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# Notice of Rulemaking Hearing

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

<b>Agency/Board/Commission:</b>	Tennessee Department of Finance and Administration
<b>Division:</b>	Bureau of TennCare
<b>Contact Person:</b>	George Woods
<b>Address:</b>	Bureau of TennCare 310 Great Circle Road Nashville, TN 37243
<b>Phone:</b>	(615) 507-6446
<b>Email:</b>	george.woods@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

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

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

Address 1:	Bureau of TennCare 310 Great Circle Road, Conference Room 1 East A		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	February 28, 2017		
Hearing Time:	9:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

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**Revision Type (check all that apply):**

- Amendments
- New
- Repeal

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

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-13-13	TennCare Medicaid
<b>Rule Number</b>	<b>Rule Title</b>
1200-13-13-.01	Definitions
1200-13-13-.10	Exclusions
1200-13-13-.11	Appeal of Adverse Actions Affecting TennCare Services or Benefits
1200-13-13-.12	Other Appeals By TennCare Applicants and Enrollees

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

Chapter 1200-13-13 TennCare Medicaid Table of Contents is amended by deleting the title of rule 1200-13-13-.11 "Appeal of Adverse Actions Affecting TennCare Services or Benefits" and by substituting instead the language "Appeal of Adverse Benefit Determinations" and is further amended by deleting the title of rule 1200-13-13-.12 "Other Appeals by TennCare Applicants and Enrollees" and by substituting instead the language "Reserved" so that, as amended, the Table of Contents titles of rules 1200-13-13-.11 and 1200-13-13-.12 shall read as follows:

1200-13-13-.11 Appeal of Adverse Benefit Determinations

1200-13-13-.12 Reserved

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-113.

Rule 1200-13-13-.01 Definitions paragraph (3) Administrative Hearing is amended by deleting it in its entirety and renumbering the following paragraphs appropriately.

Rule 1200-13-13-.01 Definitions paragraph (4) Adverse Action Affecting TennCare Services or Benefits is amended by deleting the language "Action Affecting TennCare Services or Benefits as it relates to actions under the Grier Revised Consent Decree" and by substituting instead the language "Benefit Determination" and is further amended by deleting the punctuation and phrase ", as well as any other act or omission of the TennCare Program which impairs the quality, timeliness, or availability of such benefits." and by adding the sentence "See 42 C.F.R. § 438.400." so that, as amended, paragraph (4) shall read as follows:

(4) Adverse Benefit Determination shall mean, but is not limited to, a delay, denial, reduction, suspension or termination of TennCare benefits. See 42 C.F.R. § 438.400.

Rule 1200-13-13-.01 Definitions paragraph (23) Continuation or Reinstatement is amended by deleting the paragraph and its subparagraphs in their entirety and by substituting instead the following language, so that, as amended, paragraph (23) shall read as follows:

(23) Continuation or Reinstatement of Benefits Pending Resolution of Appeal (COB) shall mean the circumstances under which an enrollee may keep receiving, or, in the case of reinstatement, get back and keep receiving, the benefit under appeal until the appeal is resolved. See 42 C.F.R. §§ 431.230, 431.231 and 438.420.

Rule 1200-13-13-.01 Definitions paragraph (35) Delay is amended by deleting the punctuation and language ": (a) Any" and by substituting instead the punctuation and language ", any" and is further amended by deleting the punctuation ";" following the word "appeal" and by substituting instead the punctuation "." and is further amended by deleting subparagraph (b) in its entirety, so that, as amended, paragraph (35) shall read as follows:

(35) Delay shall mean, but is not limited to, any failure to provide timely receipt of TennCare services, and no specific waiting period may be required before the enrollee can appeal.

Rule 1200-13-13-.01 Definitions paragraph (42) Emergency Medical Condition is amended by deleting it in its entirety and renumbering the following paragraphs appropriately.

