



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
INSURANCE DIVISION
500 JAMES ROBERTSON PARKWAY 7th FLOOR
NASHVILLE, TENNESSEE 37243-5065
615-741-2176

August 8, 2013

Lisa Robinson
petale@petaleranch.com

Re: Interpretive Opinion No. 04-13, Definition of "At Risk Populations" for Purposes of TENN. CODE ANN. § 56-6-705(a)(10)(C) of the Health Care Service Utilization Review Act

Dear Ms. Robinson:

This letter is written in response to your inquiry submitted, on or around June 5, 2013, to Brian Hoffmeister, Director of Policy Analysis with the Insurance Division of the Tennessee Department of Commerce and Insurance ("Division"). Your inquiry requested clarification on the meaning of the term "at risk population" as it is used in TENN. CODE ANN. § 56-6-705(a)(10)(C). This inquiry is being treated as a request for an Interpretive Opinion from the Division pursuant to TENN. COMP. R. & REGS. 0780-1-77-.01(1). Specifically, you have requested the Division to advise as to who is included within the term "at risk populations", as these individuals would be excluded from the eighteen percent (18%) limitation placed on those outpatient mental health and chemical dependency services that are permitted to have a follow-up review after an initial utilization review by an agent.

RESPONSE:

It is the position of the Division that "at risk populations" for purposes of TENN. CODE ANN. § 56-6-705(a)(10)(C) should be interpreted to include those patients that are either being seen for more than two (2) visits a week, or those patients for which substance abuse has been reported or suspected. TENN. CODE ANN. § 56-6-705(a)(10)(C) provides:

After the initial utilization review, additional information or follow-up utilization review for outpatient mental health or chemical dependency patients shall be limited to no more than eighteen percent (18%) of the total number of outpatient mental health and chemical dependency patients' reviews performed by the utilization review agent for the previous calendar year adjusted for the difference

of covered lives in this state for the present calendar year, or as otherwise required by the Utilization Review Accreditation Commission (URAC) or the National Committee for Quality Assurance (NCQA). **The eighteen percent (18%) limit shall not apply to utilization review applicable to at risk populations, patients seen more than two (2) visits a week and patients for which substance abuse is reported or suspected.** Calls from reviews to providers for appointment follow-up calls or for the credentialing process shall also not be subject to the eighteen percent limit. [Emphasis added].

Per the language of the statute cited above, following the initial utilization review of services proposed or provided to a patient that are related to outpatient mental health and chemical dependency services, any follow-up utilization review, or review of additional information, is subject to an eighteen percent (18%) limitation that is based off a specified formula outlined within the statute. The statutory language continues on to provide that the eighteen percent (18%) limitation does not apply to "at risk populations, patients seen more than two (2) visits a week and patients for which substance abuse is reported or suspected". TENN. CODE ANN. § 56-6-705(a)(10)(C) (2012).

It is the Division's position that "at risk populations" includes those individuals who fit within the specified description of patients provided within the statute, meaning patients seen more than two (2) visits a week and patients for which substance abuse is reported or suspected. Use of the term "at risk populations" in the statute without providing a definition creates ambiguity as to its application, especially since the subject matter of those at risk relating specifically to outpatient mental health and chemical dependency is very particularized and difficult to apply a common understanding to. Tennessee courts have held that "a statute is ambiguous where it is capable of conveying more than one meaning." Nathan E. Steppach, Jr. v. William H. Thomas, Jr., 346 S.W.3d 488, 506 (Tenn. Ct. App. 2011). When a statute is ambiguous, the general rule of statutory construction is to effectuate legislative intent, with all rules of statutory construction serving as a means to that end. Steppach, 346 S.W.3d at 506. One such rule is the doctrine of *ejusdem generis* which provides that "where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated." 346 S.W.3d at 507. Simply put, under the doctrine of *ejusdem generis* courts have held that in construing a statute "where it clearly appears that the lawmaker was thinking of a particular class of person or objects, his words of more general description may not have been intended to embrace any other than those within the class." Id. at 507.

The above cited doctrine proves useful in interpreting the language of TENN. CODE ANN. § 56-6-705(a)(10)(C) and effectuating its legislative intent. As quoted above, following the statute's use of the term "at risk populations," specific language is directly provided that includes two (2) classes of individuals in this category. The classes include patients being seen more than two (2) visits a week, and patients that have either been reported for, or suspected of, substance abuse. Applying the doctrine of *ejusdem generis*, the term "at risk populations" should be construed as only including these two categories of individuals. This maintains the general legislative intent of the Health Care Service Utilization Review Act, which is to assure that utilization review agents

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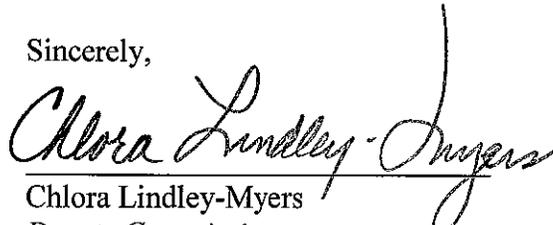
adhere to reasonable standards for conducting utilization review, and promoting the delivery of quality healthcare in a cost-effective manner. TENN. CODE ANN. § 56-6-702 (2012).

Based on the application of the above rules, the Division interprets the term "at risk populations" as used in TENN. CODE ANN. § 56-6-705(a)(10)(C) to apply to patients seen more than two (2) visits a week, or patients that have been reported for substance abuse or suspected of it, as specifically stated in the statute.

This response by the Division to a specific use and interpretation of the Tennessee Code should not be construed as a legal position or opinion of the Commissioner of Commerce and Insurance, or any other official in the Department of Commerce and Insurance. This Interpretive Opinion only expresses the current position of the Division staff with respect to enforcement, and is not binding on the Commissioner or third parties.

If you have any questions regarding this matter, please do not hesitate to contact me at (615) 741-2176.

Sincerely,



Chlora Lindley-Myers
Deputy Commissioner

CLM/lvd

cc: Julie Mix McPeak, Commissioner
Nancy S. Jones, General Counsel and Deputy Commissioner
Rachel L. Waterhouse, Deputy General Counsel
Tony Greer, Chief Counsel for Insurance
Michael Humphreys, Director of Insurance
Brian Hoffmeister, Director of Policy Analysis
Lauren Dantche, Assistant General Counsel for Insurance