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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).

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Revision Type (check all that apply):

- Amendment
 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
1200-13-01	TennCare Long-Term Care Programs
Rule Number	Rule Title
1200-13-01-.02	Definitions
1200-13-01-.05	TennCare CHOICES Program

(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 (28) of Rule 1200-13-01-.02 Definitions is deleted in its entirety and replaced with a new Paragraph (28) which shall read as follows:

(28) Community-Based Residential Alternatives (CBRA) to institutional care. For purposes of CHOICES:

- (a) Residential services that offer a cost-effective, community-based alternative to NF care for individuals who are elderly and/or adults with Physical Disabilities.
- (b) CBRA's include, but are not limited to:
 - 1. Services provided in a licensed facility such as an ACLF or Critical Adult Care Home, and residential services provided in a licensed home or in the person's home by an appropriately licensed provider such as Community Living Supports or Community Living Supports-Family Model; and
 - 2. Companion Care.

Rule 1200-13-01-.02 Definitions is amended by inserting in alphabetical order the following new Paragraphs, with all paragraphs numbered appropriately so that the new Paragraphs shall read as follows:

(#) Community Living Supports (CLS). For the purposes of CHOICES this service is available to CHOICES Group 2 and 3 Members as appropriate:

- (a) A CBRA licensed by the DIDD in accordance with T.C.A. Title 33 and TDMHSAS Rules 0940-5-24, 0940-5-28 or 0940-5-32, as applicable, that encompasses a continuum of residential support options for up to four individuals living in a home that:
 - 1. Supports each resident's independence and full integration into the community;
 - 2. Ensures each resident's choice and rights; and
 - 3. Comports fully with standards applicable to HCBS settings detailed in 42 C.F.R. § 441.301(c)(4) and (5), including those requirements applicable to provider-owned or controlled homes, as applicable, including any exception as supported by the individual's specific assessed need and set forth in the person-centered plan of care.
- (b) CLS services are individualized based on the needs of each resident and specified in the person-centered plan of care. Services may include hands-on assistance, supervision, transportation, and other supports intended to help the individual exercise choices such as:
 - 1. Selecting and moving into a home.
 - 2. Locating and choosing suitable housemates.
 - 3. Acquiring and maintaining household furnishings.
 - 4. Acquiring, retaining, or improving skills needed for activities of daily living or assistance with activities of daily living as needed, such as bathing, dressing, personal hygiene and grooming, eating, toileting, transfer, and mobility.
 - 5. Acquiring, retaining, or improving skills needed for instrumental activities of daily living or assistance with instrumental activities of daily living as needed, such as household chores, meal planning, shopping, preparation and storage of food, and managing personal finances.
 - 6. Building and maintaining interpersonal relationships with family and friends.

7. Pursuing educational goals and employment opportunities.
8. Participating fully in community life, including faith-based, social, and leisure activities selected by the individual.
9. Scheduling and attending appropriate medical services.
10. Self-administering medications, including assistance with administration of medications as permitted pursuant to T.C.A. §§ 68-1-904 and 71-5-1414.
11. Managing acute or chronic health conditions, including nurse oversight and monitoring, and skilled nursing services as needed for routine, ongoing health care tasks, such as blood sugar monitoring and management, oral suctioning, tube feeding, bowel care, etc.
12. Becoming aware of, and effectively using, transportation, police, fire, and emergency help available in the community to the general public.
13. Asserting civil and statutory rights through self-advocacy.

(#) Community Living Supports Family Model (CLS-FM). For the purposes of CHOICES, this service is available to CHOICES Group 2 and 3 Members as appropriate:

(a) A CBRA licensed by the DIDD in accordance with T.C.A. Title 33 and TDMHSAS Rule 0940-5-26 that encompasses a continuum of residential support options for up to three individuals living in the home of trained family caregivers (other than the individual's own family) in an "adult foster care" arrangement. In this type of shared living arrangement, the provider allows the individual(s) to move into his or her existing home in order to integrate the individual into the shared experiences of a home and a family and provide the individualized services that:

1. Support each resident's independence and full integration into the community;
2. Ensure each resident's choice and rights; and
3. Support each resident in a manner that comports fully with standards applicable to HCBS settings detailed in 42 C.F.R. § 441.301(c)(4)-(5), including those requirements applicable to provider-owned or controlled homes, as applicable, including any exception as supported by the individual's specific assessed need and set forth in the person-centered plan of care.

(b) CLS-FM services are individualized based on the needs of each resident and specified in the person-centered plan of care. Services may include hands-on assistance, supervision, transportation, and other supports intended to help the individual exercise choices such as:

1. Selecting and moving into a home.
2. Locating and choosing suitable housemates.
3. Acquiring and maintaining household furnishings.
4. Acquiring, retaining, or improving skills needed for activities of daily living or assistance with activities of daily living as needed, such as bathing, dressing, personal hygiene and grooming, eating, toileting, transfer, and mobility.
5. Acquiring, retaining, or improving skills needed for instrumental activities of daily living or assistance with instrumental activities of daily living as needed, such as household chores, meal planning, shopping, preparation and storage of food, and managing personal finances.
6. Building and maintaining interpersonal relationships with family and friends.
7. Pursuing educational goals and employment opportunities.

8. Participating fully in community life, including faith-based, social, and leisure activities selected by the individual.
9. Scheduling and attending appropriate medical services.
10. Self-administering medications, including assistance with administration of medications as permitted pursuant to T.C.A. §§ 68-1-904 and 71-5-1414.
11. Managing acute or chronic health conditions, including nurse oversight and monitoring, and skilled nursing services as needed for routine, ongoing health care tasks, such as blood sugar monitoring and management, oral suctioning, tube feeding, bowel care, etc.
12. Becoming aware of, and effectively using, transportation, police, fire, and emergency help available in the community to the general public.
13. Asserting civil and statutory rights through self-advocacy.

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

Rule 1200-13-01-.02 Definitions is amended by adding the phrase "and in CHOICES Community Living Supports-Family Model" after the word "CHOICES" in the current Paragraph (62) Immediate Family Member so that as amended the current Paragraph (62) shall read as follows:

- (62) Immediate Family Member. For purposes of employment as a Consumer-Directed Worker in CHOICES and in CHOICES Community Living Supports-Family Model, a spouse, parent, grandparent, child, grandchild, sibling, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, and son-in-law. Adopted and step Members are included in this definition.

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

Part 4 of Subparagraph (b) of Paragraph (3) of Rule 1200-13-01-.05 TennCare CHOICES Program is amended by adding a sentence at the end of the part so as amended Part 4 shall read as follows:

4. Members enrolled in CHOICES Group 1 on June 30, 2012, who wish to begin receiving HCBS and transition to CHOICES Group 2 shall, for purposes of LOC, be permitted to do so, so long as they continue to meet the NF LOC criteria in place on June 30, 2012, and have remained continuously enrolled in CHOICES Group 1 and in TennCare since June 30, 2012. Should such Member subsequently require transition back to CHOICES Group 1, TennCare may grant an exception to the current NF LOC criteria, so long as the person continues to meet the NF LOC criteria in place on June 30, 2012, and has remained continuously enrolled in CHOICES Group 1 and/or Group 2 and in TennCare since June 30, 2012.

