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

June 27, 2013

John G. Roberts
General Counsel
Bureau of TennCare
310 Great Circle Road
Nashville, Tennessee 37243

Re: Interpretive Opinion No. 01-13
Definition of "Physician" for Purposes of the Tennessee Health Carrier Grievance and External Review Procedure Act

Dear Mr. Roberts:

This letter is written in response to your request for an Interpretive Opinion regarding the definition of "physician" as it is used in the definition of "medically necessary" found in TENN. CODE ANN. § 56-61-102(23) of the Tennessee Health Carrier Grievance and External Review Procedure Act ("External Review Act"). You have requested the Insurance Division of the Tennessee Department of Commerce and Insurance ("Division") to opine as to whether the term "physician" as used in TENN. CODE ANN. § 56-61-102(23) is intended to encompass non-physician healthcare professionals who provide healthcare services, such as licensed healthcare providers practicing within the scope of their licensure.

The facts understood by the Division are as follows:

The general purpose of the External Review Act is to establish procedures by health carriers to ensure that covered persons have the appropriate means to dispute grievances when coverage is denied. The External Review Act sets up required methods of review that health carriers must engage in when applicable. However, under TENN. CODE ANN. § 56-61-104, health carriers may deny coverage for healthcare services that are not "medically necessary". TENN. CODE ANN. § 56-61-102(23) defines "medically necessary" to include:

> Healthcare services that a ***physician***, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:
>
> (A) In accordance with generally accepted standards of medical practice;
>
> (B) Clinically appropriate, in terms of type, frequency, extent, site and duration; and considered effective for the patient's illness, injury or disease; and
>
> (C) Not primarily for the convenience of the patient, physician, or other healthcare provider, and
>
> (D) Not more costly than an alternative service or sequence of service at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient's illness, injury, or disease; [Emphasis added].

Therefore, the term "physician" helps establish the standard of what constitutes "medically necessary" health care services which plays a role in determining whether or not a health carrier is prohibited from denying coverage for such services.

RESPONSE:

The External Review Act, found in TENN. CODE ANN. §§ 56-61-101 *et seq.*, does not define the term "physician". Therefore, the laws of statutory construction must be applied. Tennessee case law provides that "legislative intent is to be ascertained whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language". Eastman Chemical Company v. Ruth E. Johnson, Commissioner of Revenue, State of Tennessee, 151 S.W.3d 503, 507 (Tenn. 2004). The External Review Act makes clear under TENN. CODE ANN. § 56-61-101 that its purpose is to provide health carriers with review procedures to ensure covered persons and providers can appropriately resolve their grievances. In other words, to ensure that decisions determining when coverage should and should not be provided are adequately resolved. With the purpose of facilitating legislative intent in mind, Tennessee courts have ruled that "when statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without forced interpretation that would limit or expand the statute's application." Eastman, 151 S.W.3d at 507. Webster's dictionary defines "physician" to include "a person skilled in the art of healing; one educated, clinically experienced, and licensed to practice medicine as usually distinguished from surgery; one exerting a remedial or salutary influence." "physician". *Merriam-Webster.com.* 2013. http://www.merriam-webster.com (17 June 2013). Further, Tennessee Code Annotated Title 63 governs professions of the healing arts, and provides additional guidance by specifically defining the "practice of the healing arts" to include:

> Offering or undertaking to diagnose, treat, operate on or prescribe for any human pain, injury, disease, deformity or physical or mental condition.

TENN. CODE ANN. § 63-1-102(2) 2005.

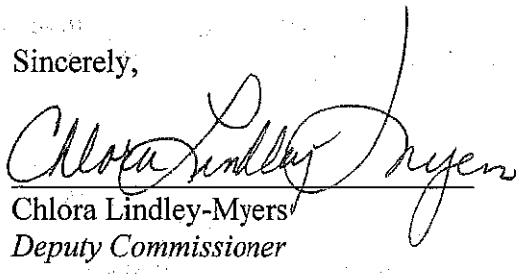
The Division believes that the above definitions can be used in determining who is a "physician" for purposes distinguishing whether a healthcare service falls within the definition of "medically necessary" as used in the External Review Act.

Applying the above definitions to the question presented, it is the Division's opinion that those persons who are skilled in the healing arts and licensed under Title 63 are to be considered "physicians" as the term is used in the definition of "medically necessary" in TENN. CODE ANN. § 56-61-102(23).

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. As each inquiry is reviewed on the specific facts presented, this response is based on only such facts and may not be used as precedent. Any variation in the facts presented to the Division could result in a different conclusion than asserted herein.

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: Nancy Jones, General Counsel and Deputy Commissioner
Rachel L. Waterhouse, Deputy General Counsel
Lisa Jordan, Assistant Commissioner for TennCare Oversight
Patricia Newton, Compliance Officer
Michael Humphrey, Director of Insurance
Brian Hoffmeister, Director of Policy Analysis