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Sequence Number: 07-20-16
Notice ID(s): 2546
File Date: 7/15/16

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

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, TN 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:

ADA Contact:	Talley A. Olson, Director HCFA Office of Civil Rights Compliance
Address:	Bureau of TennCare 310 Great Circle Road Nashville, TN 37243
Phone:	(855) 857-1673 TTY dial 711 and ask for 855-857-1673
Email:	hcfa.fairtreatment@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Bureau of TennCare 310 Great Circle Road, Conference Room 1 East A		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	September 12, 2016		
Hearing Time:	1:30 p.m.	X CST/CDT ___ EST/EDT	

Additional Hearing Information:

Revision Type (check all that apply):
X Amendments
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. 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-.01	Purpose
1200-13-01-.02	Definitions
1200-13-01-.05	TennCare CHOICES Program
1200-13-01-.08	Personal Needs Allowance (PNA), Patient Liability, Third Party Insurance and Estate Recovery for Persons Receiving LTSS
1200-13-01-.10	Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE
1200-13-01-.31	TennCare Employment and Community First CHOICES (ECF CHOICES) 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)

Paragraph (2) of Rule 1200-13-01-.01 Purpose is amended by deleting the introductory sentence and replacing it with the following:

(2) The Bureau of TennCare (Bureau) offers the following LTSS programs and services. Each of these programs is operated in accordance with the authority granted under the Medicaid State Plan or the applicable waiver authority granted by CMS, and these rules.

Paragraph (2) of Rule 1200-13-01-.01 Purpose is further amended by adding a new Subparagraph (b) and the current Subparagraph (b) is re-lettered as (c) and subsequent subparagraphs relettered appropriately, the new Subparagraph (b) shall read as follows:

(b) Employment and Community First (ECF) CHOICES (See Rule 1200-13-01-.31.)

Paragraph (4) of Rule 1200-13-01-.01 Purpose is amended by inserting in alphabetical order the following new Subparagraphs numbered appropriately so that the new Subparagraphs shall read as follows:

(#) DD – Developmental Disability(ies)

(#) ECF CHOICES – Employment and Community First CHOICES

(#) FPL – Federal Poverty Level

(#) I/DD – Intellectual or Developmental Disability(ies)

(#) PCSP – Person-Centered Support Plan

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

Rule 1200-13-01-.02 Definitions is amended by inserting in alphabetical order the following new paragraphs, with all paragraphs numbered appropriately so that the new Paragraphs shall read as follows:

(#) Adult Dental Services. For purposes of ECF CHOICES only and limited to adults age 21 or older:

(a) Preventive dental services, fillings, root canals, extractions, periodontics, the provision of dentures, and other dental treatments to relieve pain and infection which have dental procedure codes listed in the current TennCare Maximum Reimbursement Rate Schedule for Dental Services that is used specifically for adult dental services provided under the State's Section 1915(c) waivers for individuals with intellectual disabilities; and intravenous sedation or other anesthesia services provided in the dentist's office by, and billed by, the dentist or by a nurse anesthetist or anesthesiologist who meets the waiver provider qualifications. Orthodontic services are excluded from coverage.

(b) Dental services for adults age 21 or older enrolled in the ECF CHOICES program shall be reimbursed only for dates of services when the ECF CHOICES Member was enrolled in ECF CHOICES at the time the service was delivered, and subject to the amount approved for such services in the ECF CHOICES Member's PCSP.

(c) All Dental Services for children enrolled in the waiver are provided through the TennCare EPSDT program. Dental Services shall not be covered through ECF CHOICES for children under age 21 years enrolled in ECF CHOICES (since it would duplicate TennCare/EPSDT benefits).

(d) Adult Dental Services for adults age 21 or older enrolled in ECF CHOICES shall be limited to a maximum of $5,000 per member per calendar year, and a maximum of $7,500 per member across three (3) consecutive calendar years.

(#) Aging Caregiver. Pursuant to T.C.A 33-5-112 as amended, the older custodial parent or custodial caregiver of an individual who has an intellectual disability and who is at least 75 years of age. A Potential Applicant for ECF CHOICES who has an Aging Caregiver shall, subject to all applicable eligibility and enrollment criteria, be enrolled into ECF CHOICES Group 5, unless the Applicant qualifies and elects to enroll in an available ECF CHOICES Group 4 slot, or cannot be safely served in ECF CHOICES Group 5 and meets eligibility criteria, including NF LOC, to enroll in an available ECF CHOICES Group 6 slot. Reserve capacity shall be established in ECF CHOICES Group 5 based on the number of persons with an intellectual disability who have an Aging Caregiver that are expected to be served in each program year.

(#) Benefits Counseling. For purposes of ECF CHOICES only and limited to persons age 16 or older:

(a) A service designed to inform the individual (and guardian, conservator and/or family, if applicable) of the multiple pathways to ensuring individualized integrated employment or self-employment that results in increased economic self-sufficiency (net financial benefit) through the use of various work incentives. This service should also repudiate myths and alleviate fears and concerns related to seeking and working in individualized integrated employment or self-employment through an accurate, individualized assessment. The service provides information to the individual (and guardian, conservator and/or family, if applicable) regarding the full array of available work incentives for essential benefit programs including SSI, SSDI, Medicaid, Medicare, ECF, housing subsidies, food stamps, etc.

(b) The service also will provide information and education to the person (and guardian, conservator and/or family, if applicable) regarding income reporting requirements for public benefit programs, including the Social Security Administration.

(c) Benefits counseling provides work incentives counseling and planning services to persons actively considering or seeking individualized integrated employment or self-employment, or career advancement in either of these types of employment.

(d) This service is provided by a certified Community Work Incentives Coordinator (CWIC). In addition to ensuring this service is not otherwise available to the individual under Section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. §§ 1401, et seq.), ECF CHOICES may not fund this service if CWIC Benefits Counseling services funded through the Federal Work Incentives Planning and Assistance (WIPA) program are available to the individual.

(e) Service must be provided in a manner that supports the person's communication style and needs, including, but not limited to, age appropriate communications, translation/interpretation services for persons of limited English-proficiency or who have other communication needs requiring translation including sign language interpretation, and ability to communicate with a person who uses an assistive communication device.

(f) Benefits Counseling services are paid for on an hourly basis and limited in the following ways:

1. Initial Benefits Counseling for someone actively considering or seeking individualized integrated employment or self-employment, or career advancement in these types of employment: up to twenty (20) hours. This service may be authorized no more than once every two (2) years (with a minimum of two 365-day intervals between services).

2. Supplementary Benefits Counseling for someone evaluating an individualized integrated job offer/promotion or self-employment opportunity: up to an additional six (6) hours. This service may be authorized up to three (3) times per year if needed.

3. PRN Problem-Solving services for someone to maintain individualized integrated employment or self-employment: up to eight (8) hours per situation requiring PRN assistance. This service may be authorized up to four (4) times per year if necessary for the individual to maintain individualized integrated employment or self-employment.

(#) Career Advancement. For purposes of ECF CHOICES only and limited to persons age 16 or older:

(a) This is a time-limited career planning and advancement support service for persons currently engaged in individualized integrated employment or self-employment who wish to obtain a promotion and/or a second individualized integrated employment or self-employment opportunity. The service is time-limited and focuses on developing and successfully implementing a plan for achieving increased income and economic self-sufficiency through promotion to a higher paying position or through a second individualized integrated employment or self-employment opportunity.

(b) The outcomes of this service are: (1) the identification of the person's specific career advancement objective; (2) development of a viable plan to achieve this objective; and (3) implementation of the plan which results in the person successfully achieving his/her specific career advancement objective.

(c) Career Advancement is paid on an outcome basis, after key milestones are accomplished:

1. Outcome payment number one is paid after the written plan to achieve the person's specific career advancement objective is reviewed and approved. Note: The written plan must follow the template prescribed by TennCare.

2. Outcome payment number two is paid after the person has achieved his/her specific career advancement objective and has been in the new position or second job for a minimum of two (2) weeks.

(d) This service may not be included on a Person-Centered Support Plan if the PCSP also includes any of the following services: Integrated Employment Path Services, Exploration, Discovery, Situational Observation and Assessment, Job Development or Self-Employment Plan, or Job Development or Self-Employment Start-Up. This service may not be authorized retroactive to a promotion or second job being made available to a person. Supports for Career Advancement may be authorized and paid once every three (3) years (with a minimum of three 365-day intervals between services), if evidence exists that the individual is eligible for promotion or able to present as a strong candidate for employment in a second job (e.g. has strong reference, performance reviews and attendance record from current employer). The only exception is in situations where the provider previously authorized and paid for outcome payment number one did not also earn outcome payment number two (because they did not successfully obtain a promotion or second job for the person). In this situation, reauthorization for outcome payments number one and two may occur a maximum of once per year (with a minimum 365-day interval between services), so long as the reauthorization involves the use of a new/different provider.

(#) Caregiver. For purposes of CHOICES or ECF CHOICES, a person who is (a) a family member or is unrelated to the member but has a close, personal relationship with the member; and (b) routinely involved in providing unpaid support and assistance to the member. A caregiver may also be designated by the member as a representative for CHOICES or ECF CHOICES or for consumer direction of eligible CHOICES or ECF CHOICES HCBS.

(#) Community Integration Support Services. For purposes of ECF CHOICES only:

(a) Services which coordinate and provide supports for valued and active participation in integrated daytime and nighttime activities that build on the person's interests, preferences, gifts, and strengths while reflecting the person's goals with regard to community involvement and membership. This service involves participation in one or more integrated community settings, in activities that involve persons without disabilities who are not paid or unpaid caregivers. Community Integration Support Services are designed to promote maximum participation in integrated community life while facilitating meaningful relationships, friendships and social networks with persons without disabilities who share similar interests and goals for community involvement and participation.

(b) Community Integration Support Services shall support and enhance, rather than supplant, an individual's involvement in public education, post-secondary education/training and individualized integrated employment or self-employment (or services designed to lead to these types of employment).

(c) Community Integration Support Services enable the person to increase or maintain his/her capacity for independent participation in community life and to develop age-appropriate social roles valued by the community by learning, practicing and applying skills necessary for full inclusion in the person's community, including skills in arranging and using public transportation for individuals aged 16 or older.

(d) Community Integration Support Services provide assistance for active and positive participation in a broad range of integrated community settings that allow the person to engage with people who do not have disabilities who are not paid or unpaid caregivers. The service is expected to result in the person developing and sustaining a range of valued, age-appropriate social roles and relationships; building natural supports; increasing independence; and experiencing meaningful community integration and inclusion. Activities are expected to increase the individual's opportunity to build connections within his/her local community and include (but are not limited to) the following:

1. Supports to participate in age-appropriate community activities, groups, associations or clubs to develop social networks with community organizations and clubs;

2. Supports to participate in community opportunities related to the development of hobbies or leisure/cultural interests or to promote personal health and wellness (e.g. yoga class, walking group, etc.);

3. Supports to participate in adult education and postsecondary education classes;

4. Supports to participate in formal/informal associations or community/neighborhood groups;

5. Supports to participate in volunteer opportunities;

6. Supports to participate in opportunities focused on training and education for self-determination and self-advocacy;

7. Supports for learning to navigate the local community, including learning to use public transportation and/or private transportation available in the local area; and

8. Supports to maintain relationships with members of the broader community (e.g., neighbors, co-workers and other community members who do not have disabilities and who are not paid or unpaid caregivers) through natural opportunities and invitations that may occur.

(e) This service includes a combination of training and supports as needed by the individual. The Community Integration Support Services provider shall be responsible for any personal assistance needs during the hours that Community Integration Support Services are provided; however, the personal assistance services may not comprise the entirety of the Community Integration Support Service. All providers of personal care under Community Integration Support Services meet the Personal Assistance provider qualifications.

(f) This service shall be provided in a variety of integrated community settings that offer opportunities for the person to achieve his or her personally identified goals for community integration, involvement, exploration and for developing and sustaining a network of positive natural supports. All settings where Community Integration Support Services are provided must be non-disability specific and meet all federal standards for HCBS settings. This service is provided separate and apart from the person's place of residence. This service does not take place in licensed facilities, sheltered workshops or any type of facility owned, leased or operated by a provider of this service.

(g) This service is available only:

1. For children not yet old enough to work and/or not yet eligible for employment services who are enrolled in Essential Family Supports; or

2. As "wrap-around" supports to employment or employment services (Supported Employment Individual or Small Group services and/or Integrated Employment Path Services) for individuals not receiving Community Living Supports or Community Living Supports-Family Model; or

3. For individuals who are of legal working age (16+) not receiving Community Living Supports or Community Living Supports-Family Model who, after an Employment Informed Choice Process as defined by TennCare, have decided not to pursue employment; or

4. For individuals of retirement age not receiving Community Living Supports or Community Living Supports-Family Model who have made a choice not to pursue further employment opportunities.

(h) For individuals receiving Community Integration Support Services and not participating in employment or employment services, the option to pursue employment should be discussed at least semi-annually.

(i) For individuals receiving Community Living Supports or Community Living Supports-Family Model, all services necessary to support community integration and participation are part of the scope of benefits provided under the CLS or CLS-FM benefit and shall not be authorized, provided or reimbursed as a separate service.

(j) For individuals of appropriate age (18+), fading of the service and less dependence on paid support for ongoing participation in community activities and relationships is expected. Fading strategies, similar to those used in Supported Employment Job Coaching, should be utilized. Milestones for the reduction/fading of paid supports and the enhancement of natural supports must be established and monitored for this service.

(k) Payment for registration, materials and supplies for participation in classes, conferences and similar types of activities, or club/association dues can be covered, but cannot exceed $500 per year for children under age 21 or $1,000 per year for adults age 21 or older. These costs are not included in the rates paid to the providers of Community Integration Support Services and must be prior approved before being incurred.

(l) Transportation to and from the service is not included in the rate paid for the service; but transportation during the service (when no-cost forms of transportation are not available or not being accessed) is included in the rate paid for the service.

(m) Community Integration Support Services shall be limited as follows:

1. For persons not working in Individualized Integrated Employment, Individualized Integrated Self-Employment, or Small Group Employment in the community or receiving at least one employment service, no more than 20 hours per week of Community Integration Support Services and Independent Living Skills Training combined after completing an Employment Informed Choice process.

2. For persons who are working in Individualized Integrated Employment, Individualized Integrated Self-Employment, or Small Group Employment in the community (not a sheltered workshop) or receiving at least one employment service, no more than 30 hours per week of Community Integration Support Services, Independent Living Skills Training, and Individual or Small Group Employment Supports combined.

3. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop), no more than 40 hours per week of Community Integration Support Services, Independent Living Skills Training, Job Coaching, Co-Worker Supports, and the hours worked without paid supports combined.

4. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop) at least 30 hours per week, no more than 50 hours per week of Community Integration Support Services,

Independent Living Skills Training, Job Coaching, Co-Worker Supports, and the hours worked without paid supports combined.

(#) Community Support Development, Organization and Navigation. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 4 (Essential Family Supports):

(a) Assists individuals and families in 1) promoting a spirit of personal reliance and contribution, mutual support and community connection; 2) developing social networks and connections within local communities, and 3) emphasizing, promoting and coordinating the use of unpaid supports to address individual and family needs in addition to paid services.

(b) Supports provided include:

1. Helping individuals and family caregivers to develop a network for information and mutual support from others who receive services or family caregivers of individuals with disabilities;

2. Assisting individuals with disabilities and family caregivers with identifying and utilizing supports available from community service organizations, such as churches, schools, colleges, libraries, neighborhood associations, clubs, recreational entities, businesses and community organizations focused on exchange of services (e.g. time banks); and

3. Assisting individuals with disabilities and family caregivers with providing mutual support to one another (through service/support exchange), and contributions offered to others in the community.

(c) These services are provided by a Community Navigator and reimbursed on a per person (or family) per month basis, based on specific goals and objectives as specified in the person-centered support plan.

(#) Community Transportation. For purposes of ECF CHOICES only:

(a) Community Transportation services are non-medical transportation services offered in order to enable individuals, and their personal assistants as needed, to gain access to employment, community life, activities and resources that are identified in the person-centered support plan. These services allow individuals to get to and from typical day-to-day, non-medical activities such as individualized integrated employment or self-employment (if not home-based), the grocery store or bank, social events, clubs and associations and other civic activities, or attending a worship service. This service is made available when public or other no-cost community-based transportation services are not available and the person does not have access to transportation through any other means (including natural supports).

(b) Whenever possible, family, neighbors, co-workers, carpools or friends are utilized to provide transportation assistance without charge. When this service is authorized, the most cost-effective option should be considered first. This service is in addition to the medical transportation service offered under the Medicaid State Plan, which includes transportation to medical appointments as well as emergency medical transportation.

(c) Community Transportation shall be limited to no more than $225 per month for persons electing to receive this service through Consumer Direction.

(#) Conservatorship and Alternatives to Conservatorship Counseling and Assistance. For purposes of ECF CHOICES only:

(a) This service offers up to $500 in one-time consultation, education and assistance to family caregivers in understanding conservatorship and alternatives to conservatorship. These services shall be provided in a manner that seeks to preserve the rights and freedoms of the individual to the maximum extent possible and appropriate. This service may include assistance with completing necessary paperwork and processes to establish an alternative to conservatorship or conservatorship, if appropriate. Reimbursable services may include payment of legal or court fees necessary to formalize an alternative to conservatorship or conservatorship, but only upon completion of education

and consultation to help preserve the person's rights and freedoms to the maximum extent possible and appropriate.

(b) Conservatorship and Alternatives to Conservatorship Counseling and Assistance shall be limited to $500 per lifetime.

(#) Consumer. Except when used regarding consumer direction of eligible CHOICES or ECF CHOICES HCBS, an individual who uses a mental health or substance abuse service.

(#) Co-Worker Supports. For purposes of ECF CHOICES only and limited to persons age 16 or older:

(a) This service involves a provider of Job Coaching for Individualized Integrated Employment entering into an agreement with an individual's employer to reimburse the employer for supports provided by one or more supervisors and/or co-workers, acceptable to the individual, to enable the person to maintain individualized integrated employment with the employer. This service cannot include payment for the supervisory and co-worker supports rendered as a normal part of the business setting and that would otherwise be provided to an employee without a disability. Additional natural supports for the individual, already negotiated with the employer, and provided through supervisors and co-workers, are not eligible for reimbursement under Co-Worker Supports. Only supports that must otherwise be provided by a Job Coach may be reimbursed under this service category. Co-Worker Supports would be authorized in situations where any of the following is true:

1. From the start of employment or at any point during employment, if the employer prefers (or the individual prefers and the employer agrees) to provide needed Job Coach supports, rather than having a Job Coach, either employed by a third party agency or self-employed, present in the business. Fading expectations should still be in place to maximize independence of the employed individual.

2. At any point in the individual's employment where needed Job Coaching supports can be most cost effectively provided by Co-Worker Supports and both the employer and individual agree to the use of Co-Worker Supports. Fading of Job Coaching supports may or may not still be occurring, but Co-Worker Supports should always be considered when ongoing fading of Job Coaching has stopped occurring.

3. For individuals who are expected to be able to transition to working only with employer supports available to any employee and additional negotiated natural supports if applicable. In this situation, Co-Worker Supports are authorized as a temporary (maximum twelve months) bridge to relying only on employer supports, and additional negotiated natural (unpaid) supports if applicable, to maintain employment. The supervisor(s) and/or co-worker(s) identified to provide the support to the individual must meet the qualifications for a legally responsible individual as provider of this service. The provider is responsible for ensuring these qualifications are met and also for oversight and monitoring of paid co-worker supports.

(b) The amount of time authorized for this service is negotiated with the employer and reflective of the specific needs the individual has for Co-Worker Supports above and beyond negotiated natural supports and supervisory/co-worker supports otherwise available to employees without disabilities. A 10% add-on to the 15 minute unit rate for the employer is applied to cover the service provider's role in administering Co-Worker Supports.

(c) Co-Worker Supports shall be limited as follows:

1. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop), no more than 40 hours per week of Co-Worker Supports, Job Coaching, Community Integration Support Services, Independent Living Skills Training, and the hours worked without paid supports combined.

2. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop) at least 30 hours per week, no more than 50 hours per week of Co-Worker Supports, Job Coaching, Community

Integration Support Services, Independent Living Skills Training, and the hours worked without paid supports combined.

(#) Developmental Disability(ies) (DD).

(a) Pursuant to T.C.A § 33-1-101, as amended, a developmental disability in a person over five (5) years of age means a condition that:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Manifested before twenty-two (22) years of age;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three (3) or more of the following major life activities:

1. Self-care;

2. Receptive and expressive language;

3. Learning;

4. Mobility;

5. Self-direction;

6. Capacity for independent living; or

7. Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special interdisciplinary or generic services, supports, or other assistance that is likely to continue indefinitely and need to be individually planned and coordinated.

(b) Developmental disability in a person up to five (5) years of age means a condition of substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disability as defined for persons over five (5) years of age if services and supports are not provided.

(c) For purposes of ECF CHOICES, the determination that an Applicant has substantial functional limitations in three (3) or more major life activities shall be made by TennCare using an adaptive behavior (or life skills) assessment tool, and review of supporting medical evidence. Information gathered through such adaptive behavior (or life skills) assessment shall not be used for purposes of evaluating functional deficits described in 1200-13-01-.10, or in determining an Individual Acuity Score or an Applicant's total score on the NF LOC Acuity Scale.

(#) Discovery. For purposes of ECF CHOICES only and limited to persons age 14 or older:

(a) This is a time-limited and targeted service for an individual who wishes to pursue individualized integrated employment or self-employment but for whom more information is needed to determine the following prior to pursuing individualized integrated employment or self-employment:

1. Strongest interests toward one or more specific aspects of the labor market;

2. Skills, strengths and other contributions likely to be valuable to employers or valuable to the community if offered through self-employment;

3. Conditions necessary for successful employment or self-employment.

(b) Discovery involves a comprehensive analysis of the person in relation to Parts 1., 2., and 3. above. Activities include observation of the person in familiar places and activities, interviews with family, friends and others who know the person well, observation of the person in an unfamiliar place and activity, and identification of the person's strong interests and existing strengths and skills that are transferable to individualized integrated employment or self-employment. Discovery also involves identification of conditions for success based on experience shared by the person and others who know the person well, and observation of the person during the Discovery process. The information developed through Discovery allows for activities of typical life to be translated into possibilities for individualized integrated employment or self-employment.

(c) Discovery results in the production of a detailed written Profile, using a standard template prescribed by TennCare, which summarizes the process, learning and recommendations to inform identification of the person's individualized integrated employment or self-employment goal(s) and strategies to be used in securing this employment or self-employment for the person.

(d) If Discovery is paid for through ECF CHOICES, the person should be assisted to apply to Vocational Rehabilitation (VR) for services to obtain individualized integrated employment or self-employment.

(e) The Discovery Profile should be shared with VR staff to facilitate the expeditious development of an Individual Plan for Employment (IPE).

(f) Discovery shall be limited to no more than ninety (90) calendar days from the date of service initiation. This service is expected, on average, to involve fifty (50) hours of service.

(g) The provider shall document each date of service, the activities performed that day, and the duration of each activity. The written Profile is due no later than fourteen (14) days after the last date of service is concluded. Discovery is paid on an outcome basis, after the written Profile is received and approved, and the provider submits documentation detailing each date of service, the activities performed that day, and the duration of each activity.

(h) After an individual has received the service for the first time, re-authorization may occur a maximum of once every three years (with a minimum of three 365-day intervals between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within twelve (12) months.

(#) Employment and Community First CHOICES (ECF CHOICES). A managed long-term services and supports program that offers home and community-based services to eligible individuals with intellectual and developmental disabilities enrolled in the program in order to promote competitive employment and integrated community living as the first and preferred option. The ECF CHOICES program will begin implementation at a date to be determined by TennCare, but no sooner than July 1, 2016.

(#) ECF CHOICES 217-Like Group. Individuals with I/DD of all ages who meet the NF LOC criteria who need and are receiving HCBS, and who would be eligible in the same manner as specified under 42 C.F.R. § 435.217, 42 C.F.R. § 435.726, and Section 1902(a) of the Social Security Act, if the HCBS were provided under a Section 1915(c) waiver. Enrollment in this group shall be subject to the enrollment targets established for each applicable ECF CHOICES benefit group. An Applicant may qualify in the ECF CHOICES 217-Like Group only when there is an available slot for enrollment into an ECF CHOICES benefit group for which the Applicant meets all eligibility and enrollment criteria, including prioritization criteria for enrollment into ECF CHOICES as established in these Rules, and when the Applicant upon approval of financial eligibility, will be enrolled by TennCare into such ECF CHOICES group.

(#) ECF CHOICES Group (Group). One of the three groups of TennCare enrollees who are enrolled in ECF CHOICES, and for which a particular package of ECF CHOICES HCBS benefits and limitations pertaining thereto is available. All groups in ECF CHOICES receive services in the community. These Groups are:

(a) Group 4 (Essential Family Supports). Children under age twenty one (21) with I/DD living at home with family who meet the NF LOC and need and are receiving HCBS as an alternative to NF Care, or who, in the absence of HCBS, are "At Risk for Institutionalization," as defined in these rules, and adults age 21 or older with I/DD living at home with family who meet the NF LOC and need and are receiving HCBS as an alternative to NF care, or who, in the absence of HCBS, are "At Risk for

Institutionalization," as defined in these rules, and elect to be in this group. To qualify in this group, an individual must be SSI eligible or qualify in the ECF CHOICES 217-Like Group, Interim ECF CHOICES At-Risk Demonstration Group, or upon implementation of Phase 2 of ECF CHOICES, the ECF CHOICES At-Risk or ECF CHOICES Working Disabled Demonstration Groups. "Family" shall be interpreted to mean individual(s) to whom the child or adult with I/DD is legally related, whether the relationship is by blood, by marriage, or by adoption. "Family" shall not include a foster care or paid living arrangement.

