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 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.

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|---------------------------------|--|
| 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 |
| Phone: | (615) 507-6446 |
| Email: | george.woods@tn.gov |

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. | <input checked="" type="checkbox"/> CST/CDT | <input type="checkbox"/> EST/EDT |

Additional Hearing Information:

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Revision Type (check all that apply):

- 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 |
|----------------|--|
| 1200-13-13 | TennCare Medicaid |
| Rule Number | Rule Title |
| 1200-13-13-.01 | Definitions |
| 1200-13-13-.02 | Eligibility |
| 1200-13-13-.03 | Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS) |
| 1200-13-13-.04 | Covered Services |
| 1200-13-13-.05 | Enrollee Cost Sharing |
| 1200-13-13-.08 | Providers |
| 1200-13-13-.10 | Exclusions |

(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 (6) Benefits of Rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new Paragraph (6) which shall read as follows:

- (6) Benefits shall mean the health care package of services developed by the Bureau of TennCare and which define the covered services available to TennCare enrollees. Additional benefits are available through the TennCare CHOICES program, as described in Rule 1200-13-01-.05, and the ECF CHOICES program, as described in Rule 1200-13-01-.31. CHOICES benefits are available only to persons who qualify for and are enrolled in the CHOICES program. ECF CHOICES benefits are available only to persons who qualify for and are enrolled in the ECF CHOICES program.

Rule 1200-13-13-.01 Definitions is amended by adding a definition of "Employment and Community First (ECF) CHOICES" to be appropriately numbered in alphabetical order, to read as follows:

- (#) Employment and Community First (ECF) CHOICES shall mean the program defined in Rule 1200-13-01-.02 and described in Rule 1200-13-01-.31.

Part 4 of Subparagraph (b) of Paragraph (57) Home Health Services shall mean of Rule 1200-13-13-.01 Definitions is amended by adding the phrase "requiring adult care or supervision" after the word "children" and before the word "shall" so as amended Part 4 shall read as follows:

4. No other children requiring adult care or supervision shall be present in the home during the time the home health provider is present in the home without the presence of another responsible adult, unless these children meet all the criteria stated above and are also receiving TennCare-reimbursed home health services.

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 1200-13-13-.02 Eligibility is amended by adding a new Part 3 which shall read as follows:

3. With respect to the eligibility of individuals applying for the ECF CHOICES program, the Bureau is responsible for determining that the individual meets all applicable eligibility and enrollment criteria, including target population, medical or level of care eligibility, categorical and financial eligibility, the state's ability to provide appropriate ECF HCBS (as defined in Rule 1200-13-01-.02) as determined by the availability of slots under the established enrollment target for each ECF CHOICES Group in accordance with Rule 1200-13-01-.31 and pursuant to intake and enrollment policies and processes described in 1200-13-01-.31 and in TennCare policies and protocols, and for confirming a determination by a TennCare Managed Care Organization that the individual can be safely and appropriately served in the community and at a cost that does not exceed the individual's expenditure cap pursuant to Rule 1200-13-01-.31.

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

The introductory paragraph of Paragraph (1) Enrollment of Rule 1200-13-13-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS) is amended by adding a sentence at the end of the introductory paragraph so as amended the introductory paragraph shall read as follows:

There are three (3) different types of managed care entities that provide services to TennCare enrollees. Enrollment procedures differ according to the type of managed care entity, the geographic area, and the number of managed care entities operating in each geographic area. Enrollment procedures also differ for ECF CHOICES, as described in subparagraph (c) below.

Part 1 of Subparagraph (a) of Paragraph (1) of Rule 1200-13-13-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS) is amended by adding the phrase and comma "Subject to Subparagraph (c) below," and by deleting the capital "I" and replacing it with "i" so as amended Part 1 shall read as follows:

1. Subject to subparagraph (c) below, individuals or families determined eligible for TennCare shall select a health plan (Managed Care Organization/MCO) at the time of application. The health plan must be available in the Grand Division of the State in which the enrollee lives. All family members living in the same household and enrolled in TennCare must be assigned to the same MCO except children determined by the Bureau to be eligible to enroll in TennCare Select. An enrollee is given his choice of MCOs when possible. If the requested MCO cannot accept new enrollees, the Bureau will assign each enrollee to an MCO that is accepting new enrollees. If no MCO is available to enroll new members in the enrollee's Grand Division, the enrollee will be assigned to TennCare Select until such time as another MCO becomes available. The Bureau may also assign TennCare children with special health care needs to TennCare Select.