Column 2 "Benefits for CHOICES 2 Members" of Part 4. CBRA of Subparagraph (l) of Paragraph (8) of Rule 1200-13-01-.05 TennCare CHOICES Program is deleted in its entirety and replaced with a new Part 4. which shall read as follows:

Service	Benefits for CHOICES 2 Members	Benefits for Consumer Direction ("Eligible HCBS")
4. CBRA	Companion Care. Not covered (regardless of payer), when the Member is living in an ACLF, Critical Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving any of the following HCBS: Adult Day Care, CBRA services, or Short-Term NF Care.	Yes
	CBRA services (e.g., ACLFs, Critical Adult Care Homes, CLS, and CLS-FM).	No

Subparagraph (l) of Paragraph (8) of Rule 1200-13-01-.05 TennCare CHOICES Program is amended by adding a new Part 4. CBRA to the "Benefits for CHOICES 3 Members" chart and re-numbering the current Part 4. Home-Delivered Meals as 5. and subsequent parts re-numbered accordingly so as amended the new Part 4. shall read as follows:

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction ("Eligible HCBS")
4. CBRA	<p>CBRA services (e.g., ACLFs, CLS, and CLS-FM as specified below).</p> <p>CBRAs available to individuals in Group 3 include only Assisted Care Living Facility services, CLS, and CLS-FM that can be provided within the limitations set forth in the expenditure cap as defined in Rule 1200-13-01-.02 and further specified in Rule 1200-13-01-.05(4)(f), when the cost of such services will not exceed the cost of CHOICES HCBS that would otherwise be needed by the Member to 1) safely transition from a nursing facility to the community; or 2) continue being safely served in the community and to delay or prevent nursing facility placement.</p>	No

Paragraph (8) of Rule 1200-13-01-.05 TennCare CHOICES Program is amended by adding a new Subparagraph (p) which shall read as follows:

(p) Community Based Residential Alternatives (CBRAs).

1. Intent. This subparagraph describes requirements for CBRAs in the CHOICES program necessary to ensure compliance with federal HCBS obligations, including those set forth in 42 C.F.R. §§ 441.301, et seq. These requirements supplement requirements set forth in the licensure rules applicable to the specific CBRA provider, requirements for Managed Care Organizations who administer CBRAs in the CHOICES program, requirements set forth in

MCO provider agreements with CBRA providers, and other applicable state laws and regulations, and program policies and protocols applicable to these services and/or providers of these services.

2. Requirements for CBRAs.

- (i) Member Choice. A Member shall transition into a specific CBRA setting and receive CBRA services only when such services and setting:
 - (I) Have been selected by the Member;
 - (II) The Member has been given the opportunity to meet and to choose to reside with any housemates who will also live in the CBRA setting, as applicable; and
 - (III) The setting has been determined to be appropriate for the Member based on the Member's needs, interests, and preferences, including (as applicable) the member's preferred community and/or proximity to family and other natural supports. A CLS or CLS-FM provider shall not admit a Member and CLS or CLS-FM services shall not be authorized for a CHOICES Member unless the CLS or CLS-FM provider is able to safely meet the Member's needs and ensure the Member's health, safety and well-being.
- (ii) A Member may choose to stop receiving services in a CBRA setting or from a particular CBRA provider at any time, and shall be supported in choosing and transitioning within a reasonable period to a different service, setting, or provider as applicable, that is appropriate based on the Member's needs and preferences.
- (iii) Member Rights. Providers of CBRA services shall ensure that services are delivered in a manner that safeguards the following rights of persons receiving CBRA services:
 - (I) To be treated with respect and dignity;
 - (II) To have the same legal rights and responsibilities as any other person unless otherwise limited by law;
 - (III) To receive services regardless of gender, race, creed, marital status, national origin, disability, sexual orientation, ethnicity or age;
 - (IV) To be free from abuse, neglect and exploitation;
 - (V) To receive appropriate, quality services and supports in accordance with a comprehensive, person-centered written plan of care;
 - (VI) To receive services and supports in the most integrated and least restrictive setting that is appropriate based on the individualized needs of the Member;
 - (VII) To have access to personal records and to have services, supports and personal records explained so that they are easily understood;
 - (VIII) To have personal records maintained confidentially;
 - (IX) To own and have control over personal property, including personal funds, as specified in the plan of care;
 - (X) To have access to information and records pertaining to expenditures of funds for services provided;
 - (XI) To have choices and make decisions, and to be supported by family members, an advocate or others, as appropriate, to exercise their legal capacity;

- (XII) To have privacy;
 - (XIII) To be able to associate, publicly or privately, with friends, family and others;
 - (XIV) To practice the religion or faith of one's choosing;
 - (XV) To be free from inappropriate use of physical or chemical restraint;
 - (XVI) To have access to transportation and environments used by the general public;
and
 - (XVII) To seek resolution of rights violations or quality of care issues without retaliation.
- (iv) The rights to be safeguarded by providers described in this rule do not limit any other statutory and constitutional rights afforded to all CHOICES Members or their legally authorized representatives, including those rights provided by the HCBS Settings Rule and Person-Centered Planning Rule in 42 C.F.R. § 441.301, and all other rights afforded to residents of CBRAs specific to the licensure authority for that CBRA.
 - (v) A Member who does not have a legally authorized representative may be supported by family members, an advocate or others as needed to exercise their legal capacity in a supported decision making model.
 - (vi) A Member may include family members and/or other representatives in the planning and decision-making processes.
 - (vii) A provider may serve as the Member's representative payee and assist the Member with personal funds management only as specified in the plan of care. Providers who assist the Member with personal funds management in accordance with the plan of care shall comply with all applicable policies and protocols pertaining to personal funds management, and shall ensure that the Member's bills have been paid timely and are not overdue, and that there are adequate funds remaining for food, utilities, and any other necessary expenses.

3. CLS Ombudsman.

- (i) TennCare shall arrange for all Members choosing to receive CLS or CLS-FM services, including Members identified for transition to CLS or CLS-FM, to have access to a CLS Ombudsman. The CLS Ombudsman shall be employed and/or contracted with an agency that is separate and distinct from the TennCare Bureau.
- (ii) The CLS Ombudsman will:
 - (I) Help to ensure Member choice in the selection of their CLS or CLS-FM benefit, provider, setting, and housemates;
 - (II) Provide Member education, including rights and responsibilities of Members receiving CLS or CLS-FM, how to handle quality and other concerns, identifying and reporting abuse and neglect, and the role of the CLS Ombudsman and how to contact the CLS Ombudsman;
 - (III) Provide Member advocacy for individuals receiving CLS or CLS-FM services, including assisting individuals in understanding and exercising personal rights, assisting Members in the resolution of problems and complaints regarding CLS or CLS-FM services, and referral to APS of potential instances of abuse, neglect or financial exploitation; and
 - (IV) Provide systems level advocacy, including recommendations regarding potential program changes or improvements regarding the CLS or CLS-FM benefit, and

immediate notification to TennCare of significant quality concerns.