(b) Group 5 (Essential Supports for Employment and Independent Living). Adults age twenty-one (21) or older with I/DD who do not meet nursing facility level of care, but who, in the absence of HCBS are "At Risk for Institutionalization," as defined in these rules. To qualify in this group, the adult must be SSI eligible or qualify in the Interim ECF CHOICES At-Risk Demonstration Group, or upon implementation of Phase 2 of ECF CHOICES, the ECF CHOICES At-Risk or ECF CHOICES Working Disabled Demonstration Groups.

(c) Group 6 (Comprehensive Supports for Employment and Community Living). Adults age twenty-one (21) or older with I/DD who meet nursing facility level of care and need and are receiving specialized services for I/DD. To qualify in this group, an individual must be SSI eligible or qualify in the ECF CHOICES 217-Like Demonstration Group, or upon implementation of Phase 2 of ECF CHOICES, the ECF CHOICES Working Disabled Demonstration Group.

(#) ECF CHOICES Home and Community-Based Services (HCBS). Services that are available only to eligible persons enrolled in ECF CHOICES Groups 4, 5 or 6 as an alternative to long-term care institutional services in a nursing facility or to delay or prevent placement in a nursing facility. Only certain ECF CHOICES HCBS are eligible for Consumer Direction. ECF CHOICES HCBS do not include home health or private duty nursing services or any other HCBS that are covered by Tennessee's Title XIX State Plan or under the TennCare demonstration for all eligible enrollees, although such services are subject to estate recovery and shall, for members enrolled in ECF CHOICES Group 6 who are granted an exception to the expenditure cap based on exceptional medical and/or behavioral needs, be counted for purposes of determining whether an ECF CHOICES member's needs can be safely met in the community within his or her individual expenditure cap.

(#) ECF CHOICES Member. A member who has been enrolled by TennCare into ECF CHOICES.

(#) ECF CHOICES Referral List. The listing of Potential Applicants that have completed a screening process to express their interest in applying for enrollment into the ECF CHOICES program.

(#) Eligible. Any person certified by TennCare as eligible to receive services and benefits under the TennCare program. As it relates to CHOICES and ECF CHOICES a person is eligible to receive CHOICES or ECF CHOICES benefits only if he/she has been enrolled in CHOICES or ECF CHOICES by TennCare.

(#) Eligible ECF CHOICES HCBS. Personal assistance, supportive home care, hourly respite, community transportation, and/or any other ECF CHOICES HCBS specified in TennCare rules as eligible for consumer direction which an ECF CHOICES member is determined to need and elects to direct and manage (or 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) and the delivery of each eligible ECF CHOICES HCBS within the authorized budget for that service. Eligible ECF CHOICES HCBS do not include home health or private duty nursing services.

(#) Emergent Circumstances. For purposes of reserve capacity in ECF CHOICES, a limited number of individuals who meet one or more emergent circumstances criteria as specified in these Rules and for which enrollment into ECF CHOICES is the most appropriate way to provide needed supports, as determined by an Interagency Review Committee, including both TennCare and DIDD.

(#) Employment Informed Choice. The process the MCOs must complete for working age members (ages 16 to 62) enrolled in ECF CHOICES who are eligible for, and want to receive, Community Integration Support Services and/or Independent Living Skills Training services when the member is not engaged in or pursuing integrated employment (with or without Supported Employment Individual or Small Group services, Integrated Employment Path Services or comparable Vocational Rehabilitation/Special Education services). Members who receive Community Living Supports or Community Living Supports-Family Model services are not eligible to receive Community Integration Support Services and/or Independent Living Skills Training

services. The Employment Informed Choice process includes, but is not limited to, an orientation to employment, self-employment, employment supports and work incentives provided by the member's support coordinator; the authorization and completion of Exploration services in order to experience various employment settings that are aligned with the member's interests, aptitudes, experiences and/or skills and ensure an informed choice regarding employment; and signed acknowledgment from the member/representative if the member elects not to pursue employment *before* Community Integration Support Services and/or Independent Living Skills Training may be authorized.

(#) Enrollment. One of three (3) components of the referral list management process for ECF CHOICES that occurs only when a Potential Applicant has been determined to meet criteria for an available reserve capacity slot or for one of the categories for which enrollment into ECF CHOICES is currently open, and when there is an appropriate slot available for the person to enroll, subject to all applicable eligibility and enrollment criteria. Enrollment into ECF CHOICES may be approved only by TennCare, and subject to the availability of an appropriate slot for the person to enroll if all applicable eligibility and enrollment criteria are met.

(#) Exploration. For purposes of ECF CHOICES only and limited to persons age 14 or older:

(a) This is a time-limited and targeted service designed to help a person make an informed choice about whether s/he wishes to pursue individualized integrated employment or self-employment, as defined above. The Exploration service shall be completed no more than thirty (30) calendar days from the date of service initiation. This service is not appropriate for ECF CHOICES members who already know they want to pursue individualized integrated employment or self-employment.

(b) This service includes career exploration activities to identify a person's specific interests and aptitudes for paid work, including experience and skills transferable to individualized integrated employment or self-employment. This service also includes exploration of individualized integrated employment or self-employment opportunities in the local area that are specifically related to the person's identified interests, experiences and/or skills through four to five uniquely arranged business tours, informational interviews and/or job shadows. (Each person receiving this service should participate in business tours, informational interviews and/or job shadows uniquely selected based on his or her individual interests, aptitudes, experiences, and skills most transferable to employment. All persons should not participate in the same experiences.) Each business tour, informational interview and/or job shadow shall include time for set-up, prepping the person for participation, and debriefing with the person after each opportunity.

(c) This service also includes introductory education on the numerous work incentives for individuals receiving publicly funded benefits (e.g. SSI, SSDI, Medicaid, Medicare, etc.). This service further includes introductory education on how Supported Employment services work (including Vocational Rehabilitation services). Educational information is provided to the person and the legal guardian/conservator and/or most involved family member(s), if applicable, to ensure legal guardian/conservator and/or family support for the person's choice to pursue individualized integrated employment or self-employment. The educational aspects of this service shall include addressing any concerns, hesitations or objections of the person and the legal guardian/conservator and/or most involved family member(s), if applicable.

(d) This service is expected to involve, on average, forty (40) hours of service. The provider shall document each date of service, the activities performed that day, and the duration of each activity. This service culminates in a written report summarizing the process and outcomes, using a standard template prescribed by TennCare. The written report is due no later than fourteen (14) calendar days after the last date of service is concluded. Exploration is paid on an outcome basis, after the written report is received and approved, and the provider submits documentation detailing each date of service, the activities performed that day, and the duration of each activity.

(e) After an individual has received the service for the first time, re-authorization may occur a maximum of once per year (with a minimum 365-day interval between services) and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment.

(#) Family Caregiver Education and Training. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 4 (Essential Family Supports):

(a) This service provides reimbursement up to $500 per year to offset the costs of educational materials, training programs, workshops and conferences that help the family caregiver to:

1. Understand the disability of the person supported;

2. Achieve greater competence and confidence in providing supports;

3. Develop and access community and other resources and supports;

4. Develop advocacy skills; and

5. Support the person in developing self-advocacy skills.

(b) Other types of education and training shall not be reimbursed.

(c) Family Caregiver Education and Training is offered only for a family caregiver who is providing unpaid support, training, companionship, or supervision for a person participating in ECF CHOICES who is living in the family home. The intent of the service is to provide education and support to the caregiver that preserves the family unit and increases confidence, stamina and empowerment. Education and training activities are based on the family/caregiver's unique needs and are specifically identified in the person-centered support plan prior to authorization.

(d) In order to be reimbursed by the MCO, Family Caregiver Education and Training must be approved by the member's MCO before such education or training activities commence and shall be limited to no more than $500 per calendar year.

(e) "Family" shall be interpreted to mean individual(s) to whom the child or adult with I/DD is legally related, whether the relationship is by blood, by marriage, or by adoption. "Family" shall not include a foster care or paid living arrangement. Caregiver shall be interpreted as defined in these rules.

(#) Family Caregiver Stipend in lieu of Supportive Home Care. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 4 (Essential Family Supports):

(a) A monthly payment to the primary family caregiver of a person supported when the person lives with the family in the family home and the family is providing daily services and supports that would otherwise be defined within the scope of Supportive Home Care services. This service is available only in lieu of Supportive Home Care (including Personal Assistance) services and shall not be authorized for a person receiving Supportive Home Care (including Personal Assistance) services. The funds may be used to compensate lost wage earning opportunities that are entailed in providing support to a family member with a disability and to help offset the cost of other services and supports the person needs that are not covered under this program.

(b) For a child under age 18, the Family Caregiver Stipend shall be limited to $500 per month. For an adult age 18 or older, the Family Caregiver Stipend shall be no more than $1,000 per month. The amount of Family Caregiver Stipend approved shall be based on the needs of the individual taking into account the supports necessary for employment and community integration and participation, and shall ensure that supports necessary for employment and community integration and participation are provided first, or available to the person through other sources (whether paid or unpaid) or as part of the supports provided by the family caregiver in order for a Stipend to be approved.

(c) "Family" shall be interpreted to mean individual(s) to whom the child or adult with I/DD is legally related, whether the relationship is by blood, by marriage, or by adoption. "Family" shall not include a foster care or paid living arrangement. Caregiver shall be interpreted as defined in these rules.

(#) Family-to-Family Support. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 4 (Essential Family Supports):

(a) These services provide information, resources, guidance, and support from an experienced and trained parent or other family member to another parent or family caregiver who is the primary unpaid

support to a child with intellectual or developmental disabilities enrolled in ECF CHOICES. The service shall include facilitation of parent or family member "matches" and follow-up support to assure the matched relationship meets peer expectations.

(b) Family-to-Family Support shall be reimbursed on a per member per month basis for each Member enrolled in ECF CHOICES Group 4. The per member per month reimbursement of Family-to-Family Support shall not be counted against the member's expenditure cap.

(#) Health Insurance Counseling/Forms Assistance. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 4 (Essential Family Supports):

(a) Health Insurance Counseling/Forms Assistance services offers training and assistance to individuals enrolled in ECF CHOICES and/or their family caregiver and policy holder in understanding the benefits offered through their private or public insurance program, completing necessary forms, accessing covered benefits, and navigating member appeal processes regarding covered benefits. An insurance company or its affiliate shall not be reimbursed for providing this service.

(b) This is a time-limited service intended to develop the person and/or family caregiver's understanding and capacity to self-manage insurance benefits. Reimbursement shall be limited to 15 hours per person per year.

(c) Persons choosing to receive this service must agree to complete an online assessment of its efficacy following the conclusion of counseling and/or forms assistance.

(#) Independent Living Skills Training. For purposes of ECF CHOICES only:

(a) Independent Living Skills Training services provide education and skill development or training to improve the person's ability to independently perform routine daily activities and utilize community resources as specified in the person's person-centered support plan. Services are instructional, focused on development of skills identified in the person-centered support plan and are not intended to provide substitute task performance. Daily living skills training may include only education and skill development related to:

1. Personal hygiene;

2. Food and meal preparation;

3. Home upkeep/maintenance;

4. Money management;

5. Accessing and using community resources;

6. Community mobility;

7. Parenting;

8. Computer use; and

9. Driving evaluation and lessons.

(b) Independent Living Skills Training is intended as a short-term service designed to allow a person not receiving Community Living Supports or Community Living Supports-Family Model to acquire specific additional skills that will support his/her transition to or sustained independent community living. Individuals receiving Independent Living Skills Training must have specific independent-living goals in their person-centered support plan that Independent Living Skills Training is specifically designed to support.

(c) The provider must prepare and follow a specific plan and strategy for teaching specific skills for the independent living goals identified in the person-centered support plan. Systematic instruction and other strategies used in Supported Employment Job Coaching should also be employed in this

service. The provider must document monthly progress toward achieving each independent living skill identified in the person-centered support plan.

(d) This service will typically originate from the person's home and take place in the person's home and home community. Providers of this service should meet people in these natural environments to provide this service rather than maintaining a separate service location.

(e) Transportation during the service (when no-cost forms of transportation are not available or not being accessed) is included in the rate paid for the service.

(f) Individuals receiving Community Living Supports or Community Living Supports-Family Model are not eligible to receive this service, since the scope of benefits provided to a person under the CLS and CLS-FM benefits include habilitation training and supports to help the person achieve maximum independence and sustained community living.

(g) Independent Living Skills Training shall be limited as follows:

1. For persons not working in Individualized Integrated Employment, Individualized Integrated Self-Employment, or Small Group Employment in the community or receiving at least one employment service, no more than 20 hours per week of Independent Living Skills Training and Community Integration Support Services combined after completing an Employment Informed Choice process.

2. For persons who are working in Individualized Integrated Employment, Individualized Integrated Self-Employment, or Small Group Employment in the community (not a sheltered workshop) or receiving at least one employment service, no more than 30 hours per week of Independent Living Skills Training, Community Integration Support Services, and Individual or Small Group Employment Supports combined.

3. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop), no more than 40 hours per week of Independent Living Skills Training, Community Integration Support Services, Job Coaching, Co-Worker Supports, and the hours worked without paid supports combined.

4. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop) at least 30 hours per week, no more than 50 hours per week of Independent Living Skills Training, Community Integration Support Services, Job Coaching, Co-Worker Supports, and the hours worked without paid supports combined.

(#) Individual Education and Training Services. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 5 (Essential Supports for Employment and Independent Living) or Group 6 (Comprehensive Supports for Employment and Community Living):

Reimbursement up to $500 per year to offset the costs of training programs, workshops and conferences that help the person develop self-advocacy skills, exercise civil rights, and acquire skills needed to exercise control and responsibility over other support services. Other types of education and training shall not be reimbursed. This service may include education and training for participants, their caregivers and/or legal representatives that is directly related to building or acquiring such skills. Managed care organizations assure that information about educational and/or training opportunities is available to participants and their caregivers and legal representatives. Covered expenses may include enrollment fees, books and other educational materials and transportation related to participation in training courses, conferences and other similar events. In order to be reimbursed by the MCO, Individual Education and Training Services must be approved by the member's MCO before such education or training activities commence and shall be limited to $500 per individual per calendar year.

(#) Individualized Integrated Employment. Sustained paid employment in a competitive or customized job with an employer for which an individual is compensated at or above the state's minimum wage, with the optimal goal being not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

(#) Individualized Integrated Self-Employment. Sustained paid self-employment that is home-based or conducted in an integrated setting(s) where net income in relation to hours worked is equivalent to no less than the state's minimum wage, after a reasonable self-employment start-up period.

(#) Initial Support Plan (SP). As it pertains to ECF CHOICES, the Initial SP is a written plan developed by the Support Coordinator in accordance with policies and protocols established by TennCare which identifies ECF CHOICES HCBS that are needed by the ECF CHOICES member immediately upon enrollment in ECF CHOICES while the Support Coordinator develops the comprehensive Person-Centered Support Plan. Needed ECF CHOICES HCBS specified in the Initial SP shall be authorized for no more than thirty (30) calendar days, by which point the MCO shall develop and implement the member's comprehensive Person-Centered Support Plan.

(#) Intake. One of three (3) components of the referral list management process for ECF CHOICES during which basic documentation is gathered to confirm information self-reported in the screening process, including whether a person has an intellectual or developmental disability (i.e., is in the target population for ECF CHOICES) and other information that will be used to prioritize the person for enrollment into ECF CHOICES based on established prioritization and enrollment criteria. Intake is generally performed during a face-to-face interview with the Potential Applicant. The result of intake could be 1) a decision to proceed with enrollment because a person with ID qualifies for an available reserve capacity slot based on an aging caregiver or meets certain prioritization criteria for a category for which enrollment is open and there is an appropriate slot available for enrollment; 2) referral to the Interagency Review Committee because the person may meet criteria for a reserve capacity slot based on emergent circumstances or multiple complex health conditions; or 3) continued placement on the ECF CHOICES referral list in the appropriate category.

(#) Integrated Employment Path Services (Time-Limited, Community-Based Prevocational Training). For purposes of ECF CHOICES only and limited to members age 16 or older:

(a) The provision of time-limited learning and work experiences, including volunteering opportunities, where a person can develop general, non-job-task-specific strengths and skills that contribute to employability in individualized integrated employment or self-employment. Services are expected to specifically involve strategies that facilitate a participant's successful transition to individualized integrated employment or self-employment.

(b) Individuals receiving Integrated Employment Path Services must have a desire to obtain some type of individualized integrated employment or self-employment and this goal must be documented in the PCSP as the goal that Integrated Employment Path Services are specifically authorized to address.

(c) Services should be customized to provide opportunities for increased knowledge, skills and experiences specifically relevant to the person's specific individualized integrated employment and/or self-employment goals and career goals. If such specific goals are not known, this service can also be used to assist a person with identifying his/her specific individualized integrated employment and/or self-employment goals and career goals.

(d) The expected outcome of this service is measurable gains in knowledge, skills and experiences that contribute to the individual achieving individualized integrated employment or self-employment. Integrated Employment Path Services are intended to develop and teach general skills that lead to individualized integrated employment or self-employment including but not limited to: ability to communicate effectively with supervisors, co-workers and customers; generally accepted community workplace conduct and dress; ability to follow directions; ability to attend to tasks; workplace problem solving skills and strategies; and general workplace safety and mobility training.

(e) Service limitations:

1. This service is limited to no more than twelve (12) months. One extension of up to twelve (12) months can be allowed only if the individual is actively pursuing individualized integrated employment or self-employment in an integrated setting and has documentation that a service(s) (i.e. Job Development or Self-Employment Start-Up funded by Tennessee Rehabilitation Services, ECF CHOICES or another similar source) is concurrently authorized for this purpose. The twelve (12) month authorization and one twelve (12) month reauthorization

may be repeated only if a person loses individualized integrated employment or self-employment and is seeking replacement opportunities.

2. This service must be delivered in integrated, community settings and may not be provided in sheltered workshops or other segregated facility-based day, vocational or prevocational settings.

3. Integrated Employment Path Services shall not be provided or reimbursed if the person is receiving Job Coaching (for Individualized Integrated Employment or Self-Employment), Co-Worker Supports or is working in individualized integrated employment or self-employment without any paid supports. Integrated Employment Path Services are only appropriate for individuals who are not yet engaged in individualized integrated employment or self-employment.

4. Integrated Employment Path Services shall be limited to no more than 30 hours per week in combination with Supported Employment – Small Group, Community Integration Support Services, and Independent Living Skills Training.

(f) Transportation of the individual to and from this service is not included in the rate paid for this service but transportation during the service is included in the rate.

(g) ECF CHOICES will not cover services which are otherwise available to the individual under Section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. §§ 1401, et seq.). If this service is authorized, documentation is maintained that the service is not available to the individual under a program funded under section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. §§ 1401, et seq.).

(h) This service will not duplicate other services provided through the waiver or Medicaid State Plan services.

(#) Intellectual Disability(ies) (ID). Pursuant to T.C.A § 33-1-101, an intellectual disability is defined as substantial limitations in functioning:

(a) As shown by significantly sub-average intellectual functioning that exists concurrently with related limitations in two (2) or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work; and

(b) That are manifested before eighteen (18) years of age.

For purposes of ECF CHOICES, the determination that an Applicant has limitations in two (2) or more adaptive skill areas shall be made by TennCare using an adaptive behavior (or life skills) assessment tool, and review of supporting medical evidence. Information gathered through such adaptive behavior (or life skills) assessment shall not be used for purposes of evaluating functional deficits described in Rule 1200-13-01-.10, or in determining an Individual Acuity Score or an Applicants total score on the NF LOC Acuity Scale.

(#) Interagency Review Committee. The committee composed of staff from TennCare and DIDD that reviews requests submitted on behalf of a Potential Applicant in order to determine whether the Potential Applicant meets emergent circumstances or multiple complex health conditions criteria as defined in these rules. A determination by the Interagency Review Committee that a Potential Applicant meets emergent circumstances or multiple chronic health conditions criteria shall be required before DIDD or an MCO proceeds with an enrollment visit to determine if the Potential Applicant qualifies to enroll in ECF CHOICES in a reserve capacity slot designated for such purpose.

(#) Interim ECF CHOICES At-Risk Group. Individuals with I/DD of all ages who: are not eligible for Medicaid or TennCare under any other category; meet the financial eligibility standards for the ECF CHOICES 217-Like Group; do not meet NF LOC criteria but in the absence of ECF CHOICES, are At Risk for Institutionalization. The Interim ECF CHOICES At Risk Demonstration Group will open to new enrollment only until such time that the Employment and Community First CHOICES At-Risk Demonstration Group (with income up to one hundred and fifty percent (150%) of the FPL) and the Employment and Community

First CHOICES Working Disabled Demonstration Groups can be established. Persons enrolled in the Interim ECF CHOICES At-Risk Demonstration Group as of the date new enrollment into the group closes may continue to qualify in the group as long as they continue to meet nursing facility financial eligibility standards and the At-Risk LOC criteria, and remain continuously eligible and enrolled in the Interim ECF CHOICES At-Risk Demonstration Group. Enrollment in this group shall be subject to the enrollment targets established for each applicable ECF CHOICES benefit group. An Applicant may qualify in the Interim ECF CHOICES At-Risk Group only when there is an available slot for enrollment into an ECF CHOICES benefit group for which the Applicant meets all eligibility and enrollment criteria, including prioritization criteria for enrollment into ECF CHOICES as established in these Rules, and when the Applicant, upon approval of financial eligibility, will be enrolled by TennCare into such ECF CHOICES group.

(#) Job Coaching. For purposes of ECF CHOICES only and limited to members age 16 or older:

(a) Job Coaching for Individualized, Integrated Employment includes identifying, through job analysis, and providing services and supports that assist the individual in maintaining individualized integrated employment that pays at least minimum wage but ideally not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Job coaching includes supports provided to the individual and his/her supervisor and/or co-workers, either remotely (via technology) or face-to-face. Supports during each phase of employment must be guided by a Job Coaching Fading Plan which incorporates an appropriate mix of best practices for the individual to achieve fading goals as identified in the Plan (e.g. systematic instruction utilizing task analysis to teach the individual to independently complete as much of his/her job duties as possible; high or low tech assistive technology; and effective engagement of natural supports including co-workers and supervisor(s) as needed). If progress on fading ceases at some point, adaptations to job duties, negotiated with the supervisor/employer, or transition to Co-Worker Supports may be utilized if no reduction in hours or hourly pay results.

1. The amount of time authorized for this service is a percentage of the individual's hours worked and is tiered based on the individual's level of disability and the length of time the person has been employed on the job. An exception policy applies for individuals with exceptional circumstances.

2. Transportation of the supported employee to and from the job site is not included in the rate paid for the service. Transportation of the supported employee, if necessary, during the provision of job coaching is included in the rate paid for the service.

(b) Job Coaching for Individualized, Integrated Self-Employment includes identification and provision of services and supports that assist the individual in maintaining self-employment. Job coaching for self-employment includes supports provided to the individual, either remotely (via technology) or face-to-face. Supports must enable the individual to successfully operate the business (with assistance from other sources of professional services or suppliers of goods necessary for the type of business). Job Coaching supports should never supplant the individual's role or responsibility in all aspects of the business. Supports during each phase of self-employment must be guided by a Job Coaching Fading Plan which incorporates an appropriate mix of best practices for the individual to achieve fading goals as identified in the Plan (e.g., systematic instruction utilizing task analysis to teach the individual to independently complete as much of his/her roles and responsibilities as possible; high or low tech assistive technology; and effective engagement of any business partners and/or associates and/or suppliers of goods or services. If progress on fading ceases at some point, business plan adaptations may be utilized if no reduction in paid hours or net hourly pay results.

1. The amount of time authorized for this service is a percentage of the individual's hours engaged in self-employment and is tiered based on the individual's level of disability and the length of time the person has been self-employed in the current business. An exception policy applies for individuals with exceptional circumstances.

2. Transportation of the supported self-employed person to and from the place of work is not included in the rate paid for the service. Transportation of the supported self-employed person, if necessary, during the provision of job coaching is included in the rate paid for the service.

(c) Job Coaching (for Individualized, Integrated Employment or Individualized, Integrated Self-Employment) shall be limited as follows:

1. No more than 40 hours per week of Job Coaching, Co-Worker Supports, Community Integration Support Services, Independent Living Skills Training, and the hours worked without paid supports combined.

2. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop) at least 30 hours per week, no more than 50 hours per week of Job Coaching, Co-Worker Supports, Community Integration Support Services, Independent Living Skills Training, and the hours worked without paid supports combined.

(#) Job Development or Self-Employment Start Up. For purposes of ECF CHOICES only and limited to members age 16 or older:

(a) This is a time-limited service designed to implement a Job Development or Self-Employment Plan as follows:

1. Job Development is support to obtain an individualized competitive or customized job in an integrated employment setting in the general workforce, for which an individual is compensated at or above the minimum wage, but ideally not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. The Job Development strategy should reflect best practices and be adjusted based on whether the individual is seeking competitive or customized employment.

2. Self-Employment Start Up is support in implementing a self-employment business plan. The outcome of this service is expected to be the achievement of an individualized integrated employment or self-employment outcome consistent with the individual's personal and career goals, as determined through Exploration, Discovery and/or the Situational Observation and Assessment, if authorized, and as identified in the Job Development or Self-Employment Plan that guides the delivery of this service.

(b) This service will be paid on an outcome basis once the person has completed two calendar weeks of individualized integrated employment or self-employment. Outcome payment amounts are tiered based upon the assessed level of challenge anticipated to achieve the intended outcome of this service for the individual being served. Outcome payments are also paid over three phases to incentivize retention of the job or self-employment situation.