Rule 1200-13-13-.01 Definitions paragraph (49) Final Agency Action is amended by deleting the word "impartial" so that, as amended, paragraph (49) shall read as follows:

(49) Final Agency Action shall mean the resolution of an appeal by the TennCare Bureau or an initial decision on the merits of an appeal by an administrative judge or hearing officer when such initial decision is not

modified or overturned by the TennCare Bureau. Final agency action shall be treated as binding for purposes of these rules.

Rule 1200-13-13-.01 Definitions paragraph (59) Impartial Hearing Officer is amended by deleting the word "Impartial" and the language "or hearing officer" and by deleting the word "and" and replacing it with the word "or" and is further amended by deleting the word "Administrative" preceding the word "Hearing" and substituting instead the words "State Fair" and by adding the punctuation and letters "(SFH)" at the end of the paragraph, so that, as amended, paragraph (59) shall read as follows:

(59) Hearing Officer shall mean an administrative judge who is not an employee, agent or representative of the MCC or who did not participate in, nor was consulted about, any TennCare Bureau review prior to the State Fair Hearing (SFH).

Rule 1200-13-13-.01 Definitions paragraph (71) MCC (Managed Care Contractor) subparagraph (c) is amended by deleting the language "(i.e., Department of Children's Services and Division of Intellectual Disabilities Services)" so that, as amended, paragraph (71) subparagraph (c) shall read as follows:

(c) A State government agency that contracts with TennCare for the provision of services.

Rule 1200-13-13-.01 Definitions paragraph (78) Medically Contraindicated is amended by deleting it in its entirety and renumbering the following paragraphs appropriately.

Rule 1200-13-13-.01 Definitions paragraph (112) Readable is amended by deleting all the language following "shall mean" and by substituting instead the following language, so that, as amended, paragraph (112) shall read as follows:

(112) Readable shall mean easily understood language and format. See 42 C.F.R. § 438.10.

Rule 1200-13-13-.01 Definitions paragraph (116) Reconsideration is amended by deleting it in its entirety and renumbering the following paragraphs appropriately.

Rule 1200-13-13-.01 Definitions paragraph (118) Reduction, Suspension or Termination is amended by deleting it in its entirety and renumbering the following paragraphs appropriately.

Rule 1200-13-13-.01 Definitions paragraph (119) Resources for Medicaid-Eligible Individuals is amended by deleting it in its entirety and renumbering the following paragraphs appropriately.

Rule 1200-13-13-.01 Definitions paragraph (121) Seriously Emotionally Disturbed (SED) is amended by deleting it in its entirety and renumbering the following paragraphs appropriately.

Rule 1200-13-13-.01 Definitions paragraph (122) Severely and/or Persistently Mentally Ill (SPMI) is amended by deleting it in its entirety and renumbering the following paragraphs appropriately.

Rule 1200-13-13-.01 Definitions paragraph (125) Target Population Group (TPG) is amended by deleting it in its entirety and renumbering the following paragraphs appropriately.

Rule 1200-13-13-.01 Definitions paragraph (128) TDHS or DHS (Tennessee Department of Human Services) is amended by deleting it in its entirety and renumbering the following paragraphs appropriately.

Rule 1200-13-13-.01 Definitions paragraph (131) TennCare Appeal Form is amended by deleting the language "action affecting TennCare services" and by substituting instead the language "benefit determination" so that, as amended, paragraph (131) shall read as follows:

(131) 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, when an enrollee appeals an adverse benefit determination.

Rule 1200-13-13-.01 Definitions paragraph (144) Time-Sensitive Care is amended by deleting it in its entirety and renumbering the following paragraphs appropriately.

Rule 1200-13-13-.01 Definitions is amended by inserting alphabetically the following language as a new appropriately numbered paragraph as follows:

- (i) State Fair Hearing (SFH) shall mean an evidentiary hearing conducted in accordance with 42 C.F.R. Part 431 Subpart E and the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301, et seq. An initial order under T.C.A. §4-5-314 shall be entered when an evidentiary hearing is held before an administrative judge. If an enrollee appeals the initial order under T.C.A. §4-5-315, the Commissioner may render a final order.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109, 71-5-113, 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F.

