

**RULES  
OF  
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13  
TENNCARE MEDICAID**

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**1200-13-13-.01 DEFINITIONS.**

- (1) **ABUSE** shall mean enrollee practices, or enrollee involvement in practices, including overutilization, waste or fraudulent use/misuse of a TennCare Program that results in cost or utilization which is not medically necessary or medically justified. Abuse of a TennCare Pharmacy Program justifies placement on lock-in or prior approval status for all enrollees involved. Activities or practices which may evidence abuse of the TennCare Pharmacy Program include, but are not limited to, the following: forging or altering drug prescriptions, selling TennCare paid prescription drugs, failure to control pharmacy overutilization activity while on lock-in status and visiting multiple prescribers or pharmacies to obtain prescriptions that are not medically necessary.
- (2) **ACCESS TO HEALTH INSURANCE** shall mean the opportunity an individual has to obtain group health insurance as defined elsewhere in these rules. If a person could have enrolled in work-related or other group health insurance during an open enrollment period and simply chose not to (or had the choice made for him/her by a family member) that person would not be considered to lack access to insurance once the open enrollment period is closed. Neither the cost of an insurance policy or health plan nor the fact that an insurance policy is not as comprehensive as that of the TennCare Program shall be considered in determining eligibility to enroll in TennCare.
- (3) **ADMINISTRATIVE HEARING** shall mean a contested case proceeding held pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq., except as noted otherwise herein, to allow an enrollee to appeal an adverse decision of the TennCare Program. An evidentiary hearing is held before an impartial hearing officer or administrative judge who renders an initial order under Tennessee Code Annotated § 4-5-314. If an enrollee appeals the initial order under Tennessee Code Annotated § 4-5-315, the Commissioner may render a final order.
- (4) **ADVERSE ACTION AFFECTING TENNCARE SERVICES OR BENEFITS** as it relates to actions under the *Grier Revised Consent Decree* shall mean, but is not limited to, a delay, denial, reduction, suspension or termination of TennCare benefits, as well as any other act or omission of the TennCare Program which impairs the quality, timeliness, or availability of such benefits.
- (5) **APPLICATION FEE** shall mean the fee that applicants must pay in advance for the processing of a TennCare Standard application for coverage as a “medically eligible” person. The fee is established by the Bureau of TennCare and may be periodically changed.

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- (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.
- (7) BHO (BEHAVIORAL HEALTH ORGANIZATION(S)) shall mean a type of managed care contractor approved by the Tennessee Department of Finance and Administration to deliver mental health and substance abuse services to TennCare Medicaid and TennCare Standard enrollees under the TennCare Partners Program.
- (8) BUREAU OF TENNCARE (BUREAU) shall mean the administrative unit of TennCare which is responsible for the administration of TennCare as defined elsewhere in these rules.
- (9) CAPITATION PAYMENT shall mean the fee which is paid by the State to a managed care contractor operating under a risk-based contract for each enrollee covered by the plan for the provision of medical services, whether or not the enrollee utilizes services or without regard to the amount of services utilized during the payment period.
- (10) CAPITATION RATE shall mean the amount established by the State for the purpose of providing payment to participating managed care contractors operating under a risk-based contract.
- (11) CATEGORICALLY NEEDY shall mean that category of TennCare Medicaid-eligibles as defined at 1240-3-2-.02 of the rules of the Tennessee Department of Human Services - Division of Medical Services.
- (12) CMS (CENTERS FOR MEDICARE AND MEDICAID SERVICES) (formerly known as HCFA) shall mean the agency within the United States Department of Health and Human Services that is responsible for administering Title XVIII, Title XIX, and Title XXI of the Social Security Act.
- (13) COBRA shall mean health insurance coverage provided pursuant to the Consolidated Omnibus Budget Reconciliation Act.
- (14) COMMENCEMENT OF SERVICES shall mean the time at which the first covered service(s) is/are rendered to a TennCare member for each individual medical condition.
- (15) COMMISSIONER shall mean the chief administrative officer of the Tennessee Department where the TennCare Bureau is administratively located, or the Commissioner's designee.
- (16) COMMUNITY SERVICE AREA (CSA) shall mean one (1) or more counties in a defined geographical area in which the managed care contractor is authorized to enroll and service TennCare enrollees residing in that community service area. Community Service Areas shall correspond to Community Health Agency Regions.
- (17) COMPLETED APPLICATION is an application where:
  - (a) All required fields have been completed;
  - (b) It is signed and dated by the applicant or the applicant's parent or guardian;
  - (c) It includes all supporting documentation required by the TDHS or the Bureau to determine TennCare eligibility, technical and financial requirements as set out in these rules;
  - (d) It includes all supporting documentation required to prove TennCare Standard medical eligibility as set out in these rules; and

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- (e) the application fee has been paid (this provision applies only to some persons applying for TennCare Standard as “medically eligible”).
- (18) CONTINUATION OR REINSTATEMENT shall mean that the following services or benefits are subject to continuation or reinstatement pursuant to an appeal of an adverse decision affecting a TennCare service(s) or benefits(s) if the enrollee appeals within ten (10) days of receipt of the notice of action:
- (a) For services on appeal under *Grier Revised Consent Decree*:
    1. Those services currently or most recently provided to an enrollee; or
    2. Those services provided to an enrollee in an inpatient psychiatric facility or residential treatment facility where the discharge plan has not been accepted by the enrollee or appropriate step-down services are not available; or
    3. Those services provided to treat an enrollee’s chronic condition across a continuum of services when the next appropriate level of covered services is not available; or
    4. Those services prescribed by the enrollee’s provider on an open-ended basis or with no specific ending date where the MCC has not reissued prior authorization; or
    5. A different level of covered services, offered by the MCC and accepted by the enrollee, for the same illness or medical condition for which the disputed service has previously been provided.
  - (b) For eligibility terminations, coverage will be continued or reinstated for an enrollee currently enrolled in TennCare who has received notice of termination of eligibility and who appeals within ten (10) days of receipt of notice.
- (19) CONTINUOUS ENROLLMENT shall mean that certain individuals determined eligible for the TennCare Program may enroll at anytime during the year. These individuals are:
- (a) For TennCare Medicaid:
    1. Individuals qualifying for TennCare Medicaid as defined at rule 1240-3-3 of the Tennessee Department of Human Services - Division of Medical Services.
    2. Individuals approved for SSI benefits as determined by the Social Security Administration.
    3. A woman who is uninsured, under age sixty-five (65), a US citizen or qualified alien, is not eligible for any other category of Medicaid, has been diagnosed as the result of a screening at a Centers for Disease Control and Prevention (CDC) site with breast or cervical cancer, including pre-cancerous conditions.
  - (b) For TennCare Standard:
    1. Individuals qualifying as medically eligible as defined in these rules and whose family income is less than 100% of the poverty level.
    2. An individual who is losing his/her TennCare Medicaid, who is uninsured and whose family income is within the range established by the Bureau of TennCare to qualify for TennCare Standard or as medically eligible at any income.

(Rule 1200-13-13-.01, continued)

- (20) CONTRACTOR shall mean an organization approved by the Tennessee Department of Finance and Administration to provide TennCare-covered benefits to eligible enrollees in the TennCare Medicaid and TennCare Standard programs.
- (21) COST-EFFECTIVE ALTERNATIVE SERVICE is a service which is outside the scope of services MCCs are required to cover, but which can be substituted for a more costly covered service without affecting the quality of patient care. Example: MCOs are not required to cover nursing facility care. However, an MCO may choose to provide nursing facility care for a particular patient who would otherwise require hospitalization, if such a choice is medically appropriate for that patient.
- (22) COST SHARING shall mean the amounts that certain enrollees in TennCare are required to pay for his/her TennCare coverage and covered services. Cost sharing includes premiums and copayments. Certain TennCare Medicaid enrollees are required to pay copayments for prescription drugs as of January 1, 2003.
- (23) COVERED SERVICES shall mean the services and benefits that:
- (a) TennCare contracted MCC's cover, as set out elsewhere in these rules; or
  - (b) In the instance of enrollees who are eligible for and enrolled in federal Medicaid waivers under Section 1315 of the Social Security Act, the services and benefits that are covered under the terms and conditions of such waivers.
- (24) CPT4 CODES are descriptive terms contained in the Physician's Current Procedural Terminology, used to identify medical services and procedures performed by physicians or other licensed health professionals.
- (25) DBM (DENTAL BENEFITS MANAGER) shall mean a contractor approved by the Tennessee Department of Finance and Administration to provide dental benefits to enrollees in the TennCare Program to the extent such services are covered by TennCare.
- (26) DECISION IN FAVOR OF AN ENROLLEE shall mean, in the case of a decision by an impartial administrative judge or hearing officer, the initial decision on the merits of the appeal, and shall be treated as binding for purposes of these rules.
- (27) DELAY shall mean, but is not limited to:
- (a) Any failure to provide timely receipt of TennCare services, and no specific waiting period may be required before the enrollee can appeal;
  - (b) An MCC's failure to provide timely prior authorization of a TennCare service. In no event shall a prior authorization decision be deemed timely unless it is granted within fourteen (14) calendar days of the MCC's receipt of a request for such authorization. A shorter period is required if a more prompt response is medically necessary in light of the enrollee's condition and the urgency of his need, as defined by a prudent lay person.
- (28) DISENROLLMENT shall mean the discontinuance of an individual's enrollment in TennCare.
- (29) DURABLE MEDICAL EQUIPMENT (DME) shall mean equipment that can stand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of an illness or injury, is appropriate for and used in the patient's home, and is related to the patient's physical disorder. An institution is not considered a patient's or member's home if it meets

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the definition of a hospital or skilled facility. Orthotics and prosthetic devices, and artificial limbs and eyes are considered DME.

- (30) EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT) SERVICES, a covered benefit for TennCare Medicaid-enrolled children only, shall mean:
- (a) Screening in accordance with professional standards, and interperiodic, diagnostic services to determine the existence of physical or mental illnesses or conditions of TennCare Medicaid enrollees under age twenty-one (21); and
  - (b) Health care, treatment, and other measures, described in 42 U.S.C. § 1396a(a) to correct or ameliorate any defects and physical and mental illnesses and conditions discovered.
- (31) ELIGIBLE shall mean a person who has been determined to meet the eligibility criteria of TennCare Medicaid or TennCare Standard.
- (32) EMERGENCY MEDICAL CONDITION, including emergency mental health and substance abuse emergency treatment services, shall mean the sudden and unexpected onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to potentially result in:
- (a) Placing the person's (or with respect to a pregnant woman, her unborn child's) health in serious jeopardy; or
  - (b) Serious impairment to bodily functions; or
  - (c) Serious dysfunction of any bodily organ or part.

For Medicaid enrollees only, copayments are not required for emergency services.

- (33) ENROLLEE shall mean an individual eligible for and enrolled in the TennCare program or in any Tennessee federal Medicaid waiver program approved by the Secretary of the US Department of Health and Human Services pursuant to Sections 1115 or 1915 of the Social Security Act. As concerns MCC compliance with these rules, the term only applies to those individuals for whom the MCC has received at least one day's prior written or electronic notice from the TennCare Bureau of the individual's assignment to the MCC.
- (34) ENROLLMENT shall mean the process by which a TennCare-eligible person becomes enrolled in TennCare.
- (35) FAMILY shall mean that as defined in the rules of the Tennessee Department of Human Services found at 1240-1-3 and 1240-1-4, Family Assistance Division, and 1240-3-3, Division of Medical Services.
- (36) FEDERAL FINANCIAL PARTICIPATION (FFP) shall mean the Federal Government's share of a state's expenditure under the Title XIX Medicaid Program.
- (37) FRAUD shall mean an intentional deception or misrepresentation made by a person who knows or should have known that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law.
- (38) GROUP HEALTH INSURANCE shall mean an employee welfare benefit plan to the extent that the plan provides medical care to employees or their dependents (as defined under the terms of the plan)

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directly through insurance reimbursement mechanism. This definition includes those types of health insurance found in the Health Insurance Portability And Accountability Act of 1996, as amended, definition of creditable coverage (with the exception that the 50 or more participants criteria does not apply), which includes Medicare and TRICARE. Health insurance benefits obtained through COBRA are included in this definition. It also covers group health insurance available to an individual through membership in a professional organization or a school.

(39) HEALTH INSURANCE, for the purposes of determining eligibility under these regulations:

(a) Shall mean:

1. any hospital and medical expense-incurred policy;
2. Medicare;
3. TRICARE;
4. COBRA;
5. Medicaid;
6. State health risk pool;
7. Nonprofit health care service plan contract;
8. Health maintenance organization subscriber contracts;
9. An employee welfare benefit plan to the extent that the plan provides medical care to an employee or his/her dependents (as defined under the terms of the plan) directly through insurance, any form of self insurance, or a reimbursement mechanism;
10. Coverage available to an individual through membership in a professional organization or a school;
11. Coverage under a policy covering one person or all the members of a family under a single policy where the contract exists solely between the individual and the insurance company;
12. Any of the above types of policies where:
  - (i) The policy contains a type of benefit (such as mental health benefits) which has been completely exhausted;
  - (ii) The policy contains a type of benefit (such as pharmacy) for which an annual limitation has been reached;
  - (iii) The policy has a specific exclusion or rider of non-coverage based on a specific prior existing condition or an existing condition or treatment of such a condition;  
or
13. Any of the types of policies listed above will be considered health insurance even if one or more of the following circumstances exists:
  - (i) The policy contains fewer benefits than TennCare;

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- (ii) The policy costs more than TennCare; or
  - (iii) The policy is one the individual could have bought during a specified period of time (such as COBRA) but chose not to do so.
- (b) Shall not mean:
1. Short-term coverage;
  2. Accident coverage;
  3. Fixed indemnity insurance;
  4. Long-term care insurance;
  5. Disability income contracts;
  6. Limited benefits policies as defined elsewhere in these rules;
  7. Credit insurance;
  8. School-sponsored sports-related injury coverage;
  9. Coverage issued as a supplemental to liability insurance;
  10. Automobile medical payment insurance;
  11. Insurance under which benefits are payable with or without regard to fault and which are statutorily required to be contained in any liability insurance policy or equivalent self-insurance;
  12. A medical care program of the Indian Health Services (IHS) or a tribal organization;
  13. Benefits received through the Veteran's Administration; or
  14. Health care provided through a government clinic or program such as, but not limited to, vaccinations, flu shots, mammograms, and care or services received through a disease- or condition-specific program such as, but not limited to, the Ryan White Care Act.
- (40) HEALTH PLAN shall mean a managed care organization authorized by the Tennessee Department of Finance and Administration to provide medical services to enrollees in the TennCare Program.
- (41) HEALTH MAINTENANCE ORGANIZATION (HMO) shall mean an entity licensed by the Tennessee Department of Commerce and Insurance under applicable provisions of *Tennessee Code Annotated (T.C.A.)* Title 56, Chapter 32 to provide health care services.
- (42) HIPAA shall mean the Health Insurance Portability and Accountability Act of 1996, as amended.
- (43) HOME HEALTH SERVICES shall mean the following services provided by a licensed home health agency at a recipient's place of residence and by physician's orders:
- (a) Part-time or intermittent nursing services;

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- (b) Home health aide services provided by a home health agency;
  - (c) Medical supplies, equipment, and appliances suitable for use in the home; or
  - (d) Physical therapy, occupational therapy, or speech pathology and audiology services.
- (44) IMPARTIAL HEARING OFFICER shall mean an administrative judge or hearing officer who is not an employee, agent or representative of the MCC and who did not participate in, nor was consulted about, any TennCare Bureau review prior to the Administrative Hearing.
- (45) INCOME shall mean that definition of income in rule 1240-1-4 of the Tennessee Department of Human Services - Family Assistance Division.
- (46) INDIVIDUAL HEALTH INSURANCE shall mean health insurance coverage under a policy covering one person or all the members of a family under a single policy where the contract exists solely between that person and the insurance company.
- (47) INITIATING PROVIDER shall mean the provider who renders the first covered service to a TennCare member whose current medical condition requires the services of more than one (1) provider.
- (48) INMATE shall mean an individual confined in a local, state, or federal prison, jail, youth development center, or other penal or correctional facility, including a furlough from such facility.
- (49) INPATIENT REHABILITATION FACILITIES shall mean rehabilitation hospitals and distinct parts of hospitals that are designated as 'IRFs' by Medicare.
- (50) LICENSED MENTAL HEALTH PROFESSIONAL shall mean a Board eligible or a Board certified psychiatrist or a person with at least a Master's degree and/or clinical training in an accepted mental health field which includes, but is not limited to, counseling, nursing, occupational therapy, psychology, social work, vocational rehabilitation, or activity therapy with a current valid license by the Tennessee Licensing Board for the Healing Arts.
- (51) LIMITED BENEFITS POLICY shall mean a policy of health coverage for a specific disease (e.g., cancer), or an accident occurring while engaged in a specified activity (e.g., school-based sports), or which provides for a cash benefit payable directly to the insured in the event of an accident or hospitalization (e.g., hospital indemnity).
- (52) LOCK-IN PROVIDER shall mean a provider, either pharmacy or physician, who an enrollee on pharmacy lock-in status has chosen and to whom an enrollee is assigned by TennCare or the MCO for purposes of receiving covered pharmacy services.
- (53) LOCK-IN STATUS shall mean the restriction of an enrollee to a specified and limited number of pharmacy providers.
- (54) LONG TERM CARE shall mean institutional services of a nursing facility, an intermediate care facility for the mentally retarded, and services provided through a Home and Community Based Services Waiver.
- (55) MCC (MANAGED CARE CONTRACTOR) shall mean:
- (a) A managed care organization, behavioral health organization, pharmacy benefits manager, and/or a dental benefits manager which has signed a TennCare Contractor Risk Agreement with

(Rule 1200-13-13-.01, continued)

- the State and operates a provider network and provides covered health services to TennCare enrollees; or
- (b) A pharmacy benefits manager or dental benefits manager which subcontracts with a managed care organization or behavioral health organization to provide services; or
  - (c) A State government agency (i.e., Department of Children’s Services and Division of Mental Retardation Services) that contracts with TennCare for the provision of services.
- (56) MCO (MANAGED CARE ORGANIZATION) shall mean an appropriately licensed Health Maintenance Organization (HMO) approved by the Bureau of TennCare as capable of providing medical services in the TennCare Program.
- (57) MEDICAID shall mean the federal- and state-financed, state-run program of medical assistance pursuant to Title XIX of the Social Security Act. Medicaid eligibility in Tennessee is determined by the Tennessee Department of Human Services, under contract to the Tennessee Department of Finance and Administration. Tennessee residents determined eligible for SSI benefits by the Social Security Administration are also enrolled in Tennessee’s TennCare Medicaid program.
- (58) MEDICAID “ROLLOVER” ENROLLEE shall mean a TennCare Medicaid enrollee who no longer meets technical eligibility requirements for Medicaid and will be afforded an opportunity to enroll in TennCare Standard in accordance with the provisions of these rules.
- (59) MEDICAL ASSISTANCE shall mean health care, services and supplies furnished to an enrollee and funded in whole or in part under Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, et seq. and Tennessee Code Annotated § 71-5-101, et seq. Medical assistance includes the payment of the cost of care, services, drugs and supplies. Such care, services, drugs, and supplies shall include services of qualified providers who have contracted with an MCC or are otherwise authorized to provide services to TennCare enrollees (i.e., emergency services provided out-of-network or medically necessary services obtained out-of-network because of an MCC’s failure to provide adequate access to services in-network).
- (60) MEDICAL RECORDS shall mean current information such as medical histories, records, reports and summaries, diagnoses, prognoses, records of treatment and medication ordered and given, x-ray and radiology interpretations, physical therapy charts and notes, and lab reports necessary to determine a specific diagnosis.
- (61) MEDICAL SUPPLIES shall mean covered medical supplies that are deemed medically necessary and appropriate and are prescribed for use in the diagnosis and treatment of medical conditions. Medically necessary medical supplies not included as part of institutional services shall be covered only when provided by or through a licensed home health agency, by or through a licensed medical vendor supplier or by or through a licensed pharmacist.
- (62) MEDICALLY CONTRAINDICATED shall mean a TennCare benefit or service which it is necessary to withhold in order to safeguard the health or safety of the enrollee.
- (63) MEDICALLY ELIGIBLE shall mean a person who has met the medical eligibility criteria for the TennCare Standard program through a mechanism permitted under the provisions of these rules.
- (64) MEDICALLY NECESSARY shall mean services or supplies provided by an institution, physician, or other health care provider that are required to identify or treat a TennCare enrollee’s illness or injury and which are:

