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Sequence Number: 03-13-10  
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**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>	Tennessee Department of Finance and Administration
<b>Division:</b>	Bureau of TennCare
<b>Contact Person:</b>	George Woods
<b>Address:</b>	Bureau of TennCare 310 Great Circle Road Nashville, Tennessee 37243
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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>	Bureau of TennCare 310 Great Circle Road Nashville, Tennessee 37243
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**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Bureau of TennCare 1 <sup>st</sup> Floor East Conference Room 310 Great Circle Road		
Address 2:			
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	04/28/10		
Hearing Time:	9:00 a.m.	<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 here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/Rule Title per row.)

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-13-01	General Rules
<b>Rule Number</b>	<b>Rule Title</b>
1200-13-01-.01	Definitions
1200-13-01-.02	Eligibility
1200-13-01-.03	Amount, Duration, and Scope of Assistance
1200-13-01-.05	Providers
1200-13-01-.06	Provider Reimbursement
1200-13-01-.08	Admissions to Long-Term Care Facilities
1200-13-01-.10	Criteria for Medicaid Reimbursement of Care in Nursing Facilities
1200-13-01-.11	Recipient Abuse and and Overutilization of Medicaid Program
1200-13-01-.15	Criteria for Medicaid Reimbursement of Care in and Intermediate Care Facility for the Mentally Retarded (ICF/MR)
1200-13-01-.17	Statewide Home and Community Based Services Waiver for the Elderly and Disabled
1200-13-01-.21	Provider Noncompliance or Fraud of Medicaid Program
1200-13-01-.23	Nursing Home PreAdmission Screenings for Mental Illness and Mental Retardation
1200-13-01-.25	Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled
1200-13-01-.28	Home and Community Based Services Waiver for Persons with Mental Retardation
1200-13-01-.29	Tennessee's Self-Determination Waiver Program

Chapter 1200-13-01  
General Rules

The title of Rule Chapter 1200-13-01 General Rules is deleted in its entirety and replaced with a new title so as amended the title of Rule Chapter 1200-13-01 shall read as follows:

Chapter 1200-13-01  
TennCare Long-Term Care Programs and Services

Rule 1200-13-01-.01 Definitions is deleted in its entirety and replaced with a new rule 1200-13-01-.01 Purpose which shall read as follows:

1200-13-01-.01 Purpose.

- (1) The purpose of these rules is to set forth requirements pertaining to the Long-Term Care delivery system.
- (2) The Bureau of TennCare offers the following Long-Term Care programs and services:
  - (a) Nursing Facility services.
    1. Until such time as the CHOICES Program is implemented in a particular Grand Division, Nursing Facility services will be administered by the State under a fee-for-service system and in accordance with these rules.
    2. At the time that the CHOICES Program is implemented in a particular Grand Division, Nursing Facility services for eligible residents of that Grand Division will be administered by the Managed Care Organizations under the managed care system and in accordance with these rules.
    3. At the time that the CHOICES Program is fully implemented statewide, all Nursing Facility services will be administered by the Managed Care Organizations under the managed care system and in accordance with these rules.
  - (b) Statewide Home and Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver). (See Rule 1200-13-01-.17.)

1. Until such time as the CHOICES Program is implemented in a particular Grand Division, the Statewide E/D Waiver will offer home and community based services (HCBS) to residents of that Grand Division under a fee-for-service system and in accordance with these rules.
  2. At the time that the CHOICES Program is implemented in a particular Grand Division, the Statewide E/D Waiver will terminate in that Grand Division and HCBS for residents of that Grand Division will be administered by the Managed Care Organizations under the managed care system and in accordance with these rules. The HCBS waivers for persons with mental retardation are not affected by the implementation of the CHOICES Program.
  3. At the time that the CHOICES Program is fully implemented statewide, the Statewide E/D Waiver will terminate and all HCBS other than those offered under the HCBS waivers for individuals with mental retardation or the PACE program will be administered by the Managed Care Organizations under the managed care system and in accordance with these rules.
- (c) TennCare CHOICES Program. (See Rule 1200-13-01-.05.) This program has two components:
1. Nursing Facility Services.
  2. Home and Community Based Services (HCBS) for adults who are elderly or physically disabled.
- (d) Intermediate Care Facility services for persons with Mental Retardation (or pursuant to federal law, Intermediate Care Facility services for the Mentally Retarded) (ICFs/MR). (See Rule 1200-13-01-.30.)
- (e) Home and Community Based Services waivers for individuals with Mental Retardation.
1. Statewide MR Waiver. (See Rule 1200-13-01-.25.)
  2. Arlington MR Waiver. (See Rule 1200-13-01-.28.)
  3. Self-Determination MR Waiver. (See Rule 1200-13-01-.29.)
- (f) PACE (Program of All-Inclusive Care for the Elderly). This is a program for certain dually eligible Medicare and Medicaid beneficiaries that is offered through the Tennessee Medicaid State plan, Attachment 3.1-A, #26.
- (3) Individuals receiving Long-Term Care services will be enrolled in Managed Care Contractors (MCCs) as follows:
- (a) Individuals receiving TennCare-reimbursed Long-Term Care services, other than PACE, are also enrolled in a TennCare Managed Care Organization (MCO) for primary care, behavioral health services, and acute care services.
  - (b) In addition to enrollment in an MCO, the following Long-Term Care recipients, other than those enrolled in the PACE Program, are enrolled with the TennCare Pharmacy Benefits Manager for coverage of prescription drugs:
    1. Children under the age of twenty-one (21).
    2. Adults aged twenty-one (21) and older who are not Medicare beneficiaries.

- (c) Children under the age of twenty-one (21) who are Long-Term Care recipients are also enrolled with the TennCare Dental Benefits Manager for coverage of dental services.
- (4) Acronyms. The following are acronyms used throughout these rules and the terms they represent:
- (a) AAAD – Area Agencies on Aging and Disability
  - (b) ACLF – Assisted Care Living Facility
  - (c) ADL – Activities of Daily Living
  - (d) ALA – Administrative Lead Agency
  - (e) Arlington MR Waiver – Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (limited to members of the Arlington class certified in *United States v. Tennessee, et. al.*)
  - (f) CBRA – Community-Based Residential Alternative
  - (g) CMS – Centers for Medicare and Medicaid Services
  - (h) DBM – Dental Benefits Manager
  - (i) DHS – Tennessee Department of Human Services
  - (j) DIDS – Tennessee Department of Finance and Administration’s Division of Intellectual Disabilities Services
  - (k) DMHDD – Tennessee Department of Mental Health and Developmental Disabilities
  - (l) EVV – Electronic Visit Verification
  - (m) FEA – Fiscal Employer Agent
  - (n) FERP – Federal Estate Recovery Program
  - (o) FFS – Fee-for-Service
  - (p) HCBS – Home and Community Based Services
  - (q) ICF/MR – Intermediate Care Facility for persons with Mental Retardation (or pursuant to federal law, Intermediate Care Facility for the Mentally Retarded)
  - (r) IADL – Instrumental Activities of Daily Living
  - (s) MCO – Managed Care Organization
  - (t) NF – Nursing Facility
  - (u) OAA – Operational Administrative Agency
  - (v) PACE – Program of All-Inclusive Care for the Elderly
  - (w) PAE – PreAdmission Evaluation
  - (x) PASRR – PreAdmission Screening and Resident Review
  - (y) PBM – Pharmacy Benefits Manager
  - (z) PERS – Personal Emergency Response System

- (aa) PNA – Personal Needs Allowance
- (bb) QIT – Qualifying Income Trust
- (cc) QMRP – Qualified Mental Retardation Professional
- (dd) Self-Determination MR Waiver – Tennessee’s Self-Determination Waiver under Section 1915(c) of the Social Security Act
- (ee) SNF – Skilled Nursing Facility (as defined under Medicare)
- (ff) SPOE – Single Point of Entry
- (gg) SSI – Supplemental Security Income
- (hh) SSI FBR – Supplemental Security Income Federal Benefit Rate
- (ii) Statewide E/D Waiver –Statewide Home and Community Based Services Waiver for the Elderly and Disabled
- (jj) Statewide MR Waiver – Tennessee’s Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

Rule Chapter 1200-13-01-.02 Eligibility is deleted in its entirety and replaced with a new rule 1200-13-01-.02 Definitions which shall read as follows:

1200-13-01-.02 Definitions.

- (1) Administrative Lead Agency (ALA). The approved agency or agencies with which the Bureau of TennCare contracts for the provision of covered services through the Statewide E/D Waiver.
- (2) Adult Care Home. For purposes of the CHOICES Program, a state-licensed community-based residential alternative which offers twenty-four (24) hour residential care and support in a single family residence to no more than five (5) elderly or disabled adults who meet NF level of care, but who would prefer to receive care in the community in a smaller, home-like setting. The provider must either live on-site in the home, or hire a resident manager who lives on-site so that the person primarily responsible for delivering care on a day-to-day basis is living in the home with the individuals for whom they are providing care. Coverage shall not include the costs of room and board. Pursuant to state law, licensure is currently limited to Critical Adult Care Homes for persons who are ventilator dependent and adults with traumatic brain injury.
- (3) Adult Day Care. For purposes of the CHOICES Program and the Statewide E/D Waiver, community-based group programs of care delivered in an Adult Day Care facility licensed by the Department of Human Services pursuant to Rule 1240-7-10, lasting more than three (3) hours per day but less than twenty-four (24) hours per day. Adult Day Care services shall be provided pursuant to an individualized plan of care by a licensed provider not related to the participating adult. The Adult Day Care provider shall be responsible for the provision of all assistance and supervision required by program participants. Such assistance is a component of the Adult Day Care benefit and shall not be billed as a separate HCBS.
- (4) Applicant. For purposes of compliance with the Linton Order, an individual who seeks admission to a NF and is not limited to those individuals who have completed an official application or have complied with the NF’s pre-admission requirements. The term shall include all individuals who have affirmatively expressed an intent to be considered for current or future admission to the NF or requested that their name be entered on any “wait list.” Individuals who only make casual inquiry concerning the NF or its admission practices, who request information on these subjects, or who do not express any intention that they wish to be actively considered for admission shall not be considered applicants. All individuals, whether applicants or non-applicants, who contact a NF to casually inquire about the facility’s services or admissions policies shall be informed by the facility of that individual’s right to apply for admission and be considered for admission on a nondiscriminatory basis and in conformance with Rule 1200-13-01-.06.

- (5) Area Agencies on Aging and Disability (AAAD). Regional agencies designated under Tennessee Rule 0030-01-5-.02.
- (6) Assisted Care Living Facility (ACLF) Services. For purposes of the CHOICES Program, a CBRA to NF care in a licensed ACLF that provides and/or arranges for daily meals, personal, homemaker and other supportive services or health care including medication oversight (to the extent permitted under state law), in a home-like environment to persons who need assistance with activities of daily living. Coverage shall not include the costs of room and board.
- (7) Assisted Care Living Facility (ACLF) Services. For purposes of the Statewide E/D Waiver, personal care services, homemaker services, and medication oversight (to the extent permitted under state law) provided in a home-like environment in a licensed ACLF. Coverage shall not include the costs of room and board.
- (8) Assistive Technology. For purposes of the CHOICES Program and the Statewide E/D Waiver, an assistive device, adaptive aids, controls or appliances which enable an enrollee to increase the ability to perform activities of daily living or to perceive or control their environment. Examples include, but are not limited to, "grabbers" to pick objects off the floor, a strobe light to signify the smoke alarm has been activated, etc.
- (9) Attendant Care. For purposes of the CHOICES Program, services to an enrollee who, due to age and/or physical disability, needs more extensive assistance than can be provided through intermittent personal care visits (i.e., more than four (4) hours per occurrence) to provide hands-on assistance and related tasks as specified below, and which may also include safety monitoring and/or supervision.
  - (a) Attendant Care may include assistance with the following:
    1. ADLs such as bathing, dressing and personal hygiene, eating, toileting, transfers and ambulation; or
    2. IADLs that are essential, although secondary, to the personal care tasks needed by the enrollee in order to continue living at home because there is no household member, relative, caregiver, or volunteer to meet the specified need, such as:
      - (i) Picking up medications or shopping for groceries;
      - (ii) Meal preparation
      - (iii) Household tasks such as making the bed, washing soiled linens or bedclothes; or
    3. Continuous safety monitoring and supervision during the period of service delivery.
  - (b) Attendant care shall be primarily provided in the individual's place of residence, except as permitted within the scope of service (e.g., picking up medications or shopping for groceries), when accompanying the individual into the community pursuant to rule 1200-13-01-.05(7)(k), or under exceptional circumstances as authorized by an MCO in the plan of care to accommodate the needs of the individual.
  - (c) Attendant care shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services, or while a person is receiving Adult Day Care services.
  - (d) Attendant care does not include:
    1. Care or assistance including meal preparation or household tasks for other residents of the same household;
    2. Yard work; or
    3. Care of non-service related pets and animals.
- (10) Back-up Plan. A written plan that is a required component of the plan of care for all CHOICES members receiving companion care or non-residential HCBS in their own homes and which specifies unpaid persons as well as paid consumer-directed workers and/or contract providers (as applicable) who are available,

have agreed to serve as back-up, and who will be contacted to deliver needed care in situations when regularly scheduled HCBS providers or workers are unavailable or do not arrive as scheduled. A CHOICES member or his representative may not elect, as part of the back-up plan, to go without services. The back-up plan shall include the names and telephone numbers of persons and agencies to contact and the services to be provided by each of the listed contacts. The member and his representative (as applicable) shall have primary responsibility for the development and implementation of the back-up plan for consumer-directed services with assistance from the FEA as needed.

- (11) **Bed Hold.** The policy by which NFs providing Level 1 care and ICFs/MR are reimbursed for holding a resident's bed for him while he is away from the facility, in accordance with these rules.
- (12) **Bureau of TennCare** (herein referred to as "TennCare" or as "Bureau"). The division of the Tennessee Department of Finance and Administration, the single state Medicaid agency, that administers the TennCare Program. For the purposes of these rules, the Bureau of TennCare shall represent the State of Tennessee.
- (13) **Care Coordination.** For purposes of the CHOICES Program, the continuous process of: (1) assessing a member's physical, behavioral, functional, and psychosocial needs; (2) identifying the physical health, behavioral health and long-term care services and other social support services and assistance (e.g., housing or income assistance) that are necessary to meet identified needs; (3) ensuring timely access to and provision, coordination and monitoring of physical health, behavioral health, and long-term care services needed to help the member maintain or improve his or her physical or behavioral health status or functional abilities and maximize independence; and (4) facilitating access to other social support services and assistance needed in order to ensure the member's health, safety and welfare, and as applicable, to delay or prevent the need for more expensive institutional placement.
- (14) **Caregiver.** For purposes of the Statewide E/D Waiver, one or more adult individuals who sign an agreement with the ALA to provide services to enrollees participating in the Waiver to meet the needs of the enrollee during the hours when waiver services are not being provided by the Administrative Lead Agency.
- (15) **Case Management.** For purposes of the Statewide E/D Waiver, services which will assist individuals who receive waiver services in gaining access to needed waiver and other Medicaid State plan services, as well as needed medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.
- (16) **Case Manager.** For purposes of the Statewide E/D Waiver, the individual who is responsible for development of the Plan of Care and for ongoing monitoring of the provision of services included in the enrollee's Plan of Care. Case Managers shall initiate and oversee the process of assessment and reassessment of the enrollee's level of care and the review of Plans of Care at such intervals as are specified in the waiver rules and policies. Case Managers are prohibited from providing any other services to an enrollee for whom they serve as Case Managers under the Waiver.
- (17) **Centers for Medicare and Medicaid Services (CMS).** The agency within the United States Department of Health and Human Services that is responsible for administering Title XVIII, Title XIX, and Title XXI of the Social Security Act.
- (18) **Certification.** A process by which a physician who is licensed as a doctor of medicine or doctor of osteopathy signs and dates a PAE signifying that: (1) the person requires the requested level of institutional care or reimbursement (Level 1 NF, Level 2 NF, Enhanced Respiratory Care, or ICF/MR) or, in the case of a section 1915(c) HCBS waiver program, requires HCBS as an alternative to the applicable level of institutional care for which the person would qualify; and (2) the requested long-term care services are medically necessary for the individual. Physician certification is not required for CHOICES HCBS.
- (19) **CHOICES.** See "TennCare CHOICES in Long-Term Care."
- (20) **CHOICES 217-Like Group.** Individuals age sixty-five (65) and older and adults age twenty-one (21) and older with physical disabilities who meet the NF level of care criteria, who could have been eligible for HCBS under 42 C.F.R. § 435.217 had the state continued its section 1915(c) HCBS Waiver for persons who are elderly and/or physically disabled, and who need and are receiving HCBS as an alternative to NF care. This group exists only in the Grand Divisions of Tennessee where the CHOICES Program has been implemented, and participation is subject to the enrollment target for CHOICES Group 2.

- (21) CHOICES Group 1. Individuals of all ages who are receiving Medicaid-reimbursed care in a NF.
- (22) CHOICES Group 2. Individuals age sixty-five (65) and older and adults age twenty-one (21) and older with physical disabilities who meet the Nursing Facility level of care and who qualify for TennCare either as SSI recipients or in an institutional category (i.e., as members of the CHOICES 217-Like demonstration population), and who need and are receiving HCBS as an alternative to NF care. TennCare has the discretion to apply an enrollment target to this group, as described in these rules.
- (23) CHOICES Member. An individual who has been enrolled by the Bureau of TennCare into the CHOICES Program.
- (24) Chronic Ventilator Care Reimbursement. The rate of Medicaid reimbursement provided for NF services, including enhanced respiratory care assistance, delivered by a NF that meets the requirements set forth in Rule 1200-13-01-.03(5) to residents determined by TennCare to meet the medical eligibility criteria set forth in Rule 1200-13-01-.10(5)(d).
- (25) Community-Based Residential Alternatives (CBRA) to institutional care. For purposes of the CHOICES Program, residential services which offer a cost-effective, community-based alternative to NF care for individuals who are elderly and/or adults with physical disabilities. CBRAs include, but are not limited to, CBRA facilities such as ACLFs and Adult Care Homes, and Companion Care.
- (26) Companion Care. For purposes of the CHOICES Program, a consumer-directed residential model in which a CHOICES member may choose to select, employ, supervise and pay, utilizing the services of a Fiscal Intermediary, on a monthly basis, a live-in companion who will be present in the member's home and provide frequent intermittent assistance or continuous supervision and monitoring throughout the entire period of service duration. Such model will be available only for a CHOICES member who requires and does not have available through family or other caregiving supports frequent intermittent assistance with activities of daily living or supervision and monitoring for extended periods of time that cannot be met more cost-effectively with other non-residential services. A CHOICES member who requires assistance in order to direct his or her companion care may designate a representative to assume consumer direction of companion care services on his/her behalf, pursuant to requirements for representatives otherwise applicable to consumer direction. Companion Care shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services, or while a person is receiving Adult Day Care services. Companion Care is only available through Consumer Direction.
- (27) Competent Adult. For purposes of self-direction of health care tasks in consumer direction, a person age twenty-one (21) or older who has the capability and capacity to evaluate knowledgeably the options available and the risks attendant upon each and to make an informed decision acting in accordance with his own preferences and values. A person is presumed competent unless a decision to the contrary is made.
- (28) Consumer Direction of HCBS. For purposes of the CHOICES Program, the opportunity for a member assessed to need specified types of HCBS limited to attendant care, personal care, homemaker, in-home respite, or companion care to elect to direct and manage (or to have a representative direct and manage) certain aspects of the provision of such services—primarily, the hiring, firing, and day-to-day supervision of consumer directed workers delivering the needed service(s).
- (29) Consumer-Directed Worker (Worker). An individual who has been hired by a CHOICES member participating in Consumer Direction of HCBS or his representative to provide one or more eligible HCBS to the member. A consumer-directed worker does not include an employee of an agency that is being paid by an MCO to provide HCBS to the member.
- (30) Continuity of Care Period. For purposes of the CHOICES Program, the period of time immediately following implementation of the CHOICES Program in a Grand Division during which a member will continue to receive the same long-term care services, as specified in the plan of care in place prior to CHOICES implementation, from the same long-term care providers, regardless of whether such providers have elected to participate in the MCO's network. Such period shall be at least thirty (30) days following implementation, but in the case of CHOICES Group 2 participants, shall continue for up to ninety (90) days or until a comprehensive needs assessment has been performed and a new plan of care has been developed.

- (31) Contract Provider. A provider who is under contract with an enrollee's MCO. Also called "network provider" or "in-network provider."
- (32) Cost-Effective Alternative Service. A service that is not a covered service but that is approved by TennCare and CMS and provided at an MCO's discretion. TennCare enrollees are not entitled to receive these services. Cost-effective alternative services may be provided because they are either: (1) alternatives to covered Medicaid services that, in the MCO's judgment, are cost-effective; or (2) preventative in nature and offered to avoid the development of conditions that, in the MCO's judgment, would require more costly treatment in the future. Cost-effective alternative services need not be determined medically necessary except to the extent that they are provided as an alternative to covered Medicaid services. Even if medically necessary, cost effective alternative services are not covered services and are provided only at an MCO's discretion. For purposes of the CHOICES Program, cost-effective alternative services may include the provision of HCBS as an alternative to NF care when the Enrollment Target for CHOICES Group 2 has been reached as described in Rule 1200-13-01-.05.
- (33) Cost Neutrality Cap. For purposes of the CHOICES Program, the average cost of the level of NF reimbursement that would be paid if the member were institutionalized. It functions as a limit on the total cost of HCBS that, when combined with the cost of Home Health Services and Private Duty Nursing services the person will receive, can be provided to the individual in the home or community setting. The Cost Neutrality Cap shall be individually applied.
- (34) Dental Benefits Manager (DBM). See "Dental Benefits Manager" in Rule 1200-13-13-.01.
- (35) Designated Correspondent. A person or agency authorized by an individual to receive correspondence on his behalf related to a NF or ICF/MR PAE.
- (36) Disenrollment. The voluntary or involuntary termination of an individual's enrollment in a Long-Term Care Program.
- (37) Division of Intellectual Disabilities Services (DIDS). The division of the Tennessee Department of Finance and Administration that serves as the Operational Administrative Agency for day-to-day operations of the Home and Community Based Services Waivers for persons with Mental Retardation. Formerly the Division of Mental Retardation Services.
- (38) Electronic Visit Verification (EVV) system. An electronic system into which caregivers can check-in at the beginning and check-out at the end of each period of service delivery to monitor member receipt of HCBS and which may also be utilized for submission of claims.
- (39) Eligible HCBS. For purposes of consumer direction, services that may be consumer directed are limited to attendant care, personal care visits, homemaker services, in-home respite care, or companion care.
- (40) Employer of Record. The member participating in Consumer Direction of HCBS or a representative designated by the member to assume the Consumer Direction of HCBS functions on the member's behalf.
- (41) Enhanced Respiratory Care Reimbursement. Specified levels of Medicaid reimbursement (i.e., Chronic Ventilator Care, Tracheal Suctioning and Ventilator Weaning) provided for NF services, including enhanced respiratory care assistance, or Ventilator Weaning services and care during the post-weaning period, delivered by a NF that meets the requirements set forth in Rule 1200-13-01-.03(5) to persons determined by TennCare or an MCO, as applicable, to meet specified medical eligibility criteria for such level of Medicaid reimbursement.
- (42) Enrollee. A Medicaid Eligible individual who is enrolled in a TennCare Long-Term Care program.
- (43) Enrollment target. The maximum number of individuals that can be enrolled in CHOICES Group 2 at any given time, subject to the exceptions provided in these rules. The enrollment target is not calculated on the basis of "unduplicated participants." Vacated slots in CHOICES Group 2 may be refilled immediately, rather than being held until the next program year, as is required in the HCBS waiver programs.
- (44) Expiration Date. A date assigned by the Bureau of TennCare at the time of approval of a PAE after which Medicaid reimbursement will not be made unless a new PAE is submitted and approved, or 365 days after the PAE Approval Date when the PAE has not been used. A PAE is "used" when the individual has begun

receiving long-term care services based on the level of care approved in the PAE. A PAE is “expired” when the individual has not begun receiving long-term care services on or before the 365th day. The first claim for reimbursement may be submitted after the 365th day, so long as the first date of service is on or before the 365th day.

- (45) Federal Estate Recovery Program (FERP). A federal program set forth under section 1917(b) of the Social Security Act which requires states offering Medicaid-reimbursed long-term care services to seek adjustment or recovery for certain types of medical assistance from the estates of individuals who were age fifty-five (55) or older at the time such assistance was received, and from permanently institutionalized individuals of any age. For persons age fifty-five (55) and older, states are obligated to seek adjustment or recovery for nursing facility (including ICF/MR) services, HCBS, and related hospital and prescription drug services. For permanently institutionalized persons, states are obligated to seek adjustment or recovery for the institutional services. For both mandatory populations, the State may elect to recover up to the total cost of all medical assistance provided.
- (46) Fee-for-Service (FFS) System. An arrangement whereby the State, rather than the MCO, is responsible for arranging for covered long-term care services and paying claims for these services.
- (47) Fiscal Employer Agent (FEA). An entity contracting with the State and/or an MCO that helps CHOICES members participating in Consumer Direction of HCBS. The FEA provides both financial administration and supports brokerage functions for CHOICES members participating in Consumer Direction of HCBS. This term is used by the IRS to designate an entity operating under Section 3504 of the IRS code, Revenue Procedure 70-6 and Notice 2003-70, as the agent to members for the purpose of filing certain federal tax forms and paying federal income tax withholding, FICA and FUTA taxes. The FEA also files state income tax withholding and unemployment insurance tax forms and pays the associated taxes and processes payroll based on the eligible HCBS authorized and provided.
- (48) Grand Divisions. See “Grand Divisions” in Rule 1200-13-13-.01.
- (49) Health Care Tasks. For persons participating in consumer direction, health care tasks are those medical nursing or home health services, beyond activities of daily living, which (1) a person without a functional disability or a caregiver would customarily perform without the assistance of a licensed health care provider; (2) the person is unable to perform for himself due to a functional or cognitive limitation; (3) the treating physician, advanced practice nurse, or registered nurse determines can safely be performed in the home and community by an unlicensed consumer directed worker under the direction of a competent adult or caregiver; and (4) enable the person to maintain independence, personal hygiene, and safety in his own home.
- (50) Home (of an enrollee). For purposes of the Statewide E/D Waiver, the residence or dwelling in which the enrollee resides in Tennessee, excluding hospitals, NFs, ICFs/MR, ACLFs, Homes for the Aged (Residential Homes for the Aged), and other CBRAs.
- (51) Home and Community Based Services (HCBS). Services not covered by Tennessee’s Title XIX State Plan that are provided pursuant to a written plan of care as an alternative to long-term care institutional services in a NF or an ICF/MR to individuals for whom there has been a determination that, but for the provision of such services, the individuals would require the level of care provided in the institution to which the HCBS offer an alternative. HCBS does not include home health and private duty nursing services.
- (52) Home and Community Based Services (HCBS) Waiver. A waiver approved by CMS under the section 1915(c) authority.
- (53) Home-Delivered Meals. For purposes of the CHOICES Program and the Statewide E/D Waiver, nutritionally well-balanced meals, other than those provided under Title III C-2 of the Older Americans Act, that provide at least one-third but no more than two-thirds of the current daily Recommended Dietary Allowance (as estimated by the Food and Nutrition Board of Sciences – National Research Council) and that will be served in the enrollee’s home. Special diets shall be provided in accordance with the individual Plan of Care when ordered by the enrollee’s physician. Home-delivered meals shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services.
- (54) Home Health Services. See “Home Health Services” in Rule 1200-13-13-.01.

