

## Tennessee

The following provisions shall apply to Pharmacies in the State of Tennessee:

Pursuant to TCA § 56-7-3206 and Tenn. Comp. R. & Regs. Ch. 0780-01-95:

### Definitions:

1. "Actual Cost" means the amount a Pharmacy paid as evidenced by documentation that includes, but is not limited to, the invoice price minus discounts, price concessions, rebates or other reductions, but not including a Cash Discount.
2. "Allowed Amount" means the cost of a prescription drug or device after applying ProCare's or the Covered Entity's pricing discounts available at the time of the prescription claim translation.
3. "Cash Discount" means a deduction from the invoice paid by a Pharmacy for a prescription drug or device if the invoice is paid on or before a specified date or in cash.
4. "Commissioner" means the commissioner of the Department or the commissioner's designee.
5. "Department" means the Tennessee Department of Commerce and Insurance.
6. "Initial Appeal" means the process required under T.C.A. § 56-7-3206(c)(2) and administered by ProCare by which a Pharmacy, or a pharmacy services administrative organization acting on behalf of a Pharmacy, may appeal a reimbursement received from ProCare that is not at least the Actual Cost to the Pharmacy for a prescription drug or device.
7. "Majority Wholesaler" means the wholesaler from whom a Pharmacy purchased the majority of its prescription pharmaceutical products for resale in the calendar year preceding the calendar year during which the claim that is the subject of an Initial Appeal is processed.
8. "Pharmacy" means pharmacy as defined in T.C.A. § 56-7-3102 and includes an agent acting on behalf of a pharmacy, including but not limited, to a pharmacy services administrative organization that is also a Network Pharmacy as defined above.
9. "Similarly Situated Pharmacy" means a Pharmacy in ProCare's pharmacy network that purchases a particular drug or medical product or device to which the finding applies from the same pharmaceutical wholesaler as the Pharmacy that prevailed in an Initial Appeal; and to which ProCare applies the challenged rate of reimbursement or Actual Cost.

This section applies when a Pharmacy files an Initial Appeal asserting that ProCare did not reimburse the Pharmacy for a prescription drug or device at an amount that is equal to or greater than the Pharmacy's Actual Cost.

1. The Pharmacy will include with its appeal a copy of invoice(s) demonstrating the Pharmacy's Actual Cost as of the date of filing the Initial Appeal.
2. Consideration of discounts, price concessions, rebates or other reductions in drug or device price reductions, excluding Cash Discounts, received by the Pharmacy:
  - A. **At the time of the appeal.** The Pharmacy will provide ProCare with information regarding any discounts, price concessions, rebates, or other reductions, excluding Cash Discounts, during the pendency of an Initial Appeal, the Pharmacy received for the drug or device.
  - B. **During the pendency of the appeal.** The Pharmacy will notify ProCare during the pendency of the Initial Appeal of any additional discounts, price concessions, rebates, or other reductions, excluding Cash Discounts that it receives for the drug or device.
  - C. **After conclusion of the appeal.** Additional discounts, price concessions, rebates, or other reductions received after the resolution of an Initial Appeal will not be grounds for reconsideration of any Initial Appeal previously considered and resolved.
3. When submitting an Initial Appeal, the Pharmacy will provide ProCare with:

- A. The name and contact information of the wholesaler or manufacturer from which it purchased the prescription drug or device at issue.
  - (1) If ProCare denies an Initial Appeal as otherwise permitted by law or Tennessee regulation and the Pharmacy fails to provide this information, ProCare may presume the prescription drug or device at issue is available at a lower cost from the wholesaler or manufacturer from which the Pharmacy purchased the prescription drug or device at issue.
  - (2) Failure of the Pharmacy to provide this information will not constitute grounds for ProCare to deny an Initial Appeal.
- 4. Within seven (7) business days after receiving a Pharmacy's appeal for reimbursement of a drug or device that was less than the Pharmacy's Actual Cost, ProCare:
  - A. May consider additional discounts, price concessions, rebates or other reductions in the price paid by the Pharmacy, when calculating the Pharmacy's Actual Cost;
  - B. Will make the necessary change to the challenged rate or reimbursement or Actual Cost;
  - C. If the appeal is a drug, ProCare will provide the Pharmacy or its agent with the national drug code number for the drug on which the change is based;
  - D. Will permit the challenging pharmacy to reverse and rebill the claim upon which the appeal is based;
  - E. Will pay or waive the cost of any transaction fee required to reverse and rebill the claim; and
  - F. Will apply the findings from the Initial Appeal as to the rate of reimbursement and Actual Cost or challenged cost for the particular drug or device to other Similarly Situated pharmacies.
- 5. If the Pharmacy prevails in its appeal:
  - A. ProCare will:
    - (1) Provide the Pharmacy with a written statement granting the appeal with a summary outlining the basis for its decision;
    - (2) ProCare will notify the Pharmacy in writing that it has adjusted the challenged rate of reimbursement;
    - (3) ProCare will provide detailed written instructions for how to reverse and rebill the claim upon which the Initial Appeal was based; and
    - (4) Reimburse the Pharmacy for at least Actual Cost.
  - B. ProCare will apply the findings from the Initial Appeal to Similarly Situated Pharmacies as the rate of reimbursement and actual price for the drug, medical produce, or device.
    - (1) Within seven (7) business days of resolution of an Initial Appeal, ProCare will apply the findings of an Initial Appeal retroactively to all Similarly Situated Pharmacies that received the challenged rate of reimbursement for the drug or medical product, or device was at issue in the Initial Appeal, including any appeals pending where the challenged rate of reimbursement is the subject of the Initial Appeal by:
      - (i) Notifying all Similarly Situated Pharmacies of the adjusted rate of reimbursement in writing. The written notice will contain the applicable national drug code number or the unique device identifier at issue, as appropriate, and the rate of reimbursement to which the Similarly Situated Pharmacy is now entitled for the drug or medical product or device; and
      - (ii) Paying all Similarly Situated Pharmacies the difference in the original rate of reimbursement the Similarly Situated Pharmacy received and the adjusted rate of reimbursement that resulted from the Initial Appeal resolved in favor of a pharmacy.

