

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: register.information@tn.gov

**For Department of State Use Only**

Sequence Number: 09-17-09  
Rule ID(s): 4245  
File Date: 09/11/2009  
Effective Date: 12/10/2009

## Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Tennessee Department of Finance and Administration
<b>Division:</b>	Bureau of TennCare
<b>Contact Person:</b>	George Woods
<b>Address:</b>	Bureau of TennCare 310 Great Circle Road Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 507-6446
<b>Email:</b>	George.woods@tn.gov

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

- ☒ Amendment  
☐ New  
☐ Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)**

Chapter Number	Chapter Title
1200-13-14	TennCare Standard
Rule Number	Rule Title
1200-13-14-.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>)

Chapter 1200-13-14  
TennCare Standard

Amendment

Public necessity rule subparagraph (b) of paragraph (8) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a rulemaking hearing rule subparagraph (b) which shall read as follows:

- (b) Home health nurses and aides and private duty nurses will never be authorized to personally transport a TennCare enrollee. Home health nurses and aides delivering prior approved home health care services may accompany an enrollee outside the home in accordance with T.C.A. § 71-5-107(a)(12).

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

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules.

D-J. Gordon  
Darin J. Gordon  
Director, Bureau of TennCare  
Tennessee Department of Finance and Administration

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 09/08/2009 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/30/09

Rulemaking Hearing(s) Conducted on: (add more dates). 08/17/09

Date: 9/8/09  
Signature: M. D. Goetz Jr.  
Name of Officer: M. D. Goetz Jr.  
Title of Officer: Commissioner

Subscribed and sworn to before me on: 9.8.09  
Notary Public Signature: Pat Pentecost  
My commission expires on: 1-3-2011



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

Robert E. Cooper, Jr.  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
9-10-09 Date

Department of State Use Only

Filed with the Department of State on: 9/11/09  
Effective on: 10/12/09  
Tre Hargett  
Tre Hargett  
Secretary of State

RECEIVED  
2009 SEP 11 PM 11:40  
SECRETARY OF STATE  
PUBLICATIONS

## **Public Hearing Comments**

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

There were no public comments on this rule.

### **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)

RULE 1200-13-14-04(8)(b) Covered Services – TennCare Standard.

### **STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES**

1. **Name of Bureau:** Bureau of TennCare

2. **Rulemaking hearing date:** August 17, 2009

3. **Types of small businesses that will be directly affected by, bear the cost of, and/or directly benefit from the proposed rules:**

Small businesses that will potentially be impacted are home health agencies which will have the option of delivering approved home health services outside the home. The agency will not receive any additional reimbursement for accompanying the service recipient outside of the home.

4. **A description of how small businesses will be adversely impacted:**

Since the home health agency will have discretion as to whether home health nurses or aides will accompany a recipient outside the home it is not anticipated that the agency will be adversely impacted.

5. **Whether, and to what extent, alternative means exist for accomplishing the objectives of the proposed rule that might be less burdensome to small businesses, and why such alternatives are not being proposed:**

It is not anticipated that the rule will be burdensome to home health agencies.

6. **A comparison of the proposed rule with federal or state counterparts:**

We are promulgating this rule to be consistent with the revision to T.C.A. § 71-5-107(a)(12) of the Medical Assistance Act passed by the Tennessee General assembly and signed into law on June 23, 2009, as Public Chapter 471, effective July 1, 2009. The amendment is also required pursuant to the Appropriations Bill for Fiscal Year 2010 passed by the Tennessee General Assembly June 17, 2009. The law authorizes home health nurses and aides to accompany a recipient outside the home during the course of prior approved home health services, if the following criteria are met: (1) the home health nurse or aide must not transport the service recipient; (2) the home health agency will have discretion as to whether or not to accompany a recipient outside the home; (3) additional visit or hours of care will not be approved for the purpose of accompanying a recipient outside the home; and (4) no additional reimbursement will be paid to the home health agency in association with the decision of the agency to accompany a patient outside the home.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule is being promulgated to point out that home health nurses and aides may accompany an enrollee outside the home for the purpose of providing prior approved home health services. The rule grants the home health agency the authority to decide whether or not the nurse or aide may accompany the service recipient outside of the home.

- (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;

Rule 1200-13-14-.04(8)(b) is promulgated and adopted by the Department of Finance and Administration in accordance with Tennessee Code Annotated §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-107(a)(12) as amended by Public Acts of 2009, Chapter 471.

- (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 entities most directly affected by this rule are the recipients, the providers, and the 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;

Rule 1200-13-14-.04(8)(b) 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 and telephone number 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) 507-6443

Darin.J.Gordon@tn.gov

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

None.

GW1049204