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- (a) Consistent with the symptoms or diagnosis and treatment of the enrollee's condition, disease, ailment, or injury; and
  - (b) Appropriate with regard to standards of good medical practice; and
  - (c) Not solely for the convenience of an enrollee, physician or other provider; and
  - (d) The most appropriate supply or level of services which can safely be provided to the enrollee. When applied to the care of an inpatient, it further means that services for the enrollee's medical symptoms or condition require that the services cannot be safely provided to the enrollee as an outpatient.
  - (e) When applied to TennCare Medicaid enrollees under twenty-one (21) years of age, services shall be provided in accordance with EPSDT requirements including federal regulations as described in 42 CFR Part 441, Subpart-B, and the Omnibus Budget Reconciliation Act of 1989.
- (65) MEDICALLY NEEDY shall mean that category of TennCare Medicaid-eligibles as defined in rule 1240-3-2-.03 of the Tennessee Department of Human Services - Division of Medical Services.
- (66) MEDICARE shall mean the program administered through the Social Security Administration pursuant to Title XVIII, available to most individuals upon attaining age sixty-five (65), to some disabled individuals under age sixty-five (65), and to individuals having End Stage Renal Disease (ESRD).
- (67) MEMBER shall mean a TennCare Medicaid- or TennCare Standard-eligible individual who is enrolled in a managed care organization.
- (68) OPEN ENROLLMENT shall mean a designated period of time, determined by the Bureau of TennCare, during which individuals may apply for enrollment in TennCare Standard. The following individuals may apply for TennCare Standard during periods of open enrollment:
- (a) Uninsured individuals whose income fall within the poverty levels established for the period of open enrollment being held.
  - (b) Individuals qualifying as medically eligible as defined in these rules. These persons may have income at any level.
- (69) OPEN MEDICAID CATEGORIES shall mean those Medicaid eligibility categories for which enrollment has not been closed pursuant to authority granted by CMS as part of the TennCare demonstration project.
- (70) OVERUTILIZATION shall mean any of the following:
- (a) The enrollee initiated use of TennCare services or supplies at a frequency or amount that is not medically necessary or medically justified.
  - (b) Overutilization, or attempted overutilization, of the TennCare Pharmacy Program which justifies placement on lock-in status for all enrollees involved.
  - (c) Activities or practices which may evidence overutilization of the TennCare Pharmacy Program including, but not limited to, the following:
    - 1. Treatment by several physicians for the same diagnosis;

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2. Obtaining the same or similar controlled substances from several physicians;
  3. Obtaining controlled substances in excess of the maximum recommended dose;
  4. Receiving combinations of drugs which act synergistically or belong to the same class;
  5. Frequent treatment for diagnoses which are highly susceptible to abuse;
  6. Receiving services and/or drugs from numerous providers;
  7. Obtaining the same or similar drugs on the same day or at frequent intervals; or
  8. Frequent use of the emergency room in non-emergency situations in order to obtain prescription drugs.
- (71) PBM (PHARMACY BENEFITS MANAGER) shall mean an organization approved by the Tennessee Department of Finance and Administration to provide pharmacy benefits to enrollees to the extent such services are covered by the TennCare Program. A PBM may have a signed TennCare Contractor Risk Agreement with the State, or may be a subcontractor to an MCO or BHO.
- (72) PHYSICIAN shall mean a person licensed pursuant to chapter 6 or 9 of title 63 of the Tennessee Code Annotated.
- (73) POVERTY LEVEL shall mean the poverty level established by the Federal Government.
- (74) PRIMARY CARE PHYSICIAN shall mean a physician responsible for supervising, coordinating, and providing initial and primary care to patients; for initiating referrals for specialist care; and for maintaining the continuity of patient care. A primary care physician is a physician who has limited his practice of medicine to general practice or who is a Board Certified or Eligible Internist, Pediatrician, Obstetrician/ Gynecologist, or Family Practitioner.
- (75) PRIMARY CARE PROVIDER shall mean health care professional capable of providing a wide variety of basic health services. Primary care providers include practitioners of family, general, or internal medicine; pediatricians and obstetricians; nurse practitioners; midwives; and physician's assistant in general or family practice.
- (76) PRIOR APPROVAL STATUS shall mean the restriction of an enrollee to a procedure wherein services, except in emergency situations, must be approved by TennCare or the MCO prior to the delivery of services.
- (77) PRIVATE DUTY NURSING SERVICES shall mean nursing services for recipients who require individual and continuous care and that are provided by a registered nurse or a licensed practical nurse, under the direction of the recipient's physician, and to a recipient in his or her own home.
- (78) PROSPECTIVE ENROLLMENT shall mean the future date when the applicant's/enrollee's actual enrollment and eligibility to receive TennCare-covered services begins, subject to collection of the initial month's premium if appropriate.
- (79) PROVIDER shall mean an institution, facility, agency, person, corporation, partnership, or association which accepts as payment in full for providing benefits to a TennCare enrollee, the amounts paid pursuant to an approved agreement with an MCC. Such payment may include copayments from the enrollee or the enrollee's responsible party.

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- (80) PROVIDER-INITIATED REDUCTION, TERMINATION OR SUSPENSION OF SERVICES shall mean a decision to reduce, terminate, or suspend an enrollee's TennCare services which is initiated by the enrollee's provider, rather than by the MCC.
- (81) PROVIDER WITH PRESCRIBING AUTHORITY shall mean, in the context of TennCare pharmacy services, a health care professional authorized by law or regulation to order prescription medications for his/her patients, and who:
- (a) Participates in the provider network of the MCC in which the enrollee is enrolled; or
  - (b) Has received a referral of the enrollee, approved by the MCC, authorizing her to treat the enrollee; or
  - (c) In the case of a TennCare enrollee who is also enrolled in Medicare, is authorized to treat Medicare patients.
- (82) PRUDENT LAY PERSON shall mean a reasonable person who possesses an average knowledge of health and medicine.
- (83) QUALIFYING MEDICAL CONDITION shall mean a medical condition which is included among a list of conditions established by the Bureau and which will render a qualified uninsured applicant medically eligible.
- (84) QUALIFIED UNINSURED PERSON shall mean an uninsured person who meets the technical, financial, and insurance requirements for the TennCare Standard Program.
- (85) READABLE shall mean no more than a sixth grade level of reading proficiency is needed to understand notices or other written communications, as measured by the Fogg index, the Flesch Index, the Flesch-Kincaid Index, or other recognized readability instrument. The preprinted language approved by the US District Court following entry of the *Grier Revised Consent Decree* and distributed to MCCs as templates is deemed readable. It is the responsibility of the entity issuing the notice to ensure that text added to the template is deemed readable, with the exception of medical, clinical or legal terminology.
- (86) REASSIGNMENT shall mean the process by which the Bureau of TennCare transfers an enrollee from one MCO to another as described in these rules.
- (87) RECEIPT OF MAILED NOTICES shall mean that receipt of mailed notices is presumed to occur within five (5) days of mailing.
- (88) RECERTIFICATION shall mean the process by which TDHS evaluates the ongoing eligibility status of TennCare Medicaid and TennCare Standard enrollees. This is a periodic process that is conducted at specified intervals or when an enrollee's circumstances change. The process is conducted in accordance with TennCare's, or its designee's, policies and procedures.
- (89) RECONSIDERATION shall mean the process by which an MCC reviews and renders a decision regarding an enrollee's appeal of the MCC's adverse action affecting TennCare benefits.
- (90) REDETERMINATION shall mean the process by which TDHS initially determines whether waiver-eligible TennCare (non-Medicaid) enrollees who were enrolled in the TennCare Program as of June 30, 2002, are eligible for TennCare Medicaid or TennCare Standard under the terms of the waiver program in effect as of July 1, 2002.

(Rule 1200-13-13-.01, continued)

- (91) REDUCTION, SUSPENSION OR TERMINATION shall mean the acts or omissions by TennCare or others acting on its behalf which result in the interruption of a course of necessary clinical treatment for a continuing spell of illness or medical condition. MCCs are responsible for the management and provision of medically necessary covered services throughout an enrollee's illness or need for such services, and across the continuum of covered services, including, but not limited to behavioral health services and appropriate transition plans specified in the applicable TennCare contract. The fact that an enrollee's medical condition requires a change in the site or type of TennCare service does not lessen the MCC's obligation to provide covered treatment on a continuous and ongoing basis as medically necessary.
- (92) RESOURCES FOR MEDICAID-ELIGIBLE INDIVIDUALS shall mean those resources as defined in Chapter 1240-3-3-.05 - .06 of the rules of the Tennessee Department of Human Services - Division of Medical Services.
- (93) SERIOUSLY EMOTIONALLY DISTURBED (SED) shall mean persons who have been identified by the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) or its designee as meeting the criteria provided below.
- (a) Age from birth to age eighteen (18), and
  - (b) Currently, or at any time during the past year, has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the DSM-IV-TR (and subsequent revisions) of the American Psychiatric Association, with the exception of the DSM-IV-TR (and subsequent revisions) "V" codes, substance abuse, and developmental disorders, unless these disorders co-occur with another diagnosable serious emotional disturbance. All of these disorders have episodic, recurrent, or persistent features; however, the disorders may vary in terms of severity and disabling effects; and
  - (c) The diagnosable mental, behavioral, or emotional disorder identified above has resulted in functional impairment, which substantially interferes with or limits the child's role or functioning in family, school, and community activities. Functional impairment is defined as difficulties that substantially interfere with or limit a child or adolescent in achieving or maintaining developmentally appropriate social, behavioral, cognitive, communicative, or adapted skills and is evidenced by a Global Assessment of Functioning score of fifty (50) or less in accordance with the DSM-IV-TR (and subsequent revisions).
- (94) SEVERELY AND/OR PERSISTENTLY MENTALLY ILL (SPMI) shall mean individuals who have been identified by the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) or its designee as meeting the criteria in (a) below. These persons will be identified as belonging in one of Clinically Related Groups listed in (b) below.
- (a) Criteria
    - 1. Age eighteen (18) and over; and
    - 2. Currently, or at any time during the past year, has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified within the DSM-IV-TR (and subsequent revisions) of the American Psychiatric Association, with the exception of the DSM-IV-TR (and subsequent revisions) "V" codes, substance abuse, and developmental disorders, unless these disorders co-occur with another diagnosable serious emotional disturbance. All of these disorders have episodic, recurrent, or persistent features; however, the disorders may vary in terms of severity and disabling effects; and

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3. The diagnosable mental, behavioral, or emotional disorder identified above has resulted in functional impairment which substantially interferes with or limits major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning in major life activities including the basic living skills (e.g., eating, bathing, dressing); instrumental living skills (maintaining a household, managing money, getting around in the community, taking prescribed medication); and functioning in social, family, and vocational/educational contexts. This definition includes adults who would have met functional impairment criteria during the referenced year without the benefit of treatment or other support services.

(b) Definitions of Clinically Related Groups (CRGs).

1. Clinically Related Group 1. Any person eighteen (18) years or older whose functioning is, or in the last six (6) months has been, severely impaired and the duration of the impairment totals six (6) months or longer in the past year. This person requires constant assistance or supervision with daily living activities and displays an inability to relate to others which interferes with his/her ability to work and his/her family relationships and usually results in social isolation in the community. Changes in the environment are stressful and may result in further withdrawal or dysfunction in other areas. Support is needed to insure the person's safety and survival.
2. Clinically Related Group 2. Any person eighteen (18) years or older whose functioning is, or in the last six (6) months has been, severely impaired and the duration of the impairment totals six (6) months or longer in the past year. This individual has extensive problems with performing daily routine activities and requires frequent assistance. S/he has substantial impairment in his/her ability to take part in social activities or relationships, which often results in social isolation in the community. The person has extensive difficulty in adjusting to change. Assistance with activities of daily living is necessary to survival in the community. This person has difficulty completing simple tasks but with assistance could work in a highly supervised setting.
3. Clinically Related Group 3. Any person eighteen (18) years or older whose functioning has not been severely impaired recently (within the last six (6) months), but has been severely impaired in the past to the extent that he or she needs services to prevent relapse. This individual generally needs long term continued support. Characteristics of this population may include regular or frequent problems performing daily routine activities. S/he may require some supervision although s/he can survive without it. This person has noticeable disruption in social relations, although he or she is capable of taking part in a variety of social activities. Inadequate social skills have a serious negative impact on the person's life; however, some social roles are maintained with support. This person can complete tasks without prompting and help and can function in the workplace with assistance even though the experience may be stressful. There is sometimes noticeable difficulty in accepting and adjusting to change, and the person may require some intervention.

- (95) SSI (SUPPLEMENTAL SECURITY INCOME) BENEFITS shall mean the benefits provided through a program administered by the Social Security Administration for those meeting program eligibility requirements. Tennessee residents determined eligible for SSI benefits are automatically enrolled in TennCare Medicaid.
- (96) TDHS or DHS (TENNESSEE DEPARTMENT OF HUMAN SERVICES) shall mean the State Agency under contract with the Bureau of TennCare to determine eligibility for individuals applying for TennCare Medicaid or TennCare Standard, except for those determined to be eligible for SSI

(Rule 1200-13-13-.01, continued)

benefits by the Social Security Administration. Medical eligibility for TennCare Standard is not determined by TDHS, but by an entity designated by the Bureau of TennCare.

- (97) TDMHDD (TENNESSEE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES) shall mean the State Agency responsible for the provision of services to individuals with neurobiological brain disorders, mental illnesses and mental retardation/developmental disabilities.
- (98) TECHNICAL ELIGIBILITY REQUIREMENTS shall mean the eligibility requirements applicable to the appropriate category of medical assistance as discussed in Chapter 1240-3-3-.03 of the rules of the TDHS - Division of Medical Services, and the additional eligibility requirements set forth in these rules.
- (99) TENNCARE shall mean the program administered by the Single State agency as designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.
- (100) TENNCARE APPEAL FORM shall mean the TennCare form(s) which are completed by an enrollee, or by a person authorized by the enrollee to do so, whenever an enrollee appeals an adverse action affecting TennCare services. The use of the form is not required, but is encouraged to ensure that the MCC and TennCare Bureau have the necessary information.
- (101) TENNCARE MEDICAID shall mean that part of the TennCare program, which covers persons eligible for Medicaid under Tennessee's Title XIX State Plan for Medical Assistance. The following persons are eligible for TennCare Medicaid:
- (a) Tennessee residents determined to be eligible for Medicaid in accordance with 1240-3-3 of the rules of the Tennessee Department of Human Services - Division of Medical Services.
  - (b) Individuals who qualify as dually eligible for Medicare and Medicaid are enrolled in TennCare Medicaid.
  - (c) A Tennessee resident who is an uninsured woman, under age sixty-five (65), a US citizen or qualified alien, is not eligible for any other category of Medicaid, has been diagnosed as the result of a screening at a Centers for Disease Control and Prevention (CDC) site with breast or cervical cancer, including pre-cancerous conditions.
  - (d) Tennessee residents determined eligible for SSI benefits by the Social Security Administration are automatically enrolled in TennCare Medicaid.
- (102) TENNCARE MEDICAID ELIGIBILITY REFORMS shall mean the amendments to the TennCare demonstration project approved by CMS on March 24, 2005, to close enrollment into TennCare Medicaid for non-pregnant adults age twenty-one (21) or older who qualify as Medically Needy under Tennessee's Title XIX State Plan for Medical Assistance and to terminate coverage for currently enrolled non-pregnant Medically Needy adults age twenty-one (21) or older at the expiration of their current eligibility periods.
- (103) TENNCARE PARTNERS PROGRAM shall mean that component of the TennCare Program that provides mental health and substance abuse services.
- (104) TENNCARE PHARMACY PROGRAMS shall mean any TennCare pharmacy carve-outs, including, but not limited to, enrollees with dual eligibility, the behavioral health pharmacy benefit, and all pharmacy services provided by the TennCare managed care organizations (MCOs).

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- (105) TENNCARE SELECT shall mean a state self-insured HMO established by the Bureau of TennCare and administered by a contractor to provide medical services to certain eligible enrollees.
- (106) TENNCARE SERVICES OR TENNCARE BENEFITS, for purposes of this rule, shall mean any medical assistance that is administered by the Bureau of TennCare or its contractors and which is funded wholly or in part with federal funds under the Medicaid Act or any waiver thereof, but excluding:
- (a) Medical assistance that can be appealed through an appeal of a pre-admission evaluation (PAE) determination; and
  - (b) Medicare cost sharing services that do not involve utilization review by the Bureau of TennCare or its contractors.
- (107) TENNCARE STANDARD shall mean that part of the TennCare Program, which provides health coverage for Tennessee residents who:
- (a) are uninsured, do not have access to group health insurance (either directly or indirectly through another family member), and whose income is less than the poverty level for which Federal and State appropriations are made available; or
  - (b) are uninsured, do not have or have access to group health insurance (either directly or indirectly through another family member), and have proven that s/he meets the appropriate Medical Eligibility criteria for his/her circumstances; or
  - (c) Are uninsured children under age nineteen (19), whose family income is less than 200% poverty, who have access to insurance but have not purchased it, and who have been continuously enrolled in this category since December 31, 2001; or
  - (d) Had Medicare as of December 31, 2001 (but not Medicaid) and were enrolled in the TennCare Program as of December 31, 2001, and who continue to meet the definition of “uninsurable” in effect at that time. Effective January 1, 2003 these individuals are eligible only for the TennCare Standard pharmacy benefit package; or
  - (e) Were enrolled as dislocated workers on June 30, 2002, have not purchased other insurance, and have incomes that do not exceed the amount established for redetermination during the waiver transition period in Rule 1200-13-14-.02(7).
- (108) TERMINATION shall mean the discontinuance of an enrollee’s coverage under the TennCare Medicaid or TennCare standard program.
- (109) THIRD PARTY shall mean any entity or funding source other than the enrollee or his/her responsible party, which is or may be liable to pay for all or a part of the costs of medical care of the enrollee.
- (110) TIME - SENSITIVE CARE shall mean care which requires a prompt medical response in light of the enrollee’s condition and the urgency of his/her need as defined by a prudent lay person; provided, however, that a case may be treated as non-time-sensitive upon the written certification of the enrollee’s treating physician.
- (111) TRANSITION PERIOD shall mean the period from July 1, 2002 through December 31, 2002 during which time the Bureau will transition enrollees and applicants from the old waiver program to the new waiver program.

(Rule 1200-13-13-.01, continued)

- (112) **TREATING PHYSICIAN (OR CLINICIAN)** shall mean a health care provider who has provided diagnostic or treatment services for an enrollee (whether or not those services were covered by TennCare), for purposes of treating, or supporting the treatment of, a known or suspected medical condition. The term excludes providers who have evaluated an enrollee's medical condition primarily or exclusively for the purposes of supporting or participating in a decision regarding TennCare coverage.
- (113) **UNINSURED** shall mean any person who does not have health insurance directly or indirectly through another family member, or who does not have access to group health insurance. For purposes of the Medicaid eligibility category of women under 65 requiring treatment for breast or cervical cancer, "Uninsured" shall mean any person who does not have health insurance or access to health insurance which covers treatment for breast or cervical cancer.
- (114) **WAIVER ELIGIBLE** shall mean a person who is not eligible for Medicaid, is enrolled in the TennCare program as of June 30, 2002 and whose eligibility was determined based on the terms of the waiver in effect as of June 30, 2002. Effective July 1, 2002 all waiver-eligibles are considered TennCare Standard enrollees for the purposes of these rules.

**Authority:** T.C.A. §§4-5-202, 4-5-209, 71-5-105, 71-5-109, and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.01; new effective date February 12, 2003. Amendment filed April 9, 2003; effective June 23, 2003. Public necessity rule filed May 5, 2005; effective through October 17, 2005. Public necessity rule filed June 3, 2005; effective through November 15, 2005.

