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Sequence Number: 01-09-19
Rule ID(s): 8049
File Date: 1/3/19
Effective Date: 4/3/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

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

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-13-11	Public Records Access
Rule Number	Rule Title
1200-13-11-.01	Scope and Authority
1200-13-11-.02	Definitions
1200-13-11-.03	Requesting Access to Public Records
1200-13-11-.04	Responding to Public Records Requests
1200-13-11-.05	Inspection of Records
1200-13-11-.06	Copies of Records
1200-13-11-.07	Fees and Charges and Procedures for Billing and Payment
1200-13-11-.08	Aggregation of Frequent and Multiple Requests
1200-13-11-.09	TennCare Public Records Request Form

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to

http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Rule Chapter 1200-13-11 Administrative Fees is deleted in its entirety and replaced with a new Rule Chapter 1200-13-11 Public Records Access which shall read as follows:

Rules
of
Tennessee Department of Finance and Administration
Division of TennCare

Chapter 1200-13-11
Public Records Access

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1200-13-11-.01 Scope of Authority
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1200-13-11-.07 Fees and Charges and Procedures for Billing and Payment
1200-13-11-.08 Aggregation of Frequent and Multiple Requests
1200-13-11-.09 TennCare Public Records Request Form

1200-13-11-.01 Scope and Authority. The Tennessee Public Records Act (TPRA), T.C.A. §§ 10-7-501, et seq., requires each state agency to provide public access to agency records, unless exempted by the TPRA. This chapter establishes the process and procedure through which the Division of TennCare shall provide access to public records, pursuant to T.C.A. § 10-7-503.

- (1) TennCare shall provide economical and efficient access to public records.
- (2) TennCare public records shall, at all times during business hours, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by law.
- (3) Personnel of TennCare shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records.
- (4) The integrity and organization of public records, as well as the efficient and safe operation of TennCare, its programs and the individuals they support, shall be protected as provided by law.
- (5) TennCare is not required to sort through files to compile information or to create or recreate a record that does not exist in order to satisfy a records request.

Statutory Authority: T.C.A. §§ 4-5-202, 10-7-503 and 71-5-105.

1200-13-11-.02 Definitions.

- (1) Division of TennCare (TennCare). A state governmental agency administratively located within the Tennessee Department of Finance and Administration; includes references to all employees and subdivisions of the agency.
- (2) Media. This term includes reporters, editors and journalists working with radio, television, online or any other news organizations, and serving the general public.

- (3) Media Inquiries. Inquiries not related to the use or disclosure of public records, made by or on behalf of members of the media.
- (4) Protected Health Information (PHI). Health information that identifies or may be used to identify an individual and that meets the following criteria:
 - (a) Information that is:
 - 1. Transmitted by electronic media; or,
 - 2. Maintained in electronic media; or,
 - 3. Transmitted or maintained in any other form or medium, including demographic information that identifies or may be used to identify an individual; and,
 - (b) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and,
 - (c) Relates to the physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. See 45 C.F.R. § 160.103.
- (5) Public Records. All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.
- (6) Public Records Request Coordinator (PRRC). The individual, or individuals, designated in Rule .03, who has, or have, the responsibility to ensure public records requests are routed to the appropriate records custodian and are fulfilled according to the TPRA. The PRRC may also be a records custodian.
- (7) Records Custodian. The office, official or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.
- (8) Requestor. A person seeking access to a public record, whether it is for inspection or duplication.
- (9) TennCare Public Records Request Form (Request Form). The form utilized by TennCare for processing a public records request, available on the TennCare website at <https://www.tn.gov/tenncare/> or in Rule .09.

Statutory Authority: T.C.A. §§ 4-5-202, 10-7-503 and 71-5-105.

1200-13-11-.03 Requesting Access to Public Records.

