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## Emergency Rule Filing Form

*Emergency rules are effective from date of filing for a period of up to 180 days.*

<b>Agency/Board/Commission:</b>	Tennessee Department of Finance and Administration
<b>Division:</b>	Bureau of TennCare
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**Rule Type:**

☒ Emergency Rule

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

☒ Amendments

☐ New

☐ Repeal

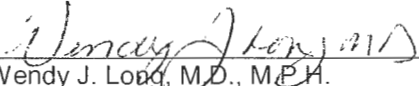
**Statement of Necessity:**

On June 24, 2015, TennCare received approval from the Centers for Medicare and Medicaid Services (CMS), for amendments 18 and 24 to the TennCare II Medicaid Section 1115 Demonstration Waiver (No. 11-W-00151/4). Amendment number 18 extends Assisted Care Living Facility (ACLF) services to individuals in CHOICES Group 3, which is comprised of individuals who are at risk for institutionalization and are either adults (age 21 and older) with a physical disability or seniors (age 65 and older). Amendment number 24 revised the definition of community-based residential alternatives (CBRA) to institutional care by including two new service definitions; Community Living Supports (CLS) and Community Living Supports – Family Model (CLS-FM). The amendments are effective June 23, 2015.

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.

Based upon the above information, I have made the finding that the emergency adoption of this rule is required in order to achieve implementation by July 1, 2015.

For a copy of this emergency rule contact: George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

  
Wendy J. Long, M.D., M.P.H.  
Deputy Director/ Chief of Staff, Bureau of TennCare  
Tennessee Department of Finance and Administration

**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 ACLFs and Critical Adult Care Homes, and residential services provided in a licensed home or in the person's home by an appropriately licensed provider such as Community Living Supports and 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). A CBRA licensed by the DIDD in accordance with Title 33 of the T.C.A. and TDMHSAS Rule 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 supports each resident's independence and full integration into the community, ensures each resident's choice and rights, and 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. This service is available to CHOICES Group 2 and 3 Members as appropriate.

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:

- (a) Selecting and moving into a home.
- (b) Locating and choosing suitable housemates.
- (c) Acquiring and maintaining household furnishings.

- (d) 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.
  - (e) 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.
  - (f) Building and maintaining interpersonal relationships with family and friends.
  - (g) Pursuing educational goals and employment opportunities.
  - (h) Participating fully in community life, including faith-based, social, and leisure activities selected by the individual.
  - (i) Scheduling and attending appropriate medical services.
  - (j) Self-administering medications, including assistance with administration of medications as permitted pursuant to T.C.A. §§ 68-1-904 and 71-5-1414.
  - (k) 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.
  - (l) Becoming aware of, and effectively using, transportation, police, fire, and emergency help available in the community to the general public.
  - (m) Asserting civil and statutory rights through self-advocacy.
- (#) Community Living Supports Family Model (CLS-FM) (For the purposes of CHOICES). A CBRA licensed by the DIDD in accordance with Title 33 of the T.C.A. 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 supports each resident's independence and full integration into the community, ensures each resident's choice and rights, and 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. This service is available to CHOICES Group 2 and 3 Members as appropriate.
- 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:
- (a) Selecting and moving into a home.
  - (b) Locating and choosing suitable housemates.
  - (c) Acquiring and maintaining household furnishings.

- (d) 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.
- (e) 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.
- (f) Building and maintaining interpersonal relationships with family and friends.
- (g) Pursuing educational goals and employment opportunities.
- (h) Participating fully in community life, including faith-based, social, and leisure activities selected by the individual.
- (i) Scheduling and attending appropriate medical services.
- (j) Self-administering medications, including assistance with administration of medications as permitted pursuant to T.C.A. §§ 68-1-904 and 71-5-1414.
- (k) 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.
- (l) Becoming aware of, and effectively using, transportation, police, fire, and emergency help available in the community to the general public.
- (m) Asserting civil and statutory rights through self-advocacy.

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. §§ 4-5-208, 71-5-105 and 71-5-109.