#### **1200-13-13-.02 ELIGIBILITY.**

- (1) Delineation of Agency Roles and Responsibilities.
- (a) The Tennessee Department of Finance and Administration is the lead State agency for the TennCare Program and is responsible for establishing policy and procedural requirements and criteria.
  - (b) The TDHS is under contract with the Department of Finance and Administration to determine TennCare Medicaid eligibility and eligibility for TennCare Standard, with the exception of determining the presence of a qualifying medical condition for those applying as medically eligible persons.
  - (c) The Social Security Administration determines eligibility for the Supplemental Security Income (SSI) Program. Tennessee residents determined eligible for SSI benefits are automatically eligible for and enrolled in TennCare Medicaid benefits.
  - (d) The Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) is the lead agency for establishing policy and procedural requirements and criteria for the TennCare Partners Program.
- (2) Technical and Financial Eligibility Requirements for TennCare Medicaid.
- (a) To be eligible for TennCare Medicaid, each individual must:
    1. Meet all technical requirements applicable to the appropriate category of medical assistance as described in Chapter 1240-3-3-.03 of the rules of the TDHS - Division of Medical Assistance, and all financial eligibility requirements applicable to the

(Rule 1200-13-13-.02, continued)

- appropriate category of medical assistance as described in Chapter 1240-3-3-.03 of the rules of the TDHS - Division of Medical Assistance; or
2. Meet the financial eligibility requirements of the SSI Program of the Social Security Administration and be approved for SSI benefits by the Social Security Administration; or
  3. Be a woman who
    - (i) Is under age sixty-five (65),
    - (ii) Is uninsured,
    - (iii) Is not eligible for Medicaid under any other category,
    - (iv) Is a U.S. citizen or qualified alien,
    - (v) Has been diagnosed by a screening at a Centers for Disease Control and Prevention (CDC) site with breast or cervical cancer, including pre-cancerous conditions, and needs treatment, and
- (b) The Bureau of TennCare will also have access to third party information on current TennCare Medicaid eligibles. MCCs will release insurance information from their files to the Bureau of TennCare on a regular basis, as required in the contract between the MCCs and the Tennessee Department of Finance and Administration.
- (c) By applying for TennCare Medicaid, an applicant grants permission and authorizes release of information to the Bureau, or its designee, to investigate any and all information provided, or any information not provided if it could affect eligibility, to determine TennCare eligibility; and if approved, what cost sharing, if any, may be required of the applicant as found in these rules. Information may be verified through, but not limited to, the following sources:
1. The United States Internal Revenue Service (IRS);
  2. State income tax records for Tennessee or any other state where income is earned;
  3. The Tennessee Department of Labor and Work Force Development, and other employment security offices within any state whereby the applicant may have received wages or been employed;
  4. Credit bureaus;
  5. Insurance companies;
  6. Any other governmental agency, or public or private source of information where such information may impact an applicant's eligibility or cost sharing requirements for the TennCare Program.
- (d) Under *Tennessee Code Annotated (T.C.A.)* 71-5-118 it is a felony offense to obtain TennCare coverage under false means or to help anyone get on TennCare under false means.
- (3) Covered Groups under TennCare Medicaid.
- (a) Eligibility for TennCare Medicaid is limited to individuals who meet the following criteria:

(Rule 1200-13-13-.02, continued)

1. Tennessee residents who are eligible for Medicaid as defined in rule 1240-3-3 of the TDHS - Division of Medical Assistance;
    - (i) Individuals enrolled as categorically needy, as defined at 1200-13-13-.01 of these rules, will be eligible for TennCare Medicaid for a period determined by his/her eligibility category.
    - (ii) Individuals enrolled as medically needy, as defined at 1200-13-13-.01 of these rules, will be enrolled in TennCare Medicaid for one year. At the end of that year, eligibility either in TennCare Medicaid or TennCare Standard must be re-established in order for these individuals to continue in the program.
    - (iii) A TennCare Medicaid enrollee in Parts 1.(i) and 2.(ii) above, must be recertified for TennCare Medicaid prior to the expiration of his/her eligibility and qualify to remain in TennCare Medicaid, or apply for and be approved for TennCare Standard in order to maintain his/her benefits in the TennCare Program without a break in coverage.
  2. Tennessee residents who are determined eligible for the SSI Program by the Social Security Administration.
  3. Women who have been enrolled as a result of needing treatment for breast or cervical cancer and who meet the technical requirements found at 1200-13-13-.02(2)(a)3.
- (b) Effective date of eligibility
1. For SSI eligibles, the date determined by the Social Security Administration in approving the individual for SSI coverage.
  2. For all other Medicaid eligibles, the date of the application or the date of the qualifying event (such as the date that a spend-down obligation is met), whichever is later.
  3. For persons applying for Medicaid eligibility during a period when the DHS offices are not open, the date his/her faxed application is received at DHS, but only when the faxed application is followed up on the next business day with a complete application at DHS.
- (c) Notwithstanding anything in these rules or in the Department of Human Services rules to the contrary, specifically including Chapter 1240-3-2 concerning eligibility of individuals in a Medically Needy category, effective at the close of business of the offices of the State of Tennessee on April 29, 2005, enrollment in the Medically Needy category is closed to all enrollees except for: (a) individuals under the age of twenty-one (21) and (b) pregnant women. Individuals who have filed an application for a Medically Needy category that is open for enrollment prior to the close of business of the offices of the State of Tennessee on April 29, 2005, will be allowed to enroll in such category if it is determined that they have met the eligibility criteria for such category prior to the close of business of the offices of the State of Tennessee on April 29, 2005, even if such determination is made after the close of business of the offices of the State of Tennessee on April 29, 2005. Any individual whose application is approved for enrollment in a Medically Needy category will be enrolled in the Medically Needy category for a period of twelve (12) months from the latter of: (a) the date of his or her application or (b) the date spenddown eligibility is met, so long as both (a) and (b) occur prior to the close of business of the offices of the State of Tennessee on April 29, 2005.

(Rule 1200-13-13-.02, continued)

(4) Loss of Eligibility.

Eligibility for TennCare Medicaid shall cease when:

- (a) The individual no longer qualifies for TennCare Medicaid as specified in Chapter 1240-3-3 of the rules of TDHS; or
- (b) A woman determined to be eligible under 1200-13-13-.02(2)(a)3. of these rules:
  - 1. Reaches age sixty-five (65); or
  - 2. Gains access to group health insurance as defined elsewhere in these rules; or
  - 3. It has been determined that she no longer needs treatment for breast or cervical cancer, including pre-cancerous conditions.
- (c) The individual who is eligible as a non-pregnant Medically Needy adult in accordance with Rule 1240-2-1-.03 of the Department of Human Services is found to meet the following criteria:
  - 1. S/he is aged twenty-one (21) or older,
  - 2. S/he has completed his/her twelve (12) month period of eligibility for TennCare, and
  - 3. S/he has not been determined eligible in an open Medicaid category.

(5) TennCare Partners Program.

A person who is enrolled in the TennCare Medicaid Program will receive his/her behavioral health services through the assigned Behavioral Health Organization.

(6) Recertification of TennCare Medicaid Eligibility.

- (a) An enrollee who qualifies for TennCare Medicaid through the TDHS shall recertify his/her TennCare Medicaid eligibility as required by the appropriate category of medical assistance as described in Chapter 1240-3-3 of the rules of the TDHS - Division of Medical Assistance.
- (b) A woman, who has been determined eligible for TennCare Medicaid under 1200-13-13-.02(2)(a)3. of these rules, shall annually recertify her eligibility in terms of changes to her address, her and her family's if appropriate, income, and access to health insurance.
- (c) Enrollees eligible for TennCare Medicaid as a result of being eligible for SSI benefits shall follow the recertification requirements of the Social Security Administration.

(7) Disenrollment Related to TennCare Medicaid Eligibility Reforms

Prior to the disenrollment of adult non-pregnant Medically Needy TennCare enrollees based on coverage terminations resulting from TennCare Medicaid Eligibility Reforms, Medicaid eligibility shall be reviewed in accordance with the following.

(a) Ex Parte Review

DHS will conduct an ex parte review of eligibility for open Medicaid categories for all non-pregnant adult Medically Needy enrollees in eligibility groups due to be terminated as part of

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the TennCare Medicaid eligibility reforms. Such ex parte review shall be conducted in accordance with federal requirements as set forth by CMS in the Special Terms and Conditions of the TennCare demonstration project.

(b) Request for Information

1. At least thirty (30) days prior to the expiration of their current eligibility period, the Bureau of TennCare will send a Request for Information to all non-pregnant adult Medically Needy enrollees in eligibility groups being terminated pursuant to the TennCare Medicaid eligibility reforms. The Request for Information will include a form to be completed with information needed to determine eligibility for open Medicaid categories as well as a list of the types of proof needed to verify certain information.
2. Enrollees will be given thirty (30) days inclusive of mail time from the date of the Request for Information to return the completed form to TDHS and to provide TDHS with the necessary verifications to determine eligibility for open Medicaid categories.
3. Enrollees with a health, mental health, or learning problem or a disability will be given the opportunity to request assistance in responding to the Request for Information. Enrollees with Limited English Proficiency will have the opportunity to request translation assistance for responding to the Request for Information.
4. Enrollees will be given an opportunity until the date of termination to request one extension for good cause of the thirty (30) day timeframe for responding to the Request for Information. The good cause extension is intended to allow a limited avenue for possible relief for certain enrollees who face significant unforeseen circumstances, or who, as a result of a health, mental health, or learning problem, or a disability, or limited English proficiency are unable to respond timely, as an alternative to imposing a standard with no exceptions whatsoever. The good cause exception does not confer an entitlement upon enrollees and the application of this exception will be within the discretion of TDHS. Only one thirty (30) day good cause extension can be granted to each enrollee. Good cause is determined by TDHS eligibility staff. Good cause is not requested nor determined through filing an appeal. Requests for an extension of the 30-day timeframe to respond to the Request for Information must be initiated by the enrollee. However, the enrollee may receive assistance in initiating such request. TDHS will not accept a request for extension of the thirty (30) day timeframe submitted by a family member, advocate, provider, or CMHC acting on the enrollee's behalf without the involvement and knowledge of the enrollee, for example, to allow time for such entity to locate the enrollee if his/her whereabouts is unknown. All requests for good cause extension must be made prior to termination of Medicaid eligibility. A good cause extension will be granted if TDHS determines that a health, mental health or learning problem or disability or limited English proficiency prevented an enrollee from understanding or responding timely to the Request for Information. Except in the aforementioned circumstances, a good cause extension will only be granted if such request is submitted in writing to TDHS prior to termination of Medicaid eligibility and TDHS determines that serious personal circumstances such as illness or death prevent an enrollee from responding to the Request for Information for an extended period of time. Proof of the serious personal circumstances is required with the submission of the written request in order for a good cause extension to be granted. Good cause extensions will be granted at the sole discretion of TDHS and if granted shall provide the enrollee with an additional thirty (30) days inclusive of mail time from the date of TDHS's decision to grant the good cause extension. TDHS will send enrollees a letter granting or denying the request for good cause extensions. TDHS's decisions with respect to good cause extensions shall not be appealable.

(Rule 1200-13-13-.02, continued)

5. If an enrollee provides some but not all of the necessary information to TDHS to determine his/her eligibility for open Medicaid categories during the thirty (30) day period following the Request for Information, TDHS will send the enrollee a Verification Request. The Verification Request will provide the enrollee with ten (10) days inclusive of mail time to submit any missing information as identified in the Verification Request. Enrollees will not have the opportunity to request an extension for good cause of the ten (10) day timeframe for responding to the Verification Request.
6. Enrollees who respond to the Request for Information within the thirty (30) day period or within any extension of such period granted by TDHS shall retain their eligibility for TennCare Medicaid (subject to any changes in covered services generally applicable to enrollees in their Medicaid category) while TDHS reviews their eligibility for open Medicaid categories.
7. TDHS shall review all information and verifications provided within the requisite time period by an enrollee pursuant to the Request for Information and/or the Verification Request to determine whether the enrollee is eligible for any open Medicaid categories. If TDHS makes a determination that the enrollee is eligible for an open Medicaid category, TDHS will so notify the enrollee and the enrollee will be enrolled in the appropriate TennCare Medicaid category. Once the enrollee is enrolled in the appropriate TennCare Medicaid category, his/her eligibility as a non-pregnant Medically Needy adult shall then be terminated without additional notice. If TDHS makes a determination that the enrollee is not eligible for any open Medicaid categories or if an enrollee does not respond to the Request for Information within the requisite thirty (30) day time period or any extension of such period granted by TDHS, the TennCare Bureau will send the enrollee a twenty (20) day advance Termination Notice.
8. Enrollees who respond to the Request for Information or the Verification Request after the requisite time period specified in those notices or after any extension of such time period granted by TDHS but before the date of termination shall retain their eligibility for TennCare Medicaid (subject to any changes in covered services generally applicable to enrollees in their Medicaid category) while TDHS reviews their eligibility for open Medicaid categories. If TDHS makes a determination that the enrollee is eligible for an open Medicaid category, TDHS will so notify the enrollee and the enrollee will be enrolled in the appropriate TennCare Medicaid category. Once the enrollee is enrolled in the appropriate TennCare Medicaid category, his/her eligibility as a non-pregnant Medically Needy adult shall then be terminated without additional notice. If TDHS makes a determination that the enrollee is not eligible for any open Medicaid categories, the TennCare Bureau will send the enrollee a twenty (20) day advance Termination Notice.
9. Individuals may provide the information and verifications specified in the Request for Information after termination of eligibility. TDHS shall review all such information pursuant to the rules, policies and procedures of TDHS and the Bureau of TennCare applicable to new applicants for TennCare coverage. The individual shall not be entitled to be reinstated into TennCare pending this review. If the individual is subsequently determined to be eligible for an open Medicaid category, s/he shall be granted retroactive coverage to the date of application, or in the case of spend down eligibility for Medically Needy pregnant women and children, to the latter of (a) the date of his or her application or (b) the date spenddown eligibility is met.

(c) Termination Notice

(Rule 1200-13-13-.02, continued)

1. The TennCare Bureau will send Termination Notices to all non-pregnant adult Medically Needy enrollees being terminated pursuant to the TennCare Medicaid eligibility reforms who are not determined to be eligible for open Medicaid categories pursuant to the Ex Parte Review or Request for Information processes described in this subsection.
2. Termination Notices will be sent twenty (20) days in advance of the date upon which the coverage will be terminated.
3. Termination Notices will provide enrollees with forty (40) days from the date of the notice to appeal valid factual disputes related to the disenrollment and will inform enrollees how they may request a hearing.
4. Enrollees with a health, mental health, or learning problem or a disability will be given the opportunity to request additional assistance for their appeal. Enrollees with Limited English Proficiency will have the opportunity to request translation assistance for their appeal.
5. Enrollees will not have the opportunity to request an extension for good cause of the forty (40) day timeframe in which to request a hearing.

**Authority:** T.C.A. §§4-5-202, 4-5-209, 71-5-105, 71-5-109, and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.02; new effective date February 12, 2003. Amendment filed April 9, 2003; effective June 23, 2003. Public necessity rule filed April 29, 2005, effective through October 11, 2005. Public necessity rule filed June 3, 2005; effective through November 15, 2005.

### **1200-13-13-.03 ENROLLMENT, DISENROLLMENT, RE-ENROLLMENT, AND REASSIGNMENT.**

#### **(1) Enrollment.**

Persons determined eligible for TennCare Medicaid by the TDHS or the Social Security Administration, as eligible for SSI benefits, shall enroll in accordance with the following:

- (a) Individuals who are approved for TennCare Medicaid by the TDHS or the Social Security Administration (for SSI benefits) shall be allowed to enroll in TennCare Medicaid at any time throughout the year.
- (b) TennCare Medicaid enrollees will have a forty-five (45) day period after initially selecting or being assigned to a health plan to change plans. No additional changes will be allowed except as otherwise specified in these rules.
- (c) If an individual is approved for TennCare Medicaid and has another family member already enrolled in the TennCare Program, that individual shall be placed in the same health plan as the currently enrolled family member. To the extent possible, all identifiable family members shall be placed in the same health plan. The exception will be any family members assigned to TennCare Select by the Bureau of TennCare. If the newly enrolled family member opts to change MCOs during the 45-day change period as stated in (b) above, all family members on the case will be transferred to the new MCO.
- (d) Enrollees in TennCare Medicaid shall be given his/her choice of health plans when possible. If no MCO is available to enroll new members in the enrollee's region, the enrollee will be assigned to TennCare Select until such time as another MCO becomes available. The Bureau may also elect to assign certain TennCare Medicaid children with special health needs to

(Rule 1200-13-13-.03, continued)

TennCare Select. Once the 45-day change period, as stated in (b) above expires, an individual shall remain a member of the designated plan until:

1. Recertification if s/he is TDHS-eligible for TennCare Medicaid. During the recertification process, the enrollee will be given the opportunity to change health plans if s/he chooses to do so. Enrollees who must recertify TennCare Medicaid eligibility more often than annually will only be allowed to change health plans one (1) time per twelve (12) months, except as otherwise provided for in these rules; or
2. S/he, if eligible for TennCare Medicaid as a result of being eligible for SSI benefits, is given the opportunity to change health plans annually during a period specified by the Bureau of TennCare; or
3. S/he loses eligibility to participate in the TennCare Program, whichever comes first.

However, enrollees, after going through the appeal process as described in (4)(b) below, and obtaining the approval of the Bureau of TennCare, may be permitted to change enrollment to a different health plan. In the event that an enrollee elects to change health plans, the enrollee's medical care will be the responsibility of the original health plan until enrollment in the subsequent health plan is deemed complete.

- (e) All changes in health plan assignments are subject to the requested health plan's ability and capacity to accept additional enrollees. If the requested health plan cannot accept additional enrollees, the enrollee will be assigned to another health plan, or remain in the same health plan of which s/he is a current member.
- (f) TennCare Medicaid enrollees shall be enrolled in a BHO for his/her mental health and substance abuse services.
- (g) TennCare Medicaid enrollees shall be accepted by an MCO regardless of his/her health condition at the time of enrollment.
- (h) Individuals or families determined eligible for TennCare Medicaid shall select a health plan at the time of application. Individuals enrolled as a result of being eligible for SSI benefits will be assigned to a health plan as s/he does not have the opportunity to select a health plan prior to the effective date of coverage. All TennCare Medicaid enrollees have a forty-five (45) day period, effective with the effective date of coverage, to request a change of health plans.
- (i) Enrollment shall be effective on the date provided to the Bureau of TennCare by the TDHS or the Social Security Administration, in accordance with these rules, and the eligible person has selected or been assigned to a health plan from those available where the person resides. In the event that an individual fails to select a health plan or the requested health plan is unable to accept additional enrollees, s/he shall be assigned to a health plan by the Bureau of TennCare.
- (j) MCOs shall offer enrollees to the extent possible, freedom of choice among providers participating in the MCO's respective health plans. If after notification of enrollment the enrollee has not chosen a primary care provider, one may be chosen for him/her by the MCO. The period during which an enrollee may choose his/her primary care provider shall not be less than fifteen (15) calendar days.
- (k) A TennCare Medicaid enrollee is given his/her choice of health plans when possible. Once enrolled, the enrollee shall remain a member of the designated health plan until s/he is given an opportunity to change during an annual recertification period, or during a Bureau of TennCare-specific time for those who are SSI-eligible to participate in TennCare Medicaid. Only one (1)

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change is permitted every twelve (12) months, except where otherwise provided for in these rules.

