

Department of State
Division of Publications
 312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 04-08-24
 Notice ID(s): 3809
 File Date: 4/10/2024

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.

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Division of TennCare
Contact Person:	Aaron Butler
Address:	Division of TennCare 310 Great Circle Road Nashville, TN 37243
Phone:	(615) 507-6448
Email:	aaron.c.butler@tn.gov

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

ADA Contact:	Talley A. Olson
Address:	Division of TennCare 310 Great Circle Road Nashville, TN 37243
Phone:	(855) 857-1673 TTY dial 711 and ask for 855-857-1673
Email:	hcfa.fairtreatment@tn.gov

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

Address 1:	TennCare Building 310 Great Circle Road		
Address 2:	Conference Room 1 East A		
City:	Nashville		
Zip:	37243		
Hearing Date:	June 6, 2024		
Hearing Time:	2:00 p.m.	<u> X </u> CST/CDT	<u> </u> EST/EDT

Additional Hearing Information:

Please bring identification to facilitate prompt check-in to the building.

Written comments on the rule are also accepted. Written comments may be submitted via email to aaron.c.butler@tn.gov; or mailed to Aaron Butler, Director of Policy, Division of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243. Written comments must be received by 5:00 PM Central Time, June 6, 2024, to ensure consideration.

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1200-13-02	Nursing Facility Provider Reimbursement
Rule Number	Rule Title
1200-13-02-.11	Quality-Based Component of the Reimbursement Methodology for Nursing Facilities

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>.

Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by inserting a new Paragraph (4), with all subsequent paragraphs renumbered appropriately, so that Paragraph (4) shall read as follows:

- (4) Performance benchmark methodology shall be established by TennCare in consultation with THCA and industry stakeholders. This methodology shall be released to the providers in advance of the submission and scoring process via the annual QuILTSS Memo. The annual QuILTSS Memo details all scoring methodologies, threshold measures, special provisions, deadlines, and training details. The annual QuILTSS Memo is distributed to all stakeholders and nursing facilities that are Medicaid licensed and shall be posted and maintained on TennCare’s website at tn.gov/tenncare.

Part 4 of Subparagraph (a) of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by deleting the phrase “For purposes of the NF reimbursement rates effective on July 1, 2018” and replacing it with the phrase “Effective July 1, 2018 through June 30, 2019” so that as amended Part 4 shall read as follows:

4. Effective July 1, 2018 through June 30, 2019, the methodology used for calculating a facility’s Satisfaction score shall be based upon the criteria established by TennCare in the QuILTSS #10 memorandum of March 20, 2017.

Part 5 of Subparagraph (a) of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by deleting the phrase “For purposes of the NF reimbursement rates effective on July 1, 2019” and replacing it with the phrase “Effective July 1, 2019 through June 30, 2020” so that as amended Part 4 shall read as follows:

5. Effective July 1, 2019 through June 30, 2020, the methodology used for calculating a facility’s Satisfaction score shall be based on the facility’s adoption and implementation of the survey instrument(s) according to with the methodology described in this subparagraph. Data collected during the baseline year of the Satisfaction survey instrument(s) described in this subparagraph shall be used to establish a performance benchmark for each of the three (3) Satisfaction measures, in consultation with THCA and other NF Stakeholders.

Part 6 of Subparagraph (a) of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by deleting the phrase “over the baseline year” in the first sentence and replacing it with the comma and phrase “, defined in Section (5), as determined by TennCare”, and by deleting the second sentence in its entirety so that as amended, Part 5 shall read as follows:

6. For purposes of the NF reimbursement rates effective on July 1, 2020, the methodology used for calculating a facility’s Satisfaction score shall be based in part on whether the facility achieves the performance benchmark for each of the three (3) Satisfaction measures described in this subparagraph, and for facilities who do not achieve the performance benchmarks, a lesser score based on the percentage of improvement, defined in Paragraph (5), as determined by TennCare.

