

Department of State  
 Division of Publications  
 312 Rosa L. Parks, 8th Floor Tennessee Tower  
 Nashville, TN 37243  
 Phone: 615-741-2650  
 Fax: 615-741-5133  
 Email: sos.information@state.tn.us

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Sequence Number: 07-04-09  
 Rule ID(s): 4246  
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Emergency or Public Necessity Rule(s) Filing Form

*Emergency and Public Necessity rules are effective from date of filing for a period of up to 165 days.*

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	Bureau of TennCare 310 Great Circle Road Nashville, Tennessee
Zip:	37243
Phone:	(615) 507-6443
Email:	george.woods@tn.gov

Rule Type :

- Emergency Rule  
 Public Necessity Rule

Revision Type (check all that apply):

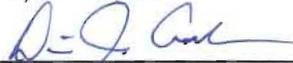
- Amendment  
 New  
 Repeal

Statement of Necessity:

T.C.A. Section 4-5-209(a)(4) authorizes the promulgation of public necessity rules when the agency is required by an enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of regular rulemaking procedures for the promulgation of permanent rules.

I have made a finding that amendments to Rule Chapter 1200-13-17 are required pursuant to the Appropriations Bill for Fiscal Year 2010 passed by the Tennessee General Assembly on June 16, 2009, which becomes effective on July 1, 2009.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

  
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 Darin J. Gordon  
 Director, Bureau of TennCare

Rule(s) Revised (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)

Chapter Number	Chapter Title
1200-13-17	TennCare Crossover Payments for Medicare Deductible and Coinsurance
Rule Number	Rule Title
1200-13-17-.01	Definitions
1200-13-17-.04	Medicare Crossover Payment Methodology

Chapter 1200-13-17  
TennCare Crossover Payments for Medicare Deductibles and Coinsurance

Amendments

Rule 1200-13-17-.01 Definitions is amended by adding new paragraphs (16) and (17) and the present paragraphs (16) and (17) are renumbered as paragraphs (18) and (19) and subsequent paragraphs are renumbered accordingly so as amended the new paragraphs (16) and (17) shall read as follows:

- (16) Pharmacy Providers shall mean providers enrolled with the Medicare program and with Medicaid to provide Medicare Part B pharmacy services.
- (17) Pharmacy Services shall mean outpatient prescription drugs provided through Medicare Part B.

Paragraph (19) TennCare Allowable to be renumbered as (21) is amended by replacing "80%" with "85%" so as amended the renumbered paragraph (21) shall read as follows:

- (21) TennCare Allowable shall mean the lower of the TennCare maximum fee or 85% of the Medicare allowed amount on the claim.

Paragraph (21) TennCare Maximum Fee to be renumbered as paragraph (23) is amended by replacing "80%" with "85%" so as amended the renumbered paragraph (23) shall read as follows:

- (23) TennCare Maximum Fee shall mean the maximum amount considered by TennCare for reimbursement of a particular Medicare-covered service. The TennCare maximum fee is 85% of the Cigna Medicare fee schedule amount for participating providers that was in effect on January 1, 2008.

Rule 1200-13-17-.01 Definitions is amended by adding a new renumbered paragraph (25) which shall read as follows:

- (25) TennCare Pharmacy Allowable shall mean, for Medicare Part B pharmacy services provided to FBDEs by pharmacy providers, as defined in these rules, 100% of the Medicare allowed amount on the claim.

Statutory Authority: T.C.A. §§ 4-5-209, 71-5-105, and 71-5-109.

Rule 1200-13-17-.04 Medicare Crossover Payment Methodology is amended by adding the phrase "and non-FBDE QMBs" after the abbreviation "FBDEs" in the introductory paragraph and by adding new paragraphs (2) and (3) and subsequent paragraphs are renumbered accordingly so as amended rule 1200-13-17-.04 shall read as follows:

1200-13-17-.04 Medicare Crossover Payment Methodology.

Notwithstanding anything in these rules to the contrary, TennCare's payment methodology for crossover claims submitted on behalf of FBDEs and non-FBDE QMBs for professional services delivered under either Medicare Part B or Medicare Part C is as follows:

- (1) On crossover claims for professional services and procedures with dates of service on or after July 1, 2008, TennCare will pay the TennCare allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.
- (2) On crossover claims for Medicare Part B pharmacy services provided by pharmacy providers, as defined in these rules, to non-FBDEs with dates of service on or after July 1, 2009, TennCare will pay the TennCare allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.
- (3) On crossover claims for Medicare Part B pharmacy services provided by pharmacy providers, as defined in these rules, to FBDEs with dates of service on or after July 1, 2009, TennCare will pay the TennCare pharmacy allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.

- (4) In no circumstance will the TennCare payment exceed the enrollee's liability on the Medicare crossover claim.
- (5) Medicare crossover payments are normally made by the Bureau of TennCare separately from the Managed Care Contractors. However, if an MCC should choose to authorize a non-covered TennCare service as a cost-effective alternative service for a non-QMB FBDE who is age 21 or older and not an SSI recipient, the MCC will be responsible for the Medicare crossover payment on that service. The calculation of this payment should be included by the MCC in its analysis of whether or not the non-covered TennCare service is a cost-effective alternative service.

Statutory Authority: T.C.A. §§ 4-5-209, 71-5-105, and 71-5-109.

GW1019180

Signature of the agency officer directly responsible for proposing and/or drafting these rules:

D. J. Gordon  
Darin J. Gordon  
Director, Bureau of TennCare  
Tennessee Department of Finance and Administration

I certify that this is an accurate and complete copy of emergency or public necessity rules, lawfully promulgated and adopted.

Date: 6-30-09

Signature: M. D. Goetz, Jr.

Name of Officer: M. D. Goetz, Jr.  
Title of Officer: Commissioner, Department of Finance and Administration



Subscribed and sworn to before me on: 6-30-09

Notary Public Signature: Sherry H. Buchanan

My commission expires on: 5-2-2011

All emergency or public necessity 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.

Robert E. Cooper, Jr.  
Robert E. Cooper, Jr.  
Attorney General and Reporter

7-1-09  
Date

**Department of State Use Only**

Filed with the Department of State on: 7/1/09

Effective for: 165 \*days

Effective through: 12/31/09

\* Temporary rules may be effective for up to 165 days from the date of filing.

Tre Hargett  
Tre Hargett  
Secretary of State

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

The rule is being promulgated to point out that TennCare is revising its methodology for reimbursing full benefit dual eligibles.

- (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;

Rules 1200-13-13-.01(16), (17), (21), (23) and (25); 1200-13-17-.04 are promulgated and adopted by the Department of Finance and Administration in accordance with and defined by Tennessee Code Annotated §§ 4-5-209, 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 entities most directly affected by this rule are the recipients, the providers, and the 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;

Rules 1200-13-13-.01(16), (17), (21), (23) and (25); 1200-13-17-.04 were reviewed and 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 anticipated to increase state expenditures by \$3,233,900.

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

Darin J. Gordon; Director , Bureau of TennCare

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

Darin J. Gordon; Director, Bureau of TennCare

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

310 Great Circle Road  
Nashville, TN 37243  
(615) 507-6443

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

None.