- (l) Prior to the expiration of TDHS Medicaid eligibility, such enrollee will be sent a notice by TDHS that s/he needs to be redetermined as to continued Medicaid eligibility. The Bureau of TennCare will also send a notice to the enrollee at his/her last address on file. This notice will remind the enrollee that s/he is at risk of losing Medicaid and TennCare Medicaid coverage. In order to retain eligibility for TennCare, the enrollee must complete one of the following and be approved for Medicaid and/or TennCare.
  1. Make and keep an appointment with the TDHS office of the county where s/he resides. The worker will review the information presented by the enrollee to determine if s/he meets the eligibility criteria in any Medicaid-eligible category. The enrollee will be informed by TDHS of eligibility status.
  2. An individual who is losing eligibility for TennCare Medicaid may apply for enrollment in TennCare Standard as a Medicaid "Rollover", regardless of income levels, as defined herein:
    - (i) A notice will be sent by the Bureau of TennCare thirty (30) days prior to the expiration of the individual's TennCare Medicaid eligibility period. This letter will tell the individual that eligibility for Medicaid is ending, and to continue in the TennCare Program, s/he must go to his/her county TDHS office and reapply as instructed in the notice.
    - (ii) When the individual reapplies, s/he will first be screened for TennCare Medicaid eligibility.
    - (iii) If the individual is no longer TennCare Medicaid-eligible, s/he will then be screened for eligibility as a Medicaid "Rollover". Such enrollees submitting an application to TDHS will have forty-five (45) additional days to complete the process (from the date the application is received at TDHS). This includes scheduling an appointment with the TDHS office in the county where s/he resides and completing the application process. An enrollee under age nineteen (19) who submits an application prior to the end date of Medicaid eligibility and who is found eligible as a Medicaid "Rollover" may be enrolled in TennCare Standard during periods of closed enrollment if s/he meets the technical and financial requirements found at 1200-13-14-.02 of the Rules of TennCare Standard.
    - (iv) If determined to be eligible for TennCare Standard, the individual will be subject to premium and copayment requirements as appropriate.
- (m) Notwithstanding anything in these rules or in the Department of Human Services rules to the contrary, specifically including Chapter 1240-3-2 concerning eligibility of individuals in a Medically Needy category, effective at the close of business of the offices of the State of Tennessee on April 29, 2005, enrollment in the Medically Needy category is closed to all enrollees except for: (a) individuals under the age of twenty-one (21) and (b) pregnant women. Individuals who have filed an application for a Medically Needy category that is open for enrollment prior to the close of business of the offices of the State of Tennessee on April 29, 2005, will be allowed to enroll in such category if it is determined that they have met the eligibility criteria for such category prior to the close of business of the offices of the State of Tennessee on April 29, 2005, even if such determination is made after the close of business of the offices of the State of Tennessee on April 29, 2005. Any individual whose application is approved for enrollment in a Medically Needy category will be enrolled in the Medically Needy

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category for a period of twelve (12) months from the latter of: (a) the date of his or her application or (b) the date spenddown eligibility is met, so long as both (a) and (b) occur prior to the close of business of the offices of the State of Tennessee on April 29, 2005.

(2) Disenrollment.

- (a) A TennCare Medicaid enrollee may be disenrolled from a designated health plan only when authorized to do so by the Bureau of TennCare.
- (b) Coverage shall cease at 12:00 midnight, local time, on the date that the individual is disenrolled.
- (c) An MCO may not request the disenrollment of a TennCare Medicaid enrollee for any of the following reasons:
  - 1. Adverse changes in the enrollee's health;
  - 2. Pre-existing medical conditions; or
  - 3. High cost medical bills.

(3) Re-enrollment.

- (a) A TennCare Standard enrollee who is terminated from the TennCare Standard Program for failure to pay applicable premiums may be re-enrolled in TennCare Medicaid if eligible, without having to pay the outstanding arrearages as a condition of re-enrollment; however,
- (b) Nothing in this provision shall eliminate the enrollee's responsibility for premium arrearages incurred during any previous period of TennCare Standard eligibility. The arrearages will not be used to impede enrollment in TennCare Medicaid, however, should the enrollee become eligible for Medicaid.

(4) Reassignment.

- (a) Reassignment to a health plan other than the current health plan in which the TennCare Medicaid enrollee is placed is subject to another health plan's capacity to accept new enrollees, must be approved by the Bureau of TennCare, and is the result of one of the following:
  - 1. During the initial forty-five (45) day period of enrollment, a TennCare Medicaid enrollee may request transfer to a health plan other than the one s/he selected or to which s/he was assigned.
  - 2. A TennCare Medicaid enrollee must change health plans if s/he moves outside of the health plan's Community Services Area (CSA), and that health plan is not authorized to operate in the TennCare Medicaid enrollee's new place of residence. Until the TennCare Medicaid enrollee selects or is assigned to a new health plan and his/her enrollment is deemed complete, his/her medical care will remain the responsibility of the original health plan. Once reassigned, a TennCare Medicaid enrollee will have forty-five (45) calendar days to change his/her choice of health plans in the new CSA.
  - 3. TennCare Medicaid enrollees will be given the opportunity to select a new health plan if his/her health plan withdraws from participation in the TennCare Program if more than one (1) health plan is available as being able to accept new enrollees. If no MCO is available to accept enrollees from an exiting MCO, the enrollees will be assigned to TennCare Select until such time as another MCO becomes available. If the enrollee does

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not make a selection within the allotted time frame, or if circumstances exist which do not permit the Bureau to allow time for a selection period, the Bureau of TennCare will assign him/her to a health plan operating in his/her CSA.

4. A TennCare Medicaid enrollee will be given an opportunity to change MCOs only once per twelve (12) months regardless of how often Medicaid eligibility is required to be recertified. Only one (1) health plan change is permitted every twelve (12) months, unless the Bureau authorizes a change as the result of the resolution of an appeal requesting a "hardship" reassignment. When an enrollee changes health plans, the enrollee's medical care will be the responsibility of the current health plan until enrolled in the requested health plan.
- (b) A TennCare Medicaid enrollee may change health plans if s/he has filed an appeal and a decision was made in his/her favor based on hardship criteria. Requests for hardship MCO reassignments must meet all of the following six (6) criteria for reassignment. Determinations must be made on an individual basis.
1. A member has a medical condition that requires complex, extensive, and ongoing care; and
  2. The member's PCP and/or specialist has stopped participating in the member's current MCO network and has refused continuation of care to the member in his/her current MCO assignment; and
  3. The ongoing medical condition of the member is such that another physician or provider with appropriate expertise would be unable to take over his/her care without significant and negative impact on his/her care; and
  4. The current MCO has been unable to negotiate continued care for this member with the current PCP or specialist; and
  5. The current provider of services is in the network of one or more alternative MCOs; and
  6. An alternative MCO is available to enrolled members (i.e., has not given notice of withdrawal from the TennCare Program, is not in receivership, and is not at member capacity for the member's region).

A hardship MCO change request will not be granted to a Medicare beneficiary who, with the exception of pharmacy services, may utilize his/her choice of providers, regardless of network affiliation.

- (c) Enrollees who are out-of-state on a temporary basis, but maintain his/her status as a Tennessee resident under state and federal laws, shall be reassigned to TennCare Select for the period of time s/he is out-of-state.

**Authority:** T.C.A. §§4-5-202, 4-5-209, 71-5-105, 71-5-109, and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.03; new effective date February 12, 2003. Public necessity rule filed April 19, 2005; effective through October 11, 2005.

#### **1200-13-13-.04 COVERED SERVICES.**

- (1) Covered Services: July 1, 2002 through December 31, 2002.

(Rule 1200-13-13-.04, continued)

TennCare managed care organizations shall cover, at a minimum, the following services and benefits, subject to any applicable limitations described herein. Managed care organizations shall not impose any service limitations that are more restrictive than those described herein; however, this provision shall not limit the managed care organization’s ability to establish procedures for the determination of medical necessity.

SERVICE	BENEFITS
Inpatient Hospital Services	As medically necessary. Preadmission approval and concurrent reviews allowed.
Inpatient Psychiatric Facility Services	Under age 21: As medically necessary. Preadmission approval and concurrent reviews by the managed care organization are allowed.  Age 21-65: As medically necessary and in accordance with CMS requirements. Preadmission approval and concurrent reviews by the managed care organization are allowed.  Over age 65: As medically necessary. Preadmission approval and concurrent reviews by the managed care organization are allowed.
Inpatient Substance Abuse Treatment Program  Note: When medically appropriate, services in a licensed substance abuse residential treatment facility may be substituted as a cost-effective alternative for inpatient substance abuse services.	As medically necessary for children under age 21.  As medically necessary for adults subject to the following lifetime limits: \$30,000 for inpatient and outpatient substance abuse treatment. Lifetime limit of ten (10) inpatient detox days. This limit shall not apply to persons who are Severely and/or Persistently Mentally Ill or Seriously Emotionally Disturbed.
Outpatient Hospital Services	As medically necessary.
Outpatient Mental Health Services (including physician services)	As medically necessary, no lifetime limit for enrollees under age 21.
Psychiatric Rehabilitation	As medically necessary.
Mental Health Case Management	As medically necessary for SPMI/SED.
24-hour Residential Treatment	As medically necessary.
Housing/Residential Care for Adults	As medically necessary.
Outpatient Substance Abuse  Note: When medically appropriate, services in a licensed substance abuse residential treatment facility may be substituted as a cost-effective alternative for inpatient substance abuse services.	As medically necessary for children under age 21.  As medically necessary for adults subject to the following lifetime limit: \$30,000 for inpatient and outpatient substance abuse treatment and ten (10) days detoxification. This limit shall not apply to persons who are Severely and/or Persistently Mentally Ill or Seriously Emotionally Disturbed.
Physician Inpatient Services	As medically necessary. This shall include acupuncture performed by a Physician or a registered nurse as an anesthetic in connection with a surgical procedure.
Psychiatric Physician Inpatient	As medically necessary.

(Rule 1200-13-13-.04, continued)

Services	
Physician Outpatient Services/ Community Health Clinics/Other Clinic Services	As medically necessary. This shall include acupuncture performed by a Physician or a registered nurse as an anesthetic in connection with a surgical procedure (and services provided by a Primary Care Provider with a primary behavioral health diagnosis [ICD-9-CM 290.xx-319.xx]).
Lab & X-Ray Services	As medically necessary.
Hospice Care	As medically necessary. Must be provided by an organization certified pursuant to Medicare Hospice requirement.
Dental Services	<p>Preventive, diagnostic and treatment services for enrollees under age 21.</p> <p>Services for enrollees age 21 or older limited to cases of accidental injury to or neoplasms of the oral cavity, life threatening infections that include, but are not limited to, individuals with severely compromised immune systems, organ donor recipients, or individuals with or scheduled to receive a prosthetic heart valve(s), accidental injury to natural teeth including their replacement (limited to the cost of bridgework or the replacement of teeth injured in an accident unless teeth implants are medically necessary) and the removal of impacted wisdom teeth. (The adult dental “accident” must be caused by some external force, like a car accident, not by some normal act of mastication, or grinding of teeth while sleeping, or any other naturally occurring circumstance and must have occurred during a period of TennCare eligibility and within twelve (12) months from the date service is requested.)</p> <p>Orthodontics limited to individuals under age 21 except when an orthodontic treatment plan is approved prior to the enrollee attaining 20 ½ years of age, and treatment is initiated prior to the recipient attaining 21 years of age, or when orthodontic treatment is the result of facial hemiatrophy or congenital birth defects (if enrollee was covered by TennCare at birth).</p> <p>At such time that TennCare carves out the MCO’s responsibility to provide Dental Services, the provision of transportation to and from said services as well as the medical and anesthesia services related to the dental services shall remain with the MCO.</p>
Vision Services	Preventive, diagnostic and treatment services (including eyeglasses) for enrollees under age 21. The first pair of cataract glasses or contact lens/lenses following cataract surgery is covered

(Rule 1200-13-13-.04, continued)

	for adults.
Home Health Care	As medically necessary.
Pharmacy Services (obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy or those administered to a long-term care facility resident (nursing facility))	As medically necessary. Non-covered therapeutic classes as described in Section 2-3.q. of the MCO Contractor Risk Agreement, DESI, LTE, IRS drugs excluded.  TennCare is responsible for the provision and payment of pharmacy benefits to individuals who are enrolled in the TennCare Program in the category of TennCare Medicaid/Medicare dual eligible. (However, this does not include pharmaceuticals administered in a doctor's office.)
Durable Medical Equipment	As medically necessary.
Medical Supplies	As medically necessary.
Emergency Air and Ground Ambulance Transportation	As medically necessary
Non-Emergency Ambulance Transportation	As medically necessary.
Non-Emergency Transportation (including Non-Emergency Ambulance Transportation)	As necessary for enrollees lacking accessible transportation for covered services.  The travel to access primary care and dental services must meet the requirements of the waiver terms and conditions. The availability of specialty services as related to travel distance should meet the usual and customary standards for the community. However, in the event the MCO is unable to negotiate such an arrangement for an enrollee, transportation must be provided regardless of whether or not the enrollee has access to transportation. If the enrollee is a child, transportation must be provided for the child and an accompanying adult. However, transportation for a child shall not be denied pursuant to any policy which poses a blanket restriction due to enrollees age or lack of parental accompaniment. Any decision to deny transportation of a child due to an enrollee's age or lack of parental accompaniment must be made on a case-by-case basis and must be based on the individual facts surrounding the request. As with any denial, all notices and actions must be in accordance with the appeal process.  At such time that TennCare carves out the MCO's responsibility to provide Dental Services, the provision of transportation to and from said services shall remain with the MCO.
Community Health Services	As medically necessary.
Renal Dialysis Services	As medically necessary.

(Rule 1200-13-13-.04, continued)

<p>EPSDT Services</p>	<p>Screening, interperiodic screening, diagnostic and follow-up treatment services as medically necessary in accordance with federal regulations as described in 42 CFR Part 441, Subpart B, and the Omnibus Budget Reconciliation Act of 1989 for enrollees under age 21. Except for Dental services, Screens shall be in accordance with the periodicity schedule set forth in the latest “American Academy of Pediatrics Recommendations For Preventive Pediatric Health Care” and all components of the screens must be consistent with the latest “American Academy of Pediatrics Recommendations For Preventive Pediatric Health Care”. Dental screens shall be in accordance with the latest periodicity schedule set forth by the American Academy of Pediatric Dentistry and all components of the screens must be consistent with the latest recommendations by the American Academy of Pediatric Dentistry.</p>
<p>Rehabilitation Services</p>	<p>As medically necessary when determined to be cost-effective by the MCO.</p> <p>All medically necessary services shall be provided to enrollees under 21 years of age in accordance with EPSDT requirements including federal regulations as described in 42 CFR Part 441, Subpart B, and the Omnibus Reconciliation Act of 1989.</p>
<p>Chiropractic Services</p>	<p>When determined cost effective by the MCO.</p>
<p>Speech Therapy</p>	<p>As medically necessary, by a Licensed Speech Therapist to restore speech (as long as there is continued medical progress) after a loss or impairment. The loss or impairment must not be caused by a mental, psychoneurotic or personality disorder. All medically necessary services shall be provided to enrollees under 21 years of age in accordance with EPSDT requirements including federal regulations as described in 42 CFR Part 441, Subpart B, and the Omnibus Budget Reconciliation Act of 1989.</p>
<p>Reconstructive Breast Surgery</p>	<p>Covered in accordance with Tenn. Code Ann. 56-7-2507 which requires coverage of all stages of reconstructive breast surgery on a diseased breast as a result of a mastectomy as well as any surgical procedure on the non-diseased breast deemed necessary to establish symmetry between the two breasts in the manner chosen by the physician. The surgical procedure performed on a non-diseased breast to establish symmetry with the diseased breast will only be covered if the surgical procedure performed on a non-diseased breast occurs within five (5) years of the date the reconstructive breast surgery was performed on a</p>

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	<p>diseased breast.</p> <p>Note: Applicable CPT procedure codes regarding the revision of non-diseased breast following mastopexy or mastectomy for breast cancer, for the purpose of restoring symmetry, shall be the CPT procedures codes in the following range: 19316-19396.</p>
Private Duty Nursing	As medically necessary and when prescribed by an attending physician for treatment and services rendered by a registered nurse (R.N.) or a licensed practical nurse (L.P.N.), who is not an immediate relative.
Sitter Services	As medically necessary, a sitter who is not a relative may be used where an enrollee is confined to a hospital as a bed patient and certification is made by a network physician that R.N. or L.P.N. is needed and neither is available.
Convalescent Care	Upon receipt of proof that a Covered Person has incurred Medically Necessary expenses related to convalescent care, the Plan shall pay for up to and including the one-hundredth (100th) day of confinement during any calendar year for convalescent facility(ies) room, board and general nursing care, provided: (1) a Physician recommends confinement for convalescence; (2) the enrollee is under the continuous care of a Physician during the entire period of confinement; and (3) the confinement is required for other than custodial care.
Organ Transplant and Donor Organ Procurement	As medically necessary for a covered organ transplant.
Psychiatric Pharmacy Services	As medically necessary. DESI, LTE, and IRS drugs excluded.
Transportation to Covered Mental Health Services	<p>As medically necessary for enrollees lacking accessible transportation.</p> <p>The availability of specialty services, as related to travel distance, should meet the usual and customary standards for the community. However, in the event the BHO has no contracted provider for specialty services that meets the travel distance or other access requirements, transportation must be provided to an enrollee regardless of whether or not the enrollee is a child and needs to be accompanied by an adult, transportation must be provided for both the child and the accompanying adult.</p>
Mental Health Crisis Services	As medically necessary.

- (2) The managed care organization shall be allowed to use alternative services, whether listed as covered or non-covered, when the use of alternative services is medically appropriate and cost-effective.

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- (3) The following preventive medical services (identified by applicable CPT procedure codes) shall be covered subject to any limitations described herein, within the scope of standard medical practice, and shall be exempt from any deductibles and copayments as described herein.

Dental services and laboratory services not specifically listed herein, which are required pursuant to the Medicaid Early Periodic Screening, Diagnosis and Treatment (EPSDT) program for persons under age 21, shall be provided in accordance with the TennCare periodicity schedule for such services.

## (a) Office Visits

## 1. NEW PATIENT

99381 - Initial evaluation  
 99382 - age 1 through 4 years  
 99383 - age 5 through 11 years  
 99384 - age 12 through 17 years  
 99385 - age 18 through 39 years  
 99386 - age 40 through 64 years  
 99387 - age 65 years and over

## 2. ESTABLISHED PATIENT

99391 - Periodic reevaluation  
 99392 - age 1 through 4 years  
 99393 - age 5 through 11 years  
 99394 - age 12 through 17 years  
 99395 - age 18 through 39 years  
 99396 - age 40 through 64 years  
 99397 - age 65 years and over

## (b) Counseling and Risk Factor Reduction Intervention

## 1. INDIVIDUAL

99401 - approximately 15 minutes  
 99402 - approximately 30 minutes  
 99403 - approximately 45 minutes  
 99404 - approximately 60 minutes

## 2. GROUP

99411 - approximately 30 minutes  
 99412 - approximately 60 minutes

- (c) Family Planning Services if not part of a Preventive Services office visit, should be billed using the codes in (b)1. above.

## (d) Prenatal Care

59400 Routine obstetric care including antepartum care, vaginal delivery (with or without episiotomy, and/or forceps) and postpartum care

59410 Vaginal delivery only (with or without episiotomy and/or forceps) including postpartum care

(Rule 1200-13-13-.04, continued)

- 59430 Postpartum care only (separate procedure)
- 59510 Routine obstetric care including antepartum care, cesarean delivery, and postpartum care
- 59515 Cesarean delivery only including postpartum care

(e) Other preventive services

- 99420 Administration and interpretation of health risk assessment instrument (e.g., health hazard appraisal)
- 90700 through 90742 - Immunizations
- 92551 Screening test, pure tone, air only (Audiologic function)
- 92552 Pure tone audiometry (threshold); air only

Any laboratory test or procedure listed in the preventive services periodicity schedule when the service CPT code is one of the above preventive medicine codes. This includes mammography screening (76092) as indicated in the periodicity schedule.

(4) Maximum Lifetime Limitations.

The following maximum lifetime limitations shall apply to the services outlined in paragraphs (1) and (2) above. The managed care organizations shall not impose service limitations that are more restrictive than those described herein but benefits may be provided in excess of these amounts at the managed care organization’s discretion. Determination of these limitations shall be based upon the managed care organization’s payments for those services and shall exclude payments made by the enrollee in the form of deductibles, copayments, and/or special fees. Persons who are determined to be Seriously and/or Persistently Mentally Ill or Seriously Emotionally Disturbed by TennCare are exempt from limitations on substance abuse services. Children under age 21 are also exempt from limitations on substance abuse services.