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 of 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 and are 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.

(I) 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. 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) Member Rights.

(I) 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;
  - 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.
- (iii) 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.
  - (iv) The Member shall have the right to manage personal finances as specified in the plan of care.
  - (v) 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.

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 who 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;
- (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.

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 Title 33 of the T.C.A. and TDMHSAS Rule 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 Title 33 of the T.C.A.;
  - (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.
- (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 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 egress, 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 Title 33 of the T.C.A. 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) 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.
- (x) 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.

- (xi) 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.
  - (xii) 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, as needed 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 Title 33 of the T.C.A. 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 Title 33 of the T.C.A.;
    - (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 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 Title 33 of the T.C.A. 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) 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.
- (x) 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.
- (xi) 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.
- (xii) 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, as needed 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) Rates of reimbursement for CLS and CLS-FM services shall be established by TennCare.
- (iii) 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.

- (iv) 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.
- (v) 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, any may take into consideration the rate of reimbursement authorized.
- (vi) 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.
- (vii) 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.
- (viii) 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.
- (ix) Family members of the individual receiving services are not prohibited from helping pay a resident's Room and Board expenses.
- (x) Reimbursement for CLS or CLS-FM services shall not include the cost of maintenance of the dwelling.
- (xi) 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.
- (xii) Personal Care Visits, Attendant Care, and Home Delivered Meals shall not be authorized or reimbursed for a Member receiving CLS or CLS-FM services.
- (xiii) In-home Respite shall not be authorized or reimbursed for a member receiving CLS services. In-home Respite shall only be reimbursed for a member receiving CLS-FM if CLS-FM services are not reimbursed for that day.
- (xiv) CLS and CLS-FM service shall not be provided or reimbursed in nursing facilities, ACLFs, hospitals or ICFs/IID.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.



Date: 7/24/15

Signature: Wendy J. Long

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: 7/24/15

Notary Public Signature: Cheryl D. Kline

My commission expires on: AUG 23 2016

All emergency 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

7-24-15

Date

#### Department of State Use Only

Filed with the Department of State on: 7/27/15

Effective for: 180 \*days

Effective through: 1/23/16

\* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett

Tre Hargett  
Secretary of State

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PUBLICATIONS

### **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)

These 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 are being promulgated to make assisted care living facilities services (ACLFs) available to persons in CHOICES 3. These rules adds 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 T.C.A. §§ 4-5-208, 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;

The promulgation of these rules 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;

John G. (Gabe) Roberts  
General Counsel

- (G) 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

- (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

310 Great Circle Road  
Nashville, TN 37243  
(615) 507-6936  
gabe.roberts@tn.gov

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

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GW10215180dkt



RULES  
OF  
TENNESSEE DEPARTMENT OF FINANCE  
AND ADMINISTRATION  
BUREAU OF TENNCARE

CHAPTER 1200-13-01  
TENNCARE LONG-TERM CARE PROGRAMS

1200-13-01-.02 DEFINITIONS.

(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, ~~and meet NF LOG.~~
- (b) CBRA's include, but are not limited to:
  - 1. ~~CBRA facilities such as ACLFs and Adult Care Homes Services provided in a licensed facility such as ACLFs and Critical Adult Care Homes, and residential services provided in a licensed home or in the person's home by an appropriately licensed provider such as Community Living Supports and Community Living Supports-Family Model; and~~
  - 2. Companion Care.

(29) Community Living Supports (CLS) (For the purposes of CHOICES). A CBRA licensed by the DIDD in accordance with Title 33 of the T.C.A. and TDMHSAS Rule 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 supports each resident's independence and full integration into the community, ensures each resident's choice and rights, and 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. This service is available to CHOICES Group 2 and 3 Members as appropriate.

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:

- (a) Selecting and moving into a home.
- (b) Locating and choosing suitable housemates.
- (c) Acquiring and maintaining household furnishings.
- (d) 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.

