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Sequence Number: 01-20-10  
Notice ID(s): 1197  
File Date: 01/25/2010

# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	Department of Health
<b>Division:</b>	Communicable and Environmental Disease Services
<b>Contact Person:</b>	Carolyn Wester, M.D.
<b>Address:</b>	425 5 <sup>th</sup> Avenue North, 1 <sup>st</sup> Floor, Nashville TN, 37243
<b>Phone:</b>	615-741-7247
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*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	ADA Coordinator
<b>Address:</b>	227 French Landing , Suite 501 Nashville, TN 37243
<b>Phone:</b>	(615) 741-7221
<b>Email:</b>	

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Poplar Conference Room, Heritage Place		
Address 2:	227 French Landing Drive		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	03/19/2010		
Hearing Time:	1:00 pm	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

**Additional Hearing Information:**

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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1200-14-02	HIV Drug Reimbursement (HDR) Program
Rule Number	Rule Title
1200-14-02-.01	Definitions
1200-14-02-.02	Purpose and Administration of ADAP Funds

1200-14-02-.03	Eligibility Criteria
1200-14-02-.04	Program Limited to Available Funds
1200-14-02-.05	Certification of Coverage by Program
1200-14-02-.06	Reconsideration of Denial

(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>)

1200-14-02 HIV Drug Reimbursement (HDR) Program Rules are amended by deleting it in its entirety and substituting instead the following, so that as amended, the new 1200-14-02 shall read:

1200-14-02-.01 Definitions:

- (1) For the purpose of these regulations the terms used herein are defined as follows:
  - (a) "ADAP" means the AIDS Drug Assistance Program, the federal earmark in the Ryan White Part B grant providing funding for HIV clients' medications, which encompasses HDAP and IAP.
  - (b) "AIDS" means Acquired Immune Deficiency Syndrome or Acquired Immunodeficiency Syndrome.
  - (c) "Aids Centers Of Excellence Pharmacy And Therapeutics Subcommittee" means a subcommittee of the AIDS Centers of Excellence Advisory Committee serving in an advisory capacity to the Ryan White Program.
  - (d) "Certification" means the determination that an applicant meets the eligibility criteria to receive assistance through HDAP or IAP.
  - (e) "Client" means a person enrolled in HDAP or IAP.
  - (f) "Department" means the Tennessee Department of Health.
  - (g) "FDA" means the U.S. Food and Drug Administration.
  - (h) "Formulary" means the HDAP Formulary, which lists the FDA approved medications provided by Tennessee's Ryan White Program.
  - (i) "HDAP" means the HIV Drug Assistance Program, a program through which the Department provides medications for eligible applicants
  - (j) "HIV" means Human Immunodeficiency Virus.
  - (k) "IAP" means Insurance Assistance Program, a program through which the Department provides assistance paying health insurance premiums, co-payments, and/or deductibles for eligible applicants.
  - (l) "Medical Care Manager" means an individual working in a medical setting designated to certify applicants' eligibility for HDAP or IAP services, subject to Departmental confirmation.
  - (m) "Priority Group" means a group the Department designates as requiring temporary emergency access to HDAP or IAP services if there is a waiting list.
  - (n) "Program Director" means the Department employee responsible for the overall management of grants and programs in the HIV/AIDS/STD Section of the Department.

- (o) "Ryan White Program " means a program, including ADAP and IAP, receiving a federal Ryan White Part B grant and providing medical services, medications, and support services to eligible applicants.
- (p) "TENNCARE" means Tennessee's State Medicaid Program.

1200-14-02-.02: Purpose and Administration of ADAP Funds

(1) HDAP

- (a) HDAP shall provide medications from the Formulary for eligible applicants.
- (b) HDAP shall be responsible for:
  - (1) The purchase, storage, and accountability for medications;
  - (2) Expending funds to purchase drugs and fill prescriptions for clients enrolled in HDAP at the lowest cost;
  - (3) Coordinating with TennCare to ensure that clients do not receive benefits from both programs simultaneously; and
  - (4) Determining which medications shall be included in the Formulary.
- (c) HDAP shall ensure that licensed pharmacists shall dispense prescription medications.
- (d) HDAP shall ensure that clients' physicians shall prescribe medication(s) including, but not limited to, dosage, directions, and temporary or permanent discontinuation.
- (d) HDAP shall provide applications and instructional forms through the statewide network of Medical Care Managers. It shall disseminate participation guidelines to applicants, interested physicians, and other inquiring parties upon request.