- (iii) CLS and CLS-FM providers shall ensure that every CHOICES Member receiving CLS or CLS-FM services knows how to contact the CLS Ombudsman and that contact information for the CLS Ombudsman is available in the residence in a location of the Member's preference.
 - (iv) CLS and CLS-FM providers shall ensure access to telephones and/or computers for purposes of communication, and shall respect and safeguard the member's right to privacy, including the Member's ability to meet privately with the CLS Ombudsman in the residence.
4. Person-centered Delivery of CLS and CLS-FM Services. A CLS or CLS-FM provider shall be responsible for the following:
- (i) A copy of the plan of care for any Member receiving CLS or CLS-FM services shall be accessible in the home to all paid staff;
 - (ii) Staff shall meet all applicable training requirements as specified in applicable licensure regulations, TennCare regulations, contractor risk agreements with managed care organizations, provider agreements with managed care organizations, or in TennCare policy or protocol. Staff shall be trained on the delivery of person-centered service delivery, and on each Member's plan of care, including the risk assessment and risk agreement, as applicable, prior to being permitted to provide supports to that Member;
 - (iii) The CLS or CLS-FM provider shall implement the Member's plan of care and shall ensure that services are delivered in a manner that is consistent with the Member's preferences and which supports the Member in achieving his or her goals and desired outcomes;
 - (iv) The CLS or CLS-FM provider shall support the Member to make his or her own choices and to maintain control of his or her home and living environment;
 - (v) The Member shall have access to all common living areas within the home with due regard to privacy and personal possessions;
 - (vi) The Member shall be afforded the freedom to associate with persons of his/her choosing and have visitors at reasonable hours;
 - (vii) The CLS or CLS-FM provider shall support the Member to participate fully in community life, including faith-based, social, and leisure activities selected by the Member; and
 - (viii) There shall be an adequate food supply (at least 48 hours) for the Member that is consistent with the Member's dietary needs and preferences.
5. Requirements for Community Living Supports (CLS).
- (i) Providers of CLS services in the CHOICES program shall:
 - (I) Be contracted with the Member's MCO for the provision of CLS services, licensed by the DIDD in accordance with T.C.A. Title 33 and TDMHSAS Rules 0940-5-24, 0940-5-28 or 0940-5-32 as applicable, and contracted by the DIDD to provide residential services pursuant to an approved Section 1915(c) waiver;
 - (II) Maintain an adequate administrative structure necessary to support the provision of CLS services;
 - (III) Demonstrate financial solvency as it relates to daily operations, including sufficient resources and liquid assets to operate the facility;

- (IV) Maintain adequate, trained staff to properly support each CLS resident; the provider must comply with minimum staffing standards specified in licensure regulations, and ensure an adequate number of trained staff to implement each resident's plan of care, and meet the needs and ensure the health and safety of each resident, including the availability of back-up and emergency staff when scheduled staff cannot report to work;
 - (V) Comply with all background check requirements specified in T.C.A Title 33;
 - (VI) Comply with all critical incident reporting and investigation requirements set forth in state law, contractor risk agreements with managed care organizations, provider agreements with managed care organizations, or in TennCare policy or protocol; and
 - (VII) Cooperate with quality monitoring and oversight activities conducted by the DIDD under contract with TennCare to ensure compliance with requirements for the provision of CLS and to monitor the quality of CLS and CLS-FM services received.
- (ii) A home where CLS services are provided shall have no more than four (4) residents, or fewer as permitted by the applicable licensure requirements.
 - (iii) The Member or the Member's representative (legally authorized or designated by Member) shall have a contributing voice in choosing other individuals who reside in the home where CLS services are provided, and the staff who provide the Member's services and supports.
 - (I) The CLS provider shall notify the Member and the Member's representative (as applicable) of changes of extended or permanent duration in the regularly assigned staff who will provide the Member's support. Such notification may be verbal or in writing. When practicable, such notification shall occur in advance of the staffing change.
 - (II) The CLS provider shall ensure that the Member and/or Member's representative has the opportunity to help choose new staff who will be regularly assigned to support the Member; however, this may not be possible in the short-term for situations where the change in staffing is of limited duration or is unexpected, e.g., due to illness, termination of employment, or abuse or neglect.
 - (iv) A CLS provider may deliver CLS services in a home where other CHOICES members receiving CLS reside. A CLS provider may also deliver CLS services in a home where CHOICES members receiving CLS reside along with individuals enrolled in a Section 1915(c) HCBS waiver program operated by the DIDD, when the provider is able and willing to provide supports in a blended residence, comply with all applicable program requirements, and meet the needs and ensure the health, safety and welfare of each resident.
 - (v) In instances when the CLS provider owns the Member's place of residence, the provider must sign a written lease/agreement pursuant to the Tennessee Uniform Landlord and Tenant Act (T.C.A. §§ 66-28-101, et seq.) as applicable per the county of residence. If the Tennessee Uniform Landlord and Tenant Act is not applicable to the county of residence, the provider must sign a written lease/agreement with the Member that provides the Member with the same protections as those afforded under the Tennessee Uniform Landlord and Tenant Act.
 - (vi) Unless the residence is individually licensed or inspected by a public housing agency utilizing the HUD Section 8 safety checklist, the residence shall be inspected, as required by TennCare, prior to the Member's transition to CLS services; the home where CLS services are provided must have an operable smoke detector and a second means of

gress, and all utilities must be working and in proper order.