(c) After an individual has received the service for the first time, re-authorization may occur a maximum of once per year (with a minimum 365-day interval between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within nine (9) months.

(#) Job Development Plan or Self-Employment Plan. For purposes of ECF CHOICES only and limited to members age 16 or older:

(a) This is a time-limited and targeted service designed to create a clear and detailed plan for Job Development or for the start-up phase of Self-Employment. This service is limited to thirty (30) calendar days from the date of service initiation. This service includes a planning meeting involving the individual and other key people who will be instrumental in supporting the individual to become employed in individualized integrated employment or self-employment.

(b) This service culminates in a written plan, using a template prescribed by TennCare, that incorporates the results of Exploration, Discovery, and/or Situational Observation and Assessment, if previously authorized. The written plan is due no later than thirty (30) calendar days after the service commences. For self-employment goals, this service results in the development of a self-employment business plan, including potential sources of business financing (such as VR, Small Business Administration loans, PASS plans), given that Medicaid funds may not be used to defray the capital expenses associated with starting a business. This service is paid on an outcome basis, after the written plan is received and approved, and the provider submits documentation detailing each date of service, the activities performed that day, and the duration of each activity.

(c) After an individual has received the service for the first time, re-authorization may occur a maximum of once every three years (with a minimum of three 365-day intervals between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within twelve (12) months.

(#) Level of Need. The categorization of the intensity level of practical supports needed by a member enrolled in ECF CHOICES Group 6 based on an objective assessment utilizing the American Association of Intellectual and Developmental Disabilities Supports Intensity Scale. The member's assessed level of need, including consideration of exceptional medical or behavioral needs as identified in the assessment, is used to establish the member's Expenditure Cap, required Support Coordinator-to-member ratios, and frequency of required Support Coordination contacts in the ECF CHOICES program.

(#) Multiple Complex Health Conditions. For purposes of reserve capacity in ECF CHOICES, a limited number of individuals who have multiple complex chronic or acquired health conditions that prevent the person from being able to work, and who are in urgent need of supports in order to maintain the current living arrangement and delay or prevent the need for more expensive services, and for which enrollment into ECF CHOICES is the most appropriate way to provide needed supports, as determined through an Interagency Committee review process, including both TennCare and DIDD. Multiple Complex Health Conditions shall be applicable only to individuals of working age.

(#) One-Time ECF CHOICES HCBS. Specified ECF CHOICES HCBS other than employment services and supports which occur as a distinct event or which may be episodic in nature (occurring at less frequent irregular intervals or on an as needed basis for a limited duration of time). One-time ECF CHOICES HCBS include: Conservatorship and Alternatives to Conservatorship Counseling and Assistance, Minor Home Modifications, Individual Education and Training Services, Specialized Consultation and Training, Adult Dental Services, Community Support Development, Organization and Navigation, Family Caregiver Education and Training, Assistive Technology, Adaptive Equipment and Supplies, Peer-to-Peer Support and Navigation for Person Centered Planning, Self-Direction, Integrated Employment/Self Employment, and Independent Community Living, Respite, Family-to-Family Support, and Health Insurance Counseling/Forms Assistance.

(#) Ongoing ECF CHOICES HCBS. Specified ECF CHOICES HCBS which are delivered on a regular and ongoing basis, generally one or more times each week, or in the case of community-based residential alternatives on a continuous basis, or which may be one component of a continuum of services intended to achieve employment. Ongoing ECF CHOICES HCBS include: Supportive Home Care, Family Caregiver Stipend in lieu of Supportive Home Care, Independent Living Skills Training, Community Integration Support Services, Personal Assistance, Community Transportation, Community Living Supports (CLS), Community Living Supports Family Model (CLS-FM), Exploration, Discovery, Benefits Counseling, Situational Observation and Assessment, Job Development or Self-Employment Plan, Job Development or Self-Employment Start Up, Job Coaching (including Competitive, Integrated Employment and Self-Employment), Supported Employment – Small Group, Co-worker Supports, Career Advancement, and Integrated Employment Path Services (Time Limited Pre-Vocational Training).

(#) Peer-to-Peer Support and Navigation for Person-Centered Planning, Self-Direction, Integrated Employment/Self-Employment and Independent Community Living. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 5 (Essential Supports for Employment and Independent Living) or Group 6 (Comprehensive Supports for Employment and Community Living):

(a) These services assist an individual and his/her family member(s) or conservator in one or more of the following areas:

1. Directing the person-centered planning process;

2. Understanding and considering self-direction;

3. Understanding and considering individualized integrated employment/self-employment; or

4. Understanding and considering independent community living options.

(b) The service involves addressing questions and concerns related to such options. Services are provided by a peer who has successfully directed his or her person-centered planning process, self-directed his or her own services, successfully obtained individualized integrated employment or self-employment and/or utilized independent living options.

(c) Peer-to-Peer Support and Navigation for Person-Centered Planning, Self-Direction, Integrated Employment/Self-Employment and Independent Community Living services are provided by individuals with intellectual or developmental disabilities (with paid supports if needed) who have successfully directed their person-centered planning processes, and/or self-directed their own services, and/or successfully utilized independent living options. Individuals with intellectual or developmental disabilities qualified to provide these services will have also completed training in best practices for offering peer to peer supports in the areas covered by this service.

(d) Peer-to-Peer Support and Navigation for Person-Centered Planning, Self-Direction, Integrated Employment/Self-Employment and Independent Community Living services are focused on mentoring and training others based upon their personal experience and success in one or more areas this service is focused on. A qualified service provider understands, empathizes with and can support three important areas important for enhancing self-esteem:

1. The human need for connections;

2. Overcoming the disabling power of learned helplessness, low expectations and the stigma of labels; and

3. Supporting self-advocacy, self-determination and informed choice in decision making.

(e) The Peer-to-Peer Support and Navigation for Person-Centered Planning, Self-Direction, Integrated Employment/Self-Employment and Independent Community Living service provider offers:

1. One-on-one training and information to encourage the person to lead their person-centered planning process, pursue self-direction, seek integrated employment/self-employment and/or independent community living options;

2. Education on informed decision making, risk taking, and natural consequences;

3. Education on self-direction, including recruiting, hiring and supervising staff;

4. Planning support regarding integrated employment;

5. Planning support regarding independent community living opportunities, including selection of living arrangements and housemates; and

6. Assistance with identifying potential opportunities for community participation, the development of valued social relationships, and expanding unpaid supports to address individual needs in addition to paid services.

(f) These services are intended to support an individual in knowledge and skill acquisition and should not be provided on an ongoing basis, nor should these services be provided for companionship purposes. Reimbursement shall be limited to $1,500 per person per lifetime.

(#) Person-Centered Support Plan (PCSP). As it pertains to ECF CHOICES, the PCSP is a written plan developed by the Support Coordinator in accordance with person-centered planning requirements set forth in federal regulation, and in TennCare policies and protocols, using a person-centered planning process that accurately documents the member's strengths, needs, goals, lifestyle preferences and other preferences and outlines the services and supports that will be provided to the member to help them achieve their preferred lifestyle and goals, and to meet their identified unmet needs (after considering the availability and role of unpaid supports provided by family members and other natural supports) through paid services provided by the member's MCO and other payor sources. The person-centered planning process is directed by the member with long-term support needs unless he or she has a court-appointed guardian or conservator, and may include a representative whom the member has freely chosen to assist

the member with decision-making, and others chosen by the member to contribute to the process. This planning process, and the resulting PCSP, will assist the member in achieving a personally defined lifestyle and outcomes in the most integrated community setting, ensure delivery of services in a manner that reflects personal preferences and choices, and contribute to the assurance of health, welfare, and personal growth. Services in ECF CHOICES shall be authorized, provided, and reimbursed only as specified in the PCSP.

(#) Personal Assistance. For purposes of ECF CHOICES only and limited to adults age 21 or older enrolled in ECF CHOICES Group 5 (Essential Supports for Employment and Independent Living) or Group 6 (Comprehensive Supports for Employment and Community Living):

(a) A range of services and supports designed to assist an individual with a disability to perform activities and instrumental activities of daily living at the person's own home, on the job or in the community that the individual would typically do for themselves if he/she did not have a disability. Personal Assistance services may be provided outside of the person's home as long as the outcomes are consistent with the supports defined in the person-centered support plan with the goal of ensuring full participation and inclusion.

(b) Personal Assistance services may be used to:

1. Support the person at home in getting ready for work and/or community participation;

2. Support the person in getting to work and/or community participation opportunities; and

3. Support the person in the workplace and/or in the broader community.

(c) The only exception is if Supported Employment Services or Community Integration Support Services are being provided, in which case the provider of Supported Employment and/or Community Integration Support Services shall be responsible for personal assistance needs during the hours that Supported Employment services are provided as long as the Personal Assistance Services do not comprise the entirety of the Supported Employment or Community Integration Support Service. If a person only needs personal assistance to participate in employment or community opportunities, then this service should be authorized rather than Supported Employment or Community Integration Support Services.

(d) Personal Assistance services that are covered also include the following:

1. Support, supervision and engaging participation with eating, toileting, personal hygiene and grooming, and other activities of daily living as appropriate and needed to sustain community living, except when provided as a component of another covered service the person is receiving at that time; and

2. Direction and training to individuals in the person's social network or to his/her coworkers who choose to learn how to provide some of the Personal Assistance services.

(e) In ECF CHOICES Group 6 (Comprehensive Supports for Employment and Community Living), Personal Assistance services shall be limited to 215 hours per month. An MCO may authorize services in excess of the benefit limit as a cost-effective alternative to institutional placement or other medically necessary covered benefits.

(#) Potential Applicant. Individuals for whom TennCare or its designee shall perform referral and intake functions as specified in these rules. A Potential Applicant is entitled to a determination regarding his or her eligibility to enroll in the ECF CHOICES program and, if the application is denied, to due process, including notice and the right to request a fair hearing only when the Potential Applicant is determined to meet criteria for an available reserve capacity slot or meets prioritization criteria for an available program slot for which enrollment is currently open and will be enrolled into the program if all applicable eligibility and enrollment criteria are met.

(#) Referral. An expression of interest in applying for the ECF CHOICES program.

(#) Reserve capacity slot. For the purposes of ECF CHOICES, the state's authority to reserve a finite number of program slots in a particular ECF CHOICES Group for persons in specified circumstances; such as an

Aging Caregiver of a person with ID, Emergent Circumstances, and Multiple Complex Health Conditions as defined.

(#) Respite. For purposes of ECF CHOICES only:

(a) Respite shall mean services provided to a person supported when unpaid caregivers are absent or need relief from routine caregiving responsibilities.

(b) Respite shall be limited to 30 days of service per person per calendar year or to 216 hours per person per calendar year, depending on the needs and preferences of the individual as reflected in the PCSP.

1. A member shall choose to receive Respite as either a daily or hourly service. The 2 limits cannot be combined in a calendar year.

2. If a member chooses to receive Respite as a daily service, each 24 hour time period within which Respite is provided and reimbursed shall count as one day regardless of the number of hours of Respite services reimbursed during that 24 hour period.

3. Only hourly Respite shall be available through Consumer Direction. Daily Respite shall not be available through Consumer Direction.

(c) Respite services shall be provided in settings that meet the federal HCBS regulatory standards, which promote community involvement and inclusion and which allow individuals to sustain their lifestyle and routines when an unpaid caregiver is absent for a period of time.

(d) Respite shall be provided only for persons living with unpaid family caregivers, or living independently (not in a CBRA setting), but having unpaid caregivers who routinely (i.e., daily or almost daily) have responsibilities to provide support to the member, and relief from such support is needed.

(#) Screening. One of three (3) components of the ECF CHOICES referral list management process which includes providing basic education about the program, including eligibility criteria and enrollment processes, and helps to gather basic information that can be used to determine if a Potential Applicant is likely to qualify for the program, and that allows the Potential Applicant to be prioritized for intake based on established prioritization and enrollment criteria.

(#) Situational Observation and Assessment. For purposes of ECF CHOICES only and limited to members age 14 or older:

(a) This is a time-limited service that involves observation and assessment of an individual's interpersonal skills, work habits and vocational skills through practical experiential, community integrated volunteer experiences and/or paid individualized, integrated work experiences that are uniquely arranged and specifically related to the interests, preferences and transferable skills of the job seeker as established through Discovery or a similar process. This service involves a comparison of the actual performance of the individual being assessed with core job competencies and duties required of a skilled worker in order to further determine the work competencies and skills needed by the individual to be successful in environments similar to where the Assessment is taking place. The individual shall be reimbursed at least the minimum wage and all applicable overtime for work performed, except as permitted pursuant to the Fair Labor Standards Act for unpaid internships.

(b) Situational Observation and Assessment shall be limited to no more than thirty (30) calendar days from the date of service initiation. Each job seeker may be authorized for up to four (4) such experiences within the thirty (30) calendar day period. A summary report, using a standard template prescribed by TennCare, is due within ten (10) days after the last date of service is concluded. Reimbursement is paid on an outcome basis for each individual experience, which is expected to involve an average of twelve (12) hours of service per individual experience. The Situational Observation and Assessment outcome payment is made after the written summary report is received and approved, and the provider submits documentation detailing each date of service, the activities performed that day, and the duration of each activity.

(c) The learning from this service described in the summary report is to be used to help inform the job development plan or self-employment plan.

(d) After an individual has received the service for the first time, re-authorization may occur a maximum of once every three years (with a minimum of three 365-day intervals between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within twelve (12) months.

(#) Specialized Consultation and Training. For purposes of ECF CHOICES only, and limited to adults age 21 or older enrolled in ECF CHOICES Group 5 (Essential Supports for Employment and Independent Living) or Group 6 (Comprehensive Supports for Employment and Community Living):

(a) Expertise, training and technical assistance in one or more specialty areas (behavior services, occupational therapy, physical therapy, speech language pathology, nutrition, orientation and mobility, or nurse education, training and delegation) to assist paid or natural or co-worker supports in supporting individuals who have long-term intervention needs, consistent with the person-centered support plan, therefore increasing the effectiveness of the specialized therapy or service. This service also is used to allow the specialists listed above to be an integral part of the person-centered planning team, as needed, to participate in team meetings and provide additional intensive consultation for individuals whose functional, medical or behavioral needs are determined to be complex. The consultation staff and the paid support staff are able to bill for their service time concurrently. Specialized Consultation and Training shall not include the ongoing provision of direct services. Activities that are covered include:

1. Observing the individual to determine and assess functional, medical or behavioral needs;

2. Assessing any current interventions for effectiveness;

3. Developing a written, easy-to-understand intervention plan, which may include recommendations for assistive technology/equipment, workplace and community integration site modifications; the intervention plan will clearly define the interventions, activities and expected timeline for completion of activities;

4. Identification of activities and outcomes to be carried out by paid and natural supports and co-workers;

5. Training of family caregivers or paid support personnel on how to implement the specific interventions/supports detailed in the intervention plan; in the case of nurse education, training and delegation, shall include specific training, assessment of competency, and delegation of skilled nursing tasks to be performed as permitted under state law;

6. Development of and training on how to observe, record data and monitor implementation of therapeutic interventions/support strategies;

7. Monitoring the individual, family caregivers and/or the supports personnel during the implementation of the plan;

8. Reviewing documentation and evaluating the activities conducted by relevant persons as detailed in the intervention plan with revision of that plan as needed to assure progress toward achievement of outcomes or revision of the plan as needed;

9. Participating in team meetings; and/or,

10. Tele-Consulting, as permitted under state law, through the use of two-way, real time interactive audio and video between places of greater and lesser clinical expertise to provide clinical consultation services when distance separates the clinical expert from the individual.

(b) Specialized Consultation Services are provided by a certified, licensed, and/or registered professional or qualified assistive technology professional appropriate to carry out the relevant therapeutic

interventions for purposes of teaching and training, and not for the ongoing provision of direct services.

(c) Specialized Consultation Services are limited to $5,000 per person per calendar year, except for adults in ECF CHOICES Group 6 (Comprehensive Supports for Employment and Community Living) determined by TennCare to have exceptional medical and/or behavioral support needs.

(d) Only for adults age 21 or older in ECF CHOICES Group 6 (Comprehensive Supports for Employment and Community Living) determined by TennCare to have exceptional medical and/or behavioral support needs, Specialized Consultation Services shall be limited to $10,000 per person per calendar year.

(e) An MCO may authorize services in excess of the benefit limit as a cost-effective alternative to institutional placement or other medically necessary covered benefits.

(#) Supported Employment – Small Group Supports. For purposes of ECF CHOICES only and limited to members age 16 or older:

(a) This service provides employment services and training activities to support successful transition to individualized integrated employment or self-employment, or to supplement such employment and/or self-employment when it is only part-time. Service may involve small group career planning and exploration, small group Discovery classes/activities, other educational opportunities related to successful job acquisition and working successfully in individualized integrated employment. Service may also include employment in integrated business, industry and community settings. Examples include mobile crews, small enclaves and other small groups participating in integrated employment that is specifically related to the identified interests, experiences and/or skills of each of the persons in the small group and that results in acquisition of knowledge, skills and experiences that facilitate transition to individualized integrated employment or self-employment, or that supplement such employment or self-employment when it is only part-time. Minimum staffing ratio is 1:3 for this service.

1. Career planning and exploration activities, Discovery classes/activities, other educational opportunities related to successful job acquisition and working successfully in individualized integrated employment or self-employment must be conducted in appropriate non-disability-specific settings (e.g. Job Centers, businesses, post-secondary education campuses, libraries, etc.) All settings must meet all HCBS setting standards and must not isolate participants from others who do not have disabilities.

2. In the enclave model, a small group of people with disabilities (no more than three people) is trained and supervised to work among employees who are not disabled at the host company's work site. Persons in the enclave may work as a team at a single work area or may work in multiple areas throughout the company. The Supported Employment—Small Group provider is responsible for training, supervision, and support of participants. The provider is expected to conduct this service in integrated business, industry or community settings that meet all HCBS setting standards and do not isolate participants from others in the setting who do not have disabilities. The experience should allow opportunities for routine interactions with others without disabilities in the setting and involvement from supervisors and co-workers without disabilities (not paid to deliver this service) in the supervision and support of individuals receiving this service.

3. In the mobile work crew model, a small crew of workers (including no more than three persons with disabilities and ideally also including workers without disabilities) work as a distinct unit and operate as a self-contained business that generates employment for their crew members by selling a service. The crew typically works at several locations within the community. The Supported Employment—Small Group provider is responsible for training, supervision, and support of participants. The provider is expected to conduct this service in integrated business, industry or community settings that meet all HCBS setting standards and do not isolate participants from others who do not have disabilities. The experience should allow opportunities for routine interactions with people without disabilities (including fellow crew members, customers, etc.) in the course of performing services.

(b) Paid work under Supported Employment—Small Group must be compensated at minimum wage or higher.

(c) Supported Employment—Small Group does not include vocational or prevocational services, employment or training provided in facility based work settings. Supported Employment—Small Group service settings cannot be provider-owned, leased or operated settings. The settings must be integrated in, and support full access of participants to the greater community, including opportunities to learn about and seek individualized integrated employment or self-employment, engage in community life, and control their earned income.

(d) The expected outcome of this service is the acquisition of knowledge, skills and experiences that facilitate career development and transition to individualized integrated employment or self-employment, or that supplement such employment and/or self-employment when it is only part-time. The individualized integrated employment or self-employment shall be consistent with the individual's personal and career goals.

(e) Supported Employment—Small Group services shall be provided in a way that presumes all participants are capable of working in individualized integrated employment and/or self-employment. Participants in this service shall be encouraged, on an ongoing basis, to explore and develop their interests, strengths, and abilities relating to individualized integrated employment and/or self-employment. In order to reauthorize this service, the Person-Centered Support Plan (PCSP) must document that such opportunities are being provided through this service, to the individual, on an on-going basis. The PCSP shall also document and address any barriers to the individual transitioning to individualized integrated employment or self-employment if the person is not already participating in individualized integrated employment or self-employment. Any individual using this service to supplement part-time individualized integrated employment or self-employment shall be offered assistance to increase hours in individualized integrated employment and/or self-employment as an alternative or partial alternative to continuing this service.

(f) As a component part of this service, Supported Employment—Small Group service providers shall support individuals in identifying and pursuing opportunities that will move them into individualized integrated employment or self-employment. A one-time incentive payment for full transition of a person from Supported Employment—Small Group services to individualized integrated employment or self-employment shall be paid to the Supported Employment—Small Group provider upon successful transition (defined as successfully completing at least four weeks in the individualized integrated employment or self-employment situation) out of Supported Employment—Small Group services to individualized integrated employment or self-employment.

(g) Transportation of participants to and from the service is not included in the rate paid for the service; however transportation provided during the course of Supported Employment—Small Group services is considered a component part of the service and the cost of this transportation is included in the rate paid to providers of this service.

(h) The Supported Employment—Small Group provider shall be responsible for any personal assistance needs during the hours that Supported Employment—Small Group services are provided; however, the personal assistance services may not comprise the entirety of the Supported Employment—Small Group service. All providers of personal care under Supported Employment—Small Group shall meet the Personal Assistance service provider qualifications, except that a separate PSSA license shall not be required.

(i) Supported Employment—Small Group services exclude services available to an individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. §§ 1401, et seq.).

(j) Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

1. Incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment;

2. Payments that are passed through to users of supported employment services; or

3. Payments for training that is not directly related to an individual's supported employment program.

(k) Supported Employment—Small Group does not include supports provided in facility based (sheltered, prevocational, vocational or habilitation) work settings and does not include supports for volunteering.

(l) Supported Employment—Small Group services shall be limited to no more than 30 hours per week of Supported Employment—Small Group, Integrated Employment Path Services, Community Integration Support Services, and Independent Living Skills training combined.

(#) Supportive Home Care (SHC). For purposes of ECF CHOICES only, and limited to members enrolled in ECF CHOICES Group 4 (Essential Family Supports):

(a) This service involves the provision of services and supports in the home and community by a paid caregiver who does not live in the family home to an individual living with his or her family that directly assist the individual with activities of daily living and personal needs to insure adequate functioning in their home and maintain community living. Supportive Home Care services may be provided outside of the person's home as long as the outcomes are consistent with the supports defined in the person-centered support plan with the goal of ensuring full participation and inclusion.

(b) Services include:

1. Hands-on assistance with activities of daily living such as dressing/undressing, bathing, feeding, toileting, assistance with ambulation (including the use of a walker, cane, etc.), care of hair and care of teeth or dentures. This can also include preparation and cleaning of areas used during personal care activities such as the bathroom and kitchen.

2. Observation of the person supported to assure safety, oversight direction of the person to complete activities of daily living or instrumental activities of daily living.

3. Routine housecleaning and housekeeping activities performed for the person supported (and not other family members or persons living in the home, as applicable), consisting of tasks that take place on a daily, weekly or other regular basis, including: washing dishes, laundry, dusting, vacuuming, meal preparation and shopping for food and similar activities that do not involve hands-on care of the person.

4. Necessary cleaning of vehicles, wheelchairs and other adaptive equipment and home modifications such as ramps.

Paragraph (4) Applicant of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (4) which shall read as follows:

(4) Applicant. A person applying for TennCare-reimbursed LTSS, for whom a PAE has been submitted to TennCare, and/or by or on behalf of whom a Medicaid application has been submitted to TennCare. An Applicant is entitled to a determination regarding his or her eligibility to enroll in the program for which the PAE has been submitted, and to due process, including notice and the right to request a fair hearing, if the application is denied. For purposes of compliance with the Linton Order, the term shall include all individuals who have affirmatively expressed an intent to be considered for current or future admission to a NF or requested that their name be entered on any "wait list." All individuals 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.

Paragraph (8) Assistive Technology of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (8) which shall read as follows:

(8) Assistive Technology.

(a) For purposes of CHOICES:

Assistive devices, adaptive aids, controls or appliances that enable an Enrollee to increase his ability to perform ADLs or to perceive or control his 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.

(b) For purposes of ECF CHOICES:

An item, piece of equipment or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities and to support the individual's increased independence in the home, community living and participation, and individualized integrated employment or self-employment. The service covers purchases, leasing, shipping costs, and as necessary, repair of equipment required by the person to increase, maintain or improve his/her functional capacity to perform daily tasks in the community and in employment that would not be possible otherwise. All items must meet applicable standards of manufacture, design and installation. The person-centered support plan must include strategies for training the individual and any others who the individual will or may rely on in effectively using the assistive technology or adaptive equipment (e.g. his/her support staff; co-workers and supervisors in the place of employment; natural supports).

1. Assistive Technology Equipment and Supplies also covers the following:

   (i) Evaluation and assessment of the assistive technology and adaptive equipment needs of the individual by an appropriate professional, including a functional evaluation of the impact of the provision of appropriate assistive technology and adaptive equipment through equipment trials and appropriate services to him/her in all environments with which the person interacts over the course of any 24 hour day, including the home, integrated employment setting(s) and community integration locations;

   (ii) Services consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, updating, repairing, or replacing assistive technology devices and adaptive equipment;

   (iii) Adaptive equipment to enable the individual to feed him/herself and/or complete oral hygiene as indicated while at home, work or in the community (e.g. utensils, gripping aid for utensils, adjustable universal utensil cuff, utensil holder, scooper trays, cups, bowls, plates, plate guards, non-skid pads for plates/bowls, wheelchair cup holders, adaptive cups that are specifically designed to allow a person to feed him/herself or for someone to safely assist a person to eat and drink, and adaptive toothbrushes);

   (iv) Coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with other services in the person-centered support plan;

   (v) Training, programming, demonstrations or technical assistance for the individual and for his/her providers of support (whether paid or unpaid) to facilitate the person's use of the assistive technology and adaptive equipment;

   (vi) Adaptive switches and attachments;

   (vii) Adaptive toileting equipment;

   (viii) Communication devices and aids that enable the person to perceive, control or communicate with the environment, including a variety of devices for augmentative communication;

   (ix) Assistive devices for persons with hearing and vision loss (e.g. assistive listening devices, TDD, large visual display services, Braille screen communicators, FM systems, volume control telephones, large print telephones and teletouch systems and long white canes with appropriate tips to identify footpath information for people with visual impairment;

(x) Computer equipment, adaptive peripherals and adaptive workstations to accommodate active participation in the workplace and in the community;

(xi) Software also is approved when required to operate accessories included for environmental control;

(xii) Pre-paid, pre-programmed cellular phones that allow an individual who is participating in employment or community integration activities without paid or natural supports and who may need assistance due to an accident, injury or inability to find the way home. The person's PCSP outlines a protocol that is followed if the individual has an urgent need to request help while in the community;

(xiii) Such other durable and non-durable medical equipment not available under the State Plan that is necessary to address functional limitations in the community, in the workplace, and in the home;

(xiv) Repair of equipment is covered for items purchased through this waiver or purchased prior to waiver participation, as long as the item is identified within this service definition and the cost of the repair does not exceed the cost of purchasing a replacement piece of equipment. The individual must own any piece of equipment that is repaired.

