

Tennessee Department of Finance and Administration

Bureau of TennCare

Chapter 1200-13-14
TennCare Standard

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 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.

These rules are being amended to clarify applicable appeal rights for enrollees who are denied services that are no longer covered by TennCare effective August 1, 2005, including when an enrollee has exceeded the monthly pharmacy benefit limit.

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 Standard 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 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

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

Public Necessity Rules
of
Tennessee Department of Finance and Administration

Bureau of TennCare

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Amendments

Subparagraph (d) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding new parts 3. and 4. which shall read as follows:

3. Notwithstanding the requirements of this subsection, effective August 1, 2005, such pharmacy notice will not be provided if the enrollee does not receive the medication of the type and amount prescribed because the pharmacy services are no longer covered by TennCare, including when an enrollee has exceeded the monthly pharmacy benefit limit.
4. Notwithstanding the requirements of this subsection, effective August 1, 2005, pharmacists will verify TennCare coverage for all prescriptions presented by enrollees through the PBM. If the PBM denies coverage because an enrollee has exceeded the applicable pharmacy benefit limit, the PBM will provide appropriate notice to enrollees on behalf of the TennCare Bureau. This notice will only be provided upon the first denial of coverage of a pharmacy service sought by the enrollee that exceeds the monthly five (5) prescription limit or the monthly two (2) prescription limit on branded drugs.

Subparagraph (g) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding a new part 6. which shall read as follows:

6. Effective August 1, 2005, notwithstanding the requirements of this subsection, enrollees are not entitled to continuation or reinstatement of services pending an appeal when the service that is the subject of the appeal, even if prescribed, prior authorized and/or initiated or ordered prior to August 1, 2005, was denied because it is no longer covered by TennCare. This includes appeals related to denials of coverage of pharmacy services when the enrollee exceeds the monthly pharmacy benefit limit.

Subparagraph (a) of paragraph (5) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding a new part 5. which shall read as follows:

5. Effective August 1, 2005, notwithstanding the requirements of this subsection, a three-day supply of the prescribed drug will not be provided to enrollees who present a prescription at a pharmacy and are denied coverage because the services are not covered by TennCare, including when enrollees have exceeded the monthly benefit limit.

Paragraph (5) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding new subparagraphs (e) and (f) which shall read as follows:

- (e) The Bureau of TennCare shall establish a tolerance level for early refills of prescriptions. Such established tolerance level may be more stringent for narcotic substances. Notwithstanding the requirements of this subsection, if an enrollee requests a refill of a prescription prior to the tolerance

level for early refills established by the Bureau, the pharmacy will deny this request as a service which is non-covered until the applicable tolerance period has lapsed, and will not provide a three-day supply of the prescribed drug or written notice in accordance with (1)(d) above.

- (f) Effective October 1, 2003, when providing a supply of a prescribed drug as required under this subsection, TennCare must only provide coverage of a three-day supply of the prescribed drug.

Paragraph (7) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding a new subparagraph (h) which shall read as follows:

- (h) In no circumstance will a directive be issued by the TennCare Solutions Unit or an Administrative Law Judge to provide a service to an enrollee if, when the appeal is resolved, the service is no longer covered by TennCare for the enrollee. A directive also will not be issued by TennCare Solutions Unit if the service cannot reasonably be provided to the enrollee before the date when the service is no longer covered by TennCare for the enrollee and such appeal will proceed to a hearing.

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 29th day of July, 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 10th day of January, 2006.