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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>	Division of TennCare
<b>Contact Person:</b>	George Woods
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*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	Talley A. Olson, Director TennCare Office of Civil Rights Compliance
<b>Address:</b>	Division of TennCare 310 Great Circle Road Nashville, TN 37243
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**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Division of TennCare 310 Great Circle Road, Conference Room 4 East A		
City:	Nashville, TN		
Zip:	37243		
Hearing Date:	May 12, 2022		
Hearing Time:	2:00 pm	<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>
1200-13-01	TennCare Long-Term Care Programs
<b>Rule Number</b>	<b>Rule Title</b>
1200-13-01-.02	Definitions
1200-13-01-.05	TennCare CHOICES Program
1200-13-01-.10	Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE
1200-13-01-.25	Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled Under Section 1915(c) of the Social Security Act (Statewide MR Waiver)
1200-13-01-.28	Home and Community Based Services Waiver for Persons with Mental Retardation Under Section 1915(c) of the Social Security Act (Arlington MR Waiver)
1200-13-01-.29	Tennessee's Self-determination Waiver Under Section 1915(c) of the Social Security Act (Self-determination MR Waiver Program)
1200-13-01-.31	TennCare Employment and Community First CHOICES (ECF CHOICES) Program
1200-13-01-.33	Temporary Benefits Under the American Rescue Plan Act Enhanced HCBS FMAP Spending Plan

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 1200-13-01 TennCare Long-Term Care Programs Table of Contents is amended by adding a new Rule 1200-13-.01-.33 and title which shall read as follows:

1200-13-01-.33 Temporary Benefits Under the American Rescue Plan Act Enhanced HCBS FMAP Spending Plan

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

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

(#) Enabling Technology.

- (a) For purposes of CHOICES and ECF CHOICES, equipment and/or methodologies that, alone or in combination with associated technologies, provide the means to support individuals' increased independence in their homes, communities, and/or workplaces. When utilized in a person-centered manner, these technologies have a substantial influence on how Long-Term Services and Supports (LTSS) supports people with intellectual and developmental disabilities in a more natural, non-segregated environment in order to promote independence, personal development, and additional opportunities for self-determination
  - 1. The Enabling Technology service covers purchases, leasing, shipping costs, training, maintenance, and, as necessary, repair of equipment required by the member to increase, maintain and/or improve his/her functional capacity to perform daily tasks that would not be possible otherwise. All items must meet applicable standards of manufacture, design and installation.
  - 2. Examples of Enabling Technology include, but are not limited to, motion sensors; smoke and carbon monoxide alarms; bed and/or chair sensors; live or on demand audio and/or video technologies; pressure sensors; stove guards; automated medication dispenser systems; mobile software applications using digital pictures, audio and video to guide, teach, or remind; GPS guidance devices; wearable and virtual technologies; and software to operate devices for environmental control or to communicate with other smart devices, with paid or natural supports at home, at work, or any other place of personal import.
  - 3. Enabling Technology includes remote support technology systems in which remote support staff and/or coaches and/or natural supports can interact, coordinate supports, or actively respond to needs in person when needed. Remote support systems are real time support systems which

often include two-way communication. Enabling technology is an available support option for all aspects and places of participants' lives.

