



# TENNCARE POLICY MANUAL

<b>Policy No:</b> CON 07-003 (Rev. 4)	
<b>Subject:</b> MCCs' Responsibilities to Provide Services to TennCare Children Receiving Special Education Services	
<b>Approved by:</b> <i>V. Fugate MD</i>	<b>Date:</b> 3/7/14

## PURPOSE:

The purpose of this policy is to clarify the responsibilities of the MCCs when TennCare children who have been identified under the Individuals with Disabilities Education Act (IDEA) have service needs that are identified as **"related services"** in their Individual Education Plans (IEPs).

## POLICY:

There are certain circumstances in which MCCs may have an obligation to cover **"related services"** identified in the IEPs of TennCare children whose educational services fall under the IDEA. These services must be otherwise coverable under TennCare (including meeting medical necessity criteria), and they must be delivered by appropriately qualified and enrolled providers. The MCC may require that the usual managed care principles be followed.

## DISCUSSION:

The IDEA requires that school systems identify children with handicapping conditions and provide services to them through IEPs. IEPs include statements of both the educational services to be provided to the child and any **"related services"** to be provided, meaning services necessary to assist the child in benefiting from his educational services and achieving his educational goals. Examples of **"related services"** may include such things as physical therapy to help the child maintain mobility during the school day; eyeglasses to help his vision; and psychological services to address behavior problems that are interfering with his ability to learn. The relevant statutory and regulatory language is below under the heading FEDERAL REQUIREMENTS.

Federal courts have clarified what may be considered a **"related service."** In *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984), the Supreme Court established three requirements for use in determining whether a service could be considered a **"related service"** under IDEA. These requirements are as follows:

- The child with a disability must qualify under IDEA for special education;
- The service must be necessary to aid the child with a disability to benefit from special education;
- and

- The service must be able to be provided by a qualified person other than a physician.

The Court in *Tatro* determined which medically-related services Congress intended to be included under the IDEA. Schools are required to provide medical diagnostic and evaluation services provided by a licensed physician.<sup>1</sup> However, other termed “**medical services**” are excluded from consideration as “**related services.**” “**Medical services**” are defined as “services provided by a licensed physician.”<sup>2</sup> Thus, the Department of Education determined that the services of a school nurse otherwise qualifying as a “**related service**” are not subject to exclusion as a “**medical service,**” but that the services of a physician are excludable as such (*Tatro* at 892-893).

In *Cedar Rapids Community School District v. Garret F.*, 526 U.S. 66 (1999), the Supreme Court expanded on the finding in *Tatro*, stating that supportive services that can be provided by a nurse or a qualified layperson cannot be excluded from the definition of “**related services**” if they are needed in order for an IDEA child to attend school. The Supreme Court stated that one of the purposes of the IDEA was that these services would “enable a disabled child to remain in school during the day” (*Cedar Rapids*, at 73).

Different courts have defined what can be considered an excluded “**medical service**” mostly on a case-by-case basis. For example, placement of a child in a residential psychiatric treatment facility was excluded but placement of a child in a residential treatment facility for brain injury victims was considered a “**related service**” (See *Mary T. v. School District of Philadelphia*, 575 F.3d 235 (3<sup>rd</sup> Cir. 2009) and *Brown v. Wilson Cty. School Bd.*, 747 F.Supp. 436 (M.D.Tenn. 1990), respectively).

“**Related services**” are reimbursed by school systems under the IDEA. However, Medicaid may have some responsibilities when an IDEA child is enrolled in Medicaid, or in Tennessee’s case, TennCare. When a “**related service**” is a service that is otherwise coverable by TennCare (i.e., it is a covered service and it is medically necessary), then the MCCs have an obligation to cover these services upon request, subject to the usual requirements.

The MCCs are not required to pay school systems as providers, although they may do so if they choose and if the school system meets provider qualifications. Additionally, the MCC may require that children use MCC providers for provision of services. “**Related services**” do not have to be delivered on-site at the school.

