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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.*

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

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

| | |
|---|---|
| **ADA Contact:** | Talley A. Olson, Director<br>TennCare Office of Civil Rights Compliance |
| **Address:** | Division of TennCare<br>310 Great Circle Road<br>Nashville, TN 37243 |
| **Phone:** | (855) 857-1673<br>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: | Division of TennCare<br>310 Great Circle Road, Conference Room 1 East A | | |
| City: | Nashville, TN | | |
| Zip: | 37243 | | |
| Hearing Date : | September 24, 2020 | | |
| Hearing Time: | 5:00 p.m. | X CST/CDT ___EST/EDT | |

**Additional Hearing Information:**

Members of the public may submit written comments for consideration at the hearing until 5:00 p.m. Central Time on September 24, 2020. Written comments should be sent via email to george.woods@tn.gov.

If attending in-person, please bring identification so that you may be checked into the building.

COVID Building Entry Protocols:

As part of the Tennessee Pledge, TennCare observes and is compliant with the following building entry protocols:

- At this time, all persons working or meeting in the TennCare building are required to wear a face mask.
- We recommend meeting attendees bring their own mask, however, if an attendee does not have one, a mask will be provided to any attendee upon entry.
- Additional personal protection equipment (PPE) such as a face shield are permitted but are not a

replacement for a face mask.

- Upon entry, persons are required to complete a health screening by answering the following questions:
    1. Have you been in close contact with a confirmed case of COVID-19 in the past 14 days? (Note: This does not apply to medical personnel, first responders, or other individuals who encounter COVID-19 as part of their professional or caregiving duties while wearing appropriate PPE.)
    2. Are you experiencing a cough, shortness of breath or sore throat?
    3. Have you had a fever in the last 48 hours?
    4. Have you had new loss of taste or smell?
    5. Have you had vomiting or diarrhea in the last 24 hours?
- Persons working or meeting in the TennCare building are also required to submit to a temperature screening; persons with temperatures 100.4 degrees or higher will not be permitted to enter the building. However, an opportunity will be provided to submit comments in writing instead of in-person.

*****NOTICE*****

Currently, Governor Lee's Emergency Order pertaining to COVID-19 that allows State Boards to hold their meetings electronically is set to expire August 29, 2020. If it does expire on that date, then this hearing will be an in-person hearing at the location and time denoted just above. If the Emergency Order is extended beyond the scheduled date of this hearing, then this hearing will be held electronically via WebEx.

In the event of an electronic hearing, members of the public may join the WebEx at the following link:

https://tngov.webex.com/tngov/j.php?MTID=m87d8d68ec30ab38b674181b09d996d73

The link above should take users directly to the rulemaking hearing. If prompted for a meeting number or password, use:

Meeting number (access code): 161 963 7259
Meeting password: tenncare

It is recommended that interested persons join the WebEx several minutes early to ensure adequate time to install any mandatory plugins in order to attend the electronic rulemaking hearing.

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

X 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.)

| **Chapter Number** | **Chapter Title** |
|---|---|
| 1200-13-02 | Nursing Facility Provider Reimbursement |
| **Rule Number** | **Rule Title** |
| 1200-13-02-.01 | Definitions |
| 1200-13-02-.06 | Reimbursement Methodology for Nursing Facilities |
| 1200-13-02-.07 | Case Mix Index Calculation |
| 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-.01 Definitions, paragraph (22), is amended by adding to the end of the paragraph two (2) new sentences "Any MDS assessments or MDS assessment periods which coincide with a federally or state declared public health emergency period may be excluded from or have BC1-Delinquent records removed from the calculation of the Medicaid Nursing Facility-Wide Semi-Annual Average Case Mix Index. In the event that less than three (3) months of MDS assessment information is available for the semi-annual case mix index calculation after exclusion, the most recently preceding Medicaid Nursing Facility-Wide Semi-Annual Average Case Mix

Index which contains three (3) or more months of MDS assessment information will be utilized for rate setting." so that, as amended, paragraph (22) shall read:

(22) Medicaid Nursing Facility-Wide Semi-Annual Average Case Mix Index – The calendar day weighted average, carried to four (4) decimal places, of all indices for each resident MDS assessment transmitted and accepted by CMS that is considered active within a given semi-annual rate period and where Medicaid is determined to be the primary per diem payer source. The resident case mix indices are calculated utilizing the time-weighted acuity measurement system. Any MDS assessments or MDS assessment periods which coincide with a federally or state declared public health emergency period may be excluded from or have BC1-Delinquent records removed from the calculation of the Medicaid Nursing Facility-Wide Semi-Annual Average Case Mix Index. In the event that less than three (3) months of MDS assessment information is available for the semi-annual case mix index calculation after exclusion, the most recently preceding Medicaid Nursing Facility-Wide Semi-Annual Average Case Mix Index which contains three (3) or more months of MDS assessment information will be utilized for rate setting.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109 and 71-5-1413.