- (i) These systems use wireless technology, and/or phone lines, to link an individual's home to a person off-site to provide up to 24/7 support.
    - (ii) These systems include the use of remote sensor technology to send "real time" data remote staff or family who are immediately available to assess the situation and provide assistance according to a Person-Centered Support Plan (PCSP).
  - 4. In CHOICES Groups 2 and 3, Enabling Technology shall be limited to \$5,000 per person per calendar year through March 31, 2024. Enabling Technology is a time-limited benefit, and shall no longer be available after March 31, 2024.
  - 5. In ECF CHOICES Groups 4, 5, 6, 7, and 8, Enabling Technology and Assistive Technology, Adaptive Equipment and Supplies combined shall be limited to \$5,000 per person per calendar year.
  - 6. An MCO may authorize services in excess of the benefit limit as a cost-effective alternative to institutional placement or other medically necessary covered benefits.
- (b) For purposes of 1915(c) Waivers, equipment, devices, items and/or their deployment or innovations that, in combination with associated technologies, provides the means to support an individual's increased independence in the home or community.
- 1. The service covers purchases, leasing, shipping costs, and as necessary, repair of equipment, devices or items required by the person to increase, maintain or improve his/her functional capacity to perform daily tasks that would not be possible otherwise. All items must meet applicable standards of manufacture, design and installation.
  - 2. Examples of Enabling Technology include, but are not limited to, motion sensors; smoke and carbon monoxide alarms; bed and/or chair sensors; live or on demand audio and/or video technologies; pressure sensors; stove guards; automated medication dispenser systems; mobile software applications using digital pictures, audio and video to guide, teach, or remind; GPS guidance devices; wearable and virtual technologies; and software to operate devices for environmental control or to communicate with other smart devices, with paid or natural supports at home, at work, or any other place of personal import.
  - 3. Enabling Technology also includes monitoring services as needed by an entity external to the Residential or Personal Assistance services provider, using certain of the devices described above and the provision of 24-hour response and assistance as needed to support waiver participants in maintaining independence and assuring health and safety when staff are not physically present.
  - 4. Enabling Technology includes remote support technology systems in which remote caregivers can interact, coordinate supports, or actively respond to needs as appropriate. Remote support systems are real time support systems which include two-way communication.
    - (i) These systems use wireless technology, and/or phone lines, to link an individual's home to a person offsite to provide up to 24/7 support.
    - (ii) These systems include the use of remote sensor technology to send "real time" data remote staff or family who are immediately available to assess the situation and provide assistance according to an individual support plan (ISP).
  - 5. Enabling Technology and Specialized Medical Equipment, Supplies, and Assistive Technology shall be limited to a combined maximum benefit of \$10,000 per person supported per 2 waiver program years (calendar years).
- (c) Enabling Technology is not a covered benefit in the Katie Beckett program.

- (#) Family Caregiver Supports (FCS) (expires March 31, 2024). FCS are temporary, additional one-time increases in specified HCBS programs available from November 2, 2021 through March 31, 2024 under the American Rescue Plan Act Enhanced HCBS FMAP Spending Plan and as outlined in Rule 1200-13-01-.33.

Subparagraph (a) of Paragraph (11) of Rule 1200-13-01-.02 Definitions is amended by adding the sentence "Assistive technology shall be limited to \$900 per person per calendar year. An MCO may authorize services in excess of the benefit limit as a cost-effective alternative to institutional placement or other medically necessary covered benefits." so as amended Subparagraph (a) shall read as follows:

- (a) For purposes of CHOICES:

Assistive devices, adaptive aids, controls or appliances that enable an Enrollee to increase his ability to perform ADLs or to perceive or control his environment. Examples include, but are not limited to, "grabbers" to pick objects off the floor, a strobe light to signify the smoke alarm has been activated, etc. Assistive technology shall be limited to \$900 per person per calendar year. An MCO may authorize services in excess of the benefit limit as a cost-effective alternative to institutional placement or other medically necessary covered benefits.

Part 4 of Subparagraph (b) of Paragraph (11) of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Part 4 which shall read as follows:

4. For purposes of ECF CHOICES, Assistive Technology, Adaptive Equipment and Supplies and Enabling Technology combined shall be limited to \$5,000 per person per calendar year. For purposes of the Katie Beckett Program, Assistive Technology, Adaptive Equipment and Supplies shall be limited to \$5,000 per person per calendar year. An MCO may authorize services in excess of the benefit limit as a cost-effective alternative to institutional placement or other medically necessary covered benefits.

Part 1 of Subparagraph (a) of Paragraph (194) Safety Determination of Rule 1200-13-01-.02 Definitions is amended by deleting "of \$15,000" after the phrase "Expenditure Cap" so as amended Part 1 shall read as follows:

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

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

Subparagraph (f) of Paragraph (3) of Rule 1200-13-01-.05 TennCare Choices Program is amended by replacing "\$15,000" with "\$18,000" so as amended Subparagraph (f) shall read as follows:

- (f) All Members in TennCare CHOICES Group 3 must be determined by the MCO to be able to be served safely and appropriately in the community within the array of services and supports available in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of \$18,000 (excluding the cost of minor home modifications), non-CHOICES HCBS available through TennCare (e.g., home health), services available through Medicare, private insurance or other funding sources, and unpaid supports provided by family members and other caregivers. Reasons a person cannot be served safely and appropriately in the community may include, but are not limited to, the following:

Part 4 of Subparagraph (c) of Paragraph (4) of Rule 1200-13-01-.05 TennCare Choices Program is amended by adding a new Subpart (iv) which shall read as follows:

- (iv) Notwithstanding the Expenditure Cap specified in 1200-13-01-.05(4)(c) and (f), a person enrolled in CHOICES shall not be disenrolled, nor shall currently authorized CHOICES HCBS be reduced, if the sole reason the person's Individual Cost Neutrality Cap or Expenditure Cap would be exceeded is the targeted rate increases in CHOICES HCBS provided via Tennessee's HCBS Spending Plan under Section 9817 of the American Rescue Plan Act of 2021.