- (vii) The provider shall be responsible for the provision of all assistance and supervision required by program participants. Services shall be provided pursuant to the Member's person-centered plan of care and may include assistance with the following:
 - (I) Hands-on assistance with ADLs such as bathing, dressing, personal hygiene, eating, toileting, transfers and ambulation;
 - (II) Assistance with instrumental activities of daily living necessary to support community living;
 - (III) Safety monitoring and supervision for Members requiring this type of support as outlined in their person-centered plan of care; and
 - (IV) Managing acute or chronic health conditions, including nurse oversight and monitoring, administration of medications, and skilled nursing services as needed for routine, ongoing health care tasks such as blood sugar monitoring and management, oral suctioning, tube feeding, bowel care, etc., by appropriately licensed nurses practicing within the scope of their licenses, except as delegated in accordance with state law.
- (viii) Medication administration shall be performed by appropriately licensed staff or by unlicensed staff who are currently certified in medication administration and employed by an HCBS waiver provider who is both licensed under T.C.A. Title 33 and contracted with DIDD to provide services through an HCBS waiver operated by DIDD, as permitted pursuant to T.C.A. §§ 68-1-904 and 71-5-1414.
- (ix) Self-administration of medications is permitted for a person receiving CLS services who is capable of using prescription medication in a manner directed by the prescribing practitioner without assistance or direction. Staff intervention must be limited to verbal reminders as to the time the medication is due. The plan of care must document any training the person needs in order to self-administer medications and how it will be provided; storage, labeling and documentation of administration; oversight to ensure safe administration; and how medication will be administered during any time the person is incapable of self-administration.
- (x) Services and supports for a Member receiving CLS shall be provided up to 24 hours per day based on the Member's assessed level of need as specified in the plan of care and approved level of CLS reimbursement. Members approved for 24 hours per day of CLS are not prohibited from engaging in independent activities.
- (xi) Members approved for 24 hour support who are assessed to be capable of independent functioning may participate in activities of their choosing without the support of staff as specified in the plan of care and risk assessment and risk agreement.
- (xii) Regardless of the level of CLS reimbursement a Member is authorized to receive, a Member may choose to be away from home without support of staff, e.g., for overnight visits, vacations, etc. with family or friends.
- (xiii) The CLS provider shall be responsible for community transportation needed by the Member. The CLS provider shall transport the Member into the community or assist the Member in identifying and arranging transportation into the community to participate in activities of his choosing.
- (xiv) The provider shall be responsible for assisting the Member in scheduling medical appointments and obtaining medical services, including accompanying the Member to medical appointments, as needed, and shall either provide transportation to medical services and appointments for the Member or assist the Member in arranging and

utilizing NEMT, as covered under the TennCare program.

6. Requirements for Community Living Supports Family Model (CLS-FM) Services.

- (i) Providers of CLS-FM services in the CHOICES program shall:
 - (I) Be contracted with the Member's MCO for the provision of CLS-FM services, licensed by the DIDD in accordance with T.C.A. Title 33 and TDMHSAS Rule 0940-5-26, and contracted by the DIDD to provide residential services pursuant to an approved Section 1915(c) waiver;
 - (II) Maintain an adequate administrative structure necessary to support the provision of CLS-FM services;
 - (III) Demonstrate financial solvency as it relates to daily operations, including sufficient resources and liquid assets to operate the facility;
 - (IV) Ensure CLS-FM family caregivers are adequately trained to properly support each CLS resident; the provider must comply with minimum staffing standards specified in licensure regulations, and ensure an adequate number of family caregivers and trained staff as needed to implement each resident's plan of care, and meet the needs and ensure the health and safety of each resident, including the availability of back-up and emergency staff when scheduled staff cannot report to work;
 - (V) Comply with all background check requirements specified in T.C.A. Title 33;
 - (VI) Comply with all critical incident reporting and investigation requirements set forth in state law, contractor risk agreements with managed care organizations, provider agreements with managed care organizations, or in TennCare policy or protocol; and
 - (VII) Cooperate with quality monitoring and oversight activities conducted by the DIDD under contract with TennCare to ensure compliance with requirements for the provision of CLS and to monitor the quality of CLS and CLS-FM services received.
- (ii) A home where CLS-FM services are provided shall serve no more than three (3) individuals, including individuals receiving CLS-FM services and individuals receiving Family Model Residential services, and must be physically adequate to allow each participant to have private bedroom and bathroom space unless otherwise agreed upon with residents to share, in which case each participant must have equal domain over shared spaces.
- (iii) The Member or the Member's representative (legally authorized or designated by Member) shall have a contributing voice in choosing other individuals who reside in the home where CLS-FM services are provided, caregivers whose home the Member will move into, and any staff hired by the CLS-FM provider to assist in providing the Member's services and supports.
- (iv) A CLS-FM provider may deliver CLS-FM services in a home where other CHOICES Members receiving CLS-FM reside. A CLS-FM provider may also deliver CLS services in a home where CHOICES Members receiving CLS-FM reside along with individuals enrolled in a Section 1915(c) HCBS waiver program operated by the DIDD, when the provider is able and willing to provide supports in a blended residence, comply with all applicable program requirements, and meet the needs and ensure the health, safety and welfare of each resident. In instances of blended homes, there shall be no more than three (3) service recipients residing in the home, regardless of the program or funding source.
- (v) The family caregiver and Member must sign a written lease/agreement pursuant to the

Tennessee Uniform Landlord and Tenant Act (T.C.A. §§ 66-28-101, et seq.) as applicable per the county of residence. If the Tennessee Uniform Landlord and Tenant Act is not applicable to the county of residence, the provider must sign a written lease/agreement with the Member that provides the Member with the same protections as those afforded under the Tennessee Uniform Landlord and Tenant Act.

- (vi) Unless the residence is individually licensed or inspected by a public housing agency utilizing the HUD Section 8 safety checklist, the residence shall be inspected, as required by TennCare, prior to the Member's transition to CLS services; the home where CLS-FM services are provided must have an operable smoke detector and a second means of egress.
- (vii) The CLS-FM provider shall be responsible for the provision of all assistance and supervision required by program participants. Services shall be provided pursuant to the Member's person-centered plan of care and may include assistance with the following:
 - (I) Hands-on assistance with ADLs such as bathing, dressing, personal hygiene, eating, toileting, transfers and ambulation;
 - (II) Assistance with instrumental activities of daily living necessary to support community living;
 - (III) Safety monitoring and supervision for Members requiring this type of support as outlined in their person-centered plan of care; and
 - (IV) Managing acute or chronic health conditions, including nurse oversight and monitoring, administration of medications, and skilled nursing services as needed for routine, ongoing health care tasks such as blood sugar monitoring and management, oral suctioning, tube feeding, bowel care, etc., by appropriately licensed nurses practicing within the scope of their licenses, except as delegated in accordance with state law.
- (viii) Medication administration shall be performed by appropriately licensed staff or by unlicensed staff who are currently certified in medication administration and employed by an HCBS waiver provider who is both licensed under T.C.A. Title 33 and contracted with DIDD to provide services through an HCBS waiver operated by DIDD, as permitted pursuant to T.C.A. §§ 68-1-904 and 71-5-1414.
- (ix) Self-administration of medications is permitted for a person receiving CLS-FM services who is capable of using prescription medication in a manner directed by the prescribing practitioner without assistance or direction. Staff intervention must be limited to verbal reminders as to the time the medication is due. The plan of care must document any training the person needs in order to self-administer medications and how it will be provided; storage, labeling and documentation of administration; oversight to ensure safe administration; and how medication will be administered during any time the person is incapable of self-administration.
- (x) Services and supports for a Member receiving CLS-FM shall be provided up to 24 hours per day based on the Member's assessed level of need as specified in the plan of care and approved level of CLS reimbursement. Members approved for 24 hours per day of CLS-FM are not prohibited from engaging in independent activities.
- (xi) Members approved for 24 hour support who are assessed to be capable of independent functioning may participate in activities of their choosing without the support of staff as specified in the plan of care and risk assessment and risk agreement.
- (xii) Regardless of the level of CLS-FM reimbursement a Member is authorized to receive, a Member may choose to be away from home without support of staff, e.g., for overnight visits, vacations, etc. with family or friends.