- (e) 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.
- (f) Building and maintaining interpersonal relationships with family and friends.
- (g) Pursuing educational goals and employment opportunities.
- (h) Participating fully in community life, including faith-based, social, and leisure activities selected by the individual.
- (i) Scheduling and attending appropriate medical services.
- (j) Self-administering medications, including assistance with administration of medications as permitted pursuant to T.C.A. §§ 68-1-904 and 71-5-1414.
- (k) 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.
- (l) Becoming aware of, and effectively using, transportation, police, fire, and emergency help available in the community to the general public.
- (m) Asserting civil and statutory rights through self-advocacy.

(30) Community Living Supports Family Model (CLS-FM) (For the purposes of CHOICES). A CBRA licensed by the DIDD in accordance with Title 33 of the T.C.A. 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 supports each resident's independence and full integration into the community, ensures each resident's choice and rights, and 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. This service is available to CHOICES Group 2 and 3 Members as appropriate.

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:

- (a) Selecting and moving into a home.
- (b) Locating and choosing suitable housemates.
- (c) Acquiring and maintaining household furnishings.

- (d) 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.
- (e) 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.
- (f) Building and maintaining interpersonal relationships with family and friends.
- (g) Pursuing educational goals and employment opportunities.
- (h) Participating fully in community life, including faith-based, social, and leisure activities selected by the individual.
- (i) Scheduling and attending appropriate medical services.
- (j) Self-administering medications, including assistance with administration of medications as permitted pursuant to T.C.A. §§ 68-1-904 and 71-5-1414.
- (k) 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.
- (l) Becoming aware of, and effectively using, transportation, police, fire, and emergency help available in the community to the general public.
- (m) Asserting civil and statutory rights through self-advocacy.

~~(2931)~~ Companion Care. For purposes of CHOICES:

- (a) A consumer-directed residential model in which a CHOICES Member may choose to select, employ, supervise and pay, using the services of an FEA, a live-in companion who will be present in the Member's home and provide frequent intermittent assistance or continuous supervision and monitoring throughout the entire period of service duration.
- (b) Such model shall be available only for a CHOICES Member who requires and does not have available through family or other caregiving supports frequent intermittent assistance with ADLs or supervision and monitoring for extended periods of time that cannot be accomplished more cost-effectively with other non-residential services.
- (c) A CHOICES Member who requires assistance in order to direct his Companion Care may designate a Representative to assume CD of Companion Care services on his behalf, pursuant to requirements for Representatives otherwise applicable to CD.
- (d) Regardless of payer, Companion Care shall not be provided to Members living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving Short-Term NF services or Adult Day Care services.
- (e) Companion Care is only available through CD.

~~(3032)~~ Competent Adult. For purposes of Self-Direction of Health Care Tasks in CD, a person age twenty-one (21) or older who has the capability and capacity to evaluate

knowledgeably the options available and the risks attendant upon each and to make an informed decision acting in accordance with his own preferences and values. A person is presumed competent unless a decision to the contrary is made.

ETC.

(6264)Immediate Family Member. For purposes of employment as a Consumer-Directed Worker in CHOICES and in 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.

(6365)Individual Acuity Score. The weighted value assigned by TennCare to:

- (a) The response to a specific ADL or related question in the PAE for NF LOC that is supported by the medical evidence submitted with the PAE; or
- (b) A specific skilled or rehabilitative service determined by TennCare to be needed by the applicant on a daily basis or at least five (5) days per week for rehabilitative services based on the medical evidence submitted with the PAE and for which TennCare would authorize level 2 or Enhanced Respiratory Care Reimbursement in a NF.

(6466)Individual Cost Neutrality Cap. See "Cost Neutrality Cap."

ETC.

#### **1200-13-01-.05 TENNCARE CHOICES PROGRAM.**

(8) Benefits in the TennCare CHOICES Program.

- (l) CHOICES HCBS covered under TennCare CHOICES and applicable limits are specified below. The benefit limits are applied across all services received by the Member regardless of whether the services are received through CD and/or a traditional provider agency. Corresponding limitations regarding the scope of each service are defined in Rule 1200-13-01-.02 and in Subparagraphs (a) through (k) above.