Individuals enrolled as a result of being eligible for SSI benefits will be assigned to an MCO as they do not have the opportunity to select a health plan prior to the effective date of coverage, since they are enrolled through the Social Security Administration.

Part 2 of Subparagraph (a) of Paragraph (1) of Rule 1200-13-13-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS) is amended by adding the phrase, comma and word "a" "Subject to Subparagraph (c) below, a" so as amended Part 2 shall read as follows:

2. Subject to subparagraph (c) below, a TennCare enrollee may change MCOs one (1) time within the initial forty-five (45) calendar days (inclusive of mail time) from the date of the letter informing him of his MCO assignment, if there is another MCO in the enrollee's Grand Division that is currently permitted by the Bureau to accept new enrollees. No additional changes will be allowed except as otherwise specified in these rules. An enrollee shall remain a member of the designated plan until he is given an opportunity to change once each year during an annual change period. The annual change period will occur each year in March for enrollees in West Tennessee, in May for enrollees in Middle Tennessee, and in July for enrollees in East Tennessee. Thereafter, an MCO change is permitted only during an annual change period, unless the Bureau authorizes a change as the result of the resolution of an appeal requesting a "hardship" reassignment as specified in paragraph (2)(b) below. When an enrollee changes MCOs, the enrollee's medical care will be the responsibility of the current MCO until he is enrolled in the requested MCO.

Paragraph (1) of Rule 1200-13-13-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS) is amended by adding a new Subparagraph (c) and re-lettering the current Subparagraph (c) as (d) the re-lettered (c) shall read as follows:

- (c) TennCare Managed Care Organizations (MCOs) for ECF CHOICES. Individuals enrolled in ECF CHOICES may select from only two MCOs: Amerigroup or BlueCare.
 1. If an individual enrolled in an MCO other than Amerigroup or BlueCare (i.e., United Healthcare Community Plan or TennCare Select) wants to enroll in the ECF CHOICES program, the individual must choose to enroll in either Amerigroup or BlueCare in order to enroll in ECF CHOICES.
 2. If an individual enrolled in the ECF CHOICES program elects to transition to an MCO other than Amerigroup or BlueCare (i.e., United Healthcare Community Plan or TennCare Select), the individual is choosing to voluntarily disenroll from ECF CHOICES. Because this is a voluntary decision, advance notice and the right to a fair hearing shall not be provided. However, the

individual may elect to transition back to Amerigroup or BlueCare in order to resume enrollment in ECF CHOICES.

Subparagraph (c) TennCare Dental Benefits Manager (DBM) re-lettered as (d) of Paragraph (1) of Rule 1200-13-13-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS) is amended by adding a sentence at the end of the Subparagraph and subsequent subparagraph re-lettered as appropriately so as amended Subparagraph (d) shall read as follows:

(d) TennCare Dental Benefits Manager (DBM).

TennCare children shall be assigned to the Dental Benefits Manager (DBM) under contract with the Bureau to provide dental benefits through the TennCare Program. TennCare adults age 21 and older enrolled in ECF CHOICES shall be assigned to the DBM under contract with the Bureau to provide Adult Dental Services through the ECF CHOICES program as defined in 1200-13-01-.02.

Subparagraph (a) of Paragraph (3) of Rule 1200-13-13-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS) is deleted in its entirety and replaced with a new Subparagraph (a) which shall read as follows:

- (a) When it has been determined that an individual no longer meets the criteria for TennCare eligibility, that individual shall be disenrolled from the TennCare Program, including the CHOICES and ECF CHOICES program, as applicable. Services provided by the TennCare MCO in which the individual has been enrolled, as well as the PBM and DBM, if applicable, shall be terminated upon disenrollment. Such disenrollment action will be accompanied by appropriate due process procedures as described elsewhere in this Chapter. Disenrollment from the CHOICES program shall proceed as described in Rule 1200-13-01-.05. Disenrollment from the ECF CHOICES program shall proceed as described in Rule 1200-13-01-.31.