- (55) Homemaker Services. For purposes of the CHOICES Program, general household activities and chores such as sweeping, mopping, and dusting in areas of the home used by the member, changing the member's linens, making the member's bed, washing the member's dishes, doing the member's personal laundry, ironing, or mending, meal preparation and/or educating caregivers about preparation of nutritious meals for the member, assistance with maintenance of safe environment, and errands such as grocery shopping and having the member's prescriptions filled. Homemaker services are to be provided only for the member (and not for other household members) and only when the member is unable to perform such activities and there is no other caregiver or household member available to perform such activities for the member. Homemaker services shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services.
- (56) Homemaker Services. For purposes of the Statewide E/D Waiver, general household activities and chores such as sweeping, mopping, dusting, changing linens, making beds, washing dishes, doing personal laundry, ironing, mending, meal preparation and/or education about preparation of nutritious appetizing meals, assistance with maintenance of safe environment and errands such as grocery shopping and having prescriptions filled. Homemaker services are to be provided when the enrollee is unable to perform such activities and the individual regularly responsible for these activities is unable to perform such activities for the enrollee. Homemaker services shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services.
- (57) ICF/MR Eligible. An individual determined by DHS to qualify for Medicaid-reimbursement of ICF/MR services and determined by TennCare to meet ICF/MR level of care.
- (58) ICF/MR PAE Approval Date. The beginning date of level of care eligibility for Medicaid-reimbursed care in an ICF/MR for which the ICF/MR PAE has been approved by TennCare.
- (59) ICF/MR PAE Form. The assessment form used by TennCare to document the current medical and habilitative needs of an individual with mental retardation and to document that the individual meets the Medicaid level of care eligibility criteria for care in an ICF/MR.
- (60) Identification Screen (Level I). The identification screen to determine which NF applicants or residents have mental illness or mental retardation and are subject to preadmission screening/resident review (PASRR). Individuals with a supportable primary diagnosis of Alzheimer's disease or dementia will also be detected through the identification screen. NFs are responsible for ensuring that all applicants receive a Level I identification screen prior to admission to the facility, and for submission of the Level I screen to TennCare.
- (61) Immediate Eligibility. A mechanism by which the State may elect, based on a preliminary determination of an individual's eligibility for the CHOICES 217-Like Group, to enroll the individual into CHOICES Group 2 and provide immediate access to a limited package of HCBS pending a final determination of eligibility. To qualify for immediate eligibility, an individual must be applying to receive covered HCBS, be determined by TennCare to meet Nursing Facility level of care, have submitted an application for financial eligibility determination to DHS, and be expected to qualify in the CHOICES 217-Like Group based on review of the financial information provided by the applicant, and meets all other specified criteria for enrollment into CHOICES Group 2, subject to categorical and financial eligibility determination. Immediate eligibility shall only be for specified HCBS (no other covered services) and for a maximum of forty-five (45) days. Immediate Eligibility is not available for individuals who are already enrolled in TennCare.
- (62) Individual Cost Neutrality Cap. See "Cost Neutrality Cap."
- (63) Individual Plan of Care. For purposes of the Statewide E/D Waiver, an individualized written plan of care which serves as the fundamental tool by which the State ensures the health and welfare of enrollees and which meets the requirements of these rules.
- (64) In-Home Respite Care. For purposes of the CHOICES Program, services provided to individuals unable to care for themselves, furnished on a short-term basis in the individual's place of residence, because of the absence or need for relief of those family members or other unpaid caregivers normally providing the care. In-Home Respite Care shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services.
- (65) In-Patient Respite Care. For purposes of the CHOICES Program, services provided to individuals unable to care for themselves, furnished on a short-term basis in a licensed NF or licensed CBRA facility, because of

the absence or need for relief of those family members or other unpaid caregivers normally providing the care. In-Patient Respite Care shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services.

- (66) In-Patient Nursing Care. Nursing services which are available twenty-four (24) hours per day by or under the supervision of a licensed practical nurse or registered nurse and which, in accordance with general medical practice, are usually and customarily provided on an inpatient basis in a NF. Inpatient nursing care includes, but is not limited to, routine nursing services such as observation and assessment of the individual's medical condition, administration of legend drugs, and supervision of nurse aides, and other skilled nursing therapies or services that are performed by a licensed practical nurse or registered nurse.
- (67) Intermediate Care Facility for Persons with Mental Retardation (or pursuant to federal law, Intermediate Care Facility for the Mentally Retarded) (ICF/MR). A licensed facility approved for Medicaid reimbursement that provides specialized services for individuals with mental retardation or related conditions and that complies with current federal standards and certification requirements set forth in 42 C.F.R., Part 483.
- (68) Involuntary Transfer or Discharge. Any transfer or discharge that is opposed by the resident or a representative of the resident of a NF or ICF/MR. For purposes of compliance with the requirements of these rules, a discharge or transfer is involuntary when the NF initiates the action to transfer or discharge.
- (69) Legally Appointed Representative. Any person appointed by a court of competent jurisdiction or authorized by legal process (e.g., power of attorney for health care treatment, declaration for mental health treatment) to determine the legal and/or health care interests of an individual and/or his estate.
- (70) Level of Care. Medical eligibility criteria for receipt of an institutional service. An individual who meets the level of care criteria for NF care is an individual who has been determined by TennCare to meet the medical eligibility criteria established for that service.
- (71) Level 1 Nursing Facility care. The level of Medicaid reimbursement provided for nursing facility services delivered to residents eligible for Medicaid-reimbursement of NF services determined by TennCare to meet the medical eligibility criteria set forth in Rule 1200-13-01-.10(4) by a NF that meets the requirements set forth in Rule 1200-13-01-.03(3), and in accordance with the reimbursement methodology for Level 1 NF Care set forth in Rule 1200-13-01-.03(6).
- (72) Level 2 Nursing Facility care. The level of Medicaid reimbursement provided for nursing facility services delivered to residents eligible for Medicaid-reimbursement of NF services determined by TennCare to meet the medical eligibility criteria set forth in Rule 1200-13-01-.10(5) by a NF that meets the requirements set forth in Rule 1200-13-01-.03(4), and in accordance with the reimbursement methodology for Level 2 NF Care set forth in Rule 1200-13-01-.03(7).
- (73) Linton Order. The Orders issued by the United States District Court and the Sixth Circuit Court of Appeals in response to the lawsuit known as Linton v. Tennessee Commissioner of Health and Environment.
- (74) Long-Term Care Enrollee or Participant. An individual who is participating in a TennCare Long-Term Care Program.
- (75) Long-term Care Ombudsman. An individual with expertise and experience in the fields of long-term care and advocacy, who assists in the identification, investigation, and resolution of complaints that are made by, or on behalf of, NF residents, and persons residing in Community-Based Residential Alternative settings, including ACLFs and Adult Care Homes. The Tennessee Long-Term Care Ombudsmen program is administered by the Tennessee Commission on Aging and Disability.
- (76) Long-Term Care Program. One of the programs offering long-term care services to individuals enrolled in TennCare. Long-Term Care Programs include institutional programs (NFs and ICFs/MR), as well as HCBS offered either through the CHOICES Program or through a section 1915(c) HCBS waiver program.
- (77) Managed Care Organization (MCO). See "Managed Care Organization" in Rule 1200-13-13-.01.
- (78) Managed Care System. A system under which the MCOs are responsible for arranging for services and paying claims for delivery of these services to members enrolled in their plans.

- (79) Medicaid Eligible. For purposes of these rules, an individual who has been determined by DHS to be financially eligible to have Medicaid make reimbursement for covered long-term care services.
- (80) Medicare Savings Program. The mechanisms by which low-income Medicare beneficiaries can get assistance from Medicaid in paying for their Medicare premiums, deductibles, and/or coinsurance. These programs include the Qualified Medicare Beneficiary (QMB) program, the Specified Low Income Medicare Beneficiary (SLMB) program, and the Qualified Individual (QI) program.
- (81) Mental Illness. For the purposes of compliance with federal PASRR regulations, an individual who meets the following requirements on diagnosis, level of impairment and duration of illness:
- (a) The individual has a major mental disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, 3<sup>rd</sup> edition which is a schizophrenic, mood, paranoid, panic or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability; but is not a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder;
  - (b) The level of impairment must result in functional limitations in major life activities within the past three to six months that would be appropriate for the individual's developmental stage; or
  - (c) The treatment history of the individual has at least one of the following: a psychiatric treatment more intensive than outpatient care more than once in the past two years, or within the last two years, due to a mental disorder, the individual has experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.
- (82) Mental Retardation and Related Conditions. For the purposes of compliance with federal PASRR regulations, an individual is considered to be mentally retarded if he/she has a level of retardation (mild, moderate, severe and profound) as described in the American Association on Mental Deficiency's Manual on Classification in Mental Retardation (1983).
- (a) Mental Retardation refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period (i.e., prior to age eighteen).
  - (b) The provisions of this section also apply to persons with "related conditions", as defined by 42 C.F.R. § 435.1010, which states: "Persons with related conditions" means individuals who have a severe, chronic disability that meets all of the following conditions:
    - 1. It is attributable to:
      - (i) Cerebral palsy or epilepsy, or
      - (ii) Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for these persons.
    - 2. It is manifested before the person reaches age twenty-two (22).
    - 3. It is likely to continue indefinitely.
    - 4. It results in substantial functional limitations in three or more of the following areas of major life activity:
      - (i) Self-care;
      - (ii) Understanding and use of language;

- (iii) Learning;
  - (iv) Mobility;
  - (v) Self-direction; and
  - (vi) Capacity for independent living.
- (83) **Minor Home Modifications.** For purposes of the CHOICES Program, provision and installation of certain home mobility aids (e.g., a wheelchair ramp and modifications directly related to and specifically required for the construction or installation of the ramp, hand rails for interior or exterior stairs or steps, grab bars and other devices) and minor physical adaptations to the interior of a member's place of residence which are necessary to ensure the health, welfare and safety of the individual, or which increase the member's mobility and accessibility within the residence, such as widening of doorways or modification of bathroom facilities. Excluded are installation of stairway lifts or elevators and those adaptations which are considered to be general maintenance of the residence or which are considered improvements to the residence or which are of general utility and not of direct medical or remedial benefit to the individual, such as installation, repair, replacement or roof, ceiling, walls, or carpet or other flooring; installation, repair, or replacement of heating or cooling units or systems; installation or purchase of air or water purifiers or humidifiers; and installation or repair of driveways, sidewalks, fences, decks, and patios. Adaptations that add to the total square footage of the home are excluded from this benefit. All services shall be provided in accordance with applicable state or local building codes. Minor Home Modifications shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services, except as provided in Rule 1200-13-01-.05 to facilitate transition to the community.
- (84) **Minor Home Modifications.** For purposes of the Statewide E/D Waiver, the provision and installation of certain home mobility aids (e.g., ramps, rails, non-skid surfacing, grab bars, and other devices and minor home modifications which facilitate mobility) and modifications to the home environment to enhance safety. Excluded are those adaptations or improvements to the home which are of general utility and which are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc. Adaptations that add to the total square footage of the home are excluded from this benefit. All services shall be provided in accordance with applicable state or local building codes.
- (85) **Natural Supports.** For purposes of the CHOICES Program, unpaid support and assistance delivered by family members, friends, neighbors, and other entities, including clubs, churches, and community organizations, to a CHOICES member residing in the community which are critical to ensuring the member's health, safety, and welfare and quality of life in the community, and which should be supplemented, but not supplanted by paid HCBS in order to help sustain the natural supports over time, and to help ensure the delivery of cost-effective community-based care.
- (86) **Network Provider.** See "Contract Provider."
- (87) **Non-Contract Provider.** A provider who does not have a contract with an enrollee's MCO. Also called "out-of-network" provider.
- (88) **Notice.** When used in regulations pertaining to NFs, notification that must be provided by the facility to "residents" or "applicants," and shall also include notification to the person identified in a PAE application as the resident's or applicant's designated representative and any other individual who is authorized by law to act on the resident's or applicant's behalf or who is in fact acting on the resident's or applicant's behalf in dealing with the NF.
- (89) **Notice of Disposition or Change.** A notice issued by DHS of an individual's financial eligibility for Medicaid and approved Medicaid vendor date for payments to a NF or an ICF/MR.
- (90) **Nursing Facility (NF).** A Medicaid-certified NF approved by the Bureau of TennCare.
- (91) **Nursing Facility Eligible.** An individual determined by DHS to qualify for Medicaid-reimbursement of NF services and determined by TennCare to meet NF level of care.
- (92) **Out-of-Network Provider.** See "Non-Contract Provider."

- (93) PAE Approval Date. The beginning date of level of care eligibility for Medicaid-reimbursed care in a NF for which the PAE has been approved by TennCare, which cannot precede completion of the PASRR process.
- (94) Patient Liability. The amount determined by DHS which a Medicaid Eligible is required to pay for covered services provided by a NF, an ICF/MR, an HCBS waiver program, or the CHOICES Program.
- (95) Personal Care Assistance/Attendant Services. For purposes of the Statewide E/D Waiver, intermittent provision of direct assistance with activities such as toileting, bathing, dressing, personal hygiene, eating, meal preparation (excluding the cost of food), budget management, attending appointments, and interpersonal and social skill building to enable the enrollee to live in a community setting. Personal Care Assistance/Attendant Services shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services, or while a person is receiving Adult Day Care services.
- (96) Personal Care Services. For purposes of the Statewide E/D Waiver, services provided to assist the enrollee with activities of daily living, and related essential household tasks (e.g., making the bed, washing soiled linens or bedclothes that require immediate attention), and other activities that enable the enrollee to remain in the home, as an alternative to Nursing Facility care, including the following:
  - (a) Assistance with activities of daily living (e.g., bathing, grooming, personal hygiene, toileting, feeding, dressing, ambulation);
  - (b) Assistance with cleaning that is an integral part of personal care and is essential to the health and welfare of the enrollee;
  - (c) Assistance with maintenance of a safe environment.

Personal Care Services shall be primarily provided in the individual's place of residence, except under exceptional circumstances as authorized in the plan of care to accommodate the needs of the individual, Personal Care Services shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services, or while a person is receiving Adult Day Care services.

- (97) Personal Care Visits. For purposes of the CHOICES Program, visits to an enrollee who, due to age and/or physical disability, needs assistance that can be provided through intermittent visits of limited duration not to exceed four (4) hours per visit and two (2) visits per day to provide hands-on assistance and related tasks as specified below.
  - (a) Personal Care Visits may include assistance with the following:
    - 1. ADLs such as bathing, dressing and personal hygiene, eating, toileting, transfers and ambulation; or
    - 2. IADLs that are essential, although secondary, to the personal care tasks needed by the enrollee in order to continue living at home because there is no household member, relative, caregiver, or volunteer to meet the specified need, such as:
      - (i) Picking up medications or shopping for groceries;
      - (ii) Meal preparation; or
      - (iii) Household tasks such as making the bed, washing soiled linens or bedclothes.
  - (b) Personal care visits shall be primarily provided in the individual's place of residence, except as permitted within the scope of service (e.g., picking up medications or shopping for groceries), when accompanying the individual into the community pursuant to rule 1200-13-01-.05(7)(k), or under exceptional circumstances as authorized by an MCO in the plan of care to accommodate the needs of the individual.
  - (c) Personal Care Visits shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services, or while a person is receiving Adult Day Care services.
  - (d) Personal care visits do not include:

1. Companion or sitter services, including safety monitoring and supervision;
  2. Care or assistance including meal preparation or household tasks for other residents of the same household;
  3. Yard work; or
  4. Care of non-service related pets and animals.
- (98) Personal Emergency Response System (PERS). For purposes of the CHOICES Program, an electronic device which enables certain individuals at high risk of institutionalization to summon help in an emergency. The individual may also wear a portable "help" button to allow for mobility. The system is programmed to signal a response center once the "help" button is activated. The response center is staffed by trained professionals who assess the nature of the emergency, and obtain assistance for the individual, as needed. PERS services are limited to those individuals who have demonstrated mental and physical capacity to utilize such system effectively and who live alone or who are alone with no caregiver for extended periods of time, such that the individual's safety would be compromised without access to a PERS. Personal Emergency Response System (PERS) shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services.
- (99) Personal Emergency Response System (PERS). For purposes of the Statewide E/D Waiver, an electronic device which enables certain individuals at high risk of institutionalization to summon help in an emergency. The individual may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal a response center once a "help" button is activated. The response center is staffed by trained professionals. PERS services are limited to those individuals who are alone for significant parts of the day, who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision. Personal Emergency Response System (PERS) shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services.
- (100) Personal Needs Allowance (PNA). A reasonable amount which is deducted by DHS pursuant to federal and state law and the Medicaid State Plan in the application of post-eligibility provisions and the calculation of patient liability for long-term care services. The PNA is set aside for clothing and other personal needs of the individual while in the institution (Institutional PNA), and to also pay room, board and other living expenses in the community (Community PNA).
- (101) Pest Control. For purposes of the CHOICES Program and the Statewide E/D Waiver, the use of sprays, poisons and traps, as appropriate, in the enrollee's residence (excluding NFs or ACLFs) to regulate or eliminate the intrusion of cockroaches, wasps, mice, rats and other species of pests into the household environment thereby removing an environmental issue that could be detrimental to a frail elderly or disabled enrollee's health and physical well-being. Pest Control shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services. A treatment visit for Pest Control is a visit by the Pest Control provider to the enrollee's residence during which the Pest Control treatment is applied.
- (102) Pharmacy Benefits Manager (PBM). See "Pharmacy Benefits Manager" in Rule 1200-13-13-.01.
- (103) Physical Disabilities. One or more medically diagnosed chronic, physical impairments, either congenital or acquired, which limit independent, purposeful physical movement of the body or of one or more extremities, as evidenced by substantial functional limitations in one or more activities of daily living that require such movement—primarily mobility or transfer—and which are primarily attributable to the physical impairments and not to cognitive impairments or mental health conditions. A person with cognitive impairments or mental health conditions who also has one or more physical disabilities as defined above may qualify as "Physically Disabled," and may be enrolled into the Statewide E/D Waiver or CHOICES Group 2 (as applicable) so long as such individual can be safely served in the community and at a cost that does not exceed the individual's cost neutrality cap. This includes consideration of whether or not the Statewide E/D Waiver or CHOICES Group 2 benefit package (as applicable) can adequately address any specialized service needs the applicant may have pertaining to the cognitive impairment or mental health condition, as applicable.
- (104) Physically Disabled. For purposes of enrollment into CHOICES Group 2 or the Statewide E/D Waiver, an adult aged twenty-one (21) or older who has one or more physical disabilities.

- (105) Physician. A doctor of medicine or osteopathy who has received a degree from an accredited medical school and licensed to practice their profession in Tennessee.
- (106) Physician's Plan of Care. For purposes of the Statewide E/D Waiver, an individualized written Plan of Care developed by the enrollee's physician and included on the PAE and reviewed as needed or at least every ninety (90) days.
- (107) Plain language. Any notice or explanation that requires no more than a sixth grade level of education as measured by the Flesch Index, Fog Index, or Flesch-Kincaid Index.
- (108) Pre-Admission Evaluation (PAE). A process of assessment by the Bureau of TennCare used to determine an individual's medical (or level of care) eligibility for Medicaid-reimbursed care in a NF or ICF/MR, and in the case of NF services, the appropriate level of reimbursement for such care. For purposes of the CHOICES Program, the PAE application shall be used for the purposes of determining level of care and for calculating the individual Cost Neutrality Cap.
- (109) Pre-Admission Screening/Resident Review (PASRR). The process by which the State determines whether an individual who resides in or seeks admission to a Medicaid-certified NF has, or is suspected of having, mental illness or mental retardation, and, if so, whether the individual requires specialized services and is appropriate for NF placement. See "Identification Screen (Level I)."
- (110) PreAdmission Screening/Resident Review (Level II). The process whereby a determination is made about whether the individual requires the level of services provided by a NF or another type of facility and, if so, whether the individual requires specialized services. These reviews shall be the responsibility of the DMHDD and/or DIDS, as applicable.
- (111) Private Duty Nursing Services. See "Private Duty Nursing Services" in Rule 1200-13-13-.01.
- (112) Program of All-inclusive Care for the Elderly (PACE). A program for dually eligible enrollees in need of long-term care services that is authorized under the Medicaid State Plan, Attachment 3.1-A, #26.
- (113) Provider. See "Provider" in Rule 1200-13-13-.01. Provider does not include consumer-directed workers (see Consumer-Directed Worker); nor does provider include the FEA (see Fiscal Employer Agent).
- (114) Qualifying Income Trust (QIT). See "Qualified Income Trust" in Rule 1240-03-03-.03(8).
- (115) Recertification. For purposes of the Statewide E/D Waiver, the process approved by the Bureau of TennCare by which the enrollee's physician assesses the medical necessity of continuation of waiver services and certifies in writing that the enrollee continues to require waiver services.
- (116) Related Conditions. See "Mental Retardation and Related Conditions."
- (117) Representative. In general, for CHOICES members, a person who is at least eighteen (18) years of age and is authorized by the member to participate in care planning and implementation and to speak and make decisions on the member's behalf, including but not limited to identification of needs, preference regarding services and service delivery settings, and communication and resolution of complaints and concerns. As it relates to Consumer Direction of HCBS, a person who is authorized by the member to direct and manage the member's worker(s), and signs a representative agreement. The representative for Consumer Direction of HCBS must also: be at least eighteen (18) years of age; have a personal relationship with the member and understand his support needs; know the member's daily schedule and routine, medical and functional status, medication regimen, likes and dislikes, and strengths and weaknesses; and be physically present in the member's residence on a regular basis or at least at a frequency necessary to supervise and evaluate workers.
- (118) Representative Agreement. The agreement between a CHOICES member electing Consumer Direction of HCBS who has a representative direct and manage the consumer's worker(s) and the member's representative that specifies the roles and responsibilities of the member and the member's representative.
- (119) Reserve Capacity. The State's right to maintain some capacity within an established enrollment target to enroll individuals into HCBS under certain circumstances. These circumstances could include, but are not

limited to: accommodation of a phased in implementation of the CHOICES Program; discharge from a NF; discharge from an acute care setting where institutional placement is otherwise imminent, or other circumstances which the state may establish from time to time in accord with these rules.

- (120) Respite Care. For purposes of the Statewide E/D Waiver, services provided to individuals unable to care for themselves, furnished on a short-term basis because of the absence or need for relief of those persons normally providing the care. These services may be provided in-patient or in-home. Respite Care shall not be provided to persons living in a CBRA facility or receiving Short-Term NF services.
- (121) Risk Agreement. An agreement signed by a member who will receive HCBS (or his representative) that includes, at a minimum, identified risks to the member of residing in the community and receiving HCBS, the consequences of such risks, strategies to mitigate the identified risks, and the member's decision regarding his acceptance of risk. For members electing to participate in Consumer Direction, the risk agreement must include any additional risks associated with the member's decision to act as the employer of record, or to have a representative act as the employer of record on his behalf.
- (122) Room and Board. Lodging, meals, and utilities which are the responsibility of the individual receiving HCBS in a CBRA facility. The kinds of items that are considered "room and board" and are therefore not reimbursable by Medicaid include:
- (a) Rent, or, if the individual owns his home, mortgage payments, depreciation, or mortgage interest
  - (b) Property taxes
  - (c) Insurance (title, mortgage, property and casualty)
  - (d) Building and/or grounds maintenance costs
  - (e) Resident "raw" food costs including individual special dietary needs (the cost of preparing, serving, and cleaning up after meals is not included)
  - (f) Household supplies necessary for the room and board of the individual
  - (g) Furnishings used by the resident
  - (h) Utilities (electricity, water and sewer, gas)
  - (i) Resident telephone
  - (j) Resident cable television
- (123) Safety Plan. For purposes of the Statewide E/D Waiver, an individualized plan by which the Administrative Lead Agency ensures the health, safety, and welfare of enrollees who do not have twenty-four (24) hour caregiver services and which meets the requirements of these rules.
- (124) Self-Direction of Health Care Tasks. A decision by a CHOICES member participating in Consumer Direction to direct and supervise a paid worker delivering eligible HCBS in the performance of health care tasks that would otherwise be performed by a licensed nurse. Self-direction of health care tasks is not a service, but rather health care-related duties and functions (such as administration of medications) that a CHOICES member participating in Consumer Direction may elect to have performed by a consumer-directed worker as part of the delivery of eligible HCBS s/he is authorized to receive.
- (125) Service Agreement. The agreement between a CHOICES member electing Consumer Direction of HCBS (or the member's representative) and the member's consumer-directed worker that specifies the roles and responsibilities of the member (or the member's representative) and the member's worker.
- (126) Short-Term Nursing Facility Care. For purposes of the CHOICES Program, the provision of NF care for up to ninety (90) days to a CHOICES Group 2 member who was receiving home and community based services upon admission and who requires temporary placement in a NF—for example, due to the need for skilled or rehabilitative services upon hospital discharge or due to the temporary illness or absence of a primary caregiver—when such member is reasonably expected to be discharged and to resume HCBS

participation within no more than ninety (90) days. Such CHOICES Group 2 member must meet the NF level of care upon admission and in such case, while receiving Short-Term Nursing Facility care may continue enrollment in Group 2, pending discharge from the NF within no more than ninety (90) days or until such time it is determined that discharge within ninety (90) days from admission is not likely to occur, at which time the member shall be transitioned to CHOICES Group 1, as appropriate. The community personal needs allowance shall continue to apply during the provision of Short-Term NF care, up to the 90th day, in order to allow sufficient resources for the member to maintain his or her community residence for transition back to the community. The PASRR process is required for CHOICES Group 2 members entering Short-Term Nursing Facility Care. Persons receiving Short-Term NF Care are not eligible to receive any other HCBS, except as permitted pursuant to 1200-13-01-.05 to facilitate transition to the community.

- (127) Single Point of Entry (SPOE). The agency charged with screening, intake, and facilitated enrollment processes for non-Medicaid eligible individuals seeking enrollment into the CHOICES Program.
- (128) Skilled Nursing Service. A physician-ordered nursing service the complexity of which is such that it can only be safely and effectively provided directly by a registered nurse or licensed practical nurse.
- (129) Skilled Rehabilitative Service. A physician-ordered rehabilitative service the complexity of which is such that it can only be safely and effectively provided by qualified health care personnel (e.g., registered physical therapist, licensed physical therapist assistant, registered occupational therapist, certified occupational therapy assistance, licensed respiratory therapist, licensed respiratory therapist assistant).
- (130) Specialized Services for Individuals with Mental Illness. The implementation of an individualized Plan of Care developed under and supervised by a physician, provided by a physician and other qualified mental health professionals;
  - (a) that prescribes specific therapies and activities for the treatment of individuals who are experiencing an acute episode of severe mental illness, which necessitates continuous supervision by trained mental health personnel; and
  - (b) is directed toward diagnosing and reducing the resident's behavioral symptoms that necessitated institutionalization, improving his or her level of independent functioning, and achieving a functioning level that permits reduction in the intensity of mental health services to below the level of specialized services at the earliest possible convenience. Services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous specialized services program are not included.
- (131) Specialized Services for Individuals with Mental Retardation and Related Conditions. The implementation of an individualized Plan of Care specifying a continuous program for each individual, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services, and related services that is directed towards the acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and the prevention or deceleration of regression or loss of current optimal functional status. Services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous specialized services program are not included.
- (132) Statewide E/D Waiver. The section 1915(c) HCBS Waiver project approved for Tennessee by CMS to provide services to a specified number of Medicaid-eligible adults who reside in Tennessee, who are aged or have physical disabilities, and who meet the medical eligibility (or level of care) criteria for reimbursement of Level 1 NF services.
- (133) Subcontractor. For purposes of the Statewide E/D Waiver, an individual, organized partnership, professional corporation, or other legal association or entity which enters into a written contract with the Administrative Lead Agency to provide waiver services to an enrollee.
- (134) Supports Broker. For purposes of consumer direction, an individual assigned by the FEA to each member who assists the member/representative in performing the employer of record functions, including, but not limited to: developing job descriptions; locating, recruiting, interviewing, scheduling, monitoring, and evaluating workers. The supports broker collaborates with, but does not duplicate, the functions of the member's care coordinator. The supports broker does not have authority or responsibility for Consumer

Direction. The member or member's representative must retain authority and responsibility for Consumer Direction.

- (135) TennCare. The program administered by the Single State Agency as designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration Waiver granted to the State of Tennessee.
- (136) TennCare CHOICES in Long-Term Care (called "CHOICES"). The program in which NF services for TennCare eligibles of any age and HCBS for individuals aged sixty-five (65) and older and/or adults aged twenty-one (21) and older with physical disabilities are integrated into TennCare's managed care delivery system.
- (137) Tracheal Suctioning Reimbursement. The rate of Medicaid reimbursement provided for NF services, including enhanced respiratory care assistance, delivered by a NF that meets the requirements set forth in Rule 1200-13-01-.03(5), to residents determined by TennCare to meet the medical eligibility criteria set forth in Rule 1200-13-01-.10(5)(e) or determined by an MCO to require short-term intensive respiratory intervention during the post-weaning period.
- (138) Transfer Form. For purposes of the ICF/MR program, a Medicaid-approved form which is used in lieu of a new PAE to document the transfer of an ICF/MR eligible individual having an approved unexpired ICF/MR PAE from one ICF/MR to another ICF/MR, from an HCBS MR Waiver Program to an ICF/MR, from an ICF/MR to an HCBS MR Waiver Program, or from one HCBS MR Waiver Program to another HCBS MR Waiver Program.
- (139) Transfer Form. For purposes of the NF program and HCBS E/D Waiver prior to implementation of the CHOICES Program, a form which is used in lieu of a new PAE to document the transfer of a NF eligible individual having an approved unexpired PAE from Medicaid Level 1 in one NF to Medicaid Level 1 in another such facility or to the HCBS E/D Waiver, from Medicaid Level 2 in one NF to Medicaid Level 2 in another such facility, or from the HCBS E/D Waiver to Medicaid Level 1 in a NF.
- (140) Transition Allowance. For purposes of the CHOICES Program, a per member allotment not to exceed two thousand dollars (\$2,000) per lifetime which may, at the sole discretion of a managed care organization, be provided as a cost-effective alternative to continued institutional care for a CHOICES member in order to facilitate transition from a nursing facility to the community when such member will, upon transition, receive more cost-effective non-residential home and community based services or companion care. Items which may be purchased or reimbursed are only those items which the member has no other means to obtain and which are essential in order to establish a community residence when such residence is not already established and to facilitate the person's safe and timely transition, including rent and/or utility deposits, essential kitchen appliances, basic furniture, and essential basic household items, such as towels, linens, and dishes. Transition Allowance cannot be provided to persons transitioning to a CBRA facility.
- (141) Ventilator Weaning Reimbursement. The rate of Medicaid reimbursement provided for Ventilator Weaning Services delivered by a NF that meets the requirements set forth in Rule 1200-13-01-.03(5) to residents determined by an MCO to require such services based on medical necessity criteria.
- (142) Wait List. The list maintained by NFs of all individuals who have affirmatively expressed an intent to be considered for current or future admission to the NF or requested that their name be entered on any "wait list."
- (143) Waiting List. For purposes of the CHOICES Program, the list maintained by the Bureau of TennCare of individuals who have applied for CHOICES Group 2 but who cannot be served because an enrollment target has been met.
- (144) Waiver Eligible. For purposes of the Statewide HCBS E/D Waiver, a resident of Tennessee determined by TennCare to meet the criteria specified in Rule 1200-13-01-.17(5), and determined by DHS to qualify for Medicaid upon enrollment into a section 1915(c) HCBS waiver and receipt of HCBS. A Waiver Eligible person is not necessarily enrolled into the Waiver.
- (145) Worker. See "Consumer-Directed Worker."

