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Sequence Number: 09-24-17
Rule ID(s): 6606
File Date: 9/25/17
Effective Date: 12/24/17

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Finance & Administration
Division:	TennCare
Contact Person:	George Woods
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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 here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. 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-.03	Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCs)
1200-13-14-.10	Exclusions

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Subparagraph (c) of Paragraph (2) of Rule 1200-13-14-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCs) is amended by naming the title of subparagraph (c) as "Members receiving long-term services and supports.", by numbering the current content as Part 1, and adding a new Part 2 so as amended Subparagraph (c) shall read as follows:

(c) Members receiving long-term services and supports.

1. In the event that a CHOICES member is determined, based on an assessment of needs, to require a long-term care service that is not currently available under the MCO in which he is currently enrolled, but that is available through another MCO, the Bureau shall work with the current MCO to arrange for provision of the required service, which may involve providing such service out-of-network. It shall be considered to be a hardship reason to change MCO assignment only if the current MCO, after working with the Bureau, is unable to provide the required service. In such cases, the MCO that is unable to provide the required service after working with the Bureau may be subject to sanctions.
2. A CHOICES or ECF CHOICES member may request and shall have cause to change MCO assignment if all of the following are met:
 - (i) The member receives institutional, residential, or employment support services in the MLTSS program in which he is enrolled;
 - (ii) The member's institutional, residential, or employment support services provider has stopped participating in the member's MCO network and has refused continuation of care to the member in his current MCO assignment;
 - (iii) The member's current MCO has been unable to negotiate continued services for the member with the current provider;
 - (iv) The member would have to change his residential, institutional, or employment supports provider based on that provider's change in status from an in-network to an out-of-network provider with the MCO;
 - (v) As a result, the member would experience a disruption in his residence or employment;
 - (vi) The current institutional, residential, or employment support services provider is in the network of one or more alternative MCOs; and
 - (vii) The alternative MCO the member has selected is available to enroll members (i.e., has not given notice of withdrawal from the TennCare Program, is not in receivership, and is not at member capacity for the member's region).

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

The introductory sentence to Part 29 of Subparagraph (b) of Paragraph (3) of Rule 1200-13-14-.10 Exclusions is amended by capitalizing the "R" in "rule" and deleting the "12." at the end of "1200-13-14-.10(3)(a)12." and replacing it with "10)," so as amended the introductory sentence shall read as follows:

29. Food and food products (distinct from food supplements or substitutes, as defined in Rule 1200-13-14-.10(3)(a)10), including but not limited to specialty food items for use in diets such as:

The introductory sentence of Part 52 of Subparagraph (b) of Paragraph (3) of Rule 1200-13-14-.10 Exclusions is amended by deleting "23." at the end of "1200-13-14-.04(1)(b)23." and replacing it with "22" so as amended the introductory sentence shall read as follows:

52. Organ and tissue donor services provided in connection with organ or tissue transplants covered pursuant to Rule 1200-13-14-.04(1)(b)22, including, but not limited to:

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 & Administration (board/commission/ other authority) on 08/17/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/13/17

Rulemaking Hearing(s) Conducted on: (add more dates). 08/04/17

Date: 8/17/17

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D., M.P.H.

Director, Division of TennCare

Title of Officer: Tennessee Department of Finance & Administration



Subscribed and sworn to before me on: 8/17/17

Notary Public Signature: Robin A Page

My commission expires on: 11/3/2020

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.

Herbert H. Slatery III

Herbert H. Slatery III

Attorney General and Reporter

9/20/2017

Date

Department of State Use Only

Filed with the Department of State on: 9/25/17

Effective on: 12/24/17

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

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 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, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

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 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;

The Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCs) rule is being promulgated to point out the circumstances in which members enrolled in a managed long-term services and supports (MLTSS) program will be allowed to change MCOs. The exclusions rule is being amended to correct citations.

- (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 Division of TennCare in accordance with T.C.A. §§ 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 TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by these Rules is the Division of TennCare, Tennessee Department of Finance & Administration.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate 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 these rules is anticipated to produce a minimal fiscal impact on state revenues and expenditures.

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

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RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-14
TENNCARE STANDARD

1200-13-14-.03 ENROLLMENT, REASSIGNMENT, AND DISENROLLMENT WITH MANAGED CARE CONTRACTORS (MCCS).

(2) Reassignment.

(c) Members receiving long-term services and supports.

1. In the event that a CHOICES member is determined, based on an assessment of needs, to require a long-term care service that is not currently available under the MCO in which he is currently enrolled, but that is available through another MCO, the Bureau shall work with the current MCO to arrange for provision of the required service, which may involve providing such service out-of-network. It shall be considered to be a hardship reason to change MCO assignment only if the current MCO, after working with the Bureau, is unable to provide the required service. In such cases, the MCO that is unable to provide the required service after working with the Bureau may be subject to sanctions.
2. A CHOICES or ECF CHOICES member may request and shall have cause to change MCO assignment if all of the following are met:
 - (i) The member receives institutional, residential, or employment support services in the MLTSS program in which he is enrolled;
 - (ii) The member's institutional, residential, or employment support services provider has stopped participating in the member's MCO network and has refused continuation of care to the member in his current MCO assignment;
 - (iii) The member's current MCO has been unable to negotiate continued services for the member with the current provider;
 - (iv) The member would have to change his residential, institutional, or employment supports provider based on that provider's change in status from an in-network to an out-of-network provider with the MCO;
 - (v) As a result, the member would experience a disruption in his residence or employment;
 - (vi) The current institutional, residential, or employment support services provider is in the network of one or more alternative MCOs; and
 - (vii) The alternative MCO the member has selected is available to enroll members (i.e., has not given notice of withdrawal from the TennCare Program, is not in receivership, and is not at member capacity for the member's region).

1200-13-14-.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.
- (b) Services, products, and supplies that are specifically excluded from coverage under the TennCare program.
29. Food and food products (distinct from food supplements or substitutes, as defined in Rule 1200-13-14-.10(3)(a)42-10), including but not limited to specialty food items for use in diets such as:
- (i) Low-phenylalanine or phenylalanine-free
 - (ii) Gluten-free
 - (iii) Casein-free
 - (iv) Ketogenic
52. Organ and tissue donor services provided in connection with organ or tissue transplants covered pursuant to Rule 1200-13-14-.04(1)(b)23-22, including, but not limited to:
- (i) Transplants from a donor who is a living TennCare enrollee and the transplant is to a non-TennCare enrollee
 - (ii) Donor services other than the direct services related to organ procurement (such as, hospitalization, physician services, anesthesia)
 - (iii) Hotels, meals, or similar items provided outside the hospital setting for the donor
 - (iv) Any costs incurred by the next of kin of the donor
 - (v) Any services provided outside of any "bundled rates" after the donor is discharged from the hospital