Service	Benefits for CHOICES 2 Members	Benefits for Consumer Direction  ("Eligible HCBS")
1. Adult Day Care	Covered with a limit of 2080 hours per calendar year, per CHOICES Member.	No
2. Assistive Technology	Covered with a limit of \$900 per calendar year, per Member.	No
3. Attendant Care	<p>Covered only for persons who require hands-on assistance with ADLs when needed for more than 4 hours per occasion or visits at intervals of less than 4 hours between visits.</p> <p>For Members who do not require Homemaker Services as defined in Rule 1200-13-01-.02 in addition to hands on assistance with ADLs, covered with a limit of 1080 hours per calendar year, per Member.</p> <p>For Members who require Homemaker Services as defined in Rule 1200-13-01-.02 in addition to hands on assistance with ADLs, covered with a limit of 1240 hours for calendar year 2012, per Member.</p> <p>For Members who require Homemaker Services as defined in Rule 1200-13-01-.02 in addition to hands on assistance with ADLs, beginning January 1, 2013, covered with a limit of 1400 hours per calendar year, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, 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 (including Companion Care), or Short-Term NF Care.</p>	Yes
4. CBRA	<p><del>Companion Care.</del></p> <p><u>Companion Care.</u> Not covered (regardless of payer), when the Member is living in an ACLF, <u>Critical</u> Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving any of the following HCBS: Adult Day Care, CBRA <u>facility</u> services, or Short-Term NF Care.</p>	Yes
	CBRA <u>facility</u> services (e.g., ACLFs, <u>Critical</u> Adult Care Homes, CLS, and CLS-FM).	No



Service	Benefits for CHOICES 2 Members	Benefits for Consumer Direction  ("Eligible HCBS")
5. Home-Delivered Meals	<p>Covered with a limit of 1 meal per day, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	No
6. Homemaker Services	<p>*Covered only for Members who also need hands-on assistance with ADLs and as a component of Attendant Care or Personal Care Visits as defined in these rules.</p> <p>Not covered as a stand-alone benefit.</p> <p>Not covered for persons who do not require hands-on assistance with ADLs.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	*
7. In-Home Respite Care	<p>Covered with a limit of 216 hours per calendar year, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	Yes
8. Inpatient Respite Care	<p>Covered with a limit of 9 days per calendar year, per Member.</p> <p>PASRR approval not required.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	No

Service	Benefits for CHOICES 2 Members	Benefits for Consumer Direction  ("Eligible HCBS")
9. Minor Home Modifications	<p>Covered with a limit of \$6,000 per project, \$10,000 per calendar year, and \$20,000 per lifetime.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting. Not covered when the Member is receiving Short-Term NF Care, except when provided to facilitate transition from a NF to the community. See Rule 1200-13-01-.05(8)(h).</p>	No
10. Personal Care Visits	<p>Covered with a limit of 2 intermittent visits per day, per Member; visits limited to a maximum of 4 hours per visit and there shall be at least four (4) hours between intermittent visits.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, 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 (including Companion Care), or Short-Term NF Care.</p>	Yes
11. PERS	<p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	No
12. Pest Control	<p>Covered with a limit of 9 treatment visits per calendar year, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving Short-Term NF Care.</p>	No
13. Short-Term NF Care	<p>Covered with a limit of 90 days per stay, per Member.</p> <p>Approved PASRR required.</p> <p>Members receiving Short-Term NF Care are not eligible to receive any other HCBS except when permitted to facilitate transition to the community. See Rule 1200-13-01-.05(8)(h).</p>	No