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

Rule Chapter 1200-13-01-.03 Amount, Duration, and Scope of Assistance is deleted in its entirety and replaced with a new rule 1200-13-01-.03 Nursing Facility Provider Reimbursement which shall read as follows:

1200-13-01-.03 Nursing facility provider Reimbursement.

- (1) Definitions. See Rule 1200-13-01-.02.
- (2) Level 1, Level 2, and Enhanced Respiratory Care Nursing Facility Reimbursement. Reimbursement for Nursing Facility (NF) services provided to Medicaid recipients enrolled in the TennCare program will be categorized according to the needs of recipients and the level of skilled and/or rehabilitative services required as specified in Rule 1200-13-01-.10. Level 2 or Enhanced Respiratory Care NF reimbursement shall be provided only for beds that are certified for both Medicaid and Medicare for the provision of Skilled Nursing Facility care.
- (3) Conditions for reimbursement of Level 1 NF care.
  - (a) The Level 1 Nursing Facility must enter into a provider agreement with TennCare or, upon implementation of the CHOICES Program in the Grand Division, one or more TennCare Managed Care Organizations, for reimbursement of Level 1 NF services.
  - (b) The Level 1 Nursing Facility must be certified by the Tennessee Department of Health, showing that it has met the standards set out in 42 C.F.R., Part 442.
  - (c) Nursing Facilities reimbursed for Level 1 NF services participating in TennCare shall be terminated as a TennCare provider if certification or licensure is canceled by the state.
  - (d) If the resident has resources to apply toward payment, including patient liability as determined by the Department of Human Services or third party liability, which may include long-term care insurance benefits, the payment for nursing facility services shall be the facility's per diem rate for the applicable level of NF reimbursement authorized minus the available patient resources.
  - (e) Payments for residents requiring reimbursement for Level 1 Nursing Facility Services will not exceed per diem costs or charges, whichever is less.
  - (f) Regardless of the reimbursement rate established for a Level 1 Nursing Facility, no Level 1 Nursing Facility may charge TennCare enrollees an amount greater than the amount per day charge to private paying patients for equivalent accommodations and services.
  - (g) Personal laundry services in a Level 1 Nursing Facility shall be considered a covered service and included in the per diem rate. TennCare enrollees may not be charged for personal laundry services.
- (4) Conditions for reimbursement of Level 2 NF care.
  - (a) The Level 2 Nursing Facility must enter into a provider agreement with TennCare, or, upon implementation of the CHOICES Program in the Grand Division, one or more TennCare Managed Care Organizations, for reimbursement of Level 2 NF services.
  - (b) Nursing Facilities (Medicare SNFs and TennCare facilities receiving reimbursement for Level 2 NF care) must be certified by Medicare, showing they have met the federal certification standards. Any of these Nursing Facilities participating in TennCare shall be terminated as a TennCare provider if certification or licensure is canceled by the state.
  - (c) If the patient has available resources to apply toward payment, including patient liability as determined by the Department of Human Services or third party liability, which may include long-term care insurance benefits, the payment for nursing facility services shall be the facility's per diem rate for the applicable level of NF reimbursement authorized minus the patient's available resources.
  - (d) If the Level 2 Nursing Facility (upon submission of a cost report and a desk review or examination of its cost), has collected on a per diem basis during the period covered by the cost report and examination, more than cost reimbursement allowed, the skilled nursing facility shall be required to

reimburse the state for that portion of the reimbursement collected in excess of the actual recorded and examined cost.

- (e) Regardless of the reimbursement rate established for a Level 2 Nursing Facility, no Level 2 Nursing Facility may charge Medicaid patients an amount greater than the amount per day charged to private paying patients for equivalent accommodations and services.
- (5) Conditions for reimbursement of Enhanced Respiratory Care.
- (a) The Level 2 Nursing Facility must enter into a provider agreement with one or more TennCare Managed Care Organizations for the provision and reimbursement of Ventilator Weaning, Chronic Ventilator Services and/or Tracheal Suctioning in a Level 2 certified and licensed Skilled Nursing Facility.
  - (b) Nursing Facilities (Medicare SNFs and TennCare facilities providing Enhanced Respiratory Care services in a Level 2 NF) must be certified by Medicare, showing they have met the federal certification standards. Any of these Nursing Facilities participating in the TennCare shall be terminated by all TennCare Managed Care Organizations as a TennCare provider if certification or licensure is canceled by the state.
  - (c) Nursing Facilities providing Ventilator Weaning or Chronic Ventilator services and Nursing Facilities receiving short-term reimbursement at the Tracheal Suctioning Rate for a person who has just been weaned from the ventilator, but who still requires short-term intensive respiratory intervention, shall also meet or exceed the following minimum standards:
    - 1. A licensed respiratory care practitioner as defined by T.C.A. § 63-27-102(7), shall be on site twenty four (24) hours per day, seven (7) days per week to provide:
      - (i) ventilator care;
      - (ii) administration of medical gases;
      - (iii) administration of aerosol medications; and
      - (iv) diagnostic testing and monitoring of life support systems.
    - 2. The facility shall ensure that an appropriate individualized plan of care is prepared for each patient requiring ventilator services. The plan of care shall be developed with input and participation from a pulmonologist or a physician with experience in ventilator care.
    - 3. The facility shall establish admissions criteria to ensure the medical stability of ventilator-dependent patients prior to transfer from an acute care setting.
    - 4. Arterial Blood Gas (ABG) shall be readily available in order to document the patient's acid base status and/or End Tidal Carbon Dioxide (etCO<sub>2</sub>) and continuous pulse oximetry measurements should be performed in lieu of ABG studies.
    - 5. An audible, redundant external alarm system shall be located outside of each ventilator-dependent patient's room for the purpose of alerting caregivers of patient disconnection, ventilator disconnection or ventilator failure.
    - 6. Ventilator equipment shall be connected to electrical outlets connected to back-up generator power.
    - 7. Ventilators shall be equipped with battery back-up systems.
    - 8. The facility shall be equipped to employ the use of current ventilator technology consistent with meeting patients' needs for mobility and comfort.
    - 9. A (one) back-up ventilator shall be available at all times in the facility.

- (d) Except as provided in (c) above, the standards set forth in (c) are not applicable for reimbursement of Tracheal Suctioning Enhanced Respiratory Care services; however, the NF must ensure the availability of necessary equipment, supplies, and appropriately trained and licensed nurses or licensed respiratory therapists to perform the specified tasks.
  - (e) If the patient has available resources to apply toward payment, including patient liability as determined by the Department of Human Services or third party liability, which may include long-term care insurance benefits, the payment made by the state is the per diem rate established by TennCare minus the patient's available resources.
- (6) Reimbursement methodology for Level 1 care:
- (a) A Level 1 Nursing Facility will be reimbursed on the lowest of the following:
    - 1. Allowable cost,
    - 2. Allowable charges,
    - 3. An amount representing the 65th percentile of all such facilities or beds, whichever is lower, participating in the Level 1 Medicaid Nursing Facility program. In determining the 65th percentile for purposes of this sub-section, each provider's most recently filed and reviewed cost report shall be inflated from the mid-point of the provider's cost reporting period to the mid-point of the state's payment period. The trending factor shall be computed for facilities that have submitted cost reports covering at least six months of program operations. For facilities that have submitted cost reports covering at least three full years of program participation, the trending factor shall be the average cost increase over the three-year period, limited to the 75th percentile trending factor of facilities participating for at least three years. Negative averages shall be considered zero. For facilities that have not completed three full years in the program, the one-year trending factor shall be the 50th percentile trending factor of facilities participating in the program for at least three years. For facilities that have failed to file timely cost reports, the trending factor shall be zero,
    - 4. An amount representing the reimbursable cost of the 65th percentile of facilities or beds, whichever is lower, participating in the Nursing Facility Level 1 Program. In determining the 65th percentile ceiling for purposes of this sub-section, operating costs from each provider's most recently filed and reviewed cost report will be inflated from the mid-point of the provider's cost reporting period to the mid-point of the state's payment period. The inflation factor shall be as described in 3. above. Capital-related costs are not subject to indexing. Capital-related costs are property, depreciation, and amortization expenses included in Section F.18 and F.19 of the Nursing Facility Cost Report Form. All other costs, including home office costs and management fees, are operating costs. No inflation factor will be allowed for providers not filing timely cost reports. For providers in the program less than three years, the inflation factor shall be the 50th percentile of allowable inflation factors for providers participating in the program for at least three years. Budgeted cost reports receive no inflation allowance; or
    - 5. For State Fiscal Year 1997-98, the budgeted amount for Level 1 and Level 2 care of \$672,040,000. For State Fiscal Year 1998-99, the budgeted amount for Level 1 and Level 2 care of \$705,642,000. For State Fiscal Year 1999-2000 and subsequent years, a proportional share of expenditures not to exceed the amount budgeted by the state for Nursing Facility reimbursement. Expenditures will be monitored throughout each year to determine if rate adjustments are necessary to assure that each level of care is within the budgeted amount.

To assure the proper application of limit 5. above, the Comptroller's Office shall be authorized to adjust per-diem rates up or down as necessary during the year.

The annual Nursing Facility tax will be passed through as an allowable cost, but will be excluded for purposes of computing the inflation allowance and cost-containment incentive. The Nursing Facility tax will not be subject to the 65th percentile limits but is subject to the limit specified in Rule 1200-13-01-.03(6)(a)5.

If the patient has no available resources to apply toward payment, the payment made by the state is the lower of per-diem cost, charges, or the 65th percentile of all such facilities or beds participating in the Medicaid Program, whichever is less. Cost is determined on a facility by facility basis.

The cost report closing date for determination of the Level 1 65<sup>th</sup> percentile shall be the first working day of the month preceding the month in which the recomputed 65<sup>th</sup> percentile is effective. All clean cost reports received by the Comptroller's Office on or before the closing date shall be included in the determination of the 65<sup>th</sup> percentile ceiling. A clean cost report is one upon which rates may be set without additional communication from the provider. Home office cost reports must be filed before any individual Nursing Facility cost reports included in a chain can be processed.

- (b) Costs for supplies and other items billed, including any facility staff required to deliver the service, which are billed to Medicare Part B on behalf of all patients must be included as a reduction to reimbursable expenses in Section G of the nursing facility cost report.
  - (c) Once a per-diem rate is determined from a clean cost report, the rate will not be changed until the next ceiling redetermination except for audit adjustments, correction of errors, or termination of a budgeted rate, or as necessary to comply with rule 1200-13-01-.03(6)(a)5.
- (7) Reimbursement methodology for Level 2 care:
- (a) A Level 2 Nursing Facility will be reimbursed on the lowest of the following:
    - 1. Allowable costs,
    - 2. Allowable charges,
    - 3. An amount representing the reimbursable cost of the 65th percentile of all such facilities or beds, whichever is lower, participating in the Level 2 Medicaid Nursing Facility program. In determining the 65th percentile for purposes of this subsection, each provider's most recently filed and reviewed cost report shall be inflated from the mid-point of the provider's cost reporting period to the mid-point of the state's payment period. The trending factor shall be computed for facilities that have submitted cost reports covering at least six months of program operations. For facilities that have submitted cost reports covering at least three full years of program participation, the trending factor shall be the average cost increase over the three-year period, limited to the 75th percentile trending factor of facilities participating for at least three years. Negative averages shall be considered zero. For facilities that have not completed three full years in the program, the one-year trending factor shall be the 50th percentile trending factor of facilities participating in the program for at least three years. For facilities that have failed to file timely cost reports, the trending factor shall be zero.
    - 4. A prospective amount representing the reimbursable cost of the 65th percentile of facilities or beds, whichever is lower, participating in the Nursing Facility Level 2 Program. In determining the 65th percentile ceiling for purposes of this sub-section, operating costs from each provider's most recently filed and reviewed cost report will be inflated from the midpoint of the provider's cost reporting period to the mid-point of the state's payment period. The inflation factor shall be as described in Part 3. above. Capital-related costs are not subject to indexing. Operating and capital-related costs are as specified on Worksheet B of the Medicare Skilled Nursing Facility cost report form. Budgeted cost reports receive no inflation allowance; or
    - 5. For State Fiscal Year 1997-98, the budgeted amount for Level 1 and Level 2 care of \$672,040,000. For State Fiscal Year 1998-99, the budgeted amount for level 1 and level 2 care of \$705,642,000. For State Fiscal Year 1999-2000 and subsequent years, a proportional share of expenditures not to exceed the amount budgeted by the state for Nursing Facility reimbursement. Expenditures will be monitored throughout each year to determine if rate adjustments are necessary to assure that each level of care is within the budgeted amount.

To assure the proper application of limit 5. above, the Comptroller's Office shall be authorized to adjust per-diem rates up or down as necessary during the year.

The cost report closing date for determination of the Level 2 65th percentile shall be the first working day of the month preceding the month in which the recomputed 65th percentile is effective. All clean cost reports received by the Comptroller's Office on or before the closing date shall be included in the determination of the 65th percentile. A clean cost report is one upon which rates may be set without additional communication from the provider. Home office cost reports must be filed before any individual Nursing Facility cost reports included in a chain can be processed.

The annual Nursing Facility tax will be passed through as an allowable cost, but will be excluded for purposes of computing the inflation allowance and cost-containment incentive. The Nursing Facility tax will not be subject to the 65th percentile limits but is subject to the limit specified in Rule 1200-13-01-.03(7)(a)5.

Once a per-diem rate is determined from a clean cost report, the rate will not be changed until the next ceiling redetermination except for audit adjustments, correction of errors, or termination of a budgeted rate, or as necessary to comply with Rule 1200-13-01-.03(7)(a)5.

If the patient has no available resources to apply toward payment, the payment made by the state is the lower of per-diem cost, charges, or the 65th percentile of beds or facilities, whichever is lower, participating in the Medicaid Program. Cost is determined on a facility by facility basis.

- (b) Medicare Part B charges, including any facility staff required to deliver the service, are non-allowable in calculating Medicaid Level 2 Nursing Facility reimbursement.
- (8) Reimbursement for Enhanced Respiratory Care services in a Medicare-certified and licensed Level 2 Skilled Nursing Facility shall be made only by TennCare Managed Care Organizations in accordance with these rules and rates established by TennCare.
- (9) Bed holds.
  - (a) A Level 1 Nursing Facility (NF) shall be reimbursed in accordance with this paragraph for the recipient's bed in that facility during the recipient's temporary absence from that facility in accordance with the following:
    - 1. Reimbursement will be made for up to a total of ten (10) days per state fiscal year while the resident is hospitalized or absent from the facility on therapeutic leave. The following conditions must be met in order for a bed hold reimbursement to be made under this provision:
      - (i) The resident intends to return to the NF.
      - (ii) For hospital leave days:
        - (I) Each period of hospitalization is physician ordered and so documented in the patient's medical record in the NF; and
        - (II) The hospital provides a discharge plan for the resident.
      - (iii) Therapeutic leave days, when the resident is absent from the facility on a therapeutic home visit or other therapeutic absence, are provided pursuant to a physician's order.
      - (iv) At least 85% of all other beds in the NF are occupied at the time of the hospital admission or therapeutic absence. An occupied bed is one that is actually being used by a patient. Beds being held for other patients while they are hospitalized or otherwise absent from the facility are not considered to be occupied beds, for purposes of this calculation.
  - (b) Nursing Facilities shall not be reimbursed for holding a bed for a person receiving Level 2 NF or Enhanced Respiratory Care reimbursement during his temporary absence from the facility.

- (10) Other reimbursement issues.

- (a) No change of ownership or controlling interest of an existing Medicaid provider, including Nursing Facilities, can occur until monies as may be owed to Medicaid are provided for. The purchaser shall notify Medicaid of the purchase at the time of ownership change and is financially liable for the outstanding liabilities to Medicaid for one (1) year from the date of purchase or for one (1) year following Medicaid's receipt of the provider's Medicare final notice of program reimbursement, whichever is later. The purchaser shall be entitled to utilize any means available to it by law to secure and recoup these funds from the selling entity. In addition, purchasers of Nursing Facilities are responsible for obtaining an accurate accounting and transfer of funds held in trust for Medicaid residents at the time of the change of ownership or controlling interest.
- (b) If the division of Medicaid has not reimbursed a business for Medicaid services provided under the Medicaid program at the time the business is sold, when such an amount is determined the division of Medicaid shall be required to reimburse the person owning the business provided such sale included the sale of such assets.
- (c) When a provider was originally paid within a retrospective payment system that is subject to regular adjustments and the provider disputes the proposed adjustment action, the provider must file with the State not later than thirty (30) days after receipt of the notice informing the provider of the proposed adjustment action, a request for hearing. The provider's right to a hearing shall be deemed waived if a hearing is not requested within thirty (30) days after receipt of the notice.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

Rule Chapter 1200-13-01-.05 Providers is deleted in its entirety and replaced with a new rule 1200-13-01-.05 TennCare CHOICES Program which shall read as follows:

1200-13-01-.05 TennCare CHOICES Program.

- (1) Definitions. See Rule 1200-13-01-.02.
- (2) Program components. The TennCare CHOICES Program is a managed long-term care program that is administered by the TennCare Managed Care Organizations (MCOs) under contract with the Bureau of TennCare. The program consists of two components:
  - (a) Nursing Facility services, as described in these rules.
  - (b) Home and Community Based Services (HCBS), as described in these rules.

The MCOs are responsible for coordinating all covered physical, behavioral, and long-term care services for their members who qualify for and are enrolled in the CHOICES program.

- (3) Eligibility for CHOICES.
  - (a) There are two groups in TennCare CHOICES:
    - 1. CHOICES Group 1. Participation in CHOICES Group 1 is limited to Medicaid enrollees of all ages who qualify for and are receiving Medicaid-reimbursed Nursing Facility services. Medicaid eligibility for long-term care services is determined by the Department of Human Services (DHS). Medical (or level of care) eligibility is determined by TennCare as specified in Rule 1200-13-01-.10. Persons in CHOICES Group 1 must be enrolled in TennCare Medicaid and qualify for Medicaid-reimbursement of long-term care services.
    - 2. CHOICES Group 2. Participation in CHOICES Group 2 is limited to TennCare enrollees who qualify for and are receiving TennCare-reimbursed HCBS. Eligible enrollees for CHOICES Group 2 must: (a) be in one of the defined target populations; (b) qualify in one of the specified eligibility categories; (c) meet nursing facility level of care; and (d) have needs which can be safely and appropriately met in the community and at a cost that does not exceed their individual cost neutrality cap as defined in these rules.

- (i) Target Populations for CHOICES Group 2. Only persons in one of the target populations below may qualify to enroll in CHOICES Group 2:
    - (I) Persons age sixty-five (65) and older.
    - (II) Persons twenty-one (21) years of age and older who have one or more physical disabilities as defined in Rule 1200-13-01-.02.
  - (ii) Eligibility Categories Served in CHOICES Group 2. Participation in CHOICES Group 2 is limited to TennCare enrollees who qualify in one of the following eligibility categories:
    - (I) SSI eligibles, who are determined eligible for SSI by the Social Security Administration. SSI eligibles are enrolled in TennCare Medicaid.
    - (II) The CHOICES 217-Like Group, as defined in Rule 1200-13-01-.02. Financial and categorical eligibility are determined by the Department of Human Services. Persons who qualify in the CHOICES 217-Like Group in accordance with Rule 1200-13-14-.02 are enrolled in TennCare Standard.
- (b) Level of Care.
- All enrollees in TennCare CHOICES must meet the level of care criteria for Nursing Facility services, as determined by TennCare in accordance with Rule 1200-13-01-.10. Physician certification of level of care shall be required only for nursing facility services. Upon implementation of CHOICES in the Grand Division, only the CHOICES PAE may be submitted to establish level of care eligibility for CHOICES long-term care services. However, an unexpired non-CHOICES PAE eligibility segment may be used as permitted by TennCare for enrollment into CHOICES, including persons on a waiting list for Home and Community Based Services.
- (c) With respect to the PASRR process described in Rule 1200-13-01-.23:
1. Persons in CHOICES Group 1 must have been determined through the PASRR process described in Rules 1200-13-01-.10 and 1200-13-01-.23 appropriate for NF placement.
  2. Persons in CHOICES Group 2 are not required to complete the PASRR process unless they are admitted to a Nursing Facility for the Short-term Nursing Facility benefit described in paragraph (7). Completion of the PASRR process is not required for members of CHOICES Group 2 who have elected the In-Patient Respite Care benefit described in paragraph (7), since the service being provided is not Nursing Facility services, but rather, In-Patient Respite Care, which is an HCBS.
- (d) All enrollees in TennCare CHOICES must be admitted to a Nursing Facility and require Medicaid-reimbursement of Nursing Facility services or be receiving HCBS in CHOICES Group 2.
- (e) All enrollees in TennCare CHOICES Group 2 must be determined by the Area Agency on Aging and Disability or the Managed Care Organization, as applicable, to be able to be served safely and appropriately in the community and within their individual cost-neutrality cap, in accordance with these rules. Reasons a person cannot be served safely and appropriately in the community may include, but are not limited to, the following:
1. The home or home environment of the applicant is unsafe to the extent that it would reasonably be expected that HCBS could not be provided without significant risk of harm or injury to the person or to individuals who provide covered services.
  2. The health, safety, and welfare of the individual cannot be assured due to the lack of a signed Risk Agreement, or the person's decision to receive services in the home or community poses an unacceptable level of risk.
  3. The applicant or his caregiver is unwilling to abide by the plan of care or Risk Agreement, resulting in the inability to ensure the person's health, safety and welfare.

(f) Immediate Eligibility. See definition in Rule 1200-13-01-.02.

1. TennCare may elect, based on information provided in a Medicaid application that has been submitted to DHS for determination, to grant a forty-five (45) day period of Immediate Eligibility for a person who:
  - (i) is deemed likely to qualify for Medicaid in the CHOICES 217-Like eligibility category; and
  - (ii) has an approved CHOICES PAE; and
  - (iii) meets all other specified criteria for enrollment into CHOICES Group 2, subject to categorical and financial eligibility determination.
2. Persons admitted to the CHOICES program under the Immediate Eligibility option are persons who are not already eligible for TennCare.
3. Immediate Eligibility is not a covered eligibility category in the Medicaid State plan or the TennCare 1115 Waiver. There is no entitlement to apply or qualify for Immediate Eligibility. Should TennCare not elect to provide a period of Immediate Eligibility, no notice shall be issued.
4. If eligibility in the CHOICES 217-Like Group is denied by DHS, the applicant shall receive notice and the right to request a fair hearing regarding the DHS eligibility decision. Continuation of HCBS benefits or Immediate Eligibility shall not be granted during the fair hearing process once the forty-five (45) day Immediate Eligibility period has expired. A fair hearing shall not be granted regarding:
  - (i) a decision by TennCare to not grant the optional forty-five (45) day period of Immediate Eligibility; or
  - (ii) the end of a forty-five (45) day period of Immediate Eligibility granted by TennCare.
5. During a period of Immediate Eligibility, enrollees are eligible only for the limited package of HCBS identified in paragraph (7)(j). They are not eligible for any other TennCare (including other long-term care) services.
6. During a period of Immediate Eligibility, enrollees who are also Medicare beneficiaries are not entitled to Medicare crossover payments on their Medicare benefits. They cannot be considered "dual eligibles" since they are not yet Medicaid-eligible.

(4) Enrollment in TennCare CHOICES.

Enrollment into TennCare CHOICES shall be processed by TennCare in accordance with the following:

(a) Enrollment into CHOICES Group 1.

To qualify for enrollment into CHOICES Group1, an individual must:

1. Have completed the PASRR process as defined in Rules 1200-13-01-.10 and 1200-13-01-.23.
2. Have an approved unexpired CHOICES PAE for Level 1 services or CHOICES Skilled Nursing Facility PAE for Level 2 or enhanced respiratory care reimbursement. TennCare may also accept, at its discretion, an approved, unexpired non-CHOICES PAE for the applicable level of care (Level 1 NF or Level 2 NF) submitted prior to implementation of the CHOICES Program in the Grand Division. Eligibility for Enhanced Respiratory Care reimbursement may be established only with a CHOICES PAE.
3. Be approved by the Department of Human Services for Medicaid-reimbursement of nursing facility services.

4. Be admitted to a Nursing Facility. TennCare must have received notification from the Nursing Facility that Medicaid reimbursement is requested for the effective date of CHOICES enrollment (i.e., the individual is no longer privately paying for nursing facility services and Medicare payment of nursing facility services is not available). Enrollment into CHOICES Group 1 (and payment of a capitation payment for long-term care services) cannot begin until Medicaid will be responsible for payment of nursing facility services.
- (b) Enrollment into CHOICES Group 2.
- To qualify for enrollment into CHOICES Group 2:
1. An individual must be in one of the target populations specified in these rules.
  2. An individual must have an approved unexpired CHOICES PAE. TennCare may also accept, at its discretion, an approved, unexpired non-CHOICES PAE for Level 1 NF care or the Statewide E/D Waiver submitted prior to implementation of the CHOICES Program in the Grand Division.
  3. An individual must be approved by the Department of Human Services for Medicaid-reimbursement of long-term care services as an SSI recipient or in the CHOICES 217-Like Group. To qualify in the CHOICES 217-Like Group, an individual must be enrolled in CHOICES Group 2 or approved by TennCare for immediate enrollment into CHOICES Group 2, subject to categorical and financial eligibility by DHS.
  4. TennCare must have received a determination by the AAAD or MCO, as applicable, that the person's needs can be safely and appropriately met in the community, and at a cost that does not exceed his individual cost neutrality cap, as described in these rules.
  5. There must be capacity within the established enrollment target to enroll the person in accordance with these rules, which may include satisfaction of criteria for reserve capacity, as applicable; or the person must meet specified exceptions to enroll even when the enrollment target has been reached.
- (c) Individual Cost Neutrality Cap.
1. Each person enrolled in CHOICES Group 2 shall have an individual cost neutrality cap, which shall be used to determine:
    - (i) Whether or not he qualifies to enroll in CHOICES Group 2;
    - (ii) Whether or not he qualifies to remain enrolled in CHOICES Group 2; and
    - (iii) The total cost of HCBS, Home Health services, and Private Duty Nursing services he can receive while enrolled in CHOICES Group 2. The person's individual cost neutrality cap functions as a limit on the total cost of HCBS that, when combined with the cost of Home Health Services and Private Duty Nursing services the person will receive, can be provided to the individual in the home or community setting.
  2. An enrollee is not entitled to receive services up to the amount of his cost neutrality cap. An enrollee shall receive only those services which are medically necessary (i.e., required in order to help ensure the person's health, safety and welfare in the home or community setting and to delay or prevent the need for nursing facility placement). Determination of the services which are needed shall be based on a comprehensive assessment of the person's needs and the availability of natural supports and other (non-TennCare reimbursed) services to meet identified needs which shall be conducted by the member's Care Coordinator.
  3. Calculating a Group 2 member's individual cost neutrality cap.
    - (i) Each Group 2 member will have an individual cost neutrality cap that is based on the average cost of the level of NF reimbursement that would be paid if the member were institutionalized in a nursing facility as set forth in Items (I) through (III) below. CHOICES Group 2 does not offer an alternative to hospital level of care.