As an example, a child’s IEP could indicate that he needs psychological counseling, which would ordinarily be covered by the MCC. If the psychological counseling services are found to be medically necessary, the MCC can arrange to have the services delivered at and by a Community Mental Health Agency; the MCC would also be responsible for furnishing transportation to and from the Community Mental Health Agency if the child lacked transportation resources. In addition, the MCC would assure coordination of care for the behavioral health services the child is receiving.

## **FEDERAL REQUIREMENTS**

### 20 USCA § 1400

#### (d) Purposes

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<sup>1</sup> 34 C.F.R. § 300.34(c)(5).

<sup>2</sup> 34 C.F.R. § 300.13(b)(4).

The purposes of this chapter are--

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

34 CFR § 300.154

(b) Obligation of noneducational public agencies.

(1)(i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology devices, § 300.6 relating to assistive technology services, § 300.34 relating to related services, § 300.41 relating to supplementary aids and services, and § 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.

(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.

**DEFINITIONS:**

1. IDEA. Individuals with Disabilities Education Act. The federal law that outlines the provisions for providing special education services to children who have been identified as having handicapping conditions.<sup>3</sup>
2. IEP. Individual Education Plan. The plan of services that the child is to receive under IDEA.
3. LEA. Local Education Agency or the school system.

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<sup>3</sup> 20 U.S.C.A. § 1400.

4. Related services. Services which are needed to assist a child in benefiting from his special education services and which can be delivered by a professional other than a physician.

The term “related services” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.<sup>4</sup>

**OFFICES OF PRIMARY RESPONSIBILITY:**

TennCare Office of Managed Care Operations  
TennCare Office of the Medical Director  
TennCare Division of Member Services

**REFERENCES:**

20 USCA § 1400

<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title20/pdf/USCODE-2011-title20-chap33.pdf>

34 CFR § 300

<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=3dc376447058a2675357c5d521c559c2&rgn=div5&view=text&node=34:2.1.1.1.1&idno=34>

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Reviewed: No revisions required: 07/29/08: SB

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Reviewed: No revisions required: 07/28/10: SB

Reviewed: Definitions updated. 07/22/11: SB

Revision 2: 07/20/12: PMD

Revision 3: 01/09/14: AB

Revision 4: 03/07/14: SB

Attachment (IEP Release Form) Updated: 03/21/14: AB

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<sup>4</sup> 20 U.S.C.A. § 1401(26).

**TennCare, a Division of Health Care Finance and Administration**  
**PARENTAL AUTHORIZATION FOR RELEASE OF INFORMATION**  
**FOR**  
**INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

Federal law requires that a parent or legal guardian must give TennCare consent before a student's school may disclose personally identifiable information (PII) that is contained in the student's Educational Records.

**The following records may be disclosed by your child's school to TennCare:**

1. Your child's Individual Educational Plan (IEP)
2. Medical information contained in your child's Educational Records
3. Psychological information contained in your child's Educational Records
4. Education reports, records or relevant test results contained in your child's Educational Records

**What is the purpose of your child's school disclosing your child's Educational Records to TennCare?**

The purpose of your child's school disclosing and sharing your child's Educational Records with TennCare is so:

1. TennCare can share the records with your child's Managed Care Organization (MCO)
2. TennCare can share the records with your child's Primary Care Provider (PCP)

**So that your child's MCO and PCP can review the records to provide feedback to the School concerning services provided to Your Child.**

By signing this release, I understand and agree that:

1. TennCare may access my TennCare information or my insurance information.
2. TennCare may access my child's TennCare information or my child's insurance information so that my child may be eligible for payment of services under the **Assistance to States for the Education of Children with Disabilities Federal Program**.
3. My consent to disclose my child's records is voluntary.
4. I can take back my consent to allow the school to disclose My Child's records at any time.

By signing this release, I give permission for

\_\_\_\_\_  
Name of School

To release information concerning:

\_\_\_\_\_  
Full Name of Child

\_\_\_\_\_  
Street/Physical Address of Child

\_\_\_\_\_  
City/State/Zip - Address of Child

\_\_\_\_\_  
Child's Social Security Number

Parent/Guardian Name and Signature:

\_\_\_\_\_  
Parent/Guardian Printed Name

\_\_\_\_\_  
Parent / Guardian Signature

\_\_\_\_\_  
Date