2) of the five (5) can be brand name drugs. Additional drugs for individuals in (B) shall not be covered. Prescriptions shall be counted beginning on the first of each calendar month. Each prescription and/or refill counts as one (1). A prescription or refill can be for no more than a thirty-one (31) day supply. The Bureau of TennCare shall maintain a "Pharmacy Short List" of pharmacy services which shall not count against such limit. The Pharmacy Short List may be modified at the discretion of the Bureau of TennCare. The most current version of the Pharmacy Short List will be made available to enrollees via the internet from the TennCare website and upon request by mail through the DHS Family Service Assistance Centers. Only drugs that are specified on the version of the Pharmacy Short List that is available on the TennCare website located on the World Wide Web at www.state.tn.us/tenncare and indicated as current as of the

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		date of service shall be considered exempt from applicable pharmacy limits. Unless specified on the version of the Pharmacy Short List which is current as of the date of the pharmacy service, pharmacy services in excess of five (5) prescriptions and/or refills per enrollee per month or two (2) brand name drugs per enrollee per month are non-covered services. (C) Over-the-counter drugs for Medicaid adults are not covered even if the enrollee has a prescription for such service, except for prenatal vitamins for pregnant women.
27. Physical Therapy [defined at 42 CFR §440.110(a)].	Covered as medically necessary, by a Licensed Physical Therapist, to restore, improve, stabilize or ameliorate impaired functions,	Covered as medically necessary, by a Licensed Physical Therapist, to restore, improve, or stabilize impaired functions.
28. Physician Inpatient Services [defined at 42 CFR §440.50].	Covered as medically necessary.	Covered as medically necessary.
29. Physician Outpatient Services/Community Health Clinics/Other Clinic Services [defined at 42 CFR §440.20(b), 42 CFR §440.50, and 42 CFR §440.90].	Covered as medically necessary. Services provided by a Primary Care Provider when the enrollee has a primary behavioral health diagnosis (ICD-9-CM 290.xx-319.xx) are the responsibility of the MCO. Medical evaluations provided by a neurologist, as approved by the MCO, and/or an emergency room provider to establish a primary behavioral health diagnosis are the responsibility of the MCO.	Covered as medically necessary, except see "Methadone Clinic Services." Services provided by a Primary Care Provider when the enrollee has a primary behavioral health diagnosis (ICD-9-CM 290.xx-319.xx) are the responsibility of the MCO. Medical evaluations provided by a neurologist, as approved by the MCO, and/or an emergency room provider to establish a primary behavioral health diagnosis are the responsibility of the MCO.
30. Private Duty Nursing [defined at 42 CFR §440.80].	Covered as medically necessary when prescribed by an attending physician for treatment and	Covered as medically necessary when prescribed by an attending physician for treatment and

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	services rendered by a registered nurse (R.N.) or a licensed practical nurse (L.P.N.), who is not an immediate relative**.**	services rendered by a registered nurse (R.N.) or a licensed practical nurse (L.P.N.), who is not an immediate relative**.**
31. Psychiatric Inpatient Facility Services [defined at 42 CFR §441, Subparts C and D and including services for persons of all ages].	Covered as medically necessary, Preadmission and concurrent reviews by the MCC are allowed.	Covered as medically necessary, Preadmission and concurrent reviews by the MCC are allowed.
32. Psychiatric Pharmacy.	See "Pharmacy Services."	See "Pharmacy Services."
33. Psychiatric Rehabilitation Services [defined as psychiatric services delivered in accordance with 42 CFR §440.130(d)].	Covered as medically necessary.	Covered as medically necessary.
34. Psychiatric Physician Inpatient Services [defined at 42 CFR §440.50].	Covered as medically necessary.	Covered as medically necessary.
35. Psychiatric Physician Outpatient Services.	See "Outpatient Mental Health Services."	See "Outpatient Mental Health Services."
36. Psychiatric Residential Treatment Services [defined at 42 CFR §483.352] and including services for persons of all ages].	Covered as medically necessary.	Covered as medically necessary.
37. Reconstructive Breast Surgery [defined in accordance with Tenn. Code Ann. § 56-7-2507].	Covered in accordance with Tenn. Code Ann. § 56-7-2507 which requires coverage of all stages of reconstructive breast surgery on a diseased breast as a result of a mastectomy as well as any surgical procedure on the non-diseased breast deemed necessary to establish symmetry between the two breasts in the manner chosen by the physician. The surgical procedure performed on a non-	Covered in accordance with Tenn. Code Ann. §56-7-2507 which requires coverage of all stages of reconstructive breast surgery on a diseased breast as a result of a mastectomy as well as any surgical procedure on the non-diseased breast deemed necessary to establish symmetry between the two breasts in the manner chosen by the physician. The surgical procedure performed on a non-