Detoxification	Ten (10) days per lifetime
Substance abuse benefits (Inpatient and outpatient)	\$30,000

- (5) Emergency Medical Services shall be available twenty-four (24) hours per day, seven (7) days per week. Coverage of emergency medical services shall not be subject to prior authorization by the managed care organization but may include a requirement that notice be given to the managed care organization of use of out-of-plan emergency services. However, such notice requirements shall provide at least a 24-hour time frame after the emergency for notice to be given to the managed care organization.
- (6) Managed Care Organizations may not offer incentives such as a greater variety and/or quantity of health care services and benefits as a means of promoting enrollment in their respective plans.
- (7) Effective January 1, 2003, the covered benefits for TennCare Medicaid will be as follows:

TennCare managed care contractors shall cover, at a minimum, the following services and benefits subject to any applicable limitations described herein effective January 1, 2003. Any and all medically necessary services may require prior authorization or approval by the managed care contractor, except

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where prohibited by law. As stated elsewhere in these rules, managed care organizations shall not require prior authorization or approval for services rendered in the event of an emergency need of the enrollee. Such emergency services may be reviewed on the basis of medical necessity or other MCO administrator requirements, but cannot be denied solely because the provider did not obtain prior authorization or approval from the enrollee’s managed care organization. Managed care contractors shall not impose any service limitations that are more restrictive than those described herein; however, this provision shall not limit the managed care contractor’s ability to establish procedures for the determination of medical necessity. Services for which there is no federal financial participation (FFP) are not covered.

(a) Physical Health Services.

SERVICE	BENEFIT
Inpatient Hospital Services	As medically necessary. MCO may conduct concurrent and retrospective reviews.  Age 21 and older: Inpatient Rehabilitation Facilities services may be covered when determined to be a cost effective alternative by the MCO.  Under age 21: As medically necessary, Inpatient Rehabilitation Facilities services are covered under EPSDT.
Outpatient Hospital Services	As medically necessary.
Physician Inpatient Services	As medically necessary.
Physician Outpatient Services/ Community Health Clinics/Other Clinic Services	As medically necessary.
Lab and X-Ray Services	As medically necessary.  (Note: Audiologic testing to include audiometric screening, comprehensive audiometric testing, and auditory evoked potentials when determined to be medically necessary.)
Hospice Care	As medically necessary. Must be provided by an organization certified pursuant to Medicare Hospice requirements.
Dental Services	Preventive, diagnostic and treatment services for enrollees under age 21. Services for enrollees age 21 or older limited to cases of accidental injury to or neoplasms of the oral cavity, life threatening infections that include, but are not limited to, individuals with severely compromised immune systems, organ donor recipients, or individuals with or scheduled to receive a prosthetic heart valve(s), accidental injury to natural teeth including their replacement (limited to the cost of bridgework or the replacement of teeth injured in an accident unless teeth implants are medically necessary) and the removal of impacted wisdom teeth. (The adult dental “accident” must be caused by some external force, like a car accident, not by some normal act of mastication, or grinding of teeth while sleeping, or any other naturally occurring circumstance and must have occurred during a period of TennCare eligibility and within twelve (12) months from the date service is requested.)

(Rule 1200-13-13-.04, continued)

	<p>Orthodontics limited to individuals under age 21 except when an orthodontic treatment plan is approved prior to the enrollee attaining 20 ½ years of age, and treatment is initiated prior to the recipient attaining 21 years of age, or when orthodontic treatment is the result of facial hemiatrophy or congenital birth defects (if enrollee was covered by TennCare at birth).</p>
Vision Services	<p>Age 21 and older: Medical eye care, meaning evaluation and management of abnormal conditions, diseases, and disorders of the eye (not including evaluation and treatment of refractive state), will be covered. Routine, periodic assessment, evaluation, or screening of normal eyes and examinations for the purpose of prescribing, fitting or changing eyeglass and /or contact lenses will not be covered.</p> <p>Under age 21: Preventive, diagnostic, and treatment services (including eyeglasses) are covered as medically necessary.</p>
Home Health Care	<p>Age 21 and older: As medically necessary, all home health care as delivered by a licensed Home Health Agency, as defined by 42 CFR §440.70, limited to 125 visits per calendar year (January - December).</p> <p>Under age 21: As medically necessary.</p> <p>A home health visit includes any of the following: Skilled Nursing, Physical Therapy, Occupational Therapy, Speech Pathology and Audiology Services, and Home Health Aide. Full-time nursing services are not covered for adults 21 years of age and over.</p>
Pharmacy Services (obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy or those administered to a long-term care facility resident (nursing facility))	<p>As medically necessary. Certain drugs (known as DESI, LTE, IRS drugs) are excluded from coverage, or as provided herein at 1200-13-13-.10.</p> <p>TennCare is responsible for the provision and payment of pharmacy benefits to individuals who are enrolled in the TennCare Program in the category of TennCare Medicaid/Medicare dual eligible. (However, this does not include pharmaceuticals administered in a doctor's office.)</p>
Durable Medical Equipment	As medically necessary.
Medical Supplies	As medically necessary.
Emergency Air and Ground Ambulance Transportation	As medically necessary.
Non-Emergency Transportation (including Non-Emergency Ambulance Transportation)	<p>As necessary to get an enrollee to and from covered services, for enrollees not having access to transportation. MCOs may require advance notice of the need in order to timely arrange transportation.</p> <p>The travel to access primary care and dental services must meet the requirements of the waiver terms and conditions. The availability of specialty services as related to travel distance should meet the usual and customary standards for the community. However, in the event the MCO is unable to negotiate such an arrangement for an enrollee, transportation</p>

(Rule 1200-13-13-.04, continued)

	<p>must be provided regardless of whether or not the enrollee has access to transportation. If the enrollee is a child, transportation must be provided for the child and an accompanying adult. However, transportation for a child shall not be denied pursuant to any policy which poses a blanket restriction due to enrollee's age or lack of parental accompaniment. (Note: Tennessee recognizes the "mature minor exception" to permission for medical treatment). Any decision to deny transportation of a child due to an enrollee's age or lack of parental accompaniment must be made on a case-by-case basis and must be based on the individual facts surrounding the request. As with any denial, all notices and actions must be in accordance with the appeal process.</p> <p>At such time that TennCare carves out the MCO's responsibility to provide Dental Services, the provision of transportation to and from said services shall remain with the MCO.</p>
<p>Bariatric Surgery, including, but not limited to, Gastric Stapling, Intestinal By-pass Surgery, and Banding</p>	<p>As medically necessary and provided in accordance with clinical guidelines established by the Bureau of TennCare.</p>
<p>Community Health Services</p>	<p>As medically necessary.</p>
<p>Renal Dialysis Services</p>	<p>As medically necessary, for the first ninety (90) days prior to being covered by Medicare.</p>
<p>EPSDT Services</p>	<p>Age 21 and older: Not covered.</p> <p>Under age 21: Covered as medically necessary, except that the screenings do not have to be medically necessary. Children may also receive screenings in-between regular checkups if a parent or caregiver believes there is a problem.</p> <p>Screening, interperiodic screening, diagnostic and follow-up treatment services as medically necessary in accordance with federal regulations as described in 42 CFR Part 441, Subpart B, and the Omnibus Budget Reconciliation Act of 1989 for enrollees under age 21. Except for Dental services, screens shall be in accordance with the periodicity schedule set forth in the latest "American Academy of Pediatrics Recommendations For Preventive Pediatric Health Care" and all components of the screens must be consistent with the latest "American Academy of Pediatrics Recommendations For Preventive Pediatric Health Care". Dental screens shall be in accordance with the latest periodicity schedule set forth by either the American Academy of Pediatric Dentistry or the American Academy of Pediatrics and all components of the screens must be consistent with the latest recommendations by the American Academy of Pediatric Dentistry or the American Academy of Pediatrics.</p>
<p>Chiropractic services</p>	<p>Under age 21: Covered as medically necessary in accordance with EPSDT requirements.</p>

(Rule 1200-13-13-.04, continued)

	Age 21 and over: Not covered.
Private Duty Nursing	Under age 21: Covered as medically necessary in accordance with EPSDT requirements when prescribed by an attending physician for treatment and services rendered by a registered nurse (R.N.) or a licensed practical nurse (L.P.N.) who is not an immediate relative.  Age 21 and over: Not covered.
Convalescent Care Services	Not covered.
Speech Therapy	Age 21 and older: Covered as medically necessary, by a Licensed Speech Therapist to restore speech (as long as there is continued medical progress) after a loss or impairment.  Under age 21: Covered as medically necessary in accordance with EPSDT requirements.
Organ Transplant and Donor Organ Procurement	Age 21 and older: All medically necessary and non-investigational/experimental organ transplants are covered. These include, but may not be limited to: Bone Marrow/Stem cell Cornea Heart Heart/Lung Kidney Kidney/Pancreas Liver Lung Pancreas Small bowel/Multi-visceral.  Under age 21: Covered as medically necessary in accordance with EPSDT requirements. Experimental or investigational transplants are not covered.
Reconstructive Breast Surgery	Covered in accordance with Tenn. Code Ann. § 56-7-2507 which requires coverage of all stages of reconstructive breast surgery on a diseased breast as a result of a mastectomy as well as any surgical procedure on the non-diseased breast deemed necessary to establish symmetry between the two breasts in the manner chosen by the physician. The surgical procedure performed on a non-diseased breast to establish symmetry with the diseased breast will only be covered if the surgical procedure performed on a non-diseased breast occurs within five (5) years of the date the reconstructive breast surgery was performed on a diseased breast.
Sitter Services	Not covered.
Occupational Therapy	Age 21 and older: Covered as medically necessary, by a Licensed Occupational Therapist, to restore, improve, or stabilize impaired functions.  Under age 21: covered as medically necessary in accordance with EPSDT requirements.
Physical Therapy	Age 21 and older: Covered as medically necessary, by a Licensed Physical Therapist, to restore, improve, or stabilize impaired functions.

(Rule 1200-13-13-.04, continued)

	Under age 21: covered as medically necessary in accordance with EPSDT requirements.
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(b) Mental Health and Substance Abuse Treatment Services

SERVICE	BENEFIT
Psychiatric Inpatient Services	As medically necessary
Psychiatric Physician Inpatient Services	As medically necessary
Outpatient Mental Health Services (including physician services)	As medically necessary
Inpatient and Outpatient Substance Abuse Benefits  Note: When medically appropriate, services in a licensed substance abuse residential treatment facility may be substituted as a cost effective alternative for inpatient substance abuse services.	Age 21 and older: As medically necessary. Limited to 10 days detox, with a \$30,000 limit in lifetime medically necessary benefits.  Under age 21: As medically necessary.
Psychiatric Pharmacy Services	As medically necessary. DESI, LTE, and IRS drugs excluded and as further provided herein at 1200-13-13.04(7)(c) and 1200-13-13-.10
Emergency Air and Ground Ambulance Services	As medically necessary.
Non-emergency Transportation	As necessary to get the enrollee to and from covered services, for enrollees lacking access to transportation.
Mental Health Case Management	As medically necessary
24-hour Psychiatric Residential Treatment	As medically necessary
Housing/Residential Care for Adults	As medically necessary.
Mental Health Crisis Services	As medically necessary
Psychiatric Rehabilitation Services	As medically necessary

(c) Pharmacy and Psychiatric Pharmacy.

Each MCC is permitted under the terms and conditions of the waiver approved by the federal government, to restrict coverage of prescription and non-prescription drugs to a TennCare-approved list of drugs known as a drug formulary. Each MCC must make this list of covered drugs available to the public. Through the use of a formulary, the following drugs or classes of drugs, or their medical uses, shall be excluded from coverage or otherwise restricted by the MCC as described in Sec. 1927 of the Social Security Act [42 U.S.C. §1396r-8]:

1. Agents for weight loss or weight gain.
2. Agents to promote fertility or for the treatment of impotence or infertility or for the reversal of sterilization.
3. Agents for cosmetic purposes or hair growth.
4. Agents for symptomatic relief of coughs and colds.
5. Agents to promote smoking cessation.
6. Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

(Rule 1200-13-13-.04, continued)

7. Nonprescription drugs.
8. Covered outpatient drugs, which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

The MCC or TennCare shall not cover drugs considered by the FDA to be Less Than Effective (LTE) and DESI drugs, or drugs considered to be Identical, Related, and Similar (IRS) to DESI and LTE drugs or any other pharmacy services for which federal financial participation (FFP) is not available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age. MCCs and TennCare shall not cover experimental or investigational drugs, which have not received final approval from the FDA.

- (8) TennCare Maintenance Drug List as of January 1, 2003.

TennCare will develop and publish a list of generic, multi-source drugs used in the maintenance of chronic conditions that may be dispensed in quantities of one hundred (100) units or a three (3) month supply, whichever is greater. This maintenance drug list will allow dispensing pharmacies to provide greater supplies of chronic medications to members and reduce copayments for enrollees with appropriate, yet high utilization needs.

- (9) Use of Alternative Services as of January 1, 2003.

MCCs shall be allowed, but are not required, to use alternative services, whether listed as covered or non-covered, when the use of alternative services is medically appropriate and cost-effective and provided in accordance with the TennCare/MCC Contract.

- (10) Preventive Medical Services as of January 1, 2003.

The following preventive services (identified by applicable CPT procedure codes) shall be covered subject to any limitations described herein, within the scope of standard medical practice.

- (a) Office Visits.

1. New Patient

99381 - Initial evaluation  
 99382 - ages 1 through 4 years  
 99383 - ages 5 through 11 years  
 99384 - ages 12 through 17 years  
 99385 - ages 18 through 39 years  
 99386 - ages 40 through 64 years  
 99387 - ages 65 years and older

2. Established Patient

99391 - Periodic evaluation  
 99392 - ages 1 through 4 years  
 99393 - ages 5 through 11 years  
 99394 - ages 12 through 17 years  
 99395 - ages 18 through 39 years  
 99396 - ages 40 through 64 years  
 99397 - ages 65 years and older

(Rule 1200-13-13-.04, continued)

- (b) Counseling and Risk Factor Reduction Intervention.
  - 1. Individual
    - 99401 - approximately 15 minutes
    - 99402 - approximately 30 minutes
    - 99403 - approximately 45 minutes
    - 99404 - approximately 60 minutes
  - 2. Group
    - 99411 - approximately 30 minutes
    - 99412 - approximately 60 minutes
- (c) Family Planning Services if not part of a preventive services office, should be billed by using the codes in (b)1. above.
- (d) Prenatal Care
  - 59400 Routine obstetric care including antepartum care, vaginal delivery (with or without episiotomy, and/or forceps) and postpartum care
  - 59410 Vaginal delivery only (with or without episiotomy, and/or forceps) including postpartum care
  - 59425 Antepartum care only, 4 - 6 visits
  - 59426 Antepartum care only, 7 or more visits
  - 59430 Postpartum care only (separate procedure)
  - 59510 Routine obstetric care including antepartum care, cesarean delivery, and postpartum care
  - 59515 Cesarean delivery only including postpartum care
  - 59610 Routine obstetric care including antepartum care, vaginal delivery (with or without episiotomy and/or forceps) and postpartum, after previous cesarean delivery
  - 59618 Routine obstetric care including antepartum care, cesarean delivery, and postpartum care, following attempted vaginal delivery after previous cesarean delivery
- (e) Other Preventive Services
  - 99173 Vision
  - 96110 Developmental Code - Limited
  - 99420 Administration and interpretation of health risk assessment instrument (e.g., health hazard appraisal)
  - 99431 Newborn - Initial Hospitalization

(Rule 1200-13-13-.04, continued)

- 99435 Newborn - Assessment and Discharge Same Day
- 90700 through 90744 Immunizations
- 92551 Screening test, pure tone, air only (Audiologic function)
- 92552 Pure tone audiometry (threshold); air only

Any laboratory test procedure listed in the preventive services periodicity schedule when the services CPT code is one of the above preventive medicine codes. This includes mammography screening (76092) as indicated in the periodicity schedule.

(11) Maximum Lifetime Limitations as of January 1, 2003

The following maximum lifetime limitations shall apply to the services outlined in paragraphs (7)(b) and (10) above. The MCCs shall not impose services limitations that are more restrictive than those described herein but benefits may be provided in excess of these amounts at the MCC’s discretion. Determination of these limitations shall be based upon the MCC’s payments for those services. This limit shall not apply to children under EPSDT guidelines.

Detoxification	Ten (10) days
Substance Abuse Benefits (Inpatient and outpatient)	\$30,000

(12) Emergency Medical Services as of January 1, 2003.

Emergency medical services shall be available twenty-four (24) hours per day, seven (7) days per week. Coverage of emergency medical services shall not be subject to prior authorization by the MCC but may include a requirement that notice be given to the MCC of use of out-of-plan emergency services. However, such requirements shall provide at least a twenty-four (24) hour time frame after the emergency for notice to be given to the MCC.

(13) Hospital Discharges as of January 1, 2003.

Hospital discharges of mothers and newborn babies following delivery shall take into consideration the following guidelines:

- (a) The decision to discharge postpartum mothers and newborns less than 24 - 48 hours after delivery should be made based upon discharge criteria collaboratively developed and adopted by obstetricians, pediatricians, family practitioners, delivery hospitals, and health plans. The criteria must be contingent upon appropriate preparation, meeting in hospital criteria for both mother and baby, and the planning and implementation of appropriate follow-up. An individualized plan of care must include identification of a primary care provider for both mother and baby and arrangements for follow-up evaluation of the newborn.

Length of hospital stay is only one factor to consider when attempting to optimize patient outcomes for postpartum women and newborns. Excellent outcomes are possible even when length of stay is very brief (less than 24 hours) if perinatal health care is well planned, allows for continuity of care, and patients are well chosen. Some postpartum patients and/or newborns may require extended hospitalization (greater than 48-72 hours) despite meticulous care due to medical, obstetric, or neonatal complications. The decision for time of discharge must be individualized and made by the physicians caring for the mother-baby pair. The following guidelines have been developed to aid in the identification of postpartum mothers and newborns

(Rule 1200-13-13-.04, continued)

who may be candidates for discharge prior to 24 - 48 hours. The guidelines also provide examples where discharge is inappropriate.

Principles of patient care should be based upon data obtained by clinical research. Regarding the question of postpartum and newborn length of hospitalization, there are inadequate studies available to provide clear direction for clinical decision-making. Clinical guidelines represent an attempt to conceptualize what is, in reality, a dynamic process of health care refinement. Review of these guidelines is desirable and expected.

No provider shall be denied participation, reimbursement or reduction in reimbursement within a network solely related to his/her compliance with the "Guidelines for Discharge of Postpartum Mothers and Newborns."

(b) Guidelines for Discharge of Postpartum Mothers and Newborns.

1. Discharge Planning.

(i) Discharge planning should occur in a planned and systematic fashion for all postpartum women and newborns in order to enhance care, prevent complications and minimize the need for rehospitalization. Prior to discharge a discussion should be held between the physician or another health care provider and the mother (and father if possible) about any expected perinatal problems and ways to cope with them. Plans for future and immediate care as well as instructions to follow in the event of an emergency or complication should be discussed.

(ii) Follow-up care must be planned for both mother and baby at the time of discharge. For patients leaving the hospital prior to 24 - 48 hours, contact within 48 - 72 hours of discharge is recommended and may include appropriate follow-up within 48 - 72 hours as deemed necessary by the attending provider, depending upon individual patient need. This follow-up visit will be acknowledged as a provider encounter.

(I) Maternal Considerations:

I. Prior to discharge, the patient should be informed of normal postpartum events including but not limited to:

A. Lochial patterns;

B. Range of activity and exercise;

C. Breast care;

D. Bladder care;

E. Dietary needs;

F. Perineal care;

G. Emotional responses;

H. What to report to physician or other health care provider including:

(Rule 1200-13-13-.04, continued)

- (A) Elevation of temperature,
  - (B) Chills,
  - (C) Leg pains, and
  - (D) Increased vaginal bleeding.
  - I. Method of contraception;
  - J. Coitus resumption; and
  - K. Specific instructions for follow-up (routine and emergent)
- (II) Neonatal Considerations:
- I. Prior to discharge, the following points should be reviewed with the mother or, preferably, with both parents:
    - A. Condition of the neonate;
    - B. Immediate needs of the neonate, (e.g., feeding methods and environmental supports);
    - C. Instructions to follow in the event of a newborn complication or emergency;
    - D. Feeding techniques;
    - E. Skin care, including cord care and genital care;
    - F. Temperature assessment and measurement with the thermometer; and
    - G. Assessment of neonatal well-being;
    - H. Recognition of illness including jaundice;
    - I. Proper infant safety including use of car seat and sleeping position;
    - J. Reasonable expectations for the future; and
    - K. Importance of maintaining immunization begun with initial dose of hepatitis B vaccine.
2. Criteria for Maternal Discharge Less Than 24 - 48 Hours Following Delivery.
- (i) Prior to discharge of the mother, the following should occur:
    - (I) The mother should have been observed after delivery for a sufficient time to ensure that her condition is stable, that she has sufficiently recovered and may be safely transferred to outpatient care.