2. A written recommendation by an appropriate professional must be obtained to ensure that the equipment will meet the needs of the person. The recommendation of the Job Accommodation Networks (JAN) will meet this requirement for worksite technology. Depending upon the financial size of the employer or the public entity, those settings may be required to provide some of these items as part of their legal obligations under Title I or Title III of the ADA. Federal financial participation is not claimed for accommodations that are the legal responsibility of an employer or public entity, pursuant to Title I or Title III of the ADA.

3. ECF CHOICES will not cover Assistive Technology or Adaptive Equipment and services which are otherwise available to the individual under Section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. §§ 1401, et seq.). If this service is authorized, documentation is maintained that the service is not available to the individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. §§ 1401, et seq.).

4. Assistive Technology, Adaptive Equipment and Supplies shall be limited to $5,000 per person per calendar year.

Paragraph (9) At Risk for Institutionalization of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (9) which shall read as follows:

(9) At Risk for Institutionalization.

(a) For purposes of CHOICES.

1. A requirement for eligibility to enroll in CHOICES Group 3 (including Interim CHOICES Group 3), whereby an individual does not meet the NF LOC criteria in place as of July 1, 2012, but meets the NF LOC criteria in place as of June 30, 2012, as defined in TennCare Rule 1200-13-01-.10(4) such that, in the absence of the provision of a moderate level of home and community based services and supports, the individual's condition and/or ability to continue living in the community will likely deteriorate, resulting in the need for more expensive institutional placement.

2. As it relates to CHOICES Group 3, includes only SSI eligible adults age sixty-five (65) or older or age twenty-one (21) or older with physical disabilities. As it relates to Interim CHOICES Group 3, open for enrollment only between July 1, 2012 and June 30, 2015, includes only adults age sixty-five (65) or older or age twenty-one (21) or older with physical disabilities who receive SSI or meet Nursing Facility Financial eligibility criteria.

(b) For purposes of ECF CHOICES:

The minimum medical eligibility (i.e., level of care) requirement to enroll in ECF CHOICES Group 4 or 5, whereby an Applicant does not meet NF LOC criteria, but has an intellectual or developmental disability as defined under T.C.A. § 33-1-101 as amended, including for an Applicant with ID, limitations in two (2) or more adaptive skill areas (i.e., communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work); and for an Applicant age five (5) or older with DD, substantial functional limitations in three (3) or more major life activities (i.e., self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency); such that, in the absence of the provision of a moderate level of ECF CHOICES home and community based services and supports, the individual's condition and/or ability to continue living in the community will likely deteriorate, resulting in the need for more expensive institutional placement.

Paragraph (11) Back-up Plan of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (11) which shall read as follows:

(11) Back-up Plan. A written plan that is a required component of the plan of care for all CHOICES members receiving companion care or the plan of care or person-centered support plan, as appropriate, for CHOICES or ECF CHOICES members receiving non-residential CHOICES or ECF CHOICES HCBS in their own home 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 or support in situations when regularly scheduled CHOICES or ECF CHOICES HCBS providers or workers are unavailable or do not arrive as scheduled. A CHOICES or ECF CHOICES member or his/her 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/her representative (as applicable) shall have primary responsibility for the development and implementation of the back-up plan for consumer directed services. The FEA will assist as needed with the development and verification of the initial back-up plan for consumer direction. The care coordinator or support coordinator shall be responsible for assistance as needed with implementing the back-up plan and for updating and verifying the back-up plan on an ongoing basis.

Paragraph (24) CHOICES Home and Community-Based Services (HCBS) of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (24) which shall read as follows:

(24) CHOICES Home and Community-Based Services (HCBS). Services that are available only to eligible persons enrolled in CHOICES Group 2 or Group 3 as an alternative to long-term care institutional services in a nursing facility or to delay or prevent placement in a nursing facility. Only certain CHOICES HCBS are eligible for Consumer Direction. CHOICES HCBS do not include home health or private duty nursing services or any other HCBS that are covered by Tennessee's Title XIX State Plan or under the TennCare demonstration for all eligible enrollees, although such services are subject to estate recovery and shall be counted for purposes of determining whether a CHOICES Group 2 member's needs can be safely met in the community within his or her individual cost neutrality cap.

Paragraph (28) Community-Based Residential Alternatives (CBRA) to institutional care of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (28) which shall read as follows:

(28) Community-Based Residential Alternatives (CBRA) to institutional care. For purposes of CHOICES and ECF CHOICES:

(a) Residential services that offer a cost-effective, community-based alternative to NF care for individuals who are elderly and/or adults with Physical Disabilities and for individuals with I/DD.

(b) CBRAs include, but are not limited to:

1. Services provided in a licensed facility such as an ACLF or Critical Adult Care Home, and residential services provided in a licensed home or in the person's home by an appropriately licensed provider such as Community Living Supports and Community Living Supports-Family Model; and

2. Companion Care.

Paragraph (29) Community Living Supports (CLS) of Rule 1200-13-01-.02 Definitions is amended by deleting the introductory paragraph in its entirety and replacing it with a new introductory paragraph, so as amended the introductory paragraph of Paragraph (29) shall read as follows:

(29) Community Living Supports (CLS). For the purposes of CHOICES and ECF CHOICES, this service is available only to CHOICES Group 2 and 3 Members and ECF CHOICES Group 5 and 6 Members as appropriate:

Paragraph (30) Community Living Supports Family Model (CLS-FM) of Rule 1200-13-01-.02 Definitions is amended by deleting the introductory paragraph in its entirety and replacing it with a new introductory paragraph so as amended the introductory Paragraph (30) shall read as follows:

(30) Community Living Supports Family Model (CLS-FM). For the purposes of CHOICES and ECF CHOICES, this service is available to CHOICES Group 2 and 3 Members and ECF CHOICES Group 5 and Group 6 Members as appropriate:

Paragraph (33) Consumer Direction (CD) of Eligible CHOICES HCBS of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with the following Paragraph (33):

(33) Consumer Direction of Eligible CHOICES or ECF CHOICES HCBS. The opportunity for a CHOICES or ECF CHOICES member assessed to need specified types of CHOICES or ECF CHOICES HCBS including for purposes of CHOICES, attendant care, personal care, in-home respite, companion care; and for purposes of ECF CHOICES, personal assistance, supportive home care, hourly respite, and community transportation; and/or any other service specified in TennCare rules as available for consumer direction 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) and for ECF CHOICES, the delivery of each eligible ECF CHOICES HCBS within the authorized budget for that service.

Paragraph (34) Consumer-Directed (Worker) of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with the following Paragraph (34):

(34) Consumer-Directed Worker (Worker). An individual who has been hired by a CHOICES or ECF CHOICES member participating in consumer direction of eligible CHOICES or ECF CHOICES HCBS or his/her representative to provide one or more eligible CHOICES or ECF CHOICES HCBS to the member. Worker does not include an employee of an agency that is being paid by an MCO to provide HCBS to the member.

Paragraph (36) Cost-Effective Alternative (CEA) Service of Rule 1200-13-01-.02 Definitions is amended by adding a new Subparagraph (e) which shall read as follows:

(e) For purposes of ECF CHOICES, CEA services may include the provision of ECF CHOICES HCBS as an alternative to NF care when the Enrollment Target for the benefit group in which the Member will be enrolled has been reached as described in Rule 1200-13-01-.31.

Paragraph (39) Department of Intellectual and Developmental Disabilities (DIDD) of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (39) which shall read as follows:

(39) Department of Intellectual and Developmental Disabilities (DIDD). The State entity contracted by TennCare to serve as the OAA for day-to-day operation of Section 1915(c) HCBS waivers for persons with ID. Formerly known as the Division of Intellectual Disabilities Services (DIDS), DIDD is responsible for the performance of contracted functions for ECF CHOICES as specified in an interagency agreement.

Paragraph (42) Electronic Visit Verification (EVV) System of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (42) which shall read as follows:

(42) Electronic Visit Verification (EVV) System. An electronic system into which provider staff and consumer-directed workers can check-in at the beginning and check-out at the end of each period of service delivery to monitor member receipt of specified CHOICES and ECF CHOICES HCBS and which may also be utilized for submission of claims.

Paragraph (44) Employer of Record of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (44) which shall read as follows:

(44) Employer of Record. The member participating in consumer direction of eligible CHOICES or ECF CHOICES HCBS or a representative designated by the member to assume the consumer direction of eligible CHOICES or ECF CHOICES HCBS functions on the member's behalf.

Paragraph (48) Expenditure Cap of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (48) which shall read as follows:

(48) Expenditure Cap. The annual limit on expenditures for CHOICES or ECF CHOICES that a member enrolled in CHOICES Group 3 or ECF CHOICES, as applicable, can receive. For purposes of the Expenditure Cap for members in CHOICES Group 3 and ECF CHOICES Group 4, the cost of minor home modifications is not counted in calculating annual expenditures for CHOICES HCBS or ECF CHOICES HCBS. For purposes of the Expenditure Cap for members in ECF CHOICES Group 6 who are granted an exception to the Expenditure Cap based on exceptional medical and/or behavioral needs, the cost of home health and private duty nursing shall be counted against the member's Expenditure Cap.

Paragraph (52) Fiscal Employer Agent (FEA) of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (52) which shall read as follows:

(52) Fiscal Employer Agent (FEA). An entity contracting with the State and/or one of the State's contracted MCOs that helps CHOICES and ECF CHOICES members participating in consumer direction of eligible CHOICES or ECF CHOICES HCBS. The FEA provides both financial administration and supports brokerage functions for CHOICES and ECF CHOICES members participating in consumer direction of eligible CHOICES or ECF CHOICES 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 CHOICES or ECF CHOICES HCBS authorized and provided.

Paragraph (55) Home and Community Based Services (HCBS) of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (55) which shall read as follows:

(55) Home and Community-Based Services (HCBS). Services that are provided pursuant to a Section 1915(c) waiver or the CHOICES or ECF CHOICES program as an alternative to long-term care institutional services in a nursing facility or an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) or to delay or prevent placement in a nursing facility. HCBS may also include optional or mandatory services that are covered by Tennessee's Title XIX State Plan or under the TennCare demonstration for all eligible enrollees, including home health or private duty nursing. However, only CHOICES and ECF CHOICES HCBS are eligible for Consumer Direction. CHOICES and ECF CHOICES HCBS do not include home health or private duty nursing services or any other HCBS that are covered by Tennessee's Title XIX State Plan or under the TennCare demonstration for all eligible enrollees, although such services are subject to estate recovery and shall be counted for purposes of determining whether a CHOICES Group 2 member's needs can be safely met in the community within his or her individual cost neutrality cap. The cost of home health and private duty nursing shall also be counted against the member's Expenditure Cap for members in ECF CHOICES Group 6 who are granted an exception to the Expenditure Cap based on exceptional medical and/or behavioral needs.

Subparagraph (b) of Paragraph (57) Home-Delivered Meals of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Subparagraph (b) so as amended Paragraph (57) shall read as follows:

(57) Home-Delivered Meals.

(a) 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 POC when ordered by the Enrollee's physician.

(b) Regardless of payer, Home-Delivered Meals shall not be provided to Members living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA (including Companion Care) or Short-Term NF services, provided however, that an MCO may authorize Home-Delivered Meals for a CHOICES member receiving Companion Care or Community Living Supports (not Community Living Supports-Family Model) in their own home (not a provider-controlled residence) when such service is medically necessary in order to 1) address health risks related to food insecurity; 2) support improved management of chronic health conditions; 3) reduce risk of hospital readmissions related to such chronic health conditions; 4) improve physical or mental health outcomes; or 5) delay or prevent nursing home placement

Paragraph (65) Individual Acuity Score of Rule 1200-13-01-.02 Definitions is amended by adding a new Subparagraph (c) so as amended Paragraph (65) shall read as follows:

(65) Individual Acuity Score. The weighted value assigned by TennCare to:

(a) The response to a specific ADL or related question in the PAE for NF LOC that is supported by the medical evidence submitted with the PAE; or

(b) A specific skilled or rehabilitative service determined by TennCare to be needed by the applicant on a daily basis or at least five (5) days per week for rehabilitative services based on the medical evidence submitted with the PAE and for which TennCare would authorize level 2 or Enhanced Respiratory Care Reimbursement in a NF.

(c) An Individual Acuity Score shall be based only on the response to the specific ADL or related question on the PAE, and the supporting medical evidence submitted with the PAE pertaining to such question on the PAE, and not by any other assessment instrument, including the adaptive behavior (or life skills) assessment used to determine whether a person has an intellectual or developmental disability; provided, however, that all available information, including the adaptive behavior (or life skills) assessment shall be taken into account in a Safety Determination (see Rule 1200-13-01-02 and Rule 1200-13-01-.05(6)).

Paragraph (90) Minor Home Modifications. For purposes of CHOICES of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (90) which shall read as follows:

(90) Minor Home Modifications. For purposes of CHOICES and ECF CHOICES:

(a) Included are the following:

1. The provision and installation of certain home mobility aids, including but not limited to:

(i) Wheelchair ramps and modifications directly related to and specifically required for the construction or installation of the ramps;

(ii) Hand rails for interior or exterior stairs or steps; or

(iii) Grab bars and other devices.

2. Minor physical adaptations to the interior of a Member's place of residence that are necessary to ensure his health, welfare and safety, or which increase his mobility and accessibility within the residence, including but not limited to:

(i) Widening of doorways; or

(ii) Modification of bathroom facilities.

(b) Excluded are the following:

1. Installation of stairway lifts or elevators;

2. Adaptations that are considered to be general maintenance of the residence;

3. Adaptations that are considered improvements to the residence;

4. Adaptations that are of general utility and not of direct medical or remedial benefit to the individual, including but not limited to:

(i) Installation, repair, replacement or roof, ceiling, walls, or carpet or other flooring;

(ii) Installation, repair, or replacement of heating or cooling units or systems;

(iii) Installation or purchase of air or water purifiers or humidifiers;

(iv) Installation or repair of driveways, sidewalks, fences, decks, and patios; and

(v) Adaptations that add to the total square footage of the home are excluded from this benefit.

(c) All services shall be provided in accordance with applicable State or local building codes.

(d) Regardless of payer, Minor Home Modifications shall not be provided to Members living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting. Minor Home Modifications shall not be provided to Members receiving Short-Term NF services, except as provided in Rule 1200-13-01-.05 to facilitate transition to the community.

(e) Minor home modifications are subject to a limit of $6,000 per project, $10,000 per calendar year, and $20,000 per lifetime.

Subparagraph (b) of Paragraph (105) Personal Emergency Response System (PERS). For Purposes of CHOICES of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Subparagraph (b) so as amended Paragraph (105) shall read as follows:

(105) Personal Emergency Response System (PERS). For purposes of CHOICES:

(a) An electronic device that enables certain Members at high risk of institutionalization to summon help in an emergency. The Member 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 Members 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 Member's safety would be compromised without access to a PERS.

(b) Regardless of payer, PERS shall not be provided to Members living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA (including Companion Care) or Short-Term NF services, provided however, that an MCO may authorize PERS for a CHOICES member receiving Companion Care, Community Living Supports, or Community Living Supports-Family Model services when such service provides less than 24-hour staff support and PERS is medically necessary in order help sustain or increase the member's independence in the home, reduce risk of safety concerns, and delay or prevent nursing home placement.

Paragraph (119) Qualified Assessor of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (119) which shall read as follows:

(119) Qualified Assessor. A practicing professional who meets the qualifications established by TennCare to certify the accuracy of a level of care assessment as reflected in the PAE application. For the CHOICES program, Qualified Assessors shall include only the following: a licensed physician, nurse practitioner, physician assistant, registered or licensed nurse, licensed social worker, or an individual who has a bachelor's degree in social work, nursing, education or other human service (e.g., psychology or sociology) and is also prior approved by TennCare on a case-by-case basis. For the ECF CHOICES program, Qualified Assessors shall include the preceding individuals and shall also include individuals who meet the federal requirements for a Qualified Intellectual Disabilities Professional or Qualified Developmental Disabilities Professional or individuals who have five (5) or more years' experience as an independent support coordinator or case manager for service recipients in a 1915(c) HCBS Waiver and have completed

Personal Outcome Measures Introduction and Assessment Workshop trainings as established by the Council on Quality and Leadership and are prior approved by TennCare on a case-by-case basis.

Paragraph (122) Representative of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (122) which shall read as follows:

(122) Representative.

(a) In general, for CHOICES and ECF CHOICES members, a person who is at least eighteen (18) years of age and is authorized by the member to participate in care or support planning and implementation and to speak and/or 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, provided that any decision making authority not specifically delegated to a legal representative (e.g., a guardian or conservator) is retained by the member unless he or she chooses to allow a (non-legal) representative whom he or she has freely chosen to make such decisions.

(b) As it relates to consumer direction of eligible CHOICES or ECF CHOICES 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 eligible CHOICES or ECF CHOICES HCBS must also: be at least eighteen (18) years of age; have a personal relationship with the member and understand his/her 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.

Paragraph (123) Representative Agreement of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (123) which shall read as follows:

(123) Representative Agreement. The agreement between a CHOICES or ECF CHOICES member electing consumer direction of eligible CHOICES or ECF CHOICES 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.

Paragraph (127) Safety Determination of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (127) which shall read as follows:

(127) Safety Determination.

(a) A decision made by the Bureau in accordance with the process and requirements described in Rule 1200-13-01-.05(6) regarding whether:

1. An Applicant age 65 and older and is At Risk for Institutionalization as defined in Rule 1200-13-01-.02 or an Applicant age 21 and older who has a physical disability and is At Risk for Institutionalization as defined in Rule 1200-13-01-.02 would qualify to enroll in CHOICES Group 3 (including Interim CHOICES Group 3) or if there is sufficient evidence, as required and determined by the Bureau, to demonstrate that the necessary intervention and supervision needed by the Applicant cannot be safely provided within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of $15,000;, non-CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care, and which may impact the Applicant's NF LOC eligibility (see Rule 1200-13-01-.10(4)(b)2.(i)(II) and 1200-13-01-.10(4)(b)2.(ii)(II)).

2. An Applicant, age 21 and older who has an intellectual or developmental disability and is At Risk for Institutionalization as defined in Rule 1200-13-01-.02 would qualify to enroll in ECF CHOICES Group 5, or if there is sufficient evidence, as required and determined by the Bureau, to demonstrate that the necessary intervention and supervision needed by the Applicant cannot be safely provided within the array of services and supports that would be available if the

Applicant was enrolled in ECF CHOICES Group 5, including ECF CHOICES HCBS up to the Expenditure Cap of $30,000; one-time emergency assistance up to $6,000; non-ECF CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care, and which may impact the Applicant's NF LOC eligibility (see Rule 1200-13-01-.10(4)(b)2.(ii)(III)).

3. An Applicant under age 18 who has an intellectual or developmental disability and is At Risk for Institutionalization as defined in Rule 1200-13-01-.02 would not qualify financially for TennCare unless the deeming of the parent's income to the child is waived, and absent the availability of benefits in ECF CHOICES Group 4, including ECF CHOICES HCBS up to the Expenditure Cap of $15,000, non-ECF CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care, the child is at imminent risk of placement outside the home, and which may impact the Applicant's NF LOC eligibility (see Rule 1200-13-01-.10(4)(b)2.(ii)(IV)).

(b) Such determination shall include review of information submitted to the Bureau as part of the Safety Determination request, including, but not limited to:

1. Ongoing skilled and/or rehabilitative interventions and treatment by licensed professional staff;

2. A pattern of recent falls resulting in injury or with significant potential for injury;

3. An established pattern of recent emergent hospital admissions or emergency department utilization for emergent conditions;

4. Recent nursing facility admissions, including precipitating factors and length of stay;

5. An established pattern of self-neglect that increases risk to personal health, safety and/or welfare requiring involvement by law enforcement or Adult Protective Services;

6. A determination by a community-based residential alternative provider that the Applicant's needs can no longer be safely met in a community setting;

7. The need for and availability of regular, reliable natural supports, including changes in the physical or behavioral health or functional status of family or unpaid caregivers; and

8. For Applicants who have an intellectual or developmental disability, the Applicant's adaptive and maladaptive behaviors as determined by the life skills assessment tool developed or selected by TennCare and the Maladaptive Behavior Index (MBI or problem behavior) portion of the Inventory for Client and Agency Planning (ICAP) Assessment to capture behaviors requiring extraordinary support to ensure the safety of the individual.

Paragraph (130) Service Agreement of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (130) which shall read as follows:

(130) Service Agreement. The agreement between a CHOICES or ECF 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.

Paragraph (139) Supports Broker of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (139) which shall read as follows:

(139) Supports Broker. An individual assigned by the FEA to each CHOICES or ECF CHOICES member participating in consumer direction who assists the member/representative as needed in performing certain employer of record functions as follows: developing job descriptions; recruiting, interviewing, and hiring workers; member and worker enrollment in consumer direction and consumer direction training; and

developing (as part of the onboarding process for new workers) a schedule for the member's workers that comports with the schedule at which services are needed by the member as reflected in the plan of care or PCSP, as applicable. The supports broker shall also assist the member as needed with developing and verifying the initial back-up plan for consumer direction. The supports broker collaborates with the member's care coordinator or support coordinator, as appropriate. 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.

Paragraph (143) Tennessee Pre-Admission Evaluation System (TPAES) of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (143) which shall read as follows:

(143) TennCare Pre-Admission Evaluation Tracking System (PAE Tracking System) – A component of the State's Medicaid Management Information System and the system of record for all Pre-Admission Evaluation (i.e., level of care) submissions and level of care determinations, as well as enrollments into and transitions between LTSS programs, including CHOICES, ECF CHOICES, and the State's MFP Rebalancing Demonstration (MFP), as a tracking mechanism for referral list management in ECF CHOICES, and which shall also be used to gather data required to comply with tracking and reporting requirements pertaining to MFP.

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

Paragraph (6) Safety Determination Requests of Rule 1200-13-01-.05 TennCare CHOICES Program is deleted in its entirety and replaced with a new Paragraph (6) which shall read as follows:

(6) Safety Determination Requests for CHOICES and ECF CHOICES.

(a) For purposes of the Need for Inpatient Nursing Care, as specified in TennCare Rule 1200-13-01-.10(4)(b)2.(i)(II) and 1200-13-01-.10(4)(b)2.(ii)(II)-(IV), a Safety Determination by TennCare shall be made upon request of the Applicant, the Applicant's Representative, or the entity submitting the PAE, including the AAAD, DIDD, MCO, NF, or PACE Organization if an Applicant for CHOICES is in the target population for CHOICES as specified in Rule 1200-13-01-.05 and is At Risk for Institutionalization as defined in Rule 1200-13-01-.02, or an Applicant for ECF CHOICES is in the target population for ECF CHOICES as specified in Rule 1200-13-01-.31 and is At Risk for Institutionalization as defined in Rule 1200-13-01-.02, and at least one of the following criteria are met.

1. The Applicant has an approved total acuity score of at least five (5) but no more than eight (8);

2. The Applicant has an approved individual acuity score of at least three (3) for the Orientation measure and the absence of frequent intermittent or continuous intervention and supervision would result in imminent and serious risk of harm to the Applicant and/or others (documentation of the impact of such deficits on the Applicant's safety, including information or examples that would support and describe the imminence and seriousness of risk shall be required);

3. The Applicant has an approved individual acuity score of at least two (2) for the Behavior measure; and the absence of intervention and supervision for behaviors at the frequency specified in the PAE would result in imminent and serious risk of harm to the Applicant and/or others (in addition to information submitted with the PAE, information or examples that would support and describe the imminence and seriousness of risk resulting from the behaviors shall be required);

4. The Applicant has an approved individual acuity score of at least three (3) for the mobility or transfer measures or an approved individual acuity score of at least two (2) for the toileting measure, and the absence of frequent intermittent assistance for mobility and/or toileting needs would result in imminent and serious risk to the Applicant's health and safety (documentation of the mobility/transfer or toileting deficits and the lack of availability of assistance for mobility/transfer and toileting needs shall be required);

5. The Applicant has experienced a significant change in physical or behavioral health or functional needs or the Applicant's caregiver has experienced a significant change in physical or behavioral health or functional needs which impacts the availability of needed assistance for

the Applicant;

6. The Applicant has a pattern of recent falls resulting in injury or with significant potential for injury or a recent fall under circumstances indicating a significant potential risk for further falls;

7. The Applicant has an established pattern of recent emergent hospital admissions or emergency department utilization for emergent conditions or a recent hospital or NF admission or episode of treatment in a hospital emergency department under circumstances sufficient to indicate that the person may not be capable of being safely maintained in the community (not every hospital or NF admission or emergency department episode will be sufficient to indicate such).