ProCare will not charge any fees or require any additional documentation from Similarly Situated Pharmacies for reimbursement at the price determined during the Initial Appeal.

(2) The findings from an Initial Appeal resolved in favor of a Pharmacy shall be applied retroactively by applying the adjusted rate to all Similarly Situated Pharmacies beginning on the date of services of the claim that was the subject of the Initial Appeal and continuing to apply that rate going forward until the appealing pharmacy and the Similarly Situated Pharmacy or Pharmacies were no longer entitled to the same rate of reimbursement for the drug or medical product or device at issue.

(3) ProCare will track Initial Appeals such that it can reasonably determine if an adjusted rate of reimbursement applies.

6. If the Initial Appeal is resolved against the Pharmacy:

A. ProCare will provide:

(1) A written statement that the Initial Appeal is denied, along with a summary outlining the basis for its decision;

(2) If applicable, evidence ProCare has adjusted the challenged rate of reimbursement;

(3) If applicable, detailed instructions for how to reverse and rebill the claim upon which the Initial Appeal is based; and

(4) Instructions on how to make an external appeal of ProCare's decision to the Commissioner by:

(i) Explaining how to submit an appeal, including the appropriate phone number or website address for the Department where appeals are accepted.

(a) ProCare is responsible for ensuring that the information provided to Pharmacies regarding appeals with the Department are accurate; and

(b) ProCare will include the following statement with instructions on how to make an external appeal: "Pursuant to T.C.A. § 56-7-3206(g)(2), you have the right to appeal this decision to the Commissioner of the Tennessee Department of Commerce and Insurance."

B. ProCare will determine whether the product associated with a national drug code number or the unique device identifier is available at a cost that is less than the challenged rate of reimbursement from a pharmaceutical wholesaler in Tennessee, within seven (7) business days after receiving notice of the appeal, ProCare will provide the Pharmacy or its agent with:

(1) The name of the national or regional pharmaceutical wholesalers operating in this state that have the particular drug or medical product or device currently in stock at a price that is less than the amount of the challenged reimbursement; and

(i) A drug, medical product, or device shall be deemed available if, at the time the Initial Appeal was received by ProCare, the product was in stock with a wholesaler operating in Tennessee.

(ii) If after reasonable effort ProCare is unable to make a determination of whether the drug, medical product, or device was reimbursed at or above the Pharmacy's Actual Cost because the wholesalers contacted by ProCare failed to provide the information needed by ProCare within the timeframe within which ProCare must resolve Initial Appeals, ProCare shall presume that the product associated with the national drug code number or unique device identifier at issue was not available at a cost that is less than the challenged rate of reimbursement from a pharmaceutical wholesaler in Tennessee as of the date the Initial Appeal was received from the appealing Pharmacy.

