



TENNCARE POLICY MANUAL

Policy No: CON 09-001	
Subject: Third Party Liability	
Approved by: <i>D. A. Cook</i>	Date: January 1, 2010

PURPOSE:

The purpose of this policy is to clarify responsibilities regarding **identification and billing of third party payers** for TennCare-covered services. The policy addresses routine third party billing issues. It does not address issues associated with subrogation or estate recovery.

This policy is intended to be a companion to Policy No. CON 05-001, which addresses the responsibilities of Managed Care Contractors when the enrollee has **third party copays and/or deductibles**.

BACKGROUND:

Some TennCare enrollees have other insurance, which can be an important resource in paying for at least a portion of the TennCare services these enrollees receive. Other insurance is referred to as "Third Party Liability" or TPL. Recognition and capture of TPL are critical components in TennCare's efforts to use resources wisely and thereby contain costs.

State Medicaid programs, including TennCare, administer third party liability programs to identify third parties liable for payment of Medicaid services and to pursue third party payment when such payment is available. See 42 CFR 433, Subpart D. In situations where an enrollee uses a service that is covered by both TennCare and his

other insurance carrier, the state Medicaid agency is the payer of last resort, although in certain circumstances the agency is required to “pay and chase.”¹

Every person who enrolls in TennCare automatically assigns his right to collect TPL to the “state” (TennCare), which has delegated this authority to the MCOs.² See TCA § 71-5-117(f) and the MCO contracts.³ It is the MCO’s obligation to make “every reasonable effort” to determine the legal liability of third parties to pay for services provided to its enrollees and to access payments accordingly.⁴

The MCOs have an incentive to pursue third party payments, since the premiums that TennCare pays to the MCOs assume a certain level of TPL opportunity in the market. The premiums paid to the MCOs are reduced by this TPL opportunity with the expectation that they, as risk-based organizations, will take advantage of this opportunity. TennCare has a back-end process to collect TPL where identified and not previously claimed at the point of service.

This MCO incentive, however, does not relieve the provider of his obligation to find out as much as he can about third party payers that may be responsible for some or all of the services he delivers to a TennCare enrollee. Providers are encouraged to bill any known third party for services prior to billing the MCO.

There are a number of commercial sources of information about TPL that are available to TennCare providers and MCOs. Tennessee Anytime is a government service that offers primarily eligibility information. It provides some TPL information, but it was never intended to be an absolute and authoritative source of data about third party payers. TPL information is placed on Tennessee Anytime only when it has been reported to TennCare and determined to be accurate and valid. The website for Tennessee Anytime is www.tennesseeanytime.org/tncr.

POLICY:

1. Providers generally request TPL data from patients at the point of service. They should bill the third party payer before billing the MCO.

If the probable existence of TPL for a particular enrollee has been determined by the MCO, the MCO may deny claims and return them to the provider, with the instruction that the provider should bill the third party payer first, unless the

¹ TennCare-East/West CRA, Section 2.21.4; TennCare -Middle Tennessee CRA, Section 2.21.4.

² TCA § 71-5-117(b).

³ Ibid

⁴ Ibid

service is one that would fall under “pay and chase.”⁵ When denying a claim for TPL, the MCO must give the provider its TPL data so that the provider can appropriately submit his claim to the third party payer.⁶