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction (“Eligible HCBS”)
1. Adult Day Care	Covered with a limit of 2080 hours per calendar year, per CHOICES Member.	No
2. Assistive Technology	Covered with a limit of \$900 per calendar year, per Member.	No
3. Attendant Care	<p>Covered only for persons who require hands-on assistance with ADLs when needed for more than 4 hours per occasion or visits at intervals of less than 4 hours between visits.</p> <p>For Members who do not require Homemaker Services as defined in Rule 1200-13-01-.02 in addition to hands on assistance with ADLs, covered with a limit of 1080 hours per calendar year, per Member.</p> <p>For Members who require Homemaker Services as defined in Rule 1200-13-01-.02 in addition to hands on assistance with ADLs, covered with a limit of 1240 hours for calendar year 2012, per Member.</p> <p>For Members who require Homemaker Services as defined in Rule 1200-13-01-.02 in addition to hands on assistance with ADLs, beginning January 1, 2013, covered with a limit of 1400 hours per calendar year, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, 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 (including Companion Care), or Short-Term NF Care.</p>	Yes

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction  ("Eligible HCBS")
4. CBRA	<p><u>CBRA services (e.g., ACLFs, CLS, and CLS-FM as specified below).</u></p> <p><u>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.</u></p>	No
45. Home-Delivered Meals	<p>Covered with a limit of 1 meal per day, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	No
56. Homemaker Services	<p>*Covered only for Members who also need hands-on assistance with ADLs and as a component of Attendant Care or Personal Care Visits as defined in these rules.</p> <p>Not covered as a stand-alone benefit.</p> <p>Not covered for persons who do not require hands-on assistance with ADLs.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	*

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction ("Eligible HCBS")
<u>67.</u> In-Home Respite Care	<p>Covered with a limit of 216 hours per calendar year, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	Yes
<u>78.</u> Inpatient Respite Care	<p>Covered with a limit of 9 days per calendar year, per Member.</p> <p>PASRR approval not required. NF LOC not required.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.</p>	No
<u>89.</u> Minor Home Modifications	<p>Covered with a limit of \$6,000 per project, \$10,000 per calendar year, and \$20,000 per lifetime.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting. Not covered when the Member is receiving Short-Term NF Care, except when provided to facilitate transition from a NF to the community. See Rule 1200-13-01-.05(8)(h).</p>	No
<u>910.</u> Personal Care Visits	<p>Covered with a limit of 2 intermittent visits per day, per Member; visits limited to a maximum of 4 hours per visit and there shall be at least four (4) hours between intermittent visits.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, 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 (including Companion Care), or Short-Term NF Care.</p>	Yes



Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction  ("Eligible HCBS")
<del>40</del> 11. PERS	Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care.	No
<del>44</del> 12. Pest Control	Covered with a limit of 9 treatment visits per calendar year, per Member.  Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving Short-Term NF Care.	No
<del>42</del> 13. Short-Term NF Care	Covered with a limit of 90 days per stay, per Member.  Approved PASRR required. Member must meet NF LOC.  Members receiving Short-Term NF Care are not eligible to receive any other HCBS except when permitted to facilitate transition to the community. See Rule 1200-13-01-.05(8)(h).	No

(m) Transportation.

1. Emergency and non-emergency transportation for TennCare covered services other than CHOICES services is provided by the MCOs in accordance with Rules 1200-13-13-.04 and 1200-13-14-.04.
2. Transportation is not provided to HCBS covered by CHOICES, except in the circumstance where a Member requires Adult Day Care that is not available within 30 miles of the Member's residence.

For CHOICES Members not participating in CD, provider agencies delivering CHOICES HCBS may permit staff to accompany a Member outside the home. In circumstances where the Member is unable to drive, assistance by provider agency staff in performing IADLs (e.g., grocery shopping, picking up prescriptions, banking) specified in the POC may include transporting the Member when such assistance would otherwise be performed for the Member by the provider staff, and subject to the provider agency's agreement and responsibility to ensure that the Worker has a valid driver's license and proof of insurance prior to transporting a Member. The decision of whether or not to accompany the Member outside the home (and in the circumstances described above, to transport the Member) is at the discretion of the agency/Worker, taking into account such issues as the ability to safely provide services outside the home setting, the cost involved, and the provider's willingness to accept and manage potential risk and/or liability. In no case will additional hours of service

and/or an increased rate of reimbursement be provided as a result of an agency/Worker decision to accompany or transport a Member outside the home.