- (iii) If ProCare does not provide the Pharmacy with a determination that the drug, medical product, or device is available from a pharmaceutical wholesaler in Tennessee within seven (7) business days after receiving the appeal, it shall be deemed to have determined there is no pharmaceutical wholesaler operating in this state that offered the product associated with the national drug code number or unique device identifier at issue at a cost that is less than the challenged rate of reimbursement as of the date the Initial Appeal was received from the appealing Pharmacy.
  - (2) The national drug code number for a drug or the unique device identifier for a device.
- C. The Pharmacy will provide ProCare with the name of its Majority Wholesaler.
  - (1) ProCare will then determine whether the prescription drug or device at issue is available from the pharmaceutical wholesaler at a cost that is less than the challenged rate of reimbursement as of the date the Initial Appeal was received from the appealing Pharmacy.
    - (i) If, after contacting the Pharmacy's Majority Wholesaler, ProCare is unable to make the determination because the wholesaler failed to provide the information needed by ProCare within the timeframe within which ProCare must resolve Initial Appeals, ProCare will presume that the product associated with the national drug code number or unique device identifier at issue was not available at a cost that is less than the challenged rate of reimbursement from the wholesaler as of the date the Initial Appeal was received from the appealing Pharmacy.
  - (2) If the Pharmacy fails to provide the name of its Majority Wholesaler within two (2) business days of a request by ProCare to provide that name, ProCare may presume the prescription drug or device at issue is available at a cost that is less than the challenged rate of reimbursement from the Pharmacy's Majority Wholesaler and take no further action.
  - (3) If the product associated with the national drug code number or unique device identifier at issue shall be deemed available if, at the time the Initial Appeal was received by ProCare, the product was in stock from the Pharmacy's wholesaler.
  - (4) ProCare will not deny an Initial Appeal because the Pharmacy or its Majority Wholesaler did not provide ProCare with the name of its Majority Wholesaler, or the Pharmacy's Majority Wholesaler did not provide ProCare with the information requested.
- D. If the product associated with the national drug code number or unique device identifier is not available at a cost that is less than the challenged rate of reimbursement from the pharmaceutical wholesaler from whom the Pharmacy purchases the majority of prescription pharmaceutical products for resale, then ProCare will adjust the challenged rate of reimbursement to an amount equal to or greater than the appealing pharmacy's Actual Cost and permit the Pharmacy to reverse and rebill each claim affected by the inability to procure the pharmaceutical product at a cost a cost that is equal to or less than the previously challenged rate of reimbursement. ProCare will pay or waive the cost of any transaction fee required to reverse and rebill the claim.
- E. ProCare will not include within the amount calculated to reimburse a Pharmacy for Actual Cost the amount of any professional dispensing fee that is payable to the Pharmacy.
- F. ProCare will follow this appeals process for drugs, medical products, or devices for which a Pharmacy asserts it did not receive reimbursement from ProCare sufficient to cover its Actual Cost, even if Procare has another basis for denying the appeal.
- G. If the Pharmacy's Initial Appeal is resolved against the appealing pharmacy, and ProCare determines that the Pharmacy was entitled to reimbursement at Actual Cost for a drug, medical product, or device, ProCare will apply its determination to Similar Situated Pharmacies as though the Pharmacy prevailed in its Initial Appeal.

- a. ProCare will notify Similarly Situated Pharmacies within seven (7) business days after it receives a Pharmacy's Initial Appeal regarding reimbursement for Actual Cost of a drug, medical product, or device.
7. Records retention for Initial Appeals.
  - A. ProCare will retain all records related to an Initial Appeal for the greater of five (5) years or until ProCare is audited by the Department.
8. ProCare will not assess any costs to a Pharmacy for any services provided by ProCare in connection with an Initial Appeal.
9. An Initial Appeal will not result in a Pharmacy, whether the appealing Pharmacy or a Similarly Situated Pharmacy, being required to reimburse or refund ProCare any portion of a payment previously received by the Pharmacy.
10. Timing and notice requirements of Initial Appeal processes. ProCare's Initial Appeal process, or a Pharmacy's participation in an Initial Appeal must meet the following requirements:
  - A. The Pharmacy must file its Initial Appeal within seven (7) business days of its submission of the initial claim for reimbursement for the drug or medical product or device.
  - B. ProCare must make a final determination resolving the Pharmacy's Initial Appeal within seven (7) business days of ProCare's receipt of an initial appeal that includes the following timeline:
    - (1) The timeline begins after ProCare has received all required information sufficient to allow ProCare to conduct a complete analysis of the Initial Appeal.
    - (2) ProCare will be deemed to have all required information sufficient to allow ProCare to conduct a complete analysis of the Initial Appeal upon receipt of:
      - (a) A complete version of either an Initial Appeal form provided by the Commissioner to be used by a Pharmacy to file an Initial Appeal or ProCare's appeal form submitted and approved by the Department; and
      - (b) Certification from the Pharmacy that it has provided ProCare with all invoices or other records demonstrating the Pharmacy's Actual Cost for the drug or medical product or device at issue, which shall take into account all discounts, price concessions, rebates or other reductions received as of the date the Pharmacy filed its Initial Appeal.
  - C. If ProCare receives an initial appeal from a Pharmacy that does not contain all information required in Section B above, ProCare will accept the incomplete Initial Appeal and hold it open pending receipt of additional information from the Pharmacy.
  - D. ProCare may not delay the start of its review of an Initial Appeal by:
    - (1) Requiring additional or different information from a Pharmacy beyond what is required to be submitted to ProCare under its Initial Appeal process approved by the commissioner; or
    - (2) Basing the delay on administrative or non-substantive errors or omissions in any of the filings that does not affect the overall validity of the Initial Appeal.
  - E. If ProCare does not comply with the timing and notice requirements set forth above, the Pharmacy's Initial Appeal will be resolved by ProCare in favor of the Pharmacy.
  - F. If the Pharmacy does not comply with the timing requirements set forth above, ProCare may deny the Initial Appeal.
  - G. ProCare's Initial Appeal process is available on its secure website, which includes all deadlines applicable to its Initial Appeal process, a description of the steps contained within its initial appeal process, and clearly state that its Initial Appeal process is available for all prescription drugs or devices in Tennessee for which a Pharmacy alleges it did not receive its Actual Cost.