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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. 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):

X 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**
1200-13-14	TennCare Standard
Rule Number	**Rule Title**
1200-13-14-.01	Definitions
1200-13-14-.03	Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS)
1200-13-14-.04	Covered Services
1200-13-14-.06	Managed Care Organizations

(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

Amendments

Paragraph (7) BHO (Behavioral Health Organization(s) of rule 1200-13-14-.01 Definitions is deleted in its entirety and subsequent paragraphs renumbered accordingly.

Paragraph (49) Health Plan to be renumbered as paragraph (48) of rule 1200-13-14-.01 Definitions is amended by adding the phrase "and behavioral" after the word "medical" so as amended the renumbered paragraph (48) shall read as follows:

(48) HEALTH PLAN shall mean a Managed Care Organization authorized by the Tennessee Department of Finance and Administration to provide medical and behavioral services to enrollees in the TennCare Program.

Paragraph (64) MCC (Managed Care Contractor) to be renumbered as paragraph (63) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new renumbered paragraph (63) which shall read as follows:

(63) MCC (MANAGED CARE CONTRACTOR) shall mean:

(a) A Managed Care Organization, Pharmacy Benefits Manager and/or a Dental Benefits Manager which has signed a TennCare Contractor Risk Agreement with the State and operates a provider network and provides covered health services to TennCare enrollees; or

(b) A Pharmacy Benefits Manager, Behavioral Health Organization or Dental Benefits Manager which subcontracts with a Managed Care Organization to provide services; or

(c) A State government agency (i.e., Department of Children's Services and Division of Intellectual Disabilities Services) that contracts with TennCare for the provision of services.

Paragraph (65) MCO (Managed Care Organization) to be renumbered as paragraph (64) of rule 1200-13-14-.01 Definitions is amended by adding the phrase "and behavioral" after the word "medical" so as amended the renumbered paragraph (64) shall read as follows:

(64) MCO (MANAGED CARE ORGANIZATION) shall mean an appropriately licensed Health Maintenance Organization (HMO) approved by the Bureau of TennCare as capable of providing medical and behavioral services in the TennCare Program.

Paragraph (80) PBM (Pharmacy Benefits Manager) to be renumbered as paragraph (79) of rule 1200-13-14-.01 definitions is amended by deleting the phrase "or BHO" at the end of the paragraph so as amended the renumbered paragraph (79) shall read as follows:

(79) PBM (PHARMACY BENEFITS MANAGER) shall mean an organization approved by the Tennessee Department of Finance and Administration to provide pharmacy benefits to enrollees to the extent such services are covered by the TennCare Program. A PBM may have a signed TennCare Contractor Risk Agreement with the State, or may be a subcontractor to an MCO.

Paragraph (110) TDMHDD (Tennessee Department of Mental Health and Developmental Disabilities) of rule 1200-13-14-.01 Definitions is deleted in its entirety and subsequent paragraphs renumbered accordingly.

Paragraph (116) TennCare Partners Program of rule 1200-13-14-.01 Definitions is deleted in its entirety and subsequent paragraphs renumbered accordingly.

Paragraph (117) TennCare Pharmacy Program to be renumbered as paragraph (114) of rule 1200-13-14-.01 Definitions is amended by deleting the phrase and comma "the behavioral health pharmacy benefit," so as amended the renumbered paragraph (114) shall read as follows:

(114) TENNCARE PHARMACY PROGRAMS shall mean any TennCare pharmacy carve-outs, including, but not limited to, enrollees with dual eligibility and all pharmacy services provided by the TennCare Managed Care Organizations (MCOs).

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

Paragraph (1) of rule 1200-13-14-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCs) is amended by changing the word "four" in the first line of the introductory paragraph to "three (3)" and deleting subparagraph (c) in its entirety and relettering subsequent subparagraphs accordingly so as amended paragraph (1) shall read as follows:

(1) Enrollment.

There are three (3) different types of managed care entities that provide services to TennCare enrollees. Enrollment procedures differ according to the type of managed care entity, the geographic area, and the number of managed care entities operating in each geographic area.

(a) TennCare Managed Care Organizations (MCOs) other than TennCare Select.

