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Sequence Number: 12-20-13
Rule ID(s): 5637
File Date: 12/17/13
Effective Date: 3/17/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
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Revision Type (check all that apply):

X Amendments
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1200-13-13	TennCare Medicaid
Rule Number	**Rule Title**
1200-13-13-.04	Covered Services
1200-13-13-.10	Exclusions

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

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

(a) TennCare MCCs shall cover the following services and benefits subject to any applicable limitations described in this Chapter. TennCare MCCs shall cover TennCare CHOICES services and benefits in accordance with Rule 1200-13-01-.05.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

Subparagraph (b) of Paragraph (3) of Rule 1200-13-13-.10 Exclusions is amended by inserting in alphabetical order the following new Parts, with all parts of Subparagraph (b) numbered appropriately so that as amended the new Parts shall read as follows:

##. Injections for the treatment of pain such as:

(i) Facet/medial branch injections for therapeutic purposes

(ii) Medial branch injections for diagnostic purposes in excess of four (4) injections in a calendar year

(iii) Trigger point injections in excess of four (4) injections per muscle trigger point during any period of six (6) consecutive months

(iv) Epidural steroid injections in excess of three (3) injections during any period of six (6) consecutive months, except epidural injections associated with childbirth

##. TENS (transcutaneous electrical nerve stimulation) units for the treatment of chronic lower back pain

##. Urine drug screens in excess of twelve (12) during a calendar year

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 12/04/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/20/13

Rulemaking Hearing(s) Conducted on: (add more dates). 11/25/13

Date: 12/4/2013

Signature:

Name of Officer: Darin J. Gordon

Title of Officer: Director, Bureau of TennCare
Tennessee Department of Finance and Administration

CHERYL D. KLINE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 12-4-13

Notary Public Signature: Cheryl D. Kline

My commission expires on: ~~Aug 23 2016~~

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter

12-16-13
Date

Department of State Use Only

Filed with the Department of State on: 12/17/13

Effective on: 3/17/14

Tre Hargett
Secretary of State

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Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no public comments on these rules.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

The rules are not anticipated to have an effect on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rules are being amended to exclude or otherwise limit coverage of specified benefits.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The rules are lawfully adopted by the Bureau of TennCare in accordance with §§ 4-5-202, 71-5-105 and 71-5-109.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by these rules are TennCare enrollees and TennCare providers. The governmental entity most directly affected by these rules is the Bureau of TennCare, Tennessee Department of Finance and Administration.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Rules were approved by the Tennessee Attorney General. No additional opinion was given or requested.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

The promulgation of the TennCare Medicaid and TennCare Standard rules is anticipated to decrease state annual expenditures by $4,241,300.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Donna K. Tidwell
Deputy General Counsel

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Donna K. Tidwell
Deputy General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

GW10113309

(Rule 1200-13-13-.03, continued)

rule filed April 29, 2005; effective through October 11, 2005. Amendments filed July 28, 2005; effective October 11, 2005. Public necessity rule filed December 29, 2005; effective through June 12, 2006. Public necessity rule filed December 29, 2005, expired June 12, 2006. On June 13, 2006, affected rules reverted to status on December 28, 2005. Amendment filed March 31, 2006; effective June 14, 2006. Amendment filed August 14, 2006; effective October 28, 2006. Public necessity rule filed February 8, 2008; effective through July 22, 2008. Repeal and new rule filed May 7, 2008; effective July 21, 2008. Amendments filed September 25, 2009; effective December 24, 2009. Amendment filed November 30, 2009; effective February 28, 2010. Emergency rule filed March 1, 2010; effective through August 28, 2010. Amendments filed May 27, 2010; effective August 25, 2010. Amendments filed October 26, 2010; effective January 24, 2011.

1200-13-13-.04 COVERED SERVICES.

(1) Benefits covered under the managed care program

(a) TennCare MCCs shall cover the following services and benefits subject to any applicable limitations described ~~herein~~ in this Chapter. TennCare MCCs shall cover TennCare CHOICES services and benefits in accordance with Rule 1200-13-01-.05.

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

2. An MCC shall not refuse to pay for a service solely because of a lack of prior authorization as follows:

(i) EPSDT services. MCCs shall provide all medically necessary, covered services regardless of whether the need for such services was identified by a provider whose services had received prior authorization from the MCC or by an in-network provider.

(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.

3. 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.

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

5. Non-covered services are non-covered regardless of medical necessity.

(Rule 1200-13-13-.10, continued)

state of the eye(s); one pair of cataract glasses or lenses is covered for adults following cataract surgery

(ii) LASIK

(iii) Orthoptics

(iv) Vision perception training

(v) Vision therapy

(b) Services, products, and supplies that are specifically excluded from coverage under the TennCare program.