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

Subparagraph (a) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new (a) which shall read as follows:

- (a) TennCare MCCs shall cover the following services and benefits subject to any applicable limitations described in this Chapter. TennCare MCCs shall cover TennCare CHOICES services and benefits for individuals enrolled in the TennCare CHOICES program in accordance with Rule 1200-13-01-.05 and ECF CHOICES services and benefits for individuals enrolled in the ECF CHOICES program in accordance with Rule 1200-13-01-.31.

Introductory part of Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new introductory part to Subparagraph (b) which shall read as follows:

- (b) The following physical health and mental health benefits are covered under the TennCare managed care program. Benefits offered under the TennCare CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.05. Benefits offered under the ECF CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.31. There are some exclusions to the benefits listed below. The exclusions are listed in this rule and in Rule 1200-13-13-.10.

(C) Pharmacy services in Row 25 of the table in Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new (C) which shall read as follows:

| SERVICE | BENEFIT FOR PERSONS UNDER AGE 21 | BENEFIT FOR PERSONS AGED 21 AND OLDER |
|---|----------------------------------|---|
| 25. Pharmacy Services [defined at 42 CFR §440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient | | (C) Pharmacy services with no quantity limits on the number of prescriptions per month for the following non-Medicare enrollees only: adults age 21 and older enrolled in CHOICES 1 or CHOICES 2; adults age 21 and |

| SERVICE | BENEFIT FOR PERSONS UNDER AGE 21 | BENEFIT FOR PERSONS AGED 21 AND OLDER |
|--|----------------------------------|---|
| hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident]. | | older enrolled in ECF CHOICES who meet nursing facility level of care or transitioned from a Section 1915(c) waiver into ECF CHOICES and granted an exception by TennCare based on ICF/IID level of care; non-Medicare PACE enrollees; and persons receiving TennCare-reimbursed services in an Intermediate Care Facility for Individuals with Intellectual Disabilities or a Home and Community Based Services Waiver for Individuals with Intellectual Disabilities. |

Part 2 of Subparagraph (a) of Paragraph (2) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new Part 2 which shall read as follows:

2. These services are provided under the CHOICES program for individuals enrolled in the CHOICES program in accordance with Rule 1200-13-01-.05 or the ECF CHOICES program for individuals enrolled in the ECF CHOICES program in accordance with Rule 1200-13-01-.31; and

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

Paragraph (2) of Rule 1200-13-13-.05 Enrollee Cost Sharing is amended by deleting Subparagraph (c) in its entirety and replacing it with a new Subparagraph (c) and by adding a new Subparagraph (d) as follows:

- (c) Individuals who are receiving services in a Nursing Facility, an Intermediate Care Facility for Individuals with Intellectual Disabilities, CHOICES Group 2, or a Home and Community Based Services waiver for individuals with intellectual disabilities.
- (d) Adults age 21 and older enrolled in ECF CHOICES who meet nursing facility level of care or transitioned from a Section 1915(c) waiver into ECF CHOICES and granted an exception by TennCare based on ICF/IID level of care.

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

Paragraph (2) of Rule 1200-13-13-.08 Providers is amended by adding a new Subparagraph (e) which shall read as follows:

- (e) Non-Participating Providers who furnish covered ECF CHOICES services are reimbursed in accordance with Rule 1200-13-01-.31.

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

Introductory paragraph to Paragraph (3) of Rule 1200-13-13-.10 Exclusions is deleted in its entirety and replaced with a new introductory paragraph to Paragraph (3) which shall read as follows:

- (3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES or ECF CHOICES programs or outside the managed care program under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate approved TennCare Home and Community Based Services waiver.

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

Assistant Commissioner and Chief of Long-Term Services and Supports, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



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

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Filed with the Department of State on: 7/15/16

Tre Hargett

Tre Hargett
Secretary of State

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