- (1) Public records requests shall be made to the PRRC or designee in order to ensure that public records requests are routed to the appropriate records custodian and fulfilled in a timely manner. The TennCare designated PRRC is the Privacy and Public Records Officer, in the Office of General Counsel, whose contact information is available in the Request Form and as follows:

TennCare Public Records Request Coordinator
 Department of Finance and Administration
 Division of TennCare
 310 Great Circle Road
 Nashville, TN 37243
 1-866-797-9469
 fax: (615) 734-5289
 email: Privacy.Records.TennCare@tn.gov

- (2) Requests for inspection may be made orally or in writing using the Request Form, at the PRRC's mailing address, email address, fax or phone number. The PRRC shall request contact information from the requestor for providing any written communication required under the TPRA.
- (3) Requests for copies, or requests for inspection and copies, shall be made to the PRRC in writing using the Request Form at the mail or email address or fax number provided.
- (4) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or at TennCare discretion an alternative acceptable form of ID) is required as a condition to inspect or receive copies of public records.
- (5) Requests by journalists, media organizations, outlets, agencies and their representatives may be treated as Media Inquiries and responded to based on the procedures of the TennCare Communications Office. It is the policy of TennCare to respond only to public record requests by journalists who are Tennessee citizens. Interstate journalist and media organization requests shall be treated as Media Inquiries rather than as records requests and such requests will be responded to at the discretion of the TennCare Deputy Director of Communications and Employee Relations. Contact information for the Communications Office is available on the TennCare website.

Statutory Authority: T.C.A. §§ 4-5-202, 10-7-503 and 71-5-105.

1200-13-11-.04 Responding to Public Records Requests.

(1) Public Records Request Coordinator.

- (a) The PRRC shall review public records requests and make an initial determination of the following:
 1. If the requestor provided evidence of Tennessee citizenship;
 2. If the records requested are described with sufficient specificity to identify them; and
 3. If TennCare is the custodian of the records.
- (b) The PRRC shall acknowledge receipt of the request and take any of the following appropriate actions:
 1. Advise the requestor of this rule chapter and the decisions made regarding:
 - (i) Proof of Tennessee citizenship;
 - (ii) Any forms required for copies;
 - (iii) Fees; or,
 - (iv) Aggregation of multiple or frequent requests.
 2. If appropriate, deny the request in writing, using the TennCare Public Records Request Response Form (Response Form) providing the appropriate ground for denial such as:
 - (i) The requestor is not, or has not presented evidence of being, a Tennessee citizen;
 - (ii) The request lacks specificity;
 - (iii) An exemption makes the record not subject to disclosure under the TPRA;
 - (iv) TennCare is not the custodian of the requested records; or,
 - (v) The records requested do not exist.

3. If appropriate, contact the requestor to see if the request can be narrowed or otherwise clarified.
4. Forward the records request to the appropriate records custodian within TennCare.
5. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity.

(2) Records Custodian.

- (a) Upon receiving a public records request, a TennCare records custodian in collaboration with the PRRC shall promptly make requested public records available using the Response Form. If the records custodian is uncertain that an applicable TPRA exemption applies, the custodian may consult with the PRRC or the Office of General Counsel.
- (b) If not practicable to promptly provide requested records, a records custodian in collaboration with the PRRC shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Response Form indicating the reason for the delay and an estimate of the time necessary to produce the records or determine the proper response to the request because additional time is necessary:
 1. To determine whether the requested records exist;
 2. To search for, retrieve, or otherwise gain access to records;
 3. To determine whether the records are open;
 4. To redact records; or
 5. For other similar reasons.
- (c) If a records custodian in collaboration with the PRRC denies a public records request, he or she shall deny the request in writing as provided above using the Response Form.
- (d) If a records custodian in collaboration with the PRRC reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the Response Form should be used to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian or PRRC should contact the requestor to see if the request can be narrowed.
- (e) If a records custodian discovers records responsive to a records request were omitted, the records custodian in collaboration with the PRRC should contact the requestor concerning the omission and produce the records as quickly as practicable.

(3) Confidential Records and Redaction.

- (a) If the PRRC determines that the requested records are considered confidential or privileged records under federal or state law and are not available for public inspection, the PRRC shall communicate the determination to the requester in writing. However, nothing in this rule chapter shall be construed to require TennCare to generate a detailed description of each confidential record withheld from inspection, such as may be required with respect to the production of documents in discovery under the Tennessee Rules of Civil Procedure.
- (b) Individually identifying information and Protected Health Information (PHI) is generally not subject to public records requests. PHI and other sensitive information are confidential except as use or disclosure is permitted by The Privacy Act, HIPAA and other federal and state privacy rules.
- (c) If a TennCare record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access or copies. If

questions arise concerning redaction, the records custodian should coordinate with the PRRC or counsel or other appropriate parties regarding review and redaction of records. The records custodian, the PRRC, and the Office of General Counsel may also consult with the Comptroller of the Treasury's Office of Open Records Counsel (OORC) or with the Office of the Attorney General and Reporter regarding this topic or others regarding open records requests.