8. The Applicant's behaviors or a pattern of self-neglect has created a risk to personal health, safety and/or welfare that has prompted intervention by law enforcement or Adult Protective Services (APS). A report of APS or law enforcement involvement shall be sufficient by itself to require the conduct of a Safety Determination (but not necessarily the approval of a Safety Determination).

9. The Applicant has recently been discharged from a community-based residential alternative setting (or such discharge is pending) because the Applicant's needs can no longer be safely met in that setting.

10. The Applicant is a CHOICES Group 1 or Group 2 member or PACE member enrolled on or after July 1, 2012 (pursuant to level of care rules specified in 1200-13-01-.10(4)(b)2.(i) and (ii)) and has been determined upon review to no longer meet nursing facility level of care based on a total acuity score of 9 or above.

11. The applicant has diagnosed complex acute or chronic medical conditions which require frequent, ongoing skilled and/or rehabilitative interventions and treatment by licensed professional staff.

12. The Applicant's MCO has determined, upon enrollment into Group 3 based on a PAE submitted by another entity, that the Applicant's needs cannot be safely met within the array of services and supports available if enrolled in Group 3 (see 1200-13-01-.02), such that a higher level of care is needed.

13. An Applicant who has an intellectual or developmental disability has a General Maladaptive Index value of -21 or lower, as determined on the Maladaptive Behavior Index (MBI) portion of the Inventory for Client and Agency Planning (ICAP).

14. An Applicant under age 18 who has an intellectual or developmental disability will not qualify financially for TennCare unless the deeming of the parent's income to the child is waived, and absent the availability of benefits in ECF CHOICES Group 4, the child is at imminent risk of placement outside the home.

(b) Any of these criteria shall be sufficient to warrant review of a Safety Determination request by the Bureau; however except as provided in Subpart (f)1.(i) below, no criterion shall necessarily be sufficient, in and of itself, to justify that such Safety Determination request (and NF LOC) will be approved. The Bureau may also, at its discretion, review a Safety Determination request when none of the criteria in (a) above have been met, but other safety concerns have been submitted which the Bureau determines may impact the person's ability to be safely served in CHOICES Group 3, or ECF CHOICES Group 5, as applicable, along with sufficient medical evidence to make a safety determination. The Bureau's Safety Determination shall be based on a review of the medical evidence in its entirety, including consideration of the Applicant's medical and functional needs, and the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3 or ECF CHOICES Group 4 (for children under age 18) or Group 5 (for adults age 21 and older), as applicable for the target population in which the Applicant will be enrolled, if eligible, including CHOICES HCBS or ECF CHOICES HCBS up to the Expenditure Cap of $15,000 or $30,000, as applicable, and one-time emergency assistance up to $6,000, as applicable; non-CHOICES HCBS available through TennCare (e.g., home health); cost effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources and unpaid supports provided by family members and other caregivers who are willing and able to provide

such care.

(c) PAEs may be submitted by more than one entity on behalf of an applicant. If Entity #1 (e.g., the MCO) believes that an applicant's needs can be safely met if enrolled in Group 3 and a Safety Determination is not needed for the applicant, but Entity #2 (e.g., the NF) believes that a Safety Determination is appropriate, then Entity #2 (e.g., the NF) may also submit a PAE on behalf of the applicant, along with a completed Safety Determination request, to the Bureau for review.

(d) If one or more of the criteria specified in (a) above are met and the medical evidence received by the Bureau is insufficient to make a Safety Determination, the Bureau may request a face-to-face assessment by the AAAD or DIDD (for non Medicaid-eligible Applicants), the MCO (for Medicaid-eligible Applicants), or other designee in order to gather additional information needed by the Bureau to make a final Safety Determination. In such instances, the PAE shall be deemed incomplete, and the time for disposition of the PAE shall be tolled for a reasonable period of time (not to exceed 10 business days, except when such delay is based on the reasonable needs or request of the Applicant, and only for a specific additional period not to exceed a total period of 30 calendar days, occasioned by the Applicant's needs or request) while such additional evidence is gathered.

(e) Except as specified in Subpart (f)1.(i) below, documentation required to support a Safety Determination request shall include all of the following:

1. A completed PAE, including detailed explanation of each ADL or related deficiency, as required by the Bureau, a completed Safety Determination request, and medical evidence sufficient to support the functional and related deficits identified in the PAE and the health and safety risks identified in the Safety Determination request;

2. A comprehensive needs assessment which shall include all of the following:

   (i) An assessment of the Applicant's physical, behavioral, and psychosocial needs not reflected in the PAE, including the specific tasks and functions for which assistance is needed by the Applicant, the frequency with which such tasks must be performed, and the Applicant's need for safety monitoring and supervision;

   (ii) The Applicant's living arrangements and the services and supports the Applicant has received for the six (6) months prior to submission of the Safety Determination request, including unpaid care provided by family members and other caregivers, paid services and supports the Applicant has been receiving regardless of payer (e.g., non-CHOICES HCBS available through TennCare such as home health and services available through Medicare, private insurance or other funding sources); and any anticipated change in the availability of such care or services from the current caregiver or payer; and

   (iii) Detailed explanation regarding any recent significant event(s) or circumstances that have impacted the Applicant's need for services and supports, including how such event(s) or circumstances impact the Applicant's ability to be safely supported within the array of covered services and supports that would be available if the Applicant were enrolled in CHOICES Group 3 or ECF CHOICES Group 5, as applicable, or for a child under age 18 who has an intellectual or developmental disability, how such event(s) or circumstances would impact the Applicant's ability to remain in the family home.

3. A person-centered plan of care or support plan, as applicable, developed by the MCO Care Coordinator or Support Coordinator, NF, or PACE Organization (i.e., the entity submitting the Safety Determination request) which specifies the tasks and functions for which assistance is needed by the Applicant, the frequency with which such tasks must be performed, the Applicant's need for safety monitoring and supervision; and the amount (e.g., minutes, hours, etc.) of paid assistance that would be necessary to provide such assistance; and that would be provided by such entity upon approval of the Safety Determination. (A plan of care or support plan is not required for a Safety Determination submitted by the AAAD or DIDD.) In the case of a Safety Determination request submitted by an MCO or AAAD for a NF resident, the plan of care shall be developed in collaboration with the NF, as appropriate; and

4. An explanation regarding why an array of covered services and supports, including CHOICES

HCBS up to the Expenditure Cap of $15,000, ECF CHOICES HCBS up to the Expenditure Cap of $30,000 and one-time emergency assistance up to $6,000; and non-CHOICES or non-ECF CHOICES HCBS (e.g., home health); services available through Medicare, private insurance or other funding sources; and unpaid supports provided by family members and other caregivers would not be sufficient to safely meet the Applicant's needs in the community, or for a child under age 18 who has an intellectual or developmental disability, why the availability of benefits in ECF CHOICES Group 4, including ECF CHOICES HCBS up to the Expenditure Cap of $15,000, non-ECF CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care, are necessary to prevent the child's imminent placement outside the home.

(f) Approval of a Safety Determination Request.

1. A Safety Determination request shall be approved if there is sufficient evidence, as required and determined by the Bureau, to demonstrate that the necessary intervention and supervision needed by the Applicant cannot be safely provided within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3 or ECF CHOICES Group 5, as applicable for the target population in which the Applicant will be enrolled, if eligible, including CHOICES HCBS or ECF CHOICES HCBS up to the Expenditure Cap of $15,000 or $30,000, as applicable, and one-time emergency assistance up to $6,000, as applicable; non-CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and unpaid supports provided by family members and other caregivers who are willing and able to provide such care; or for a child under age 18 who has an intellectual or developmental disability, that the Applicant will not qualify financially for TennCare unless the deeming of the parent's income to the child is waived, and absent the availability of benefits in ECF CHOICES Group 4, including ECF CHOICES HCBS up to the Expenditure Cap of $15,000; non-ECF CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care, the child is at imminent risk of placement outside the home:

   (i) An applicant with I/DD whose GMI score is at or below -31 (categorized as "Serious" or "Very Serious") shall qualify for NF LOC on the basis of the safety determination, regardless of their score on the PAE Acuity Scale. No minimum acuity score and no other information shall be required as part of the safety determination.

   (ii) A maladaptive behavior index value of -21 to -30 (categorized as "Moderately Serious") shall be sufficient to warrant a Safety Determination review upon request, but shall not automatically qualify for approval of NF LOC on the basis of safety. The decision shall be based on a review of the entirety of the person's needs and circumstances and in accordance with documentation requirements specified herein.

   (iii) For applicants with I/DD who have a maladaptive behavior index value of -20 and above, the problem behavior assessment and the life skills assessment shall be taken into account along with other documentation requirements specified herein in determining whether any safety determination request submitted should be approved.

2. When a Safety Determination request is approved, the Applicant's NF LOC eligibility shall be approved (see Rule 1200-13-01-.10(4)(b)2.(i)(II) and 1200-13-01-.10(4)(b)2.(ii)(II)-(IV)).

3. If enrolled in CHOICES Group 1 or 2, PACE, or in ECF CHOICES, based upon approval of a Safety Determination request, the NF, MCO, or PACE Organization, respectively, shall implement any plan of care or initial support plan developed by such entity and submitted as part of the Safety Determination request to demonstrate the services needed by the Applicant, subject to changes in the Applicant's needs which shall be reflected in a revised plan of care and signed by the Applicant (or authorized representative).

4. The lack of availability of suitable community housing, the need for assistance with routine medication management, discharge from another service system (e.g., state custody or a mental health institute), or release from incarceration shall not be sufficient by itself to justify approval of a Safety Determination request.

(g) Denial of a Safety Determination Request for CHOICES or ECF CHOICES.

1. Pursuant to Rule 1200-13-01-.10(7)(b), when a PAE is denied, including instances where a Safety Determination has been requested and denied, a written Notice of denial shall be sent to the Applicant and, where applicable, to the Designated Correspondent. In instances where such denial is based in part on a Safety Determination that has been requested and denied, such Notice shall advise the Applicant of the Bureau's LOC decision, including denial of the Safety Determination request. This notice shall advise the Applicant of the right to appeal the PAE denial decision, which includes the Safety Determination, as applicable, within 30 calendar days.

2. If enrolled in CHOICES Group 3 or in ECF CHOICES Group 5 based upon denial of a Safety Determination Request, the MCO shall implement any plan of care or initial support plan, as applicable, developed by the MCO and submitted as part of the Safety Determination process to demonstrate that the Applicant's needs can be safely met in CHOICES Group 3 or ECF CHOICES Group 5, as applicable, including covered medically necessary CHOICES HCBS or ECF CHOICES HCBS, and non-CHOICES or non-ECF CHOICES HCBS available through TennCare and cost-effective alternative services upon which denial of the Safety Determination was based, subject to changes in the Applicant's needs which shall be reflected in a revised plan of care or person-centered support plan and signed by the Applicant (or authorized representative).

(h) Duration of Nursing Facility Level of Care Based on an Approved Safety Determination Request.

1. Pursuant to 1200-13-01-.10(2)(h), Nursing Facility level of care based on an approved Safety Determination request may be approved by the Bureau for an open ended period of time or a fixed period of time with an expiration date based on an assessment by the Bureau of the Applicant's medical condition and anticipated continuing need for inpatient nursing care, and how long it is reasonably anticipated that the Applicant's needs cannot be safely and appropriately met in the community within the array of services and supports available if enrolled in CHOICES Group 3 or ECF CHOICES Group 5, as applicable, or for a child under age 18, when the child turns age 18 and the parent's income is no longer deemed to the child. This may include periods of less than 30 days as appropriate, including instances in which it is determined that additional post-acute inpatient treatment of no more than 30 days is needed for stabilization, rehabilitation, or intensive teaching as specified in the plan of care following an acute event, newly diagnosed complex medical condition, or significant progression of a previously diagnosed complex medical condition in order to facilitate the Applicant's safe transition back to the community.

2. Pursuant to Rule 1200-13-01-.10(7)(f), when a PAE for NF LOC is approved for a fixed period of time with an expiration date based on an assessment by the Bureau of the Applicant's medical condition and anticipated continuing need for inpatient nursing care, and how long it is reasonably anticipated that the Applicant's needs cannot be safely and appropriately met in the community within the array of services and supports available if enrolled in CHOICES Group 3 or ECF CHOICES Group 5, or for a child under age 18, when the child turns age 18 and the parent's income is no longer deemed to the child, the Applicant shall be provided with a Notice of appeal rights, including the opportunity to submit an appeal within 30 calendar days of receipt of this notice. Nothing in this section shall preclude the right of the Applicant to submit a new PAE (including a new Safety Determination request) establishing medical necessity of care before the Expiration Date has been reached or anytime thereafter.

Column 2 "Benefits of CHOICES 2 Members" of Part 5. Home-Delivered Meals and Part 11. PERS of Subparagraph (I) of Paragraph (8) of Rule 1200-13-01-.05 TennCare CHOICES Program is deleted in their entirety and replaced with new Parts 5 and 11 Benefits of CHOICES 2 Members which shall read as follows:

Service	Benefits for CHOICES 2 Members	Benefits for Consumer Direction ("Eligible HCBS")
5. Home-Delivered Meals	Covered with a limit of 1 meal per day, per Member. Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care, provided however, that an MCO may authorize Home-Delivered Meals for a CHOICES member receiving Companion Care or Community Living Supports (not Community Living Supports-Family Model) in their own home (not a provider-controlled residence) when such service is medically necessary in order to 1) address health risks related to food insecurity; 2) support improved management of chronic health conditions; 3) reduce risk of hospital readmissions related to such chronic health conditions; 4) improve physical or mental health outcomes; or 5) delay or prevent nursing home placement.	No

Service	Benefits for CHOICES 2 Members	Benefits for Consumer Direction ("Eligible HCBS")
11. PERS	Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care, provided however, that an MCO may authorize PERS for a CHOICES member receiving Companion Care, Community Living Supports, or Community Living Supports-Family Model services when such service provides less than 24-hour staff support and PERS is medically necessary in order help sustain or increase the member's independence in the home, reduce risk of safety concerns, and delay or prevent nursing home placement.	No

Column 2 "Benefits of CHOICES 3 Members" of Part 5. Home-Delivered Meals and Part 11. PERS of Subparagraph (I) of Paragraph (8) of Rule 1200-13-01-.05 TennCare CHOICES Program is deleted in their entirety and replaced with new Parts 5 and 11 Benefits of CHOICES 2 Members which shall read as follows:

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction ("Eligible HCBS")
5. Home-Delivered Meals	Covered with a limit of 1 meal per day, per Member. Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care, provided however, that an MCO may authorize Home-Delivered Meals for a CHOICES member receiving Companion Care or Community Living Supports (not Community Living Supports-Family Model) in their own home (not a provider-controlled residence) when such service is medically necessary in order to 1) address health risks related to food insecurity; 2) support improved management of chronic health conditions; 3) reduce risk of hospital readmissions related to such chronic health conditions; 4) improve physical or mental health outcomes; or 5) delay or prevent nursing home placement.	No

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction ("Eligible HCBS")
11. PERS	Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care, provided however, that an MCO may authorize PERS for a CHOICES member receiving Companion Care, Community Living Supports, or Community Living Supports-Family Model services when such service provides less than 24-hour staff support and PERS is medically necessary in order help sustain or increase the member's independence in the home, reduce risk of safety concerns, and delay or prevent nursing home placement.	No

Item (l) of Subpart (i) of Part 5 of Subparagraph (p) of Paragraph (8) of Rule 1200-13-01-.05 TennCare CHOICES Program is amended by adding the word "and" after the word and comma "services,", and by deleting the comma and phrase ", and contracted by the DIDD to provide residential services pursuant to an approved Section 1915(c) waiver" at the end of the Item, so as amended Item (l) shall read as follows:

(l) Be contracted with the Member's MCO for the provision of CLS services, and licensed by the DIDD in accordance with T.C.A. Title 33 and TDMHSAS Rules 0940-5-24, 0940-5-28 or 0940-5-32 as applicable;

Item (l) of Subpart (i) of Part 6 of Subparagraph (p) of Paragraph (8) of Rule 1200-13-01-.05 TennCare CHOICES Program is amended by adding the word "and" after the word and comma "services,", and by deleting the comma and phrase ", and contracted by the DIDD to provide residential services pursuant to an approved Section 1915(c) waiver" at the end of the Item, so as amended Item (l) shall read as follows:

(l) Be contracted with the Member's MCO for the provision of CLS-FM services, and licensed by the DIDD in accordance with T.C.A. Title 33 and TDMHSAS Rule 0940-5-26;

Subpart (xiii) of Part 7 of Subparagraph (p) of Paragraph (8) of Rule 1200-13-01-.05 TennCare CHOICES Program is amended by adding the phrase "Except as permitted pursuant to Rule 1200-13-01-.05(8)(l)," at the beginning of the subpart so as amended Subpart (xiii) shall read as follows:

(xiii) Except as permitted pursuant to Rule 1200-13-01-.05(8)(l), Personal Care Visits, Attendant Care, and Home-Delivered Meals shall not be authorized or reimbursed for a Member receiving CLS or CLS-FM services.

Part 2 of Subparagraph (i) of Paragraph (9) of Rule 1200-13-01-.05 TennCare CHOICES Program is deleted in its entirety and replaced with a new Part 2 which shall read as follows:

2. Qualifications of Consumer-Directed Workers. Workers must meet the following requirements prior to providing services:

(i) Be at least eighteen (18) years of age or older;

(ii) Complete a background check that includes a 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) Verification that the person has not been excluded from participation in Medicare, Medicaid, SCHIP, or any Federal health care programs (as defined in Section 128B(f) of the Social Security Act);

(vi) Complete all required training;

(vii) Complete all required applications to become a TennCare provider;

(viii) Sign an abbreviated Medicaid agreement;

(ix) Be assigned a Medicaid provider ID number;

(x) Sign a Service Agreement; and

(xi) 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.

Part 3 of Subparagraph (i) of Paragraph (9) of Rule 1200-13-01-.05 TennCare CHOICES Program is deleted in its entirety and replaced with a new Part 3 which shall read as follows:

3. Disqualification from Serving as a Consumer-Directed Worker. A Member (or Representative for CD) cannot waive a background check for a potential Worker. A background check may reveal a potential Worker's past criminal conduct that may pose an unacceptable risk to the Member. Any of the following findings may place the Member at risk and may 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; and/or

(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.

Part 4 of Subparagraph (i) of Paragraph (9) of Rule 1200-13-01-.05 TennCare CHOICES Program is deleted in its entirety and replaced with a new Part 4 which shall read as follows:

4. Individualized Assessment of a Consumer-Directed Worker with a Criminal Background.

(i) If a potential Worker's background check includes past criminal conduct, the Member (or Representative for CD) must review the past criminal conduct with the help of the FEA. The Member (or Representative for CD), with the assistance of the FEA, will consider the following factors:

(I) Whether or not the evidence gathered during the potential Worker's individualized assessment shows the criminal conduct is related to the job in such a way that could place the Member at risk;

(II) The nature and gravity of the offense or conduct, such as whether the offense is related to physical or sexual or emotional abuse of another person, if the offense involves violence against another person, or the manufacture, sale, or distribution of drugs; and

(III) The time that has passed since the offense or conduct and/or completion of the sentence.

(ii) After considering the above factors and any other evidence submitted by the potential Worker, the Member (or Representative for CD) must decide whether to hire the potential Worker.

(iii) If a Member (or Representative for CD) decides to hire the Worker, the FEA shall assist the Member (or Representative for CD) in notifying the Member's MCO of this decision and shall collaborate with the Member's MCO to amend the Member's risk agreement to reflect the Member's (or CD Representative's) decision to voluntarily assume risk associated with hiring an individual with a criminal history and that the Member (or Representative for CD) is solely responsible for any negative consequences stemming from that decision.

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

Subparagraph (b) of Paragraph (1) of Rule 1200-13-01-.08 Personal Needs Allowance (PNA), Patient Liability, Third Party Insurance and Estate Recovery for Persons Receiving LTSS is deleted in its entirety and replaced with new Subparagraph (b) which shall read as follows:

(b) The maximum PNA for persons participating in CHOICES Group 2, CHOICES Group 3, or ECF CHOICES is 300% of the SSI FBR.

Subparagraphs (c), (d), (e) and (f) of Paragraph (2) of Rule 1200-13-01-.08 Personal Needs Allowance (PNA), Patient Liability, Third Party Insurance and Estate Recovery for Persons Receiving LTSS are deleted in their entirety and replaced with new Subparagraphs (c), (d), (e) and (f) which shall read as follows:

(c) For Members of the CHOICES 217-Like Group, the CHOICES At-Risk Demonstration Group, the ECF CHOICES 217-Like Group, the Interim ECF CHOICES At-Risk Group, and upon implementation of Phase 2 of ECF CHOICES, the ECF CHOICES At-Risk and ECF CHOICES Working Disabled Demonstration Groups, 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 a Member of CHOICES Group 2, CHOICES Group 3, or ECF CHOICES receiving the Short-Term NF Care benefit (for up to 90 days) or an Enrollee in one of the State's Section 1915(c) Waiver programs who is temporarily placed in a medical institution, i.e., a hospital, NF or ICF/IID (for up to 90 days), 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 days, or as soon as it appears that the inpatient stay will not be a short-term stay, whichever comes first, a CHOICES Group 2, CHOICES Group 3, or ECF CHOICES Member will be transitioned to CHOICES Group 1 (see 1200-13-01-.31(6)(b) for requirements pertaining to ECF CHOICES Members), 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 NF, ICF/IID, or receives CBRA services other than Companion Care (i.e., ACLF, Critical Adult Care Home, Community Living Supports, or Community Living Supports – Family Model), the Enrollee must pay his Patient Liability to the residential facility or provider. The residential facility or provider shall reduce the amount billed to the Bureau 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, CHOICES Group 3, or ECF CHOICES Member does not receive CBRA services other than Companion Care, i.e., the Member is receiving HCBS in his own home, the Member must pay his Patient Liability to the MCO. The amount of Patient Liability collected will be used to offset the cost of CHOICES Group 2, CHOICES Group 3, or ECF CHOICES benefits or CEA services provided as an alternative to covered CHOICES Group 2, CHOICES Group 3, or ECF CHOICES 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,

CHOICES Group 3 or ECF CHOICES benefits (or CEA services provided as an alternative to CHOICES Group 2, CHOICES Group 3 or ECF CHOICES benefits) reimbursed by the MCO for that month.

(f) A CHOICES or ECF CHOICES provider, including an MCO, may decline to continue to provide LTSS to a CHOICES or ECF CHOICES Member who fails to pay his Patient Liability. If other Contract Providers or the other TennCare MCO(s) operating in the Grand Division are unwilling to provide LTSS to a CHOICES or ECF CHOICES Member who has failed to pay his Patient Liability, the Member may be disenrolled from the CHOICES or ECF CHOICES program in accordance with the procedures set out in this Chapter.

Subparagraphs (b), (c) and (d) of Paragraph (3) of Rule 1200-13-01-.08 Personal Needs Allowance (PNA), Patient Liability, Third Party Insurance and Estate Recovery for Persons Receiving LTSS are deleted in their entirety and replaced with new Subparagraphs (b), (c) and (d) which shall read as follows:

(b) Applicants for the CHOICES or ECF CHOICES programs who have LTC insurance policies must report these policies to TennCare upon enrollment in the CHOICES or ECF CHOICES program. Applicants may be subject to criminal prosecution for knowingly providing incorrect information.

(c) Obligations of CHOICES or ECF CHOICES Members receiving NF or CBRA services (other than Companion Care) having insurance that will pay for care in a NF or other residential facility (including cash benefits to the Member for the cost of such services):

1. If the benefits are assignable, the Member must assign them to the NF or residential facility or provider. These benefits will be used to reduce the amounts that the MCO would otherwise be required to pay the NF or the residential facility or provider for LTSS.

2. If the benefits are not assignable, the Member must provide payment to the NF or the residential facility or provider 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 NF or the residential facility or provider for LTSS.

(d) Obligations of CHOICES or ECF CHOICES Members receiving non-residential CHOICES HCBS or Companion Care services, or non-residential ECF CHOICES services having insurance that will pay for CHOICES HCBS or ECF CHOICES HCBS (including cash benefits to the Member for the cost of such services):

1. If the benefits are assignable, the Member 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 CHOICES HCBS or ECF CHOICES HCBS for the Member.

2. If the benefits are not assignable, the Member 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 CHOICES HCBS or ECF CHOICES HCBS for the Member.

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

Introductory paragraph to Paragraph (4) of Rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE is amended by adding a comma and phrase ", ECF CHOICES HCBS" after the words "CHOICES HCBS" so as amended the introductory paragraph to Paragraph (4) shall read as follows:

(4) Level of Care Criteria for Medicaid Level 1 Reimbursement of Care in a Nursing Facility, CHOICES HCBS, ECF CHOICES HCBS and PACE.

Introductory paragraph to Subparagraph (b) of Paragraph (4) of Rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE is amended by adding a comma and phrase ", ECF CHOICES HCBS" after the phrase "CHOICES HCBS" so as amended the introductory paragraph to Subparagraph (b) shall read as follows:

(b) An Applicant must meet both of the following LOC criteria in order to be approved for TennCare-reimbursed care in a NF, CHOICES HCBS, ECF CHOICES HCBS or PACE, as applicable:

Subpart (ii) of Part 1 of Subparagraph (b) of Paragraph (4) of Rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE is amended by adding a comma and phrase ", ECF CHOICES" after the words "in CHOICES" and before the words "or PACE" so as amended Subpart (ii) shall read as follows:

(ii) Applicants requesting HCBS in CHOICES, ECF CHOICES or PACE. HCBS must be required in order to allow the Applicant to continue living safely in the home or community-based setting and to prevent or delay placement in a NF, and such HCBS must be specified in an approved plan of care and needed on an ongoing basis.

