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The lifting power of many wings

can achieve twice the distance of flying alone.



We appreciate the opportunity to provide comment on TennCare Rule 1200-13-01-.05 relative to the TennCare CHOICES Program. The Tennessee Disability Coalition has long been a proponent of Home- and Community-Based Services and believe that affordable, accessible options for long-term supports and services that offer real choice are good. We support the addition of CLS and CLS- FM as Community-Based Residential Alternatives to the continuum of long-term supports and services.

In reviewing TennCare Rule 1200-13-01-.05, we have the following comments:

Member Rights and Choice

The proposed rules reflect a respect for individual rights and choice. Protecting these rights and implementing processes that allow the exercise of choice and rights can be challenging. Throughout, we believe that family members and/or other representatives chosen by the member should be included planning, choice, and decision-making. The principles of family-centered care and supported decision-making should be reflected in the rules.

For example, it is reflected in 1200-13-01-.05 Paragraph (8) in new Subparagraph (p)5(iii) - "the Member or Member's representative "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." Language enabling participation by a Member's representative should be reflected throughout the rules.

In addition, with respect to choice, we believe those choices must be real and reasonable, and free of undue pressure. We are concerned that individuals have access to choices of location and situations that keep them in their preferred community and near natural and community supports.

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CLS Ombudsman

The Coalition strongly supports Members' access to Ombudsman services. We believe that the CLS Ombudsman Program should be integrated into the existing state Long-Term Care Ombudsman Program. As defined at 1200 – 13-01-.02 (79), the LTC ombudsman already has a role on behalf of person residing in CBRS settings. A separate Ombudsman Program would be unnecessarily confusing. Additionally, because the existing program is established under the Older American Act, integrating the CLS Ombudsman into the existing Long-Term Care Ombudsman Program will assure its integrity and independence of the Program.

Reimbursement of CLS and CLS-FM Services

An issue not addressed in the rules, but about which we are concerned, is related to subparagraph (p) 7. Families and individuals have expressed concern about freedom of movement for Members receiving CLS. There needs to be a mechanism for a member to be away from home, for example making overnight visits to family or friends, without putting a provider at financial risk. Without such a mechanism, there is sometimes pressure to prevent such activity.

TennCare Response to Comments on Rule 1200-13-01-.05

Rule Citation	Rule Language	Commenter	Comment(s)	Response
1200-13-01-.05	<p>Paragraph (8) new Subparagraph (p)</p> <p>2. Requirements for CBRAs</p> <p>(i) Member Choice</p> <p>(ii) Member Rights</p>	The Tennessee Disability Coalition	<p>Member Rights and Choice – The proposed rules reflect a respect for individual rights and choice. Protecting these rights and implementing processes that allow the exercise of choice and rights can be challenging. Throughout, we believe that family members and/or other representatives chosen by the member should be included in planning, choice, and decision-making. The principles of family-centered care and supported decision-making should be reflected in the rules. In addition, with respect to choice, we believe those choices must be real and reasonable, and free of undue pressure. We are concerned that individuals have access to choices of location and situations that keep them in their preferred community and near natural and community supports.</p>	<p>The Home and Community-Based Services (HCBS) Regulations (specifically 42 C.F.R. § 441.301(c)(1)) issued by CMS establishes person-centered planning requirements for home and community-based settings in Medicaid HCBS programs. In this final rule, CMS specifies that service planning for participants in Medicaid HCBS programs must be developed through a person-centered planning process. The federal regulations require that, “The individual will lead the person-centered planning process where possible. The individual's representative should have a participatory role, as needed and as defined by the individual, unless State law confers decision-making authority to the legal representative. All references to individuals include the role of the individual's representative. In addition to being led by the individual receiving services and supports, the person-centered planning process:</p> <p>(i) Includes people chosen by the individual.</p> <p>(ii) Provides necessary information and support to ensure that the</p>