- (d) Whenever a redacted record is provided, a records custodian shall provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

Statutory Authority: T.C.A. §§ 4-5-202, 10-7-503 and 71-5-105.

1200-13-11-.05 Inspection of Records.

- (1) There shall be no charge for inspection of open public records. Charges may be assessed for reasonable costs incurred in producing requested materials in accordance with T.C.A. §§ 10-7-503(a)(5) and 10-7-503(a)(7)(C)(i).
- (2) The location for inspection of records shall be reasonably determined by the PRRC or the records custodian.
- (3) Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.

Statutory Authority: T.C.A. §§ 4-5-202, 10-7-503 and 71-5-105.

1200-13-11-.06 Copies of Records.

- (1) The PRRC or records custodian shall promptly respond to a public records request for copies in the most economic and efficient manner practicable.
- (2) Copies will be available for pickup at a location specified by the PRRC or records custodian.
- (3) Upon payment for postage and fees for copies and labor, copies will be delivered to the requestor's home address via the United States Postal Service. Additional permitted means of delivery may be agreed upon with the requestor, including email, electronic transfer or via disk, upon payment of fees for copies and labor and in the case of use of devices such as flash drives, the agency's cost for procuring such a device.
- (4) Except for the use of a cell phone or handheld camera, a requestor will not be allowed to make copies of records with their personal equipment during the inspection of such records.

Statutory Authority: T.C.A. §§ 4-5-202, 10-7-503 and 71-5-105.

1200-13-11-.07 Fees and Charges and Procedures for Billing and Payment.

- (1) Excessive fees and charges for copies of public records shall not be used to hinder access to public records.
- (2) Records custodians in collaboration with the PRRC shall provide requestors with an itemized estimate of the charges prior to producing copies of records and shall require pre-payment of such charges before producing requested records.
- (3) When fees for copies and labor do not exceed \$50.00, the fees will be waived. Requests for waivers for fees above \$50.00 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of TennCare and for the public good. Fees associated with aggregated records requests will not be waived.

- (4) Fees and charges for copies are as follows:
 - (a) \$0.15 per page for letter- and legal-size black and white copies.
 - (b) \$0.50 per page for letter- and legal-size color copies.
 - (c) Shipping or mailing costs in excess of \$15.00.
 - (d) Labor when time exceeds 1 hour for time reasonably necessary to produce requested records, including the time spent locating, retrieving, reviewing, reproducing, redacting or scanning records. The cost will vary depending on the hourly rates of the employee(s) doing the work and may include the time of an attorney reasonably necessary to review records and redactions to ensure compliance with confidentiality requirements of state and federal law.
 - (e) If an outside vendor is used, the actual costs assessed by the vendor.
 - (f) If transfer is performed via disk, such as a flash drive, the agency's cost for procuring such a device.
- (5) No duplication costs will be charged for requests for less than 10 pages.
- (6) Payment is to be made by check or money order payable to TennCare and presented to the PRRC via mail or hand delivery, at the address provided in the Request and Response Forms.

Statutory Authority: T.C.A. §§ 4-5-202, 10-7-503 and 71-5-105.

1200-13-11-.08 Aggregation of Frequent and Multiple Requests.

- (1) TennCare will aggregate record requests according to the Frequent and Multiple Request Policy promulgated by the OORC when more than four (4) requests are received within a calendar month either from a single individual or a group of individuals deemed working in concert.
- (2) The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.
- (3) Requests for any TennCare records, regardless of the type of records requested or whether the request pertains to any office or sub-division of the agency, may be aggregated.
- (4) Once the aggregation threshold is reached, the exemption for labor charges up to one hour specified above does not apply for any ongoing and subsequent requests.

Statutory Authority: T.C.A. §§ 4-5-202, 10-7-503 and 71-5-105.