- (xiii) The CLS provider shall be responsible for community transportation needed by the Member. The CLS provider shall transport the Member into the community or assist the Member in identifying and arranging transportation into the community to participate in activities of his choosing.
- (xiv) The provider shall be responsible for assisting the Member in scheduling medical appointments and obtaining medical services, including accompanying the Member to medical appointments, as needed, and shall either provide transportation to medical services and appointments for the Member or assist the Member in arranging and utilizing non-emergency transportation services (NEMT), as covered under the TennCare program.

7. Reimbursement of CLS and CLS-FM Services

- (i) Reimbursement for CLS and CLS-FM services shall be made to a contracted CLS or CLS-FM provider by the Member's MCO in accordance with the Member's plan of care and service authorizations, and contingent upon the Member's eligibility for and enrollment in TennCare and CHOICES.
- (ii) Reimbursement for CLS and CLS-FM services shall be made only for dates of service that the member actually receives CLS and CLS-FM services. CLS and CLS-FM services shall not be reimbursed for any date on which the member does not receive any CLS or CLS-FM services because the member is in a hospital or other inpatient setting, or for therapeutic leave, e.g., overnight visits, vacations, etc. with family or friends when the Member is not accompanied by staff.
- (iii) Rates of reimbursement for CLS and CLS-FM services shall be established by TennCare.
- (iv) Rates of reimbursement for CLS and CLS-FM services may take into account the level of care the person qualifies to receive (Nursing Facility or At-Risk as determined by TennCare), and the person's support needs, including skilled nursing needs for ongoing health care tasks.
- (v) The rate of reimbursement for CLS or CLS-FM, as applicable, shall not vary based on the number of people receiving CLS, CLS-FM or HCBS Waiver services who live in the home.
- (vi) A licensed and contracted CLS or CLS-FM provider selected by a person to provide CLS or CLS-FM services shall determine whether the provider is able to safely provide the requested service and meet the person's needs, and may take into consideration the rate of reimbursement authorized.
- (vii) Neither a Member nor a CLS or CLS-FM provider may file a medical appeal or receive a fair hearing regarding the rate of reimbursement a provider will receive for CLS or CLS-FM services.
- (viii) The rate of reimbursement for CLS or CLS-FM services is inclusive of all applicable transportation services needed by the Member, except for transportation authorized and obtained under the TennCare NEMT benefit.

- (ix) Reimbursement for CLS or CLS-FM services shall not be made for room and board. Residential expenses (e.g., rent, utilities, phone, cable TV, food, etc.) shall be apportioned as appropriate between the Member and other residents in the home.
- (x) Family members of the individual receiving services are not prohibited from helping pay a resident's Room and Board expenses.
- (xi) Reimbursement for CLS or CLS-FM services shall not include the cost of maintenance of the dwelling.
- (xii) Reimbursement for CLS or CLS-FM services shall not include payment made to the Member's immediate family member as defined in Rule 1200-13-01-.02 or to the Member's conservator.
- (xiii) Personal Care Visits, Attendant Care, and Home Delivered Meals shall not be authorized or reimbursed for a Member receiving CLS or CLS-FM services.
- (xiv) In-home Respite shall not be authorized or reimbursed for a Member receiving CLS or CLS-FM services.
- (xv) CLS and CLS-FM services shall not be provided or reimbursed in nursing facilities, ACLFs, hospitals or ICFs/IID.

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 10/16/2015 (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: 08/11/2015

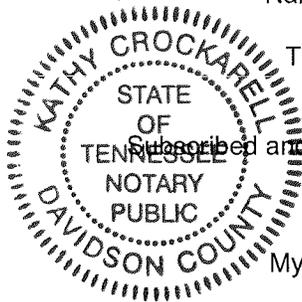
Rulemaking Hearing(s) Conducted on: (add more dates). 10/02/2015

Date: 10/16/2015

Signature: Wendy Long MD

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

Title of Officer: Deputy Director / Chief of Staff, Bureau of TennCare
Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 10/16/2015

Notary Public Signature: Kathy Crockarell

My commission expires on: January 8, 2019

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
10/21/2015
Date

Department of State Use Only

Filed with the Department of State on: 10/22/2015

Effective on: 1/21/2016

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.

Comments: Tennessee Disability Coalition and Response from the Bureau of TennCare

Thank you for your comments regarding the Notice of Rulemaking Hearing for Community Based Residential Services, including primarily Community Living Supports and Community Living Supports-Family Model. We have carefully reviewed and considered each of your comments and suggestions. Please find attached a summary of your comments, along with the response to each. Where appropriate, adjustments have been made in the rule as documented in the summary.

TennCare Response to Comments on Rule 1200-13-01-.05

Rule Citation	Rule Language	Commenter	Comment(s)	Response
1200-13-01-.05	Paragraph (8) new Subparagraph (p) 2. Requirements for CBRAs (i) Member Choice (ii) Member Rights	The Tennessee Disability Coalition	Member Rights and Choice – The proposed rules reflect a respect for individual rights and choice. Protecting these rights and implementing processes that allow the exercise of choice and rights can be challenging. Throughout, we believe that family members and/or other representatives chosen by the member should be included planning, choice, and decision-making. The principles of family-centered care and supported decision-making should be reflected in the rules. In addition, with respect to choice, we believe those choices must be real and reasonable, and free of undue pressure. We are concerned that individuals have access to choices of location and situations that keep them in their preferred community and near natural and community supports.	The Home and Community-Based Services (HCBS) Regulations (specifically 42 C.F.R. § 441.301(c)(1)) issued by CMS establishes person-centered planning requirements for home and community-based settings in Medicaid HCBS programs. In this final rule, CMS specifies that service planning for participants in Medicaid HCBS programs must be developed through a person-centered planning process. The federal regulations require that, "The individual will lead the person-centered planning process where possible. The individual's representative should have a participatory role, as needed and as defined by the individual, unless State law confers decision-making authority to the legal representative. All references to individuals include the role of the individual's representative. In addition to being led by the individual receiving services and supports, the person-centered planning process: (i) Includes people chosen

				<p>by the individual. (ii) Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions...”</p> <p>The TennCare rules were written to ensure compliance with the Home and Community-Based Services (HCBS) Settings Final Rule and do not preclude an individual from including others of their choosing to participate in the planning process.</p> <p>Based on your comments, we have added language in 1200-13-01-.05(8)(p)2.(iii)(XI) and 1200-13-01-.05(8)(p)2.(v) and (vi) to further clarify the member’s ability to include family members and others in the planning and decision making processes and to be supported by family members and others in exercising legal capacity.</p> <p>Additionally, in response to your comments, we have added language in 1200-13-01-.05(8)(p)2.(i)(III) to further emphasize your concerns regarding consideration of the member’s preferred community and proximity to family and other natural supports.</p>
1200-13-01-.05	Paragraph (8) new Subparagraph (p) 3. CLS Ombudsman	The Tennessee Disability Coalition	CLS Ombudsman – The Coalition strongly supports Members’ access to Ombudsman services. We believe the CLS Ombudsman Program should be integrated into the existing state Long-Term Care Ombudsman Program. As defined at 1200-13-01-.02 (79), the LTC ombudsman already	The existing Long-Term Care Ombudsman funded through the Older American’s Act (OAA) is designated to serve residents of licensed long-term care facilities. Currently, in the state of Tennessee, these include: nursing facilities, assisted care living facilities, and adult care homes. The state is prohibited from