1. Individuals or families determined eligible for TennCare shall select a health plan (Managed Care Organization/MCO) at the time of application. The health plan must be available in the Grand Division of the State in which the enrollee lives. Every attempt will be made to enroll eligible family members in the same MCO with the exception of a family member assigned by the Bureau to TennCare Select. An enrollee is given his choice of MCOs when possible. If the requested MCO cannot accept new enrollees, the Bureau will assign each enrollee to an MCO that is accepting new enrollees. If no MCO is available to enroll new members in the enrollee's Grand Division, the enrollee will be assigned to TennCare Select until such time as another MCO becomes available. The Bureau may also assign TennCare children with special health care needs to TennCare Select.

2. A TennCare enrollee may change MCOs one (1) time within the initial forty-five (45) calendar days (inclusive of mail time) from the date of the letter informing him of his MCO assignment, if there is another MCO in the enrollee's Grand Division that is currently permitted by the Bureau to accept new enrollees. No additional changes will be allowed except as otherwise specified in these rules. An enrollee shall remain a member of the designated plan until he is given an opportunity to change during an annual redetermination of eligibility. Thereafter, only one (1) MCO change is permitted every twelve (12) months, unless the Bureau authorizes a change as the result of the resolution of an appeal requesting a "hardship" reassignment as specified in paragraph (2)(b) below. When an enrollee changes MCOs, the enrollee's medical care will be the responsibility of the current MCO until he is enrolled in the requested MCO.

3. Each MCO shall offer its enrollees, to the extent possible, freedom of choice among participating providers. If after notification of enrollment the enrollee has not chosen a primary care provider, one will be selected for him by the MCO. The period during which an enrollee may choose his primary care provider shall not be less than fifteen (15) calendar days.

4. In the event a pregnant woman entering an MCO's plan is receiving medically necessary prenatal care the day before enrollment, the MCO shall be responsible for the costs of continuation of such medically necessary services, without any form of prior approval and without regard to whether such services are being provided within or outside the MCO's provider network until such time as the MCO can reasonably transfer the enrollee to a service and/or network provider without impeding service delivery that might be harmful to the enrollee's health.

In the event a pregnant woman entering the MCO's plan is in her second or third trimester of pregnancy and is receiving medically necessary prenatal care services the day before enrollment, the MCO shall be responsible for providing continued access to the provider (regardless of network affiliation) through the postpartum period. Reimbursement to an out-of-network provider shall be as set out in rule 1200-13-14-.08.

(b) TennCare Select.

TennCare Select is a prepaid inpatient health plan (PIHP), as defined in 42 CFR 438.2, which operates in all areas of the State and covers the same services as the MCOs. The State's TennCare Select contractor is reimbursed on a non-risk, non-capitated basis for services rendered to covered populations, and in addition receives fees from the State to offset administrative costs.

1. The TennCare populations included in the TennCare Select delivery system are as follows:

(i) Children under the age of nineteen (19) years who are eligible for Supplemental Security Income.

(ii) Children in state custody and children leaving state custody for six (6) months post-custody as long as the child remains eligible.

(iii) Children under the age of (19) years in an institutional eligibility category who are receiving care in a Nursing Facility, an Intermediate Care Facility for the Mentally Retarded, or a Home and Community Based Services 1915(c) waiver.

(iv) Enrollees living in areas where there is insufficient MCO capacity to service them.

After being assigned to TennCare Select, persons in categories (i) and (iii) above may choose to disenroll from TennCare Select and enroll in another MCO if one is available. Persons in categories (ii) and (iv) must remain in TennCare Select. TennCare Select is not open to voluntary selection by TennCare enrollees.

2. TennCare Select also provides the following functions:

(i) It is the back-up plan should one of the MCOs leave the TennCare program unexpectedly. For TennCare enrollees previously enrolled with the MCO, TennCare Select provides medical case management and all MCO covered services.

(ii) It is the only entity responsible for payment of the services described in 42 CFR 431.52, services provided to residents temporarily absent from the State, and provides all MCO covered services (primarily emergency services).

(iii) It is also the only entity responsible for payment of the services described in 42 CFR 440.255, emergency services for certain aliens.

(c) TennCare Dental Benefits Manager (DBM).

TennCare children shall be assigned to the Dental Benefits Manager (DBM) under contract with the Bureau to provide dental benefits through the TennCare Program.

(d) TennCare Pharmacy Benefits Manager (PBM).

TennCare enrollees who are eligible to receive pharmacy services shall be assigned to the Pharmacy Benefits Manager (PBM) under contract with the Bureau to provide pharmacy benefits for both medical and behavioral health services through the TennCare Program.