Rule 1200-13-13-.10 Exclusions paragraph (1) subparagraph (b) is amended by deleting the language "except for limited special appeal provisions pertaining to children who are placed in Youth Development Centers as defined in the Grier Revised Consent Decree, Section C.15.f. and pursuant to the DCS Interagency Agreement" so that, as amended, paragraph (1) subparagraph (b) shall read as follows:

- (b) Provision of services to persons who are not enrolled in TennCare, either on the date the services are delivered or retroactively to the date the services are delivered.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109, 71-5-113, 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by deleting the title and by substituting instead a new title "Appeal of Adverse Benefit Determinations" so that, as amended, the title of Rule 1200-13-13-.11 shall read as follows:

1200-13-13-.11 Appeal of Adverse Benefit Determinations.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (1) subparagraph (a) part 1 is amended by deleting the language "action taken" and by substituting instead the language "benefit determination made" so that, as amended, paragraph (1) subparagraph (a) part 1 shall read as follows:

1. A written notice shall be given to an enrollee by his/her MCC of any adverse benefit determination made by the MCC to deny, reduce, suspend, or terminate medical assistance.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (1) subparagraph (a) part 2 is amended by deleting it in its entirety and renumbering the following parts appropriately.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (1) subparagraph (a) part 4 subpart (i) is amended by deleting the language "for a severely and persistently mentally ill (SPMI) adult enrollee or severely emotionally disturbed (SED) child" so that, as amended, paragraph (1) subparagraph (a) part 4 subpart (i) shall read as follows:

- (i) Any behavioral health service;

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (1) subparagraph (b) part 1 is amended by inserting the numbers "431" before the punctuation and numbers ".214" wherever they appear so that, as amended, paragraph (1) subparagraph (b) part 1 shall read as follows:

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 - 431.214 (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 - 431.214 permit or require reduction of the time frames within which advance notice must be provided.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (1) subparagraph (b) part 2 is amended by deleting the language following the words "enrollee for" and by substituting instead the new language "prior authorization for medical or related services as set out in 42 C.F.R. § 438.210(d)", so that, as amended, paragraph (1) subparagraph (b) part 2 shall read as follows:

2. An MCC must notify an enrollee of its decision in response to a request by or on behalf of an enrollee for prior authorization for medical or related services as set out in 42 C.F.R. § 438.210(d).

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (1) subparagraph (b) part 4 is amended by deleting the introductory phrase "Where required by paragraph (1)(a)4. of this rule," and by capitalizing the letter "w" in "written" and further amended by deleting the language "at least two (2) business days in advance of the proposed action" and by substituting instead the new language "in compliance with 42 C.F.R. §§ 431.211, 431.213 and 431.214", so that, as amended, paragraph (1) subparagraph (b) part 4 shall read as follows:

4. Written notice of provider-initiated reduction, termination or suspension of services must be provided to an enrollee in compliance with 42 C.F.R. §§ 431.211, 431.213 and 431.214.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (1) subparagraph (c) part 1 is amended by deleting the language "action affecting medical assistance" and by substituting instead the language "benefit determination" and is further amended by deleting the language "contain the following elements," and by substituting instead the word "be" and is further amended by deleting the punctuation ":" and all of the subparts (i) through (v) and substituting instead the language "and must comply with the requirements of 42 C.F.R. §§ 431.210 and 438.404." so that, as amended, paragraph (1) subparagraph (c) part 1 shall read as follows:

1. Whenever this rule requires that a TennCare enrollee receive written notice of an adverse benefit determination, the notice must be written in concise, readable terms and must comply with the requirements of 42 C.F.R. §§ 431.210 and 438.404.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (1) subparagraph (c) part 2 is amended by deleting the word "action" and by substituting instead the language "benefit determination" and is further amended by deleting the language "will not automatically resolve the appeal in favor of the enrollee. TennCare" and "prior to issuance of the notice of hearing" so that, as amended, paragraph (1) subparagraph (c) part 2 shall read as follows:

2. Remedying of Notice. If a notice of adverse benefit determination provided to an enrollee does not meet the notice content requirements of rule 1200-13-13-.11(1)(c)1., TennCare or the MCC may cure any such deficiencies by providing one corrected notice to enrollees. If a corrected notice is provided to an enrollee, the reviewing authority shall consider only the factual reasons and legal authorities cited in the corrected notice, except that additional evidence beneficial to the enrollee may be considered on appeal.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (1) subparagraph (c) part 3. is deleted in its entirety.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (1) subparagraphs (d) through (g) are deleted in their entirety.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (2) subparagraph (a) is amended by deleting the language "actions affecting TennCare services" and by substituting instead the language "benefit determinations" so that, as amended, paragraph (2) subparagraph (a) shall read as follows:

- (a) To appeal adverse benefit determinations.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (2) subparagraph (b) is amended by deleting the word "actions" and by substituting instead the language "benefit determinations" so that, as amended, paragraph (2) subparagraph (b) shall read as follows:

- (b) An enrollee's request for appeal, including oral or written expressions by the enrollee, or on his behalf, of dissatisfaction or disagreement with adverse benefit determinations that have been taken or are proposed to be taken, may not be denied, including instances in which:

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (2) subparagraph (b) part 1 is amended by deleting the language “, provided however, that the State may create an administrative grievance or other informal process to address appeals by enrollees without an order or prescription” so that, as amended, paragraph (2) subparagraph (b) part 1 shall read as follows:

1. The enrollee lacks an order or prescription from a provider supporting the appeal;

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (2) subparagraph (b) part 6 is amended by adding the word “and” at the end of the part so that, as amended, paragraph (2) subparagraph (b) part 6 shall read as follows:

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; and

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (2) subparagraph (b) part 7 is amended by deleting it in its entirety and renumbering the following part appropriately.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (2) subparagraph (d) is amended by deleting the word “action” wherever it appears, and by substituting instead the language “benefit determination” and further by deleting the language “affecting TennCare services” so that, as amended, paragraph (2) subparagraph (d) shall read as follows :

- (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 benefit determination, to appeal any adverse benefit determination.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (2) subparagraph (f) is amended by deleting it in its entirety and renumbering the following subparagraphs appropriately.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (2) subparagraph (h) is amended by deleting the word “impartial” and further by deleting the language “But for initial reconsideration by an MCC as permitted by this rule, no” and by substituting instead the word “No” and further by removing the phrase “who was directly involved in the initial determination of the action in question” from the end of the last sentence and placing it between the words “official” and “may” in the last sentence so that, as amended, paragraph (2) subparagraph (h) shall read as follows :

- (h) To an appeals process. 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 who was directly involved in the initial determination of the action in question may participate in deciding the outcome of an enrollee’s appeal.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (3) subparagraph (b) is amended by inserting the word “Medical” as the first word of the subparagraph and by deleting the language “Decisions to be Supported by Substantial and Material” and by deleting the language “Throughout all stages of an appeal of an adverse benefit determination affecting TennCare services, decisions shall be based upon substantial and material evidence. In cases involving clinical judgments, this requirement means that:” so that, as amended, paragraph (3) subparagraph (b) shall read as follows:

- (b) Medical Evidence.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (3) subparagraph (b) part 1 is amended by deleting the current language and by substituting instead the following language so that, as amended, paragraph (3) subparagraph (b) part 1 shall read as follows:

1. Appeal decisions must be based on an evaluation of pertinent medical evidence. TennCare and the MCCs shall elicit from enrollees and their treating providers all pertinent medical records that support an appeal; and

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (3) subparagraph (b) part 2 is amended by deleting the language “in accordance with the Grier Revised Consent

Decree and" and further by deleting the language "action affecting TennCare services" and by substituting instead the language "benefit determination" so that, as amended, paragraph (3) subparagraph (b) part 2 shall read as follows:

2. Medical opinions shall be evaluated pursuant to TennCare Medical Necessity rule 1200-13-16. 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 benefit determination.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (3) subparagraph (c) and subparagraph (d) are amended by deleting the language "action affecting TennCare services" and by substituting instead the language "benefit determination" so that, as amended, paragraph (3) subparagraph (c) and subparagraph (d) shall read as follows:

- (c) Record on Review. When TennCare receives an appeal from an enrollee regarding an adverse benefit determination, 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.
- (d) Valid Factual Disputes. When TennCare receives an appeal from an enrollee, TennCare will dismiss this appeal unless the enrollee has established a valid factual dispute relating to an adverse benefit determination.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (3) subparagraph (d) part 1 is amended by inserting the word "state" before the words "fair hearing" wherever they appear so that, as amended, paragraph (3) subparagraph (d) part 1 shall read as follows:

1. Processing of Appeals. TennCare shall screen all appeals submitted by TennCare enrollees to determine if the enrollees have presented a valid factual dispute. If TennCare determines that an enrollee failed to present a valid factual dispute, TennCare will immediately provide the enrollee with a notice, informing him/her that the enrollee must provide additional information as identified in the notice. If the enrollee does not provide this information, the appeal shall be dismissed without the opportunity for a state fair hearing within ten (10) days of the date of the notice. If the enrollee adequately responds to this notice, TennCare shall inform the enrollee that the appeal will proceed to a hearing. If the enrollee responds but fails to provide adequate information, TennCare will provide a notice to the enrollee, informing him/her that the appeal is dismissed without the opportunity for a state fair hearing. If the enrollee does not respond, the appeal will be dismissed without the opportunity for a state fair hearing, without further notice to the enrollee.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (3) subparagraph (d) part 2 is amended by deleting the word "action" and by substituting instead the language "benefit determination" so that, as amended, paragraph (3) subparagraph (d) part 2 shall read as follows:

2. Information Required to Establish Valid Factual Disputes. In order to establish a valid factual dispute, TennCare enrollees must provide the following information: Enrollee's name; member SSN or TennCare ID#; address and phone; identification of the service or item that is the subject of the adverse benefit determination; and the reason for the appeal, including any factual error the enrollee believes TennCare or the MCC has made. For reimbursement and billing appeals, enrollees must also provide the date the service was provided, the name of the provider, copies of receipts which prove that the enrollee paid for the services or copies of a bill for the services, whichever is applicable.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (3) subparagraph (e) is amended by deleting the word "If" and by substituting instead the word "When" and further amended by deleting the language "appeals an adverse action and TennCare determines that the basis of the appeal is that" and by substituting instead the language "attempts to lodge an appeal for a benefit for which" so that, as amended, paragraph (3) subparagraph (e) shall read as follows:

- (e) Appeals When Enrollees Lack a Prescription. When a TennCare enrollee attempts to lodge an appeal for a benefit for which the enrollee lacks a prescription, TennCare may require the enrollee to exhaust the following administrative process before an appeal can proceed:

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (3) subparagraph (f) is amended in the first sentence by deleting the language "Action is Taken" and by substituting instead the language "Benefit Determination Has Been Made" and in the second sentence by deleting the language "action has been taken related to TennCare services" and by substituting instead the language "benefit determination has been made" and in the third sentence by deleting the language "when no adverse action has been taken" and by substituting instead the language "in this circumstance" and further amended in the fourth sentence by deleting the word "claim" and by substituting instead the word "request" so that, as amended, paragraph (3) subparagraph (f) shall read as follows:

- (f) Appeals When No Adverse Benefit Determination Has Been Made. Enrollees shall not possess the right to appeal when no adverse benefit determination has been made. If enrollees request a hearing in this circumstance, their request shall be denied by the TennCare bureau without the opportunity for a hearing. Such circumstances include but are not limited to when enrollees appeal and no request for services had previously been denied.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (a) is amended by deleting the language "an in-person hearing, a telephone" and by substituting instead the language "a state fair" so that, as amended, paragraph (4) subparagraph (a) shall read as follows:

- (a) TennCare shall inform enrollees that they have the right to a state fair hearing or other hearing accommodation as may be required for enrollees with disabilities;

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (b) is amended by deleting the language "an impartial" and by substituting instead the word "a" so that, as amended, paragraph (4) subparagraph (b) shall read as follows:

- (b) Enrollees shall be entitled to a hearing before a hearing officer that affords each enrollee the right to:

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (b) part 9 is amended by deleting the word "impartial" so that, as amended, paragraph (4) subparagraph (b) part 9 shall read as follows:

9. A written decision setting out the hearing officer's rulings on findings of fact and conclusions of law; and

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (b) part 10 is amended by deleting the language "with an ALJ" and by substituting instead the language "before a hearing officer" and is further amended by deleting the language "within ninety (90) days for standard appeals or thirty-one (31) days (or forty-five (45)) days when additional time is required to obtain an enrollee's medical records) for expedited appeals, from the date of receipt of the appeal" and by substituting instead the language "pursuant to 42 C.F.R. §§ 431.244 and 438.408" so that, as amended, paragraph (4) subparagraph (b) part 10 shall read as follows:

10. Resolution, including a hearing before a hearing officer if the case has not been previously resolved in favor of the enrollee, pursuant to 42 C.F.R. §§ 431.244 and 438.408.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (d) is amended by deleting the language "an administrative" and by substituting instead the language "a state fair" and by deleting the word "impartial" so that, as amended, paragraph (4) subparagraph (d) shall read as follows:

- (d) Parties to an Appeal. Under this rule, the parties to a state fair 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 hearing officer.



Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (e) is amended by deleting the word "impartial" so that, as amended, paragraph (4) subparagraph (e) shall read as follows:

- (e) Consistent with the Code of Judicial Conduct, 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.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (f) part 1 is amended by deleting the part in its entirety and by substituting instead the following language, so that, as amended, part 1 shall read as follows:

1. Hearing officers shall promptly issue an Order of their decision. Any Order delivered orally from the bench in an expedited hearing by a hearing officer shall be effective immediately as to the provision or denial of benefits. In accordance with 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F the hearing officer shall enter a written order as soon as practicable and shall provide the parties with copies of such Orders. The time for appealing any oral Order shall not begin to run until entry of the written Order.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (f) part 2 is amended by deleting the word "impartial" and is further amended by inserting after the word "officers" the punctuation and language ", in accordance with T.C.A. §§ 4-5-314 and 4-5-315," and is further amended by deleting the language "the Grier Revised Consent Decree" and by substituting instead the language "this chapter and 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F" so that, as amended, paragraph (4) subparagraph (f) part 2 shall read as follows:

2. The TennCare Bureau shall have the opportunity to review all decisions of hearing officers, in accordance with T.C.A. §§ 4-5-314 and 4-5-315, to determine whether such decisions are contrary to applicable law, regulations or policy interpretations, which shall include but not be limited to decisions regarding the defined package of covered benefits, determinations of medical necessity and decisions based on the application of this chapter and 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (f) part 2 is amended by deleting subparts (i) and (ii) in their entirety and by renumbering the remaining subparts appropriately.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (f) part 2 subparts (iii) and (iv) are amended by deleting the word "impartial" so that, as amended, paragraph (4) subparagraph (f) part 2 subparts (iii) and (iv) shall read as follows:

- (iii) If TennCare modifies or overturns the decision of the hearing officer, TennCare shall issue a written decision that will be provided to the enrollee and the hearing officer. TennCare's decision shall constitute final agency action.
- (iv) If TennCare does not modify or overturn the decision of the hearing officer, the hearing officer's decision shall constitute final agency action without additional notice to the enrollee.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (f) part 2 subpart (v) is amended by deleting the language "the Tennessee Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq" and by inserting the language "T.C.A. § 4-5-315" so that, as amended, paragraph (4) subparagraph (f) part 2 subpart (v) shall read as follows:

- (v) Review of final agency action shall be available to enrollees pursuant to T.C.A. § 4-5-315.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (f) part 2 subpart (vi) is amended by deleting the words "An impartial" and by substituting the word "A" so that, as amended, paragraph (4) subparagraph (f) part 2 subpart (vi) shall read as follows:

- (vi) A hearing officer's decision in an enrollee's appeal shall not be deemed precedent for future appeals.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (g) part 1 is amended by deleting the language "Except as" and by substituting instead the word "As" and by deleting the numbers and language "431.214 and" and by deleting the punctuation and language ", as modified by this rule" and by substituting instead the language and numbers "and 438.420" and by deleting the punctuation ":" and by deleting subparts (i) and (ii) in their entirety and is amended by deleting from subpart (iii) the numbers and word "(iii) Continuation" and by substituting instead the word "continuation" and is further amended by deleting the language "MCC initiated" so that, as amended, paragraph (4) subparagraph (g) part 1 shall read as follows:

1. As permitted under 42 C.F.R. §§ 431.213, 431.220 and 438.420, TennCare services shall continue or be reinstated until an initial hearing decision if the enrollee appeals and requests continuation or reinstatement of services within ten (10) days of notice of action to terminate, suspend or reduce other ongoing services or prior to the date of action.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (g) part 2 is amended by deleting it in its entirety and by renumbering the remaining parts appropriately.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (g) part 3 is amended by deleting the language "(i) and (iii)", so that, as amended, paragraph (4) subparagraph (g) part 3 shall read as follows:

3. In the case of a timely request for continuation or reinstatement of the TennCare services described in paragraph (4)(g)1 above, the services shall continue or be reinstated pending only if and to the extent prescribed by the enrollee's treating clinician.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (g) is amended by deleting parts 4 and 5 in their entirety and by renumbering the remaining parts appropriately.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (4) subparagraph (h) is amended by deleting the punctuation "." following the word "appeals" and by deleting from part 1 the number and language "1. Expedited appeals of any action involving time-sensitive care" and is further amended by deleting the language "thirty-one (31) days, or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received" and substituting instead the language "the time constraints set out at 42 C.F.R. § 431.244. An enrollee may request an expedited appeal, and the MCC shall grant the request, if he meets the criteria for expedited resolution as set forth in 42 C.F.R. §§ 431.244 and 438.410." further, subparagraph (h) is amended by deleting parts 2 through 4 in their entirety so that, as amended, paragraph (4) subparagraph (h) shall read as follows:

- (h) Expedited appeals must be resolved within the time constraints set out at 42 C.F.R. § 431.244. An enrollee may request an expedited appeal, and the MCC shall grant the request, if he/she meets the criteria for expedited resolution as set forth in 42 C.F.R. §§ 431.244 and 438.410.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (5) Special Provisions Pertaining to Pharmacy is amended by deleting it in its entirety and substituting instead the following:

- (5) Reserved.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (6) Release of Enrollees' Medical Records subparagraphs (a), (b) and (d) are amended by deleting the language "action affecting TennCare services" and by substituting instead the language "benefit determination" so that, as amended, paragraph (6) subparagraphs (a), (b) and (d) shall read as follows:

- (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 benefit determination, 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 benefit determination.
- (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 benefit determination.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (7) Time Requirements and Corrective Action is amended by deleting the language "and Corrective Action" so that, as amended, paragraph (7) shall read as follows:

(7) Time Requirements.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (7) Time Requirements and Corrective Action subparagraph (a) is amended by deleting the language "within fourteen (14) days" and is further amended by deleting the language "rule 1200-13-13-.11(1)(b)2. or as expeditiously as the enrollee's health condition requires. Failure by the MCCs to act upon a request for prior authorization within twenty-one (21) days shall result in an automatic authorization of the requested service, subject to the provision of (7)(e) below, and to provisions relating to medical contraindication at rule 1200-13-13-.11(8)" and by substituting instead the language "42 C.F.R. § 438.210" so that, as amended, paragraph (7) subparagraph (a) shall read as follows:

- (a) MCCs must act upon a request for prior authorization as provided in 42 C.F.R. § 438.210.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (7) Time Requirements and Corrective Action subparagraph (b) is amended by deleting it in its entirety and by renumbering the remaining subparagraphs appropriately.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (7) Time Requirements and Corrective Action subparagraph (c) is amended by inserting in the first sentence between the words "standard" and "appeals" the new language "and expedited" and by deleting the language "an impartial" and by substituting instead the word "a" and by deleting the language "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, unless extended to forty-five days when additional time is required to obtain an enrollee's medical records. Calculation of the ninety (90) day, thirty-one (31) day or forty-five (45) day deadline may be adjusted so that" and substituting instead the new language "pursuant to the timeframes set forth in 42 C.F.R. § 431.244." and is further amended by deleting the final two sentences of the subparagraph so that, as amended, paragraph (7) subparagraph (c) shall read as follows:

- (c) All standard and expedited appeals, including, if not previously resolved in favor of the enrollee, a hearing before a hearing officer, shall be resolved pursuant to the timeframes set forth in 42 C.F.R. § 431.244. TennCare is not charged with any delays attributable to the enrollee.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (7) Time Requirements and Corrective Action subparagraphs (d), (e) and (f) are amended by deleting them in their entirety and by renumbering the remaining subparagraphs appropriately.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (7) Time Requirements and Corrective Action subparagraph (g) is amended by deleting the words "Solutions Unit" wherever they appear and by substituting instead the word "Bureau" and by deleting the words "an impartial" and by substituting instead the word "a" and by inserting the word "the" in the second sentence between the words "issued by" and "TennCare" so that, as amended, paragraph (7) subparagraph (g) shall read as follows:

- (g) In no circumstance will a directive be issued by the TennCare Bureau or a hearing officer to provide a service to an enrollee if, when the appeal is resolved, the service is no longer covered by TennCare for the enrollee. A directive also will not be issued by the TennCare Bureau if the service cannot

reasonably be provided to the enrollee before the date when the service is no longer covered by TennCare for the enrollee and such appeal will proceed to a hearing.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (8) Medical Contraindication is amended by deleting it in its entirety and substituting instead the following:

(8) Reserved.

Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits paragraph (9) Special Provisions Relating to Children in State Custody is amended by deleting the language "In addition to" and by substituting instead the language "Children in the custody of the State have" and by deleting the language and punctuation "and the terms of this rule, children in state custody shall also receive the following enhanced notice and appeal rights:" and by substituting instead the language and punctuation "regarding TennCare services and benefits." and is further amended by deleting subparagraphs (a) through (c) in their entirety so that, as amended, paragraph (9) shall read as follows:

(9) Special Provisions Relating to Children in State Custody. Children in the custody of the State have the rights and protections established by 42 C.F.R. Part 431, Subpart E regarding TennCare services and benefits.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109, 71-5-113, 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F.

Rule 1200-13-13-.12 Other Appeals by TennCare Applicants and Enrollees is amended by deleting it in its entirety and substituting instead the following:

1200-13-13-.12 Reserved.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109, 71-5-113, 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

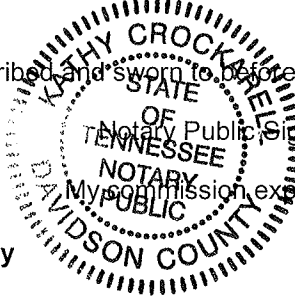
Date: 12/22/16

Signature: *John G. Roberts*

Name of Officer: John G. (Gabe) Roberts  
Deputy Director and Chief Operating Officer  
Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: December 22, 2016  
Notary Public Signature: *Kathy Crockett*  
My commission expires on: 1/8/2019



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Filed with the Department of State on: 1/4/17

*Tre Hargett*  
Tre Hargett  
Secretary of State

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