- (I) A member who would qualify only for Level 1 NF reimbursement shall have a cost neutrality cap set at the average cost of Level 1 NF care.
  - (II) A member who would qualify for Level 2 NF reimbursement shall have a cost neutrality cap set at the average cost of Level 2 (or skilled) NF care.
  - (III) A member who would qualify for the enhanced respiratory care rate for persons who are chronically ventilator dependent, or for persons who have a functioning tracheostomy that requires frequent suctioning through the tracheostomy will have a cost neutrality cap that reflects the higher payment that would be made to the NF for such care. There is no cost neutrality cap for the ventilator weaning respiratory care rate, as such service is available only on a short-term basis in a skilled nursing facility or acute care setting.
- (ii) The PreAdmission Evaluation application will be used to submit information that will be used by TennCare to establish a member's individual cost neutrality cap.
  - (iii) A member's individual cost neutrality cap shall be the average cost of Level 1 NF care unless a higher cost neutrality cap is established based on information submitted in the PAE application.
4. Application of the Individual Cost Neutrality Cap.
- (i) The annual cost neutrality cap will be applied on a calendar year basis. TennCare and the MCOs will track utilization of HCBS, Home Health services, and Private Duty Nursing services across calendar year increments.
  - (ii) In addition, a member's individual cost neutrality cap must be applied prospectively on a twelve (12) month basis. This is to ensure that a person's plan of care does not establish a threshold level of supports that cannot be sustained over the course of time. This means that, for purposes of care planning, the AAAD or MCO will always project the total cost of all HCBS (including one-time costs such as minor home modifications, short-term services or short-term increases in services) and Home Health and Private Duty Nursing services forward for twelve (12) months in order to determine whether the member's needs can continue to be safely and cost-effectively met based on the most current plan of care that has been developed. The cost of one-time services such as minor home modifications, short-term services or short-term increases in services must be counted as part of the total cost of HCBS for a full twelve (12) month period following the date of service delivery.
  - (iii) If it can be reasonably anticipated, based on the HCBS, Home Health and Private Duty Nursing services currently received or determined to be needed in order to safely meet the person's needs in the community, that the person will exceed his cost neutrality cap, the person does not qualify to enroll in or to remain enrolled in CHOICES Group 2.
5. As the setting of an individual's cost neutrality cap does not, in and of itself, result in any increase or decrease in a member's services, notice of action shall not be provided regarding TennCare's cost neutrality cap calculation. A member's right to due process regarding his individual cost neutrality cap comes into play when services are denied or reduced, or when a determination is made that an applicant cannot be enrolled into CHOICES or a currently enrolled CHOICES member can no longer remain enrolled in CHOICES because his/her needs cannot be safely and effectively met in the home and community-based setting at a cost that does not exceed his or her individual cost neutrality cap. At such time that an adverse action is taken, notice of action will be provided, and the applicant or member, as applicable, shall have the right to fair hearing regarding any valid factual dispute pertaining to such action, which may include (but is not limited to) whether his cost neutrality cap was calculated appropriately.
- (i) Denial of or reductions in HCBS based on a member's cost neutrality cap shall constitute an adverse action under the Grier Revised Consent Decree (Modified) (See Rule 1200-13-13-.01(4) and 1200-13-14-.01(4)), and shall give rise to Grier notice of action and due

process rights to request a fair hearing in accordance with Rules 1200-13-13-.11 and 1200-13-14-.11.

- (ii) Denial of enrollment and/or involuntary disenrollment because a person's cost neutrality cap will be exceeded shall constitute an eligibility/enrollment action, and shall give rise to notice of action and due process rights to request a fair hearing in accordance with this rule.

(d) Enrollment Target for CHOICES Group 2.

1. There will be an enrollment target for CHOICES Group 2. The enrollment target functions as a cap on the total number of people that can be enrolled into CHOICES Group 2 at any given time.
  - (i) Effective March 1, 2010, the enrollment target for CHOICES Group 2 will be seven thousand five hundred (7,500).
  - (ii) Effective July 1, 2010, the enrollment target for CHOICES Group 2 will be nine thousand five hundred (9,500).
2. Reserve Capacity.
  - (i) The State will reserve three hundred (300) slots in CHOICES Group 2 Enrollment Target within the enrollment target. These slots are available only when the Enrollment Target has otherwise been reached, and only to:
    - (I) Individuals being discharged from a Nursing Facility (NF); and
    - (II) Individuals being discharged from an acute care setting who are at imminent risk of being placed in a Nursing Facility setting absent the provision of home and community-based services.
  - (ii) Once all other available (i.e., unreserved) slots have been filled, individuals who meet specified criteria (including new applicants seeking to establish eligibility in the CHOICES 217-Like Group as well as current SSI-eligible individuals seeking enrollment into CHOICES Group 2) may be enrolled into reserved slots. TennCare may require confirmation of the nursing facility or hospital discharge and in the case of hospital discharge, written explanation of the applicant's circumstances which warrant the immediate provision of Nursing Facility services unless HCBS are immediately available.
  - (iii) If enrollment into a reserve capacity slot is denied, notice shall be provided to the applicant, including the right to request a fair hearing regarding any valid factual dispute pertaining to the State's decision. If the person otherwise qualifies for enrollment into CHOICES Group 2, but does not meet the specified criteria for reserve capacity, the person will be placed on a waiting list for CHOICES Group 2.
  - (iv) Once the enrollment target is reached, qualified persons shall not be enrolled into CHOICES Group 2 or qualify in the CHOICES 217-Like eligibility category based on receipt of HCBS until such time that capacity within the enrollment target is available, with the following exceptions:
    - (I) Nursing Facility-to-Community Transitions. An enrollee being served in CHOICES Group 1 who meets requirements to enroll in CHOICES Group 2 can enroll in CHOICES Group 2 notwithstanding the enrollment target. This person will be served in CHOICES Group 2 outside the enrollment target but shall be moved within the CHOICES enrollment target at such time that a slot becomes available. A request to transition a member from CHOICES Group 1 to CHOICES Group 2 in excess of the CHOICES Group 2 enrollment target must specify the name of the nursing facility where the person currently resides, the date of admission and planned date of transition.

(II) Cost-Effective Alternative Enrollment. An MCO with an SSI eligible recipient that meets all other criteria for enrollment into CHOICES Group 2, but who cannot enroll in CHOICES Group 2 because the enrollment target for that group has been met, has the option, at its sole discretion, of offering HCBS as a cost-effective alternative to the individual. Upon receipt of satisfactory documentation from the MCO of its cost-effective alternative determination and assurance of provider capacity to meet the member's needs, TennCare will enroll the person into CHOICES Group 2, notwithstanding the enrollment target. The person will be served in CHOICES Group 2 outside the enrollment target, but moved within the CHOICES Group 2 enrollment target at such time that a slot becomes available. Satisfactory documentation of the MCO's cost-effective alternative determination shall include an explanation of the member's circumstances which warrant the immediate provision of nursing facility services unless HCBS are immediately available. Documentation of adequate provider capacity to meet the member's needs shall include a listing of providers for each HCBS in the member's plan of care which the MCO has confirmed are willing and able to initiate HCBS within five (5) days of the member's enrollment into CHOICES.

(v) Once the CHOICES Group 2 enrollment target is reached, any persons enrolled in excess of the enrollment target in accordance with these rules must receive the first available slots that become available. Only after all persons enrolled in excess of the enrollment target have been moved under the enrollment target can additional persons be enrolled into CHOICES Group 2.

(5) Disenrollment from CHOICES.

A member may be disenrolled from CHOICES voluntarily or involuntarily.

- (a) Voluntary disenrollment shall proceed only upon receipt of a statement signed by the member or his authorized representative. No notice of action shall be issued regarding a member's decision to voluntarily disenroll from CHOICES. However, notice shall be provided regarding any subsequent adverse action which may occur as a result of the member's decision, including as applicable, any change in benefits, cost-sharing responsibility, or continued eligibility for TennCare when the person's eligibility was conditioned on receipt of long-term care services.
- (b) A person may be involuntarily disenrolled from CHOICES only by TennCare, although such process may be initiated by a person's MCO.

Reasons for involuntary disenrollment include when the person no longer meets one or more criteria for eligibility and/or enrollment as specified in these rules. Such reasons include but are not limited to:

1. The person's needs can no longer be safely met in the community. This may include, but is not limited to the following instances:
  - (i) The home or home environment of the enrollee becomes unsafe to the extent that it would reasonably be expected that waiver services could not be provided without significant risk of harm or injury to the enrollee or to individuals who provide covered services to the enrollee.
  - (ii) The enrollee or his/her caregiver refuses to abide by the plan of care or Risk Agreement, resulting in the inability to ensure the enrollee's health, safety and welfare.
  - (iii) Notwithstanding an adequate provider network, there are no providers who are willing to provide necessary services to the enrollee.
  - (iv) The health, safety, and welfare of the enrollee cannot be assured due to the lack of a signed Risk Agreement, or the member's decision to continue receiving services in the home or community poses an unacceptable level of risk.
2. The person's needs can no longer be safely met in the community at a cost that does not exceed the person's cost neutrality cap, as described in these rules.

3. The person no longer needs or is no longer receiving long-term care services.
  4. The person has refused to pay his or her patient liability, the MCO and/or its participating providers are unwilling to serve the member in CHOICES because he has not paid his patient liability, and/or no other MCO is willing to serve the member in CHOICES.
- (6) Transitioning into CHOICES and transitioning between CHOICES Groups.
- (a) Transition at the time that the CHOICES program is implemented in a particular Grand Division of the state:
    1. All active participants in the existing section 1915(c) Elderly and Disabled waiver who live in that Grand Division shall be automatically transitioned into CHOICES.
    2. All persons receiving TennCare-reimbursed Nursing Facility services in that Grand Division shall be automatically transitioned into CHOICES.
    3. There shall be no right to fair hearing regarding the termination of the section 1915(c) waiver, and no ability for a member to remain enrolled in the section 1915(c) waiver or to continue receiving fee-for-service Nursing Facility care. Once the CHOICES Program has been implemented in their Grand Division, TennCare members in that Grand Division may receive long-term care services only through the CHOICES Program, with the following exceptions:
      - (i) Institutional and community services for persons with mental retardation will continue to be offered through the ICF/MR program described in Rule 1200-13-01-.30 and the HCBS waiver programs for persons with mental retardation described in Rules 1200-13-01-.25, .28, and .29.
      - (ii) Elderly and disabled residents of Hamilton County may elect to participate in the PACE program, in which case they will not be enrolled with a TennCare MCO.
    4. Members shall remain in their currently assigned MCO. Long-term care services will become part of the covered benefit package provided to the member by his current MCO.
  - (b) Continuity of Care period.
    1. Members residing in Nursing Facilities and transitioning into CHOICES Group 1 and members transitioning from the existing section 1915(c) waiver into CHOICES Group 2 shall receive a Continuity of Care period based on their currently authorized plan of care.
    2. The Continuity of Care period will last for a minimum of thirty (30) days and will continue for up to ninety (90) days for persons enrolled in CHOICES Group 2 or until a new plan of care has been implemented.
    3. During the Continuity of Care period:
      - (i) CHOICES Group 1 members.
        - (I) The member will continue to receive NF services from the current NF provider, regardless of whether the NF is a contract or non-contract provider, unless the member chooses to move to another NF and such choice is documented.
        - (II) NF providers not participating in the MCO's network shall be reimbursed at the contract rate for the first thirty (30) days following implementation, and thereafter in accordance with Rule 1200-13-01-.05(9)(e)3.
      - (ii) CHOICES Group 2 members.

- (I) The member shall continue to receive the services currently specified in his waiver plan of care, except for case management services which shall be replaced with care coordination provided by the member's MCO.
- (II) The member shall continue to receive HCBS from his current waiver providers, regardless of whether such providers are contracted with the MCO to deliver CHOICES benefits. Non-contract HCBS providers shall be reimbursed at the MCO's full contract rate during the Continuity of Care period, even if such period is extended beyond thirty (30) days. In the case of members receiving services in a Community Based Residential Alternative (CBRA) setting, the member shall remain in that CBRA during the Continuity of Care period, unless he chooses to move to another CBRA and such choice is documented.
- (III) Any action to reduce or change the type, amount, frequency, or duration of waiver services in order to implement the new plan of care shall require notice of action in accordance with Rules 1200-13-13-.11 and 1200-13-14-.11.

(c) Transitioning between CHOICES Groups.

1. Transition from Group 1 to Group 2.

- (i) An MCO may request to transition a member from Group 1 to Group 2 only when the member chooses to transition from the Nursing Facility to a home and community-based setting. Members shall not be required to transition from Group 1 to Group 2.
- (ii) When persons move from Group 1 to Group 2, DHS must recalculate the member's patient liability based on the Community personal needs allowance.

2. Transition from Group 2 to Group 1.

- (i) An MCO may request to transition a member from Group 2 to Group 1 only under the following circumstances:
  - (I) The member chooses to transition from HCBS to NF for example, due to a decline in the member's health or functional status, or a change in the member's natural caregiving supports; or
  - (II) The MCO has made a determination that the person's needs can no longer be safely met in the community and at a cost that does not exceed the average cost of NF services for which the member would qualify, and the member chooses to transition to the more appropriate institutional setting in order to safely meet his needs.
- (ii) When persons move from Group 2 to Group 1, DHS must recalculate the member's patient liability based on the Institutional personal needs allowance.

3. At such time as a transition between groups is made, the MCO shall issue notice of transition to the member. Because the member has elected the transition and remains enrolled in the CHOICES Program, such transition between CHOICES groups shall not constitute an adverse action. Thus the notice will not include the right to appeal or request a fair hearing regarding the member's decision.

(7) Benefits in the TennCare CHOICES Program.

- (a) The CHOICES Program includes Nursing Facility care and Home and Community-Based Services (HCBS) benefits, as described in these rules. Pursuant to federal regulations, Nursing Facility services must be ordered by the treating physician. A physician's order is not required for HCBS.
- (b) Persons in CHOICES Group 1 receive Nursing Facility care, in addition to all of the medically necessary covered benefits available for Medicaid recipients, as specified in TennCare Rules 1200-13-13-.04. While they are receiving Nursing Facility care, they are not eligible for HCBS.

- (c) Persons in CHOICES Group 2 who are Medicaid eligible receive HCBS as specified in an approved plan of care, in addition to medically necessary covered benefits available for TennCare Medicaid recipients, as specified in TennCare Rule 1200-13-13-.04. While they are receiving HCBS, they are not eligible for Nursing Facility care, except for Short-Term Nursing Facility care, as described in these rules.
- (d) Persons in CHOICES Group 2 who are eligible for TennCare Standard in the CHOICES 217-Like Group receive HCBS as specified in an approved plan of care, in addition to medically necessary covered benefits available for TennCare Standard recipients, as specified in TennCare Rule 1200-13-14-.04. While they are receiving HCBS, they are not eligible for Nursing Facility care, except for Short-Term Nursing Facility care, as described in these rules.
- (e) Persons are not eligible to receive any other HCBS during the time that short-term NF services are provided. HCBS such as minor home modifications or installation of a Personal Emergency Response System (PERS) which are required to facilitate transition from the NF back to the home or community may be provided during the NF stay and billed with date of service being on or after discharge from the NF.
- (f) Persons receiving CBRA services, other than Companion Care, are eligible to receive only Assistive Technology services, since other types of support and assistance are within the defined scope of the 24-hour CBRA benefit and are the responsibility of the CBRA provider.
- (g) Persons receiving Companion Care are eligible to receive only Assistive Technology, Minor Home Modifications, and Pest Control, since all needed assistance with ADLs and IADLs are within the defined scope of the 24-hour CBRA benefit.
- (h) All long-term care services, NF services as well as HCBS, must be authorized by the MCO in order for MCO payment to be made for the services. An MCO may elect to accept TennCare's PAE determination as its prior authorization for NF services. Nursing Facility care may sometimes start before authorization is obtained, but payment will not be made until the MCO has authorized the service. Except for special provisions which may be made by an MCO during the Continuity of Care period for CHOICES implementation, HCBS must be specified in an approved plan of care and authorized by the MCO prior to delivery of the service in order for MCO payment to be made for the services.
- (i) HCBS covered under TennCare CHOICES and applicable limits are specified below. The benefit limits are applied across all services received by the member regardless of whether the services are received through consumer direction and/or a traditional provider agency. Corresponding limitations regarding the scope of each service are defined in Rule 1200-13-01-.02 and in subparagraphs (a) through (h) above.
  1. Short-Term Nursing Facility care, not to exceed 90 days per stay, per enrollee
  2. Community-Based Residential Alternatives, to include Adult Care Homes, Assisted Care Living Facility services, and Companion Care. Companion Care is only available through Consumer Direction.
  3. Personal Care visits, up to 2 intermittent visits per day, per enrollee; visits limited to a maximum of 4 hours per visit and shall not run consecutively.
  4. Attendant Care, up to 1080 hours per calendar year, per enrollee. Attendant Care services must be needed for more than four (4) hours per occasion. If a lesser intensity of service is needed, Personal Care Visits is the more appropriate benefit.
  5. Homemaker services, up to 3 visits per week, per enrollee
  6. Home-delivered Meals, up to 1 meal per day, per enrollee
  7. Personal Emergency Response System (PERS)

8. Adult Day Care, up to 2080 hours per calendar year, per enrollee
  9. In-home Respite Care, up to 216 hours per year, per enrollee
  10. Inpatient Respite Care, up to 9 days per year, per enrollee
  11. Assistive Technology, up to \$900 per year, per enrollee
  12. Minor Home Modifications, with the following limitations:
    - (i) \$6,000 per project;
    - (ii) \$10,000 per calendar year; and
    - (iii) \$20,000 per lifetime.
  13. Pest Control, up to 9 treatment visits per calendar year, per enrollee
- (j) Persons who qualify as “Immediate Eligibles” are eligible only for certain HCBS covered under CHOICES. They are not eligible for any other TennCare benefits, including other CHOICES benefits. These HCBS are listed below. The limits are the same as those specified in subparagraph (i) above. When the limit is an annual limit, the services used in the immediate eligibility period count against the annual limit if the individual should become eligible for TennCare.
1. Personal Care
  2. Attendant Care
  3. Homemaker services
  4. Home-delivered Meals
  5. PERS
  6. Adult day care
- (k) Transportation.
1. Emergency and non-emergency transportation to TennCare covered services other than CHOICES services is provided by the MCOs in accordance with Rules 1200-13-13-.04 and 1200-13-14-.04.
  2. Transportation is not provided to HCBS covered by CHOICES, except in the circumstance where a member requires Adult Day Care that is not available within 30 miles of the member’s residence.
 

For CHOICES enrollees not participating in Consumer Direction, provider agencies delivering HCBS may permit staff to accompany a member outside the home, but not to personally transport the enrollee. The decision of whether or not to accompany the member outside the home is at the discretion of the agency/worker, taking into account such issues as the ability to safely provide services outside the home setting and the cost involved. In no case will additional hours of service and/or an increased rate of reimbursement be provided as a result of an agency/worker decision to accompany a member outside the home.
  3. For CHOICES enrollees participating in Consumer Direction, the enrollee may elect to have his consumer directed workers (including Companion Care workers) to accompany and/or transport the member if such an arrangement is agreed to by both the member and the workers and specified in the Service Agreement; however, no additional hours or reimbursement will be available. Consumer directed worker(s) must provide to the FEA a valid driver’s license and proof of insurance prior to transporting a member.

- (l) Freedom of Choice.
  - 1. CHOICES members shall be given freedom of choice of nursing facility care or HCBS, so long as the person meets all criteria for enrollment into CHOICES Group 2, as specified in these rules, and the person may be enrolled into CHOICES Group 2 in accordance with requirements pertaining to the CHOICES Group 2 enrollment target as described in these rules.
  - 2. CHOICES members shall also be permitted to choose providers for HCBS specified in the plan of care from the MCO's list of participating providers, so long as the participating provider selected is available and willing to initiate services timely and to deliver services in accordance with the plan of care. The member is not entitled to receive services from a particular provider, however. A member is not entitled to a fair hearing if he is not able to receive services from the provider of his choice.
- (m) Transition allowance. For CHOICES members moving from CHOICES 1 to CHOICES 2, the MCO may, at its sole discretion, provide a Transition Allowance not to exceed \$2,000 per lifetime as a cost-effective alternative to facilitate transition of the member from the NF to the community. Items which may be purchased or reimbursed are only those items which the member has no other means to obtain and which are essential in order to establish a community residence when such residence is not already established and to facilitate the person's safe and timely transition, including rent and/or utility deposits, essential kitchen appliances, basic furniture, and essential basic household items, such as towels, linens, and dishes.

(8) Consumer-Direction.

- (a) Consumer Direction is a model of service delivery that affords CHOICES Group 2 members the opportunity to have more choice and control with respect to certain types of home and community based services (HCBS) that are needed by the member, in accordance with the rules described herein. Consumer Direction is not a service or set of services.

The model of Consumer Direction that will be implemented in CHOICES is a prior authorization model. The determination regarding the services a member will receive will be based on a comprehensive needs assessment performed by a care coordinator which identifies the member's needs, the availability of family and other caregivers to meet those needs, and the gaps in care for which paid services may be authorized. Once the type and amount of services that a member needs have been determined, CHOICES members determined to need eligible HCBS may elect to receive one or more of the eligible HCBS through a Contract Provider, or they may participate in Consumer Direction. Companion care is available only through Consumer Direction. CHOICES members who do not need eligible HCBS will not be offered the opportunity to enroll in Consumer Direction.

- (b) HCBS Eligible for Consumer Direction (Eligible HCBS).

- 1. Consumer Direction is limited to the following HCBS:
  - (i) Attendant Care
  - (ii) Companion Care (Companion Care is only available for persons electing Consumer Direction)
  - (iii) Homemaker Services
  - (iv) In-Home Respite Care
  - (v) Personal Care Visits
- 2. The amount of a covered benefit available to the member will not increase as a result of his decision to participate in Consumer Direction, even if the rate of reimbursement for the service is lower in Consumer Direction. The amount of each covered benefit to be provided to the member is specified in the approved plan of care.

3. Home health services, private duty nursing services, and HCBS other than those specified above shall not be available through Consumer Direction.
- (c) Eligibility for Consumer Direction. To be eligible for Consumer Direction, CHOICES members must meet all of the following criteria:
1. They must be members of CHOICES Group 2;
  2. They must be determined by a Care Coordinator, based on a comprehensive Needs Assessment, to need one or more of the HCBS eligible for Consumer Direction.
  3. They must be willing and able to serve as the employer of record for their consumer-directed workers and to fulfill all of the required responsibilities for consumer direction, or they must have a qualified representative who is willing and able to serve as the employer of record and to fulfill all of the required responsibilities for consumer direction. Assistance shall be provided to the member or his representative by the Fiscal Employer Agent.
  4. Any additional risks associated with a member's decision to participate in Consumer Direction must be identified and addressed in a signed Risk Agreement, and the MCO must determine that the person's needs can be safely and appropriately met in the community while participating in Consumer Direction.
  5. The member or his representative for consumer direction and any workers he employs must agree to use the services of TennCare's contracted Fiscal Employer Agent to perform required Financial Administration and Supports Brokerage functions.
- (d) Enrollment in Consumer Direction.
1. A CHOICES Group 2 member assessed to need one or more eligible HCBS may elect to participate in Consumer Direction at any time.
  2. If the member is unable to make a decision regarding his participation in Consumer Direction or to communicate his decision, only a legally appointed representative may make such decision on his behalf. The member, or a family member or other caregiver, must sign a Consumer Direction participation form reflecting the decision the member has made.
  3. If the member is unable to make a decision regarding Consumer Direction or to communicate his decision and does not have a legally appointed representative, the member cannot participate in Consumer Direction since there is no one with the legal authority to assume and/or delegate Consumer Direction responsibilities.
  4. Self-Assessment Tool. If a member elects to participate in Consumer Direction, he must complete a self-assessment tool developed by the Bureau of TennCare to determine whether he requires the assistance of a representative to perform the responsibilities of Consumer Direction.
  5. Representative. If the member requires assistance in order to participate in Consumer Direction, he must designate, or have appointed by a legally appointed representative, a representative to assume the Consumer Direction responsibilities on his behalf.
    - (i) A representative must meet all of the following criteria:
      - (I) Be at least 18 years of age;
      - (II) Have a personal relationship with the member and understand his support needs;
      - (III) Know the member's daily schedule and routine, medical and functional status, medication regimen, likes and dislikes, strengths and weaknesses; and
      - (IV) Be physically present in the member's residence on a regular basis or at least at a frequency necessary to supervise and evaluate each consumer-directed worker.

- (ii) If a member requires a Representative but is unwilling or unable to appoint one, the MCO may submit to TennCare, for review and approval, a request to deny the member's participation in Consumer Direction.
- (iii) If a member's care coordinator believes that the person selected as the member's representative for Consumer Direction does not meet the specified requirements (e.g., the representative is not physically present in the member's residence at a frequency necessary to adequately supervise workers), the Care Coordinator may request that the member select a different representative who meets the specified requirements.

If the member does not select another Representative who meets the specified requirements, the MCO may, in order to help ensure the member's health and safety, submit to TennCare, for review and approval, a request to deny the member's participation in Consumer Direction.

- (iv) A member's representative shall not receive payment for serving in this capacity and shall not serve as the member's worker for any consumer-directed service.
- (v) Representative agreement. A representative agreement must be signed by the member (or person authorized to sign on the member's behalf) and the representative in the presence of the care coordinator. By completing a representative agreement, the representative confirms that he agrees to serve as a member's representative and that he accepts the responsibilities and will perform the duties associated with being a representative.
- (vi) A member may change his representative at any time by immediately notifying his care coordinator and his supports broker that he intends to change representatives. The care coordinator shall verify that the new representative meets the qualifications as described above. A new representative agreement must be completed and signed, in the presence of a care coordinator, prior to the new representative assuming his respective responsibilities.

(e) Employer of record.

1. If a member elects to participate in Consumer Direction, either he or his representative must serve as the employer of record.
2. The employer of record is responsible for the following:
  - (i) Recruiting, hiring and firing workers;
  - (ii) Determining workers' duties and developing job descriptions;
  - (iii) Scheduling workers;
  - (iv) Supervising workers;
  - (v) Evaluating worker performance and addressing any identified deficiencies or concerns;
  - (vi) Setting wages from a range of reimbursement levels established by TennCare.
  - (vii) Training workers to provide personalized care based on the member's needs and preferences;
  - (viii) Ensuring that workers deliver only those services authorized, and reviewing and approving hours worked by consumer-directed workers;
  - (ix) Reviewing and ensuring proper documentation for services provided; and

- (x) Developing and implementing as needed a back-up plan to address instances when a scheduled worker is not available or fails to show up as scheduled.
- (f) Denial of Enrollment in Consumer Direction.
- 1. Enrollment into Consumer Direction may be denied by TennCare when:
    - (i) The person is not enrolled in TennCare or in CHOICES Group 2.
    - (ii) The member does not need one or more of the HCBS eligible for Consumer Direction, as specified in the plan of care.
    - (iii) The member is not willing or able to serve as the employer of record for their consumer-directed workers and to fulfill all of the required responsibilities for consumer direction, and does not have a qualified representative who is willing and able to serve as the employer of record and to fulfill all of the required responsibilities for consumer direction.
    - (iv) The member is unwilling to sign a Risk Agreement which identifies and addresses any additional risks associated with the member's decision to participate in Consumer Direction, or the risks associated with the member's decision to participate in Consumer Direction pose too great a threat to the member's health, safety and welfare.
    - (v) The member does not have an adequate back-up plan for consumer direction.
    - (vi) The member's needs cannot be safely and appropriately met in the community while participating in Consumer Direction.
    - (vii) The member or his representative for consumer direction, or consumer directed workers they want to employ are unwilling to use the services of TennCare's contracted Fiscal Employer Agent to perform required Financial Administration and Supports Brokerage functions.
    - (viii) Other significant concerns regarding the member's participation in Consumer Direction which jeopardize the health, safety or welfare of the member.
  - 2. Denial of enrollment in Consumer Direction gives rise to notice and due process including the right to a fair hearing, as set forth in this rule.
- (g) Fiscal Employer Agent (FEA).
- 1. The FEA shall perform the following functions on behalf of all members participating in Consumer Direction:
    - (i) Financial Administration functions in the performance of payroll and related tasks; and
    - (ii) Supports Brokerage functions to assist the member or his representative with other non-payroll related tasks such as recruiting and training workers.
  - 2. The FEA will:
    - (i) Assign a supports broker to each CHOICES member electing to participate in Consumer Direction of HCBS.
    - (ii) Provide initial and ongoing training to members and their representatives (as applicable) on Consumer Direction and other relevant issues;
    - (iii) Verify worker qualifications, including conducting background checks on workers, enrolling workers into Medicaid, assigning provider Medicaid ID numbers, and holding Medicaid provider agreements;

- (iv) Provide initial and ongoing training to workers on Consumer Direction and other relevant issues;
- (v) Assist the member and/or representative in developing and updating service agreements;
- (vi) Withhold, file and pay applicable federal, state and local income taxes; employment and unemployment taxes; and worker's compensation;
- (vii) Pay workers for authorized services rendered within authorized timeframes;

(h) Back-up Plan for Consumer-Directed Workers.

1. Each member participating in Consumer Direction or his representative is responsible for the development and implementation of a back-up plan that identifies how the member/representative will address situations when a scheduled worker is not available or fails to show up as scheduled.
2. The member/representative (as applicable) may not elect, as part of the back-up plan, to go without services.
3. The back-up plan for Consumer Direction shall include the names and telephone numbers of contacts (workers, agency staff, organizations, supports) for alternate care, the order in which each shall be notified and the services to be provided by contacts.
4. Back-up contacts may include paid and unpaid supports; however, it is the responsibility of the member electing Consumer Direction and/or his representative to secure paid (as well as unpaid) back-up contacts who are willing and available to serve in this capacity, and for initiating the back-up plan when needed.
5. The member's back-up plan for consumer-directed workers shall be integrated into the member's back-up plan for services provided by contract providers, as applicable, and the member's plan of care.
6. The care coordinator shall review the back-up plan developed by the member and/or his representative to determine its adequacy to address the member's needs. If an adequate back-up plan cannot be provided to consumer direction, enrollment into Consumer Direction may be denied, as set forth in this rule.
7. The back-up plan will be reviewed and updated at least annually, and as frequently as necessary if there are changes in the type, amount, duration, scope of eligible HCBS or the schedule at which such services are needed, changes in workers (when such workers also serve as a back-up to other workers) and changes in the availability of paid or unpaid back-up workers to deliver needed care.

(i) Consumer-directed Workers (Workers).

1. Hiring Consumer-Directed Workers.
  - (i) Members shall have the flexibility to hire persons with whom they have a close personal relationship to serve as workers, such as neighbors or friends.
  - (ii) Members may hire family members, excluding spouses, to serve as workers. However, a family member shall not be reimbursed for a service that he would have otherwise provided without pay. A member or his representative for Consumer Direction may not hire a family member or other person with whom the member currently resides to begin delivering Companion Care services.
  - (iii) Members may elect to have a worker provide more than one service, have multiple workers, or have both a worker and a contract provider for a given service, in which case, there must be a set schedule which clearly defines when contract providers will be utilized.