1. Alcoholic beverages
2. Animal therapy including, but not limited to:
   (i) Dolphin therapy
   (ii) Equine therapy
   (iii) Hippo therapy
   (iv) Pet therapy
3. Art therapy
4. Autopsy
5. Bathtub equipment and supplies as follows:
   (i) Paraffin baths
   (ii) Sauna baths
6. Beds and bedding equipment as follows:
   (i) Adjust-a-Beds, lounge beds, or similar devices
   (ii) Waterbeds
7. Bioenergetic therapy
8. Body adornment and enhancement services including, but not limited to:
   (i) Body piercing

(Rule 1200-13-13-.10, continued)

(iii) Safe automobile transport is not otherwise possible.

40. Infertility or impotence services including, but not limited to:

(i) Artificial insemination services

(ii) Purchase of donor sperm and any charges for the storage of sperm

(iii) Purchase of donor eggs, and any charges associated with care of the donor required for donor egg retrievals or transfers of gestational carriers

(iv) Cryopreservation and storage of cryopreserved embryos

(v) Services associated with a gestational carrier program (surrogate parenting) for the recipient or the gestational carrier

(vi) Fertility drugs

(vii) Home ovulation prediction kits

(viii) Services for couples in which one of the partners has had a previous sterilization procedure, with or without reversal

(ix) Reversal of sterilization procedures

(x) Any other service or procedure intended to create a pregnancy

(xi) Testing and/or treatment, including therapy, supplies, and counseling, for frigidity or impotence

##. Injections for the treatment of pain such as:

(i) Facet/medial branch injections for therapeutic purposes

(ii) Medial branch injections for diagnostic purposes in excess of four (4) injections in a calendar year

(iii) Trigger point injections in excess of four (4) injections per muscle trigger point during any period of six (6) consecutive months

(iv) Epidural steroid injections in excess of three (3) injections during any period of six (6) consecutive months, except epidural injections associated with childbirth

41. Lamps such as:

(i) Heating lamps

(Rule 1200-13-13-.10, continued)

~~71~~72.Sex change or transformation surgery

72. Sexual dysfunction or inadequacy services and medicine, including drugs for erectile dysfunctions and penile implant devices

73. Sitter Services.

74. Speech devices as follows:

    (i) Phone mirror handivoice

    (ii) Speech software

    (iii) Speech teaching machines

75. Sphygmomanometers (blood pressure cuffs)

76. Stethoscopes

77. Supports

    (i) Cervical pillows

    (ii) Orthotrac pneumatic vests

##. TENS (transcutaneous electrical nerve stimulation) units for the treatment of chronic lower back pain

78. Thermograms

79. Thermography

80. Time involved in completing necessary forms, claims, or reports

81. Tinnitus maskers

82. Toy equipment such as: Flash switches (for toys)

83. Transportation costs as follows:

    (i) Transportation to a provider who is outside the geographical access standards that the MCC is required to meet when a network provider is available within such geographical access standards or, in the case of Medicare beneficiaries, transportation to Medicare providers who are outside the geographical access standards of the TennCare program when there are Medicare providers available within those standards

(Rule 1200-13-13-.10, continued)

(ii) Mileage reimbursement, car rental fees, or other reimbursement for use of a private vehicle unless prior authorized by the MCC in lieu of contracted transportation services

(iii) Transportation back to Tennessee from vacation or other travel out-of-state in order to access non-emergency covered services (unless authorized by the MCC)

(iv) Any non-emergency out-of-state transportation, including airfare, that has not been prior authorized by the MCC. This includes the costs of transportation to obtain out-of-state care that has been authorized by the MCC. Out-of-state transportation must be prior authorized independently of out-of-state care.

84. Transsexual surgery

<u>##. Urine drug screens in excess of twelve (12) during a calendar year</u>

85. Vagus nerve stimulators, except after conventional therapy has failed in treating partial onset of seizures.

86. Weight loss or weight gain and physical fitness programs including, but not limited to:

(i) Dietary programs of weight loss programs, including, but not limited to, Optifast, Nutrisystem, and other similar programs or exercise programs. Food supplements will not be authorized for use in weight loss programs or for weight gain.

(ii) Health clubs, membership fees (e.g., YMCA)

(iii) Marathons, activity and entry fees

(iv) Swimming pools

87. Wheelchairs as follows:

(i) Wheelchairs defined by CMS as power operated vehicles (POVs), namely, scooters and devices with three (3) or four (4) wheels that have tiller steering and limited seat modification capabilities (i.e., provide little or no back support). Powered wheelchairs, meaning four (4) wheeled, battery operated vehicles that provide back support and that are steered by an electronic device or joystick that controls direction and turning, are covered as medically necessary.

(ii) Standing wheelchairs

(iii) Stair-climbing wheelchairs