Item (I) of Subpart (ii) of Part 1 of Subparagraph (b) of Paragraph (4) of Rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE is deleted in its entirety and replaced with a new Item (I) which shall read as follows:

(I) The need for one-time CHOICES HCBS or one-time ECF CHOICES HCBS is not sufficient to meet medical necessity of care for HCBS.

Item (II) of Subpart (i) of Part 2 of Subparagraph (b) of Paragraph (4) of Rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE is deleted in its entirety and replaced with a new Item (I) which shall read as follows:

(II) Meet one (1) or more of the ADL or related criteria specified in 1200-13-01-.10(4)(b)2.(iii) on an ongoing basis and be determined by TennCare through approval of a Safety Determination Request to not be able to be safely served within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of $15,000, non-CHOICES HCBS available through TennCare (e.g., home health), cost-effective alternative services (as applicable), services available through Medicare, private insurance or other funding sources, and natural supports provided by family members and other caregivers who are willing and able to provide such care. An Applicant who cannot be safely served in CHOICES Group 3 does not qualify to enroll in CHOICES Group 3. An applicant who could be safely served in CHOICES Group 3 except that he does not meet Medicaid categorical and financial eligibility criteria for CHOICES Group 3 (i.e. is not an SSI recipient) shall not be eligible for CHOICES Group 1 as a result of a Safety Determination.

Subpart (ii) of Part 2 of Subparagraph (b) of Paragraph (4) of Rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE is deleted in its entirety and replaced with a new Subpart (ii) which shall read as follows:

(ii) Applicants eligible to receive care in a NF, but requesting HCBS in CHOICES Group 2, ECF CHOICES or PACE.

The Applicant must have a physical or mental condition, disability, or impairment that requires ongoing supervision and/or assistance with activities of daily living in the home or community setting. In the absence of ongoing CHOICES HCBS, ECF CHOICES HCBS or PACE, the Applicant would require and must qualify to receive NF services in order to remain eligible for HCBS. The Applicant must be unable to self-perform needed nursing care and must meet one (1) or more of the following criteria on an ongoing basis:

(I) Have a total score of at least nine (9) on the TennCare NF LOC Acuity Scale; or

(II) For a CHOICES Group 2 Applicant, meet one (1) or more of the ADL or related criteria specified in 1200-13-01-.10(4)(b)2.(iii) on an ongoing basis and be determined by TennCare through approval of a Safety Determination Request to not be able to be safely served within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of $15,000, non-CHOICES HCBS

available through TennCare (e.g., home health), cost-effective alternative services (as applicable), services available through Medicare, private insurance or other funding sources, and natural supports provided by family members and other caregivers who are willing and able to provide such care. An Applicant who cannot be safely served in CHOICES Group 3 does not qualify to enroll in CHOICES Group 3. An applicant who could be safely served in CHOICES Group 3 except that he does not meet Medicaid categorical and financial eligibility criteria for CHOICES Group 3 (i.e. is not an SSI recipient) shall not be eligible for CHOICES Group 2 as a result of a Safety Determination; or

(III) For an ECF CHOICES Applicant age 21 or older, have an intellectual or developmental disability and be determined through approval of a Safety Determination Request to not be able to be safely served within the array of services and supports that would be available if the Applicant was enrolled in ECF CHOICES Group 5, including ECF CHOICES HCBS up to the Expenditure Cap of $30,000; one-time emergency assistance up to $6,000; non-ECF CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care; or

(IV) For an ECF CHOICES Applicant under age 18 with an intellectual or developmental disability, to not qualify financially for TennCare unless the deeming of the parent's income to the child is waived, and absent the availability of benefits in ECF CHOICES Group 4, including ECF CHOICES HCBS up to the Expenditure Cap of $15,000, non-ECF CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care, the child is at imminent risk of placement outside the home.

Part 2 of Subparagraph (b) of Paragraph (4) of Rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE is amended by adding a new Subpart (iv) which shall read as follows:

(iv) Applicants not eligible to receive care in a NF, but at risk of NF placement and requesting HCBS in ECF CHOICES Group 4 or 5. The Applicant has an intellectual or developmental disability as defined under Tennessee state law, including for an Applicant with ID, limitations in two (2) or more adaptive skill areas (i.e., communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work); and for an Applicant age five (5) or older with DD, substantial functional limitations in three (3) or more major life activities (i.e., self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency); such that, in the absence of the provision of a moderate level of ECF CHOICES home and community based services and supports on an ongoing basis, the individual's condition and/or ability to continue living in the community will likely deteriorate, resulting in the need for more expensive institutional placement.

Introductory Subparagraph (a) to Paragraph (6) of Rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE is deleted in its entirety and replaced with a new introductory Subparagraph (a) which shall read as follows:

(a) Effective July 1, 2012, for all new enrollments into CHOICES Groups 1 and 2 and for approval of NF LOC for individuals applying for enrollment into ECF CHOICES, level of care (LOC) eligibility for TennCare-reimbursement of NF services shall be based on an assessment of the following measures:

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

Paragraph (4) of Rule 1200-13-01-.25 Tennessee 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 Subparagraph (d) which shall read as follows:

(d) Upon implementation of the ECF CHOICES program, all new enrollment into the Statewide waiver shall be closed; provided, however, that a child age 18-21 who has an Intellectual Disability and is aging out of State custody or is determined by TennCare to no longer be able to safely continue living with their family may be enrolled into the Statewide Waiver subject to (b) above if all eligibility and enrollment criteria are met, only until such time that the State has authority under the terms and conditions of the 1115 waiver to provide for enrollment of such child into ECF CHOICES, when appropriate.

Paragraph (4) 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 amended by adding a new Subparagraph (d) which shall read as follows:

(d) Upon implementation of the ECF CHOICES program, all new enrollment into the Arlington waiver (effective upon its renewal on January 1, 2015, the Comprehensive Aggregate Cap waiver) shall be limited to individuals who have been identified by the state as a former member of the certified class in the United States vs. State of Tennessee, et al. (Arlington Developmental Center), a current or former member of the certified class in the United States vs. the State of Tennessee, et al. (Clover Bottom Developmental Center), or a person discharged from a State Developmental Center (Clover Bottom or Greene Valley) or the Harold Jordan Center following a stay of at least 90 days.

Paragraph (5) 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 amended by adding a new Subparagraph (c) which shall read as follows:

(c) Upon implementation of the ECF CHOICES program, all new enrollment into the Self-Determination waiver shall be closed; provided, however, that a child age 18-21 who has an Intellectual Disability and is aging out of State custody or is determined by TennCare to no longer be able to safely continue living with their family may be enrolled into the Self-Determination waiver subject to (b) above if all eligibility and enrollment criteria are met, only until such time that the State has authority under the terms and conditions of the 1115 waiver to provide for enrollment of such child into ECF CHOICES, when appropriate

Rule Chapter 1200-13-01 TennCare Long-Term Care Programs is amended by adding a new Rule 1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF) Program which shall read as follows:

1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF CHOICES) Program.

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

(2) Program components. The TennCare ECF CHOICES Program is a managed LTSS program that is administered by specified TennCare MCOs under contract with the Bureau. The specified MCOs are responsible for coordinating all covered physical, behavioral, and LTSS for their Members who qualify for and are enrolled in ECF CHOICES. The program consists of HCBS, as described in this Chapter.

(3) Eligibility for ECF CHOICES.

(a) There are three (3) groups in ECF CHOICES:

1. ECF CHOICES Group 4 (Essential Family Supports).

(i) Participation in ECF CHOICES Group 4 is limited to TennCare Members living at home with family who qualify for and are receiving TennCare-reimbursed ECF CHOICES HCBS. "Family" shall mean individual(s) to whom the child or adult with I/DD is legally related, whether the relationship is by blood, by marriage, or by adoption. "Family" shall not include a foster care or paid living arrangement. To be eligible for ECF CHOICES Group 4, Applicants must meet the following criteria:

(I) Be in one of the defined target populations;

(II) Qualify in the specified eligibility categories;

(III) Meet NF LOC or be "At Risk for Institutionalization," as defined in Rule 1200-13-01-.02;

(IV) Need and upon enrollment in ECF CHOICES Group 4, receive on an ongoing basis ECF CHOICES HCBS;

(V) Have needs that can be safely and appropriately met in the community and at a cost that does not exceed the Expenditure Cap, as described in Section 1200-13-01-.31(4)(d); and

(VI) Qualify in one of the priority categories for which enrollment into ECF CHOICES is currently open and for which a slot is available, or for an available reserve capacity slot.

(ii) Target Populations for ECF CHOICES Group 4. Only persons in one of the target populations below may qualify to enroll in ECF CHOICES Group 4:

(I) Persons who have an intellectual disability as defined in Rule 1200-13-01-.02.

(II) Persons who have a developmental disability as defined in Rule 1200-13-01-.02.

(iii) Eligibility Categories Served in ECF CHOICES Group 4. Participation in ECF CHOICES Group 4 is limited to TennCare Members who are in the ECF CHOICES Group 4 target population(s) and qualify in one of the following eligibility categories:

(I) SSI eligible, who are determined eligible for SSI by the Social Security Administration. SSI eligibles are enrolled in TennCare Medicaid.

(II) ECF CHOICES 217-Like Group as defined in Rule 1200-13-01-.02. Persons who qualify in the ECF CHOICES 217-Like Group are enrolled in TennCare Standard.

(III) Interim ECF CHOICES At-Risk Group as defined in Rule 1200-13-01-.02. Persons who qualify in the Interim ECF CHOICES At-Risk Group are enrolled in TennCare Standard.

2. ECF CHOICES Group 5 (Essential Supports for Employment and Independent Living).

(i) Participation in ECF CHOICES Group 5 is limited to TennCare Members who qualify for and are receiving TennCare-reimbursed ECF CHOICES HCBS. To be eligible for ECF CHOICES Group 5, Applicants must meet the following criteria:

(I) Be in one of the defined target populations;

(II) Qualify in the specified eligibility categories;

(III) Do not meet NF LOC but are At Risk for Institutionalization, as defined in Rule 1200-13-01-.02, provided however, that an adult age 21 and older who meets NF LOC may choose to enroll in ECF CHOICES Group 5, subject to (V) below when the enrollment target for ECF CHOICES Group 6 has been reached;

(IV) Need and upon enrollment in ECF CHOICES Group 5, receive on an ongoing basis ECF CHOICES HCBS;

(V) Have needs that can be safely and appropriately met in the community and at a cost that does not exceed the Expenditure Cap, as described in Section 1200-13-01-.31(4)(d); and

(VI) Qualify in one of the priority categories for which enrollment into ECF CHOICES is currently open and for which a slot is available, or for an available reserve capacity slot.

(ii) Target Populations for ECF CHOICES Group 5. Only persons in one of the target populations below may qualify to enroll in ECF CHOICES Group 5:

(I) Adults age 21 or older who have an intellectual disability, as defined in Rule 1200-13-01-.02.

(II) Adults age 21 or older who have a developmental disability, as defined in Rule 1200-13-01-.02.

(iii) Eligibility Categories Served in ECF CHOICES Group 5. Participation in ECF CHOICES Group 5 is limited to TennCare Members who are in the ECF CHOICES Group 5 target population(s) and qualify in one of the following eligibility categories:

(I) SSI eligible, who are determined eligible for SSI by the Social Security Administration. SSI eligibles are enrolled in TennCare Medicaid.

(II) ECF CHOICES 217-Like Group as defined in Rule 1200-13-01-.02. Persons who qualify in the ECF CHOICES 217-Like Group are enrolled in TennCare Standard.

(III) Interim ECF CHOICES At-Risk Group as defined in Rule 1200-13-01-.02. Persons who qualify in the Interim ECF CHOICES At-Risk Group are enrolled in TennCare Standard.

3. ECF CHOICES Group 6 (Comprehensive Supports for Employment and Community Living).

(i) Participation in ECF CHOICES Group 6 is limited to TennCare Members who qualify for and are receiving TennCare-reimbursed ECF CHOICES HCBS. To be eligible for ECF CHOICES Group 6, Applicants must meet the following criteria:

(I) Be in one of the defined target populations;

(II) Qualify in the specified eligibility categories:

(III) Meet NF LOC, provided however, that the State may grant an exception to individuals transitioning from the Statewide or Comprehensive Aggregate Cap Waivers who are At Risk for Institutionalization and meet the ICF/IID level of care but not the NF level of care;

(IV) Need and upon enrollment in ECF CHOICES Group 6, receive on an ongoing basis ECF CHOICES HCBS;

(V) Have needs that can be safely and appropriately met in the community and at a cost that does not exceed the Expenditure Cap, as described in Section 1200-13-01-.31(4)(d); and

(VI) Qualify in one of the priority categories for which enrollment into ECF CHOICES is currently open and for which a slot is available, or for an available reserve capacity slot.

(ii) Target Populations for ECF CHOICES Group 6. Only persons in one of the target populations below may qualify to enroll in ECF CHOICES Group 6:

(I) Adults age 21 or older who have an intellectual disability, as defined in Rule 1200-13-01-.02.

(II) Adults age 21 or older who have a developmental disability, as defined in Rule 1200-13-01-.02.

(iii) Eligibility Categories Served in ECF CHOICES Group 6. Participation in ECF CHOICES Group 6 is limited to TennCare Members who are in the ECF CHOICES Group 6 target population(s), meet NF LOC (except as provided in (i)(III) above, and qualify in one of the following eligibility categories:

(I) SSI eligible, who are determined eligible for SSI by the Social Security Administration. SSI eligibles are enrolled in TennCare Medicaid.

(II) ECF CHOICES 217-Like Group as defined in Rule 1200-13-01-.02. Persons who qualify in the ECF CHOICES 217-Like Group are enrolled in TennCare Standard.

(b) Level of Care (LOC). All Enrollees in TennCare ECF CHOICES must meet the applicable LOC criteria, as determined by the Bureau in accordance with Rule 1200-13-01-.10. Physician certification of LOC shall not be required for enrollment in ECF CHOICES.

1. Applicants shall meet NF LOC criteria or be At Risk for Institutionalization, as defined in Rule 1200-13-01-.02 in order to enroll in ECF CHOICES Group 4 (Essential Family Supports).

2. Applicants shall not be required to meet NF LOC, but shall be At Risk for Institutionalization as defined in Rule 1200-13-01-.02 in order to enroll in ECF CHOICES Group 5 (Essential Supports for Employment and Community Living), provided however, that an adult age 21 and older who meets NF LOC may choose to enroll in ECF CHOICES Group 5, subject to requirements specified in 1200-13-01-.31(3)(a)(2)(i)(V) when the enrollment target for ECF CHOICES Group 6 has been reached;

3. Applicants shall meet NF LOC in order to enroll in ECF CHOICES Group 6 (Comprehensive Supports for Community Living). For enrollment in ECF CHOICES Group 6, the State may grant an exception to individuals transitioning from the Statewide or Comprehensive Aggregate Cap Waivers who are At Risk for Institutionalization and meet the ICF/IID level of care but not the NF level of care.

(c) With respect to the PASRR process described in Rule 1200-13-01-.23, members in ECF CHOICES are not required to complete the PASRR process unless they are admitted to a NF for Short-Term NF Care described in Paragraph (8) of Rule 1200-13-01-.05 and defined in Rule 1200-13-01-.02.

(d) All Members in TennCare ECF CHOICES must be determined by the MCO to be able to be served safely and appropriately in the community within the array of services and supports available in the ECF CHOICES Group in which the Member is or will be enrolled, including ECF CHOICES HCBS up to the applicable Expenditure Caps for each benefit group, as described in Rule 1200-13-01-.31(4)(d), non-ECF CHOICES HCBS available through TennCare (e.g., home health), services available through Medicare, private insurance or other funding sources, and unpaid supports provided by family members and other caregivers who are willing and able to provide such care.

(4) Enrollment in TennCare ECF CHOICES. Enrollment into ECF CHOICES shall be processed by the Bureau as follows:

(a) There shall be separate Enrollment Targets for ECF CHOICES Groups 4, 5, and 6. The Enrollment Target for each ECF CHOICES Group functions as a cap on the total number of persons who can be enrolled into that ECF CHOICES Group at any given time.

1. Effective July 1, 2016, the Enrollment Target for ECF CHOICES shall be five hundred (500) for Group 4, one thousand (1,000) for Group 5, and two hundred (200) for Group 6.

2. Once the Enrollment Target (including Reserve Capacity as defined in Rule 1200-13-01-.02 and as described in Rule 1200-13-01-.31(4)(b) is reached for a particular ECF CHOICES Group, qualified Applicants shall not be enrolled into that ECF CHOICES Group or qualify in the ECF CHOICES 217-Like Group or the Interim ECF CHOICES At-Risk Group based on receipt of HCBS until such time that capacity within the Enrollment Target is available, with the following exceptions:

(i) NF-to-Community Transitions. A Member being served in CHOICES Group 1 or receiving services in an ICF/IID who meets requirements to enroll in ECF CHOICES Group 4, 5, or 6 can enroll in ECF CHOICES even though the Enrollment Target has been met. This Member will be served in ECF CHOICES outside the Enrollment Target but shall be moved within the ECF CHOICES Enrollment Target at such time that a slot becomes available. A request to transition a Member from CHOICES Group 1 or an ICF/IID to ECF CHOICES in excess of the ECF CHOICES Enrollment Targets must specify the name of the facility where the Member currently resides, the date of admission and the planned date of transition.

(ii) CEA Enrollment. An MCO with an SSI-eligible recipient who meets all other criteria for enrollment into ECF CHOICES Group 4, 5, or 6, but who cannot enroll in ECF CHOICES because the Enrollment Target for that group has been met, has the option, at its sole discretion, of offering HCBS as a CEA to the Member. Upon receipt of satisfactory documentation from the MCO of its CEA determination and assurance of provider capacity to meet the Member's needs, the Bureau will enroll the person into ECF CHOICES Group 4, 5, or 6, as applicable, based on all applicable eligibility and enrollment criteria, regardless of the Enrollment Targets. The person will be served in ECF CHOICES Group 4, 5 or 6 outside the Enrollment Target, but shall be moved within the ECF CHOICES Group 4, 5, or 6 Enrollment Target at such time that a slot becomes available. Satisfactory documentation of the MCO's CEA determination shall include an explanation of the Member's circumstances that warrant the immediate provision of NF 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 PCSP which the MCO has confirmed are willing and able to initiate HCBS as required by TennCare upon the Member's enrollment into ECF CHOICES Group 4, 5, or 6.

(iii) If a Potential Applicant is not permitted to proceed with application for enrollment into ECF CHOICES because the Enrollment Target has been reached, the Potential Applicant shall remain on the Referral List for ECF CHOICES.

(iv) Once the ECF CHOICES Enrollment Target for an ECF CHOICES Group is reached, any persons enrolled in that Group excess of the Enrollment Target in accordance with this Rule must receive the first available slots in that Group. Only after all persons enrolled in excess of the Enrollment Target have been moved under the Enrollment Target can additional persons be enrolled into the ECF CHOICES Group.

(b) Reserve Capacity.

1. The Bureau shall reserve 250 slots within the ECF CHOICES Groups 4, 5, 6 Enrollment Target. These slots are available only to the following:

(i) Applicants being discharged from a NF or ICF/IID;

(ii) Applicants being discharged from an acute care setting who are at imminent risk of being placed in a NF setting absent the provision of HCBS;

(iii) Applicants with ID who have an Aging Caregiver as defined in these rules;

(iv) Applicants determined by an Interagency Review Committee to meet one or more Emergent Circumstances criteria as defined in these rules; and

(v) Applicants determined by an Interagency Review Committee to meet Multiple Complex Health Conditions criteria as defined in these rules.

2. Only Applicants who meet specified reserve capacity criteria (including new Applicants seeking to establish eligibility in the ECF CHOICES 217-Like Group or the Interim ECF CHOICES At-Risk Group as well as current SSI-eligible individuals seeking enrollment into ECF CHOICES) may be enrolled into reserve capacity slots. TennCare may require confirmation of the NF or hospital discharge and in the case of hospital discharge, written explanation of the Applicant's

circumstances that warrant the immediate provision of NF services unless HCBS are immediately available. TennCare may also require confirmation that an Applicant meets other applicable reserve capacity criteria, i.e., Aging Caregiver, Emergent Circumstances, or Multiple Complex Health Conditions.

3. Once all reserve capacity slots set aside for a particular purpose have been filled, persons who meet such criteria shall not proceed with the enrollment process, but shall remain on the Referral List for ECF CHOICES.

4. If a Potential Applicant does not meet criteria for a Reserve Capacity slot, the Potential Applicant shall not proceed with the enrollment process, but shall remain on the Referral List for ECF CHOICES.

(c) Enrollment into ECF CHOICES.

1. To qualify for enrollment into ECF CHOICES Group 4:

(i) An Applicant must be in one of the target populations: an individual with an intellectual or developmental disability;

(ii) An Applicant must have an approved unexpired PAE for NF LOC or be determined to be At Risk for Institutionalization as defined in Rule 1200-13-01-.02;

(iii) An Applicant must be approved by TennCare for TennCare reimbursement of LTSS as an SSI recipient, or in the ECF CHOICES 217-Like Group or the Interim ECF CHOICES At-Risk Group defined in Rule 1200-13-01-.02;

(iv) The Bureau must have received a determination by the MCO that the Applicant's needs can be safely and appropriately met in the community, and at a cost that does not exceed his Expenditure Cap, as described in this Rule, except in instances where the Applicant is not eligible for TennCare at the time of ECF CHOICES application, in which case, such determination shall be made by the MCO upon enrollment into ECF CHOICES Group 4; and

(v) There must be capacity within the established Enrollment Target to enroll the Applicant in accordance with this Rule which may include satisfaction of criteria for Reserve Capacity, as applicable; or the Applicant must meet specified exceptions to enroll even when the Enrollment Target has been reached.

2. To qualify for enrollment into ECF CHOICES Group 5:

(i) An Applicant must be in one of the target populations: an individual with an intellectual or developmental disability who is over twenty-one (21) years old;

(ii) An Applicant must have an approved unexpired PAE for NF LOC or be determined to be At Risk for Institutionalization as defined in Rule 1200-13-01-.02;

(iii) An Applicant must be approved by TennCare for TennCare reimbursement of LTSS as an SSI recipient, or in the ECF CHOICES 217-Like Group or the Interim ECF CHOICES At-Risk Group defined in Rule 1200-13-01-.02;

(iv) The Bureau must have received a determination by the MCO that the Applicant's needs can be safely and appropriately met in the community, and at a cost that does not exceed his Expenditure Cap, as described in this Rule, except in instances where the Applicant is not eligible for TennCare at the time of ECF CHOICES application, in which case, such determination shall be made by the MCO upon enrollment into ECF CHOICES Group 5; and

(v) There must be capacity within the established Enrollment Target to enroll the Applicant in accordance with this Rule which may include satisfaction of criteria for Reserve Capacity,

as applicable; or the Applicant must meet specified exceptions to enroll even when the Enrollment Target has been reached.

3. To qualify for enrollment into ECF CHOICES Group 6:

(i) An Applicant must be in one of the target populations: an individual with an intellectual or developmental disability who is over twenty-one (21) years old;

(ii) An Applicant must have an approved unexpired PAE for NF LOC and require specialized services/supports for their I/DD;

(iii) An Applicant must be approved by TennCare for TennCare reimbursement of LTSS as an SSI recipient or in the ECF CHOICES 217-Like Group as defined in Rule 1200-13-01-.02;

(iv) The Bureau must have received a determination by the MCO that the Applicant's needs can be safely and appropriately met in the community, and at a cost that does not exceed his Expenditure Cap, as described in this Rule, except in instances where the Applicant is not eligible for TennCare at the time of ECF CHOICES application, in which case, such determination shall be made by the MCO upon enrollment into ECF CHOICES Group 6; and

(v) There must be capacity within the established Enrollment Target to enroll the Applicant in accordance with this Rule which may include satisfaction of criteria for Reserve Capacity, as applicable; or the Applicant must meet specified exceptions to enroll even when the Enrollment Target has been reached.

(d) Expenditure Caps for ECF CHOICES.

1. Each Member enrolling or enrolled in ECF CHOICES shall be subject to an Expenditure Cap on the benefit package assigned to that member, depending on the member's need. Each benefit package has a distinct Expenditure Cap, outlined below:

(i) For Members enrolled in Group 4, the expenditure cap shall be fifteen thousand dollars ($15,000) per person per calendar year. The Expenditure Cap shall apply to Group 4 ECF CHOICES HCBS only (not other Medicaid services). For Members enrolled in Group 4, the cost of minor home modifications shall not count against the expenditure cap. There shall be no exceptions to the Expenditure Cap for a Member enrolled in Group 4.

(ii) For Members enrolled in Group 5, the Expenditure Cap shall be thirty thousand dollars ($30,000) per person per calendar year. The Expenditure Cap shall apply to Group 5 ECF CHOICES HCBS only (not other Medicaid services). All ECF CHOICES HCBS shall be counted against a CHOICES Group 5 Member's Expenditure Cap, including the cost of minor home modifications.

(I) TennCare may grant an exception for emergency needs up to six thousand dollars ($6,000) per calendar year. Any exception that may be granted shall apply only for the calendar year in which the exception is approved.

(II) Expenditures for ECF CHOICES HCBS for a Member enrolled in CHOICES Group 5 shall not exceed $36,000 per calendar year.

(iii) The Expenditure Cap for a member enrolled in ECF CHOICES Group 6 shall depend on the Member's assessed level of need as defined in Rule 1200-13-01-.02.

(I) An ECF CHOICES Group 6 member assessed to have a low or moderate level of need shall have an Expenditure Cap of $45,000 per calendar year.