Part 8 of Subparagraph (a) of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is deleted in its entirety, with subsequent parts renumbered appropriately.

Part 4 of Subparagraph (b) of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by deleting the phrase “For purposes of the NF reimbursement rates effective on July 1, 2018” and replacing it with the phrase “Effective July 1, 2018 through June 30, 2019” so that as amended Part 4 shall read as follows:

4. Effective on July 1, 2018 through June 30, 2019, the methodology used for calculating a facility’s score encompassing each of the four (4) aspects of Culture Change and Quality of Life shall be developed in consultation with THCA and with input from the NF stakeholders, including individuals receiving services and their family members and representatives. These criteria shall be provided to NFs and posted on the TennCare website no later than two (2) months prior to the implementation of the reimbursement system.

Part 5 of Subparagraph (b) of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by deleting the phrase “For purposes of the NF reimbursement rates effective on July 1, 2019” and replacing it with the phrase “Effective July 1, 2019 through June 30, 2020” so that as amended Part 4 shall read as follows:

5. Effective on July 1, 2019 through June 30, 2020, the methodology used for calculating a facility’s Culture Change and Quality of Life score shall be based on the facility’s adoption and implementation of the survey questions and/or instrument(s) in accordance with the methodology described in this subparagraph. Data collected during the baseline year of the Culture Change and Quality of Life survey instrument(s) described in this section shall be used to establish a performance benchmark for each of the four (4) Culture Change and Quality of Life measures, in consultation with THCA and other NF Stakeholders.

Part 6 of Subparagraph (b) of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by deleting the phrase “over the baseline year” in the first sentence and replacing it with the comma and phrase “, defined in Section (5), as determined by TennCare”, and by deleting the second sentence in its entirety so that as amended Part 6 shall read as follows:

6. For purposes of the NF reimbursement rates effective on July 1, 2020, the methodology used for calculating a facility’s Satisfaction score shall be based in part on whether the facility achieves the performance benchmark for each of the three (3) Satisfaction measures described in this subparagraph, and for facilities who do not achieve the performance benchmarks, a lesser score based on the percentage of improvement, defined in Paragraph (5), as determined by TennCare.

Part 8 of Subparagraph (b) of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is deleted in its entirety, with subsequent parts renumbered appropriately.

Subparagraph (c) of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by adding the comma and phrase “, through June 30, 2024” to the end of the subparagraph so that as amended Subparagraph (c) shall read as follows:

- (c) Staffing and Staff Competency shall be valued at twenty-five (25) of the one hundred (100) possible quality performance points, through June 30, 2024.

Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by adding a new Subparagraph (d), with all subsequent subparagraphs renumbered appropriately, so that Subparagraph (d) shall read as follows:

- (d) Effective July 1, 2024, Staffing and Staff Competency shall be valued at twenty (20) of the one hundred (100) possible quality performance points.
 1. Staffing and Staff Competency shall include four (4) separate measures, with each measure valued at five (5) of the one hundred (100) possible quality performance points, as follows:
 - (i) Registered Nurse (RN) and Licensed Practical/Vocational Nurse (LPN/LVN) case-mix adjusted hours per resident day.
 - (ii) Nurse Aide (NA) case-mix adjusted hours per resident day.