1200-13-11-.09 TennCare Public Records Request Form. The following form is utilized by TennCare for processing a public records request. A requestor may use a copy of the form produced below or the electronic version of the form available on the TennCare website at <https://www.tn.gov/tenncare/>

TENNCARE PUBLIC RECORDS REQUEST FORM

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

To: TennCare Public Records Request Coordinator
Department of Finance and Administration, Division of TennCare

310 Great Circle Road
Nashville, TN 37243
1-866-797-9469, fax (615) 734-5289
email the completed form to Privacy.Records.TennCare@tn.gov

From: Requestor Name: _____
Residence address: _____
Mailing or delivery information: _____
Phone: _____ Email: _____

Is the requestor a Tennessee citizen? Yes No (A copy of a valid driver's license or other evidence showing requestor's address is required prior to access to public records.)

Request: Inspection (The TPRA does not permit copying fees or require a written request for inspection only. Fees may be assessed for redaction as appropriate.)

Copies/Duplicates (There is no fee for requests for records of less than 10 pages and labor charges of one hour or less. If fees are to be assessed, the requestor has a right to receive a good faith estimate prior to receiving the documents requested. More details as to fees and charges may be found in the TennCare Public Records Policy.)

Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed \$ _____? If so, initial here: _____.

Delivery preference: On-Site Pick-Up USPS First-Class Mail
 Electronic Other: _____

Records Requested:

Provide a detailed description of the records requested, including:

- (1) type of records;
- (2) timeframe or dates for the records sought; and
- (3) subject matter or key words related to the records.

Under the TPRA, records requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your records request must provide enough detail to enable the records custodian responding to the request to identify the specific records requested.

Description: _____

Signature of Requestor and Date Submitted

TENNCARE OFFICE USE ONLY

Received by: _____ Date and time received: _____

Notes:

Statutory Authority: T.C.A. §§ 4-5-202, 10-7-503 and 71-5-105.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the ^{Tennessee Dept of} ~~Finance & Administration~~ ^{Division of TennCare} (board/commission/ other authority) on 10/10/18 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 7/27/18

Rulemaking Hearing(s) Conducted on: (add more dates). 9/18/18

Date: 10/10/18

Signature: Wendy Long M.D.

Name of Officer: Wendy Long, M.D., M.P.H.

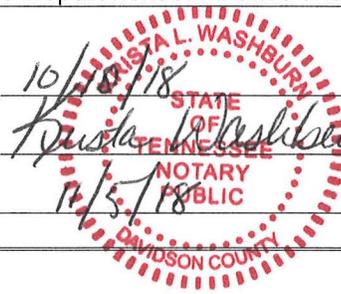
Division of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 10/18/18

Notary Public Signature: Krista L. Washburn

My commission expires on: 11/5/18



Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-11

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
12/27/2018
Date

Department of State Use Only

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PUBLICATIONS

Filed with the Department of State on: 1/3/19

Effective on: 4/3/19

Tre Hargett

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

1. Identification Requirement

The commenter asked that the identification requirement to prove Tennessee citizenship be relaxed. TennCare declines based upon T.C.A. § 10-7-503(a)(7)(A)(vi), which states that a governmental entity may require any person making a request to view or copy a public record to present a government-issued photo identification. TennCare also allows alternate forms of identification on a case-by-case basis so that prompt access to public records will not be hindered.

2. Cost for Records

The commenter asked for modification of the rules related to charges for the costs of preparation and redaction of public records. TennCare declines the recommendation to modify the rule at this time. As the state Medicaid agency, TennCare records generally contain confidential and/or privileged information under federal and state law which is not open for public inspection. Further, these statutes, including T.C.A. § 10-7-503(a)(5) require that TennCare perform redaction of confidential information and allows the costs for performing such redaction to be assessed prior to making records available to the public. While TennCare does not charge a fee for inspecting records, in some circumstances there may be costs associated with preparation for inspection, which includes staff time or vendor expenses to review and appropriately redact records as required by law.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rule chapter is not anticipated to have an effect on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule chapter is not anticipated to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule chapter is being amended to comply with T.C.A. § 10-7-503(g)(2) (PC 712, Acts 2018) passed by the General Assembly, which requires all state agencies to promulgate rules to govern access to public records.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The rule chapter is lawfully adopted by the Division of TennCare in accordance with T.C.A. §§ 4-5-202, 10-7-503 and 71-5-105.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by this rule chapter are those desiring access to the Division of TennCare public records. The governmental entity most directly affected by this rule chapter is the Division of TennCare, Tennessee Department of Finance & Administration.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

The rule chapter was approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The promulgation of this rule chapter is not anticipated to have an impact on state and local government revenues and expenditures.