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	diseased breast to establish symmetry with the diseased breast will only be covered if the surgical procedure performed on a non-diseased breast occurs within five (5) years of the date the reconstructive breast surgery was performed on a diseased breast.	diseased breast to establish symmetry with the diseased breast will only be covered if the surgical procedure performed on a non-diseased breast occurs within five (5) years of the date the reconstructive breast surgery was performed on a diseased breast.
38. Rehabilitation Services.	See "Inpatient Rehabilitation Facility," "Occupational Therapy," "Physical Therapy," and "Speech Therapy."	See "Inpatient Rehabilitation Facility," "Occupational Therapy," "Physical Therapy," and "Speech Therapy."
39. Renal Dialysis Clinic Services [defined at 42 CFR §440.90].	Covered as medically necessary. Generally limited to the beginning ninety (90) day period prior to the enrollee's becoming eligible for coverage by the Medicare program.	Covered as medically necessary. Generally limited to the beginning ninety (90) day period prior to the enrollee's becoming eligible for coverage by the Medicare program.
40. Sitter Services [defined as nursing services provided in the hospital by a nurse who is not an employee of the hospital].	Covered as medically necessary when a sitter who is not a relative is needed for an enrollee who is confined to a hospital as a bed patient. Certification must be made by a network physician that an R.N. or L.P.N. is needed, and neither is available.	Not covered.
41. Speech Therapy [defined at 42 CFR §440.110(c)].	Covered as medically necessary, by a Licensed Speech Therapist to restore, improve, stabilize or ameliorate impaired functions.	Covered as medically necessary, as long as there is continued medical progress, by a Licensed Speech Therapist to restore speech after a loss or impairment.
42. Transportation.	See "Emergency Air and Ground Transportation," "Non-Emergency Ambulance Transportation," and "Non-Emergency Transportation."	See "Emergency Air and Ground Transportation," "Non-Emergency Ambulance Transportation," and "Non-Emergency Transportation."
43. Vision Services [defined as services to treat conditions of the eyes].	Preventive, diagnostic, and treatment services (including eyeglasses) covered as medically necessary.	Medical eye care, meaning evaluation and management of abnormal conditions, diseases, and disorders of the eye (not including evaluation and treatment of the refractive state) is covered. Routine, periodic assessment, evaluation or screening of normal eyes, and examinations for the purpose of prescribing, fitting, or changing eyeglasses and/or contact lenses are not covered. One pair of cataract glasses or

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		lenses is covered for adults following cataract surgery.

(c) Pharmacy

TennCare is permitted under the terms and conditions of the demonstration project approved by the federal government to restrict coverage of prescription and non-prescription drugs to a TennCare-approved list of drugs known as a drug formulary. TennCare must make this list of covered drugs available to the public. Through the use of a formulary, the following drugs or classes of drugs, or their medical uses, shall be excluded from coverage or otherwise restricted by TennCare as described in Section 1927 of the Social Security Act [42 U.S.C. §1396r-8]:

1. Agents for weight loss or weight gain.

2. Agents to promote fertility or for the treatment of impotence or infertility or for the reversal of sterilization.

3. Agents for cosmetic purposes or hair growth.

4. Agents for symptomatic relief of coughs and colds.

5. Agents to promote smoking cessation.

6. Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

7. Nonprescription drugs.

8. 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.

TennCare shall not cover drugs considered by the FDA to be Less Than Effective (LTE) and DESI drugs, or drugs considered to be Identical, Related and Similar (IRS) to DESI and LTE drugs or any other pharmacy services for which federal financial participation (FFP) is not available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age. TennCare shall not cover experimental or investigational drugs which have not received final approval from the FDA.

(d) The MCC shall be allowed to use alternative services when such services have been approved by CMS for use as cost-effective alternatives and approved by TennCare for use by the MCC.

Paragraph (7) and (8) of rule 1200-13-13-.04 Covered Services is deleted in their entirety and subsequent paragraphs renumbered accordingly.

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

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 29th day of September, 2005 and will become effective on the 13th day of December, 2005.