

## RULEMAKING HEARINGS

### **TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE**

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1<sup>st</sup> Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18<sup>th</sup> day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

### **SUBSTANCE OF PROPOSED RULES**

#### **CHAPTER 1200-13-1 GENERAL RULES**

Parts 3. and 4. of subparagraph (c) of paragraph (5) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled are deleted in their entirety and replaced with new parts 3. and 4. which shall read as follows:

3. An individual shall have one or more caregivers, as specified in (6)(a). An individual shall have a 24-hour caregiver unless it is determined by an assessment that the needs of the individual can be met, and that the health, safety and welfare of the individual can be assured, through the provision of a caregiver and through provision of a Personal Emergency Response System. Documentation of such assessment shall be included in an individualized Safety Plan that is developed, reviewed and updated by the Administrative Lead Agency. A caregiver agreement is required in order to ensure the health, safety and welfare of the individual. The caregiver may, but is not required to, reside in the same household with the individual.
4. An individual who does not have a caregiver 24 hours per day 7 days per week shall have an individualized Safety Plan that is based on an assessment of the individual's medical, functional and social needs and capabilities, and that is approved, monitored and updated as needed, but no less frequently than annually, by the Administrative Lead Agency. The Safety Plan shall include:
  - (i) The medical, functional and social needs and capabilities of the individual, and how such can be met without jeopardizing the health, safety and welfare of the individual;

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- (ii) The identified caregiver(s);
- (iii) Personal Emergency Response Systems which are designed to enable Enrollees who meet the requirements of (2)(e) to secure help in an emergency; and
- (iv) Other services, devices and supports that ensure the health, safety and welfare of the Enrollee.

Subparagraph (d) of paragraph (5) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled is deleted in its entirety and replaced with a new subparagraph (d) which shall read as follows:

- (d) An individual who is capable of living alone or independently without caregiver assistance and without receiving any waiver services or receiving only minimal waiver services shall not be eligible for enrollment or continued enrollment in the Waiver.

Subparagraphs (a) and (b) of paragraph (6) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled are deleted in their entirety and replaced with new subparagraphs (a) and (b) which shall read as follows:

- (a) Caregiver assistance shall be provided by one or more competent individuals, aged 18 or older, who sign an agreement with the Administrative Lead Agency to monitor the enrollee as specified in the Safety Plan.
- (b) One or more caregivers shall be available as specified in the Individual Plan of Care and the Safety Plan. Enrollees who do not have a 24-hour caregiver shall have a Personal Emergency Response System and shall clearly be mentally and physically capable of using it based on an assessment by the Administrative Lead Agency.

Part 5. of subparagraph (a) of paragraph (8) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled is deleted in its entirety and replaced with a new part 5. which shall read as follows:

- 5. A signed Caregiver Agreement Form completed by each caregiver; and

The introductory sentence of subparagraph (a) of paragraph (12) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled is deleted in its entirety and replaced with a new introductory sentence, which shall read as follows:

- (a) An individual may be refused enrollment or involuntarily disenrolled from the Waiver for any of the following reasons:

Part 7, of subparagraph (a) of paragraph (12) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled is deleted in its entirety and replaced with a new part 7 which shall read as follows:

- 7. The Enrollee no longer has a caregiver, as defined herein, or the caregiver is unwilling or unable to comply with the caregiver agreement, and an alternative caregiver cannot be arranged within ten (10) calendar days.

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Subparagraph (a) of paragraph (12) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled is amended by adding parts 12. and 13. which shall read as follows:

12. The individual is receiving Private Duty Nursing services through his/her Managed Care Organization that are identical, nearly identical or significantly overlapping with the services covered in this waiver program.
13. The individual applies for or enrolls in the Home and Community Based Services (HCBS) program primarily as a means to establish and/or maintain TennCare eligibility or to by-pass TennCare service limits and refuses to accept a sufficient amount, scope and duration of HCBS waiver covered services to reasonably demonstrate the need for HCBS care.

Subparagraphs (a), (n) and (o) of paragraph (14) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled are deleted in their entirety and replaced with new subparagraphs (a), (n) and (o) which shall read as follows:

- (a) Pre-enrollment screening of individuals, including assessment of the individual's medical, functional, and social capabilities and needs; appropriateness for placement in the Waiver; and that the Enrollee can be adequately cared for in the home setting;
- (n) Assurance that each Enrollee has an appropriate caregiver or caregivers pursuant to signed agreement(s) with the Administrative Lead Agency;
- (o) Assurance of the safety of the Enrollee through appropriate services, supervision, and other services and supports, as described in the Individual Plan of Care and the Safety Plan;

Subparagraph (e) of paragraph (15) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled, are deleted in their entirety and replaced with new subparagraph (e) which shall read as follows:

- (e) Reimbursement shall not be made to the provider of Waiver Services on behalf of enrollees for the 10 days combined leave allowed for therapeutic and hospital leave normally available to Nursing Facility patients pursuant to rule 1200-13-1-.06(4).

**Authority:** T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109; Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of May, 2006. (05-30)