(Rule 1200-13-13-.04, continued)

- (II) Laboratory evaluations should be obtained and include ABO blood group and Rh typing with appropriate use of Rh immune globulin; and hematocrit or hemoglobin.
- (III) The mother should have received adequate preparation for and be able to assume self and immediate neonatal care.
- (ii) Factors which may exclude maternal discharge prior to 24 - 48 hours include:
  - (I) Abnormal bleeding.
  - (II) Fever equal to or greater than 100.4 degrees.
  - (III) Inadequate or no prenatal care.
  - (IV) Cesarean section.
  - (V) Untreated or unstable maternal medical condition.
  - (VI) Uncontrolled hypertension.
  - (VII) Inability to void.
  - (VIII) Inability to tolerate solid foods.
  - (IX) Adolescent mother without adequate support and where appropriate follow-up has not been established. A nurse home visit within 24 - 48 hours of discharge would act as appropriate follow-up.
  - (X) All efforts should be made to keep mother and infant together to ensure simultaneous discharge.
  - (XI) Psychosocial problems (maternal or family) which have been identified prenatally or in hospital. Where appropriate follow-up has not been established, a nurse home visit within 24 - 48 hours of discharge would act as appropriate follow-up.
- 3. Criteria for Neonatal Discharge Less than 24-48 Hours Following Delivery.

The nursery stay is planned to allow the identification of early problems and to reinforce instruction in preparation for care of the infant at home. Complications often are not predictable by prenatal and intrapartum events. Because many neonatal problems do not become apparent until several days after birth there is an element of medical risk in early neonatal discharge. Most problems are manifest during the first 12 hours, and discharge at or prior to 24 hours is appropriate for many newborns.

- (i) Prior to discharge of the newborn at 24-48 hours, the following should have occurred:
  - (I) The course of antepartum, intrapartum, and postpartum care for both mother and fetus should be without problems, which may lead to newborn complications.

(Rule 1200-13-13-.04, continued)

- (II) The baby is a single birth at 37 to 42 weeks' gestation and the birth weight is appropriate for gestational age according to appropriate intrauterine growth curves.
  - (III) The baby's vital signs are documented as being normal and stable for the 12 hours preceding discharge, including a respiratory rate below 60/minute, a heart rate of 100 to 160 beats per minute, and an axillary temperature of 36.1 degrees C in an open crib with appropriate clothing.
  - (IV) The baby has urinated and passed at least one stool.
  - (V) No evidence of excessive bleeding after circumcision greater than 2 hours.
  - (VI) The baby has completed at least two successful feedings, with documentation that the baby is able to coordinate sucking, swallowing, and breathing while feeding.
  - (VII) No evidence of significant jaundice in the first 24 hours of life.
  - (VIII) The parent's or caretaker's knowledge, ability, and confidence to provide adequate care for her baby are documented.
  - (IX) Laboratory data are available and reviewed including:
    - I. Maternal syphilis and hepatitis B surface antigen status.
    - II. Cord or infant blood type and direct Coomb's test result as clinically indicated.
  - (X) Screening tests are performed in accordance with state regulations. If the test is performed before 24 hours of milk feeding, a system for repeating the test must be assured during the follow-up visit.
  - (XI) Initial hepatitis B vaccine is administered or a scheduled appointment for its administration has been made.
  - (XII) A physician-directed source of continuing medical care for both the mother and the baby is identified. For newborns discharged less than 24-48 hours after delivery, a definitive plan for contact within 48-72 hours after discharge has been made. A nurse home visit within 24-48 hours would be considered appropriate follow-up.
- (ii) Maternal factors which may exclude discharge of the newborn prior to 24-48 hours include:
- (I) Inadequate or no prenatal care,
  - (II) Medical conditions that pose a significant risk to the infant,
  - (III) Group B streptococcus colonization,
  - (IV) Untreated syphilis,
  - (V) Suspected active genital herpes,

(Rule 1200-13-13-.04, continued)

- (VI) HIV,
  - (VII) Adolescent without adequate support and where appropriate follow-up has not been established (a nurse home visit within 24-48 hours of discharge will act as appropriate follow-up),
  - (VIII) Mental retardation or psychiatric illness, and
  - (IX) Requirements for continued maternal hospitalization.
- (iii) Newborn factors which may exclude discharge of the newborn prior to 24-48 hours include:
- (I) Preterm gestation (less than 37 weeks);
  - (II) Small for gestational age;
  - (III) Large for gestational age;
  - (IV) Abnormal physical exam, vital signs, colors, activity, feeding or stooling;
  - (V) Significant congenital malformations; and
  - (VI) Abnormal laboratory finding:
    - I. Hypoglycemia,
    - II. Hyperbilirubinemia,
    - III. Polycythemia,
    - IV. Anemia, and
    - V. Rapid plasma reagin positive.
- (14) Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services for TennCare Medicaid Enrollees under the Age of Twenty-one (21).

The Bureau of TennCare, through its contracts with managed care organizations (MCOs), behavioral health organizations (BHOs) and other contractors (also referred to collectively as Contractors), operates an EPSDT program to provide health care services as required by 42 C.F.R. Part 441, Subpart B, and the "Omnibus Budget Reconciliation Act of 1989" to TennCare Medicaid-eligible enrollees under the age of twenty-one (21).

- (a) Responsibilities of the Bureau of TennCare.
1. The Bureau will:
    - (i) Keep Contractors informed as to changes to the requirements for the operation of the EPSDT program;
    - (ii) Make changes to TennCare policy when necessary to keep the EPSDT program in compliance with federal and state requirements;

(Rule 1200-13-13-.04, continued)

- (iii) Provide policy clarification when needed; and
  - (iv) Oversee the activities of the Contractors to assure compliance with all aspects of the EPSDT program.
2. The Bureau, through local health departments, shall provide information on covered services to adolescent prenatal patients who enter TennCare Medicaid through presumptive eligibility. Assistance will be offered to presumptive eligibles on the day eligibility is determined in making a timely first prenatal appointment. For a woman past her first trimester, this appointment should occur within fifteen (15) days.
  3. The Bureau, through the Department of Children's Services, shall inform foster parents and institutions or other residential treatment settings with a number of eligible children, annually or more often when the need arises, including when a change of administrators, social workers, or foster parents occur, of the availability of EPSDT services.
- (b) Responsibilities of Contractors.

1. Contractors shall aggressively and effectively inform TennCare Medicaid enrollees of the existence of the EPSDT program, including the availability of specific EPSDT screening and treatment services. Such informing shall occur in a timely manner, generally within sixty (60) days of the MCC's receipt of notification of the child's enrollment in its plan and if no one eligible in the family has utilized EPSDT services, at least annually thereafter.

Contractors shall document to the Bureau the contractor's outreach activities and what efforts were made to inform TennCare Medicaid enrollees and/or the enrollee's responsible party about the availability of EPSDT services and how to access such services. All children, particularly those who have not received complete screenings timely, shall be the target of outreach efforts by the MCOs which are reasonably calculated to insure the child's participation in EPSDT. Failure to timely submit the requested data may result in liquidated damages as described in the contracts between the Bureau of TennCare and the Contractors.

2. Contractors shall use clear and non-technical terms to provide a combination of written and oral information so that the program is clearly and easily understandable.
3. Contractors shall use effective methods (developed through collaboration with agencies which have established procedures for working with such individuals) to inform TennCare Medicaid individuals who are illiterate, blind, deaf, or cannot understand English, about the availability of EPSDT services.
4. Contractors shall design and conduct outreach to inform all TennCare Medicaid-eligible individuals about what services are available under EPSDT, the benefits of preventive health care, where services are available, and how to obtain them; and that necessary transportation and scheduling assistance is available.
5. Contractors shall create a system so that TennCare Medicaid families can readily access an accurate list of names and phone numbers of contract providers who are currently accepting TennCare.

(Rule 1200-13-13-.04, continued)

6. Contractors shall make known and offer to a TennCare Medicaid-covered child and the child's responsible party of the availability for both transportation and scheduling assistance prior to the due date of the TennCare Medicaid child's periodic examination.
7. Contractors shall provide TennCare Medicaid enrollees assistance in scheduling appointments, and obtaining transportation prior to the date of each periodic examination as requested and necessary.
8. Contractors shall document services declined by a parent or guardian of a TennCare Medicaid-eligible child or a mature competent child, specifying the particular service declined so that outreach and education for other EPSDT services continues.
9. Contractors shall maintain records of the efforts taken to outreach TennCare Medicaid children who have missed screening appointments when scheduled or who have failed to schedule regular check-ups. These records shall be made available to the Bureau and other parties as directed.
10. Contractors shall treat a TennCare Medicaid-eligible woman's request for EPSDT services during pregnancy as a request for EPSDT services for the child at birth. If the pregnant woman is under age twenty-one (21), she may request EPSDT services for herself.

(c) Compliance.

Contractors must document and maintain records of all outreach efforts made to inform TennCare Medicaid enrollees about the availability of EPSDT services.

**Authority:** T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.04; new effective date February 12, 2003.

**1200-13-13-.05 ENROLLEE COST SHARING.** TennCare Medicaid enrollees do not have cost sharing responsibilities for TennCare coverage and covered services.

**Authority:** T.C.A. §§4-5-202, 71-5-105, 71-5-109, Acts of 2003, Public Chapter 412, §1(c), and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.05; new effective date February 12, 2003. Amendment by Acts of 2003, Public Chapter 412, §1(c) filed and effective June 25, 2003.

**1200-13-13-.06 MANAGED CARE ORGANIZATIONS.**

Managed care organizations participating in TennCare will be limited to Health Maintenance Organizations that are appropriately licensed to operate within the state of Tennessee to provide medical services in the TennCare program. Managed Care Organizations shall have a fully executed contract with the Tennessee Department of Finance and Administration. Behavioral Health Organizations shall have a fully executed contract with the Tennessee Department of Mental Health and Developmental Disabilities. MCOs, BHOs, DBMs and PBMs shall agree to comply with all applicable rules, policies, and contract requirements as specified by the Tennessee Department of Finance and Administration and the Tennessee Department of Mental Health and Developmental Disabilities as applicable. Managed care organizations must continually demonstrate a sufficient provider network based on the standards set by the Bureau of TennCare to remain in the program and must reasonably meet all quality of care requirements established by the Bureau of TennCare.

(Rule 1200-13-13-.06, continued)

**Authority:** T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.06; new effective date February 12, 2003.

#### **1200-13-13-.07 MANAGED CARE ORGANIZATION PAYMENT.**

Managed care organizations will be paid pursuant to the contract the MCO has fully executed with the Tennessee Department of Finance and Administration.

**Authority:** T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.07; new effective date February 12, 2003.

#### **1200-13-13-.08 PROVIDERS.**

- (1) Payment in full.
  - (a) All MCC participating network providers must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCC plus any deductible or copayment required by the TennCare Program to be paid by the individual.
  - (b) Any non-participating providers who provide TennCare Program covered services by authorization from an MCC must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCC plus any deductible or copayment required by the TennCare Program to be paid by the individual.
- (2) In situations where a MCC authorizes a service to be rendered by a provider who is not a participating network provider with the MCC, payment to the provider shall be no less than eighty percent (80%) of the lowest rate paid by the MCC to equivalent participating network providers for the same service. For emergency services provided to an enrollee by a provider who is not a participating network provider, the MCC shall reimburse the provider at the rate of 100% of the lowest rate paid to the MCC's network providers. Emergency care to enrollees shall not require preauthorization.
- (3) Participation in the TennCare program will be limited to providers who:
  - (a) Accept, as payment in full, the amounts paid by the managed care contractor, including copays from the enrollee, or the amounts paid in lieu of the managed care contractor by a third party (Medicare, insurance, etc.);
  - (b) Maintain Tennessee, or the State in which s/he practices, medical licenses and/or certifications as required by his/her practice, or licensure by the TDMHDD, if appropriate;
  - (c) Are not under a federal Drug Enforcement Agency (DEA) restriction of his/her prescribing and/or dispensing certification for scheduled drugs (relative to physicians, osteopaths, dentists and pharmacists);
  - (d) Agree to maintain and provide access to TennCare and/or its agent all TennCare enrollee medical records for five (5) years from the date of service or upon written authorization from TennCare following an audit, whichever is shorter;
  - (e) Provide medical assistance at or above recognized standards of practice; and

(Rule 1200-13-13-.08, continued)

- (f) Comply with all contractual terms between the provider and the managed care contractor and TennCare policies as outlined in federal and state rules and regulations and TennCare provider manuals and bulletins.
- (g) Failure to comply with any of the above provisions (a) through (f) may subject a provider to the following actions:
  - 1. Sanctions set out in T.C.A. §71-5-118. In addition, the provider may be subject to stringent review/audit procedures, which may include clinical evaluation of services and a prepayment requirement for documentation and justification for each claim.
  - 2. The Bureau of TennCare may withhold or recover payments to managed care contractors in cases of provider fraud, willful misrepresentation, or flagrant non-compliance with contractual requirements and/or TennCare policies.
  - 3. The Bureau of TennCare may refuse to approve or may suspend provider participation with a provider if any person who has an ownership or controlling interest in the provider, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid or the US Title XX Services Program.
  - 4. The Bureau of TennCare may refuse to approve or may suspend provider participation if it determines that the provider did not fully and accurately make any disclosure of any person who has ownership or controlling interest in the provider, or is an agent or managing employee of the provider and has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid or the US Title XX Services Program since the inception of these programs.
  - 5. The Bureau of TennCare shall refuse to approve or shall suspend provider participation if the appropriate State Board of Licensing or Certification fails to license or certify the provider at any time for any reason or suspends or revokes a license or certification.
  - 6. The Bureau of TennCare shall refuse to approve or shall suspend provider participation upon notification by the US Office of Inspector General Department of Health and Human Services that the provider is not eligible under Medicare or Medicaid for federal financial participation.
  - 7. The Bureau of TennCare may recover from a managed care contractor any payments made by an enrollee and/or his family for a covered service, in total or in part, except as permitted. If a provider knowingly bills an enrollee and/or his family for a covered service, in total or in part, except as permitted, the Bureau of TennCare may terminate the provider's participation in TennCare.
- (4) Solicitations and Referrals.
  - (a) Managed care contractors and providers shall not solicit TennCare enrollees by any method offering as enticements other goods and services (free or otherwise) for the opportunity of providing the enrollee with TennCare covered services that are not medically necessary and/or that overutilize the TennCare program.
  - (b) A managed care contractor may request a waiver from this restriction in writing to TennCare. TennCare shall determine the value of a waiver request based upon the medical necessity and need for the solicitation. The managed care contractor may implement the solicitation only upon

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receipt of a written waiver approval from TennCare. This waiver is not transferable and may be canceled by TennCare upon written notice.

- (c) TennCare payments for services related to a non-waivered solicitation enticement shall be considered by TennCare as a non-covered service and recouped. Neither the managed care contractor nor the provider may bill the enrollee for non-covered services recouped under this authority.
  - (d) A provider shall not offer or receive remuneration in any form related to the volume or value of referrals made or received from or to another provider.
- (5) Providers may seek payment from a TennCare enrollee if the services are not covered by the TennCare program and the provider informed the enrollee the services were not covered prior to providing the service.
- (6) Providers may not seek payment from a TennCare enrollee under the following conditions:
- (a) The provider knew or should have known about the patient's TennCare eligibility or pending eligibility prior to providing services.
  - (b) The claim(s) submitted to TennCare or the enrollee's managed care contractor for payment was/were denied due to provider billing error or a TennCare claim processing error.
  - (c) The provider accepted TennCare assignment on a claim and it is determined that another payor paid an amount equal to or greater than the TennCare allowable amount.
  - (d) The provider failed to comply with TennCare policies and procedures or provided a service which lacks medical necessity or justification.
  - (e) The provider failed to submit or resubmit claims for payment within the time periods required by the managed care contractor or TennCare.
  - (f) The provider failed to ascertain the existence of TennCare eligibility or pending eligibility prior to providing non-emergency services. Even if the enrollee presents another form of insurance, the provider must determine whether the patient is covered under TennCare.
  - (g) The provider failed to inform the enrollee prior to providing a service not covered by TennCare that the service was not covered and the enrollee may be responsible for the cost of the service. Services which are non-covered by virtue of exceeding limitations are exempt from this requirement.
  - (h) The enrollee failed to keep a scheduled appointment(s).
- (7) Providers may seek payment from a person whose TennCare eligibility is pending at the time services are provided if the provider informs the person that TennCare assignment will not be accepted whether or not eligibility is established retroactively.
- (8) Providers may seek payment from a person whose TennCare eligibility is pending at the time services are provided. Providers may bill such persons at the provider's usual and customary rate for the services rendered. However, all monies collected for TennCare-covered services rendered during a period of TennCare eligibility must be refunded when a claim is submitted to TennCare if the provider agreed to accept TennCare assignment once retroactive TennCare eligibility was established.

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- (9) Providers of inpatient hospital services, outpatient hospital services, skilled nursing facility services, independent laboratory and x-ray services, hospice services, and home health agencies must be approved for Title XVIII-Medicare in order to be certified as providers under the TennCare Program; in the case of hospitals, the hospital must meet state licensure requirements and be approved by TennCare as an acute care hospital as of the date of enrollment in TennCare. Children's hospitals and State mental hospitals may participate in TennCare without having been Medicare approved; however, the hospital must be approved by the Joint Commission for Accreditation of Health Care Organizations as a condition of participation.
- (10) Pharmacy providers may not waive pharmacy copayments for TennCare Standard enrollees as a means of attracting business to their establishments. This does not prohibit a pharmacy from exercising professional judgment in cases where an enrollee may have a temporary or acute need for a prescribed drug, but is unable, at that moment, to pay the required copayment.
- (11) Providers shall not deny services for a Medicaid enrollee's failure to make copayments.

**Authority:** T.C.A. §§4-5-202, 71-5-105, 71-5-109, Acts of 2003, Public Chapter 412, §1(c), and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.08; new effective date February 12, 2003. Amendment by Acts of 2003, Public Chapter 412, §1(c) filed and effective June 25, 2003. Amendment filed October 12, 2004; effective December 26, 2004.

#### **1200-13-13-.09 THIRD PARTY RESOURCES.**

- (1) Individuals applying for TennCare Medicaid or TennCare Standard coverage shall disclose the availability of any third party health care coverage to the agency responsible for determining the individual's eligibility for TennCare.
- (2) An individual enrolled in TennCare Medicaid or TennCare Standard shall disclose access to third party resources to his/her specified Managed Care Contractors as soon as s/he becomes aware of the existence of any third party resources.
- (3) Managed Care Contractors under contract with the Tennessee Departments of Finance and Administration or Mental Health and Developmental Disabilities shall provide all third party resource information obtained from the plan's enrollees to the Bureau of TennCare on a regular basis as required by their contracts.
- (4) Managed Care Contractors shall enforce TennCare subrogation rights pursuant to T.C.A. § 71-5-117.
- (5) Managed Care Contractors may pay health insurance premiums for their enrollees if such payments are determined by the Bureau to be cost effective.
- (6) TennCare shall be the payor of last resort, except where contrary to federal or state law.

**Authority:** T.C.A. §§4-5-202, 71-5-105, 71-5-109, 71-5-117, and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.09; new effective date February 12, 2003.