Part 3 of Subparagraph (f) of Paragraph (4) of Rule 1200-13-01-.05 TennCare Choices Program is amended by replacing "\$15,000 (fifteen thousand dollars)" with "\$18,000 (eighteen thousand dollars)" so as amended Part 3 shall read as follows:

- 3. The Expenditure Cap for CHOICES HCBS provided to CHOICES Group 3 Members shall be \$18,000 (eighteen thousand dollars) annually, excluding the cost of Minor Home Modifications.

Part 4 of Subparagraph (f) of Paragraph (4) of Rule 1200-13-01-.05 TennCare Choices Program is amended by adding a new Subpart (v) which shall read as follows:

- (v) Notwithstanding the Expenditure Cap specified in 1200-13-01-.05(4)(c) and (f), a person enrolled in CHOICES shall not be disenrolled, nor shall currently authorized CHOICES HCBS be reduced, if the sole reason the person's Individual Cost Neutrality Cap or Expenditure Cap would be exceeded is the targeted rate increases in CHOICES HCBS provided via Tennessee's HCBS Spending Plan under Section 9817 of the American Rescue Plan Act of 2021.

Subparagraph (b) of Paragraph (6) of Rule 1200-13-01-.05 TennCare Choices Program is amended by deleting "of \$15,000 or \$30,000, as applicable" so as amended subparagraph (b) shall read as follows:

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

Part 4 of Subparagraph (e) of Paragraph (6) of Rule 1200-13-01-.05 TennCare Choices Program is amended by deleting "of \$15,000" and "of \$30,000" so as amended Part 4 shall read as follows:

- 4. An explanation regarding why an array of covered services and supports, including CHOICES HCBS up to the Expenditure Cap, ECF CHOICES HCBS up to the Expenditure Cap, and one-time emergency assistance up to \$6,000; and non-CHOICES or non-ECF CHOICES HCBS (e.g., home health); services available through Medicare, private insurance or other funding sources; and unpaid supports provided by family members and other caregivers would not be sufficient to safely meet the Applicant's needs in the community.

Part 1 of Subparagraph (f) of Paragraph (6) of Rule 1200-13-01-.05 TennCare Choices Program is amended by deleting "of \$15,000 or \$30,000, as applicable" so as amended Part 1 shall read as follows:

1. A Safety Determination request shall be approved if there is sufficient evidence, as required and determined by the Bureau, to demonstrate that the necessary intervention and supervision needed by the Applicant cannot be safely provided within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3 or ECF CHOICES Group 5, as applicable for the target population in which the Applicant will be enrolled, if eligible, including CHOICES HCBS or ECF CHOICES HCBS up to the Expenditure Cap, and one-time emergency assistance up to \$6,000, as applicable; non-CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and unpaid supports provided by family members and other caregivers who are willing and able to provide such care.

The table “Benefits for CHOICES 2 Members” in Subparagraph (l) of Paragraph (8) of Rule 1200-13-01-.05 TennCare Choices Program is amended by adding a new Part 5 Enabling Technology and the current Part 5 and subsequent parts are renumbered appropriately. The new Part 5 shall read as follows:

Service	Benefits for CHOICES 2 Members	Benefits for Consumer Direction  (“Eligible HCBS”)
5. Enabling Technology	Covered with a limit of \$5,000 per calendar year, per Member through March 31, 2024.	No

The table “Benefits for CHOICES 3 Members” in Subparagraph (l) of Paragraph (8) of Rule 1200-13-01-.05 TennCare Choices Program is amended by adding a new Part 5 Enabling Technology and the current Part 5 and subsequent parts are renumbered appropriately. The new Part 5 shall read as follows:

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction  (“Eligible HCBS”)
5. Enabling Technology	Covered with a limit of \$5,000 per calendar year, per Member through March 31, 2024.	No

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

Item (II) of Subpart (i) of Part 2 of Subparagraph (b) of Paragraph (4) of Rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE is amended by deleting “of \$15,000” so as amended Item (II) shall read as follows:

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



and financial eligibility criteria for CHOICES Group 3 (i.e. is not an SSI recipient) shall not be eligible for CHOICES Group 1 as a result of a Safety Determination.

