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Sequence Number: 06-25-15
 Rule ID(s): 3974
 File Date: 06-26-15
 Effective Date: 9-24-15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-13-01	TennCare Long-Term Care Programs
Rule Number	Rule Title
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)
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)
1200-13-01-.29	Tennessee's Self-Determination Waiver Under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver Program)

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Part 3. of Subparagraph (b) of Paragraph (6) of 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. An Enrollee moves out of the State of Tennessee; provided however, that when the Enrollee is the dependent of a military service member who is a legal resident of the state, but has left the state temporarily due to the military service member's military assignment out of state, such dependent may re-enroll in the Waiver upon return to the State, so long as all conditions of eligibility are met.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-103(11), 71-5-105 and 71-5-109.

Part 3. of Subparagraph (b) of Paragraph (6) of 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. An Enrollee moves out of the State of Tennessee; provided however, that when the Enrollee is the dependent of a military service member who is a legal resident of the state, but has left the state temporarily due to the military service member's military assignment out of state, such dependent may re-enroll in the Waiver upon return to the State, so long as all conditions of eligibility are met.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-103(11), 71-5-105 and 71-5-109.

Part 3. of Subparagraph (b) of Paragraph (7) of Rule 1200-13-01-.29 Tennessee's Self-Determination Waiver Under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver Program) is deleted in its entirety and replaced with a new Part 3. which shall read as follows:

3. An Enrollee moves out of the State of Tennessee; provided however, that when the Enrollee is the dependent of a military service member who is a legal resident of the state, but has left the state temporarily due to the military service member's military assignment out of state, such dependent may re-enroll in the Waiver upon return to the State, so long as all conditions of eligibility are met.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-103(11), 71-5-105 and 71-5-109.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 06/01/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 03/30/15

Rulemaking Hearing(s) Conducted on: (add more dates). 05/22/15



Date: 6/1/2015

Signature: [Handwritten Signature]

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: 6/1/15

Notary Public Signature: [Handwritten Signature]

My commission expires on: 1/8/19

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]

Herbert H. Slatery III
Attorney General and Reporter

6/24/2015

Date

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Filed with the Department of State on: 6/26/15

Effective on: 9/24/15

[Handwritten Signature]

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no public comments received on these rules.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The rules are not anticipated to have an effect on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are being promulgated to allow for an Enrollee who is a dependent of a military service member who is a legal resident of the state, but has left the state temporarily due to the service member's military assignment out of state, to re-enroll into a Home and Community Based Services Waiver upon return to the state, so long as all conditions of eligibility are met.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The rules are lawfully adopted by the Bureau of TennCare in accordance with §§ 4-5-202, 71-5-103(11), 71-5-105 and 71-5-109.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons, organizations, corporations or governmental entities most directly affected by these Rules are the TennCare enrollee, providers, and the Bureau of TennCare, Tennessee Department of Finance and Administration.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The rules were approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The promulgation of these rules is not anticipated to have a fiscal impact on state and local government revenues and expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

John Gabe Roberts
General Counsel

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

John Gabe Roberts
General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

GW10115126

**RULES
OF
TENNESSEE DEPARTMENT OF FINANCE
AND ADMINISTRATION
BUREAU OF TENNCARE
CHAPTER 1200-13-01
TENNCARE LONG-TERM CARE PROGRAMS**

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).

- (6) Disenrollment.
- (a) Voluntary disenrollment of an Enrollee from the Waiver may occur at any time upon written notice from the Enrollee or the Enrollee's guardian or conservator to the Operational Administrative Agency. Prior to disenrollment the Operational Administrative Agency shall provide reasonable assistance to the Enrollee in locating appropriate alternative placement.
- (b) An Enrollee may be involuntarily disenrolled from the Waiver for any of the following reasons:
1. The Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled is terminated.
 2. An Enrollee becomes ineligible for Medicaid or is found to be erroneously enrolled in the Waiver.
 3. An Enrollee moves out of the State of Tennessee; provided however, that when the Enrollee is the dependent of a military service member who is a legal resident of the state, but has left the state temporarily due to the military service member's military assignment out of state, such dependent may re-enroll in the Waiver upon return to the State, so long as all conditions of eligibility are met.
 4. The condition of the Enrollee improves such that the Enrollee no longer requires the level of care provided by the Waiver.
 5. The Enrollee's medical or behavioral needs become such that the health, safety, and welfare of the Enrollee cannot be assured through the provision of Waiver Services.
 6. 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.