2. Qualifications of Consumer-Directed Workers.

Consumer-directed workers must meet the following requirements prior to providing services:

- (i) Be at least 18 years of age or older.
- (ii) pass a background check which includes criminal background check (including fingerprinting), or, as an alternative, a background check from a licensed private investigation company;
- (iii) verification that the person's name does not appear on the State abuse registry;
- (iv) verification that the person's name does not appear on the state and national sexual offender registries and licensure verification, as applicable;
- (v) complete all required training;
- (vi) complete all required applications to become a TennCare provider;
- (vii) sign an abbreviated Medicaid agreement;
- (viii) be assigned a Medicaid provider ID number; and
- (ix) sign a service agreement.
- (x) If the worker will be transporting the member as specified in the Service Agreement, a valid driver's license and proof of insurance must also be provided.

3. Disqualification from Serving as a Consumer-Directed Worker.

A member cannot waive a background check for a potential worker. The following findings shall disqualify a person from serving as a worker:

- (i) Conviction of an offense involving physical, sexual or emotional abuse, neglect, financial exploitation or misuse of funds, misappropriation of property, theft from any person, violence against any person, or manufacture, sale, possession or distribution of any drug;
- (ii) Entering of a plea of nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld with respect to a crime reasonably related to the nature of the position sought or held;
- (iii) Identification on the abuse registry;
- (iv) Identification on the state or national sexual offender registry;
- (v) Failure to have a required license; and
- (vi) Refusal to cooperate with a background check.

4. Exception to Disqualification of a Consumer-Directed Worker.

If a worker fails the background check, an exception to disqualification may be granted at the member's discretion if all of the following conditions are met:

- (i) Offense is a misdemeanor;
- (ii) Offense occurred more than five (5) years ago;
- (iii) Offense is not related to physical or sexual or emotional abuse of another person;

- (iv) Offense does not involve violence against another person or the manufacture, sale, or distribution of drugs; and
  - (v) There is only one disqualifying offense.
5. Service Agreement.
- (i) A member shall develop a service agreement with each worker, which includes, at a minimum:
    - (I) The roles and responsibilities of the worker and the member;
    - (II) The worker's schedule (as developed by the member and/or representative), including hours and days;
    - (III) The scope of each service (i.e., the specific tasks and functions the worker is to perform);
    - (IV) The service rate; and
    - (V) The requested start date for services.
  - (ii) The service agreement must be in place for each worker prior to the worker providing services.
  - (iii) The service agreement shall also stipulate if a worker will provide one or more self-directed health care tasks, the specific task(s) to be performed, and the frequency of each self-directed health care task.
6. Payments to Consumer-Directed Workers.
- (i) Rates.

With the exception of companion care services, members participating in Consumer Direction have the flexibility to set wages for their workers from a range of reimbursement levels established by TennCare.

    - (I) Monthly companion care rates are only available for a full month of service delivery and will be pro-rated when a lesser number of days are actually delivered.
    - (II) The back-up per diem rate is available only when a regularly scheduled companion is ill or unexpectedly unable to deliver services, and shall not be authorized as a component of ongoing companion care services.
  - (ii) Payments to Consumer-Directed Workers. In order to receive payment for services rendered, all workers must:
    - (I) Deliver services in accordance with the schedule of services specified in the member's plan of care and in the MCO's service authorization, and in accordance with worker assignments determined by the member or his representative.
    - (II) Utilize the EVV system to log in and out at each visit.
    - (III) Provide detailed documentation of service delivery including but not limited to the specific tasks and functions performed for the member at each visit, which shall be maintained in the member's home.
    - (IV) Provide no more than forty (40) hours of services within a consecutive seven (7) day period, unless explicitly permitted by program guidelines and in accordance with service authorizations.

(iii) Termination of Consumer-Directed Workers' Employment.

(I) A member may terminate a worker's employment at any time.

(II) The MCC may not terminate a worker's employment, but may request that a member be involuntarily withdrawn from Consumer Direction if it is determined that the health, safety and welfare of the member may be in jeopardy if the member continues to employ a worker but the member and/or representative does not want to terminate the worker.

(j) Self Direction of Health Care Tasks.

1. A competent adult, as defined in Rule 1200-13-01-.02, with a functional disability living in his or her own home, enrolled in CHOICES Group 2, and participating in Consumer Direction, or his representative for consumer direction may choose to direct and supervise a consumer directed worker in the performance of a health care task as defined in these rules.
2. For purposes of this rule, home does not include a nursing facility or assisted care living facility.
3. A member will not receive additional amounts of any service as a result of his decision to self-direct health care tasks. Rather, the health care tasks will be performed by the worker in the course of delivering eligible HCBS already determined to be needed, as specified in the plan of care.
4. Health care tasks that may be self directed for the purposes of this subparagraph are limited to administration of oral, topical and inhaled medications.
5. The member or representative who chooses to self-direct a health care task is responsible for initiating self-direction by informing the health care professional who has ordered the treatment which involves the health care task of the individual or caregiver's intent to perform that task through self-direction. The provider shall not be required to prescribe self-direction of the health care task.
6. When a licensed health care provider orders treatment involving a health care task to be performed through self-directed care, the responsibility to ascertain that the patient or caregiver understands the treatment and will be able to follow through on the self-directed care task is the same as it would be for a patient or caregiver who performs the health care task for himself or herself, and the licensed health care provider incurs no additional liability when ordering a health care task which is to be performed through self-directed care.
7. The member or his representative for Consumer Direction will identify one or more consumer directed workers who will perform the task in the course of delivery of eligible HCBS. If a worker agrees to perform the health care tasks, the tasks to be performed must be specified in the Service Agreement. The member or his representative for Consumer Direction is solely responsible for identifying a worker that is willing to perform health care tasks, and for instructing the paid personal aide on the task(s) to be performed.
8. The member or his representative for Consumer Direction must also identify in his back-up plan for consumer direction who will perform the health care task if the worker is unavailable, or stops performing the task for any reason.
9. Ongoing monitoring of the worker performing self-directed health care tasks is the responsibility of the member or his representative. Members are encouraged to use a home medication log as a tool to document medication administration. Medications should be kept in original containers, with labels intact and legible.

(k) Withdrawal from Participation in Consumer Direction.

1. General.

- (i) Voluntary Withdrawal from Consumer Direction. Members participating in Consumer Direction may voluntarily withdraw from participation in Consumer Direction at any time. The member's request must be in writing. Whenever possible, notice of a member's decision to withdraw from participation in Consumer Direction should be provided in advance to permit time to arrange for delivery of services through contracted providers.
- (ii) Voluntary or involuntary withdrawal of a member from Consumer Direction of HCBS shall not affect a member's eligibility for long-term care services or enrollment in CHOICES, so long as the member continues to meet all requirements for enrollment in CHOICES as defined in these rules.
- (iii) If a member voluntarily withdraws or is involuntarily withdrawn from Consumer Direction, any eligible HCBS he receives, with the exception of Companion Care, shall be provided through contract providers, subject to the requirements set forth in these rules. Companion Care is only available through Consumer Direction.

2. Involuntary Withdrawal.

- (i) A person may be involuntarily withdrawn from participation in Consumer Direction of HCBS for any of the following reasons:
  - (I) The person is no longer enrolled in TennCare.
  - (II) The person is no longer enrolled in CHOICES Group 2.
  - (III) The member no longer needs any of the HCBS eligible for Consumer Direction, as specified in the plan of care.
  - (IV) The member is no longer willing or able to serve as the employer of record for their consumer-directed workers and to fulfill all of the required responsibilities for consumer direction, and does not have a qualified representative who is willing and able to serve as the employer of record and to fulfill all of the required responsibilities for consumer direction.
  - (V) The member is unwilling to sign a Risk Agreement which identifies and addresses any additional risks associated with the member's decision to participate in Consumer Direction, or the risks associated with the member's decision to participate in Consumer Direction pose too great a threat to the member's health, safety and welfare.
  - (VI) The health, safety and welfare of the member may be in jeopardy if the member or his representative continues to employ a worker but the member and/or representative does not want to terminate the worker.
  - (VII) The member does not have an adequate back-up plan for consumer direction.
  - (VIII) The person's needs cannot be safely and appropriately met in the community while participating in Consumer Direction.
  - (IX) The member or his representative for consumer direction, or consumer directed workers they want to employ are unwilling to use the services of TennCare's contracted Fiscal Employer Agent to perform required Financial Administration and Supports Brokerage functions.
  - (X) The member or his representative for consumer direction are unwilling to abide by the requirements of the CHOICES Consumer Direction program.
  - (XI) If a member's representative fails to perform in accordance with the terms of the representative agreement and the health, safety and welfare of the member is at risk, and the member wants to continue to use the representative.

(XII) If a member has consistently demonstrated that he is unable to manage, with sufficient supports (including appointment of a representative) his services and the care coordinator or FEA has identified health, safety and/or welfare issues.

(XIII) A care coordinator has determined that the health, safety and welfare of the member may be in jeopardy if the member continues to employ a worker but the member and/or representative does not want to terminate the worker.

(XIV) Other significant concerns regarding the member's participation in Consumer Direction which jeopardize the health, safety or welfare of the member.

(ii) The Bureau of TennCare must review and approve all MCC requests for involuntary withdrawal from Consumer Direction of HCBS before such action may occur. If the Bureau of TennCare approves the request, written notice shall be given to the member at least ten (10) days in advance of the withdrawal. The date of withdrawal may be delayed when necessary to allow adequate time to transition the member to contract provider services as seamlessly as possible.

(iii) The member shall have the right to appeal involuntary withdrawal from Consumer Direction.

(iv) If a person is no longer enrolled in TennCare or in CHOICES, his participation in Consumer Direction shall be terminated automatically.

(9) Nursing Facilities in the TennCare CHOICES program.

(a) Conditions of participation. Nursing Facilities participating in the CHOICES program must meet all of the conditions of participation and conditions for reimbursement outlined in their provider agreements with the TennCare Managed Care Organizations.

(b) Reimbursement methodology for Level 1 care: See Rule 1200-13-01-.03(6).

(c) Reimbursement methodology for Level 2 care: See Rule 1200-13-01-.03(7).

(d) Reimbursement methodology for Level 2 care at an enhanced respiratory care rate: See Rule 1200-13-01.03(8).

(e) Non-participating providers. Nursing Facilities that wish to continue serving existing residents without entering into provider agreements with TennCare MCOs will be considered non-participating providers.

1. Non-participating Nursing Facility providers must comply with Rules 1200-13-01-.03, 1200-13-01-.06, and 1200-13-01-.09.

2. Non-participating providers must sign a modified contract (called a case agreement) with the MCO to continue receiving reimbursement for existing residents, including residents who may become Medicaid eligible.

3. Non-participating Nursing Facility providers will be reimbursed 80% of the lowest rate paid to any participating Nursing Facility provider in Tennessee for the applicable level of NF services except that for the first 30 days following CHOICES implementation in the Grand Division, reimbursement shall be made at the nursing facility's rate as established by the Office of the Comptroller.

(f) Bed holds. See Rule 1200-13-01-.03(9).

(g) Other reimbursement issues. See Rule 1200-13-01-.03(10).

(10) HCBS Providers in the CHOICES Program.

- (a) HCBS providers delivering care under the CHOICES program must meet specified license requirements and shall meet conditions for reimbursement outlined in their provider agreements with the TennCare Managed Care Organizations.
- (b) During the continuity of care period, both participating and non-participating HCBS providers will be reimbursed by the member's MCO in accordance with the contract rates for providers of similar services.
- (c) After the Continuity of Care period has ended, non-participating HCBS providers will be reimbursed by the patient's Managed Care Organization at 80% of the lowest rate paid to any HCBS provider in the state for that service.

(11) Appeals.

- (a) Appeals related to determinations of eligibility for TennCare Medicaid or TennCare Standard are processed by the Department of Human Services, in accordance with Chapters 1200-13-13 and 1200-13-14.
- (b) Appeals related to the denial, reduction, suspension, or termination of a covered service are processed by the Bureau of TennCare in accordance with Rules 1200-13-13-.11 and 1200-13-14-.11.
- (c) Appeals related to the PreAdmission Evaluation process (including decisions pertaining to the PASRR process) are handled by the Division of Long-Term Care in the Bureau of TennCare in accordance with Rule 1200-13-01-.10(6).
- (d) Appeals related to the enrollment or disenrollment of an individual in TennCare CHOICES, or to denial or involuntary withdrawal from participation in Consumer Direction are processed by the Division of Long-Term Care in the Bureau of TennCare, in accordance with the following procedures:
  - 1. If enrollment into TennCare CHOICES is denied or if participation in Consumer Direction is denied, notice shall be provided which provides explanation of the reason for such denial. The notice shall include the person's right to request a fair hearing within 30 days from receipt of the written notice regarding valid factual disputes pertaining to the enrollment denial decision.
  - 2. If a person is involuntarily disenrolled from CHOICES, or if participation in Consumer Direction is involuntarily withdrawn, advance notice of involuntary withdrawal shall be issued. The notice shall include notice of the persons' right to request a fair hearing within 30 days from receipt of the written notice regarding valid factual disputes pertaining to the decision.
  - 3. Appeals regarding denial of enrollment into CHOICES, involuntary disenrollment from CHOICES, or denial or involuntary withdrawal from participation in Consumer Direction must be filed in writing with the TennCare Division of Long-Term Care within 35 days of issuance of the written notice if the appeal is filed with TennCare by fax, and within 40 days of issuance of the written notice if the appeal is mailed to TennCare. This allows 5 days mail time for receipt of the written notice and when applicable, 5 days mail time for receipt of the written appeal.
  - 4. In the case of involuntary disenrollment from CHOICES only, if the appeal is received prior to the date of action, continuation of CHOICES benefits shall be provided, pending resolution of the disenrollment appeal.
  - 5. In the case of involuntary withdrawal from participation in Consumer Direction, if the appeal is received prior to the date of action, continuation of participation in Consumer Direction shall be provided, unless such continuation would pose a serious risk to the member's health, safety and welfare, in which case, services specified in the plan of care shall be made available through agency providers pending resolution of the appeal.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

Rule 1200-13-01-.06 Provider Reimbursement is deleted in its entirety and replaced with a new rule 1200-13-01-.06 Special Federal Requirements Pertaining to Nursing Facilities which shall read as follows:

(1) Anti-discrimination.

No Medicaid reimbursed resident of a Nursing Facility shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination by any such facility.

- (a) A Nursing Facility may not directly or through contractual or other arrangements, on ground of race, color, or national origin:
  - 1. Deny a Medicaid reimbursed resident any service or benefit provided under the program.
  - 2. Provide any service or benefit to a Medicaid reimbursed resident which is different, or is provided in a different manner, from that provided to others under the program.
  - 3. Subject a Medicaid reimbursed recipient to segregation or separate treatment in any matter related to the receipt of any service or benefit under the program.
  - 4. Restrict a Medicaid reimbursed resident in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program.
  - 5. Treat a Medicaid reimbursed resident differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which the resident must meet in order to be provided any service or benefit provided under the program.
- (b) A Nursing Facility, in determining the types of services, or benefits which will be provided under any such program, or the Medicaid reimbursed resident to whom, or the situations in which, such services or benefits will be provided under the program, or the Medicaid reimbursed resident to be afforded an opportunity to participate in the program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting those residents to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishments of the objective of the program with respect to those residents of a particular race, color, or national origin.
- (c) As used in this rule, the services or benefits provided by a Nursing Facility shall be deemed to include any service, or benefit provided in or through a facility participating in this program.
- (d) The enumeration of specific forms of prohibited discrimination in this rule does not limit the generality of the prohibition in this rule.
- (e) When a Nursing Facility has previously discriminated against persons on the ground of race, color, or national origin, the facility must take affirmative action to overcome the effects of prior discrimination.
- (f) Even in the absence of such prior discrimination, a facility may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(2) Admissions, transfers, and discharges from Nursing Facilities.

- (a) All Nursing Facilities shall establish written policies and procedures addressing admission, transfer and discharge, consistent with these rules. These policies and procedures shall be available for inspection by the state.
- (b) A Nursing Facility that has entered into a provider agreement with the Bureau of TennCare or a Managed Care Organization shall admit individuals on a first come, first served basis, except as otherwise permitted by state and federal laws and regulations.
- (c) Nursing Facilities participating in the Medicaid Program shall not as a condition of admission to or continued stay at the facility request or require:

1. Transfer or discharge of a Medicaid-eligible resident because Medicaid has been or becomes the resident's source of payment for long-term care.
  2. Payment of an amount from a Medicaid-eligible resident in excess of the amount of patient liability determined by the Tennessee Department of Human Services.
  3. Payment in excess of the amount of patient liability determined by the Tennessee Department of Human Services from any resident who is financially eligible for medical assistance but who has not submitted a PAE for consideration or whose appeal rights for a denied PAE have not been exhausted.
  4. Any person to forego his or her right to Title XIX Medical Assistance benefits for any period of time.
  5. A third party (i.e. responsible party) signature, except as required of a court appointed legal guardian or conservator, or require payment of any kind by a third party on behalf of a Medicaid Eligible individual.
- (d) Nursing Facilities participating in the Medicaid Program must comply with the following guidelines regarding transfers, discharges and/or readmissions.
1. Transfer and Discharge Rights.
    - (i) A Nursing Facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless:
      - (I) The transfer or discharge is necessary to meet the resident's welfare which cannot be met in the facility;
      - (II) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
      - (III) The safety of individuals in the facility is endangered;
      - (IV) The health of individuals in the facility would otherwise be endangered;
      - (V) The resident has failed, after reasonable and appropriate notice, to pay (or to have paid under Title XIX or Title XVIII on the resident's behalf) for a stay at the facility; or
      - (VI) The facility ceases to operate.
    - (ii) In each of the cases described above, no patient shall be discharged or transferred without a written order from the attending physician or through other legal processes and timely notification of next of kin and/or sponsor or authorized representative, if any. Each Nursing Facility shall establish a policy for handling patients who wish to leave the facility against medical advice. The basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in items (I) and (II) above, the documentation must be made by the resident's physician, and in the case described in item (IV) above, the documentation must be made by a physician. For purposes of item (V), in the case of a resident who becomes eligible for assistance under Title XIX after admission to the facility, only charges which may be imposed under Title XIX shall be considered to be allowable.
    - (iii) When a patient is transferred, a summary of treatment given at the facility, condition of patient at time of transfer and date and place to which transferred shall be entered in the record. If transfer is due to an emergency; this information will be recorded within forty-eight (48) hours; otherwise, it will precede the transfer of the patient.

- (iv) When a patient is transferred, a copy of the clinical summary should, with consent of the patient, be sent to the Nursing Facility that will continue the care of the patient.
  - (v) Where an involuntary transfer is proposed, in addition to any other relevant factors, the following factors shall be taken into account:
    - (I) The traumatic effect on the patient.
    - (II) The proximity of the proposed Nursing Facility to the present facility and to the family and friends of the patient.
    - (III) The availability of necessary medical and social services at the proposed Nursing Facility.
    - (IV) Compliance by the proposed Nursing Facility with all applicable Federal and State regulations.
2. Pre-Transfer and Pre-Discharge Notice - Before effecting a transfer or discharge of a resident, a Nursing Facility must:
- (i) Notify the resident (and, if known, a family member of the resident or legal representative) of the transfer or discharge and the reasons therefore.
  - (ii) Record the reasons in the resident's clinical record (including any documentation required pursuant to part 1. above) and include in the notice the items described in part 4. below.
  - (iii) Notify the Department of Health and the long-term care ombudsman.
  - (iv) Not transfer or discharge a resident until the above agencies have designated their intention to intervene and until any appeal process is complete, should the resident request a fair hearing.
3. Timing of Notice - The notice under part 2. above must be made at least thirty (30) days in advance of the resident's transfer or discharge except:
- (i) In a case described in Rules 1200-13-01-.06(2)(d)1.(i)(III) and 1200-13-01-.06(2)(d)1.(i)(IV).
  - (ii) In a case described in Rule 1200-13-01-.06(2)(d)1.(i)(II) where the resident's health improves sufficiently to allow a more immediate transfer or discharge.
  - (iii) In a case described in Rule 1200-13-01-.06(2)(d)1.(i)(I) where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs.
  - (iv) In a case where a resident has not resided in the facility for thirty (30) days.
- In the case of such exceptions, notice must be given as many days before the date of transfer or discharge as is practicable.
4. Items included in notice - Each pre-transfer and pre-discharge notice under part 2. above must include:
- (i) Notice of the resident's right to appeal the transfer or discharge.
  - (ii) The name, mailing address, and telephone number of the long-term care ombudsman.
  - (iii) In the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals.

- (iv) In the case of mentally ill residents, the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.
  - 5. Orientation - A Nursing Facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer discharge from the facility.
  - 6. Notice of Bed-Hold Policy and Readmission - Before a resident of a Nursing Facility is transferred for hospitalization or therapeutic leave, a Nursing Facility must provide written information to the resident and a family member or legal representative concerning:
    - (i) The provisions of the State plan under this Title XIX regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and
    - (ii) The policies of the facility consistent with part 7. below, regarding such a period.
  - 7. Notice Upon Transfer - At the time of transfer of a resident to a hospital or for therapeutic leave, a Nursing Facility must provide written notice to the resident and a family member or legal representative of the duration of any period under the State plan allowed for the resumption of residence in the facility.
- (e) NFs participating in the Medicaid Program must establish and follow a written policy under which an enrollee, whose hospitalization or therapeutic leave exceeds the bed hold period, is readmitted to the NF immediately upon the first availability of a bed in a semi-private room if the enrollee:
- 1. Requires the services provided by the NF; and
  - 2. Is eligible for the level of NF care services.
- (3) Single wait list.
- (a) Each Nursing Facility participating in the TennCare must develop and consistently implement policies and procedures regarding its admissions, including the development and maintenance of a single wait list of persons requesting admission to those facilities. This list must at a minimum contain the following information pertaining to each request for admission:
- 1. The name of the applicant.
  - 2. The name of the contact person or designated representative other than the applicant (if any).
  - 3. The address of the applicant and the contact person or designated representative (if any).
  - 4. The telephone number of the applicant and the contact person or designated representative (if any).
  - 5. The name of the person or agency referring the applicant to the Nursing Facility.
  - 6. The sex and race of the applicant.
  - 7. The date and time of the request for admission.
  - 8. Reason(s) for refusal/non-acceptance/other-action-taken pertaining to the request for admission.
  - 9. The name and title of the Nursing Facility staff person taking the application for admission.
  - 10. A notation stating whether the applicant is anticipated to be Medicaid eligible at time of admission or within one year of admission.

- (b) The wait list should be updated and revised at least once each quarter to remove the names of previous applicants who are no longer interested in admission to the Nursing Facility. Following three (3) contacts each separated by a period of at least ten (10) days, the Nursing Facility shall, consistent with the written notice required in this section move an applicant to the end of the single admission list whenever an available bed is not accepted at the time of the vacancy, but the applicant wishes to remain on the admissions list. Applicants shall be advised of these policies at the time of their inquiry, and must be notified in writing, in a format approved by the Department of Health, when their name is removed from the list or moved to the end of the list. Such contacts shall be documented in the facility log containing the wait list. The date, time and method of each contact shall be recorded along with the name of the facility staff person making the contact, and the identity of the applicant or contact person contacted. The log of such contacts shall also summarize the communication between the facility staff person and the applicant or contact person.
- (c) Each facility shall send written confirmation that an applicant's name has been entered on the wait list, their position on the wait list, and a notification of their right of access to the wait list as provided in subparagraph (h) of this rule. This confirmation shall include at a minimum the date and time of entry on the wait list and shall be mailed by first class postage to the applicant and their designated representative (if any) identified pursuant to the requirements in subparagraph (a) of this rule.
- (d) Each Nursing Facility participating in TennCare shall admit applicants in the chronological order in which the referral or request for admission was received by the facility, except as permitted in subparagraph (e) of this rule.
- (e) Documentation justifying deviation from the order of the wait list must be maintained for inspection by the State. Inspection shall include the right to review and/or make copies of these records. Deviation may be based upon:
1. Medical need, including, but not necessarily limited to, the expedited admission of patients being discharged from hospitals and patients who previously resided in a Nursing Facility at a different level of care, but who, in both cases, continue to require institutional medical services;
  2. The applicant's sex, if the available bed is in a room or a part of the facility that exclusively serves residents of the opposite sex;
  3. Necessity to implement the provisions of a plan of affirmative action to admit racial minorities, if the plan has previously been approved by the Department of Health;
  4. Emergency placements requested by the Department when evacuating another health care facility or by the Adult Protective Service of the Tennessee Department of Human Services;
  5. Other reasons or policies, e.g., previous participation in a community based waiver or other alternative care program, when approved by the Medical Director of the Department of Health's Bureau of Health Licensure and Regulation, provided, however, that no such approval shall be granted if to do so would in any way impair the Department's or the facility's ability to comply with its obligations under federal and state civil rights laws, regulations or conditions of licensure or participation.
  6. If a Medicaid-eligible recipient's hospitalization or therapeutic leave exceeds the period paid for under the Tennessee Medicaid program for the holding of a bed in the facility for the resident and if the resident continues to require the services provided by the Nursing Facility, then the resident must be readmitted to the facility immediately upon the first availability of a bed in the facility, consistent with part 2. above;
  7. Where, with the participation and approval of the Department of Health, expedited admission is approved for residents who are being displaced from another facility or its waiting list as a result of that facility's withdrawal from the Medicaid program.
- (f) Telephone requests to be placed on the wait list shall be accepted. The information required in subparagraph (a) of this rule shall be documented.

- (g) If an applicant, whether on his or her own behalf or acting through another, requests admission or to be placed on a list of applicants awaiting admission, the information on the waiting list must be recorded and preserved.
- (h) Applicants (or their representative), ombudsmen and appropriate state and federal personnel shall have access to the wait list when requested. Such access shall include the right to review and/or copy the wait list, and to be informed by telephone of their position on the wait list.
- (i) Any referrals received from the Tennessee Department of Human Services shall be handled in the following manner.
  - 1. Applicants shall be placed on a wait list without formal application until such facility is within sixty (60) days of admission to the facility based on experience.
  - 2. When the applicant is within sixty (60) days of admission to the facility as estimated by the facility based on its experience, the facility shall notify the applicant and the Department of Human Services in writing so that a formal application can be made prior to consideration for admittance.
  - 3. If, after sixty (60) days from the date notification is issued, the facility has not received a completed application then the facility may remove the applicant's name from the wait list.

(4) Physician visits.

- (a) Nursing Facilities are responsible for assuring that physician visits are made according to the schedule set out at 42 C.F.R. § 483.40.

To meet the requirement for a physician visit, the physician must, at the time of the visit,

- 1. See the patient; and
- 2. Review the patient's total program of care, including treatments; and
- 3. Verify that the patient continues to need the designated level of nursing facility care and document it in the progress notes or orders; and
- 4. Write, sign, and date progress notes; and
- 5. Sign all orders.

At the option of the physician, required visits after the initial visit may alternate between visits by a physician and visits by a physician assistant or nurse practitioner working under the physician's delegation.

A physician visit will be considered to be timely if it occurs not later than 10 days after the date of the required visit. Failure of the visit to be made timely will result in non-payment of claims, or a recoupment of all amounts paid by TennCare or the MCO during the time that the physician visit has lapsed.

- (b) Nursing Facilities are responsible for assuring that the physician verify at the time of each physician's visit the Medicaid recipient's continued need for Nursing Facility level of care and whether or not he is being served at the appropriate level of care.
  - 1. Failure to obtain the verification at the time of the scheduled physician visit may result in a recoupment of all amounts paid by TennCare or the MCO during the time that the verification/physician visit has lapsed.
  - 2. If such a recoupment is made, the participating facility shall not:
    - (i) Attempt to recoup from the resident; or

- (ii) Discharge the resident based on the recoupment.
3. In cases where the physician refused to make the required verification because the physician believes that the level of care is no longer appropriate, a new resident assessment must be completed by the Nursing Facility.
- (5) Termination of Nursing Facility provider agreements.
- (a) Facilities requesting voluntary termination of provider agreements shall comply with the following:
    1. Facilities which choose to voluntarily terminate their provider agreements may do so by notifying TennCare or the MCO in writing of such intent. The effective date of the termination will be determined by TennCare consistent with the terms of the TennCare Provider Agreement then in force between TennCare or the MCO and the facility.
    2. The facility will not be entitled to payment for any additional or newly admitted TennCare eligible residents from the date of the facility's notice of withdrawal from the TennCare program. The facility may, however, at its election, continue to receive TennCare payment for those individuals who resided in the facility, on the date of such notice, so long as they continue to reside in and receive services from the facility and provided that such individuals are TennCare-eligible during the period for which reimbursement is sought. The facility's right to continue to receive TennCare payments for such individuals following the date of its notice of intent to withdraw from the TennCare program is contingent upon:
      - (i) The facility's compliance with all requirements for TennCare participation; and
      - (ii) Its agreement to continue to serve, and accept TennCare payment for, on a non-discriminatory basis, all individuals residing in the facility on the date of notification of withdrawal, who are or become TennCare eligible.
    3. The notification must provide the following information:
      - (i) The reason(s) for voluntary termination;
      - (ii) The names and TennCare identification number of all TennCare-eligible residents;
      - (iii) Name of the resident and name of the contact person for the resident (if any) for residents with an application for TennCare eligibility pending;
      - (iv) A copy of the letter the facility will send to each resident informing them of the voluntary termination, and a copy of the letter to be sent to all TennCare-eligible residents regarding this action;
      - (v) A copy of the letter sent to all applicants on the wait list informing them of the facility's voluntary termination; and
      - (vi) Whether or not the facility intends to continue to provide services to non-TennCare residents who were residents of the facility on the date withdrawal was approved, in the event they convert to TennCare eligibility; and a copy of the notice to residents explaining that decision; and,
      - (vii) Other information determined by TennCare or the MCOs as necessary to process the request for termination.
    4. The termination of the provider's involvement in TennCare must be done in such a manner as to minimize the harm to current residents.
      - (i) Residents who are currently TennCare-eligible shall be informed, in a notice to be provided by the facility and approved by TennCare, the facility has elected to withdraw from the TennCare program. If the facility has elected under subpart (ii) of the section to continue to receive TennCare payments for residents of the facility as of the date of

notice of withdrawal from the TennCare program, the notice shall inform the resident of the right to remain in the facility as a TennCare patient as long as they wish to do so and remain otherwise eligible under the rules of the TennCare Program. The notice shall also inform the resident that, if they wish to transfer to another facility, under the supervision of TennCare, the Nursing Facility where they now reside will assist in locating a new placement and providing orientation and preparation for the transfer, in accordance with 42 U.S.C. §1396r(c)(2)(B) and implementing regulations and guidelines, if any.

