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For Department of State Use Only

Sequence Number: 04-20-12
Rule ID(s): 5796
File Date: 04/25/2012
Effective Date: 09/28/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
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Revision Type (check all that apply):
X 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**
1200-13-13	TennCare Medicaid
Rule Number	**Rule Title**
1200-13-13-.04	Covered Services

(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)

Subparagraph (d) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is amended by deleting the reference to paragraph (25) in the first sentence and replacing it with a reference to paragraph (29) so as amended Subparagraph (d) shall read as follows:

(d) The MCC shall be allowed to provide cost effective alternative services as defined in paragraph 1200-13-13-.01(29). Cost effective alternative services are not reimbursable in any circumstances other than those described in that paragraph.

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

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 03/16/2012 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 3/16/2012

Signature:

Name of Officer: Darin J. Gordon

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

CHERYL D. KLINE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 3/16/12

Notary Public Signature: Cheryl D Kline

My commission expires on: 9/3/2012

All proposed 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

4-22-12
Date

Department of State Use Only

Filed with the Department of State on: 04/25/2012

Effective on: 07/28/2012

Tre Hargett
Secretary of State

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PUBLICATIONS

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 rule has no 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)

(Insert statement here)

The rule is not projected 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 rule is being promulgated to update a rule reference contained in the rule.

(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 rule is lawfully adopted by the Bureau of TennCare in accordance with Tennessee Code Annotated §§ 4-5-202 and 71-5-105.

(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, organizations, corporations or governmental entity most directly affected by this rule are the TennCare Managed Care Organizations and 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 rule was reviewed and 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 this rule is not anticipated to have an effect on state and local government revenues and expenditures.

(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.

GW10112073

Consent Rule

(Rule 1200-13-13-.01, continued)

(b) Individuals who are losing their Medicaid, who are uninsured, who are under nineteen (19) years of age, and who meet the qualification for TennCare Standard as "Medicaid Rollovers," in accordance with the provisions of Rule 1200-13-14-.02.

(25) CONTRACT PROVIDER shall have the same meaning as Participating Provider.

(26) CONTRACTOR shall mean an organization approved by the Tennessee Department of Finance and Administration to provide TennCare-covered benefits to eligible enrollees in the TennCare Medicaid and TennCare Standard programs.

(27) CONTRACTOR RISK AGREEMENT (CRA) shall mean the document delineating the terms of the agreement entered into by the Bureau of TennCare and the Managed Care Contractors.

(28) CORE MEDICAID POPULATION shall mean individuals eligible under Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, et seq., with the exception of the following groups: individuals receiving SSI benefits as determined by the Social Security Administration; individuals eligible under a Refugee status; individuals eligible for emergency services as an illegal or undocumented alien; individuals receiving interim Medicaid benefits with a pending Medicaid disability determination; individuals with forty-five (45) days of presumptive or immediate eligibility; and children in DCS custody.

(29) COST-EFFECTIVE ALTERNATIVE SERVICE shall mean a service that is not a covered service but that is approved by TennCare and CMS and provided at an MCC's discretion. TennCare enrollees are not entitled to receive these services. Cost-effective alternative services may be provided because they are either (1) alternatives to covered Medicaid services that, in the MCC's judgment, are cost-effective or (2) preventative in nature and offered to avoid the development of conditions that, in the MCC's judgment, would require more costly treatment in the future. Cost-effective alternative services need not be determined medically necessary except to the extent that they are provided as an alternative to covered Medicaid services. Even if medically necessary, cost effective alternative services are not covered services and are provided only at an MCC's discretion.

(30) COST SHARING shall mean the amounts that certain enrollees in TennCare are required to pay for their TennCare coverage and covered services. Cost sharing includes copayments.

(31) COVERED SERVICES shall mean the services and benefits that:

(a) TennCare contracted MCCs cover, as set out elsewhere in this Chapter and in Rule 1200-13-01-.05; or

(b) In the instance of enrollees who are eligible for and enrolled in federal Medicaid waivers under Section 1915(c) of the Social Security Act, the services and benefits that are covered under the terms and conditions of such waivers.

(32) CPT4 CODES are descriptive terms contained in the Physician's Current Procedural Terminology, used to identify medical services and procedures performed by physicians or other licensed health professionals.

(33) DBM (DENTAL BENEFITS MANAGER) shall mean a contractor approved by the Tennessee Department of Finance and Administration to provide dental benefits to enrollees in the TennCare Program to the extent such services are covered by TennCare.