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

Donna K. Tidwell
Deputy General Counsel

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

Donna K. Tidwell
Deputy General Counsel

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

310 Great Circle Road
Nashville, TN 37243
(615) 507-6852
donna.tidwell@tn.gov

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

GW10118283

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH FINANCE AND ADMINISTRATION
DIVISION OF MEDICAID/TENNCARE**

**CHAPTER 1200-13-11
ADMINISTRATIVE FEES PUBLIC RECORDS ACCESS**

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1200-13-11-.01 Fees

1200-13-11-.01 FEES.

(1) The Bureau of Medicaid hereby establishes fees for the reproduction of documents as follows:

Service	Fee
(a) Paper copy of records not requiring search (per page)	\$.75
(b) Paper copy of records requiring search (per page)	\$1.50
(c) Microfiche copy of records, when available in microfiche (per microfiche page)	\$ 3.04
(d) Computer programming time, when necessary to produce records not currently available or in a different form/format than currently available, in addition to the copy costs describe, in (a) or (c) above (per one-half hour)	\$18.00
(e) The minimum total charge for computer programming time shall be	\$108.00
(f) Computer operational time for producing computer generated documents (per minute)	\$ 1.75
(g) Computer-generated output, paper, microfilm, microfiche, diskette, or tape (per 1,000 lines)	\$.60
(h) The minimum total charge for reproduction of documents shall be	\$ 5.00
(i) In addition to the fees described above, a flat-rate charge for postage, shipping and handling will be assessed for documents which are mailed, faxed, shipped or otherwise transferred from the Bureau of Medicaid in any manner except hand-delivered at the Medicaid Administration building. This fee shall not be assessed for documents hand-delivered at the Medicaid Administration building.	\$5.00

(2) The Bureau of Medicaid shall make records available for inspection during normal business hours upon request. When it is determined by the Bureau of Medicaid that considerable effort shall be required to locate or assemble records in a suitable work area, the request to inspect records shall be granted within a reasonable time. Such decision shall rest solely with the Bureau of Medicaid.

(3) The Bureau of Medicaid shall not permit records to be removed from the Bureau Administration building for purposes of inspection or reproduction except when directed to do so by court order.

(4) — The Medicaid reproduction of documents fees and procedures for public inspections of records as set out in paragraph (1), (2), and (3) above will also be applicable to the Bureau of TennCare.

~~**Authority:** T.C.A. §§4-5-202, 71-5-105, 71-5-109 and Public Chapter 358 of the Acts of 1993. **Administrative History:** Original rule filed March 16, 1992; effective April 30, 1992. Amendment filed March 18, 1994; effective June 1, 1994. Amendment filed June 9, 1994; effective August 23, 1994.~~

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1200-13-11-.06 Copies of Records

1200-13-11-.07 Fees and Charges and Procedures for Billing and Payment

1200-13-11-.08 Aggregation of Frequent and Multiple Requests

1200-13-11-.09 TennCare Public Records Request Form

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- (1) TennCare shall provide economical and efficient access to public records.
- (2) TennCare public records shall, at all times during business hours, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by law.
- (3) Personnel of TennCare shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records.
- (4) The integrity and organization of public records, as well as the efficient and safe operation of TennCare, its programs and the individuals they support, shall be protected as provided by law.
- (5) TennCare is not required to sort through files to compile information or to create or recreate a record that does not exist in order to satisfy a records request.

1200-13-11-.02 Definitions.