			<p>has a role on behalf of person residing in CBRA settings. A separate Ombudsman Program would be unnecessarily confusing. Additionally, because the existing program is established under the Older American Act, integrating the CLS Ombudsman into the existing Long-Term Care Ombudsman program will assure its integrity and independence of the Program.</p>	<p>using OAA funds to serve individuals receiving long term services and supports in their own home. However, TennCare could contract with the LTS Ombudsman Program to provide these services.</p> <p>As you know, we have held meetings with stakeholders to discuss a broader approach to Ombudsman services for individuals receiving HCBS. Those discussions yielded support as well as opposition for leveraging the current Ombudsman program for HCBS.</p> <p>A final decision regarding a comprehensive Ombudsman strategy has not been reached. In the interim, the Bureau of TennCare has contracted with the Area Agencies on Aging and Disability (AAAD) – a well-known community resource and advocate for older adults and individuals with disabilities that is independent from TennCare – to serve as CLS Ombudsman for members receiving the CLS and CLS-FM benefits. In their capacity as CLS Ombudsman, the AAAD will be responsible for: (1) Educating CHOICES members on CLS and CLS-FM services and the role of the CLS Ombudsman; (2) Conducting a pre-transition meeting with CHOICES members, during which the CLS Ombudsman will ensure that members are aware of their rights regarding choice and control in the CLS and CLS-FM service and that members understand how and when to contact the CLS Ombudsman; (3)</p>
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				<p>Conducting CLS and CLS-FM transition surveys with CHOICES members prior to and after their transitions to CLS and CLS-FM residences; and (4) Providing ongoing assistance and advocacy for these members while receiving the service and systems level advocacy related to the CLS/CLS-FM service statewide.</p>
1200-13-01-.05	<p>Paragraph (8) new Subparagraph (p)</p> <p>7. Reimbursement of CLS and CLS-FM Services</p>	The Tennessee Disability Coalition	<p>Reimbursement of CLS and CLS-FM Services – An issue not addressed in the rules, but about which we are concerned, is related to subparagraph (p) 7. Families and individuals have expressed concern about freedom of movement for Members receiving CLS. There needs to be a mechanism for a member to be away from home, for example making overnight visits to family or friends, without putting a provider at financial risk. Without such a mechanism, there is sometimes pressure to prevent such activity.</p>	<p>We agree that members should have freedom to be away from home, including overnight visits. In response to your comments, language has been added at 1200-13-01-.05(8)(p)5.(xii) and 1200-13-01-.05(8)(p)6.(xii) to reflect this choice.</p> <p>TennCare cannot, however, provide reimbursement for CLS or CLS-FM services that are not provided. Medicaid funds can only be used to reimburse approved Medicaid services that have been provided. If an individual is spending time away from their CLS residence to be with family and the provider is not providing services, the provider is not entitled to reimbursement. To reimburse a provider for services not rendered would constitute fraud under the False Claims Act. This has also been clarified at 1200-13-01-.05(8)(p)7.(ii).</p>

Comments: Tennessee Justice Center and Response from the Bureau of TennCare

Thank you for your comments regarding the Notice of Rulemaking Hearing for Community Based Residential Services, including primarily Community Living Supports and Community Living Supports-Family Model. We have carefully reviewed and considered each of your comments and suggestions. Please find attached a summary of your comments, along with the response to each. Where appropriate, adjustments have been made in the rule as documented in the summary.

TennCare Response to Comments on Rule 1200-13-01-.05

Rule Citation	Rule Language	Commenter	Comment(s)	Response
1200-13-01-.05	<p>Paragraph (8) new Subparagraph (p)</p> <p>2. Requirements for CBRAs</p> <p>(iii) Member Choice (iv) Member Rights</p>	Tennessee Justice Center	<p>Member Choice – The proposed regulations empower only the member or his or her legal representative to exercise choice, without providing the member a right to consult family members or other advocates. We would recommend that the Bureau adopts a supported decision making model to provide members the supports they may require to exercise their legal capacity.</p>	<p>The Home and Community-Based Services (HCBS) Regulations (specifically 42 C.F.R. § 441.301(c)(1) issued by CMS establishes requirements for person-centered planning in Medicaid HCBS programs. In this final rule, CMS specifies that service planning for participants in Medicaid HCBS programs must be developed through a person-centered planning process. The federal regulations require that, “The individual will lead the person-centered planning process where possible. The individual's representative should have a participatory role, as needed and as defined by the individual, unless State law confers decision-making authority to the legal representative. All references to individuals include the role of the individual's representative. In addition to being led by the individual receiving services and supports, the person-centered planning process:</p> <p>(i) Includes people chosen by the individual. (ii) Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions...”</p> <p>The TennCare rules were written to ensure compliance with the Home and Community-Based Services (HCBS) Settings Final Rule and do not preclude an individual from including others of their choosing to participate in the planning process.</p>

				Based on your comments, we have added language in 1200-13-01-.05(8)(p)2.(iii)(XI) and 1200-13-01-.05(8)(p)2.(v) and (vi) to further clarify the member's ability to include family members and others in the planning and decision making processes and to be supported by family members and others in exercising legal capacity.
1200-13-01-.05	Paragraph (8) new Subparagraph (p) 2. Requirements for CBRAs (i) Member Choice (ii) Member Rights	Tennessee Justice Center	Family Involvement – The current regulations provide only the member or legal representative any meaningful involvement in the selection of the CBRA provider, housemates, and staff.	See above.
1200-13-01-.05	Paragraph (8) new Subparagraph (p) 2. Requirements for CBRAs (i) Member Choice	Tennessee Justice Center	Freedom of Movement – Members should be afforded a window of time after moving to the CBRA setting to change their minds and return to previous care setting. For residents transitioning from nursing facilities, this would include a bed hold for therapeutic leave while the member finalizes his or her decision to transition to CBRA.	In the CHOICES program, individuals who qualify for nursing facility level of care have the right to choose where they receive their care. So long as their needs can be safely met, they can choose to receive their care in their home, or in another place in the community (like and assisted living facility or a CLS home), or in a nursing facility. A CHOICES member that meets nursing facility level of care is free to choose their care setting (including returning to a nursing facility) at any time. No particular window of time can be applied. Based on your comments, additional language has been added at 1200-13-01-.05(8)(p)2.(ii) to further clarify this choice. However, it would not be appropriate to reimburse a NF for a bed hold once a member has transitioned