(2) IAP

- (a) IAP shall provide eligible clients with financial assistance to pay health insurance premiums, co-payments, and/or deductibles.
- (b) IAP shall ensure that IAP subsidized insurance provides medication coverage that is equal to or greater than the medication coverage provided through the HDAP Formulary.
- (c) IAP shall provide applications and instructional forms regarding current maximum income levels, the Formulary, and other guidelines for participation through the statewide network of Medical Care Managers to applicants, interested physicians, and other inquiring parties upon request.

Authority: T.C.A. §§5-5-204, 10-7-504(a)(1), 68-1-103, 68-1-106, 68-10-109, 68-10-118

1200-14-02-.03 Eligibility Criteria

- (1) To qualify an applicant for ADAP services, a Medical Care Manager must submit a completed and signed Ryan White application with the following supporting to the ADAP program:
  - (a) Applicant's declaration that he/she meets all eligibility criteria to participate in HDAP or IAP;
  - (b) Medical Care Manager's declaration the applicant is eligible for coverage by HDAP or IAP;
  - (c) Proof that applicant is HIV-infected, using generally accepted diagnostic standards; and

- (d) Applicant's declaration that he/she is not receiving and is not eligible to receive TennCare or Medicare benefits.
- (2) In addition, the applicant must submit proof that he/she meets all of the following financial and asset criteria:
- (a) An income level that does not exceed the percentage of the current year's Federal Poverty Level set annually by the Department;
  - (b) Less than \$8,000 in liquid assets; and
  - (c) A lack of third party prescription coverage for medications.
- (3) For purposes of establishing income and resources the following shall apply:
- (a) For adults (meaning applicants 18 years and older), only the income and assets of the applicant and the applicant's legal spouse with whom the applicant resides will be considered.
  - (b) For minors (meaning applicants less than 18 years), the income and assets of the applicant and the legal parent or parents with whom the applicant resides will be considered. Income and assets of step-parents and legal guardians shall not be considered.
- (4) In order for a client to continue to receive ADAP services, every six (6) months from the date of eligibility the Medical Care Manager shall:
- (a) Confirm that the client continues to meet the eligibility criteria established in this rule; and
  - (b) Submit a completed and signed Ryan White recertification application on behalf of the client.

Authority: T.C.A. §§4-5-204, 10-7-504(a)(1), 68-1-103, 68-1-106, 68-10-109 and 68-10-118.

#### 1200-14-02-.04 Program Limited to Available Funds

- (1) The availability of funds limits the number of clients. Approval of new applications shall cease if funding is insufficient to sustain additional clients.
- (2) Current clients shall have priority for funding.
- (3) Eligible applicants who are denied enrollment due to a funding shortage shall be placed on a waiting list managed by the Ryan White Program.
- (4) Applicants on the ADAP waiting list in one of the following Priority Groups shall be provided with temporary emergency ADAP services as follows:
  - (a) Pregnant women shall be eligible for HDAP or IAP during pregnancy and up to 90 days post partum; and
  - (b) Infants up to one year of age shall be eligible for HDAP or IAP for up to 180 days of coverage.

Authority: T.C.A. §§4-5-204, 10-7-504(a)(1), 68-1-103, 68-1-106, 68-10-109, 68-10-118.

#### 1200-14-02-.05 Certification of Coverage by Program

- (1) The Ryan White Program will notify applicants whether certification of coverage has been awarded. Those applicants for whom coverage is certified shall be advised that coverage in any one federal fiscal year will not extend beyond the federal fiscal year of the current grant.

Authority: T.C.A. §§4-5-204, 10-7-504(a)(1), 68-1-103, 68-1-106, and 68-10-109

#### 1200-14-02-.06 Reconsideration of Denial

- (1) Applicants denied certification or recertification from participation in HDAP or IAP may request reconsideration.
  - (a) The applicant must request reconsideration in writing, directed to the Program Director, within twenty one (21) calendar days of denial or removal. The Program Director will issue a reconsidered decision in writing within fourteen (14) days of the request for reconsideration. The Program Director's review is limited to a determination of whether or not the applicant meets eligibility criteria. The decision of the Program Director is final.

Authority: T.C.A. §§4-5-204, 10-7-504(a)(1), 68-1-103, 68-1-106, and 68-10-109

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 1/25/10

Signature: Mary Kennedy

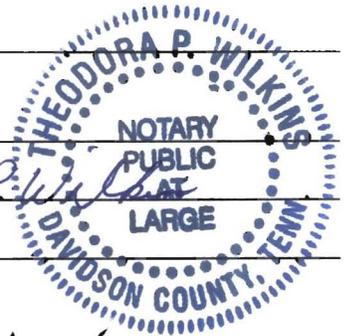
Name of Officer: Mary Kennedy  
Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 1/25/10

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/7/2011



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Filed with the Department of State on: 1/25/10

Tre Hargett

Tre Hargett  
Secretary of State

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