(34) DELAY shall mean, but is not limited to:

Current Rules

(Rule 1200-13-13-.03, continued)

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

(b) Coverage shall cease at 12:00 midnight, local time, on the date that an individual is disenrolled from TennCare.

(c) TennCare may reassign individuals from a designated MCO and place them in another MCO as described elsewhere in these rules. A TennCare MCO may not reassign an enrollee without the permission of TennCare. A TennCare MCO shall not request the reassignment of a TennCare enrollee for any of the following reasons:

1. Adverse changes in the enrollee's health;

2. Pre-existing medical conditions; or

3. High cost medical bills.

Coverage by a particular MCO shall cease at 12:00 midnight local time on the date that an individual has been reassigned by TennCare from one MCO and placed in another plan. Coverage by the new MCO will begin when coverage by the old MCO ends.

Authority: *T.C.A. §§4-5-202, 4-5-203, 4-5-208, 4-5-209, 71-5-105, 71-5-109, Executive Order No. 23.* ***Administrative History:*** *Public necessity rule filed July 1, 2002; effective through December 13, 2002. Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.03; new effective date February 12, 2003. Emergency rule filed December 13, 2002; effective through May 27, 2003. Public necessity rule filed April 29, 2005; effective through October 11, 2005. Amendments filed July 28, 2005; effective October 11, 2005. Public necessity rule filed December 29, 2005; effective through June 12, 2006. Public necessity rule filed December 29, 2005, expired June 12, 2006. On June 13, 2006, affected rules reverted to status on December 28, 2005. Amendment filed March 31, 2006; effective June 14, 2006. Amendment filed August 14, 2006; effective October 28, 2006. Public necessity rule filed February 8, 2008; effective through July 22, 2008. Repeal and new rule filed May 7, 2008; effective July 21, 2008. Amendments filed September 25, 2009; effective December 24, 2009. Amendment filed November 30, 2009; effective February 28, 2010. Emergency rule filed March 1, 2010; effective through August 28, 2010. Amendments filed May 27, 2010; effective August 25, 2010. Amendments filed October 26, 2010; effective January 24, 2011.*

1200-13-13-.04 COVERED SERVICES.

(1) Benefits covered under the managed care program

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

1 Any and all medically necessary services may require prior authorization or approval by the MCC, except where prohibited by law.

2. An MCC shall not refuse to pay for a service solely because of a lack of prior authorization as follows:

(Rule 1200-13-13-.04, continued)

1. Agents for weight loss or weight gain.

2. Agents to promote fertility or for the treatment of impotence or infertility or for the reversal of sterilization.

3. Agents for cosmetic purposes or hair growth.

4. Agents for symptomatic relief of coughs and colds.

5. Agents which are benzodiazepines or barbiturates.

6. Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

7. Nonprescription drugs.

8. Covered outpatient drugs, which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or his designee.

9. TennCare shall not cover drugs considered by the FDA to be Less Than Effective (LTE) and DESI drugs, or drugs considered to be Identical, Related and Similar (IRS) to DESI and LTE drugs or any other pharmacy services for which federal financial participation (FFP) is not available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age. TennCare shall not cover experimental or investigational drugs which have not received final approval from the FDA.

10. Buprenorphine and buprenorphine/naloxone products and sedative hypnotics for persons aged 21 and older are restricted to the quantity limits specified below:

    (i) Generic buprenorphine, Subutex (buprenorphine), and Suboxone (buprenorphine/naloxone) products shall not exceed sixteen milligrams (16 mg) per day for a period of up to six (6) months from the initiation of therapy. For enrollees who are pregnant while receiving this dosage, the six-month period does not begin until the enrollee is no longer pregnant. At the end of either six month period, the covered dosage amount shall not exceed eight milligrams (8 mg) per day.

    (ii) Sedative hypnotic medications shall not exceed fourteen (14) pills per month for sedative hypnotic formulations in pill form such as Ambien and Lunesta, one hundred forty milliliters (140 ml) per month of chloral hydrate, or one (1) bottle every sixty (60) days of Zolpimist.

(d) The MCC shall be allowed to provide cost effective alternative services as defined in paragraph 1200-13-13-.01(25). Cost effective alternative services are not reimbursable in any circumstances other than those described in that paragraph.

(2) Use of Cost Effective Alternative Services.

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

1. These services are listed in the MCC contract and/or in Policy BEN 08-001; or