				<p>into a CBRA. Pursuant to TennCare Rule 1200-13-01-.03(9)(a)1., the first condition for reimbursement of a nursing facility bed hold is that the resident intends to return to the NF. Instances in which a member has chosen to transition to a CLS home do not meet this condition. As stated above, should the member choose to return to the NF, they are free to do so as long as they continue to meet NF level of care.</p>
1200-13-01-.05	<p>Paragraph(8) new Subparagraph (p)</p> <p>5. Requirements for Community Living Supports</p> <p>(v) lease agreement</p> <p>6. Requirements for Community Living Supports Family Model (CLS-FM) Services</p> <p>(v) lease agreement</p>	Tennessee Justice Center	<p>Lease requirements – To fully ensure that members may leave a care setting they do not find optimal for their needs, the regulations should permit members to leave with limited notice requirements under specific circumstances, such as a window after admission, after a staffing change, or after a substantial change to the member’s care plan.</p>	<p>The Home and Community-Based Services (HCBS) Regulations (specifically 42 C.F.R. § 441.301(c)(4)-(6)) issued by CMS also establishes requirements for home and community-based settings in Medicaid HCBS programs. Included in this rule are requirements that provider-owned or provider-controlled residential settings include provisions that: 1) the specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement and 2) affords the individual the same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity OR if tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</p> <p>The lease provisions included in the TennCare rule are required by CMS and ensure the member’s legal protections are the same as other Tennesseans not receiving</p>

				<p>Medicaid reimbursed long-term services and supports. This includes a member's ability to terminate a lease.</p> <p>Further, as noted above, a CHOICES member that meets nursing facility level of care is free to choose their care setting at any time. This could include any of the specific circumstances identified. In addition, we do not want a member to have to move as a result of a staffing change. Per the HCBS Setting and PCP final rule, members will have a say in who provides their services. Therefore, part of the purpose of requiring a lease arrangement is to help ensure continuity of the member's residence even when staff may need to change.</p>
1200-13-01-.05	<p>Paragraph(8) new Subparagraph (p)</p> <p>3. CLS Ombudsman</p>	Tennessee Justice Center	<p>CLS Ombudsman – Request clarification on how the CLS Ombudsman's services are advertised and made available to members. We recommend that each provider is required to prominently post the contact information for the CLS Ombudsman, provide meaningful access to telephones, and provide private space to meet with the CLS Ombudsman at the provider site.</p>	<p>The Bureau of TennCare has contracted with the Area Agencies on Aging and Disability (AAAD) to serve as CLS Ombudsman for members receiving the CLS and CLS-FM benefits. In their capacity as CLS Ombudsman, the AAAD will be responsible for: (1) Educating CHOICES members on CLS and CLS-FM services and the role of the CLS Ombudsman; (2) Conducting a pre-transition meeting with CHOICES members, during which the CLS Ombudsman will ensure that members are aware of their rights regarding choice and control in the CLS and CLS-FM service and that members understand how and when to contact the CLS Ombudsman; (3) Conducting CLS and CLS-FM transition surveys with CHOICES members prior to and after their transitions to CLS and CLS-FM residences; and (4)</p>

			<p>Providing ongoing assistance and advocacy for these members while receiving the service and systems level advocacy related to the CLS/CLS-FM service statewide.</p> <p>While we appreciate the importance of ensuring that individuals are aware of how to contact the CLS Ombudsman, requiring the information to be posted in individuals' homes infringes on individuals' rights to decorate their homes as they see fit and feels institutional in nature. Therefore, posting such information has been left to the discretion of the individual.</p> <p>1200-13-01-.05(8)(p)3.(ii)(II) sets forth the responsibility of the Ombudsman to ensure that the Member knows how to contact the Ombudsman.</p> <p>In response to your comments, additional language has been added in 1200-13-01-.05(8)(p)3.(iii) and (iv) regarding the responsibility of the CLS or CLS-FM provider to ensure that CHOICES members receiving these services know how to contact the Ombudsman and that contact information is available in the residence in the location of the Member's preference, and which reinforces the right to privacy afforded to members under the HCBS Regulations (referenced above and elaborated in the Settings Compliance Requirement Toolkit developed by CMS), to include access to telephones and computers and to communicate in private, including while</p>
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				meeting with the Ombudsman.
1200-13-01-.05	<p>Paragraph(8) new Subparagraph (p)</p> <p>5. Requirements for Community Living Supports</p> <p>(i) Providers of CLS services in the CHOICES program shall:</p> <p>(V) Comply with background check requirements</p> <p>6. Requirements for Community Living Supports Family Model (CLS-FM) Services</p> <p>(i) Providers of CLS-FM services in the CHOICES program shall:</p> <p>(V) Comply with background check requirements</p>	Tennessee Justice Center	<p>Background Checks – The regulations do not specifically outline the background check requirements for CLS and CLS-FM providers, including who would be subject to background checks and when such checks must be completed.</p>	<p>Sections #5 and #6 of paragraph (8) subparagraph (p) of the proposed rule (referenced in the second column) include requirements that CLS and CLS-FM providers comply with background check requirements specified in T.C.A. Title 33.</p> <p>Title 33, Chapter 2, Part 12 (33-2-1202), each facility or service licensed under chapter 2, part 4 of this title shall have a criminal background check performed on each employee whose responsibilities include direct contact with or direct responsibility for service recipients within ten (10) days of employment or within ten (10) days of a change in responsibilities that includes direct contact with or direct responsibility for service recipients.</p>

1200-13-01-.05		Tennessee Justice Center	Staffing Change – We recommend the Bureau provide members notice and opportunity to change care settings or providers if there is a staffing change at a CLS or CLS-FM provider.	<p>TennCare agrees that member choice in staff and consistency in provider staffing have significant impact on the quality from the member's perspective. Unfortunately, staffing changes do not always allow time for advance notice. Additionally, there are circumstances where allowing the worker to continue working is prohibited such as allegations of abuse, neglect, and exploitation.</p> <p>In response to your comments, language has been added at 1200-13-01-.05(8)(p)5.(iii)(I) and (II) to provide for notification when possible, as well as opportunity to assist in selecting new staff.</p>
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Comments: Tennessee Health Care Association (THCA) and Response from the Bureau of TennCare

Thank you for your comments regarding the Notice of Rulemaking Hearing for Community Based Residential Services, including primarily Community Living Supports and Community Living Supports-Family Model. We have carefully reviewed and considered each of your comments and suggestions. Please find attached a summary of your comments, along with the response to each. Where appropriate, adjustments have been made in the rule as documented in the summary.

TennCare Response to Comments on Rule 1200-13-01-.02 and .05

Rule Citation	Commenter	Comment(s)	Response
1200-13-01-.02 and .05	Tennessee Health Care Association / Tennessee Center for Assisted Living	<p>General comments regarding the legislative and legal authority for CLS Rules.</p> <p>A. Authority for Rulemaking and Oversight of CLS</p>	T.C.A. § 33-2-418(c), passed by the General Assembly in 2012, provides authority for a residential facility or provider licensed by the department of intellectual and developmental disabilities to also provide residential services to the elderly or adults with physical disabilities.

