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Sequence Number: 09-17-11  
 Rule ID(s): 5020  
 File Date: 09/23/2011  
 Effective Date: 12/22/2011

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<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, Tennessee
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**Revision Type (check all that apply):**

- Amendments  
 New  
 Repeal

**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/Rule Title per row)**

Chapter Number	Chapter Title
1200-13-14	TennCare Standard
Rule Number	Rule Title
1200-13-14-.04	Covered Services
1200-13-14-.10	Exclusions
1200-13-14-.11	Appeal of Adverse Actions Affecting TennCare Services or Benefits

(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>)

Chapter 1200-13-14  
TennCare Standard

Emergency Rule that deleted the seventh paragraph of the "BENEFIT FOR PERSONS AGED 21 AND OLDER" column of Part 25. of Subparagraph (b) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services in its entirety and replaced it with a new seventh paragraph is replaced with a Rulemaking Hearing Rule seventh paragraph which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
		Over-the-counter (OTC) drugs for TennCare adults are not covered even if the enrollee has a prescription for such service, unless the drug is listed on the "Covered OTC Drug List" that is available on the TennCare website located at <a href="http://www.tn.gov/tenncare">www.tn.gov/tenncare</a> on the date of service.

Emergency Rule that deleted Part 5. "Agents to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d." of Subparagraph (c) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services in its entirety and renumbered Part 6. as Part 5. and subsequent Parts accordingly is replaced with this Rulemaking Hearing Rule which deletes part 5. and renumbers Part 6. as Part 5. and subsequent Parts accordingly.

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

Emergency Rule that deleted Subpart (v) "Agents when used to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. §1396d" of Part 20. of Subparagraph (a) of Paragraph (3) of Rule 1200-13-14-.10 Exclusions in its entirety and renumbered Subpart (vi) as Subpart (v) and subsequent Subparts accordingly is replaced with this Rulemaking Hearing Rule which deletes Subpart (v) and renumbers Subpart (vi) as Subpart (v) and subsequent Subparts accordingly.

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

Emergency Rule that deleted Subpart (v) "agents to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d;" of Part 2. of Subparagraph (b) of Paragraph (5) of Rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits in its entirety and renumbered Subpart (vi) as Subpart (v) and subsequent Subparts accordingly is replaced with this Rulemaking Hearing Rule which deletes Subpart (v) and renumbers Subpart (vi) as Subpart (v) and subsequent Subparts accordingly.

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 9/13/11 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/28/2011

Rulemaking Hearing(s) Conducted on: (add more dates). 08/30/2011



Date: 9/13/11

Signature: Wendy Long MD

Name of Officer: Wendy Long, MD

Title of Officer: Chief Medical Officer

Subscribed and sworn to before me on: 9/13/11

Notary Public Signature: Cheryl D Kline

My commission expires on: 9/31/2012

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

RE Cooper Jr

Robert E. Cooper, Jr.  
Attorney General and Reporter

9-23-11

Date

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Filed with the Department of State on: 9/23/11

Effective on: 12/22/11

Tre Hargett  
Tre Hargett  
Secretary of State

## **Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no public comments on these rules.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

The rules are not anticipated to have an effect on small businesses.

### **Impact on Local Governments**

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

The 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 TCA 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 replace emergency rules that pointed out that effective July 1, 2011, TennCare is covering smoking cessation products for adult enrollees.

- (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 Tennessee Code Annotated §§ 4-5-202, 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 the 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 Medicaid and TennCare Standard Rules is projected to increase state annual expenditures by \$3,500,000.

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

Darin J. Gordon  
Director, Bureau of TennCare

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

Darin J. Gordon  
Director, Bureau of TennCare

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

None

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