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Sequence Number: 07-10-16  
Rule ID(s): 6223  
File Date (effective date): 7/1/16  
End Effective Date: 12/28/16

# Emergency Rule Filing Form

*Emergency rules are effective from date of filing for a period of up to 180 days.*

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

**Rule Type:**

Emergency Rule

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

Amendments

New

Repeal

**Statement of Necessity:**

The Bureau of TennCare is making changes to certain aspects of its long term care program. These changes will enable the Bureau to implement the Employment and Community First (ECF) CHOICES program that provides managed long-term services and supports (MLTSS) to promote and support integrated, competitive employment and independent, integrated community living.

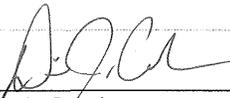
ECF CHOICES provides coverage for home and community based services (HCBS) and other services for individuals with intellectual or developmental disabilities (I/DD), as defined by the State. This includes HCBS for individuals currently on the waiting list for receiving services under the State's 1915(c) waiver that serves individuals with I/DD and other individuals who meet the financial and other applicable requirements for such services. ECF CHOICES also provides coverage for individuals with I/DD who are at risk of institutionalization.

On February 2, 2016, the Bureau received approval from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) to amend the TennCare II section 1115 demonstration (Project No. 11-W-001514) through Amendment 27 to implement the ECF CHOICES program.

Pursuant to T.C.A. §4-5-208, the Bureau of TennCare is authorized to adopt an emergency rule when the agency finds that it is required by an agency of the federal government and the adoption of the rules through ordinary procedures might jeopardize the loss of a federal program funds.

Based upon the above information, I have made the finding that the emergency adoption of these rules is required in order to achieve implementation of the ECF CHOICES program by July 1, 2016.

For a copy of this emergency rule contact: George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.



Darin J. Gordon  
Director, Bureau of TennCare  
Tennessee Department of Finance and Administration

**Rule(s) Revised** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/RuleTitle per row)

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-13-13	TennCare Medicaid
<b>Rule Number</b>	<b>Rule Title</b>
1200-13-13-.01	Definitions
1200-13-13-.02	Eligibility
1200-13-13-.03	Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS)
1200-13-13-.04	Covered Services
1200-13-13-.05	Enrollee Cost Sharing
1200-13-13-.08	Providers
1200-13-13-.10	Exclusions

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

Paragraph (6) Benefits of Rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new Paragraph (6) which shall read as follows:

- (6) Benefits shall mean the health care package of services developed by the Bureau of TennCare and which define the covered services available to TennCare enrollees. Additional benefits are available through the TennCare CHOICES program, as described in Rule 1200-13-01-.05, and the ECF CHOICES program, as described in Rule 1200-13-01-.31. CHOICES benefits are available only to persons who qualify for and are enrolled in the CHOICES program. ECF CHOICES benefits are available only to persons who qualify for and are enrolled in the ECF CHOICES program.

Rule 1200-13-13-.01 Definitions is amended by adding a definition of "Employment and Community First (ECF) CHOICES" to be appropriately numbered in alphabetical order, to read as follows:

- (#) Employment and Community First (ECF) CHOICES shall mean the program defined in Rule 1200-13-01-.02 and described in Rule 1200-13-01-.31.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.02 Eligibility is amended by adding a new Part 3 which shall read as follows:

3. With respect to the eligibility of individuals applying for the ECF CHOICES program, the Bureau is responsible for determining that the individual meets all applicable eligibility and enrollment criteria, including target population, medical or level of care eligibility, categorical and financial eligibility, the state's ability to provide appropriate ECF HCBS (as defined in Rule 1200-13-01-.02) as determined by the availability of slots under the established enrollment target for each ECF CHOICES Group in accordance with Rule 1200-13-01-.31 and pursuant to intake and enrollment policies and processes described in 1200-13-01-.31 and in TennCare policies and protocols, and for confirming a determination by a TennCare Managed Care Organization that the individual can be safely and appropriately served in the community and at a cost that does

not exceed the individual's expenditure cap pursuant to Rule 1200-13-01-.31.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Subparagraph (a) of Paragraph (3) of Rule 1200-13-13-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS) is amended by adding a sentence at the end of the Subparagraph so as amended Subparagraph (a) shall read as follows:

- (a) When it has been determined that an individual no longer meets the criteria for TennCare eligibility, that individual shall be disenrolled from the TennCare Program. Services provided by the TennCare MCO in which the individual has been placed, as well as the PBM and DBM, if applicable, shall be terminated upon disenrollment. Such disenrollment action will be accompanied by appropriate due process procedures as described elsewhere in this Chapter. Disenrollment from the CHOICES program shall proceed as described in Rule 1200-13-01-.05. Disenrollment from the ECF CHOICES program shall proceed as described in Rule 1200-13-01-.31.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Subparagraph (a) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is amended by adding the phrase "and ECF CHOICES services and benefits in accordance with Rule 1200-13-01-.31" at the end of the subparagraph so as amended Subparagraph (a) shall read as follows:

- (a) TennCare MCCs shall cover the following services and benefits subject to any applicable limitations described in this Chapter. TennCare MCCs shall cover TennCare CHOICES services and benefits in accordance with Rule 1200-13-01-.05 and ECF CHOICES services and benefits in accordance with Rule 1200-13-01-.31.