- (ii) All other residents of the facility shall receive a separate notice informing them of the facility's intention to withdraw from the TennCare program. The notice will be provided by the facility after having been first reviewed and approved by TennCare. The notice shall inform such residents that, should they become eligible for TennCare coverage, they will be able to convert to TennCare from their current source of payment and remain in the facility only during a period that ends with the termination of the facility's provider agreement, a date to be determined in accordance with the terms of the provider agreement. They will not be eligible for TennCare coverage of their care in the facility thereafter. Transfer of these residents shall be considered an involuntary transfer and shall comply with federal and state regulations governing involuntary transfer or discharges.

The same notice will caution these residents that, if they require care as TennCare patients after the facility's provider agreement is terminated, they will have to transfer to another facility. The notice will also inform the residents that, when their present facility is no longer participating in the TennCare program, certain legal rights and protections that apply to all residents (regardless of source of payment) in TennCare facilities will no longer be available to those who remain in the Nursing Facility. Readers of the notice will be informed that, if they wish to transfer, or to have their names placed on wait lists at other facilities, the facility that is withdrawing from the program will assist them by providing preparation and orientation under the supervision of TennCare, as required by 42 U.S.C. § 1396r(c)(2)(B) and implementing regulations and guidelines, if any.

- (iii) Applicants whose names are on the facility's wait list will be notified by the facility on a form that has been reviewed and approved by TennCare that the facility intends to withdraw from the TennCare program. They will be cautioned that they will not be able to obtain TennCare coverage for any care that they receive in the facility. The notice shall also inform them that certain legal rights and protections that apply to all residents (regardless of source of payment) in TennCare participating facilities will not be available in the Nursing Facility to which they have applied, once that facility has withdrawn from the TennCare program.

Applicants will be informed in the notice that, if they wish to make application at other facilities, the withdrawing facility, under the supervision of TennCare, shall assist them in seeking placement elsewhere.

5. Following submission of a notice of withdrawal from the TennCare program a facility cannot opt to receive continued TennCare payments for any resident unless it agrees to accept continual TennCare payment for all individuals who are residents on the date of the notice of withdrawal, and who are or become TennCare-eligible provided, however, that TennCare or the enrollee's MCO will pay the facility for all covered services actually provided to TennCare-eligible residents following notice of the facility's withdrawal and pending the resident's transfer or discharge. In instances where facilities elect to continue to receive such TennCare payments, their provider agreements will remain in effect until the last TennCare-eligible individual, who resided in the facility as of the date of notification of withdrawal, has been discharged or transferred from the facility in accordance with TennCare and state licensure requirements.
6. Facilities which terminate their provider agreement shall not be permitted to participate in TennCare for a period of at least two years from the date the provider agreement is terminated.
7. Unless the facility notifies TennCare within thirty (30) days after giving a notice of termination, the facility may not stop the termination procedure consistent with this order without written approval from TennCare.

- (b) Nursing Facilities may be involuntarily decertified by the Tennessee Department of Health's Division of Health Care Facilities because of their failure to comply with the provisions of these rules. Facilities that are involuntarily decertified shall not be permitted to participate in the Medicaid program for a minimum of five (5) years from the date of the decertification.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

Rule 1200-13-01-.08 Admission to Long-Term Facilities is deleted in its entirety and replaced with a new rule 1200-13-01-.08 Personal Needs Allowance, Patient Liability, Third Party Insurance and Estate Recovery for Persons Receiving Long-Term Care so as amended the new rule 1200-13-01-.08 shall read as follows:

1200-13-01-.08 Personal Needs Allowance, Patient Liability, Third Party Insurance and Estate Recovery for Persons Receiving Long-Term Care.

- (1) Personal Needs Allowance. The personal needs allowance is established for each enrollee receiving long-term care services in accordance with the Tennessee Medicaid State plan, approved 1915(c) waiver applications, and these rules. It is deducted from the enrollee's monthly income in calculating patient liability for long-term care services.
  - (a) The personal needs allowance for each person receiving Medicaid-funded services in a Nursing Facility or an Intermediate Care Facility for persons with Mental Retardation is \$50. Persons with no income have no personal needs allowance. Persons with incomes that are less than \$50 per month (including institutionalized persons receiving SSI payments) may keep the entire amount of their income as their personal needs allowance.
  - (b) The maximum personal needs allowance for persons participating in CHOICES Group 2 is 300% of the SSI Federal Benefit Rate.
  - (c) The maximum personal needs allowance for persons participating in one of the State's Section 1915(c) HCBS waivers is as follows:
    - 1. The Statewide HCBS E/D Waiver: 200% of the SSI Federal Benefit Rate, as defined in Rule 1200-13-01-.02.
    - 2. The Statewide MR Waiver: 200% of the SSI Federal Benefit Rate.
    - 3. The Arlington MR Waiver: 200% of the SSI Federal Benefit Rate.
    - 4. The Self-Determination MR Waiver: 300% of the SSI Federal Benefit Rate.
- (2) Patient Liability.
  - (a) Enrollees receiving long-term care services are required to contribute to the cost of their long-term care if their incomes are at certain levels. They are subject to the post-eligibility treatment of income rules set forth in section 1924 of the Social Security Act (42 U.S.C.A. § 1396r-5), and 42 C.F.R. § 435.725.
  - (b) For persons being served in HCBS waivers, the state must also use institutional eligibility and post-eligibility rules for determining patient liability.
  - (c) For persons in the CHOICES 217-Like Group, the state uses institutional eligibility and post-eligibility rules for determining patient liability in the same manner as specified under 42 C.F.R. §§ 435.217, 435.236, and 435.726 and section 1924 of the Social Security Act (42 U.S.C.A. § 1396r-5), if the HCBS were provided under a section 1915(c) waiver.
  - (d) For persons in CHOICES Group 2 receiving the Short-term Nursing Facility care benefit (for up to 90 days) or persons enrolled in one of the State's Section 1915(c) waiver programs that is temporarily placed in a medical institution, i.e., a hospital, nursing facility or ICF/MR (for up to 120 days if admitted prior to 3/1/2010, or up to 90 days if admitted on or after 3/1/2010), the post-eligibility calculation shall be performed as if the individual is continuing to receive HCBS. The purpose is to

ensure that the individual can maintain a community residence for transition back to the community. After 90 or 120 days, as applicable, or as soon as it appears that the inpatient stay will not be a short-term stay, whichever comes first, a CHOICES Group 2 member will be transitioned to CHOICES Group 1, or a waiver participant must be disenrolled from the waiver, and the institutional post-eligibility calculation shall apply.

(e) Patient liability shall be collected as follows:

1. If the enrollee resides in a Nursing Facility, ICF/MR, or Community Based Residential Alternative facility (i.e., an Assisted Care Living Facility or Critical Adult Care Home), the enrollee must pay his or her patient liability to the residential facility. The facility shall reduce the amount billed to TennCare or the MCO, as applicable, by the amount of the enrollee's patient liability obligation, regardless of whether such amount is actually collected by the facility.
2. If a CHOICES Group 2 enrollee does not reside in a Community Based Residential Alternative facility, i.e., the enrollee is receiving HCBS (including Companion Care) in his or her own home, the enrollee must pay his or her patient liability to the MCO. The amount of patient liability collected will be used to offset the cost of CHOICES Group 2 benefits or cost-effective alternative services provided as an alternative to covered CHOICES Group 2 benefits that were reimbursed by the MCO for that month. The amount of patient liability collected by the MCO cannot exceed the cost of CHOICES Group 2 benefits (or cost-effective alternative services provided as an alternative to CHOICES Group 2 benefits) reimbursed by the MCO for that month.

(f) A CHOICES provider, including an MCO, may decline to continue to provide long-term services to a CHOICES member who fails to pay his or her patient liability. If other contracted providers or the other TennCare MCO operating in the Grand Division are unwilling to provide long-term care services to a CHOICES member who has failed to pay his or her patient liability, the individual may be disenrolled from the CHOICES program in accordance with the procedures set out in these rules.

(3) Third Party Liability for Long-term Care.

- (a) Long-term Care insurance policies are considered Third Party Liability and are treated like all other Third Party Liability policies, as described in Rule 1200-13-01-.04.
- (b) Applicants for the CHOICES program who have Long-Term Care insurance policies must report these policies to DHS upon enrollment in the CHOICES program. Applicants may be subject to criminal prosecution for knowingly providing incorrect information.
- (c) Obligations of CHOICES enrollees receiving Nursing Facility or Community Based Residential Alternative services (other than Companion Care) having insurance that will pay for care in a Nursing Facility or other residential facility (including cash benefits to the enrollee for the cost of such services):
  1. If the benefits are assignable, the enrollee must assign them to the Nursing Facility or residential facility. These benefits will be used to reduce the amounts that the MCO would otherwise be required to pay the Nursing Facility or the residential facility for long-term care services.
  2. If the benefits are not assignable, the enrollee must provide payment to the Nursing Facility or the residential facility immediately upon receipt of the benefits. These benefits will be used to reduce the amounts that the MCO would otherwise be required to pay the Nursing Facility or the residential facility for long-term care services.
- (d) Obligations of CHOICES enrollees receiving non-residential HCBS or Companion Care services having insurance that will pay for HCBS (including cash benefits to the enrollee for the cost of such services):
  1. If the benefits are assignable, the enrollee must assign them to the MCO. These benefits will be used to reduce the amounts that the MCO would otherwise be required to pay for HCBS for the enrollee.

2. If the benefits are not assignable, the enrollee must make payment to the MCO immediately upon receipt of the benefits. These benefits will be used to reduce the amounts that the MCO would otherwise be required to pay for HCBS for the enrollee.
  - (e) Third party liability payments do not reduce the amount of patient liability an enrollee is obligated to contribute toward the cost of long-term care services.
  - (f) If benefits received by the policyholder are not paid to the facility or MCO, as applicable, such benefits shall be considered income, and may render the person ineligible for Medicaid (including Long-Term Care) benefits.
- (4) Estate Recovery. Persons enrolled in TennCare Long-Term Care programs are subject to the requirements of the Federal Estate Recovery Program (FERP) as set forth under Section 1917(b) of the Social Security Act, 42 U.S.C.A. § 1396p(b).
- (a) The State is required to seek adjustment or recovery for certain types of medical assistance from the estates of individuals as follows:
    1. For persons age 55 and older, the state is obligated to seek adjustment or recovery for nursing facility (including ICF/MR) services, HCBS, and related hospital and prescription drug services.
    2. For permanently institutionalized persons under age 55, the state is obligated to seek adjustment or recovery for the institutional services.
  - (b) Estate recovery shall apply to the estates of individuals under age fifty-five (55) who are inpatients in a nursing facility, intermediate care facility for the mentally retarded or other medical institution and who cannot reasonably be expected to be discharged home.
  - (c) A determination that an individual cannot reasonably be expected to be discharged to return home shall be made in accordance with the following.
    1. The PreAdmission Evaluation for level of care which is certified by the physician shall specify whether discharge is expected and the anticipated length of stay in the institution.
    2. The following shall be deemed sufficient evidence that a person cannot reasonably be expected to be discharged to return home and is thus permanently institutionalized:
      - (i) An approved PAE certified by the physician indicating that discharge is not expected; or,
      - (ii) The continued stay of a resident of a medical institution at the end of a temporary stay predicted by his physician at the time of admission to be no longer than six months in duration.
  - (d) Written notice of the determination that the individual residing in a medical institution cannot reasonably be expected to be discharged to return home shall be issued to the individual or his designated correspondent. The notice shall explain the right to request a reconsideration review. Such request must be submitted in writing to the Bureau of TennCare, Long Term Care Division, within 30 days of receipt of the written notice. The reconsideration review shall be conducted as a Commissioner's Administrative Hearing in the manner set out in Rule 1200-13-01-.10(6)(f).

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

The title of rule 1200-13-01-.10 Criteria for Medicaid Reimbursement of Care in Nursing Facilities is deleted in its entirety and replaced with a new title which shall read as follows:

1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities.

Paragraph (1) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is deleted in its entirety and replaced with a new paragraph (1) which shall read as follows:

(1) Definitions. See Rule 1200-13-01-.02.

Subparagraph (a) of paragraph (2) retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is deleted in its entirety and replaced with a new subparagraph (a) which shall read as follows:

(a) A PreAdmission Evaluation is required in the following circumstances:

1. When a Medicaid Eligible is admitted to a Nursing Facility for receipt of Medicaid-reimbursed nursing facility services.
2. When a private-paying resident of a Nursing Facility attains Medicaid Eligible status.
3. When Medicare reimbursement for Skilled Nursing Facility services has ended and Medicaid reimbursement for skilled nursing facility services is requested.
4. When a Nursing Facility Eligible is changed from Medicaid Level 1 to Medicaid Level 2, or from Medicaid Level 1 or Level 2 reimbursement to a Chronic Ventilator or Tracheal Suctioning Enhanced Respiratory Care rate, except as specified in rule 1200-13-01-.10(5)(f).
5. When a Nursing Facility Eligible is changed from Medicaid Level 2 or an Enhanced Respiratory Care rate to Medicaid Level 1, unless the individual has an approved unexpired Level 1 PreAdmission Evaluation.
6. When a Nursing Facility Eligible is changed from an Enhanced Respiratory Care rate to Medicaid Level 2, unless the individual has an approved unexpired Level 2 PreAdmission Evaluation.
7. When a Nursing Facility Eligible requires continuation of the same level of care beyond the expiration date assigned by TennCare.
8. When a Nursing Facility Eligible no longer requires the specific skilled nursing or rehabilitative services for which a Level 2 PreAdmission Evaluation was approved but requires other Level 2 care in a Nursing Facility.

The introductory paragraph of subparagraph (b) of paragraph (2) retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is deleted in its entirety and replaced with a new introductory paragraph to subparagraph (b) so as amended the introductory paragraph of subparagraph (b) shall read as follows:

(b) Transfer Forms are not required in Grand Divisions of the state where CHOICES has been implemented. A Transfer Form is required under the fee-for-service program (prior to implementation of the CHOICES Program in the Grand Division) in the following circumstances:

Subparagraph (b) of paragraph (2) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by adding a new part 3. which shall read as follows

3. When a Medicaid Eligible having an approved unexpired PreAdmission Evaluation transfers from Medicaid Level 1 in a Nursing Facility to the Statewide Elderly and Disabled Waiver or from the Statewide Elderly and Disabled Waiver to Medicaid Level 1 in a Nursing Facility. This requirement shall be in effect only in those Grand Divisions where the CHOICES Program has not been implemented.

Subparagraph (c) of paragraph (2) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by adding a new part 7. which shall read as follows:

7. For authorization by an MCO of Ventilator Weaning services or short-term payment at the Tracheal Suctioning Enhanced Respiratory Care rate for a person who has just been weaned from the ventilator, but who still requires short-term intensive respiratory intervention. Medical necessity determinations and authorization of Ventilator Weaning services and short-term payment at the Tracheal Suctioning Enhanced Respiratory Care rate during the post-weaning period will be managed by the enrollee's MCO.

Subparagraph (d) of paragraph (2) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by replacing the words "the Department" with the word "TennCare" so as amended subparagraph (d) shall read as follows:

- (d) If a Nursing Facility admits or allows continued stay of a Medicaid Eligible without an approved PreAdmission Evaluation, it does so at its own risk and in such event the Nursing Facility shall give the individual a plain language written notice, in a format approved by TennCare, that Medicaid reimbursement will not be paid unless the PreAdmission Evaluation is approved and if it is not finally approved the individual can be held financially liable for services provided.

Subparagraph (f) of paragraph (2) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by deleting the sentence "The history and physical or medical records must be signed by a physician who is licensed as a doctor of medicine or doctor of osteopathy, or by a licensed nurse practitioner or physician's assistant." so as amended subparagraph (f) shall read as follows:

- (f) A PreAdmission Evaluation must include a recent history and physical or current medical records which support the applicant's functional and/or skilled nursing or rehabilitative needs, as reflected in the PAE. A signed history and physical performed within 365 calendar days of the PAE Request Date may be used if the patient's condition has not significantly changed. Additional medical records (progress notes, office records, discharge summaries, etc.) may be used to supplement a history and physical and provide current medical information if changes have occurred since the history and physical was performed.

Subparagraph (g) of paragraph (2) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by replacing the words "the Department" with the word "TennCare" so as amended subparagraph (g) shall read as follows:

- (g) A PreAdmission Evaluation may be approved by TennCare for a fixed period of time with an expiration date based on an assessment by TennCare of the individual's medical condition and anticipated continuing need for inpatient nursing care. Notice of appeal rights shall be provided when a PreAdmission Evaluation is approved with an expiration date.

Part 2. of subparagraph (i) of paragraph (2) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is deleted in its entirety and replaced with a new part 2. which shall read as follows:

2. For persons with a positive Level I PASRR screen (as submitted or upon review and determination by TennCare), TennCare has received a certified exemption or advance categorical determination signed by the physician; or a determination by the Department of Mental Health and Developmental Disabilities and/or the Division of Intellectual Disabilities Services, as applicable, that the person is appropriate for nursing facility placement. Determination by TennCare that a Level II PASRR evaluation must be performed may be made:
  - (i) upon receipt of a positive PASRR screen from the nursing facility or other submitting entity;
  - (ii) based on TennCare review of a negative PASRR screening form or history and physical submitted by a nursing facility or other entity; or
  - (iii) upon review of any contradictory information submitted in the PAE application or supporting documentation at any time prior to disposition of the PAE.

The introductory phrase of subparagraph (j) of paragraph (2) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by replacing the words "the Department" with the words "TennCare or an MCO" so as amended the introductory phrase of subparagraph (j) shall read as follows:

- (j) A Nursing Facility that has entered into a provider agreement with TennCare or an MCO shall assist a resident or applicant as follows:

Subparagraph (k) of paragraph (2) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by replacing the word "financial" with the word "Medicaid" and inserting the phrase "for Nursing Facility care" between the words "reimbursement" and "shall" so as amended subparagraph (k) shall read as follows:

- (k) The Bureau of TennCare shall process PreAdmission Evaluations independently of determinations of Medicaid eligibility by the Tennessee Department of Human Services; however, Medicaid reimbursement for Nursing Facility care shall not be available until the PASRR process has been completed, and both the PreAdmission Evaluation and financial eligibility for Medicaid vendor payment have been approved.

The introductory phrase of subparagraph (a) of paragraph (3) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by adding the phrase "or an enrollee's MCO" after the word "TennCare" so as amended the introductory phrase of subparagraph (a) shall read as follows:

- (a) A Nursing Facility that has entered into a provider agreement with the Bureau of TennCare or an enrollee's MCO is entitled to receive Medicaid reimbursement for covered services provided to a Nursing Facility Eligible if

Part 2. of subparagraph (a) of paragraph (3) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by replacing the words "The Department" with the word "TennCare" so as amended part 2. shall read as follows:

- 2. TennCare has received an approvable PreAdmission Evaluation for the individual within ten (10) calendar days of the PAE Request Date or the physician certification date, whichever is earlier. The PAE Approval Date shall not be more than ten (10) days prior to date of submission of an approvable PAE. An approvable PAE is one in which any deficiencies in the submitted application are cured prior to disposition of the PAE.

Part 3. of subparagraph (a) of paragraph (3) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is deleted in its entirety and replaced by a new part 3. which shall read as follows:

- 3. Prior to implementation of the CHOICES Program, for the same-level transfer to Nursing Facility services (Level 1 to Level 1, Level 2 to Level 2, or HCBS to Level 1) of an individual having an approved unexpired PreAdmission Evaluation, TennCare has received an approvable Transfer Form within ten (10) calendar days after admission into the same level of care at the admitting Nursing Facility (i.e., the Nursing Facility to which the individual is being transferred). For transfer from Level 1 Nursing Facility services to the Statewide Home and Community Based Services Waiver program for the Elderly and Adults with Physical Disabilities, the transfer form must be submitted and approved prior to enrollment in HCBS.

Part 4. of subparagraph (a) of paragraph (3) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by replacing the words "the Department" with the word "TennCare" so as amended part 4. shall read as follows:

- 4. For a retroactive eligibility determination, TennCare has received a Notice of Disposition or Change and has received an approvable request to update an approved, unexpired PreAdmission Evaluation within thirty (30) calendar days of the mailing date of the Notice of Disposition or Change. The effective date of payment for nursing facility services shall not be

earlier than the PAE Approval Date of the original approved, unexpired PAE which has been updated.

Subparagraph (a) of paragraph (3) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by adding a new part 5. shall read as follows:

5. If the Nursing Facility participates in the enrollee's MCO, reimbursement will be made by the MCO to the Nursing Facility as a network provider. If the Nursing Facility does not participate in the enrollee's MCO, reimbursement will be made by the MCO to the NF as a non-participating provider, in accordance with Rule 1200-13-01-.05(9).

Subparagraph (d) of paragraph (3) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by replacing the words "the Department" with the words "TennCare or an MCO" after the words "a provider agreement with" and by replacing the words "the Department" with the words "TennCare or the MCO" after the words "reimbursement from" so as amended subparagraph (d) shall read as follows:

- (d) A Nursing Facility that has entered into a provider agreement with TennCare or an MCO and that admits a Medicaid Eligible without completion of the PASRR process, and without an approved PreAdmission Evaluation or, where applicable, an approved Transfer Form does so without the assurance of reimbursement from TennCare or the MCO.

Subparagraph (f) of paragraph (3) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by replacing the words "the Department" with the word "TennCare or an MCO" so as amended subparagraph (f) shall read as follows:

- (f) A Nursing Facility that has entered into a provider agreement with TennCare or an MCO shall admit individuals on a first come, first served basis, except as otherwise permitted by state and federal laws and regulations.

Subparagraph (b) of paragraph (4) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by deleting the word "financially" so as amended subparagraph (b) shall read as follows:

- (b) The individual must be determined by the Tennessee Department of Human Services to be eligible for Medicaid reimbursement for Nursing Facility Care.

Subparagraph (b) of paragraph (5) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by deleting the word "financially" so as amended subparagraph (b) shall read as follows:

- (b) The individual must be determined by the Tennessee Department of Human Services to be eligible for Medicaid reimbursement for Nursing Facility Care.

Paragraph (5) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by adding new subparagraphs (d), (e) and (f) which shall read as follows:

- (d) In order to be approved for Medicaid-reimbursed Level 2 care in a Nursing Facility at the Chronic Ventilator rate of reimbursement, an individual must be ventilator dependent for at least 12 hours each day with an invasive patient end of the circuit (i.e., tracheostomy cannula).
- (e) In order to be approved by TennCare for Medicaid-reimbursed Level 2 care in a Nursing Facility at the Tracheal Suctioning rate of reimbursement, an individual must have a functioning tracheostomy and require suctioning through the tracheostomy, at a minimum, multiple times per 8-hour shift. The suctioning must be required to remove excess secretions and/or aspirate from the trachea, which cannot be removed by the patient's spontaneous effort. Suctioning of the nasal or oral cavity does not qualify for this higher level of reimbursement. An MCO may authorize, based on medical necessity, short-term payment at the Tracheal Suctioning Enhanced Respiratory Care rate for a person who has just been weaned from the ventilator, but who still requires short-term intensive respiratory intervention during the post-weaning period.

- (f) Determination of medical necessity and authorization for Medicaid reimbursement of Ventilator Weaning services, or short-term payment at the Tracheal Suctioning Enhanced Respiratory Care rate for a person who has just been weaned from the ventilator, but who still requires short-term intensive respiratory intervention shall be managed by the enrollee's MCO.

The introductory phrase of subparagraph (b) of paragraph (6) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by replacing the words "the Department" with the word "TennCare" so as amended the introductory phrase of subparagraph (b) shall read as follows:

- (b) If TennCare denies a PreAdmission Evaluation, the individual will be notified in the following manner:

Part 2. of subparagraph (b) of paragraph (6) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by replacing the words "the Department" with the word "TennCare" so as amended the part 2. shall read as follows:

- 2. If the PreAdmission Evaluation is resubmitted with additional information for review and TennCare continues to deny the PreAdmission Evaluation, another written notice of denial shall be sent as described in (6)(b)1.

Subparagraph (f) of paragraph (6) of retitled rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by replacing the words "the Department" with the word and comma "TennCare," so as amended subparagraph (f) shall read as follows:

- (f) When a PreAdmission Evaluation is approved for a fixed period of time with an expiration date determined by TennCare, the individual shall be provided with a notice of appeal rights, including the opportunity to submit an appeal within thirty (30) calendar days prior to the expiration date. Nothing in this section shall preclude the right of the individual to submit a new PreAdmission Evaluation establishing medical necessity of care when the expiration date has been reached.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

Rule 1200-13-01-.11 Recipient Abuse and Overutilization of Medicaid Program is amended by replacing the words "Department" or "department" with the word "Bureau" wherever the words "Department" or "department" appear.

Subparagraph (h) of paragraph (9) of rule 1200-13-01-.11 Recipient Abuse and Overutilization of Medicaid Program is amended by deleting the phrase "as set out in Rule 1200-13-01-.06(18)(e)" so as amended subparagraph (h) shall read:

- (h) A provider is not at risk of a claim denial for inpatient hospital admission and related medical services if pre-admission approval has been obtained.

Paragraph (11) of rule 1200-13-01-.11 Recipient Abuse and Overutilization of Medicaid Program is amended to correct the formatting so as amended Paragraph (11) shall read as follows:

- (11) Identification Verification of Medicaid Lock-In and Prior Approval Recipients. Medicaid Lock-In and Prior Approval Status Cards:
  - (a) These special cards are pink in color for ready identification and must be signed by the recipient.
  - (b) The date of birth, eligibility period and sex designations on the card shall be utilized to assist in provider verification of card ownership as well as current eligibility status of the Card holder.
  - (c) Each prescription dispensed shall be noted on the Medicaid card by marking through a circled number on the Medicaid card.

- (d) Pink cards indicating restrictions of SPECIAL PRIOR APPROVAL ONLY require that before commencement of services, the Bureau must be contacted at the telephone number specified on the card in accordance with the rules contained in subsection (9) of this section.
- (e) Pink cards indicating restrictions of SPECIAL LOCK IN/PHARMACY/MD limit service to the providers listed in the additional information block and in accordance with the rules contained in subsection (8) of this section.

As amended rule 1200-13-01-.11 shall read as follows:

- (1) Definitions:
  - (a) Abuse: Recipient practices or recipient involvement in practices including overutilization of Medicaid Program service that result in costs to the Medicaid Program which are not medically necessary or medically justified.
  - (b) Commencement of Services: The time at which the first covered service(s) is rendered to a Medicaid recipient for each individual medical condition.
  - (c) Emergency: The sudden and unexpected onset of a medical condition requiring treatment immediately after onset or within 72 hours in order to prevent serious disability or death.
  - (d) Initiating Provider: The provider who renders the first covered service to a Medicaid recipient whose current medical condition requires the services of more than one (1) provider.
  - (e) Lock-in Provider: A provider whom a recipient on lock-in status has chosen and to whom a recipient is assigned by the Bureau for purposes of receiving medical services and referral to other providers.
  - (f) Lock-in Status: The restriction of a recipient to a specified and limited number of health care providers.
  - (g) Overutilization: Recipient initiated use of Medicaid services or items at a frequency or amount that is not medically necessary or medically justified.
  - (h) Prior Approval Status: The restriction of a recipient to a procedure wherein all health care services, except in emergency situations, must be approved by the Bureau prior to the delivery of services.
- (2) When a determination is made by the Bureau that a recipient committed, attempted to commit or aided in the commission of an abuse or overutilization of the Medicaid Program it shall:
  - (a) Restrict the recipient by placing the recipient on lock-in status for an initial period of eighteen (18) months; or
  - (b) Restrict the recipient by placing the recipient on prior approval status for an initial period of eighteen (18) months.
- (3) Activities or practices which may evidence overutilization of the Medicaid Program for which the commission or attempted commission justifies placement on lock-in status of all recipients involved, include but are not limited to:
  - (a) Treatment by several physicians for the same diagnosis.
  - (b) Obtaining the same or similar controlled substances from several physicians.
  - (c) Obtaining controlled substances in excess of the maximum recommended dose.
  - (d) Receiving combinations of drugs which act synergistically or belong to the same class.
  - (e) Frequent treatment for diagnoses which are highly susceptible to abuse.