(II) An ECF CHOICES Group 6 member assessed to have a high level of need shall have an Expenditure Cap of $60,000 per calendar year.

(III) TennCare may grant an exception only for an ECF CHOICES Group 6 Member assessed to have exceptional medical or behavioral needs pursuant to the Level of Need process described in Rule 1200-13-01-.02. If an exception is granted, the Member's Expenditure Cap shall be based on the average annualized cost of the comparable level of care in an institution as follows:

I. For an ECF CHOICES Group 6 member who has an intellectual disability and is assessed pursuant to the Level of Need process described in Rule 1200-13-01-.02 to have exceptional medical or behavioral needs, the Member's Expenditure Cap shall be based on the average annualized cost of services in a private ICF/IID (Intermediate Care Facility for Individuals with Intellectual Disabilities).

II. For an ECF CHOICES Group 6 member who has a developmental disability and is assessed pursuant to the Level of Need process described in Rule 1200-13-01-.02 to have exceptional medical or behavioral needs, the Member's Expenditure Cap shall be based on the average annualized cost of nursing facility services plus the average annualized cost of specialized services that a person with a developmental disability would be expected to need in a nursing facility. On a case-by-case basis and applicable only to an ECF CHOICES Group 6 member who has a developmental disability and is assessed pursuant to the Level of Need process described in Rule 1200-13-01-.02 to have exceptional medical or behavioral needs, and is receiving Community Living Supports (not Family Model) at the CLS-4 level of reimbursement, this Expenditure Cap may be exceeded when necessary to permit access to Supported Employment Individual Employment Support.

III. The average annualized cost of the comparable level of care in an institution (private ICF/IID or NF) shall be adjusted by TennCare each calendar year.

IV. The average annualized cost of specialized services that a person with a developmental disability would be expected to need in a nursing facility may also be adjusted each calendar year.

V. When an ECF CHOICES Group 6 member has exceptional medical or behavioral needs and has an Expenditure Cap based on the average annualized cost of care in a private ICF/IID or NF plus specialized services in the NF, the cost of any home health or private duty nursing reimbursed by TennCare shall be counted against the Member's Expenditure Cap.

2. The Expenditure Cap shall be used to determine:

(i) Whether or not an Applicant qualifies to enroll in an ECF CHOICES benefit group (4, 5, or 6);

(ii) Whether or not a Member qualifies to remain enrolled in an ECF CHOICES benefit group (4, 5, or 6);

(iii) The total cost of ECF CHOICES HCBS a Member can receive while enrolled in an ECF CHOICES Benefit Group, excluding only for Members in Group 4 the cost of Minor Home Modifications. The Expenditure Cap functions as a limit on the total cost of ECF CHOICES HCBS, excluding only for Members in Group 4 the cost of Minor Home Modifications, that can be provided by the MCO to the Member in the home or community setting. ECF CHOICES HCBS in excess of a Member's Expenditure Cap are non-covered benefits.

3. A Member shall not be entitled to receive services up to the amount of the Expenditure Cap. A Member shall receive only those services that are medically necessary (i.e., required in order to help ensure the Member's health, safety and welfare in the home or community setting and to delay or prevent the need for NF placement). Determination of the services that are needed shall be based on a comprehensive assessment of the Member'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 Support Coordinator.

4. Application of the Expenditure Cap.

(i) When a Member is enrolled in any ECF CHOICES Group (including transition from another CHOICES or ECF CHOICES Group), the Member's Expenditure Cap shall be pro-rated for the remainder of that calendar year (i.e., the portion of the calendar year that the Member will actually be enrolled in the ECF CHOICES Group).

(ii) When an ECF CHOICES Group 6 member has exceptional medical or behavioral needs and has an Expenditure Cap based on the average annualized cost of care in a private ICF/IID or NF (plus specialized services in the NF), the cost of any home health or private duty nursing reimbursed by TennCare shall be counted against the Member's Expenditure Cap.

(iii) Except as specified in Rule 1200-13-01-.31(4)(d)1.(iii)(III)V., TennCare services other than ECF CHOICES HCBS shall not be counted against a Member's Expenditure Cap.

(iv) The annual Expenditure Cap shall be applied on a calendar year basis. The Bureau and the MCOs will track utilization of ECF CHOICES HCBS excluding only for Members in Group 4 the cost of Minor Home Modifications, across each calendar year.

(v) A Member's Expenditure Cap must also be applied prospectively on a twelve (12) month basis. This is to ensure that a Member's PCSP does not establish a threshold level of supports that cannot be sustained over the course of time. This means that, for purposes of person-centered planning, the MCO will always project the total cost of ECF CHOICES HCBS (excluding only for Members in Group 4 the cost of Minor Home Modifications) forward for twelve (12) months in order to determine whether the Member's needs can continue to be met based on the most current PCSP that has been developed. The cost of one-time services such as short-term services or short-term increases in services must be counted as part of the total cost of ECF CHOICES HCBS for a full twelve (12) month period following the date of service delivery.

(vi) If it can be reasonably anticipated, based on the ECF CHOICES HCBS currently received or determined to be needed (in addition to non-CHOICES HCBS available through TennCare, e.g., home health, services available through Medicare, private insurance or other funding sources, and unpaid supports provided by family members and other caregivers) in order to safely meet the person's needs in the community, that the person will exceed his Expenditure Cap, then the person does not qualify to enroll in or to remain enrolled in ECF CHOICES.

(5) Disenrollment from ECF CHOICES. A Member may be disenrolled from ECF CHOICES voluntarily or involuntarily.

(a) Voluntary disenrollment from ECF CHOICES means the Member has chosen to disenroll, and no notice of action shall be issued regarding a Member's decision to voluntarily disenroll from ECF CHOICES. However, notice shall be provided regarding any subsequent adverse action that may occur as a result of the Member's decision, including any change in benefits, cost-sharing responsibility, or continued eligibility for TennCare when the Member's eligibility was conditioned on receipt of LTSS. Voluntary disenrollment shall proceed only upon:

1. Election by the Member to receive institutional services (e.g., NF or ICF/IID services), including hospice services in a NF, which is not a LTSS, provided however, that a Member shall not be disenrolled from ECF CHOICES in order to receive Short-Term NF care as defined in 1200-13-01-.02;

2. Election by the Member to enroll in an MCO that does not administer the ECF CHOICES program (i.e., United Healthcare Community Plan until such time as specified by TennCare or TennCare Select, including Select Community); or

3. Receipt of a statement signed by the Member or his authorized Representative voluntarily requesting disenrollment.

(b) A Member may be involuntarily disenrolled from ECF CHOICES only by the Bureau, although such process may be initiated by a Member's MCO. Reasons for involuntary disenrollment include but are not limited to:

1. The Member no longer meets one or more criteria for eligibility and/or enrollment as specified in this Rule.

2. The Member'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 Member becomes 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 Member or to individuals who provide covered services to the Member.

(ii) The Member or his representative/conservator or caregiver refuses to abide by the PCSP.

(iii) Even though an adequate provider network is in place, there are no providers who are willing to provide necessary services to the Member.

(iv) The Member's decision to continue receiving services in the home or community poses an unacceptable level of risk.

3. The Member's needs can no longer be safely met in the community at a cost that does not exceed the Member's Expenditure Cap as described in this Rule.

4. The Member no longer needs or is no longer receiving LTSS.

5. The Member has refused to pay his or her Patient Liability. The MCO and/or its participating providers are unwilling to serve the Member in ECF CHOICES because he has not paid his or her Patient Liability, and/or no other MCO is willing to serve the Member in ECF CHOICES.

(6) Transitioning To and From ECF CHOICES.

(a) Transition from CHOICES Group 1 to ECF CHOICES.

1. An MCO may request to transition a Member from CHOICES Group 1 to ECF CHOICES only when the Member chooses to transition from the NF to an HCBS setting and meets eligibility criteria to enroll in that group, as specified in Rule 1200-13-01-.31(3). Members shall not be required to transition from CHOICES Group 1 to ECF CHOICES. Only an MCO may submit to TennCare a request to transition a Member from CHOICES Group 1 to ECF CHOICES.

2. A Member that has already been discharged from the NF shall not be transitioned to ECF CHOICES. Once a Member has discharged from the NF, the Member has voluntarily disenrolled from CHOICES Group 1 and must be newly enrolled into ECF CHOICES, in accordance with these rules. A new PAE shall be required for enrollment into ECF CHOICES.

3. When Members move from CHOICES Group 1 to ECF CHOICES, TennCare must recalculate the Member's Patient Liability based on the Community PNA.

(b) Transition from ECF CHOICES to CHOICES Group 1.

1. An MCO may request to transition a Member from ECF CHOICES to CHOICES Group 1 only under the following circumstances:

(i) The MCO provides advance notification to TennCare, which shall include documentation of thoroughly exploring and exhausting all attempts to provide services in a more integrated community setting.

(ii) The member must meet the nursing facility level of care in place at the time of admission and make an informed choice to transition to a nursing facility and enroll in CHOICES Group 1. Informed choice requires thorough exploration and exhaustion of all integrated community setting options.

(iii) A PASRR shall be completed prior to admission, the member must be determined appropriate for placement in a nursing facility, and all identified specialized services must be coordinated by the MCO immediately upon admission.

2. When Members transition from ECF CHOICES to CHOICES Group 1, TennCare must recalculate the Member's Patient Liability based on the Institutional PNA.

3. At such time as a transition between ECF CHOICES and CHOICES Group 1 is made, the MCO shall issue notice of transition to the Member. Because the Member has elected the transition, such transition 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.

(c) Individuals enrolled in a Section 1915(c) waiver shall not be permitted to transition into ECF CHOICES, even if they meet applicable eligibility and enrollment criteria for ECF CHOICES, until such time that the State determines that such transitions can be permitted and in accordance with timeframes and procedures established by TennCare.

(d) Individuals enrolled in CHOICES Group 2 or 3 shall not be permitted to transition into ECF CHOICES, even if they meet applicable eligibility and enrollment criteria for ECF CHOICES, unless the State determines that the individual qualifies for ECF CHOICES, the individual's needs can be more appropriately met in ECF CHOICES, and in accordance with timeframes and procedures established by TennCare.

(7) Benefits in the TennCare ECF CHOICES Program.

(a) Members of ECF CHOICES receive HCBS as specified in an approved Initial Support Plan or PCSP, as applicable, in addition to medically necessary covered benefits available for TennCare Medicaid and TennCare Standard recipients, as specified in Rules 1200-13-13-.04 and 1200-13-14-.04. While receiving ECF CHOICES HCBS, Members are not eligible for NF care, except for Short-Term NF care, as described in this Chapter.

(b) Members are not eligible to receive any other HCBS during the time that Short-Term NF services are provided. ECF CHOICES HCBS such as Minor Home Modifications 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.

(c) All ECF CHOICES HCBS must be authorized by the MCO in order for MCO payment to be made for the services. ECF CHOICES HCBS must be specified in an approved Initial Support Plan or PCSP, as applicable, and authorized by the MCO prior to delivery of the service in order for MCO payment to be made for the service.

(d) ECF CHOICES HCBS covered under the ECF CHOICES Program 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 CD 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 (c) above.

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction ("Eligible ECF CHOICES HCBS")
1. Adult Dental Services	Covered for adults age 21 and older in accordance with limitations specified in Rule 1200-13-01-.02. Orthodontic services are excluded from coverage. Limited to a maximum of five thousand dollars ($5,000) per person per calendar year, and a maximum of seven thousand five hundred dollars ($7,500) per person across three (3) consecutive calendar years.	No
2. Assistive Technology, Adaptive Equipment and Supplies	Covered with a limit of five thousand dollars ($5,000) per person per calendar year. Not covered under ECF CHOICES if available under Section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. §§ 1401 et seq.).	No

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction ("Eligible ECF CHOICES HCBS")
3. Community Integration Support Services	Covered in accordance with limitations specified in Rule 1200-13-01-.02. Not covered as a separate service for persons receiving CLS or CLS-FM. For members not working in the community (excludes a facility-based setting) and not receiving any employment services: Up to 20 hours per week of Community Integration Support Services and Independent Living Skills Training combined after completing an Employment Informed Choice process. For members working in the community or receiving at least one employment service: Up to 30 hours per week of Community Integration Support Services, Independent Living Skills Training, and Individual or Small Group Employment Supports combined. For members working in individualized integrated employment or self-employment: Up to 40 hours per week of Community Integration Support Services, Independent Living Skills Training, Job Coaching, Co-Worker Supports and the hours worked without paid supports combined. For members working in individualized integrated employment or self-employment at least 30 hours a week: Up to 50 hours per week of Community Integration Support Services, Independent Living Skills Training, Job Coaching, Co-Worker Supports and the hours worked without paid supports combined. Payment for attendance and materials and supplies at classes and conferences and club/association dues can be covered, but cannot exceed five hundred dollars ($500) per year for children under age twenty (21) or one thousand dollars ($1,000) for adults age twenty-one (21) or older.	No

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction ("Eligible ECF CHOICES HCBS")
4. Community Living Supports (CLS) and Community Living Supports—Family Model (CLS-FM)	Covered only for adults age 21 and older enrolled in ECF CHOICES Group 5 or 6.	No
5. Community Support Development, Organization and Navigation	Covered only for Members enrolled in ECF CHOICES Group 4.	No
6. Community Transportation	Covered for transportation to employment and to support participation in community activities when public or other community-based transportation services are not available or when assistance is needed in order to access such benefits. Shall not supplant NEMT available for medical appointments. Limited to $225 per month for Members electing to receive this benefit through Consumer Direction.	Yes
7. Conservatorship Counseling and Assistance	Covered. Limited to five hundred dollars ($500) in one-time assistance per member. Legal or court fees may be reimbursed only upon completion of counseling services to protect and preserve individual rights and freedoms.	No
8. Family Caregiver Education and Training	Covered only for Members enrolled in ECF CHOICES Group 4 when approved in advance by the Member's MCO. Limited to five hundred dollars ($500) per calendar year.	No
9. Family Caregiver Stipend in lieu of SHC	Covered only for Members enrolled in ECF CHOICES Group 4 and only when supports for employment and community integration are provided. For a child under age eighteen (18), the Family Caregiver Stipend shall be limited to five hundred dollars ($500) per month. For an adult age eighteen (18) or older, the Family Caregiver Stipend shall be no more than one thousand dollars ($1,000) per month.	No
10. Family-to-Family Support	Covered only for Members enrolled in ECF CHOICES Group 4.	No

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction ("Eligible ECF CHOICES HCBS")
11. Health Insurance Counseling/Forms Assistance	Covered only for Members enrolled in ECF CHOICES Group 4. Limited to fifteen (15) hours per person per calendar year.	No
12. Independent Living Skills Training	Covered in accordance with limitations specified in Rule 1200-13-01-.02. Not covered as a separate service for persons receiving CLS or CLS-FM. For members not working in the community (excludes a facility-based setting) and not receiving any employment services: Up to 20 hours per week of Independent Living Skills Training and Community Integration Support Services combined *after* completing an Employment Informed Choice process. For members working in the community or receiving at least one employment service: Up to 30 hours per week of Independent Living Skills Training, Community Integration Support Services, and Individual or Small Group Employment Supports combined. For members working in individualized integrated employment or self-employment: Up to 40 hours per week of Independent Living Skills Training, Community Integration Support Services, Job Coaching, Co-Worker Supports and the hours worked without paid supports combined. For members working in individualized integrated employment or self-employment at least 30 hours a week: Up to 50 hours per week of Independent Living Skills Training, Community Integration Support Services, Job Coaching, Co-Worker Supports and the hours worked without paid supports combined.	No
13. Individual Education and Training Services	Covered only for Members enrolled in ECF CHOICES Group 5 or 6 when approved in advance by the Member's MCO. Limited to five hundred dollars ($500) per Member per calendar year.	No

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction ("Eligible ECF CHOICES HCBS")
14. Integrated Employment Path Services (time limited prevocational training)	Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02. Limited to no more than twelve (12) months. One extension of up to twelve (12) months can be allowed only if the individual is actively pursuing individualized employment in an integrated setting and has documentation that a service(s) (e.g. Job Development or Self-Employment Start-Up funded by Tennessee Rehabilitation Services, this waiver or another similar source) is concurrently authorized for this purpose. Limited to 30 hours per week of Integrated Employment Path Services, other Individual or Small Group Employment Supports, Independent Living Skills Training, and Community Integration Support Services combined.	No
15. Minor Home Modifications	Covered in accordance with limitations specified in Rule 1200-13-01-.02 and with a limit of $6,000 per project, $10,000 per calendar year, and $20,000 per lifetime.	No
16. Peer-to-Peer Support and Navigation for Person-Centered Planning, Self-Direction, Integrated Employment/Self-Employment and Independent Community Living	Covered only for Members enrolled in ECF CHOICES Group 5 or 6. Limited to one thousand five hundred dollars ($1,500) per person per lifetime.	No
17. Personal Assistance	Covered only for ECF CHOICES Members enrolled in Group 5 or 6. In ECF CHOICES Group 6 (Comprehensive Supports for Employment and Community Living) benefit group, Personal Assistance is limited to two hundred fifteen (215) hours per month.	Yes

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction ("Eligible ECF CHOICES HCBS")
18. Respite	Covered with limitations as follows: Up to thirty (30) days of service per person per calendar year or up to two hundred sixteen (216) hours per person per calendar year, depending on the needs and preferences of the individual as reflected in the PCSP. The two (2) limits cannot be combined in a calendar year.	Yes for hourly Respite only; daily Respite shall not be available through Consumer Direction
19. Specialized Consultation and Training	Covered only for adults age 21 or older enrolled in ECF CHOICES Group 5 or 6. Limited to five thousand dollars ($5,000) per person per calendar year, except for adults in the Comprehensive Supports for Employment and Community Living benefit group determined to have exceptional medical and/or behavioral support needs pursuant to the Level of Need process described in Rule 1200-13-01-.02. For adults age 21 and older in ECF CHOICES Group 6 (Comprehensive Supports for Employment and Community Living) determined by TennCare to have exceptional medical and/or behavioral support needs, Specialized Consultation and Training shall be limited to ten thousand dollars ($10,000) per person per calendar year.	No
20. Supportive Home Care (SHC)	Covered only for Members enrolled in ECF CHOICES Group 4.	Yes
21. Supported Employment Individual Employment Support	Covered for persons age 16 or older (or age 14 or older, as specified) in accordance with limitations specified in Rule 1200-13-01-.02, and with the following components:	No
	Exploration – Covered for persons age 14 or older in accordance with limitations specified in Rule 1200-13-01-.02. Limited to once per year (with a minimum 365-day interval between services) and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment.	No

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction ("Eligible ECF CHOICES HCBS")
	Benefits Counseling – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02. Limited to people receiving individual employment supports. Persons receiving small group employment supports are not eligible for this benefit. Initial Benefits Counseling for someone actively considering or seeking individualized integrated employment or self-employment, or career advancement in these types of employment: up to twenty (20) hours. This service may be authorized no more than once every two (2) years (with a minimum of two 365-day intervals between services). Supplementary Benefits Counseling for someone evaluating an individualized integrated job offer/promotion or self-employment opportunity: up to an additional six (6) hours. This service may be authorized up to three (3) times per year if needed. PRN problem-solving services for someone to maintain individualized integrated employment or self-employment: up to eight (8) hours per situation requiring PRN assistance. This service may be authorized up to four (4) times per year if necessary for the individual to maintain individualized integrated employment or self-employment. Service must not be available under Section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. §§ 1401, et seq.). ECF may not fund this service if CWIC Benefits Counseling services funded through the Federal Work Incentives Planning and Assistance (WIPA) program are available.	No

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction ("Eligible ECF CHOICES HCBS")
	Discovery - Covered for persons age 14 or older in accordance with limitations specified in Rule 1200-13-01-.02. Limited to no more than ninety (90) calendar days from the date of service initiation.	No
	Situational Observation and Assessment – Covered for persons age 14 or older in accordance with limitations specified in Rule 1200-13-01-.02. Limited to once every three years (with a minimum of three 365-day intervals between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within twelve (12) months.	No
	Job Development Plan or Self-Employment Plan – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02. Limited to once every three years (with a minimum of three 365-day intervals between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within twelve (12) months. Medicaid funds may not be used to defray the capital expenses associated with starting a business.	No

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction ("Eligible ECF CHOICES HCBS")
	Job Development Plan or Self-Employment Start Up – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02. Limited to once per year (with a minimum 365-day interval between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within nine (9) months.	No
	Job Coaching – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02. Covered only for members working in individualized integrated employment or self-employment. Limited to 40 hours per week of Job Coaching, Co-Worker Supports, the hours worked without paid supports, Independent Living Skills Training, and Community Integration Support Services combined. For members working in individualized integrated employment or self-employment at least 30 hours a week: Limited to 50 hours per week of Job Coaching, Co-Worker Supports, the hours worked without paid supports, Independent Living Skills Training, and Community Integration Support Services combined.	No

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction ("Eligible ECF CHOICES HCBS")
	Co-Worker Supports – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02. Covered only for members working in individualized integrated employment or self-employment. Limited to 40 hours per week of Co-Worker Supports, Job Coaching, the hours worked without paid supports, Independent Living Skills Training, and Community Integration Support Services combined. For members working in individualized integrated employment or self-employment at least 30 hours a week. Limited to 50 hours per week of Co-Worker Supports, Job Coaching, the hours worked without paid supports, Independent Living Skills Training, and Community Integration Support Services combined.	No
	Career Advancement – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02. This service shall not be authorized retroactive to a promotion or second job being made available to a person. Supports for Career Advancement may be authorized and paid once every three (3) years (with a minimum of three 365-day intervals between services), if evidence exists that the individual is eligible for promotion or able to present as a strong candidate for employment in a second job (e.g. has strong reference, performance reviews and attendance record from current employer).	No
22. Supported Employment Small Group Supports	Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02. Limited to 30 hours per week of Small Group or Individual Employment Supports, Integrated Employment Path Services, Independent Living Skills Training, and Community Integration Support Services combined.	No

(8) Consumer Direction (CD).

(a) CD is a model of service delivery that affords ECF CHOICES Members the opportunity to have more choice and control with respect to Eligible ECF CHOICES HCBS that are needed by the Member, in accordance with this Rule. CD is not a service or set of services.

(b) ECF CHOICES HCBS eligible for CD (Eligible ECF CHOICES HCBS).

1. CD shall be limited to the following HCBS:

(i) Personal Assistance.

(ii) Supportive Home Care.

(iii) Hourly Respite. (Daily Respite shall not be available through CD.)

(iv) Community Transportation.

2. ECF CHOICES Members determined to need Eligible ECF CHOICES HCBS may elect to receive one or more of the Eligible ECF CHOICES HCBS through a Contract Provider, or they may participate in CD.

3. ECF CHOICES Members who do not need Eligible ECF CHOICES HCBS shall not be offered the opportunity to enroll in CD.

4. The model of CD that will be implemented in ECF CHOICES is a modified budget authority model.

5. Each Eligible ECF CHOICES HCBS identified in the Member's PCSP that the Member elects to receive through CD shall have an individual monthly or annual budget, as specified below.

6. The amount of the budget authorized for each Eligible ECF CHOICES HCBS the Member elects to receive through CD shall be based on a comprehensive needs assessment performed by a Support Coordinator that identifies the Member's needs, the availability of family and other unpaid caregivers to meet those needs, and the gaps in care for which paid ECF CHOICES may be authorized.

(i) Each Eligible ECF CHOICES HCBS received through CD shall have a separate budget.

(ii) The budget for each Eligible ECF CHOICES HCBS received through CD shall be based on the number of units of that service the member is assessed to need, subject to applicable benefit limits and the Member's Expenditure Cap.

(iii) Once the budget for each Eligible ECF CHOICES HCBS is determined and authorized, the Member shall have flexibility to determine the rate of reimbursement for that service (subject to any limitations established by TennCare), and to purchase additional units of the service so long as the budget for that service is not exceeded.

(iv) The budget for each Eligible ECF CHOICES HCBS shall be separately maintained. A Member shall not direct money from the budget for one Eligible ECF CHOICES HCBS to purchase a different Eligible ECF CHOICES HCBS, provided however, that a Member's PCSP (and consequently, the budget for any affected Eligible ECF CHOICES HCBS) may be amended based on the Member's needs, as appropriate.

(v) Any money remaining in a Member's monthly budget for Personal Assistance, Supportive Home Care or Community Transportation at the end of a month shall not be carried over to the next month, and cannot be used to purchase units of service in any other month.

(vi) Any money remaining in a Member's annual budget for hourly Respite at the end of the calendar year shall not be carried over to the next year, and cannot be used to purchase additional units of service in a subsequent calendar year.

7. The amount of the budget for each Eligible ECF CHOICES HCBS shall be authorized as follows:

(i) Personal Assistance for Members enrolled in ECF CHOICES Group 5 or Group 6 and Supportive Home Care for Members enrolled in ECF CHOICES Group 4 shall have a monthly budget if provided through Consumer Direction.

(I) A Member shall only direct CD Workers to provide Personal Assistance or Supportive Home Care, as applicable, up to the amount of the authorized monthly budget for that service.

(II) A Member shall not ask or allow a CD Worker to provide services in excess of the authorized monthly budget for that service.

(III) If a Member exhausts the authorized monthly budget for a service before the month has ended, additional services shall not be authorized for the remainder of the month.

(IV) If a Member (or his Representative for CD) is not able to manage services within the approved budget for the service, the Member may not be able to remain in CD.

(ii) Community Transportation for Members enrolled in ECF CHOICES shall have a monthly budget if provided through CD.

(I) The monthly budget shall be based on the number of days in the month that the Member is expected to need Community Transportation services.