3. For CHOICES Members participating in CD, the Member may elect to have his Consumer-Directed Workers (including Companion Care workers) to accompany and/or transport the Member if such an arrangement is agreed to by both the Member and the Workers and specified in the Service Agreement; however, no additional hours or reimbursement will be available. Consumer-Directed Worker(s) must provide to the FEA a valid driver's license and proof of insurance prior to transporting a Member.

(n) Freedom of Choice.

1. CHOICES Members who meet NF LOC as defined in Rule 1200-13-01-.10 shall be given freedom of choice of NF care or CHOICES HCBS, so long as the Member meets all criteria for enrollment into CHOICES Group 2, as specified in this Chapter and the Member may be enrolled into CHOICES Group 2 in accordance with requirements pertaining to the CHOICES Group 2 Enrollment Target as described in this Chapter.
2. CHOICES Members shall also be permitted to choose providers for CHOICES HCBS specified in the POC from the MCO's list of participating providers, if the participating provider selected is available and willing to initiate services timely and to deliver services in accordance with the POC. The Member is not entitled to receive services from a particular provider. A Member is not entitled to a fair hearing if he is not able to receive services from the provider of his choice.

(o) Transition Allowance. For CHOICES Members moving from CHOICES 1 to CHOICES 2 or CHOICES 3, the MCO may, at its sole discretion, provide a Transition Allowance not to exceed two thousand dollars (\$2,000) per lifetime as a CEA to facilitate transition of the Member from the NF to the community. An MCO shall not be required to provide a Transition Allowance, and Members transitioning out of a NF are not entitled to receive a Transition Allowance, which is not a covered benefit. Items that an MCO may elect to purchase or reimburse are limited to the following:

1. Those items which the Member has no other means to obtain and which are essential in order to establish a community residence when such residence is not already established and to facilitate the person's safe and timely transition;
2. Rent and/or utility deposits; and
3. Essential kitchen appliances, basic furniture, and essential basic household items, such as towels, linens, and dishes.

(p) Community Based Residential Alternatives (CBRAs).

1. Intent.

This subparagraph describes requirements for CBRAs in the CHOICES program and are 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.

(I) 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. 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) Member Rights.

(I) 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;
- 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.

(iii) 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 CBRA's specific to the licensure authority for that CBRA.

(iv) The Member shall have the right to manage personal finances as specified in the plan of care.

(v) 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.

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 who 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;



- (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.

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 Title 33 of the

T.C.A. and TDMHSAS Rule 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 Title 33 of the T.C.A.;
  - (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.
  - (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 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 egress, 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 Title 33 of the T.C.A. 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) 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.
- (x) 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.
- (xi) 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.

- (xii) 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, as needed 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 Title 33 of the T.C.A. 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 Title 33 of the T.C.A.;
- (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 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 Title 33 of the T.C.A. 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) 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.
- (x) 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.
- (xi) 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.
- (xii) 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, as needed 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) Rates of reimbursement for CLS and CLS-FM services shall be established by TennCare.
- (iii) 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.
- (iv) 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.



- (v) 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, any may take into consideration the rate of reimbursement authorized.
- (vi) 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.
- (vii) 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.
- (viii) 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.
- (ix) Family members of the individual receiving services are not prohibited from helping pay a resident's Room and Board expenses.
- (x) Reimbursement for CLS or CLS-FM services shall not include the cost of maintenance of the dwelling.
- (xi) 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.
- (xii) Personal Care Visits, Attendant Care, and Home Delivered Meals shall not be authorized or reimbursed for a Member receiving CLS or CLS-FM services.
- (xiii) In-home Respite shall not be authorized or reimbursed for a member receiving CLS services. In-home Respite shall only be reimbursed for a member receiving CLS-FM if CLS-FM services are not reimbursed for that day.
- (xiv) CLS and CLS-FM service shall not be provided or reimbursed in nursing facilities, ACLFs, hospitals or ICFs/IID.