- (f) Receiving services and/or drugs from numerous providers.
  - (g) Obtaining the same or similar drugs on the same day or at frequent intervals.
  - (h) Frequent use of emergency room in non-emergency situations.
- (4) Activities or practices which may evidence abuse of the Medicaid Program for which the commission or attempted commission justifies placement on prior approval status of all recipients involved, include but are not limited to:
- (a) Trading, swapping or selling of Medicaid cards.
  - (b) Forging or altering drug prescriptions.
  - (c) Selling Medicaid paid prescription drugs.
  - (d) Failing to promptly report loss or theft of a Medicaid card when the recipient knew or should have known the card was lost or stolen.
  - (e) Inability to provide for the security and integrity of assigned Medicaid card.
  - (f) Altering a Medicaid card.
  - (g) Failure to control overutilization activity while on lock-in status.
  - (h) Knowingly providing incomplete, inaccurate or erroneous information during Medicaid financial eligibility determination.
  - (i) Knowingly providing false, incomplete, inaccurate or erroneous information to provider(s) in order to receive covered services for which the recipient is ineligible.
  - (j) The use of a Medicaid card by a recipient other than the recipient to which it is assigned to receive or attempt to receive covered medical services.
- (5) The Bureau shall conduct a review of all recipients placed on lock-in or prior approval status upon the expiration of the initial and any additional restriction period(s) and shall:
- (a) Remove the recipient from lock-in or prior approval status and reinstate the recipient to the normal Medicaid status, or
  - (b) If the recipient's activity indicates continued or attempted abuse of overutilization, regardless of the exact nature of the activity, during the initial and/or additional restriction period(s),
    1. continue the recipient on lock-in or prior approval status for an additional eighteen (18) months; or
    2. change the recipient from lock-in or prior approval status for an additional eighteen (18) months; or
    3. change the recipient from Prior approval to lock-in status for an additional eighteen (18) months.
  - (c) If at any time during which a recipient is on lock-in status, the recipient's activities indicate continued abuse or attempted abuse of the Medicaid Program, the Bureau may review the recipient's status and change the recipient from lock-in status to prior approval status for the remainder of the initial or additional restriction period.
  - (d) The Bureau may reconsider the need to continue a recipient on lock-in or prior approval status upon notification and written verification from a licensed physician that the recipient is suffering from a medical condition including but not limited to:

1. a catastrophic illness such as terminal cancer or renal dialysis; or
  2. a condition which necessitates admission to an inpatient facility for an extended period of time.
- (6) A recipient is entitled to a fair hearing in the following circumstances:
- (a) When the Bureau makes the initial determination to place the recipient on lock-in or prior approval status; and
  - (b) When the Bureau, after any recipient status review, makes a determination to:
    1. continue the recipient on lock-in or prior approval status; or
    2. change the recipient from lock-in to prior approval status; or
    3. change the recipient from prior approval to lock-in status.
  - (c) When the Bureau, pursuant to prior approval procedures, denies a prior approval status recipient's claim to or request for the provision of a covered service.
  - (d) When the action of the Bureau placing a recipient on a restricted status would result or has resulted in the denial of reasonable access to Medicaid services of adequate quality pursuant to subsection (13) of this section.
- (7) Fair Hearing Procedures: The following procedure shall apply when a recipient becomes entitled to a fair hearing pursuant to section (6):
- (a) The Bureau shall notify the recipient in writing by certified mail, return receipt requested, of its determination. The notice shall contain:
    1. the specific and comprehensive reasons for the determination, and
    2. a statement of the Bureau's intended action, and
    3. a statement of the recipient's right to a hearing pursuant to the Uniform Administrative Procedures Act (T.C.A. Section 4-5-101 et seq.).
  - (b) A recipient must request a hearing within fifteen (15) days of receipt of the notice by filing such request in writing with the Bureau. The request for hearings pursuant to subsection 6(c) must be made in writing within fifteen (15) days of the date on which the claim to or request for services is denied.
  - (c) If a recipient fails to request a hearing within the designated time limit the recipient shall forfeit the right to a hearing on the action specified in the notice and the Bureau shall take such action as it specified in the notice.
  - (d) If a recipient requests a hearing within the designated time limit, the Bureau shall schedule a hearing and notify the recipient of the time and place. The recipient's then existing status will not change pending a final determination after the hearing.
  - (e) A hearing requested pursuant to subsection (6)(c) shall be scheduled within ten (10) days of receipt of the request.
- (8) Lock-in Status Procedures: For services rendered to any lock-in status recipient the following shall apply:
- (a) The Bureau shall request the recipient to submit the name(s) of the provider(s) from whom the recipient wishes to receive services.

- (b) If the recipient's condition necessitates the services of more than one (1) physician, other physicians will be allowed to provide needed services and submit a claim to Medicaid; however, the physicians must be of different specialties and Medicaid program participants.
  - (c) The name(s) submitted by the recipient shall become the recipient's lock-in provider(s) unless the Bureau determines that the provider(s) is/are ineligible, unable or unwilling to become the lock-in provider(s) in which case additional provider names will be requested.
  - (d) If the recipient fails to submit the requested provider name(s) within ten (10) days of the receipt of the Bureau's request, the Bureau may assign, as lock-in providers one (1) physician (non-specialist) and one (1) pharmacy from those utilized recently by the recipient, or the recipient will be placed on prior approval status until the requested provider name(s) are received and approved by the Bureau.
  - (e) All referrals from a recipient's lock-in provider to a non-lock-in provider must be reported by telephone or in writing to the Bureau to avoid automatic denial of the referred providers claim.
  - (f) A recipient who is on lock-in status may change providers by giving at least thirty (30) days written notice to the Bureau. Elective changes will only be allowed every six (6) months. Emergency changes (i.e., death of provider, discharge of recipient by provider, etc.) may be accomplished at any time by telephoning the Bureau, but must be followed by a written request within ten (10) days.
  - (g) Upon the change of a lock-in provider pursuant to subsection (8)(f) of this section all referrals to other providers made by the previous lock-in provider shall no longer be valid.
  - (h) All providers are responsible for ascertaining recipient Medicaid status and, except in the case of an emergency or approved referral or admission to a long term care facility, reimbursement for services rendered to a lock-in status recipient by any provider other than the recipient's lock-in provider shall be denied.
- (9) Prior Approval Status Procedures: For services rendered to any prior approval status recipient the following shall apply:
- (a) The provider is responsible for ascertaining the status of any Medicaid recipient.
  - (b) The provider is responsible for securing prior approval by telephone from the Bureau in all cases, except emergencies, by calling the telephone number listed on the recipient's Medicaid care, in accordance with the following:
    1. If the commencement of services is during the normal office hours (8:00 a.m. to 4:30 p.m.) on any state working day, approval must be obtained prior to the commencement of services regardless of the number of services or the length of time services are provided.
    2. If the commencement of services is during any time state offices are closed, approval must be obtained no later than the closing hour of the next state working day following the commencement of services regardless of the number of services or the length of time services are provided.
  - (c) In either of the circumstances listed in subsection (9)(b) of this section, if a recipient's current medical condition requires the services of more than one (1) provider the following shall apply:
    1. If the initiating provider secures prior approval in accordance with the rules, the subsequent provider(s) need not secure prior approval for any medically necessary services rendered.
    2. If the initiating provider fails to secure prior approval in accordance with the rules, all other provider claims arising from that medical condition shall be denied except claims submitted by any subsequent provider who secures prior approval in accordance with the rules.

- (d) The provider may not seek payment from Medicaid or the recipient for any medical services rendered without prior approval or for services rendered beyond the scope of the services contemplated by any prior approval.
  - (e) A long term care provider is not at risk of a claim denial under this rule for covered services rendered to a prior approval status recipient. Compliance with all other long term care rules is mandatory to provider reimbursement.
  - (f) A provider is not at risk of a claim denial for maintenance prescriptions filled during any time at which state offices are closed, however, prior approval procedures pursuant to subsection (9)(b) must still be followed.
  - (g) Services rendered or to be rendered shall be approved or denied based upon:
    - 1. The securing of prior approval;
    - 2. Medical necessity;
    - 3. The recipient's medical history;
    - 4. The recipient's medical records;
    - 5. The medical timeliness of the services; and
    - 6. Review by the Medicaid Medical Director upon request by the recipient, provider or the Bureau prior to initial denial.
  - (h) A provider is not at risk of a claim denial for inpatient hospital admission and related medical services if pre-admission approval has been obtained.
- (10) Emergency Services: Any Medicaid provider may render services to a recipient on lock-in or prior approved status in the event of an emergency, provided however that reimbursement for services provided will be allowed only under the following circumstances:
- (a) The provider notifies the Bureau by telephone no later than the end of the next state working day following the commencement of services;
  - (b) The provider presents sufficient medical evidence concerning the nature of the emergency to justify reimbursement; and
  - (c) Review by the Medicaid Medical Director upon request by the recipient, provider or the Bureau prior to initial denial.
- (11) Identification Verification of Medicaid Lock-In and Prior Approval Recipients. Medicaid Lock-In and Prior Approval Status Cards:
- (a) These special cards are pink in color for ready identification and must be signed by the recipient.
  - (b) The date of birth, eligibility period and sex designations on the card shall be utilized to assist in provider verification of card ownership as well as current eligibility status of the Card holder.
  - (c) Each prescription dispensed shall be noted on the Medicaid card by marking through a circled number on the Medicaid card.
  - (d) Pink cards indicating restrictions of SPECIAL PRIOR APPROVAL ONLY require that before commencement of services, the Bureau must be contacted at the telephone number specified on the card in accordance with the rules contained in subsection (9) of this section.

- (e) Pink cards indicating restrictions of SPECIAL LOCK IN/PHARMACY/MD limit service to the providers listed in the additional information block and in accordance with the rules contained in subsection (8) of this section.
- (12) If reimbursement is denied based on a provider's failure to comply with any rules contained in this section the recipient or the recipient's family shall NOT be held financially responsible for payment for any covered services rendered.
- (13) If the placement of a recipient on lock-in or prior approval status would result or has resulted in the denial of reasonable access - taking into account geographic locations and reasonable travel time - to Medicaid services of adequate quality, the Bureau shall:
  - (a) Prior to the placement on restricted status, take such action as is necessary to assure reasonable access to services of adequate quality; or
  - (b) Reinstate the recipient to the normal Medicaid status until the Bureau can assure reasonable access to services of adequate quality.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

The title of rule 1200-13-01-.15 Criteria for Medicaid Reimbursement of Care in an Intermediate Care Facility for the Mentally Retarded (ICF/MR) is deleted in its entirety and replaced with a new title which shall read as follows:

1200-13-01-.15 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in an Intermediate Care Facility for Persons with Mental Retardation (or Pursuant to Federal Law, Intermediate Care Facility for the Mentally Retarded) (ICF/MR)

Paragraph (1) of retitled rule 1200-13-01-.15 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in an Intermediate Care Facility for Persons with Mental Retardation (or Pursuant to Federal Law, Intermediate Care Facility for the Mentally Retarded) (ICF/MR) is deleted in its entirety and replaced with a new paragraph (1) which shall read as follows:

(1) Definitions. See Rule 1200-13-01-.02.

Subparagraph (e) of paragraph (2) of retitled rule 1200-13-01-.15 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in an Intermediate Care Facility for Persons with Mental Retardation (or Pursuant to Federal Law, Intermediate Care Facility for the Mentally Retarded) (ICF/MR) is deleted in its entirety and replaced with a new subparagraph (e) which shall read as follows:

- (e) An ICF/MR PreAdmission Evaluation must include a psychological evaluation of need for care. Pursuant to 42 C.F.R. § 456.370(b), such evaluation must be performed before admission to the ICF/MR or authorization of payment, but not more than three months before admission.

Part 1. of subparagraph (b) of paragraph (5) of retitled rule 1200-13-01-.15 Medical (Level of Care) Eligibility Criteria for Medicaid Reimbursement of Care in an Intermediate Care Facility for Persons with Mental Retardation (or Pursuant to Federal Law, Intermediate Care Facility for the Mentally Retarded) (ICF/MR) is amended by capitalizing the words "designated correspondent" and replacing the words "mailed or faxed" with the word "sent" so as amended part 1. shall read as follows:

1. A written notice of denial shall be sent to the individual and, where applicable, to the Designated Correspondent. A notice of denial shall also be sent to the ICF/MR. This notice shall advise the individual of the right to appeal the denial decision within thirty (30) calendar days. The notice shall also advise the individual of the right to submit within thirty (30) calendar days either the original ICF/MR PreAdmission Evaluation with additional information for review or a new ICF/MR PreAdmission Evaluation. The notice shall be mailed to the individual's address as it appears upon the ICF/MR PreAdmission Evaluation. If no address appears on the ICF/MR PreAdmission Evaluation and supporting documentation, the notice will be mailed to the ICF/MR for forwarding to the individual.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

The title of rule 1200-13-01-.17 "Statewide Home and Community Based Services Waiver for the Elderly and Disabled" is amended by adding the words "(Statewide E/D Waiver)" so as amended the new title for rule 1200-13-01-.17 shall read as follows:

1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver).

Paragraph (1) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is deleted in its entirety and replaced with a new paragraph (1) which shall read as follows:

(1) See Rule 1200-13-01-.02.

Subparagraph (b) of paragraph (2) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is amended by adding a new part 3. which shall read as follows:

3. Services are limited to one (1) meal per day.

Subparagraph (e) of paragraph (2) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is amended by adding a new part 3. which shall read as follows:

3. Installation is limited to one (1) installation per waiver program year. A waiver program year runs from October 1 through September 30.

Subparagraph (g) of paragraph (2) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is deleted in its entirety and replaced with a new subparagraph (g) which shall read as follows:

(g) Respite Care.

1. Inpatient Respite Care services will be provided on a short-term basis in a Nursing Facility or Assisted Care Living Facility or assisted Care Living Facility, not to exceed nine (9) days per waiver program year (October 1 through September 30).
2. In-Home Respite will be provided on a short-term basis in the patient's residence (excluding Nursing Facilities and Assisted Care Living Facilities) not to exceed 216 hours per waiver program year (October 1 through September 30).

Paragraph (2) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is amended by adding subparagraph (h), (i), (j), (k) and (l) which shall read as follows:

- (h) Adult Day Care. Services will be limited to 2080 hours per waiver program year (October 1 through September 30).
- (i) Assisted Care Living Facility.
- (j) Assistive Technology. Services will be limited to nine (9) units of service or \$900.00 per waiver program year (October 1 through September 30).
- (k) Personal Care Assistance/Attendant. Services will be limited to 1080 hours per waiver program year (October 1 through September 30).
- (l) Pest Control Services will be limited to nine (9) occasions per waiver program year (October 1 through September 30).

Subparagraph (b) of paragraph (5) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is deleted in its entirety and replaced with a new subparagraph (b) which shall read as follows:

- (b) Enrollment in the Waiver shall be voluntary and open to all Waiver Eligibles who reside in Tennessee, but shall be restricted to the maximum number of unduplicated participants specified in the Waiver for the program year, as approved by the Centers for Medicare and Medicaid Services for the State of Tennessee. Enrollment may also be restricted if sufficient funds are not appropriated by the legislature to support full enrollment.

Subparagraph (c) of paragraph (5) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is amended by adding a new part 3. and the current part 3. is renumbered as part 4. and subsequent parts are renumbered accordingly so the new part 3. shall read as follows:

- 3. The State must reasonably expect that the cost of waiver services and TennCare home health and private duty nursing services the individual will need would not exceed the average cost of Level 1 Nursing Facility services.

Subparagraph (b) of paragraph (7) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is amended by deleting part 2. in its entirety and subsequent part 3. is renumbered as 2. so as amended subparagraph (b) shall read as follows:

- (b) A Transfer Form is required in the following circumstances:
  - 1. When an Enrollee having an approved unexpired PreAdmission Evaluation transfers from the Waiver to Level 1 care in a Nursing Facility.
  - 2. When a Waiver Eligible with an approved unexpired PreAdmission Evaluation transfers from a Nursing Facility to the Waiver.

Subparagraph (c) of paragraph (7) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is deleted in its entirety and replaced with a new subparagraph (c) which shall read as follows:

- (c) A Level I PASRR assessment for mental illness and mental retardation is required in the following circumstances:
  - 1. When an Enrollee with an approved, unexpired PreAdmission Evaluation transfers from the Waiver to a Nursing Facility.
  - 2. When an enrollee with an approved, unexpired PreAdmission Evaluation requires a short-term stay in a Nursing Facility.

A Level II PASRR evaluation is required if a history of mental illness or mental retardation is indicated by the Level I PASRR assessment, unless criteria for exception are met.

Subparagraph (a) of paragraph (12) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is amended by adding a new part 6. and the current part 6. is renumbered as part 7. and subsequent parts are renumbered accordingly so the new part 6. shall read as follows:

- 6. The State reasonably expects that the cost of waiver services and TennCare home health and private duty nursing services the individual would receive will exceed the average cost of Level 1 Nursing Facility services.

Part 11. renumbered as part 12. of subparagraph (a) of paragraph (12) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is deleted in its entirety and replaced with a new part 12. which shall read as follows:

- 12. The Enrollee does not receive waiver services for a period exceeding 120 days if such period began prior to March 1, 2010, or a period exceeding 90 days if such period begins on or after

March 1, 2010, due to the need for inpatient services in a hospital, nursing facility, or other institutional setting.

Subparagraph (e) of paragraph (12) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is deleted in its entirety and replaced with a new subparagraph (e) which shall read as follows:

(e) Notice of Disenrollment.

1. Except under circumstances when the Statewide E/D Waiver is terminated, or the enrollee is no longer categorically or financially eligible for Medicaid, or no longer meets medical eligibility (or nursing facility level of care) requirements, the Administrative Lead Agency shall provide an Enrollee written advance notice of involuntary disenrollment with an explanation of the Enrollee's right to a hearing pursuant to T.C.A. §71-5-113.
2. When the Statewide E/D Waiver is terminated in a Grand Division upon implementation of the CHOICES program, notice of transition to the CHOICES program shall be provided in accordance with the State's approved 1115 waiver amendment.
3. If a person is involuntary disenrolled from the Statewide E/D Waiver because his Medicaid eligibility has ended, the Medicaid eligibility termination notice, including the right to request a fair hearing regarding such eligibility decision, shall constitute notice of action for termination of all Medicaid-reimbursed (including waiver) services. Additional notice regarding involuntary disenrollment from the waiver shall not be provided.

Subparagraph (e) of paragraph (15) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is amended by adding the word "level" and number "1" and deleting "1200-13-01-.06(4)" at the end of the rule and replacing it with "1200-13-01-.03" so as amended subparagraph (e) shall read as follows:

- (e) Reimbursement shall not be made to the provider of Waiver Services on behalf of Enrollees for therapeutic leave or fifteen-day hospital leave ("Bed holds") normally available to Level 1 Nursing Facility patients pursuant to rule 1200-13-01-.03.

Paragraph (17) of retitled rule 1200-13-01-.17 Statewide Home and Community Based Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is deleted in its entirety and replaced with a new paragraph (17) which shall read as follows

(17) Appeal Process.

(a) Eligibility for the Statewide E/D Waiver.

1. Appeals regarding categorical and financial eligibility for the Statewide E/D Waiver will be handled by the Department of Human Services.
2. Appeals regarding medical (or level of care) eligibility for the Statewide E/D Waiver will be handled as set forth in rule 1200-13-01-.10(6).

(b) Enrollment and involuntary disenrollment.

Appeals regarding denial of enrollment into the Statewide E/D Waiver or involuntary disenrollment from the Statewide E/D Waiver for reasons other than categorical or financial eligibility or medical eligibility will be handled by the TennCare Division of Long-Term Care.

(c) Adverse actions regarding waiver services.

Appeals regarding adverse actions pertaining to waiver services covered under the Statewide E/D Waiver will be processed in accordance with TennCare rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

Paragraph (1) of rule 1200-13-01-.21 Provider Noncompliance or Fraud of Medicaid Program is amended by adding a new subparagraph (b) and renumbering the current subparagraph (b) as (c) so as amended the new subparagraph (b) shall read as follows:

- (b) Bureau of TennCare (herein referred to as "Bureau"). The division of the Tennessee Department of Finance and Administration (the single state Medicaid agency) that administers the TennCare Program. For the purposes of these rules, the Bureau of TennCare shall represent the State of Tennessee and its representatives.

Paragraph (1) of rule 1200-13-01-.21 Provider Noncompliance or Fraud of Medicaid Program is amended by deleting current subparagraph (c) "Department – means the Tennessee Department of Health and Environment" in its entirety.

Paragraph (5) of rule 1200-13-01-.21 Provider Noncompliance or Fraud of Medicaid Program is amended by replacing the word "Department" with the word "Bureau" so as amended Paragraph (5) shall read as follows:

- (5) Access to Records - The Bureau shall in the furtherance of the administration of the Medicaid Program have access to all provider records. Such access shall include the right to make copies of those records during normal business hours.

Paragraph (6) of rule 1200-13-01-.21 Provider Noncompliance or Fraud of Medicaid Program is amended by replacing the word "Department" with the word "Bureau" so as amended Paragraph (6) shall read as follows:

- (6) Confidentiality - The Bureau shall be bound by all applicable federal and/or state statutes and regulations relative to confidentiality of records.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

Paragraph (1) of rule 1200-13-01-.23 Nursing Home Preadmission Screenings for Mental Illness and Mental Retardation is deleted in its entirety and replaced with a new paragraph (1) which shall read as follows:

- (1) Definitions. See Rule 1200-13-01-.02.

Item (I) of subpart (i) of part 1. of subparagraph (a) of paragraph (2) of rule 1200-13-01-.23 Nursing Home Preadmission Screenings for Mental Illness and Mental Retardation is amended by deleting the word "prior" after the word "See" and by adding the phrase " in Rule 1200-13-01-.02" after the word "illness" in the second sentence so as amended item (I) shall read as follows:

- (I) The individual has a diagnosis of mental illness. (See definition of mental illness in Rule 1200-13-01-.02.)

Item (I) of subpart (ii) of part 1. of subparagraph (a) of paragraph (2) of rule 1200-13-01-.23 Nursing Home Preadmission Screenings for Mental Illness and Mental Retardation is amended by deleting the word "prior" after the word "See" and by adding the phrase " in Rule 1200-13-01-.02" after the word "retardation in the second sentence" so as amended item (I) shall read as follows:

- (I) The individual has a diagnosis of mental retardation. (See definition of mental retardation in Rule 1200-13-01-.02.)

Item (VII) of subpart (ii) of part 1. of subparagraph (a) of paragraph (2) of rule 1200-13-01-.23 Nursing Home Preadmission Screenings for Mental Illness and Mental Retardation is amended by deleting the first sentence and replacing it with a new first sentence so as amended Item (VII) shall read as follows:

- (VII) Results of the identification screen must be used (unless there is other indisputable evidence that the individual is not mentally ill or mentally retarded) in determining whether an individual has (or is suspected to have) mental illness or mental retardation and therefore must be subjected to the PASRR process. Findings from the evaluation should be used in making determinations about whether an individual has mental illness or mental retardation.

Part 2. of subparagraph (d) of paragraph (2) of rule 1200-13-01-.23 Nursing Home Preadmission Screenings for Mental Illness and Mental Retardation is amended by deleting the phrase "mentally ill or mentally retarded" after the words "PASRR process for" and by adding the phrase " of mental illness or mental retardation" after the word "evaluation" so as amended part 2. shall read as follows:

2. Convalescent Care - Any person with mental illness or mental retardation as long as that person is not a danger to self and/or others, may be admitted to a Medicaid-certified nursing facility after release from an acute care hospital for a period of recovery without being subjected to the PASRR process for evaluation of mental illness or mental retardation.

Part 3. of subparagraph (d) of paragraph (2) of rule 1200-13-01-.23 Nursing Home Preadmission Screenings for Mental Illness and Mental Retardation is deleted in its entirety and replaced with a new part 3. which shall read as follows:

3. Terminal Illness - Under 42 U.S.C.A § 1395x(dd)(3)(A), a Medicare beneficiary is considered to be terminally ill if he has a medical prognosis that his life expectancy is six months or less. This same standard is to be applied to Medicaid recipients with mental illness, mental retardation or related conditions who are found to be suffering from a terminal illness. An individual with mental illness or mental retardation, as long as that person is not a danger to self and/or others, may be admitted to or reside in a Medicaid-certified nursing facility without being subjected to the PASRR/MI or PASRR/MR evaluative process if he or she is certified by a physician to be "terminally ill," as that term is defined in 42 U.S.C.A § 1395x(dd)(3)(A), and requires continuous nursing care and/or medical supervision and treatment due to his physical condition.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

The title of rule 1200-13-01-.25 "Home and Community Based services Waiver for the Mentally Retarded and Developmentally Disabled" is deleted in its entirety and replaced with a new title so as amended the rule and title shall read as follows:

1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver).

Part 2. of subparagraph (c) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is deleted in its entirety and replaced with a new part 2. which shall read as follows:

2. Behavior Services shall be provided face to face with the Enrollee except for enrollee-specific training of staff; behavior assessment and plan development; and presentation of enrollee behavior information at human rights committee meetings, behavior support committee meetings, and enrollee planning meetings.

Subparagraph (c) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is amended by adding a new part 3. which shall read as follows:

3. Reimbursement for presentation of enrollee behavior information at meetings shall be limited to a maximum of 5 hours per enrollee per year per provider. Reimbursement for behavior assessments shall be limited to a maximum of 8 hours per assessment with a maximum of 2 assessments per year. Reimbursement for behavior plan development resulting from such a behavior assessment and the training of staff on the plan during the first 30 days following its approval for use shall be limited to a maximum of 6 hours.

Subparagraph (g) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is amended by deleting part 1. in its entirety and reformatting so as amended subparagraph (g) shall read as follows:

- (g) Individual Transportation Services.

(g) Individual Transportation Services.

Individual Transportation Services shall not be used for:

1. Transportation to and from Day Services;
2. Transportation to and from supported or competitive employment;
3. Transportation of school aged children to and from school;
4. Transportation to and from medical services covered by the Medicaid State Plan; or
5. Transportation of an Enrollee receiving a residential service, except as described herein for Orientation and Mobility Training or Behavioral Respite Services.

Part 1. of subparagraph (h) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is amended by deleting the phrase "not receiving Day Services or is not at school or work" after the words "Enrollee is" and by adding the phrase "not at school and shall be responsible for the cost of Day Services needed by the enrollee" so as amended part 1. shall read as follows:

1. The Medical Residential Services provider shall be responsible for providing an appropriate level of services and supports twenty-four (24) hours per day when the Enrollee is not at school and shall be responsible for the cost of Day Services needed by the enrollee.

Part 1. of subparagraph (j) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is deleted in its entirety and replaced with a new part 1. which shall read as follows:

1. Nutrition Services must be provided face to face with the Enrollee except for enrollee-specific training of caregivers responsible for food purchase, food preparation, or assisting the enrollee to eat and except for that portion of the assessment involving development of the plan of care.

Part 3. of subparagraph (j) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is deleted in its entirety and replaced with a new part 3. which shall read as follows:

3. Reimbursement for a Nutrition Services assessment visit, which includes the Nutritional Services plan development resulting from such an assessment, shall be limited to one assessment visit per month with a maximum of 3 assessment visits per year per enrollee per provider Nutrition Services other than such assessments (e.g., enrollee-specific training of caregivers; monitoring dietary compliance and food preparation) shall be limited to a maximum of one visit per day. Nutrition Services assessments shall not be billed on the same day with other Nutrition Services.

Part 2. of subparagraph (k) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is amended by adding the phrase "except for that portion of the assessment involving development of the plan of care" at the end of the part so as amended part 2. shall read as follows:

2. Occupational Therapy must be provided face to face with the Enrollee except for that portion of the assessment involving development of the plan of care.

Part 7. of subparagraph (k) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is deleted in its entirety and replaced with a new part 7. which shall read as follows:

7. Reimbursement for an Occupational Therapy assessment with development of an Occupational Therapy plan based on such an assessment shall be limited to a maximum of one assessment with plan development per month with a maximum of 3 assessments per year per enrollee per provider. Occupational Therapy services other than such assessments (e.g., enrollee-specific training of caregivers; provision of therapeutic services; monitoring progress) shall be limited to a maximum of 1.5 hours per enrollee per day.

Part 3. of subparagraph (l) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is deleted in its entirety and replaced with a new part 3. which shall read as follows:

3. Reimbursement for an Orientation and Mobility Training assessment with development of the Orientation and Mobility Training plan based on such an assessment shall be limited to a maximum of one assessment with plan development per month with a maximum of 3 assessments per year per enrollee per provider. Orientation and Mobility Training assessments shall not be billed on the same day with other Orientation and Mobility Training services. Orientation and Mobility Training services other than such assessments (e.g., enrollee training; enrollee-specific training of caregivers), which shall be reimbursed on a per diem basis, shall be limited to a maximum of 52 hours of services per enrollee per year.