7. The Enrollee or the Enrollee's guardian or conservator refuses to abide by the Plan of Care or related Waiver policies, resulting in the inability of the Operational Administrative Agency to ensure quality care or the health and safety of the Enrollee.
8. The health, safety, and welfare of the Enrollee cannot be assured due to the lack of an approved Safety Plan.
9. The Enrollee was transferred to a hospital, NF, ICF/MR, Assisted Living Facility, and/or Home for the Aged and has resided there for a continuous period exceeding one hundred twenty (120) days, if such period began prior to March 1, 2010, or a period exceeding ninety (90) days if such period begins on or after March 1, 2010.

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).

(6) Disenrollment.

- (a) Voluntary disenrollment of an Enrollee from the Waiver may occur at any time upon written notice from the Enrollee or the Enrollee's guardian or conservator to the Operational Administrative Agency. Prior to disenrollment the Operational Administrative Agency shall provide reasonable assistance to the Enrollee in locating appropriate alternative placement.
- (b) An Enrollee may be involuntarily disenrolled from the Waiver for any of the following reasons:
 1. The Home and Community Based Services Waiver for Persons with Mental Retardation is terminated.
 2. An Enrollee becomes ineligible for Medicaid or is found to be erroneously enrolled in the Waiver.
 3. An Enrollee moves out of the State of Tennessee; provided however, that when the Enrollee is the dependent of a military service member who is a legal resident of the state, but has left the state temporarily due to the military service member's military assignment out of state, such dependent may re-enroll in the Waiver upon return to the State, so long as all conditions of eligibility are met.
 4. The condition of the Enrollee improves such that the Enrollee no longer requires the level of care provided by the Waiver.
 5. The Enrollee's medical or behavioral needs become such that the health, safety, and welfare of the Enrollee cannot be assured through the provision of Waiver Services.
 6. 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.
 7. The Enrollee or the Enrollee's guardian or conservator refuses to abide by the Plan of Care or related Waiver policies, resulting in the inability of the

Operational Administrative Agency to ensure quality care or the health and safety of the Enrollee.

8. The health, safety and welfare of the Enrollee cannot be assured due to the lack of an approved Safety Plan.
9. The Enrollee was transferred to a hospital, NF, ICF/MR, Assisted Living Facility, and/or Home for the Aged and has resided there for a continuous period exceeding one hundred twenty (120) days, if such period began prior to March 1, 2010, or a period exceeding ninety (90) days if such period begins on or after March 1, 2010.

1200-13-01-.29 TENNESSEE'S SELF-DETERMINATION WAIVER UNDER SECTION 1915(c) OF THE SOCIAL SECURITY ACT (SELF-DETERMINATION MR WAIVER PROGRAM).

(7) Disenrollment.

- (a) Voluntary disenrollment of an Enrollee from the Waiver may occur at any time upon written notice from the Enrollee or the Enrollee's guardian or conservator to the Operational Administrative Agency. Prior to disenrollment the Operational Administrative Agency shall provide reasonable assistance to the Enrollee in locating appropriate alternative placement.
- (b) An Enrollee may be involuntarily disenrolled from the Waiver for any of the following reasons:
 1. The Tennessee Self-Determination Waiver Program is terminated.
 2. An Enrollee becomes ineligible for Medicaid or is found to be erroneously enrolled in the Waiver.
 3. An Enrollee moves out of the State of Tennessee; provided however, that when the Enrollee is the dependent of a military service member who is a legal resident of the state, but has left the state temporarily due to the military service member's military assignment out of state, such dependent may re-enroll in the Waiver upon return to the State, so long as all conditions of eligibility are met.
 4. The condition of the Enrollee improves such that the Enrollee no longer requires the level of care provided by the Waiver.
 5. The Enrollee's medical or behavioral needs become such that the health, safety and welfare of the Enrollee cannot be assured through the provision of Waiver Services.
 6. 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.
 7. The Enrollee or the Enrollee's guardian or conservator refuses to abide by the Plan of Care or related Waiver policies, resulting in the inability of the Operational Administrative Agency to ensure quality care or the health and safety of the Enrollee.
 8. The health, safety and welfare of the Enrollee cannot be assured due to the lack of an approved Safety Plan.

9. The Enrollee was transferred to a hospital, NF, ICF/MR, Assisted Living Facility, and/or Home for the Aged and has resided there for a continuous period exceeding one hundred twenty (120) days, if such period began prior to March 1, 2010, or a period exceeding ninety (90) days if such period begins on or after March 1, 2010.
10. The cost for all Covered Waiver services, including Emergency Assistance services, has reached the Waiver limit of \$36,000 per year per Enrollee and the State cannot assure the health and safety of the Enrollee.

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