(II) The Member may receive the first month's budget allotment in advance. The advance monthly budget allotment shall be used to purchase only Community Transportation services as defined in these rules.

(III) A Member may purchase Community Transportation services in the most cost-efficient manner possible, including public transportation (e.g., bus passes), paying a co-worker to share gas expenditures, etc.

(IV) A Member shall not reimburse any person who resides with the Member for Community Transportation.

(V) The Member is obligated to maintain a Community Transportation log and receipts for Community Transportation expenditures as required by TennCare and to submit such information on a monthly basis to his MCO.

(VI) A Member shall only purchase Community Transportation up to the amount of the authorized monthly budget for that service.

(VII) The Member's monthly Community Transportation budget shall be reimbursed only for documented purchases of Community Transportation services submitted to the MCO.

(VIII) A Member shall not be reimbursed for Community Transportation services in excess of the authorized monthly budget for that service.

(IX) If a Member exhausts the authorized monthly budget for Community Transportation services before the month has ended, additional services shall not be authorized for the remainder of the month.

(X) If a Member (or his Representative for CD) is not able to manage services within the approved budget for the service, the Member may not be able to remain in CD.

(iii) Respite services for Members enrolled in ECF CHOICES shall have an annual budget if provided through Consumer Direction.

(I) The annual budget shall operate on a calendar year (January 1 through December 31).

(II) A Member who elects to receive Respite through CD shall receive up to 216 hours per year of Respite services. (Daily Respite shall not be available through CD.)

(III) A Member shall only direct CD Workers to provide Respite services, as applicable, up to the amount of the authorized annual budget for that service.

(IV) A Member shall not ask or allow a CD Worker to provide services in excess of the authorized annual budget for that service.

(V) If a Member exhausts the authorized annual budget for Respite services before the calendar year has ended, additional services shall not be authorized for the remainder of the year.

(VI) If a Member (or his Representative for CD) is not able to manage services within the approved budget for the service, the Member may not be able to remain in CD.

8. HH Services, PDN Services, and ECF CHOICES HCBS other than those specified above shall not be available through CD.

(c) Eligibility for CD. To be eligible for CD, an ECF CHOICES Member must meet all of the following criteria:

1. Be a Member of ECF CHOICES.

2. Be determined by a Support Coordinator, based on a comprehensive needs assessment, to need one or more Eligible ECF CHOICES HCBS.

3. Be willing and able to serve as the Employer of Record for his Consumer-Directed Workers and to fulfill all of the required responsibilities for CD, or he 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 CD. Assistance shall be provided to the Member or his Representative by the FEA.

4. Any additional risks associated with a Member's decision to participate in CD must be identified and addressed in the PCSP, as applicable, and the MCO must determine that the Member's needs can be safely and appropriately met in the community while participating in CD.

5. The Member or his Representative for CD and any Workers he employs must agree to use the services of the Bureau's contracted FEA to perform required Financial Administration and Supports Brokerage functions.

(d) Enrollment in CD.

1. An ECF CHOICES Member assessed to need one or more Eligible ECF CHOICES HCBS may elect to participate in CD at any time.

2. If the Member is unable to make a decision regarding his participation in CD 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 CD participation form reflecting the decision the Member has made.

3. If the Member is unable to make a decision regarding CD or to communicate his decision and does not have a legally appointed Representative, the Member cannot participate in CD since there is no one with the legal authority to assume and/or delegate the Member's CD responsibilities.

4. Self-Assessment Tool. If a Member elects to participate in CD, he must complete a self-assessment tool developed by the Bureau to determine whether he requires the assistance of a Representative to perform the responsibilities of CD.

5. Representative. If the Member requires assistance in order to participate in CD, he must designate, or have appointed by a legally appointed Representative, a Representative to assume the CD responsibilities on his behalf.

   (i) A Representative for CD must meet all of the following criteria:

      (I) Be at least eighteen (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 the Bureau, for review and approval, a request to deny the Member's participation in CD.

   (iii) If a Member's Support Coordinator believes that the person selected as the Member's representative for CD 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 Support 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 the Bureau, for review and approval, a request to deny the Member's participation in CD.

   (iv) A Member's Representative shall not receive payment for serving in this capacity and shall not serve as the Member's paid 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 Support 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 notifying his Support Coordinator and his Supports Broker that he intends to change Representative. The Support 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 Support Coordinator, prior to the new Representative assuming his respective responsibilities.

(e) Employer of Record.

1. If a Member elects to participate in CD, either he or his Representative must serve as the Employer of Record.

2. The Employer of Record is responsible for the following:

(i) Finding, interviewing, hiring and firing Workers;

(ii) Determining Workers' duties and developing job descriptions;

(iii) Training Workers to provide personalized support based on the Member's needs and preferences;

(iv) Scheduling Workers;

(v) Ensuring there are enough workers hired to provide all of the support needed by the Member (including when the worker scheduled is unable to report to work);

(vi) Ensuring the worker(s) keep correct time sheets for the services and supports provided;

(vii) Reviewing and approving hours reported by Consumer-Directed Workers;

(viii) Ensuring Workers provide only as much support as assigned to provide and as needed by the Member;

(ix) Ensuring that no Worker provides more than 40 hours of support each week unless the Member or Representative for CD has decided to pay overtime out of the Member's approved budget;

(x) Managing the services the Member needs within the Member's approved budget for each service;

(xi) Supervising Workers;

(xii) Evaluating Worker performance and addressing any identified deficiencies or concerns;

(xiii) Setting wages from a range of reimbursement levels established by the Bureau;

(xiv) Reviewing and ensuring proper documentation for services provided; and

(xv) 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 CD.

1. Enrollment into CD may be denied by the Bureau when:

(i) The person is not enrolled in TennCare or in ECF CHOICES.

(ii) The Member does not need one or more of the HCBS eligible for CD, as specified in the PCSP.

(iii) The Member is not willing or able to serve as the Employer of Record for his Consumer-Directed Workers and to fulfill all of the required responsibilities for CD, 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 CD.

(iv) The Member is unwilling, with the assistance of his Support Coordinator, to identify and address any additional risks associated with the Member's decision to participate in CD, or the risks associated with the Member's decision to participate in CD 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 CD.

(vi) The Member's needs cannot be safely and appropriately met in the community while participating in CD.

(vii) The Member or his Representative for CD, or the Consumer-Directed Workers he wants to employ, are unwilling to use the services of the Bureau's contracted FEA to perform required Financial Administration and Supports Brokerage functions.

(viii) Other significant concerns regarding the Member's participation in CD which jeopardize the health, safety or welfare of the Member.

2. Denial of enrollment in CD 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 CD:

(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 the completion of CD enrollment paperwork and assistance with employer functions as requested.

2. The FEA shall:

(i) Assign a Supports Broker to each ECF CHOICES Member electing to participate in CD of Eligible ECF CHOICES HCBS.

(ii) Provide initial and ongoing training to Members and their Representatives (as applicable) on CD and other relevant issues.

(iii) Verify Worker qualifications, including conducting background checks on Workers, enrolling Workers into TennCare, requesting from TennCare the assignment of Medicaid provider ID numbers, and holding TennCare provider agreements.

(iv) Provide initial and ongoing training to workers on CD and other relevant issues such as the use of the FEA time keeping system.

(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 CD or his Representative is responsible for the development and implementation of a Back-up Plan that identifies how the Member or Representative will address situations when a scheduled Worker is not available or fails to show up as scheduled.

2. The Member or Representative may not elect, as part of the Back-up Plan, to go without services.

3. The Back-up Plan for CD 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 CD 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 PCSP.

6. The Support 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 CD, enrollment into CD may be denied, as set forth in this Rule.

7. The Back-up Plan shall be reviewed and updated at least annually, and as frequently as necessary if there are changes in the type, amount, duration, scope of eligible ECF CHOICES 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 support.

8. A Member may use Contract Providers to serve as back-up to Consumer Directed Workers only upon prior arrangement by the Member (or Representative for CD) with the Contract Provider, inclusion in the Member's back-up plan, verification by the Supports Broker, prior approval by the MCO, and subject to the Member's Expenditure Cap as described in Rule 1200-13-01-.31(4)(d). If the higher cost of services delivered by a Contract Provider would result in a Member's Expenditure Cap being exceeded, a Member shall not be permitted to use Contract Providers to provide back-up workers. A Member's MCO shall not be required to maintain Contract Providers on "stand-by" to provide back-up for services delivered through Consumer Direction.

(i) Consumer-Directed Workers (Workers).

1. Hiring Consumer-Directed Workers.

   (i) Members shall have the flexibility to hire individuals 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 shall not be permitted to employ any person who resides with the Member to deliver Personal Assistance, Supportive Home Care or hourly Respite services. A Member shall not reimburse any person who resides with the Member for Community Transportation.

   (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 used.

2. Qualifications of Consumer-Directed Workers. Workers must meet the following requirements prior to providing services:

   (i) Be at least eighteen (18) years of age or older;

   (ii) Complete a background check that includes a 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) Verification that the person has not been excluded from participation in Medicare, Medicaid, SCHIP, or any Federal health care programs (as defined in Section 128B(f) of the Social Security Act);

(vi) Complete all required training;

(vii) Complete all required applications to become a TennCare provider;

(viii) Sign an abbreviated Medicaid agreement;

(ix) Be assigned a Medicaid provider ID number;

(x) Sign a Service Agreement; and

(xi) 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 the completion of a background check for a potential Worker. A background check may reveal a potential Worker's past criminal conduct that may pose an unacceptable risk to the Member. Any of the following findings may place the Member at risk and may 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; and/or

(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.

4. Individualized Assessment of a Consumer-Directed Worker with a Criminal Background.

(i) If a potential Worker's background check includes past criminal conduct, the Member (or Representative for CD) must review the past criminal conduct with the help of the FEA. The Member (or Representative for CD), with the assistance of the FEA, will consider the following factors:

(I) Whether or not the evidence gathered during the potential Worker's individualized assessment shows the criminal conduct is related to the job in such a way that could place the Member at risk;

(II) The nature and gravity of the offense or conduct, such as whether the offense is related to physical or sexual or emotional abuse of another person, if the offense involves violence against another person, or the manufacture, sale, or distribution of drugs; and

(III) The time that has passed since the offense or conduct and/or completion of the sentence.

(ii) After considering the above factors and any other evidence submitted by the potential Worker, the Member (or Representative for CD) must decide whether to hire the potential Worker.

(iii) If a Member (or Representative for CD) decides to hire the Worker, the FEA shall assist the Member (or Representative for CD) in notifying the Member's MCO of this decision and shall collaborate with the Member's MCO to amend the Member's PCSP to reflect the Member's (or CD Representative's) decision to voluntarily assume the risk associated with hiring an individual with a criminal history and that the Member (or Representative for CD) is solely responsible for any negative consequences stemming from that

decision. The FEA shall also collaborate with the Member's MCO on a risk mitigation strategy.

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 typical 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.

6. Payments to Consumer-Directed Workers.

(i) Rates. Members participating in CD have the flexibility to set wages for their Workers from a range of reimbursement levels established by TennCare.

(ii) Payments to Consumer-Directed Workers. In order to receive payment for services rendered, all Workers must:

(I) Deliver services in accordance with the services specified in the Member's PCSP, the monthly or annual budget as approved in the MCO's service authorization, and in accordance with the schedule set by the Member or the Member's Representative for CD and Worker assignments determined by the Member or his Representative.

(II) Use the FEA time keeping system to record in and out times for 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 directed by the Employer of Record who by such direction, agrees to pay the worker over-time pay out of the Member's budget in accordance with the Fair Labor Standards Act. This shall reduce the amount of services that may be purchased for the Member during that month.

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

(I) A Member may terminate a Worker's employment at any time.

(II) The MCO may not terminate a Worker's employment, but may request that a Member be involuntarily withdrawn from CD 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) Withdrawal from Participation in Consumer Direction (CD).

1. General.

(i) Voluntary Withdrawal from CD. Members participating in CD may voluntarily withdraw from participation in CD at any time. The Member's request must be in writing. Whenever possible, notice of a Member's decision to withdraw from participation in CD 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 CD of Eligible ECF CHOICES HCBS shall not affect a Member's eligibility for LTSS or enrollment in ECF CHOICES, provided the Member continues to meet all requirements for enrollment in ECF CHOICES as defined in this Chapter.

(iii) If a Member voluntarily withdraws or is involuntarily withdrawn from CD, any Eligible ECF CHOICES HCBS he receives shall be provided through Contract Providers, subject to the requirements in this Chapter.

2. Involuntary Withdrawal.

(i) A person may be involuntarily withdrawn from participation in CD 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 ECF CHOICES.

(III) The Member no longer needs any of the Eligible ECF CHOICES HCBS, as specified in the PCSP.

(IV) The Member is no longer willing or able to serve as the Employer of Record for his Consumer-Directed Workers and to fulfill all of the required responsibilities for CD, 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 CD.

(V) The Member is unwilling to work with the Support Coordinator to identify and address any additional risks associated with the Member's decision to participate in CD, or the risks associated with the Member's decision to participate in CD 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 or Representative does not want to terminate the Worker.

(VII) The Member does not have an adequate Back-up Plan for CD.

(VIII) The Member's needs cannot be safely and appropriately met in the community while participating in CD.

(IX) The Member or his Representative for CD, or Consumer-Directed Workers he wants to employ are unwilling to use the services of the Bureau's contracted FEA to perform required Financial Administration and Supports Brokerage functions.

(X) The Member or his Representative for CD is unwilling to abide by the requirements of the ECF CHOICES CD 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 Support Coordinator or FEA has identified health, safety and/or welfare issues.

(XIII) A Support 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 or Representative does not want to terminate the Worker.

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

(ii) The Bureau must review and approve all MCO requests for involuntary withdrawal from CD of eligible HCBS before such action may occur. If the Bureau 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 CD.

(iv) If a person is no longer enrolled in TennCare or in ECF CHOICES, his participation in CD shall be terminated

(9) HCBS Providers in ECF CHOICES.

(a) HCBS providers delivering services under ECF CHOICES must meet specified license, training and background check requirements and shall meet conditions for reimbursement outlined in their provider agreements with the TennCare MCOs.

(b) MCOs may contract with non-participating HCBS providers as needed through a single case agreement and will reimburse the provider at no less than eighty percent (80%) of the lowest rate paid to any contracted HCBS provider in the state for that service.

(10) Appeals.

(a) Appeals related to determinations of eligibility for TennCare Medicaid or TennCare Standard are processed by TennCare, 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 in accordance with Rules 1200-13-13-.11 and 1200-13-14-.11, provided however that notice and continuation of benefits shall not be provided for ECF CHOICES HCBS identified in the Initial SP that are needed by the ECF CHOICES member immediately upon enrollment in ECF CHOICES while the Support Coordinator develops the comprehensive PCSP. A member may request a fair hearing regarding any covered benefit not approved in the PCSP that he believes is needed.

(c) Appeals related to the PAE process (including decisions pertaining to the PASRR process) are processed by the Bureau's Division of Long-Term Services and Supports in accordance with Rule 1200-13-01-.10(7).

(d) Appeals related to the enrollment or disenrollment of an individual in ECF CHOICES or to denial or involuntary withdrawal from participation in CD are processed by the Division of Long-Term Services and Supports in the Bureau, in accordance with the following procedures:

1. If enrollment into ECF CHOICES or if participation in CD is denied, notice containing an explanation of the reason for such denial shall be provided. The notice shall include the person's right to request a fair hearing within thirty (30) days from receipt of the written notice regarding valid factual disputes pertaining to the enrollment denial decision.

2. If a Member is involuntarily disenrolled from ECF CHOICES, or if participation in CD is involuntarily withdrawn, advance notice of involuntary disenrollment or withdrawal shall be issued. The notice shall include a statement of the Member's right to request a fair hearing

within thirty (30) days from receipt of the written notice regarding valid factual disputes pertaining to the decision.

3. Appeals regarding denial of enrollment into ECF CHOICES, involuntary disenrollment from ECF CHOICES, or denial or involuntary withdrawal from participation in CD must be filed in writing with the TennCare Division of Long-Term Services and Supports within thirty-five (35) days of issuance of the written notice if the appeal is filed with the Bureau by fax, and within forty (40) days of issuance of the written notice if the appeal is mailed to the Bureau. This allows five (5) days mail time for receipt of the written notice and when applicable, five (5) days mail time for receipt of the written appeal.

4. In the case of involuntary disenrollment from ECF CHOICES only, if the appeal is received prior to the date of action, continuation of ECF CHOICES benefits shall be provided, pending resolution of the disenrollment appeal.

5. In the case of involuntary withdrawal from participation in CD, if the appeal is received prior to the date of action, continuation of participation in CD 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 PCSP shall be made available through Contract Providers pending resolution of the appeal.

(11) Management of the Referral List for ECF CHOICES.

(a) A new referral list shall be established for ECF CHOICES.

(b) The referral list shall be managed by TennCare on a statewide basis.

1. The ECF CHOICES referral list management process generally includes three (3) steps: screening, intake and enrollment. The referral management process shall be used to help manage Potential Applicants and Applicants for ECF CHOICES in accordance with established prioritization and enrollment criteria.

2. Intake and enrollment into ECF CHOICES from the referral list shall proceed in accordance with these Rules and with TennCare policies and protocols.

3. Potential Applicants for ECF CHOICES shall be categorized on the ECF CHOICES referral list as follows:

(i) Category 1 - Any age or level of disability, employed and in need of supports to maintain employment that are not otherwise available as vocational rehabilitation services funded under Section 110 of the Rehabilitation Act of 1973, 29 U.S.C. § 730, or as special education or related services as those terms are defined in Section 602 of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1401.

(I) Includes youth age 18-22 transitioning from school and young adults completing post-secondary education or training who are employed and in need of supports to maintain employment.

(II) If employment is lost after enrollment into ECF CHOICES occurs, the person shall not be disenrolled if other ECF CHOICES HCBS are needed on an ongoing basis, which may include supports to obtain and maintain new employment.

(ii) Category 2 - 18-22 years old, regardless of the level of disability, transitioning from school and young adults completing post-secondary education or training who are employed or who have the commitment of employment from an employer and are in need of employment supports that are not otherwise available as vocational rehabilitation services funded under Section 110 of the Rehabilitation Act of 1973, 29 U.S.C. § 730.

Includes individuals age 18-22 and young adults completing post-secondary education or training who are participating in paid or unpaid internships with the commitment of employment and individuals with more significant needs who may require employment

customization.

(iii) Category 3 - Any age or level of disability, recently unemployed and in need of supports to obtain and/or maintain new employment that are not otherwise available as vocational rehabilitation services funded under Section 110 of the Rehabilitation Act of 1973, 29 U.S.C. § 730

(iv) Category 4 - 18-22 years old, regardless of the level of disability, transitioning from school with expressed desire for employment.

(v) Category 5 - Unemployed, regardless of the level of disability, with desire and commitment to work.

(vi) Category 6 - Youth of transition age, regardless of the level of disability, living at home with family caregivers, who are actively planning for employment as part of the transition process and in need of supports provided in ECF CHOICES, including for individuals with more significant needs, employment customization, in order to achieve and maintain employment that are not otherwise available as vocational rehabilitation services funded under Section 110 of the Rehabilitation Act of 1973, 29 U.S.C. § 730, or as special education or related services as those terms are defined in Section 602 of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1401.

Category 6 shall be applicable only to enrollment into ECF CHOICES Group 4 (Essential Family Supports).

4. ECF CHOICES referral list categories are listed in the order of prioritization. These categories shall be applicable for all non-reserve capacity slots for Potential Applicants of all ages and levels of disability, and for all ECF CHOICES benefit groups.

5. Potential Applicants on the ECF CHOICES referral list shall have the opportunity to apply for enrollment into ECF CHOICES when the category in which they are placed on the ECF CHOICES referral list is open for enrollment, and when there is an available slot in which the Potential Applicant can be enrolled, if all applicable eligibility and enrollment criteria are met.

6. ECF CHOICES referral list categories shall apply only to prioritization for enrollment into ECF CHOICES.

7. Employment shall not be a condition or requirement for enrollment in ECF CHOICES.

(i) Potential Applicants who are not employed and not interested in employment may be enrolled in ECF CHOICES in accordance with these rules and with TennCare policies and protocols for management of the statewide ECF CHOICES referral list, including prioritization criteria.

(ii) Criteria applicable to ECF CHOICES referral list categories shall apply only to prioritization for enrollment into ECF CHOICES.

(iv) Persons prioritized for enrollment in ECF CHOICES on the basis of employment who are enrolled in ECF CHOICES and subsequently lose their job shall not be disenrolled from ECF CHOICES because they are no longer employed, so long as other ECF CHOICES HCBS are needed on an ongoing basis, which may include supports to obtain and maintain new employment.

8. A person who does not meet the conditions for any of the Categories specified above shall be placed on the ECF CHOICES referral list in an "Other Active" category if ECF CHOICES HCBS are requested at time of referral or in a "Deferred" category if ECF CHOICES HCBS are not requested at time of referral.

9. Reserve Capacity Slots.

In addition to the categories identified above, a specified number of slots shall be held in

reserve capacity for individuals who meet one or more of the following criteria:

(i) One or more emergent circumstances as follows:

(I) The person's primary caregiver is recently deceased and there is no other caregiver available to provide needed long-term supports.

(II) The person's primary caregiver is permanently incapacitated and there is no other caregiver available to provide needed long-term supports.

(III) There is clear evidence of serious abuse, neglect, or exploitation in the current living arrangement. The person must move from the living arrangement to prevent further abuse, neglect or exploitation, and there is no alternative living arrangement available.

(IV) Enrollment into ECF CHOICES is necessary in order to facilitate transition out of a long-term care institution, i.e., a NF or a private or public ICF/IID into a more integrated community-based setting.

(V) The person is an adult age 21 or older enrolled in ECF CHOICES Group 4 (Essential Family Supports) or ECF CHOICES Group 5 (Essential Support for Employment and Independent Living) and has recently experienced a significant change in needs or circumstances. TennCare has determined via a Safety Determination that the person can no longer be safely served within the array of benefits available in ECF CHOICES Group 4 (Essential Family Supports) or 5 (Essential Supports for Employment and Independent Living), as applicable, the person meets NF level of care, and must be transitioned to ECF CHOICES Group 6 in order to sustain community living in the most integrated setting.

(VI) The health, safety or welfare of the person or others is in immediate and ongoing risk of serious harm or danger. Other interventions including Behavioral Health Crisis Prevention, Intervention and Stabilization services, where applicable, have been tried but were not successful in minimizing the risk of serious harm to the person or others without additional services available in ECF CHOICES, and the situation cannot be resolved absent the provision of such services available in ECF CHOICES.

(ii) The Potential Applicant has multiple complex chronic or acquired health conditions that prevent the person from being able to work, and the Potential Applicant is in urgent need of supports in order to maintain the current living arrangement and delay or prevent the need for more expensive services (applicable only to individuals of working age).

(iii) A Potential Applicant may apply for enrollment into a reserve capacity slot for persons in emergent circumstances or who have multiple complex health conditions only if determined through an Interagency Committee review process, including both TennCare and DIDD, that enrollment into ECF CHOICES is the most appropriate way to provide needed supports. Such review shall include consideration of other options, including the relative costs of such options.

(iv) Discharge from another service system (DCS, DMHSAS, etc.) shall not be deemed an emergent situation unless specified emergent criteria are met and unless diligent and timely efforts to plan and prepare for discharge and to facilitate transition to community living without long-term services and supports available in ECF CHOICES have been made, and it is determined through the Interagency Committee review process that enrollment in ECF CHOICES is the most appropriate way to provide needed supports.

10. The waiting list maintained by DIDD for the 1915(c) HCBS waivers shall be one source of referrals for ECF CHOICES. Persons on the DIDD waiting list for the 1915(c) HCBS waivers as of June 30, 2016:

(i) Shall be automatically referred for the ECF CHOICES program and placed on the ECF CHOICES referral list.

(ii) May submit documentation regarding employment that shall be reviewed in determining their category on the ECF CHOICES referral list, or if they may meet criteria for a reserve capacity slot based on emergent circumstances or multiple complex health conditions.

(iii) Who do not submit information regarding employment or indicating that they may meet criteria for enrollment in a reserve capacity slot based on emergent circumstances or multiple complex health conditions shall be placed on the ECF CHOICES referral list in the "Other Active" category, unless they are currently on the HCBS waiver waiting list in a "Deferred" category, in which case they shall be automatically placed on the ECF CHOICES referral list in the "Deferred" category.

11. A Potential Applicant may request an administrative review of his or her category on the ECF CHOICES referral list at any time.

12. A Potential Applicant may submit additional information at any time that may affect his or her category on the ECF CHOICES referral list.

13. A Potential Applicant shall not be granted a fair hearing regarding the category in which he has been placed on the ECF CHOICES referral list.

14. A Potential Applicant shall be entitled to a determination regarding his or her eligibility to enroll in the ECF CHOICES program and, if the application is denied, to due process, including notice and the right to request a fair hearing only when the Potential Applicant is determined to meet criteria for an available reserve capacity slot or meets prioritization criteria for an available program slot for which enrollment is currently open and will be enrolled into the program if all applicable eligibility and enrollment criteria are met.

(12) Safety Determination Requests. (See Rule 1200-13-01-.05(6))

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: 7/15/16

Signature: Patti Killingsworth

Name of Officer: Patti Killingsworth

Title of Officer: Assistant Commissioner and Chief of Long-Term Services and Supports, Bureau of TennCare
Tennessee Department of Finance and Administration

SHARON D. JOHNSON
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON

My Commission Expires
May 6, 2019

Subscribed and sworn to before me on: 7/15/16

Notary Public Signature: Sharon D Johnson

My commission expires on: May 6, 2019

Department of State Use Only

Filed with the Department of State on: 7/15/16

Tre Hargett
Secretary of State

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