Introductory part of Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new introductory part to Subparagraph (b) which shall read as follows:

- (b) The following physical health and mental health benefits are covered under the TennCare managed care program. Benefits offered under the TennCare CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.05. Benefits offered under the ECF CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.31. There are some exclusions to the benefits listed below. The exclusions are listed in this rule and in Rule 1200-13-13-.10.

(C) Pharmacy services in Row 25 of the table in Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new (C) which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
25. Pharmacy Services [defined at 42 CFR §440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].		(C) Pharmacy services with no quantity limits on the number of prescriptions per month for the following non-Medicare enrollees only: individuals enrolled in CHOICES 1 or CHOICES 2; adults age 21 and older enrolled in ECF CHOICES who meet nursing facility level of care or transitioned from a Section 1915(c) waiver into ECF CHOICES and granted an exception by TennCare based on ICF/IID level of care; PACE enrollees; and persons receiving TennCare-reimbursed services in an Intermediate Care Facility for Individuals with Intellectual Disabilities or a Home and

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
		Community Based Services Waiver for Individuals with Intellectual Disabilities.

Part 2 of Subparagraph (a) of Paragraph (2) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new Part 2 which shall read as follows:

2. These services are provided under the CHOICES program in accordance with Rule 1200-13-01-.05 or the ECF CHOICES program in accordance with Rule 1200-13-01-.31; and

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Paragraph (2) of Rule 1200-13-13-.05 Enrollee Cost Sharing is amended by deleting Subparagraph (c) in its entirety and replacing it with a new Subparagraph (c) and by adding a new Subparagraph (d) as follows:

- (c) Individuals who are receiving services in a Nursing Facility, an Intermediate Care Facility for Individuals with Intellectual Disabilities, the CHOICES program, or a Home and Community Based Services waiver.
- (d) Adults age 21 and older enrolled in ECF CHOICES who meet nursing facility level of care or transitioned from a Section 1915(c) waiver into ECF CHOICES and granted an exception by TennCare based on ICF/IID level of care.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Paragraph (2) of Rule 1200-13-13-.08 Providers is amended by adding a new Subparagraph (e) which shall read as follows:

- (e) Non-Participating Providers who furnish covered ECF CHOICES services are reimbursed in accordance with Rule 1200-13-01-.31.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

~~Introductory paragraph to Paragraph (3) of Rule 1200-13-13-.10 Exclusions is amended by adding the phrase "or ECF CHOICES" after the word "CHOICES" in the last sentence so as amended the introductory paragraph to Paragraph (3) shall read as follows:~~

- (3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES or ECF CHOICES programs or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 6/27/2016

Signature: [Handwritten Signature]

Name of Officer: Darin J. Gordon  
Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 6/27/2016

Notary Public Signature: [Handwritten Signature]

My commission expires on: 10/18/2016

All emergency 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

July 1 2016  
Date

**Department of State Use Only**

Filed with the Department of State on: 7/1/16

Effective for: 180 \*days

Effective through: 12/28/16

\* Emergency rule(s) may be effective for up to 180 days from the date of filing.

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Tre Hargett  
Secretary of State

### **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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules are 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;

These rules are being promulgated to allow for the implementation of the Employment and Community First (ECF) CHOICES program.

- (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 Rules are lawfully adopted by the Bureau of TennCare in accordance with T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

- (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 these Rules are the TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by these Rules is the Bureau of TennCare, Tennessee Department of Finance and Administration.

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

The Rules were 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 the TennCare Long-Term Care Programs, TennCare Medicaid and TennCare Standard rules is anticipated to increase state government expenditures by \$24,179,400.

- (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

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

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

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GW10216161ab

Rules  
of  
Tennessee Department of Finance and administration  
Bureau of TennCare

Chapter 1200-13-13  
TennCare Medicaid

1200-13-13-.01 Definitions.

- (6) Benefits shall mean the health care package of services developed by the Bureau of TennCare and which define the covered services available to TennCare enrollees. Additional benefits are available through the TennCare CHOICES program, as described in Rule 1200-13-01-.05, and the ECF CHOICES program, as described in Rule 1200-13-01-.31. CHOICES benefits are available only to persons who qualify for and are enrolled in the CHOICES program. ECF CHOICES benefits are available only to persons who qualify for and are enrolled in the ECF CHOICES program.
- (#) Employment and Community First (ECF) CHOICES shall mean the program defined in Rule 1200-13-01-.02 and described in Rule 1200-13-01-.31.