2. Sometimes the availability of TPL is not discovered until after a provider claim has been paid. This discovery may be made by internal or external sources.
 - a. Providers always have the discretion to refund payments they have received from TennCare or one of its contractors, such as the MCO, in order to pursue TPL. Once a provider has refunded a payment received from TennCare or one of its contractors, the provider may not resubmit another claim to TennCare or its contractor for the same service furnished to the same enrollee on the same date.
 - b. If the MCO learns of the availability of TPL after it has made a payment to the provider, then the MCO may recover its payment to the provider if all of the following conditions are met. This policy is not intended to affect the ability of the MCO to recover a duplicate payment when both the MCO and a third party have paid a claim to the same provider for the same service.
 - i. The claim involved was for a service delivered to an adult aged 21 and older, unless the adult is a pregnant women who is receiving prenatal care;
 - ii. Less than **nine months** have passed since the date of service when there is a commercial insurer involved and less than **two years** have passed since the date of service when Medicare is involved;
 - iii. Prior to recoupment of its payment, the MCO notified the provider with a **refund request letter** that included, at a minimum:
 - The name of the MCO;
 - The name of the provider;
 - The list of claims or a reference to a remit advice date;
 - The reason for overpayment (Example: “Another commercial insurance carrier was the primary carrier at the time of service”);
 - The identification and contact information of the insurance carrier who was determined to have been primary at the time of service, together with information about the insurance policy so that the provider can bill the insurance carrier;

⁵ TennCare-East/West CRA, Section 2.21.4; TennCare-Middle Tennessee CRA, Section 2.21.4

⁶ Ibid

- A time period of at least 45 calendar days in which the provider may return the MCO's payment and/or appeal the decision;
 - Information about how and where to file an appeal with the MCO (phone number, contact information); and,
 - A request that the provider submit claims to the commercial insurance carrier or Medicare if not already done;
- iv. When providers choose to appeal the refund request letter from the MCO, they are given 30 calendar days in addition to the 45 initial calendar days stated in the letter to provide sufficient documentation to the MCO prior to the MCO's recovery of their payment. Providers should include in their appeals a copy of a denial from the primary carrier, if available; and,
- v. The MCOs have ensured that there is a separate Service Line or Prompt for Provider Inquiries regarding these recoveries.
- c. The MCOs may not recoup payments already made to a provider when TPL is discovered unless all of the above criteria have been met.

DEFINITIONS:

Coordination of benefits. The process of working with a third party payer to make certain that benefits are delivered as cost-effectively as possible, with each party assuming its appropriate responsibility and the enrollee being "held harmless" except for allowable TennCare copays. (TennCare has no deductibles or coinsurance requirements.)

Cost avoidance. "A method of avoiding payment of Medicaid claims when other insurance resources are available to the Medicaid recipient. Whenever the [MCO] is billed first, claims are denied and returned to the provider who is required to bill and collect from liable third parties." (State Medicaid Manual, Section 3901.) The State Medicaid Manual specifically prohibits the use of cost avoidance for the covered services identified under the "pay and chase" definition below. (State Medicaid Manual, Section 3904.4.)

Pay and chase. Federal regulations require that Medicaid agencies pay first for certain covered services, and then pursue ["chase"] any possible third party payers for reimbursement where the Medicaid recipient has other health insurance. (State Medicaid Manual, Section 3904.4.)

Payment in full. TennCare’s payment for a covered service, less any applicable TennCare deductibles or copays. Providers who participate in TennCare are required to accept TennCare’s payment as payment in full.

Third party payers. Entities which are responsible for paying medical claims of TennCare enrollees.

OFFICE OF PRIMARY RESPONSIBILITY:

TennCare Office of Networks

REFERENCES:

<http://www.tn.gov/tenncare/forms/middletnmco.pdf>, TennCare-Middle Tennessee CRA

<http://www.tn.gov/tenncare/forms/eastwestmcocontract.pdf>, TennCare-East/West CRA

<http://www.michie.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp=>, T.C.A. § 71-5-117(f)

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=6bf73936870fbe634e7679711cfe7377&rgn=div5&view=text&node=42:4.0.1.1.4&idno=42#42:4.0.1.1.4.4>, 42 CFR § 433, Subpart D

<http://tennessee.gov/sos/rules/1200/1200-13/1200-13-13.20090701.pdf>, TennCare Medicaid Rules 1200-13-13-.08 & .09, Tenn. Comp. R. & Regs.

<http://tennessee.gov/sos/rules/1200/1200-13/1200-13-14.20090701.pdf>, TennCare Standard Rules 1200-13-14-.08 & .09, Tenn. Comp. R. & Regs.