Item (II) of Subpart (ii) of Part 2 of Subparagraph (b) of Paragraph (4) of Rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE is amended by deleting “of \$15,000” so as amended Item (II) shall read as follows:

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

Item (III) of Subpart (ii) of Part 2 of Subparagraph (b) of Paragraph (4) of Rule 1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE is amended by deleting “of \$30,000” so as amended Item (III) shall read as follows:

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

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

Part 5 of Subparagraph (r) of Paragraph (2) of Rule 1200-13-01-.25 Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled Under Section 1915(c) of the Social Security Act (Statewide MR Waiver) is amended by deleting the part in its entirety and substituting instead the following language, so that as amended, part 5 shall read as follows:

- 5. Specialized Medical Equipment, Supplies, Assistive Technology, and Enabling Technology, as defined by 1200-13-01-.02, shall be limited to a combined maximum benefit of \$10,000 per person supported per 2 waiver program years (calendar years).

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

Part 5 of Subparagraph (r) of Paragraph (2) of Rule 1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation Under Section 1915(c) of the Social Security Act (Arlington MR Waiver) is amended by deleting the part in its entirety and substituting instead the following language, so that as amended, part 5 shall read as follows:

- 5. Specialized Medical Equipment, Supplies, Assistive Technology, and Enabling Technology, as defined by 1200-13-01-.02, shall be limited to a combined maximum benefit of \$10,000 per person supported per 2 waiver program years (calendar years).

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

Subparagraph (p) of Paragraph (3) of Rule 1200-13-01-.29 Tennessee's Self-determination Waiver Under Section 1915(c) of the Social Security Act (Self-determination MR Waiver Program) is amended by adding a new appropriately numbered part after part 3, so that the new part, part 4, shall read as follows:

4. Specialized Medical Equipment, Supplies, Assistive Technology, and Enabling Technology, as defined by 1200-13-01-.02, shall be limited to a combined maximum benefit of \$10,000 per person supported per 2 waiver program years (calendar years).

Subparagraph (u) of Paragraph (3) of Rule 1200-13-01-.29 Tennessee's Self-determination Waiver Under Section 1915(c) of the Social Security Act (Self-determination MR Waiver Program) is amended by replacing "\$36,000" with "\$42,000", so that as amended Subparagraph (u) shall read as follows:

- (u) The cost of all Covered Services, including any Emergency Assistance, shall not exceed \$42,000 per year per Enrollee.

Subparagraph (a) of Paragraph (11) of Rule 1200-13-01-.29 Tennessee's Self-determination Waiver Under Section 1915(c) of the Social Security Act (Self-determination MR Waiver Program) is amended by replacing "36,000" with "\$42,000", so that as amended subparagraph (a) shall read as follows:

- (a) The average per capita fiscal year expenditure under the Waiver shall not exceed 100% of the average per capita expenditure that would have been made in the fiscal year if care had been provided in an ICF/MR. The total Medicaid expenditure for Waiver Services and other Medicaid services provided to Enrollees shall not exceed 100% of the amount that would have been incurred in the fiscal year if care was provided in an ICF/MR. Reimbursement for the cost of all Covered Services, including any Emergency Assistance, shall not exceed \$42,000 per year per Enrollee.

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

Subpart (i) of Part 1 of Subparagraph (d) of Paragraph (4) of Rule 1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF CHOICES) Program is amended by replacing "fifteen thousand dollars (\$15,000)" with "eighteen thousand dollars (\$18,000)" in the first sentence and by adding "Except as provided in 1200-13-01-.31(4)(d)4(vii)," to the beginning of the last sentence and by replacing the capital "T" with a lower case "t" in "there" in the last sentence so as amended Subpart (i) shall read as follows:

- (i) For Members enrolled in Group 4, the expenditure cap shall be eighteen thousand dollars (\$18,000) per person per calendar year. The Expenditure Cap shall apply to Group 4 ECF CHOICES HCBS only (not other Medicaid services). For Members enrolled in Group 4, the cost of minor home modifications shall not count against the expenditure cap. Except as provided in 1200-13-01-.31(4)(d)4(vii), there shall be no exceptions to the Expenditure Cap for a Member enrolled in Group 4.