- (iii) RN, LPN, and CNA Staff Retention.
 - (iv) Consistent Staff Assignment.
2. RN, LPN and NA case-mix adjusted hours per resident day shall be defined and calculated consistent with the methodology described in the CMS Five Star Nursing Home Quality Rating System.
- (i) RN case-mix adjusted hours per resident day and LPN/LVN case-mix adjusted hours per resident day shall be added together to combined the measures into one metric.
3. Consistent Staff Assignment shall be defined and calculated as following:
- (i) Consistent Staff Assignment shall include one measurement: the percentage of long-stay residents who have no more than twelve (12) caregivers within a one (1) month measurement period
 - (ii) Long-stay residents shall be defined as residents who have been in the facility for greater than one hundred (100) days.
 - (iii) A caregiver shall be defined as any staff assigned to provide and delivering direct NA-type care to the resident during the measurement period.
 - (I) For purposes of measuring Consistent Staff, licensed staff shall not be counted as caregivers unless they are working in the capacity of a CNA. For example, if a nurse is in a resident's room administering medications or performing other skilled tasks, and stops to take the resident to the bathroom, that nurse shall not be counted as a caregiver. However, if a nurse (or other staff) is working as a CNA because the home is short staffed or because nurses (or other staff) routinely provide direct care to residents, that person shall be included in the caregiver count.
 - (II) Staff assigned to assist one or more residents only with mealtime and/or bathing shall be counted as a caregiver for all residents for whom such assistance is provided, even if the staff functions as a float or as part of a care team dedicated to such functions on behalf of multiple residents.
 - (iv) NAs shall include certified nurse aides, aides in training, and medication aides/technicians.
 - (v) Caregivers shall include both NF employees (full-time and part-time) and individuals under an organization (agency) or individual contract that provide care to the resident during the measurement period.
 - (vi) To be eligible for Consistent Staff Assignment points, a NF must track its performance using the tools created or directed by TennCare in a manner consistent with TennCare specified requirements.
4. Staff Retention shall be defined as the percentage of specified staff that have been employed (or contracted) by the NF for at least one (1) year.
- (i) Specified staff shall include only RNs, LPNs, and NAs.
 - (ii) RNs shall include registered nurses, RN directors of nursing, and nurses with administrative duties.
 - (iii) LPNs shall include licensed practical/licensed vocational nurses.
 - (iv) NAs shall include certified nurse aides, aides in training, and medication aides/technicians.

- (v) Specified staff shall include both NF employees (full-time and part-time) and individuals under an organization (agency) or individual contract. Retention of contracted staff shall be reported and measured based on the length of service of each staff person, and not the length of the contract. For example, if a staffing agency is used, a person shall be considered “continuously” contracted only if that staff person has been assigned to and working at the facility throughout the course of the twelve (12) month measurement period, even if the contract with that organization (agency) has been in place for a longer period.
- (vi) Specified staff shall not include staff reimbursed by a resident or his/her family, hospice staff, or feeding assistants.
- (vii) Specified staff information at the beginning and end of the measurement period shall be provided to TennCare in the required form and format.
- (viii) A NF’s performance on the Staff Retention measure shall be calculated by dividing the number of specified staff continuously employed (or contracted) by the facility for the twelve (12) month measurement period divided by the total number of specified facility staff employed at the outset of the twelve (12) month measurement period.

Subparagraph (d), renumbered as (e), of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by adding the comma and phrase “, through June 30, 2024” to the end of the subparagraph that as amended Subparagraph (e) shall read as follows:

- (e) Clinical Performance shall be valued at ten (10) of the one hundred (100) possible quality performance points, through June 30, 2024.

Item (II) of Subpart (i) of Part 1 of Subparagraph (d), renumbered as (e), of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is deleted in its entirety, with all subsequent items renumbered appropriately.

Part 2 of Subparagraph (d), renumbered as (e), of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by deleting everything that appears after the phrase “Clinical Performance measures shall be” and replacing this language with the phrase “as outlined in Paragraph (4) in this rule” so that as amended Part 2 shall read as follows:

- 2. Performance benchmarks for each of the Clinical Performance measures shall be as outlined in Paragraph (4) in this rule.

Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by adding a new Subparagraph (f), and with all subsequent subparagraphs renumbered appropriately, so that Subparagraph (f) shall read as follows:

- (f) Effective July 1, 2024, Clinical Performance shall be valued at fifteen (15) of the one hundred (100) possible quality performance points. Clinical Performance shall include three (3) separate measures, with each measure valued at five (5) of the one hundred (100) possible quality performance points, as follows:
 - 1. Percentage of long-stay residents with a catheter inserted and left in their bladder consistent with the methodology described in the MDS 3.0 Quality Measures User’s Manual V15, or its successor.
 - 2. Percentage of high risk long-stay residents with pressure ulcers consistent with the methodology described in the MDS 3.0 Quality Measures User’s Manual V15, or its successor.
 - 3. Percentage of long-stay residents who lose too much weight consistent with the methodology described in the MDS 3.0 Quality Measures User’s Manual V15, or its successor.

Subparagraph (e), renumbered as (g), of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by deleting the phrase “in Subparagraphs (a), (b), (c), and (d)” so that as amended Subparagraph (g) shall read as follows:

- (g) In addition to the one hundred (100) possible quality performance points that a NF may score in the areas described above, a NF may also earn ten (10) bonus points for qualifying awards and/or accreditations that evidence the facility’s commitment to quality improvement processes. Qualifying awards or accreditations must be current in the review period and are restricted to the following:

Part 1 of Subparagraph (e), renumbered as (g), of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is deleted in its entirety and all subsequent parts renumbered appropriately.

Part 2, renumbered as 1, of Subparagraph (e), renumbered as (g), of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by deleting the word “Membership” and replacing it with “Validated membership”, and by deleting the word “Registry” and replacing it with “Alternative Growth or Certified member level” so that as amended Part 1 shall read as follows:

1. Validated membership in Eden Alternative Growth or Certified member level, which must be active during the period in which bonus points are sought.

Part 3, renumbered as 2, of Subparagraph (e), renumbered as (g), of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by deleting the word “Achievement” and replacing it with “Validated achievement”, and by deleting the phrase “and the TN Center for Performance Excellence Award (Level 2, 3, or 4, which correspond with the Commitment Award, Achievement Award, and Excellence Award; the Level 1 Interest Award is specifically excluded from points)” so that as amended Part 2 shall read as follows:

2. Validated achievement of the Malcolm Baldrige Quality Award. This includes AHCA Award (Bronze, Silver, or Gold). Any such award must have been achieved within the three (3) years prior to the end of the period in which bonus points are sought.

Part 4, renumbered as 3, of Subparagraph (e), renumbered as (g), of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by deleting the word “Accreditation” and replacing it with “Validated accreditation”, by deleting the abbreviation “CARE” and replacing it with the abbreviation “CARF” so that as amended Part 3 shall read as follows:

3. Validated accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF).

Part 5, renumbered as 4, of Subparagraph (e), renumbered as (g), of Paragraph (4), renumbered as (5), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by deleting the word “Accreditation” and replacing it with “Validated accreditation” so that as amended Part 4 shall read as follows:

4. Validated accreditation by the Joint Commission.

Paragraph (6), renumbered as (7), of Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities is amended by inserting the comma and phrase “, until the effective date of any future quality tier cut point updates” after the phrase “rate effective date”, and by deleting the numbers “75 – 100” from the second row of the table in Paragraph (6), renumbered as (7), and replacing it with the number “75” followed by a plus sign “+” so that as amended Paragraph (7) shall read as follows:

- (7) Based on quality incentive program scoring a NF will be placed into one of three quality tiers. The quality tier cut points may only be updated for the July 1 rate setting of a rebase period. For the July 1, 2018, rate effective date, until the effective date of any future quality tier cut point updates, the quality tier cut points will be as follows:

Quality Tier	Cut Point Range
Quality Tier 1	75+
Quality Tier 2	50 – 74.99
Quality Tier 3	0 – 49.99

Statutory Authority: T.C.A §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109, and 71-5-146.

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: April 10, 2024


Signature: 

Name of Officer: Stephen Smith
Director, Division of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Department of State Use Only

Filed with the Department of State on: 4/10/2024


Tre Hargett
Secretary of State

RECEIVED

Apr 10 2024, 2:51 pm

Secretary of State
Division of Publications