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

For Department of State Use OnlySequence Number: 12-19-13Rule ID(s): 5636File Date: 12/17/13Effective Date: 3/17/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

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

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 to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1200-13-14	TennCare Standard
Rule Number	Rule Title
1200-13-14-.04	Covered Services
1200-13-14-.10	Exclusions

(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>)

The introductory paragraph of Subparagraph (a) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new introductory paragraph which shall read as follows:

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

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

Subparagraph (b) of Paragraph (3) of Rule 1200-13-14-.10 Exclusions is amended by inserting in alphabetical order the following new Parts, with all parts of Subparagraph (b) numbered appropriately so that as amended the new Parts shall read as follows:

- ##. Injections for the treatment of pain such as:
 - (i) Facet/medial branch injections for therapeutic purposes
 - (ii) Medial branch injections for diagnostic purposes in excess of four (4) injections in a calendar year
 - (iii) Trigger point injections in excess of four (4) injections per muscle trigger point during any period of six (6) consecutive months
 - (iv) Epidural steroid injections in excess of three (3) injections during any period of six (6) consecutive months, except epidural injections associated with childbirth
- ##. TENS (transcutaneous electrical nerve stimulation) units for the treatment of chronic lower back pain
- ##. Urine drug screens in excess of twelve (12) during a calendar year

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

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 12/04/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/20/13

Rulemaking Hearing(s) Conducted on: (add more dates). 11/25/13



Date: 12/4/2013

Signature: [Handwritten Signature]

Name of Officer: Darin J. Gordon

Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 12-4-13

Notary Public Signature: Cheryl D Kline

My commission expires on: AUG 28 2016

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.

[Handwritten Signature]

Robert E. Cooper, Jr.
Attorney General and Reporter

12-16-13

Date

Department of State Use Only

Filed with the Department of State on: 12/17/13

Effective on: 3/17/14

[Handwritten Signature]

Tre Hargett
Secretary of State

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SECRETARY OF STATE

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)

The rules are not anticipated to have an effect on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The 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;

The rules are being amended to exclude or otherwise limit coverage of specified benefits.

- (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 §§ 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 and entities most directly affected by these rules are TennCare enrollees and TennCare providers. 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 the TennCare Medicaid and TennCare Standard rules is anticipated to decrease state annual expenditures by \$4,241,300.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Donna K. Tidwell
Deputy General Counsel

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Donna K. Tidwell
Deputy 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) 507-6852
donna.tidwell@tn.gov

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

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GW10213309

(Rule 1200-13-14-.04, continued)

- (a) TennCare MCCs shall cover the following services and benefits subject to any applicable limitations described herein in this Chapter. TennCare MCCs shall cover TennCare CHOICES services and benefits in accordance with Rule 1200-13-01-.05.
1. Any and all medically necessary services may require prior authorization or approval by the MCC, except where prohibited by law.
 2. An MCC shall not refuse to pay for a service solely because of a lack of prior authorization as follows:
 - (i) Preventive, diagnostic, and treatment services for persons under age 21. MCCs shall provide all medically necessary, covered services regardless of whether the need for such services was identified by a provider whose services had received prior authorization from the MCC or by an in-network provider.
 - (ii) Emergency services. MCCs shall not require prior authorization or approval for covered services rendered in the event of an emergency, as defined in these rules. Such emergency services may be reviewed on the basis of medical necessity or other MCC administrator requirements, but cannot be denied solely because the provider did not obtain prior authorization or approval from the enrollee's MCC.
 3. MCCs shall not impose any service limitations that are more restrictive than those described herein; however, this shall not limit the MCC's ability to establish procedures for the determination of medical necessity.
 4. Services for which there is no federal financial participation (FFP) are not covered.
 5. Non-covered services are non-covered regardless of medical necessity.
- (b) The following physical health and mental health benefits are covered under the TennCare managed care program. Benefits offered under the TennCare CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.05. There are some exclusions to the benefits listed below. The exclusions are listed in this rule and in Rule 1200-13-14-.10.

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
1. Ambulance Services.	See "Emergency Air and Ground Transportation" and "Non-Emergency Ambulance Transportation."	See "Emergency Air and Ground Transportation" and "Non-Emergency Ambulance Transportation."
2. Bariatric Surgery, defined as surgery to induce weight loss.	Covered as medically necessary.	Covered as medically necessary.
3. Chiropractic Services [defined at 42 CFR §440.60(b)].	Covered as medically necessary.	Not covered.
4. Community Health Services, [defined at 42 CFR §440.20(b) and (c) and 42 CFR §440.90].	Covered as medically necessary.	Covered as medically necessary.
5. Dental Services	Preventive, diagnostic, and treat-	Not covered, except for orthodontic

(Rule 1200-13-14-.10, continued)