				<p>individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions...”</p> <p>The TennCare rules were written to ensure compliance with the Home and Community-Based Services (HCBS) Settings Final Rule and do not preclude an individual from including others of their choosing to participate in the planning process.</p> <p>Based on your comments, we have added language in 1200-13-01-.05(8)(p)(2)(iii)(XI) and 1200-13-01-.05(8)(p)(2)(v) and (vi) to further clarify the member’s ability to include family members and others in the planning and decision making processes and to be supported by family members and others in exercising legal capacity.</p> <p>Additionally, in response to your comments, we have added language in 1200-13-01-.05(8)(p)(2)(i)(III) to further emphasize your concerns regarding consideration of the member’s preferred community and proximity to family and other natural supports.</p>
1200-13-01-.05	Paragraph (8) new Subparagraph (p)	The Tennessee Disability Coalition	CLS Ombudsman – The Coalition strongly supports Members’	The existing Long-Term Care Ombudsman funded through the

	<p>3. CLS Ombudsman</p>		<p>access to Ombudsman services. We believe the CLS Ombudsman Program should be integrated into the existing state Long-Term Care Ombudsman Program. As defined at 1200-13-01-.02 (79), the LTC ombudsman already has a role on behalf of person residing in CBRA settings. A separate Ombudsman Program would be unnecessarily confusing. Additionally, because the existing program is established under the Older American Act, integrating the CLS Ombudsman into the existing Long-Term Care Ombudsman program will assure its integrity and independence of the Program.</p>	<p>Older American’s Act (OAA) is designated to serve residents of licensed long-term care facilities. Currently, in the state of Tennessee, these include: nursing facilities, assisted care living facilities, and adult care homes. The state is prohibited from using OAA funds to serve individuals receiving long term services and supports in their own home. However, TennCare could contract with the LTS Ombudsman Program to provide these services.</p> <p>As you know, we have held meetings with stakeholders to discuss a broader approach to Ombudsman services for individuals receiving HCBS. Those discussions yielded support as well as opposition for leveraging the current Ombudsman program for HCBS.</p> <p>A final decision regarding a comprehensive Ombudsman strategy has not been reached. In the interim, the Bureau of TennCare has contracted with the Area Agencies on Aging and Disability (AAAD) – a well-known community resource and advocate for older adults and individuals with disabilities that is independent from TennCare – to serve as CLS Ombudsman for</p>
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				<p>members receiving the CLS and CLS-FM benefits. In their capacity as CLS Ombudsman, the AAAD will be responsible for: (1) Educating CHOICES members on CLS and CLS-FM services and the role of the CLS Ombudsman; (2) Conducting a pre-transition meeting with CHOICES members, during which the CLS Ombudsman will ensure that members are aware of their rights regarding choice and control in the CLS and CLS-FM service and that members understand how and when to contact the CLS Ombudsman; (3) Conducting CLS and CLS-FM transition surveys with CHOICES members prior to and after their transitions to CLS and CLS-FM residences; and (4) Providing ongoing assistance and advocacy for these members while receiving the service and systems level advocacy related to the CLS/CLS-FM service statewide.</p>
1200-13-01-.05	<p>Paragraph (8) new Subparagraph (p)</p> <p>7. Reimbursement of CLS and CLS-FM Services</p>	The Tennessee Disability Coalition	<p>Reimbursement of CLS and CLS-FM Services – An issue not addressed in the rules, but about which we are concerned, is related to subparagraph (p) 7. Families and individuals have expressed concern about freedom of movement for Members receiving CLS. There needs to be a mechanism for a member to be</p>	<p>We agree that members should have freedom to be away from home, including overnight visits. In response to your comments, language has been added at 1200-13-01-.05(8)(p)(5)(xii) and 1200-13-01-.05(8)(p)(6)(xii) to reflect this choice.</p> <p>TennCare cannot, however, provide reimbursement for CLS or CLS-FM</p>

			<p>away from home, for example making overnight visits to family or friends, without putting a provider at financial risk. Without such a mechanism, there is sometimes pressure to prevent such activity.</p>	<p>services that are not provided. Medicaid funds can only be used to reimburse approved Medicaid services that have been provided. If an individual is spending time away from their CLS residence to be with family and the provider is not providing services, the provider is not entitled to reimbursement. To reimburse a provider for services not rendered would constitute fraud under the False Claims Act. This has also been clarified at 1200-13-01-.05(8)(p)(7)(ii).</p>
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