1200-13-13-.02 Eligibility.

- (b) The Bureau of TennCare (Bureau) is the administrative unit within F&A with the responsibility for day-to-day operations of the TennCare Program. The Bureau is responsible for establishing policy and procedural requirements and criteria for TennCare.

3. With respect to the eligibility of individuals applying for the ECF CHOICES program, the Bureau is responsible for determining that the individual meets all applicable eligibility and enrollment criteria, including target population, medical or level of care eligibility, categorical and financial eligibility, the state's ability to provide appropriate ECF HCBS (as defined in Rule 1200-13-01-.02) as determined by the availability of slots under the established enrollment target for each ECF CHOICES Group in accordance with Rule 1200-13-01-.31 and pursuant to intake and enrollment policies and processes described in 1200-13-01-.31 and in TennCare policies and protocols, and for confirming a determination by a TennCare Managed Care Organization that the individual can be safely and appropriately served in the community and at a cost that does not exceed the individual's expenditure cap pursuant to Rule 1200-13-01-.31.

1200-13-13-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS).

(3) Disenrollment.

- (a) When it has been determined that an individual no longer meets the criteria for TennCare eligibility, that individual shall be disenrolled from the TennCare Program. Services provided by the TennCare MCO in which the individual has been placed, as well as the PBM and DBM, if applicable, shall be terminated upon disenrollment. Such disenrollment action will be accompanied by appropriate due process procedures as described elsewhere in this Chapter. Disenrollment from the CHOICES program shall proceed as described in Rule 1200-13-01-.05. Disenrollment from the ECF CHOICES program shall proceed as described in Rule 1200-13-01-.31.

1200-13-13-.04 Covered Services.

(1) Benefits covered under the managed care program.

- (a) TennCare MCCs shall cover the following services and benefits subject to any applicable limitations described in this Chapter. TennCare MCCs shall cover TennCare CHOICES services and benefits in accordance with Rule 1200-13-01-.05 and ECF CHOICES services and benefits in accordance with Rule 1200-13-01-.31.

- (b) The following physical health and mental health benefits are covered under the TennCare managed care program. Benefits offered under the TennCare CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.05. Benefits offered under the ECF CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.31. There are some exclusions to the benefits listed below. The exclusions are listed in this rule and in Rule 1200-13-13-.10.

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
25. Pharmacy Services [defined at 42 CFR §440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].		(C) Pharmacy services with no quantity limits on the number of prescriptions per month for the following non-Medicare enrollees only: individuals enrolled in CHOICES 1 or CHOICES 2; <u>adults age 21 and older enrolled in ECF CHOICES who meet nursing facility level of care or transitioned from a Section 1915(c) waiver into ECF CHOICES and granted an exception by TennCare based on ICF/IID level of care;</u> PACE enrollees; and persons receiving TennCare-reimbursed services in an Intermediate Care Facility for Individuals with Intellectual Disabilities or a Home and Community Based Services Waiver for Individuals with Intellectual Disabilities.

(2) Use of Cost Effective Alternative Services.

- (a) MCCs shall be allowed, but are not required, to use cost effective alternative services if and only if:

2. These services are provided under the CHOICES program in accordance with Rule 1200-13-01-.05 or the ECF CHOICES program in accordance with Rule 1200-13-01-.31; and

1200-13-13-.05 Enrollee Cost Sharing.

(2) The following adult groups are exempt from copay:

- (c) Individuals who are receiving services in a Nursing Facility, an Intermediate Care Facility for persons with ~~Mental Retardation~~ (or pursuant to federal law, ~~Care Facility for the Mentally Retarded~~), Individuals with Intellectual Disabilities, the CHOICES program, or a Home and Community Based Services waiver.

- (d) Adults age 21 and older enrolled in ECF CHOICES who meet nursing facility level of care or transitioned from a Section 1915(c) waiver into ECF CHOICES and granted an exception by TennCare based on ICF/IID level of care.

1200-13-13-.08 Providers.

(2) Non-Participating Providers.

- (e) Non-Participating Providers who furnish covered ECF CHOICES services are reimbursed in accordance with Rule 1200-13-01-.31.

Introductory paragraph to Paragraph (3) of Rule 1200-13-13-.10 Exclusions is amended by adding the phrase "or ECF CHOICES" after the word "CHOICES" in the last sentence so as amended the introductory paragraph to Paragraph (3) shall read as follows:

1200-13-13-.10 Exclusions.

- (3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES or ECF CHOICES programs or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.

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