- (1) Division of TennCare (TennCare). A state governmental agency administratively located within the Tennessee Department of Finance and Administration; includes references to all employees and subdivisions of the agency.
- (2) Media. This term includes reporters, editors and journalists working with radio, television, online or any other news organizations, and serving the general public.
- (3) Media Inquiries. Inquiries not related to the use or disclosure of public records, made by or on behalf of members of the media.
- (4) Protected Health Information (PHI). Health information that identifies or may be used to identify an individual and that meets the following criteria:
 - (a) Information that is:
 1. Transmitted by electronic media; or,
 2. Maintained in electronic media; or,

3. Transmitted or maintained in any other form or medium, including demographic information that identifies or may be used to identify an individual; and,
- (b) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and,
- (c) Relates to the physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. See 45 C.F.R. § 160.103.
- (5) Public Records. All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.
- (6) Public Records Request Coordinator (PRRC). The individual, or individuals, designated in Rule .03, who has, or have, the responsibility to ensure public records requests are routed to the appropriate records custodian and are fulfilled according to the TPRA. The PRRC may also be a records custodian.
- (7) Records Custodian. The office, official or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.
- (8) Requestor. A person seeking access to a public record, whether it is for inspection or duplication.
- (9) TennCare Public Records Request Form (Request Form). The form utilized by TennCare for processing a public records request, available on the TennCare website at <https://www.tn.gov/tenncare/> or in Rule .09.

1200-13-11-.03 Requesting Access to Public Records.

- (1) Public records requests shall be made to the PRRC or designee in order to ensure that public records requests are routed to the appropriate records custodian and fulfilled in a timely manner. The TennCare designated PRRC is the Privacy and Public Records Officer, in the Office of General Counsel, whose contact information is available in the Request Form and as follows:

TennCare Public Records Request Coordinator
Department of Finance and Administration
Division of TennCare
310 Great Circle Road
Nashville, TN 37243
1-866-797-9469
fax: (615) 734-5289
email: Privacy.Records.TennCare@tn.gov

- (2) Requests for inspection may be made orally or in writing using the Request Form, at the PRRC's mailing address, email address, fax or phone number. The PRRC shall request contact information from the requestor for providing any written communication required under the TPRA.
- (3) Requests for copies, or requests for inspection and copies, shall be made to the PRRC in writing using the Request Form at the mail or email address or fax number provided.
- (4) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or at TennCare discretion an alternative acceptable form of ID) is required as a condition to inspect or receive copies of public records.
- (5) Requests by journalists, media organizations, outlets, agencies and their representatives may be treated as Media Inquiries and responded to based on the procedures of the TennCare Communications Office. It is the policy of TennCare to respond only to public record requests by journalists who are Tennessee citizens. Interstate journalist and media organization requests shall be treated as Media Inquiries rather than as records requests and such requests will be responded to at the discretion of the TennCare Deputy Director

of Communications and Employee Relations. Contact information for the Communications Office is available on the TennCare website.

1200-13-11-.04 Responding to Public Records Requests.

(1) Public Records Request Coordinator.

(a) The PRRC shall review public records requests and make an initial determination of the following:

1. If the requestor provided evidence of Tennessee citizenship;
2. If the records requested are described with sufficient specificity to identify them; and
3. If TennCare is the custodian of the records.

(b) The PRRC shall acknowledge receipt of the request and take any of the following appropriate actions:

1. Advise the requestor of this rule chapter and the decisions made regarding:

- (i) Proof of Tennessee citizenship;
- (ii) Any forms required for copies;
- (iii) Fees; or,
- (iv) Aggregation of multiple or frequent requests.

2. If appropriate, deny the request in writing, using the TennCare Public Records Request Response Form (Response Form) providing the appropriate ground for denial such as:

- (i) The requestor is not, or has not presented evidence of being, a Tennessee citizen;
- (ii) The request lacks specificity;
- (iii) An exemption makes the record not subject to disclosure under the TPRA;
- (iv) TennCare is not the custodian of the requested records; or,
- (v) The records requested do not exist.

3. If appropriate, contact the requestor to see if the request can be narrowed or otherwise clarified.

4. Forward the records request to the appropriate records custodian within TennCare.

5. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity.

(2) Records Custodian.

(a) Upon receiving a public records request, a TennCare records custodian in collaboration with the PRRC shall promptly make requested public records available using the Response Form. If the records custodian is uncertain that an applicable TPRA exemption applies, the custodian may consult with the PRRC or the Office of General Counsel.