#### **1200-13-13-.10 EXCLUSIONS.**

- (1) Non-covered services shall include, but are not limited to, the following:
  - (a) Eyeglasses, hearing aids or non-emergency dental services;

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- (b) Services performed for cosmetic purposes;
- (c) Medical services for inmates confined in a local, state, or federal prison, jail, youth development center, or other penal or correctional facility, including a furlough from such facility;
- (d) Medical services performed outside the United States;
- (e) Services for which there is no federal financial participation (FFP);
- (f) Except as further described in this rule, experimental or investigational organ transplants or other medical procedures, including the performance of a specified medical procedure which would be covered except for the fact that it is used in a manner that is not a recognized mode of treatment for a specific medical condition. The following organ transplants or other medical procedures shall be deemed to be covered services when the conditions described herein are met:
  - 1. Dose-intensive chemotherapy/autologous bone marrow transplants or stem cell transplants for the treatment of breast cancer. Coverage shall be limited to treatments administered according to National Cancer Institute (NCI) approved protocols in centers that are NCI approved or, if a center is not NCI approved, a center that meets the NCI established standards (e.g., record-keeping, informed consent, follow-up, etc.). A non-NCI approved center is responsible for providing evidence to the managed care organization that it meets NCI established standards. It shall be the responsibility of the managed care organization to determine compliance with the NCI standards for non-NCI approved centers and to contract with appropriate NCI approved and NCI equivalent centers within ninety (90) days of the effective date of this rule. All benefits, including but not limited to physician services, hospital inpatient or outpatient services, laboratory services, radiological services, pharmacy services, etc. that would otherwise be available to the enrollee shall also be available when the services are required as a component of, or adjunctive to, the provision of dose-intensive chemotherapy/autologous bone marrow transplants or stem cell transplants for the treatment of breast cancer.
- (g) Agents for weight loss or weight gain or weight reduction programs;
- (h) Services for the treatment of impotence or infertility or for the reversal of sterilization;
- (i) Autopsy/Necropsy;
- (j) Job-related illness or injury covered by workers compensation;
- (k) Pre-employment physical examinations; and
- (l) Fitness to duty examinations.
- (m) Non-covered investigative treatment or procedures include, but are not limited to, the following:
  - 1. If the drug or device cannot be lawfully marketed without approval of the US Food and Drug Administration and approval for marketing has not been given at the time the drug or device is furnished; or
  - 2. If the drug, device, medical treatment or procedure, or the patient informed consent document utilized with the drug, device, medical treatment or procedure, was not

(Rule 1200-13-13-.10, continued)

reviewed and approved by the treating facility's Institutional Review Board or other body serving a similar function, if federal law requires such review and approval; or

3. If reliable evidence shows that the drug, device, medical treatment or procedure is the subject of ongoing Phase I or Phase II clinical trials; is being used in the research, experimental, study or investigational arm of ongoing Phase III clinical trials, or is otherwise under study to determine its maximum tolerated dose, its toxicity, its safety, its efficacy or its efficacy as compared with a standard means of treatment or diagnosis; or
  4. If reliable evidence shows that the prevailing opinion among experts regarding the drug, device, medical treatment or procedure is that further studies or clinical trials are necessary to determine its maximum tolerated dose, its toxicity, its safety, its efficacy or its efficacy as compared with a standard means of treatment or diagnosis
- (n) The following drugs or classes of drugs, or their medical uses, shall be excluded from coverage or otherwise restricted by the MCC as described in Sec. 1927 of the Social Security Act [42 U.S.C. §1396r-8]:
1. Agents when used for weight loss or weight gain.
  2. Agents to promote fertility or services for the treatment of impotence or infertility or for the reversal of sterilization.
  3. Agents for cosmetic purposes or hair growth.
  4. Agents for symptomatic relief of coughs and colds.
  5. Agents to promote smoking cessation.
  6. Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.
  7. Nonprescription drugs.
  8. Covered outpatient drugs, which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

The MCC or TennCare shall not cover drugs considered by the FDA to be Less Than Effective (LTE) and DESI drugs, or drugs considered to be Identical, Related, and Similar (IRS) to DESI and LTE drugs or any other pharmacy services for which federal financial participation (FFP) is not available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age. MCCs and TennCare shall not cover experimental or investigational drugs, which have not received final approval from the FDA.

- (2) MCCs shall not authorize or pay for non-covered services or for non-emergency services obtained outside the health plan, unless the service is medically necessary, cannot be obtained within an enrollee's health plan and only if prior authorization is obtained from the enrollee's health plan.

**Authority:** T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.10; new effective date February 12, 2003.

**1200-13-13-.11 APPEAL OF ADVERSE ACTIONS AFFECTING TENNCARE SERVICES OR BENEFITS.**

## (1) Notice Requirements.

## (a) When Written Notice is Required.

1. A written notice shall be given to an enrollee by his/her MCC of any adverse action taken by the MCC to deny, reduce, suspend, or terminate medical assistance.
2. A written notice shall be given to an enrollee whenever his/her MCC has reason to expect that covered medical assistance for the enrollee will be delayed beyond the time lines prescribed by the TennCare contract or the terms and conditions of the TennCare waiver. Actions which can reasonably be anticipated to delay or disrupt access to medical assistance include:
  - (i) Change of primary care provider;
  - (ii) Pharmacy “lock-in”;
  - (iii) Decisions affecting the designation of a person as severely and persistently mentally ill (SPMI) or severely emotionally disturbed (SED);
  - (iv) Termination of a provider’s contract, by either party to the contract; or
  - (v) Inability to provide an adequate provider network.
3. A written notice shall be given to an enrollee when s/he has been prescribed a covered service on an on-going basis or with no specific ending date and the service is subject to a prior authorization requirement.
4. A written notice shall be given to an enrollee of any MCC-initiated reduction, termination or suspension of inpatient hospital care.
5. A written notice shall be given to an enrollee of any provider-initiated reduction, termination or suspension of:
  - (i) Any behavioral health service for a severely and persistently mentally ill (SPMI) adult enrollee or severely emotionally disturbed (SED) child;
  - (ii) Any inpatient psychiatric 24-hour or residential service;
  - (iii) Any service being provided to treat a patient’s chronic condition across a continuum of services when the next appropriate level of medical service is not immediately available; or
  - (iv) Home health services.

The enrollee’s MCC shall be promptly notified of a provider’s proposal to reduce, terminate or suspend one of the above services and of the recommended discharge plan, if any, to insure compliance with this rule.

## (b) Timing of Written Notice.

(Rule 1200-13-13-.11, continued)

1. Written notice of MCC-initiated reduction, termination or suspension of medical assistance must be provided to an enrollee within the time frames required by 42 C.F.R. §§431.210 - .214 (usually ten (10) days in advance). However, in instances of MCC-initiated reduction, termination or suspension of inpatient hospital treatment, the notice must be provided to an enrollee at least two business days in advance of the proposed action. Where applicable and not in conflict with this rule, the exceptions set out at 42 C.F.R. § § 431.211 - .214 permit or require reduction of the time frames within which advance notice must be provided.
  2. Written notice of an MCC's decision in response to a request by or on behalf of an enrollee for medical or related services must be provided within fourteen (14) calendar days of receipt of the request; however, a shorter period is required if a more prompt response is medically necessary in light of the enrollee's condition and the urgency of his/her need, as defined by a prudent lay person.
  3. Written notice of delay of covered medical assistance must be provided to an enrollee immediately upon an MCC's receipt of information leading it to expect that such delay will occur.
  4. Written notice of expiration of a prior authorization for a covered service which has been prescribed on an on-going basis or with no specific ending date must be provided to an enrollee no more than forty (40) days, nor less than thirty (30) days, prior to the expiration of the prior authorization. However, in the event that the period of authorization is less than thirty (30) days, the notice shall be issued upon authorization.
  5. Where required by paragraph (1)(a)5. of this rule, written notice of provider-initiated reduction, termination or suspension of services must be provided to an enrollee at least two (2) business days in advance of the proposed action.
  6. Written notice is deemed to be provided to an enrollee upon deposit with the US Postal Service or other commercial mail carrier, or upon hand-delivery to an enrollee or his/her representative.
- (c) Notice Contents.
1. Whenever this rule requires that a TennCare enrollee receive written notice of an adverse action affecting medical assistance, the notice must contain the following elements, written in concise, readable terms:
    - (i) The type and amount of TennCare services at issue and the identity of the individual, if any, who prescribed the services.
    - (ii) A statement of reasons for the proposed action. The statement of reasons shall include the specific facts, personal to the enrollee, which support the proposed action and sources from which such facts are derived. If the proposed action turns on a determination of medical necessity or other clinical decision, the statement of reasons shall:
      - (I) Identify by name those clinicians who were consulted in reaching the decision at issue;
      - (II) Identify specifically those medical records upon which those clinicians relied in reaching his/her decision; and

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- (III) Specify what part(s) of the criteria for medical necessity or coverage was not met.
    - (iii) Reference to the legal or policy basis for a proposed adverse action, including a plain and concise statement of, and official citation to, the applicable law, federal waiver provision, or TennCare contract provision relied upon.
    - (iv) Inform the enrollee about the opportunity to contest the decision, including the right to an expedited appeal in the case of urgent care and, in the case of termination, reduction or suspension of on-going services, the right to continuation of services pending appeal.
    - (v) If the enrollee has an ongoing illness or condition requiring medical care and the MCC or its network provider is under a duty to provide a discharge plan or otherwise arrange for the continuation of treatment following the proposed adverse action, the notice must include a readable explanation of the discharge plan, if any, and a description of the specific arrangements in place to provide for the enrollee's continuing care.
2. Binding Effect of Original Notice. TennCare and the MCCs shall be bound by their own notices, and may not rely upon any reasons or legal authorities other than those which are included in their written notices to a TennCare enrollee. Therefore, in the event that an enrollee appeals an adverse action, the reviewing authority shall consider only the factual reasons and legal authorities cited in the original notice to the enrollee, except that additional evidence beneficial to the enrollee may be considered on appeal.
  3. Insufficient Legal Authority in Notice. TennCare and the MCCs may not cite or rely upon policies that are inconsistent with federal law, the TennCare waiver, properly promulgated rules or contract provisions. If the MCC's reasons or legal authorities are not sufficient to support the proposed adverse action, the proposed action must be overruled and the disputed service must be provided. While this does not preclude the issuance of a new notice that may provide the predicate for subsequent adverse action, the new notice shall not cure the deficiencies in the original notice.
- (d) Special Provisions Pertaining to Pharmacy Notice.
1. If the service at issue is a prescription drug and the enrollee does not receive the medication of the type and amount prescribed, a written notice shall be provided by the pharmacy to inform the enrollee of:
    - (i) The circumstances under which the enrollee may obtain a two week supply of the prescribed medicine and how to do so;
    - (ii) The enrollee's right to appeal the denial or termination of the medication and how to do so; and
    - (iii) The right to request continuation of services pending appeal.
  2. In the event that the enrollee appeals a denial or termination of a pharmacy benefit and the appeal is not resolved to the enrollee's satisfaction within ten (10) days from the date of receipt of the appeal, the MCC shall issue a notice containing the information described in paragraph (1)(c) above.

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- (e) Notice of Rights. The Bureau of TennCare shall provide annual notice to TennCare enrollees of his/her notice and appeal rights established by this rule, including the enrollee's recourse when billed by a provider for TennCare covered services. Additionally, upon enrollment in an MCC, the MCC shall give the enrollee a plain language explanation of appeal rights.
  - (f) Proper use of the approved template notices designated by the *Grier Revised Consent Decree* shall be deemed to satisfy the notice requirements specified by this rule.
  - (g) Violation of Notice Requirements and Corrective Action.
    - 1. No adverse action affecting TennCare services shall be effective unless the notice requirements of the federal regulations (42 C.F.R. § § 431.210 - .214), as enhanced or otherwise modified herein, have been complied with. TennCare shall not withhold, or permit others acting on its behalf to withhold, any TennCare services in violation of this requirement.
    - 2. Whenever it comes to the attention of the Bureau of TennCare or an MCC that a TennCare covered service will be or has been delayed, denied, reduced, suspended or terminated in violation of any of the notice requirements of this rule, TennCare or the MCC will immediately provide that service in the quantity and for the duration prescribed, subject to TennCare's or the MCC's right to reduce or terminate the service in accordance with the procedures required by this rule.
    - 3. In the event that the enrollee lacks a prescription for the covered TennCare service which has been delayed, denied, reduced, suspended or terminated in violation of notice requirements, the following shall occur:
      - (i) The enrollee will be immediately afforded access, at the earliest time practicable, to a qualified provider to determine whether the service should be prescribed;
      - (ii) The provider will be informed that the service will be authorized if prescribed; and
      - (iii) Entitlement to the service will not be controlled by the MCC's utilization review process.
    - 4. In the event that the notice violation has occurred with regard to a delay of access to a physician to secure the requested medical assistance, such access shall be provided as soon as practicable. The enrollee shall be entitled to continue to receive such service until such time as the MCC takes those actions required by federal regulations and this rule as a prerequisite to taking any adverse action affecting TennCare services.
- (2) Appeal Rights of Enrollees. Enrollees have the following rights:
- (a) To appeal adverse actions affecting TennCare services.
  - (b) To have oral or written expressions by the enrollee, or on his behalf, of dissatisfaction or disagreement with adverse actions that have been taken or are proposed to be taken, treated as appeals, including instances in which:
    - 1. The enrollee lacks an order or prescription from a provider supporting the appeal;
    - 2. TennCare or an MCC has agreed to cover a prescribed service in an amount that is less than the amount or duration sought by the enrollee;

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3. TennCare or an MCC has agreed to provide a covered service that is different from that sought by the enrollee;
  4. An enrollee seeks to contest a delay or denial of care resulting from the MCC's failure or refusal to make a needed service available, due to the inadequacy of the MCC's provider network;
  5. An enrollee seeks to contest a denial of his right under the TennCare waiver to choose his own primary care provider (PCP) from among a panel offered by the MCC, or seeks to contest a delay or denial of care resulting from the involuntary assignment of a PCP;
  6. An enrollee seeks to contest denial of TennCare coverage for services already received, regardless of the cost or value of the services at issue;
  7. An enrollee seeks to contest a decision granting or withholding designation as severely and persistently mentally ill (SPMI) or severely emotionally disturbed (SED); and
  8. An enrollee seeks to change health plans after the initial forty-five (45) days pursuant to criteria (4)(b)1. and 2. at 1200-13-13-.03.
- (c) To have the appeal rights that are prescribed by 42 C.F.R. Part 431, Subpart E and Tennessee Code Annotated §§ 4-5-301, et seq.
- (d) To be allowed thirty (30) days from receipt of written notice or, if no notice is provided, from the time the enrollee becomes aware of an adverse action, to appeal any adverse action affecting TennCare services.
- (e) To appeal in person, by telephone, or in writing. Reasonable accommodations shall be made for persons with disabilities who require assistance with his/her appeal, such as an appeal by TDD services or other communication device for people with disabilities. Written requests for appeals made at county TDHS offices shall be stamped, and immediately forwarded to the TennCare Bureau for processing and entry in the central registry. Oral appeals shall be followed up with an oral filing with a written, signed appeal; however, if the enrollee does not follow up in writing, the appeal will continue for resolution or for hearing;
- (f) To file an appeal through a toll-free phone number on a twenty-four (24) hours a day, seven (7) days a week basis. Resolution of appeals outside of regular business hours will be available only in cases of emergency medical condition.
- (g) For ongoing services, have the right to continuation or reinstatement of services, pursuant to 42 C.F.R. §§ 431.230 - .231 as modified by this rule, pending appeal when the enrollee submits a timely appeal and request for such services. When an enrollee is so entitled to continuation or reinstatement of services, this right may not be denied for any reason, including:
1. An MCC's failure to inform an enrollee of the availability of such continued services;
  2. An MCC's failure to reimburse providers for delivering services pending appeal; or
  3. An MCC's failure to provide such services when timely requested.
- (h) To an impartial appeals process. But for initial reconsideration by an MCC as permitted by this rule, no person who is an employee, agent or representative of an MCC may participate in deciding the outcome of a TennCare appeal. No state official may participate in deciding the

(Rule 1200-13-13-.11, continued)

outcome of an enrollee's appeal who was directly involved in the initial determination of the action in question.

(3) Special Provisions Relating to Appeals.

- (a) Individualized Decisions Required. Neither the TennCare program nor its MCCs may employ utilization control guidelines or other quantitative coverage limits, whether explicit or de facto, unless supported by an individualized determination of medical necessity based upon the needs of each TennCare enrollee and his or her medical history.
- (b) Decisions to be Supported by Substantial and Material Evidence. Throughout all stages of an appeal of an adverse action affecting TennCare services, decisions shall be based upon substantial and material evidence. In cases involving clinical judgments, this requirement means that:
  - 1. Appeal decision must be supported by medical evidence, and it is the MCCs' and TennCare's responsibility to elicit from enrollees and his/her treating providers all pertinent medical records that support an appeal; and
  - 2. The decisions or opinions of an enrollee's treating physician or other prescribing clinician shall not be overruled by either the MCC initially or TennCare upon review, unless there is substantial and material medical evidence, documented in the enrollee's medical records, to justify such action. Reliance upon insurance industry guidelines or utilization control criteria of general application, without consideration of the individual enrollee's medical history, does not satisfy this requirement and cannot be relied upon to support an adverse action affecting TennCare services.
- (c) Record on Review. When TennCare receives an appeal from an enrollee regarding an adverse action affecting TennCare services, TennCare is responsible for obtaining from the MCC any and all records or documents pertaining to the MCC's decision to take the contested action. TennCare shall correct any violation of this rule that is evident from a review of those records.

(4) Hearing Rights of Enrollees.

- (a) TennCare shall inform enrollees that they have the right to an in-person hearing, a telephone hearing or other hearing accommodation as may be required for enrollees with disabilities;
- (b) Enrollees shall be entitled to a hearing before an impartial hearing officer that affords each enrollee the right to:
  - 1. Representation at the hearing by anyone of his/her choice, including a lawyer;
  - 2. Review information and facts relied on for the decisions by the MCC and the TennCare Bureau before the hearing;
  - 3. Cross-examine adverse witnesses;
  - 4. Present evidence, including the right to compel attendance of witnesses at hearings;
  - 5. Review and present information from his/her medical records;
  - 6. Present evidence at the hearing challenging the adverse decision by his/her MCC;
  - 7. Ask for an independent medical opinion, at no expense to the enrollee;

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8. Continue or reinstate ongoing services pending a hearing decision, as specified in this rule;
  9. A written decision setting out the impartial hearing officer's rulings on findings of fact and conclusions of law; and
  10. An initial hearing decision (initial order) by the impartial hearing officer within ninety (90) days, or thirty-one (31) days in the case of a time-sensitive appeal, of the date of receipt of the appeal.
- (c) TennCare shall not impair the ability of an enrollee to appeal an adverse hearing decision by requiring that the enrollee bear the expense of purchasing a hearing transcript when such purchase would be a financial hardship for the enrollee.
- (d) Parties to an Appeal. Under this rule, the parties to an administrative hearing are limited to those permitted by federal regulations. The purpose of the hearing is to focus on the enrollee's medical needs. MCCs are not permitted to intervene or participate as parties in an enrollee's hearing. However, MCC employees may participate as witnesses in hearings. Further, nothing in this provision bars participation by an MCC in any informal resolution phase of the appeal process prior to a hearing before the impartial hearing officer.
- (e) Consistent with the Code of Judicial Conduct, impartial hearing officers shall assist pro se enrollees in developing the factual record and shall have authority to order second medical opinions at no expense to the enrollee.
- (f) Review of Hearing Decisions/Binding Effect of Decisions in Favor of Enrollees.
1. Review of impartial hearing officers' decisions shall be available to enrollees pursuant to the Tennessee Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq.
  2. If the enrollee prevails at any stage of the appeal process, the decision is binding upon TennCare and the MCC. If the enrollee prevails by decision of an impartial hearing officer, the services shall be provided, and neither TennCare nor the MCC shall appeal.
  3. An impartial hearing officer's decision in an enrollee's appeal shall not be deemed precedent for future appeals. To seek relief from the decision, TennCare may apply to federal court or enact rules and regulations, including emergency or public necessity rules, in accordance with the state Administrative Procedures Act.
- (g) Continuation or Reinstatement of TennCare Services.
1. Except as permitted under 42 C.F.R. §§ 431.213, 431.214 and 431.220, as modified by this rule, TennCare services shall continue or be reinstated until an initial hearing decision if the enrollee appeals and requests:
    - (i) Continuation of services within two (2) business days of the receipt of MCC-initiated notice of action to terminate, suspend or reduce ongoing inpatient hospital treatment; or
    - (ii) Continuation of services within two (2) business days of the receipt of provider-initiated notice of action to terminate, suspend or reduce any behavioral health service for a severely and persistently mentally ill (SPMI) adult enrollee or

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severely emotionally disturbed (SED) child, any inpatient psychiatric or residential service, any service being provided to treat a patient's chronic condition across a continuum of services when the next appropriate level of medical service is not immediately available, or home health services; or

- (iii) Continuation of services within ten (10) days of the receipt of MCC-initiated notice of action to terminate, suspend or reduce other ongoing services; or
  - (iv) Reinstatement of the services described in paragraph (4)(g)1.(i) - (iii) above within thirty (30) days of the receipt of the notice of action.
2. In the case of a timely request for continuation or reinstatement of the TennCare services described in paragraph (4)(g)1.(ii) above, the enrollee shall be afforded access to a written second medical opinion from a qualified provider who participates in the MCC's network. If there has not already been a break in receipt of the services, the benefits shall continue until receipt of the written second medical opinion. Services shall continue or be reinstated thereafter pending appeal only if and to the extent prescribed by the second provider.
  3. In the case of a timely request for continuation or reinstatement of the TennCare services described in paragraph (4)(g)1.(i) and (iii) above, the services shall continue or be reinstated pending appeal only if and to the extent prescribed by the enrollee's treating clinician.
  4. Services shall not continue, but may be immediately reduced, terminated, or suspended if the services are determined medically contraindicated in accordance with the provisions of paragraph (8) below.
  5. Any appeals involving a request for continuation of services shall be handled as expedited appeals. Expedited appeals must be concluded within thirty-one (31) days, and such time frame may not be delayed except as ordered by the impartial hearing officer. Therefore, if an enrollee makes a timely request for continuation or reinstatement of a disputed TennCare service pending appeal, receives the continued or reinstated service, and subsequently requests a continuance of the proceedings without presenting a compelling justification, the impartial hearing officer shall grant the request for continuance conditionally. The condition of such continuance is the enrollee's waiver of his right to continue receiving the disputed services pending a decision if:
    - (i) The impartial hearing officer finds that such continuance is not necessitated by acts or omissions on the part of the State or MCC;
    - (ii) The enrollee lacks a compelling justification for the requested delay; and
    - (iii) The enrollee received at least three (3) weeks notice of the hearing, in the case of a standard appeal, or at least one (1) week's notice, in the case of an expedited appeal.
- (h) Expedited appeal. Expedited appeal of any action involving time-sensitive care must be available to enrollees as follows:
1. The enrollee, the enrollee's parent, legal guardian or representative, or the enrollee's primary care provider or treating specialist asserts that the care in question requires a prompt medical response in light of the enrollee's condition and the urgency of the enrollee's needs as defined by a prudent lay person.