Rule 1200-13-02-.01 Definitions, paragraph (23), is amended by deleting the word "required" so that, as amended, paragraph (23) shall read:

(23) Minimum Data Set (MDS) – A core set of screening and assessment data, including common definitions and coding categories that form the foundation of the comprehensive assessment for all residents of long-term care NF providers certified to participate in the Medicaid program. The Tennessee reimbursement system will employ the current MDS assessment as approved by CMS.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109 and 71-5-1413.

Rule 1200-13-02-.01 Definitions, paragraph (26), is amended by adding a new sentence to the end of the first paragraph, "Any MDS assessments, BC1-Delinquent records, or MDS assessment periods excluded from the semi-annual rate setting process will also be excluded from the calculation of the Nursing Facility Cost Report Period Case Mix Index." and is further amended by deleting the second paragraph and replacing it with a new second paragraph and illustrative chart so that, as amended, paragraph (26) shall read:

(26) Nursing Facility Cost Report Period Case Mix Index – The calendar day weighted average of all applicable NF-wide semi-annual average case mix indices, carried to four (4) decimal places. The case mix index periods used in this weighted average will be the periods that most closely coincide with the NF provider's cost reporting period that is used for rate setting. The average will be determined by weighting the applicable semi-annual case mix index periods by the number of days the MDS assessments were active during the cost reporting period. The semi-annual rate period case mix index averages will be calculated using the time-weighted acuity measurement system, and be inclusive of MDS assessments available as of the date of the applicable FCIRs. Any MDS assessments, BC1-Delinquent records, or MDS assessment periods excluded from the semi-annual rate setting process will also be excluded from the calculation of the Nursing Facility Cost Report Period Case Mix Index.

For example, a NF provider with a 1/1/2018 to 12/31/2018 cost reporting period would have a nursing facility cost report period case mix index calculated by the following: ((7/1/2018 – 12/31/2018 Rate Period CMI * 59 days)+ (1/1/2019 – 6/30/2019 Rate Period CMI * 184 days)+ (7/1/2019 – 12/31/2019 Rate Period CMI * 122 days))/ 365 days, rounded to 4 decimals.

| Portion of Cost Report Year | CMI Period | Rate Period Utilizing CMI | Days for Weighted Calculation |
|---|---|---|---|
| 1/1/2018 through 2/28/2018 | 9/1/2017 through 2/28/2018 | 7/1/2018 through 12/31/2018 | 59 |
| 3/1/2018 through 8/31/2018 | 3/1/2018 through 8/31/2018 | 1/1/2019 through 6/30/2019 | 184 |
| 9/1/2018 through 12/31/2018 | 9/1/2018 through 2/28/2019 | 7/1/2019 through 12/31/2019 | 122 |

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109 and 71-5-1413.

Rule 1200-13-02-.01 Definitions, paragraph (27), is amended by adding to the end of the paragraph two (2) new

sentences “Any MDS assessments or MDS assessment periods which coincide with a federally or state declared public health emergency period may be excluded from or have BC1-Delinquent records removed from the calculation of the Nursing Facility-Wide Semi-Annual Average Case Mix Index. In the event that less than three (3) months of MDS assessment information is available for the semi-annual case mix index calculation after exclusion, the most recently preceding Nursing Facility-Wide Semi-Annual Average Case Mix Index which contains three (3) or more months of MDS assessment information will be utilized for rate setting.” so that, as amended, paragraph (27) shall read:

(27) Nursing Facility-Wide Semi-Annual Average Case Mix Index – The calendar day weighted average, carried to four (4) decimal places, of all indices for all resident MDS assessments transmitted and accepted by CMS that are considered active within a given semi-annual rate period. The resident case mix indices are calculated utilizing the time-weighted acuity measurement system. Any MDS assessments or MDS assessment periods which coincide with a federally or state declared public health emergency period may be excluded from or have BC1-Delinquent records removed from the calculation of the Nursing Facility-Wide Semi-Annual Average Case Mix Index. In the event that less than three (3) months of MDS assessment information is available for the semi-annual case mix index calculation after exclusion, the most recently preceding Nursing Facility-Wide Semi-Annual Average Case Mix Index which contains three (3) or more months of MDS assessment information will be utilized for rate setting.