(b) If not practicable to promptly provide requested records, a records custodian in collaboration with the PRRC shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Response Form indicating the reason for the delay and an estimate of the

time necessary to produce the records or determine the proper response to the request because additional time is necessary:

1. To determine whether the requested records exist;
 2. To search for, retrieve, or otherwise gain access to records;
 3. To determine whether the records are open;
 4. To redact records; or
 5. For other similar reasons.
- (c) If a records custodian in collaboration with the PRRC denies a public records request, he or she shall deny the request in writing as provided above using the Response Form.
- (d) If a records custodian in collaboration with the PRRC reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the Response Form should be used to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian or PRRC should contact the requestor to see if the request can be narrowed.
- (e) If a records custodian discovers records responsive to a records request were omitted, the records custodian in collaboration with the PRRC should contact the requestor concerning the omission and produce the records as quickly as practicable.

(3) Confidential Records and Redaction.

- (a) If the PRRC determines that the requested records are considered confidential or privileged records under federal or state law and are not available for public inspection, the PRRC shall communicate the determination to the requester in writing. However, nothing in this rule chapter shall be construed to require TennCare to generate a detailed description of each confidential record withheld from inspection, such as may be required with respect to the production of documents in discovery under the Tennessee Rules of Civil Procedure.
- (b) Individually identifying information and Protected Health Information (PHI) is generally not subject to public records requests. PHI and other sensitive information are confidential except as use or disclosure is permitted by The Privacy Act, HIPAA and other federal and state privacy rules.
- (c) If a TennCare record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access or copies. If questions arise concerning redaction, the records custodian should coordinate with the PRRC or counsel or other appropriate parties regarding review and redaction of records. The records custodian, the PRRC, and the Office of General Counsel may also consult with the Comptroller of the Treasury's Office of Open Records Counsel (OORC) or with the Office of the Attorney General and Reporter regarding this topic or others regarding open records requests.
- (d) Whenever a redacted record is provided, a records custodian shall provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

1200-13-11-.05 Inspection of Records.

- (1) There shall be no charge for inspection of open public records. However, charges may be incurred for preparation of records for inspection which may include labor costs and outside vendor expenses for collection and redaction as appropriate.
- (2) The location for inspection of records shall be reasonably determined by the PRRC or the records custodian.

(3) Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.

1200-13-11-.06 Copies of Records.

(1) The PRRC or records custodian shall promptly respond to a public records request for copies in the most economic and efficient manner practicable.

(2) Copies will be available for pickup at a location specified by the PRRC or records custodian.

(3) Upon payment for postage and fees for copies and labor, copies will be delivered to the requestor's home address via the United States Postal Service. Additional permitted means of delivery may be agreed upon with the requestor, including email, electronic transfer or via disk, upon payment of fees for copies and labor and in the case of use of devices such as flash drives, the agency's cost for procuring such a device.

(4) Except for the use of a cell phone or handheld camera, a requestor will not be allowed to make copies of records with their personal equipment during the inspection of such records.

1200-13-11-.07 Fees and Charges and Procedures for Billing and Payment.

(1) Excessive fees and charges for copies of public records shall not be used to hinder access to public records.

(2) Records custodians in collaboration with the PRRC shall provide requestors with an itemized estimate of the charges prior to producing copies of records and shall require pre-payment of such charges before producing requested records.

(3) When fees for copies and labor do not exceed \$50.00, the fees will be waived. Requests for waivers for fees above \$50.00 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of TennCare and for the public good. Fees associated with aggregated records requests will not be waived.

(4) Fees and charges for copies are as follows:

(a) \$0.15 per page for letter- and legal-size black and white copies.

(b) \$0.50 per page for letter- and legal-size color copies.

(c) Shipping or mailing costs in excess of \$15.00.

(d) Labor when time exceeds 1 hour for time reasonably necessary to produce requested records, including the time spent locating, retrieving, reviewing, reproducing, redacting or scanning records. The cost will vary depending on the hourly rates of the employee(s) doing the work and may include the time of an attorney reasonably necessary to review records and redactions to ensure compliance with confidentiality requirements of state and federal law.

(e) If an outside vendor is used, the actual costs assessed by the vendor.

(f) If transfer is performed via disk, such as a flash drive, the agency's cost for procuring such a device.

(5) No duplication costs will be charged for requests for less than 10 pages.

(6) Payment is to be made by check or money order payable to TennCare and presented to the PRRC via mail or hand delivery, at the address provided in the Request and Response Forms.

1200-13-11-.08 Aggregation of Frequent and Multiple Requests.