		Homes B. Use of Emergency Rule Process	<p>The practice of nursing, including nurses who might perform skilled nursing services for individuals receiving CLS or CLS-FM services is regulated by the board of nursing as set forth in T.C.A. Title 63, Chapter 7.</p> <p>This is not an Emergency Rule. As described in the Emergency Rule Filing Form, T.C.A. § 4-5-208(4) permits an agency to adopt an emergency rule when it is required by an agency of the federal government and the adoption of the rule through ordinary rulemaking procedure might jeopardize the loss of federal funds.</p>
1200-13-01-.02 and .05	Tennessee Health Care Association / Tennessee Center for Assisted Living	The scope of services allowed in the identified DIDD licensure regulations are not sufficient to provide for the needs of the CLS target population and, specifically CLS 3 recipients.	<p>Providers licensed under the applicable licensure requirements currently serve residents enrolled in Section 1915(c) waivers with needs that are commensurate with the CLS target population, including individuals who may qualify for CLS-3 reimbursement.</p> <p>Individuals who require health care services in addition to assistance with personal care are entitled pursuant to the Americans with Disabilities Act to receive services in the most integrated setting appropriate, and cannot be restricted, on the basis of their disability, only to services in an institution, i.e., nursing facility.</p>
1200-13-01-.02 and .05	Tennessee Health Care Association / Tennessee Center for Assisted Living	Proposed life safety regulations may not adequately protect CLS recipients.	<p>See comment above. Providers licensed under the applicable licensure requirements currently serve residents enrolled in Section 1915(c) waivers with mobility needs and cognitive limitations at least as significant as the CLS target population, including individuals who may qualify for CLS-3 reimbursement.</p> <p>As with health care services, individuals who need assistance with mobility or cognitive limitations cannot be restricted, on the basis of their disability, only to services in an institution, i.e., nursing facility.</p>
1200-13-01-.05 Paragraph (8) new Subparagraph (p) 3. CLS Ombudsman	Tennessee Health Care Association / Tennessee Center for Assisted Living	CLS Ombudsman – THCA believes that the independence of the proposed ombudsman is essential to ensuring that patient choices of services is preserved and any conflicts of interest between beneficiaries, MCOs, case coordinators, and	Based on your comments, recommended language has been added in 1200-13-01-.05(8)(p)3.(i).

		TennCare are appropriately resolved. THCA recommends that the rule include language specifically recognizing that independence of that ombudsman such as, "The CLS Ombudsman shall be employed and/or contracted with an agency that is separate and distinct from the TennCare Bureau."	
1200-13-01-.05 Paragraph (8) new Subparagraph (p) 1. Intent	Tennessee Health Care Association / Tennessee Center for Assisted Living	Delineation of CLS requirements – THCA recommends either the rule specifically outline the requirements referenced in Paragraph (8), new Subparagraph (p), (1) or that a readily available listing and citation to the incorporated requirements be provided.	The Contractor Risk Agreement (CRA) between TennCare and the Managed Care Organizations is posted on TennCare's website. TennCare Provider Agreement requirements are also delineated in the CRA. All state laws and regulations are publicly available.
1200-13-01-.02 and .05	Tennessee Health Care Association / Tennessee Center for Assisted Living	Protections for beneficiaries choosing to reverse election of CLS – THCA recommends that TennCare adopt a provision that allows members to subsequently reverse their election of CLS without penalty.	In the CHOICES program, individuals have the right to choose where they receive their care. They can choose to receive their care in their home or in another place in the community like an assisted living facility or a CLS home. And, for individuals that meet nursing facility level of care, they can choose to receive their care in a nursing facility. A CHOICES member can request a change in their plan of care (and care setting) at any time. Members are never penalized for changing care settings. The TennCare waiver already permits TennCare to grant an exception for a person in the community seeking NF admission who continues to meet the NF LOC in place at the time of enrollment into CHOICES 1 when such person has transitioned to the community and requires readmission to the NF. In response to your comment, this will also be added to TennCare Rule 1200-13-01-.05(3)(b)4. Further, based on your comments, additional language has been added at 1200-13-01-.05(8)(p)2.(ii) to clarify this choice.
1200-13-01-.02 and .05	Tennessee Health Care Association / Tennessee Center for Assisted Living	Nursing Facility "safe discharge" issues – In instances where THCA member providers do not feel that the CLS setting provides a safe discharge	As THCA is aware, TennCare is not the State Survey Agency as specified in the State Medicaid Plan. TennCare cannot therefore provide interpretation of federal regulations which are carried out by the State Survey Agency in

		<p>as required by federal regulations, THCA requests TennCare respond to those concerns by explaining whether for other regulatory purposes the facility can rely on the determination of TennCare and the MCO that the movement of the individual constitutes a "safe discharge." THCA recommends the inclusion of language in the rule at (p) (2) (III) stating,, "Any provider of services to a CHOICES beneficiary may accept the determination under this rule that the setting is appropriate for the individual to be sufficient to ensure the individual's placement is a safe and appropriate discharge."</p>	<p>accordance with the State Operations Manual and other federal guidance documents pertaining to federal survey requirements and processes.</p> <p>Nonetheless, the proposed rule makes clear that <i>"A Member shall transition into a specific CBRA setting and receive CBRA services only when...[t]he setting has been determined to be appropriate for the Member based on the Member's needs, interests, and preferences. A CLS or CLS-FM provider shall not admit a Member and CLS or CLS-FM services shall not be authorized for a CHOICES Member unless the CLS or CLS-FM provider is able to safely meet the Member's needs and ensure the Member's health, safety and well-being."</i></p> <p>In addition, transition to CLS or CLS-FM does not relieve the NF of its responsibilities under the law to provide for other aspects of an appropriate discharge plan that are critical to the member's health and safety. For example, the NF might fail to ensure that the resident's clinical record is appropriately documented by the resident's physician. This could result in the CLS provider not being fully informed of the person's needs in order to properly evaluate the provider's ability to deliver appropriate supports. Further, notwithstanding the appropriateness of the CLS or CLS-FM provider and setting, the NF might also fail to provide proper orientation for transfer or discharge, for example, by failing to ensure that written discharge instructions are provided.</p>
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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.

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;

These Rules replace emergency rules that were promulgated to make assisted care living facilities services (ACLFs) available to persons in CHOICES 3. The rules added Community Living Supports (CLS) and Community Living Supports – Family Model (CLS-FM) to the array of services available as community-based residential alternatives (CBRAs).

- (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 §§ 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 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;

(F)

The promulgation of these Rules is not anticipated to have an effect on state and local government revenues and expenditures.

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

John G. (Gabe) Roberts
General Counsel

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

John G. (Gabe) Roberts
General Counsel

- (I) 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) 507-6936
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(J) Any additional information relevant to the rule proposed for continuation that the committee requests.

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