Subparagraph (a) of paragraph (3) of rule 1200-13-14-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS) is amended by deleting the letters "BHO" after the words "well as the" so as amended subparagraph (a) shall read as follows:

(a) When it has been determined that an individual no longer meets the criteria for TennCare eligibility, that individual shall be disenrolled from the TennCare Program. Services provided by the TennCare MCO in which the individual has been placed, as well as the PBM and DBM, if applicable, shall be terminated upon disenrollment. Such disenrollment action will be accompanied by appropriate due process procedures as described elsewhere in these rules.

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

Benefits for Persons Aged 21 and Older column of part 12. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is amended by replacing the letters "BHO" in the second paragraph with the letters "MCO" so as amended part 12. shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
12. Inpatient and Outpatient Substance Abuse Benefits [defined as services for the treatment of substance abuse that are provided (a) in an inpatient hospital (as defined at 42 CFR §440.10) or (b) as outpatient hospital services (see 42 CFR §440.20(a))].	Covered as medically necessary.	Covered as medically necessary, with a maximum lifetime limitation of ten (10) detoxification days and $30,000 in substance abuse benefits (inpatient, residential and outpatient). When medically appropriate and cost effective as determined by the MCO, services in a licensed substance abuse residential treatment facility may be provided as a substitute for inpatient substance abuse services.

The introductory paragraph of paragraph (5) of rule 1200-13-14-.04 Covered Services is amended by deleting the comma and phrase ", behavioral health organizations (BHOs)" so as amended the introductory paragraph shall read as follows:

(5) Preventive, Diagnostic and Treatment Services for Individuals Under Twenty-One (21).

The Bureau of TennCare, through its contracts with Managed Care Organizations (MCOs) and other contractors (also referred to collectively as Contractors), operates an EPSDT program to provide health care services as required by 42 C.F.R. Part 441, Subpart B and the "Omnibus Budget Reconciliation Act of 1989" to eligible enrollees under the age of 21.

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

Rule 1200-13-14-.06 Managed Care Organizations is deleted in its entirety and replaced with a new rule 1200-13-14-.06 which shall read as follows:

1200-13-14-.06 MANAGED CARE ORGANIZATIONS.

Managed Care Organizations participating in TennCare will be limited to Health Maintenance Organizations that are appropriately licensed to operate within the state of Tennessee to provide medical and behavioral services in the TennCare program. Managed Care Organizations shall have a fully executed contract with the Tennessee Department of Finance and Administration. MCOs, DBMs and PBMs shall agree to comply with all applicable rules, policies, and contract requirements as specified by the Tennessee Department of Finance and Administration as applicable. Managed Care Organizations must continually demonstrate a sufficient provider network based on the standards set by the Bureau of TennCare to remain in the program and must reasonably meet all quality of care requirements established by the Bureau of TennCare.

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.

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: 06/12/09

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:

My commission expires on: 1-3-2011

PAT PENTECOST
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

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

9-25-09
Date

Department of State Use Only

Filed with the Department of State on: 9/25/09

Effective on: 12/24/09

Tre Hargett
Secretary of State

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PUBLICATIONS

Public Hearing Comments

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

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 1200-13-14-.01(7), (48), (63), (64), (79), (110), (114), and (116) Definitions; 1200-13-14-.03(1), 1200-13-14-.03(3)(a) Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS); 1200-13-14-.04(1)(b)12., 1200-13-14-.04(5) Covered Services; 1200-13-14-.06 Managed Care Organizations.

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 cost of, and/or directly benefit from the proposed rules: None

4. A description of how small businesses will be adversely impacted: None

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: Not Applicable

6. A comparison of the proposed rule with federal or state counterparts: These rules are being promulgated to point out that TennCare no longer has Behavioral Health Organizations (BHOs). Managed Care Organizations (MCOs) now provide both medical and behavioral services. There are no federal or state counterparts.

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 rules are being promulgated to point out that TennCare no longer has Behavioral Health Organizations (BHOs). Managed Care Organizations (MCOs) now provide both medical and behavioral services.

(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;

These rules are lawfully promulgated and adopted by the Department of Finance and Administration in accordance with 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 governmental entities most directly affected by these rules are the recipients, MCOs, providers and the Tennessee Department of Finance and Administration. There were no objections to the promulgation of these rules.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The rules 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 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

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

None.

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