Subpart (ii) of Part 1 of Subparagraph (d) of Paragraph (4) of Rule 1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF CHOICES) Program is amended by replacing "thirty thousand dollars (\$30,000)" with "thirty-six thousand dollars (\$36,000)" in the first sentence and by adding ", except as provided in 1200-13-01-.31(4)(d)4(vii)," to the end of the last sentence so as amended Subpart (ii) shall read as follows:

- (ii) For Members enrolled in Group 5, the Expenditure Cap shall be thirty-six thousand dollars (\$36,000) per person per calendar year. The Expenditure Cap shall apply to Group 5 ECF CHOICES HCBS only (not other Medicaid services). All ECF CHOICES HCBS shall be counted against a CHOICES Group 5 Member's Expenditure Cap, including the cost of minor home modifications, except as provided in 1200-13-01-.31(4)(d)4(vii).

Item (II) of Subpart (ii) of Part 1 of Subparagraph (d) of Paragraph (4) of Rule 1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF CHOICES) Program is amended by replacing "\$36,000" with "\$42,000" so as amended Item (II) shall read as follows:

- (II) Expenditures for ECF CHOICES HCBS for a Member enrolled in CHOICES Group 5 shall not exceed \$42,000 per calendar year.



Subpart (iii) of Part 1 of Subparagraph (d) of Paragraph (4) of Rule 1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF CHOICES) Program is amended by adding “, except as provided in 1200-13-01-.31(4)(d)4(vii)” to the end of the first sentence so as amended Subpart (iii) shall read as follows:

- (iii) The Expenditure Cap for a member enrolled in ECF CHOICES Group 6 shall depend on the Member’s assessed level of need as defined in Rule 1200-13-01-.02, except as provided in 1200-13-01-.31(d)(4)(vii).

Item (I) of Subpart (iii) of Part 1 of Subparagraph (d) of Paragraph (4) of Rule 1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF CHOICES) Program is amended by deleting the words “or moderate” after the words “have a low” and replacing “\$45,000” with “\$54,000” so as amended Item (I) shall read as follows:

- (I) An ECF CHOICES Group 6 member assessed to have a low level of need shall have an Expenditure Cap of \$54,000 per calendar year.

Subpart (iii) of Part 1 of Subparagraph (d) of Paragraph (4) of Rule 1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF CHOICES) Program is amended by adding a new Item (II) and subsequent Items renumbered as appropriate so that the new Item (II) shall read as follows:

- (II) An ECF CHOICES Group 6 member assessed to have a moderate level of need shall have an Expenditure Cap of \$82,000 per calendar year.

Item (II) of Subpart (iii) of Part 1 of Subparagraph (d) of Paragraph (4) of Rule 1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF CHOICES) Program is to be renumbered as Item (III), with subsequent items being renumbered accordingly, and is amended by deleting “\$60,000” and replacing it with “\$108,000” so as amended the renumbered Item (III) shall read as follows:

- (III) An ECF CHOICES Group 6 member assessed to have a high level of need shall have an Expenditure Cap of \$108,000 per calendar year.

Part 4 of Subparagraph (d) of Paragraph (4) of Rule 1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF CHOICES) Program is amended by adding a new Subpart (vii) which shall read as follows:

- (vii) Notwithstanding the Expenditure Caps specified herein, a person enrolled in ECF CHOICES shall not be disenrolled, nor shall currently authorized ECF CHOICES HCBS be reduced, if the sole reason the person’s expenditure cap would be exceeded is the targeted rate increases in ECF CHOICES HCBS provided via Tennessee’s HCBS Spending Plan under Section 9817 of the American Rescue Plan Act of 2021.

Column 2 “Benefits for ECF CHOICES Members” of Part 2 Assistive Technology Adaptive Equipment and Supplies of Subparagraph (d) of Paragraph (7) of Rule 1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF CHOICES) Program is amended by adding a comma and phrase “, in combination with Enabling Technology” at the end of the first sentence so as amended Part 2 shall read as follows:

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction  (“Eligible ECF CHOICES HCBS”)
2. Assistive Technology, Adaptive Equipment and Supplies	Covered with a limit of five thousand dollars (\$5,000) per person per calendar year, in combination with Enabling Technology.  Not covered under ECF CHOICES if available under Section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. §§ 1401 et seq.).	No

Subparagraph (d) of Paragraph (7) of Rule 1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF CHOICES) Program is amended by adding a new Part 8 Enabling Technology and the current Part 8 and subsequent parts are renumbered appropriately so that the new Part 8 shall read as follows:

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction  ("Eligible ECF CHOICES HCBS")
8. Enabling Technology	<p>Covered with a limit of five thousand dollars (\$5,000) per person per calendar year, in combination with Assistive Technology, Adaptive Equipment and Supplies.</p> <p>Not covered under ECF CHOICES if available under Section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. §§ 1401 et seq.).</p>	No

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

Rule Chapter 1200-13-01 TennCare Long-Term Care Programs is amended by adding a new Rule 1200-13-01-.33 Temporary Benefits Under the American Rescue Plan Act Enhanced HCBS FMAP Spending Plan which shall read as follows:

1200-14-01-.33 Temporary Benefits Under the American Rescue Plan Act Enhanced HCBS FMAP Spending Plan

- (1) Family Caregiver Supports ("FCS") are additional one-time increases in specified HCBS provided for a time-limited period pursuant to Section 9817 of the American Rescue Plan Act of 2021 (ARP) (Pub. L. 117-2) and Tennessee's conditionally approved HCBS Spending Plan.
- (2) Notwithstanding any other rule related to benefit limits, expenditure caps, individual cost neutrality tests or individual cost limits, from November 2, 2021, through March 31, 2024, TennCare members receiving HCBS in CHOICES Groups 2 or 3, ECF CHOICES Groups 4, 5, 6, or -7, or a Section 1915(c) waiver who meet the criteria outlined in this rule may receive an additional one-time increase of up to \$3,000 in eligible FCS.
- (3) Eligibility criteria. To be eligible for FCS, a member must:
  - (a) Receive HCBS in CHOICES Group 2 or 3, ECF CHOICES Group 4, 5, 6, or 7, or a Section 1915(c) waiver as of July 12, 2021; and
  - (b) Live with a family member or family members who routinely provide(s) unpaid support and assistance or have an unpaid family caregiver or family caregivers who routinely provide(s) unpaid support and assistance.
  - (c) Members receiving Residential Supports are not eligible for this benefit.
- (4) Eligible FCS.
  - (a) Services in subsections (b) through (d) below will be approved if they will further enable the member's independence or support and sustain unpaid family caregivers.
  - (b) Members in CHOICES Groups 2 and 3 who meet the eligibility criteria in (a) above may utilize the following FCS:

1. Respite;
  2. Adult Day Care Services;
  3. Assistive Technology;
  4. Enabling Technology; and
  5. Minor Home Modifications.
- (c) Members in ECF CHOICES Groups 4, 5, 6, and 7 who meet the eligibility criteria in (a) above may utilize the following FCS:
1. Respite;
  2. Assistive Technology, Adaptive Equipment and Supplies;
  3. Enabling Technology; and
  4. Minor Home Modifications.
- (d) Members in one of the 1915(c) Waiver programs who meet the eligibility criteria in (a) above may utilize the following FCS:
1. Respite;
  2. Specialized Medical Equipment, Supplies, and Assistive Technology;
  3. Enabling Technology; and
  4. Environmental Accessibility Modifications.
- (5) Use of FCS.
- (a) For each program, the \$3,000 for FCS is a one-time increase that may be utilized anytime between November 2, 2021 and March 31, 2024.
- (b) A member may elect to receive additional units of one service or multiple services; however, the overall limitation on FCS is \$3,000 per person.
- (c) This assistance is provided in addition to existing service limitations and without regard for expenditure caps, individual cost neutrality tests, or individual cost limits specified in the approved waiver. However, members must use all currently available benefits within the benefit limits or expenditure caps, individual cost neutrality tests, or individual cost limits before accessing FCS through this rule.
- (d) If a member has already reached his expenditure cap, individual cost neutrality test, or individual cost limit, as applicable, these services may be utilized without respect to whether the maximum benefit has already been utilized.
- (e) A member's PCSP shall be modified to reflect any FCS requested and approved pursuant to this rule.
- (6) Appeals. Appeals related to the denial, reduction, suspension, or termination of FCS are processed by the Division in accordance with Rules 1200-13-13-.11 and 1200-13-14-.11. Continuation of the FCS approved pursuant to this rule shall not be provided after the exhaustion of the \$3,000 limit or after March 31, 2024.

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

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

Date: March 14, 2022

Signature: 

Name of Officer: Stephen Smith

Director, Division of TennCare

Title of Officer: Tennessee Department of Finance and Administration

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Filed with the Department of State on: 3/14/2022

  
Tre Hargett  
Secretary of State

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