Rule 1200-13-02-.01 Definitions, paragraph (35) Semi-Annual Rate Period, is amended by deleting and replacing the paragraph in its entirety so that, as amended, paragraph (35) shall read:

(35) Semi-Annual Rate Period – A six (6) month period beginning July 1 or January 1 for which new reimbursement rates will be calculated. The semi-annual rate period will use all active MDS assessments for the time period beginning ten (10) months prior and ending four (4) months prior to the begin date of the semi-annual rate period. Any active MDS assessments or active MDS assessment periods which coincide with a federally or state declared public health emergency period may be excluded from or have BC1-Delinquent records removed from the calculation of the applicable case mix index averages. In the event that less than three (3) months of active MDS assessment information is available for use in the semi-annual rate period calculation after exclusion, the most recently preceding applicable case mix index averages which contain three (3) or more months of MDS assessment information will be utilized for rate setting.

For example, the July 1, 2018, semi-annual rate period will use active MDS assessment records from September 1, 2017, through February 28, 2018.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109 and 71-5-1413.

Rule 1200-13-02-.06 Reimbursement Methodology for Nursing Facilities, paragraph (2), is amended by adding a new subparagraph (c) as follows
:

(c) For rebase periods, any base-year cost reporting periods which coincide with a federally or state declared public health emergency period impacting the state of Tennessee may be excluded from rebase calculations and will not be used in determining new base year median costs and prices. In the event a cost reporting period is excluded from the rebase period, then the most recent preceding cost reporting period that satisfies the requirements of rule section 1200-13-02-.06 will be utilized.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109 and 71-5-1413.

Rule 1200-13-02-.06 Reimbursement Methodology for Nursing Facilities, paragraph (5) Determination of Rate Components, subparagraph (a), part 2., subpart (iii) is amended by inserting the prefix “non-“ before the word “case” so that, as amended, subpart (iii) shall read:

(iii) The statewide direct care non-case mix adjusted price is established at one hundred six percent (106.00%) of the direct care non-case mix adjusted annualized Medicaid resident-day-weighted median cost.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109 and 71-5-1413.

Rule 1200-13-02-.06 Reimbursement Methodology for Nursing Facilities, paragraph (5) Determination of Rate Components, subparagraph (c), part 9., subpart (i) is amended by deleting the language “if they meet the

following requirements:" and replacing it with the language "by meeting the requirements set out below in items (I) through (V). A facility may request a waiver of one or more of the requirements by submitting a written request to TennCare detailing the requirement(s) requested to be waived and the reasons supporting the request." so that, as amended, subpart (i) shall read:

(i) In order to continue to incentivize providers to perform capital improvement in non-appraisal years, TennCare will allow each NF provider to modify its total facility value on a semi-annual basis for capitalized fixed assets by meeting the requirements set out below in items (I) through (V). A facility may request a waiver of one or more of the requirements by submitting a written request to TennCare detailing the requirement(s) requested to be waived and the reasons supporting the request.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109 and 71-5-1413.

Rule 1200-13-02-.07 Case Mix Index Calculation, is amended by adding a new paragraph (3) which shall read:

(3) Any MDS assessments or MDS assessment periods which coincide with a federally or state declared public health emergency period may be excluded from or have BC1-Delinquent records removed from the calculation of the semi-annual case mix index averages. In the event that less than three (3) months of MDS assessment information is available for the semi-annual case mix index average calculations after exclusion, the most recently preceding semi-annual case mix index average calculations which contain three (3) or more months of MDS assessment information will be utilized for rate setting.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109 and 71-5-1413.

Rule 1200-13-02-.11 Quality-Based Component of the Reimbursement Methodology for Nursing Facilities, paragraph (5), subparagraph (a), is amended by deleting the number "60" and replacing it with the word and number "thirty (30)" and is further amended by adding a new sentence to the end of the subparagraph, "This shall be operationalized as an MCO rate withhold, pursuant to T.C.A. § 71-5-1006." so that as amended subparagraph (a) shall read as follows:

(a) The facility must be current on its payment of the NF Assessment Fee. Anytime a facility is more than thirty (30) days delinquent on its NF Assessment Fee, the quality-based component of the per-diem payment for NF services shall be suspended, and the facility shall forfeit any quality-based component of its per diem reimbursement rate until such time that the NF is current on its Assessment Fee payments. This shall be operationalized as an MCO rate withhold, pursuant to T.C.A. § 71-5-1006.

Statutory Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109 and 71-5-1413.

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: August 4, 2020

Signature: 

Name of Officer: Stephen Smith

Title of Officer: Director, Division of TennCare
Tennessee Department of Finance and Administration

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Filed with the Department of State on: 8/4/2020

Tre Hargett
Secretary of State

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