- (I) Fourteen (14) pills per month for sedative hypnotic formulations in pill form such as Ambien and Lunesta;
 - (II) One hundred forty milliliters (140 ml) per month of chloral hydrate; or
 - (III) One (1) bottle every sixty (60) days of Zolpimist.
- 21. Purchase, repair, or replacement of materials or equipment when the reason for the purchase, repair, or replacement is the result of enrollee abuse
- 22. Purchase, repair, or replacement of materials or equipment that has been stolen or destroyed except when the following documentation is provided:
 - (i) Explanation of continuing medical necessity for the item, and
 - (ii) Explanation that the item was stolen or destroyed, and
 - (iii) Copy of police, fire department, or insurance report if applicable
- 23. Radial keratotomy
- 24. Reimbursement to a provider or enrollee for the replacement of a rented durable medical equipment (DME) item that is stolen or destroyed
- 25. Repair of DME items not covered by TennCare
- 26. Repair of DME items covered under the provider's or manufacturer's warranty
- 27. Repair of a rented DME item
- 28. Speech, language, and hearing services to address speech problems caused by mental, psychoneurotic, or personality disorders
- 29. Standing tables
- 30. Vision services for persons 21 years of age and older that are not needed to treat a systemic disease process including, but not limited to:
 - (i) Eyeglasses, sunglasses, and/or contact lenses for persons aged 21 and older, including eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, sunglasses, and/or contact lenses; procedures performed to determine the refractive state of the eye(s); one pair of cataract glasses or lenses is covered for adults following cataract surgery
 - (ii) LASIK
 - (iii) Orthoptics
 - (iv) Vision perception training
 - (v) Vision therapy
- (b) Services, products, and supplies that are specifically excluded from coverage under the TennCare program.

(Rule 1200-13-14-.10, continued)

- (ix) Reversal of sterilization procedures
- (x) Any other service or procedure intended to create a pregnancy
- (xi) Testing and/or treatment, including therapy, supplies, and counseling, for frigidity or impotence

##. Injections for the treatment of pain such as:

- (i) Facet/medial branch injections for therapeutic purposes
- (ii) Medial branch injections for diagnostic purposes in excess of four (4) injections in a calendar year
- (iii) Trigger point injections in excess of four (4) injections per muscle trigger point during any period of six (6) consecutive months
- (iv) Epidural steroid injections in excess of three (3) injections during any period of six (6) consecutive months, except epidural injections associated with childbirth

41. Lamps such as:

- (i) Heating lamps
- (ii) Lava lamps
- (iii) Sunlamps
- (iv) Ultraviolet lamps

42. Lifts as follows:

- (i) Automobile van lifts
- (ii) Electric powered recliner, elevating seats, and lift chairs
- (iii) Elevators
- (iv) Overhead or ceiling lifts, ceiling track system lifts, or wall mounted lifts when installation would require significant structural modification and/or renovation to the dwelling (e.g., moving walls, enlarging passageways, strengthening ceilings and supports). The request for prior authorization must include a specific breakdown of equipment and installation costs, specifying all required structural modifications (however minor) and the cost associated thereto.
- (v) Stairway lifts, stair glides, and platform lifts, including but not limited to Wheel-O-Vators

43. Ligation of mammary arteries, unilateral or bilateral

44. Megavitamin therapy

(Rule 1200-13-14-.10, continued)

72. Sexual dysfunction or inadequacy services and medicine, including drugs for erectile dysfunctions and penile implant devices
73. Sitter services.
74. Speech devices as follows:
 - (i) Phone mirror handivoice
 - (ii) Speech software
 - (iii) Speech teaching machines
75. Sphygmomanometers (blood pressure cuffs)
76. Stethoscopes
77. Supports
- ## TENS (transcutaneous electrical nerve stimulation) units for the treatment of chronic lower back pain
 - (i) Cervical pillows
 - (ii) Orthotrac pneumatic vests
78. Thermograms
79. Thermography
80. Time involved in completing necessary forms, claims, or reports
81. Tinnitus maskers
82. Toy equipment such as:

Flash switches (for toys)
83. Transportation costs as follows:
 - (i) Transportation to a provider who is outside the geographical access standards that the MCC is required to meet when a network provider is available within such geographical access standards or, in the case of Medicare beneficiaries, transportation to Medicare providers who are outside the geographical access standards of the TennCare program when there are Medicare providers available within those standards
 - (ii) Mileage reimbursement, car rental fees, or other reimbursement for use of a private vehicle unless prior authorized by the MCC in lieu of contracted transportation services
 - (iii) Transportation back to Tennessee from vacation or other travel out-of-state in order to access non-emergency covered services (unless authorized by the MCC)

(Rule 1200-13-14-.10, continued)

- (iv) Any non-emergency out-of-state transportation, including airfare, that has not been prior authorized by the MCC. This includes the costs of transportation to obtain out-of-state care that has been authorized by the MCC. Out-of-state transportation must be prior authorized independently of out-of-state care.
- 84. Transsexual surgery
- ## Urine drug screens in excess of twelve (12) during a calendar year
- 85. Vagus nerve stimulators, except after conventional therapy has failed in treating partial onset of seizures.
- 86. Weight loss or weight gain and physical fitness programs including, but not limited to:
 - (i) Dietary programs of weight loss programs, including, but not limited to, Optifast, Nutrisystem, and other similar programs or exercise programs. Food supplements will not be authorized for use in weight loss programs or for weight gain.
 - (ii) Health clubs, membership fees (e.g., YMCA)
 - (iii) Marathons, activity and entry fees
 - (iv) Swimming pools
- 87. Wheelchairs as follows:
 - (i) Wheelchairs defined by CMS as power operated vehicles (POVs), namely, scooters and devices with three (3) or four (4) wheels that have tiller steering and limited seat modification capabilities (i.e., provide little or no back support). Powered wheelchairs, meaning four (4) wheeled, battery operated vehicles that provide back support and that are steered by an electronic device or joystick that controls direction and turning, are covered as medically necessary.
 - (ii) Standing wheelchairs
 - (iii) Stair-climbing wheelchairs
 - (iv) Recreational wheelchairs
- 88. Whirlpools and whirlpool equipment such as:
 - (i) Action bath hydro massage
 - (ii) Aero massage
 - (iii) Aqua whirl
 - (iv) Aquasage pump, or similar devices
 - (v) Hand-D-Jets, or similar devices
 - (vi) Jacuzzis, or similar devices