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2. Care is not time-sensitive, and an appeal is not expedited, if the enrollee's treating physician certifies in writing that the matter is not time-sensitive.
  3. An expedited appeal shall be resolved by hearing and a written hearing decision (initial order) within thirty-one (31) days from the date the appeal is received.
- (5) Special Provisions Pertaining to Pharmacy.
- (a) When a provider with prescribing authority prescribes a medication for an enrollee, and the prescription is presented at a pharmacy that participates in the enrollee's MCC, the enrollee is entitled to:
    1. The drug as prescribed, if the drug is on the MCC's formulary and does not require prior authorization; or
    2. The drug as prescribed, if the prescribing provider has obtained prior authorization or established the medical necessity of the medication; or
    3. An alternative medication, if the pharmacist consults the prescribing provider when the enrollee presents the prescription to be filled, and the provider prescribes a substituted drug; or
    4. A two (2) week supply of the prescribed drug, if the pharmacist is unable when the enrollee presents the prescription to be filled, to obtain MCC authorization to substitute an alternative medication. If the enrollee does not receive the medication of the type and amount prescribed, TennCare or the MCC shall immediately provide written notice of the right to appeal, including the right to request continuation of services pending appeal. The enrollee's entitlement to receive a two (2) week supply of the prescribed drug is subject to the provisions of paragraph (5)(b) below.
  - (b) The enrollee is entitled to a two (2) week supply of the prescribed drug, as mandated by the preceding paragraph, provided that:
    1. The medication is not classified by the FDA as Less Than Effective (LTE) and DESI drugs or any drugs considered to be Identical, Related and Similar (IRS) to DESI or LTE drugs or any medication for which no federal financial participation (FFP) is available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age; or
    2. The medication is not a drug in one of the non-covered TennCare therapeutic categories that include:
      - (i) Agents for weight loss or weight gain;
      - (ii) agents to promote fertility or to treat impotence;
      - (iii) agents for cosmetic purposes or hair growth;
      - (iv) agents for the symptomatic relief of coughs and colds;
      - (v) agents to promote smoking cessation;

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- (vi) prescription vitamins and mineral products except prenatal vitamins and fluoride preparations;
    - (vii) nonprescription drugs;
    - (viii) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee;
  - 3. Use of the medication has not been determined to be medically contraindicated because of the patient's medical condition or possible adverse drug interaction; or
  - 4. If the prescription is for a total quantity less than a two (2) week supply, the pharmacist must provide a supply up to the amount prescribed.
- (c) In some circumstances, it is not feasible for the pharmacist to dispense a two (2) week supply because the drug is packaged by the manufacturer to be sold as the original unit or because the usual and customary pharmacy practice would be to dispense the drug in the original packaging. Examples would include, but not be limited to, inhalers, eye drops, ear drops, injections, topicals (creams, ointments, sprays), drugs packaged in special dispensers (birth control pills, steroid dose packs), and drugs that require reconstitution before dispensing (antibiotic powder for oral suspension). When coverage of a two (2) week supply of a prescription would otherwise be required and when, as described above, it is not feasible for the pharmacist to dispense a two (2) week supply, it is the responsibility of the MCC to provide coverage for either the two (2) week supply or the usual dispensing amount, whichever is greater.
- (d) If the enrollee does not receive the medication of the type and amount prescribed, written notice must be issued by the pharmacy, in accordance with paragraph (1)(d) above.
- (6) Release of Enrollees' Medical Records.
- (a) When a request is made, by or on behalf of a TennCare enrollee, for approval of a TennCare service or for an appeal of an adverse action affecting TennCare services, the enrollee is deemed to have consented to release of his/her relevant medical records to his/her MCC and the TennCare Bureau for the purposes of acting upon the enrollee's request.
  - (b) Providers shall promptly provide copies of an enrollee's medical records to the enrollee's MCC(s) and to the TennCare Bureau upon being informed by the MCC(s) or TennCare Bureau that the records have been requested for the purpose of acting upon an enrollee's request for approval of a TennCare service or an enrollee's appeal of an adverse action affecting TennCare services.
  - (c) An enrollee's consent to release of his/her medical records may be evidenced by his signature (or his provider's or authorized representative's signature) upon the enrollee's initial application for TennCare, upon his TennCare appeal form or other written request for authorization or appeal, or, in the event of an appeal by telephone, by a TennCare Bureau employee's signing of an appeal form on behalf of an enrollee with documentation of consent to do so.
  - (d) The medical records obtained by MCCs and the TennCare Bureau under this rule remain confidential. MCCs and the TennCare Bureau may use and disclose the records only as necessary in their consideration of the enrollee's request for approval of a TennCare service or the enrollee's appeal of an adverse action affecting TennCare services.
- (7) Time Requirements and Corrective Action.

(Rule 1200-13-13-.11, continued)

- (a) Subject to the provisions of subparagraphs (7)(e) and (f) below and to provisions relating to medical contraindication (paragraph (8)), the failure of an MCC to act upon a request for prior approval within fourteen (14) days as provided in (1)(b)2. above shall result in automatic authorization of the requested service.
- (b) The failure of an MCC to complete reconsideration of enrollee appeals within fourteen (14) days of notification by TennCare, in the case of a standard appeal, or within five (5) days in the case of expedited appeals involving time-sensitive care, or within ten (10) days in the case of a pharmacy appeal shall result in immediate resolution of the appeal in favor of the enrollee, without further consideration or proceedings, subject to the provisions of subparagraphs (7)(e) and (f) below and to provisions relating to medical contraindication (paragraph (8)).
- (c) All standard appeals, including, if not previously resolved in favor of the enrollee, a hearing before an impartial hearing officer, shall be resolved within ninety (90) days of receipt of the enrollee's request for an appeal. All expedited appeals involving time-sensitive care shall be resolved within thirty-one (31) days of receipt of the request for appeal. Calculation of the ninety (90) day or thirty-one (31) day deadline may be adjusted so that TennCare is not charged with any delays attributable to the enrollee. However, no delay may be attributed to an enrollee's request for a continuance of the hearing, if s/he received less than three (3) weeks' notice of the hearing, in the case of a standard appeal, or less than one (1) week's notice, in the case of an expedited appeal involving time-sensitive care. An enrollee may only be charged with the amount of delay occasioned by his/her acts or omissions, and any other delays shall be deemed to be the responsibility of TennCare.
- (d) Failure to meet the ninety (90) day or thirty-one (31) day deadline, as applicable, shall result in automatic TennCare coverage of the services at issue pending a decision by the impartial hearing officer, subject to the provisions of subparagraphs (7)(e) and (f) below, and to provisions relating to medical contraindication (paragraph (8)). This conditional authorization will neither moot the pending appeal nor be evidence of the enrollee's satisfaction of the criteria for disposing of the case, but is simply a compliance mechanism for disposing of appeals within the required time frames. In the event that the appeal is ultimately decided against the enrollee, s/he shall not be liable for the cost of services provided past the deadline for resolution of the appeal.
- (e) When, under the provisions of subparagraphs (7)(a), (b) or (d) above, a failure to comply with the time frames would require the immediate provision of a disputed service, TennCare may decline to provide the service pending a contrary order on appeal, based upon a determination that the disputed service is not a TennCare-covered service. A determination that a disputed service is not a TennCare-covered service may not be based upon a finding that the service is not medically necessary. Rather, it may only be made with regard to a service that:
  - 1. Is subject to an exclusion that has been reviewed and approved by the federal Center for Medicare and Medicaid Services (CMS) and incorporated into a properly promulgated state regulation, or
  - 2. Which, under Title XIX of the Social Security Act, is never federally reimbursable in any Medicaid program.
- (f) When, under the provisions of subparagraphs (7)(a), (b) or (d) above, a failure to comply with the time frames would require the immediate provision of a disputed TennCare covered service but the enrollee lacks a prescription for such service, the enrollee shall be immediately afforded access, at the earliest time practicable, to a qualified provider to determine whether the service should be prescribed. The provider will be informed that the service will be authorized if

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prescribed. Entitlement to the service will not be controlled by an MCC's utilization review process.

- (g) Except upon a showing by an MCC of good cause requiring a longer period of time, within five (5) days of a decision in favor of an enrollee at any stage of the appeal process, the MCC must complete corrective action to implement the decision. Corrective action to implement the decision includes:
  - 1. The enrollee's receipt of the services at issue, or acceptance and receipt of alternative services; or
  - 2. Reimbursement for the enrollee's cost of services, if the enrollee has already received the services at her own cost; or
  - 3. If the enrollee has already received the service, but has not paid the provider, ensuring that the enrollee is not billed for the service and ensuring that the enrollee's care is not jeopardized by non-payment.
- (8) Medical Contraindication.
  - (a) Whenever the terms of this rule require the provision of TennCare benefits or services to an enrollee, such obligation shall be relieved upon the written certification of a provider who is familiar with the beneficiary's medical condition that the TennCare benefit or service in question is medically contraindicated. The provider must either be employed by the state or, if a licensed pharmacist determining contraindication with regard to a prescribed drug, must be making such determination consistent with pre-established standards and procedures approved by the state.
  - (b) If a TennCare service is determined to be medically contraindicated as set out above, written notice must be immediately provided to the enrollee, and the notice must be accompanied by the provider's certification that the service must be withheld in order to protect the enrollee's health or safety. A copy of the notice and provider certification must be forwarded to the Tennessee Justice Center.
- (9) Special Provisions Relating to Children in State Custody.

In addition to the rights and protections established by 42 C.F.R. Part 431, Subpart E and the terms of this rule, children in state custody shall also receive the following enhanced notice and appeal rights:

- (a) The Tennessee Department of Children's Services (DCS) must provide notice of any delay in providing a TennCare service that is administered by DCS. Such delay is immediately appealable on that child's behalf and cannot be required to last a particular length of time before issuance of the notice or processing of an appeal.
- (b) Whenever there is an adverse action affecting TennCare services (regardless of which contractor or government agency is administering such services), timely notices required by this rule must be sent to the individuals specified in the DCS implementation plan which was approved by the Court in *Grier Revised Consent Decree*. In the case of services administered by MCCs other than DCS, the responsible MCC shall provide notice to DCS, which shall ensure that timely notice is provided to the required individuals. Delivery of notice triggering the right to appeal is not complete until notice is received by those individuals.
- (c) An appeal from any individual specified in paragraph (9)(b) above must be accepted as an appeal on behalf of the child.

(Rule 1200-13-13-.11, continued)

**Authority:** T.C.A. §§4-5-202, 4-5-209, 71-5-105, 71-5-109, and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.11; new effective date February 12, 2003. Public necessity rule filed May 5, 2005; effective through October 17, 2005.

#### **1200-13-13-.12 OTHER APPEALS BY TENNCARE APPLICANTS AND ENROLLEES.**

- (1) TennCare Standard applicants and enrollees will be given an opportunity to have an administrative hearing before a Hearing Officer or an Administrative Judge regarding denial of his/her application, cost sharing disputes, and disputes regarding disenrollment from TennCare Standard. Such appeals shall be conducted in accordance with 1200-13-14-.12.
- (2) Other Appeals. Enrollees applying for Seriously and Persistently Mentally Ill (SPMI) or Seriously Emotionally Disturbed (SED) determination shall apply for each determination to the Department of Mental Health and Developmental Disabilities unless otherwise directed by the Commissioner. SPMI and SED determinations for the state only category shall be appealed in accordance with the provisions of state and federal law.

**Authority:** T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.12; new effective date February 12, 2003.

#### **1200-13-13-.13 MEMBER ABUSE AND OVERUTILIZATION OF THE TENNCARE PROGRAM.**

Lock-in Procedures.

- (1) The pharmacy lock-in minimum criteria described below are intended to outline the minimum standards and requirements that TennCare Pharmacy Programs must address in their pharmacy lock-in policies and procedures (TennCare Pharmacy Programs include any TennCare pharmacy carve-out or MCO pharmacy program). These guidelines also include template enrollee notice letters that must be used in accordance with the *Grier Revised Consent Decree*.
- (2) Pharmacy lock-in programs should be designed to complement case management activities and improve the quality of care. As an initial step in this process, the identification of pharmacy abuse, overuse or fraud and the evaluation of those cases identified must also assure each TennCare enrollee's right to due process and their right to appeal.
- (3) All pharmacy lock-in programs must contain the following elements:
  - (a) Criteria for selection of abusive or overutilizing enrollees - Pharmacy lock-in program must demonstrate, in detail, how the program will identify lock-in candidates.
  - (b) Methods of evaluation of potential lock-in candidates - Pharmacy lock-in program must describe in detail how the program will review lock-in candidates to ensure appropriate patterns of health care utilization are not misconstrued as abusive or overutilization.
  - (c) Lock-in status - Pharmacy lock-in program must describe the exact process used to notify the lock-in enrollee, notify the lock-in pharmacy and physician providers, coordinate the lock-in activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.

(Rule 1200-13-13-.13, continued)

- (d) Prior approval status - Pharmacy lock-in program must, once an enrollee is locked into a single pharmacy and that enrollee continues to abuse or inappropriately overutilize pharmacy services, move the enrollee to prior approval status. The program must describe the exact process used to notify the enrollee of prior approval status, notify the pharmacy of the enrollee's prior approval status, coordinate the prior approval status activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.
- (e) Emergency Services - Pharmacy lock-in program must describe, in detail, how pharmacy services will be delivered to enrollees on lock-in or prior approval status in the event of an emergency as defined below.
- (f) Appeals of Pharmacy Lock-in-- The MCO's pharmacy lock-in proposal must comply with the appeals provisions of the *Grier Revised Consent Decree*, including all notice and fair hearing requirements.

**Authority:** T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.13; new effective date February 12, 2003.

#### 1200-13-13-.14 TENNCARE PARTNERS STATE-ONLY PROGRAM.

- (1) Eligibility for the State-only Program.
  - (a) Effective July 1, 2002, certain individuals who have applied for, lost, or been denied eligibility for TennCare Medicaid or TennCare Standard may receive covered behavioral health services, which have been determined medically necessary, through the TennCare Partners Program. These individuals must meet the following:
    1. Have been identified by the TDMHDD or its designee as Seriously and/or Persistently Mentally Ill (SPMI) or Seriously Emotionally Disturbed (SED) and must have a current need for mental health services and/or substance abuse services; and
    2. Family incomes below one hundred (100%) percent of the poverty level; and
    3. Must have made application for eligibility in the TennCare Program and no eligibility determination has been made, or have been determined not eligible for the TennCare Program, or cannot be enrolled in the TennCare Program due to enrollment being closed; and
    4. Must not be eligible for participation in an employer-sponsored health insurance plan, either directly or indirectly through a family member, unless s/he can provide verification that his/her private mental health benefits have been exhausted; and
    5. Must not be enrolled in an individually funded, non-employer health plan, unless s/he can provide verification that his/her private mental health benefits have been exhausted; and
    6. Must be a U.S. citizen, lawfully admitted alien, or an alien permanently residing in the U.S. under color of law; and
    7. Must be a Tennessee resident as described under federal and state law; and
    8. Must have a Social Security number or provide proof of having applied for one; and

(Rule 1200-13-13-.14, continued)

9. Must not be an inmate as defined in these rules.

Services are limited to covered behavioral health services, which have been determined to be medically necessary through the TennCare Partners Program. Individuals eligible for the TennCare Partners Program only are not eligible for covered medical services provided by MCOs.

Eligibility for individuals enrolled in only the TennCare Partners Program shall cease when the individual no longer meets the criteria and technical requirements above. Individuals receiving TennCare Partners services only will be reviewed at least every six (6) months, but may be reviewed more often, to determine if the individual continues to be eligible.

- (b) A TennCare Standard enrollee who loses TennCare Standard eligibility will automatically lose eligibility for the TennCare Partners Program, except if s/he meets the criteria outlined in (a) above. Persons who meet these criteria may participate in the TennCare Partners Program even though s/he does not participate in the TennCare Medicaid or TennCare Standard Programs. These non-TennCare-eligible persons will be disenrolled from the TennCare Partners Program under the following circumstances:
1. When the individual no longer meets the criteria outlined in (a) above or is found to have falsified information provided to the TDMHDD and approval was based on this false information;
  2. When an individual who voluntarily enrolled in the TennCare Partners Program voluntarily requests disenrollment;
  3. When the individual moves outside of the State of Tennessee;
  4. When the individual has abused the TennCare Partners Program (for example, by using or allowing an ineligible person to use the individual's identification card to seek or obtain drugs or supplies illegally or for resale, subject to Federal and State laws and regulations); or
  5. Death of the individual.
- (2) Covered Benefits for the State-only Program.

TennCare Partners-covered services are those as listed herein, and are available to all State-only enrollees effective July 1, 2002. Copayments, if any, are those as described elsewhere in these rules.

SERVICE	BENEFIT
Psychiatric Inpatient Services	As medically necessary
Physician Psychiatric Inpatient Services	As medically necessary
Outpatient Mental Health Services	As medically necessary
Inpatient/Residential, and Outpatient Substance Abuse Treatment Services Includes Methadone Detoxification and Methadone Maintenance and Treatment of Pain	As medically necessary, subject to the following lifetime limitations: - Ten (10) days detoxification; - \$30,000 for inpatient and outpatient substance abuse treatment.
Psychiatric Pharmacy Services	As medically necessary. DESI, LTE, and IRS drugs excluded.
Transportation	As necessary to get the enrollee to and from covered

(Rule 1200-13-13-.14, continued)

	services, for enrollees lacking access to transportation.
Laboratory Services	As medically necessary
Mental Health Case Management	As medically necessary
24-hour Psychiatric Residential Treatment	As medically necessary
Housing/Residential Care	As medically necessary
Mental Health Crisis Services	As medically necessary
Psychiatric Rehabilitation Services	As medically necessary

- (3) SPMI and SED determinations for the state only category shall be appealed in accordance with the provisions of state and federal law.

**Authority:** T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23. **Administrative History:** Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.14; new effective date February 12, 2003.