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Sequence Number: 09-19-09
Rule ID(s): 4450
File Date: 9/11/2009
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

Agency/Board/Commission: Tennessee Department of Finance and Administration
Division: Bureau of TennCare
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Revision Type (check all that apply):

☒ Amendments
☐ 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
1200-13-17	TennCare Crossover Payments for Medicare Deductibles and Coinsurance
Rule Number	Rule Title
1200-13-17-.01	Definitions
1200-13-17-.04	Medicare Payment Methodology

Chapter 1200-13-17
TennCare Crossover Payments for Medicare Deductibles and Coinsurance

Amendments

Rule 1200-13-17-.01 Definitions is amended by replacing public necessity rule paragraphs (16) and (17) with rulemaking hearing rule paragraphs (16) and (17) which shall read as follows:

(16) Pharmacy Providers shall mean providers enrolled with the Medicare program and with Medicaid to provide Medicare Part B pharmacy services.

(17) Pharmacy Services shall mean outpatient prescription drugs provided through Medicare Part B.

Public necessity rule paragraph (21) TennCare Allowable of rule 1200-13-17-.01 Definitions is deleted in its entirety and replaced with rulemaking hearing rule paragraph (21) which shall read as follows:

(21) TennCare Allowable shall mean the lower of the TennCare maximum fee or 85% of the Medicare allowed amount on the claim.

Public necessity rule paragraph (23) TennCare Maximum Fee of rule 1200-13-17-.01 Definitions is deleted in its entirety and replaced with rulemaking hearing rule paragraph (23) which shall read as follows:

(23) TennCare Maximum Fee shall mean the maximum amount considered by TennCare for reimbursement of a particular Medicare-covered service. The TennCare maximum fee is 85% of the Cigna Medicare fee schedule amount for participating providers that was in effect on January 1, 2008.

Public necessity rule paragraph (25) of rule 1200-13-17-.01 Definitions is deleted in its entirety and replaced with rulemaking hearing rule paragraph (25) which shall read as follows:

(25) TennCare Pharmacy Allowable shall mean, for Medicare Part B pharmacy services provided to FBDEs by pharmacy providers, as defined in these rules, 100% of the Medicare allowed amount on the claim.

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

Public necessity rule 1200-13-17-.04 Medicare Crossover Payment Methodology is deleted in its entirety and replaced with rulemaking hearing rule 1200-13-17-.04 which shall read as follows:

1200-13-17-.04 Medicare Crossover Payment Methodology.

Notwithstanding anything in these rules to the contrary, TennCare's payment methodology for crossover claims submitted on behalf of FBDEs and non-FBDE QMBs for professional services delivered under either Medicare Part B or Medicare Part C is as follows:

- (1) On crossover claims for professional services and procedures with dates of service on or after July 1, 2008, TennCare will pay the TennCare allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.
- (2) On crossover claims for Medicare Part B pharmacy services provided by pharmacy providers, as defined in these rules, to non-FBDEs with dates of service on or after July 1, 2009, TennCare will pay the TennCare allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.
- (3) On crossover claims for Medicare Part B pharmacy services provided by pharmacy providers, as defined in these rules, to FBDEs with dates of service on or after July 1, 2009, TennCare will pay the TennCare

pharmacy allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.

- (4) In no circumstance will the TennCare payment exceed the enrollee's liability on the Medicare crossover claim.
- (5) Medicare crossover payments are normally made by the Bureau of TennCare separately from the Managed Care Contractors. However, if an MCC should choose to authorize a non-covered TennCare service as a cost-effective alternative service for a non-QMB FBDE who is age 21 or older and not an SSI recipient, the MCC will be responsible for the Medicare crossover payment on that service. The calculation of this payment should be included by the MCC in its analysis of whether or not the non-covered TennCare service is a cost-effective alternative service.

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

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


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: 

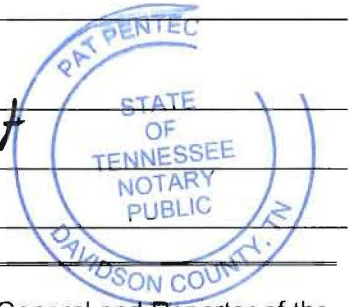
Name of Officer: M. D. Goetz, Jr.

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.
Attorney General and Reporter

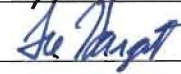
9-10-09

Date

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Filed with the Department of State on: 9/11/09

Effective on: 10/10/09



Tre Hargett
Secretary of State

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PUBLICATIONS

SS-7039 (July 2009)

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 these rules.

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)

Rules 1200-13-17-.01(16), (17), (21), (23), and (25) Definitions; and 1200-13-17-.04 Medicare Crossover Payment Methodology.

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:** Suppliers of durable medical equipment, providers of ambulance services, and pharmacies are some of the types of business that may be affected.
4. **A description of how small businesses will be adversely impacted:**

We do not anticipate that any small business will be adversely impacted since TennCare is proposing to increase Part B crossover reimbursement from 80% of Medicare allowable to 85% as well as increasing payment for Medicare Part B pharmacy crossover claims for full benefit dual eligibles to 100% of the Medicare allowable charge for pharmacy services.
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:**

We do not anticipate that the rule will be burdensome to small businesses.
6. **A comparison of the proposed rule with federal or state counterparts:** These rules are being promulgated to comply with Public Chapter 607, signed into law July 9, 2009, which amended the Medical Assistance Act by providing for a change in the methodology for reimbursing full benefit dual eligibles.

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 TennCare is revising its methodology for reimbursing full benefit dual eligibles.

- (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;

Rules 1200-13-13-.01(16), (17), (21), (23) and (25); and 1200-13-17-.04 are promulgated and adopted by the Department of Finance and Administration in accordance with Chapter 607, Public Acts of 2009 and Tennessee Code Annotated §§ 4-5-202, 71-5-105 and 71-5-109.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons, 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;

Rules 1200-13-13-.01(16), (17), (21), (23) and (25); and 1200-13-17-.04 were 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 these rules is anticipated to increase state expenditures by \$3,233,900.

- (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

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

None.

GW1019226