Part 2. of subparagraph (o) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is amended by adding the phrase "except for that portion of the assessment involving development of the plan of care" at the end of the part so as amended part 2. shall read as follows:

2. Physical Therapy must be provided face to face with the Enrollee except for that portion of the assessment involving development of the plan of care.

Part 7. of subparagraph (o) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is deleted in its entirety and replaced with a new part 7. which shall read as follows:

7. Reimbursement for a Physical Therapy assessment with development of a Physical Therapy plan based on such an assessment shall be limited to a maximum of one assessment with plan development per month with a maximum of 3 assessments per year per enrollee per provider. Physical Therapy services other than such assessments (e.g., enrollee-specific training of caregivers; provision of therapeutic services; monitoring progress) shall be limited to a maximum of 1.5 hours per enrollee per day.

Part 2. of subparagraph (s) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is amended by adding the phrase "except for that portion of the assessment involving development of the plan of care" at the end of the sentence so as amended part 2. shall read as follows:

2. Speech, Language and Hearing Services must be provided face to face with the Enrollee except for that portion of the assessment involving development of the plan of care.

Part 6. of subparagraph (s) of paragraph (2) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is deleted in its entirety and replaced with a new part 6. which shall read as follows:

6. Reimbursement for a Speech, Language, and Hearing Services assessment with development of a Speech, Language, and Hearing Services plan based on such an assessment shall be limited to a maximum of one assessment with plan development per month with a maximum of 3 assessments per year per enrollee per provider. Speech, Language, and Hearing Services other than such assessments (e.g., enrollee-specific training of caregivers; provision of

therapeutic services; monitoring progress) shall be limited to a maximum of 1.5 hours per enrollee per day.

Part 2. of subparagraph (a) of paragraph (3) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is amended by adding a comma and the phrase "except that requirements pertaining to a psychological evaluation shall be in accordance with Rule 1200-13-01-.25(3)(a)5." at the end of the sentence so as amended part 2. shall read as follows:

2. The individual must, but for the provision of Waiver Services, require the level of care provided in an ICF/MR, and must meet the ICF/MR eligibility criteria specified in TennCare rule 1200-13-01-.15, except that requirements pertaining to a psychological evaluation shall be in accordance with rule 1200-13-01-.25(3)(a)5.

Part 9. of subparagraph (b) of paragraph (6) of retitled rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is deleted in its entirety and replaced with a new part 9. which shall read as follows:

9. The Enrollee was transferred to a hospital, nursing facility, Intermediate Care Facility for persons with Mental Retardation (or pursuant to federal law, Intermediate Care Facility for the Mentally Retarded), Assisted Living Facility, and/or Home for the Aged and has resided there for a continuous period exceeding 120 days, if such period began prior to March 1, 2010, or a period exceeding 90 days if such period begins on or after March 1, 2010.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

The title of rule 1200-13-01-.28 "Home and Community Based Services Waiver for Persons with Mental Retardation" is amended by adding the phrase "under Section 1915(c) of the Social Security Act (Arlington MR Waiver)" at the end of the title so as amended the retitled rule 1200-13-01-.28 shall read as follows:

1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver).

Part 2. of subparagraph (b) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is deleted in its entirety and replaced with a new part 2. which shall read as follows:

2. Behavior Services shall be provided face to face with the Enrollee except for enrollee-specific training of staff; behavior assessment and plan development; and presentation of enrollee behavior information at human rights committee meetings, behavior support committee meetings, and enrollee planning meetings.

Subparagraph (b) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is amended by adding a new part 3. which shall read as follows:

3. Reimbursement for presentation of enrollee behavior information at meetings shall be limited to a maximum of 5 hours per enrollee per year per provider. Reimbursement for behavior assessments shall be limited to a maximum of 8 hours per assessment with a maximum of 2 assessments per year. Reimbursement for behavior plan development resulting from such a behavior assessment and the training of staff on the plan during the first 30 days following its approval for use shall be limited to a maximum of 6 hours.

Subparagraph (g) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is amended by deleting part 1. in its entirety and reformatting so as amended subparagraph (g) shall read as follows:

(g) Individual Transportation Services.

Individual Transportation Services shall not be used for:

1. Transportation to and from Day Services;
3. Transportation to and from supported or competitive employment;
3. Transportation of school aged children to and from school;
4. Transportation to and from medical services covered by the Medicaid State Plan; or
5. Transportation of an Enrollee receiving a residential service, except as described herein for Orientation and Mobility Training or Behavioral Respite Services.

Part 1. of subparagraph (h) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is amended by deleting the phrase "not receiving Day Services or is not at school or work" after the words "Enrollee is" and by adding the phrase "not at school and shall be responsible for the cost of Day Services needed by the enrollee" so as amended part 1. shall read as follows:

1. The Medical Residential Services provider shall be responsible for providing an appropriate level of services and supports twenty-four (24) hours per day when the Enrollee is not at school and shall be responsible for the cost of Day Services needed by the enrollee.

Part 1. of subparagraph (j) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is deleted in its entirety and replaced with a new part 1. which shall read as follows:

1. Nutrition Services must be provided face to face with the Enrollee except for enrollee-specific training of caregivers responsible for food purchase, food preparation, or assisting the enrollee to eat and except for that portion of the assessment involving development of the plan of care.

Part 3. of subparagraph (j) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is deleted in its entirety and replaced with a new part 3. which shall read as follows:

3. Reimbursement for a Nutrition Services assessment visit, which includes the Nutritional Services plan development resulting from such an assessment, shall be limited to one assessment visit per month with a maximum of 3 assessment visits per year per enrollee per provider Nutrition Services other than such assessments (e.g., enrollee-specific training of caregivers; monitoring dietary compliance and food preparation) shall be limited to a maximum of one visit per day. Nutrition Services assessments shall not be billed on the same day with other Nutrition Services.

Part 2. of subparagraph (k) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is amended by adding the phrase "except for that portion of the assessment involving development of the plan of care" at the end of the part so as amended part 2. shall read as follows:

2. Occupational Therapy must be provided face to face with the Enrollee except for that portion of the assessment involving development of the plan of care.

Part 7. of subparagraph (k) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is deleted in its entirety and replaced with a new part 7. which shall read as follows:

7. Reimbursement for an Occupational Therapy assessment with development of an Occupational Therapy plan based on such an assessment shall be limited to a maximum of one assessment with plan development per month with a maximum of 3 assessments per year per enrollee per provider. Occupational Therapy services other than such assessments (e.g., enrollee-specific training of caregivers; provision of therapeutic services; monitoring progress) shall be limited to a maximum of 1.5 hours per enrollee per day.

Part 3. of subparagraph (l) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is deleted in its entirety and replaced with a new part 3. which shall read as follows:

3. Reimbursement for an Orientation and Mobility Training assessment with development of the Orientation and Mobility Training plan based on such an assessment shall be limited to a maximum of one assessment with plan development per month with a maximum of 3 assessments per year per enrollee per provider. Orientation and Mobility Training assessments shall not be billed on the same day with other Orientation and Mobility Training services. Orientation and Mobility Training services other than such assessments (e.g., enrollee training; enrollee-specific training of caregivers), which shall be reimbursed on a per diem basis, shall be limited to a maximum of 52 hours of services per enrollee per year.

Part 2. of subparagraph (o) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is amended by adding the phrase “except for that portion of the assessment involving development of the plan of care” at the end of the part so as amended part 2. shall read as follows:

2. Physical Therapy must be provided face to face with the Enrollee except for that portion of the assessment involving development of the plan of care.

Part 7. of subparagraph (o) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is deleted in its entirety and replaced with a new part 7. which shall read as follows:

7. Reimbursement for a Physical Therapy assessment with development of a Physical Therapy plan based on such an assessment shall be limited to a maximum of one assessment with plan development per month with a maximum of 3 assessments per year per enrollee per provider. Physical Therapy services other than such assessments (e.g., enrollee-specific training of caregivers; provision of therapeutic services; monitoring progress) shall be limited to a maximum of 1.5 hours per enrollee per day.

Part 2. of subparagraph (s) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is amended by adding the phrase “except for that portion of the assessment involving development of the plan of care” at the end of the sentence so as amended part 2. shall read as follows:

2. Speech, Language and Hearing Services must be provided face to face with the Enrollee except for that portion of the assessment involving development of the plan of care.

Part 6. of subparagraph (s) of paragraph (2) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is deleted in its entirety and replaced with a new part 6. which shall read as follows:

6. Reimbursement for a Speech, Language, and Hearing Services assessment with development of a Speech, Language, and Hearing Services plan based on such an assessment shall be limited to a maximum of one assessment with plan development per month with a maximum of 3 assessments per year per enrollee per provider. Speech, Language, and Hearing Services other than such assessments (e.g., enrollee-specific training of caregivers; provision of therapeutic services; monitoring progress) shall be limited to a maximum of 1.5 hours per enrollee per day.

Part 3. of subparagraph (a) of paragraph (3) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is amended by adding a comma and the phrase “except that requirements pertaining to a psychological evaluation shall be in accordance with rule 1200-13-01-.28(3)(a)6.” at the end of the sentence so as amended part 3. shall read as follows:

3. The individual must, but for the provision of Waiver Services, require the level of care provided in an ICF/MR, and must meet the ICF/MR eligibility criteria specified in TennCare rule 1200-13-

Part 9. of subparagraph (b) of paragraph (6) of retitled rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is deleted in its entirety and replaced with a new part 9. which shall read as follows:

9. The Enrollee was transferred to a hospital, nursing facility, Intermediate Care Facility for persons with Mental Retardation (or pursuant to federal law, Intermediate Care Facility for the Mentally Retarded), Assisted Living Facility, and/or Home for the Aged and has resided there for a continuous period exceeding 120 days, if such period began prior to March 1, 2010, or a period exceeding 90 days if such period begins on or after March 1, 2010.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

The title of rule 1200-13-01-.29 "Tennessee Self-Determination Waiver Program" is amended by deleting the word "Program" and by adding the phrase "under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver Program)" so as amended the new title shall read as follows:

1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver Program).

Subparagraph (n) of paragraph(1) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver Under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is deleted in its entirety and replaced with a new subparagraph (n) which shall read as follows:

- (n) Financial Administration Entity – an entity which meets the State Medicaid Agency requirements to provide Financial Administration services and which has been approved by the Operational Administrative Agency to provide Financial Administration services.

Subparagraph (aa) of paragraph (1) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by deleting the word "Training" after the word "mobility" and adding the phrase "Services for Impaired Vision" so as amended subparagraph (aa) shall read as follows:

- (aa) Orientation and Mobility Services for Impaired Vision assessment of the ability of an Enrollee who is legally blind to move independently, safely, and purposefully in the home and community environment; orientation and mobility counseling; and training and education of the Enrollee and of caregivers responsible for assisting in the mobility of the Enrollee.

Part 3. of subparagraph (a) of paragraph (2) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver ) is amended by deleting the words "be selected to" after the words "entity must" so as amended part 3. shall read as follows:

3. When the Enrollee or the Enrollee's guardian or conservator elects to Self-Direct one or more of the Covered Services specified in subparagraph (2)(b), a Financial Administration Entity must provide Financial Administration services.

Part 2., 6., and 7. of subparagraph (b) of paragraph (2) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) are deleted in their entirety so as amended subparagraph (b) shall read as follows:

- (b) The following Covered Services may be Self-Directed:
  1. Day Services which are not facility-based.
  2. Individual Transportation Services.
  3. Personal Assistance.
  4. Respite Services when provided by an approved respite provider who serves only one (1) Enrollee.

4. Respite Services when provided by an approved respite provider who serves only one (1) Enrollee.

Part 6. of subparagraph (c) of paragraph (2) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is deleted in its entirety and the current part 7. is renumbered as part 6. and subsequent parts are renumbered accordingly.

Part 2. of subparagraph (c) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is deleted in its entirety and replaced by a new part 2. which shall read as follows:

2. Behavior Services shall be provided face to face with the Enrollee except enrollee-specific training of staff; behavior assessment and plan development; and presentation of enrollee behavior information at human rights committee meetings, behavior support committee meetings, and enrollee planning meetings.

Subparagraph (c) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by adding a new part 3. which shall read as follows:

3. Reimbursement for presentation of enrollee behavior information at meetings shall be limited to a maximum of 5 hours per enrollee per year per provider. Reimbursement for behavior assessments shall be limited to a maximum of 8 hours per assessment with a maximum of 2 assessments per year. Reimbursement for behavior plan development resulting from such a behavior assessment and the training of staff on the plan during the first 30 days following its approval for use shall be limited to a maximum of 6 hours.

Subparagraph (f) Financial Administration of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is deleted in its entirety and the current subparagraph (g) is relettered as (f).

Subparagraph (g) relettered as (f) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by deleting part 1. in its entirety and reformatting relettered subparagraph (f) so as amended relettered subparagraph (f) shall read as follows:

- (f) Individual Transportation Services.

Individual Transportation Services shall not be used for:

1. Transportation to and from Day Services;
2. Transportation to and from supported or competitive employment;
3. Transportation of school aged children to and from school; or
4. Transportation to and from medical services covered by the Medicaid State Plan.

Part 1. of subparagraph (i) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is deleted in its entirety and replaced by a new part 1. which shall read as follows:

1. Nutrition Services must be provided face to face with the Enrollee except for enrollee-specific training of caregivers responsible for food purchase, food preparation, or assisting the enrollee to eat and except for that portion of the assessment involving development of the plan of care.

Subparagraph (i) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by adding a new part 3. which shall read as follows:

3. Reimbursement for a Nutrition Services assessment visit, which includes the Nutritional Services plan development resulting from such an assessment, shall be limited to one assessment visit per month with a maximum of 3 assessment visits per year per enrollee per provider Nutrition Services other than such assessments (e.g., enrollee-specific training of caregivers; monitoring dietary compliance and food preparation) shall be limited to a maximum of one visit per day. Nutrition Services assessments shall not be billed on the same day with other Nutrition Services.

Part 2. of subparagraph (j) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by adding the phrase "except for that portion of the assessment involving development of the plan of care" after the word "Enrollee" so as amended part 2. shall read as follows:

2. Occupational Therapy must be provided face to face with the Enrollee except for that portion of the assessment involving development of the plan of care.

Subparagraph (j) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by adding a new part 7. which shall read as follows:

7. Reimbursement for an Occupational Therapy assessment with development of an Occupational Therapy plan based on such an assessment shall be limited to a maximum of one assessment with plan development per month with a maximum of 3 assessments per year per enrollee per provider. Occupational Therapy services other than such assessments (e.g., enrollee-specific training of caregivers; provision of therapeutic services; monitoring progress) shall be limited to a maximum of 1.5 hours per enrollee per day.

The introductory sentence to subparagraph (k) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by deleting the word "Training" and by adding the phrase "Services for Impaired Vision" so as amended the introductory sentence to subparagraph (k) shall read as follows:

- (k) Orientation and Mobility Services for Impaired Vision.

Part 1. of subparagraph (k) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by deleting the word "Training" after the word "Mobility" and by adding the phrase "Services for Impaired Vision" so as amended part 1. shall read as follows:

1. Orientation and Mobility Services for Impaired Vision shall not be billed when provided during the same time period as Physical Therapy; Occupational Therapy; Nutrition Services; Behavior Services; or Speech, Language and Hearing Services, unless there is documentation in the Enrollee's record of medical justification for the two services to be provided concurrently.

Part 2. of subparagraph (k) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by deleting the word "Training" after the word "Mobility" and by adding the phrase "Services for Impaired Vision" so as amended part 2. shall read as follows:

2. Orientation and Mobility Services for Impaired Vision shall not replace services available under a program funded by the Rehabilitation Act of 1973 or Individuals with Disabilities Education Act.

Part 3. of subparagraph (k) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is deleted in its entirety and replaced with a new part 3. which shall read as follows:

3. Reimbursement for an Orientation and Mobility Services for Impaired Vision assessment with development of the Orientation and Mobility Services for Impaired Vision plan based

on such an assessment shall be limited to a maximum of one assessment with plan development per month with a maximum of 3 assessments per year per enrollee per provider. Orientation and Mobility Services for Impaired Vision assessments shall not be billed on the same day with other Orientation and Mobility services. Orientation and Mobility Services for Impaired Vision other than such assessments (e.g., enrollee training; enrollee-specific training of caregivers), which shall be reimbursed on a per diem basis, shall be limited to a maximum of 52 hours of services per enrollee per year.

Part 2. of subparagraph (n) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by adding the phrase "except for that portion of the assessment involving development of the plan of care" at the end of the part so as amended part 2. shall read as follows:

2. Physical Therapy must be provided face to face with the Enrollee except for that portion of the assessment involving development of the plan of care.

Subparagraph (n) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by adding a new part 7. which shall read as follows:

7. Reimbursement for a Physical Therapy assessment with development of a Physical Therapy plan based on such an assessment shall be limited to a maximum of one assessment with plan development per month with a maximum of 3 assessments per year per enrollee per provider. Physical Therapy services other than such assessments (e.g., enrollee-specific training of caregivers; provision of therapeutic services; monitoring progress) shall be limited to a maximum of 1.5 hours per enrollee per day.

Part 2. of subparagraph (q) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by adding the phrase "except for that portion of the assessment involving development of the plan of care" at the end of the part so as amended part 2. shall read as follows

2. Speech, Language and Hearing Services must be provided face to face with the Enrollee except for that portion of the assessment involving development of the plan of care.

Subparagraph (q) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by adding a new part 6. which shall read as follows:

6. Reimbursement for a Speech, Language, and Hearing Services assessment with development of a Speech, Language, and Hearing Services plan based on such an assessment shall be limited to a maximum of one assessment with plan development per month with a maximum of 3 assessments per year per enrollee per provider. Speech, Language, and Hearing Services other than such assessments (e.g., enrollee-specific training of caregivers; provision of therapeutic services; monitoring progress) shall be limited to a maximum of 1.5 hours per enrollee per day.

Subparagraph (r) of paragraph (3) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is deleted in its entirety and the current subparagraph (s) is relettered as (r) and subsequent subparagraphs are relettered accordingly.

Part 2. of subparagraph (a) of paragraph (4) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is deleted in its entirety and the current part 3. is renumbered as part 2. and subsequent parts renumbered accordingly.

Renumbered part 3. of subparagraph (a) of paragraph (4) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver). is amended by adding a comma and the phrase "except that requirements pertaining to a psychological evaluation shall be in accordance with Rule 1200-13-01-.29(4)(a)6." so as amended the renumbered part 3. shall read as follows:

3. The individual must, but for the provision of Waiver Services, require the level of care provided in an ICF/MR, and must meet the ICF/MR eligibility criteria specified in TennCare rule 1200-13-01-.15, except that requirements pertaining to a psychological evaluation shall be in accordance with 1200-13-01-.29 (4)(a)6.

Subpart (ii) of renumbered part 6. of subparagraph (a) of paragraph (4) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is amended by replacing the number "7" in "1200-13-01-.29(a)7.(i)" with the number "6" so as amended subpart (ii) shall read as follows:

- (ii) There is no time limit for when the psychological evaluation is conducted as long as it is completed prior to the submission of the PAE, and as long as the evaluation meets the requirements specified in 1200-13-01-.29(4)(a)6.(i) above, and the person's current medical, social, developmental and psycho-social history continues to support the evaluation.

Part 9. of subparagraph (b) of paragraph (7) of retitled rule 1200-13-01-.29 Tennessee's Self-Determination Waiver under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver) is deleted in its entirety and replaced a new part 9. which shall read as follows:

9. The Enrollee was transferred to a hospital, nursing facility, Intermediate Care Facility for persons with Mental Retardation (or pursuant to federal law, Intermediate Care Facility for the Mentally Retarded), Assisted Living Facility, and/or Home for the Aged and has resided there for a continuous period exceeding 120 days, if such period began prior to March 1, 2010, or a period exceeding 90 days if such period begins on or after March 1, 2010.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

Retitled Rule Chapter 1200-13-01 TennCare Long-Term Care Programs and Services is amended by adding a new rule 1200-13-01-.30 TennCare ICF/MR Services which shall read as follows:

#### 1200-13-01-.30 TennCare ICF/MR Services

- (1) Definitions. See Rule 1200-13-01-.02.
- (2) Eligibility for Medicaid-reimbursed care in an ICF/MR.
  - (a) The individual must be determined by the Tennessee Department of Human Services to be financially and categorically eligible for Medicaid-reimbursed long-term care services.
  - (b) The individual must have a valid, unexpired ICF/MR PreAdmission Evaluation (PAE) that has been approved by the Bureau of TennCare in accordance with rule 1200-13-01-.15.
- (3) Conditions of participation for ICFs/MR
  - (a) The ICF/MR must enter into a provider agreement with TennCare.
  - (b) The ICF/MR must be certified by the state, showing it has met the standards set out in 42 C.F.R., Part 442, Subpart C and 42 C.F.R., Part 483.
  - (c) ICFs/MR participating in the State of Tennessee's TennCare program shall be terminated as a TennCare provider if certification or licensure is canceled by the state.
  - (d) If the resident has resources to apply toward payment, the payment made by the state will be his current maximum payment per day, charges or per diem cost (whichever is less), minus the available patient resources.
  - (e) Payments for residents requiring ICF/MR services will not exceed per diem costs or charges, whichever is less.

- (f) If an ICF/MR (upon submission of a cost report and audit of its cost), has collected on a per diem basis during the period covered by the cost report and audit, more than cost reimbursement allowed for the ICF/MR patient, the facility shall be required to reimburse the state (through the Bureau of Medicaid and/or the ICF/MR's Third Party), for that portion of the reimbursement collected in excess of the cost reimbursement allowed.
  - (g) Regardless of the reimbursement rate established for an ICF/MR, no ICF/MR may charge Medicaid patients an amount greater than the amount per day charge to private paying patients for equivalent accommodations and services.
  - (h) Personal laundry services in an ICF/MR shall be considered a covered service and included in the per diem rate. Medicaid patients may not be charged for personal laundry services.
- (4) Conditions that ICFs/MR must meet to receive Medicaid reimbursement
- (a) An ICF/MR which has entered into a provider agreement with the Bureau of TennCare is entitled to receive Medicaid reimbursement for covered services provided to an ICF/MR Eligible if
    - 1. The Bureau of TennCare has received an approvable ICF/MR PreAdmission Evaluation for the individual within ten (10) calendar days of the ICF/MR PAE Request Date or the physician certification date, whichever is earlier. The PAE Approval Date shall not be more than ten (10) days prior to date of submission of an approvable PAE. An approvable PAE is one in which any deficiencies in the submitted application are cured prior to disposition of the PAE.
    - 2. For the transfer to an ICF/MR of an individual having an approved unexpired ICF/MR PreAdmission Evaluation, the Bureau of TennCare has received an approvable Transfer Form within ten (10) calendar days after the date of the transfer. For transfer from ICF/MR services to an HCBS MR Waiver program, the transfer form must be submitted and approved prior to enrollment in the HCBS MR Waiver program.
    - 3. For a retroactive eligibility determination, the Bureau of TennCare has received a Notice of Disposition or Change and has received an approvable request to update an approved, unexpired ICF/MR PreAdmission Evaluation within thirty (30) calendar days of the mailing date of the Notice of Disposition or Change. The effective date of payment for ICF/MR services shall not be earlier than the PAE Approval Date of the original approved, unexpired PAE which has been updated.
  - (b) Any deficiencies in a submitted PAE application must be cured prior to disposition of the PAE to preserve the PAE submission date for payment purposes.
    - 1. Deficiencies cured after the PAE is denied but within thirty (30) days of the original PAE submission date will be processed as a new application, with reconsideration of the earlier denial based on the record as a whole (including both the original denied application and the additional information submitted). If approved, the effective date of PAE approval can be no earlier than the date of receipt of the information which cured the original deficiencies in the denied PAE. Payment will not be retroactive back to the date the deficient application was received or to the date requested in the deficient application.
    - 2. Once a PAE has been denied, the original denied PAE application must be resubmitted along with any additional information which cures the deficiencies of the original application. Failure to include the original denied application may delay the availability of Medicaid reimbursement for ICF/MR services.
  - (c) An ICF/MR that admits a Medicaid Eligible without an approved ICF/MR PreAdmission Evaluation or, where applicable, an approved Transfer Form does so without the assurance of reimbursement from the Bureau of TennCare.
- (5) Reimbursement methodology for Intermediate Care Facilities for persons with Mental Retardation (or pursuant to Federal Law, Intermediate Care Facilities for the Mentally Retarded).

- (a) Private for-profit and private not-for-profit Intermediate Care Facilities for persons with Mental Retardation (or pursuant to Federal Law, Intermediate Care Facilities for the Mentally Retarded) (ICFs/MR) shall be reimbursed at the lower of Medicaid cost or charges. An annual inflation factor will be applied to operating costs. The trending factor shall be computed for facilities that have submitted cost reports covering at least six months of program operations. For facilities that have submitted cost reports covering at least three full years of program participation, the trending factor shall be the average cost increase over the three-year period, limited to the 75th percentile trending factor of facilities participating for at least three years. Negative averages shall be considered zero. For facilities that have not completed three full years in the program, the one-year trending factor shall be the 50th percentile trending factor of facilities participating in the program for at least three years. For facilities that have failed to file timely cost reports, the trending factor shall be zero. Capital-related costs are not subject to indexing. Capital-related costs are property, depreciation, and amortization expenses included in Section F.18 and F.19 of the Nursing Facility Cost Report Form. All other costs, including home office costs and management fees, are operating costs. Once a per-diem rate is determined from a clean cost report, the rate will not be changed until the next rate determination except for audit adjustments, correction of errors, or termination of a budgeted rate.
- (b) Public Intermediate Care Facilities for persons with Mental Retardation (or pursuant to Federal Law, Intermediate Care Facilities for the Mentally Retarded) (ICFs/MR) that are owned by government shall be reimbursed at 100% of allowable Medicaid costs with no cost-containment incentive. Reimbursement shall be based on Medicare principles of retrospective cost reimbursement with year-end cost report settlements. Interim per-diem rates for the fiscal year beginning July 1, 1995 and ending June 30, 1996 shall be established from budgeted cost and patient day information submitted by the government ICF/MR facilities. Thereafter, interim rates shall be based on the providers' cost reports. There will be a tentative year-end cost settlement within 30 days of submission of the cost reports and a final settlement within 12 months of submission of the cost reports.
- (c) Costs for supplies and other items, including any facility staff required to deliver the service, which are billed to Medicare Part B on behalf of all patients must be included as a reduction to reimbursable expenses in Section G of the nursing facility cost report.

(6) Bed holds.

An ICF/MR will be reimbursed in accordance with this paragraph for the recipient's bed in that facility during the recipient's temporary absence from that facility in accordance with the following:

- (a) For days not to exceed 15 days per occasion while the recipient is hospitalized and the following conditions are met:
  1. The resident intends to return to the ICF/MR.
  2. The hospital provides a discharge plan for the resident.
  3. At least 85% of all other beds in the ICF/MR certified at the recipient's designated level of care (i.e., intensive training, high personal care or medical), when computed separately, are occupied at the time of hospital admission. An occupied bed is one that is actually being used by a patient. Beds being held for other patients while they are hospitalized or otherwise absent from the facility are not considered to be occupied beds, for purposes of this calculation.
  4. Each period of hospitalization must be physician ordered and so documented in the patient's medical record in the ICF/MR.
- (b) For days not to exceed 60 days per state fiscal year and limited to 14 days per occasion while the recipient, pursuant to a physician's order, is absent from the facility on a therapeutic home visit or other therapeutic absence.

(7) Other reimbursement issues

- (a) No change of ownership or controlling interest of an existing Medicaid provider, including ICFs/MR, can occur until monies as may be owed to Medicaid are provided for. The purchaser shall notify Medicaid of the purchase at the time of ownership change and is financially liable for the outstanding

liabilities to Medicaid for one (1) year from the date of purchase or for one (1) year following Medicaid's receipt of the provider's Medicare final notice of program reimbursement, whichever is later. The purchaser shall be entitled to utilize any means available to it by law to secure and recoup these funds from the selling entity. In addition, purchasers of ICFs/MR are responsible for obtaining an accurate accounting and transfer of funds held in trust for Medicaid residents at the time of the change of ownership or controlling interest.

- (b) If the Division of Medicaid has not reimbursed a business for Medicaid services provided under the Medicaid program at the time the business is sold, when such an amount is determined the division of Medicaid shall be required to reimburse the person owning the business provided such sale included the sale of such assets.
- (c) When a provider was originally paid within a retrospective payment system that is subject to regular adjustments and the provider disputes the proposed adjustment action, the provider must file with the State not later than thirty (30) days after receipt of the notice informing the provider of the proposed adjustment action, a request for hearing. The provider's right to a hearing shall be deemed waived if a hearing is not requested within thirty (30) days after receipt of the notice.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109.

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: 3/3/2010

Signature: *D. J. Gordon*

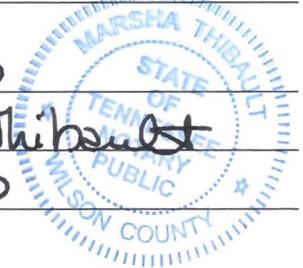
Name of Officer: Darin J. Gordon  
Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 3/3/2010

Notary Public Signature: *Marsha Thibault*

My commission expires on: 10/25/2010



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Filed with the Department of State on: 3/3/10

*Tre Hargett*

Tre Hargett  
Secretary of State

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