
 <p>STATE OF TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION BUREAU OF TENNCARE</p>  <p>TENNCARE LONG TERM SERVICES & SUPPORTS OPERATIONAL PROTOCOL</p>	
Protocol Title	Withdrawal from Consumer Direction
Effective Date	July 1, 2012

Background:

In CHOICES, a member’s participation in Consumer Direction of Home and Community Based Services (HCBS) is voluntary. Members may elect to participate in or withdraw from Consumer Direction of HCBS at any time, service by service, without affecting their enrollment in CHOICES, so long as their needs can be safely and effectively met in the home and community setting while participating in Consumer Direction, and at a cost that does not exceed the average cost of reimbursement for nursing facility services that would be provided for the member in a nursing home. If a member withdraws from participation in Consumer Direction (whether voluntarily or involuntarily) but remains enrolled in CHOICES, eligible HCBS shall be provided through the Managed Care Organization’s (MCO’s) contract providers. The MCO and the Fiscal Employer Agent (FEA) shall work together to coordinate as seamless a transition as possible to contract providers when a member withdraws from participation in Consumer Direction of HCBS.

Requirements:

Applicable CRA references include:



2.9.7.9. Withdrawal from Consumer Direction

Applicable MCO-FEA Contract Template references include:

V.E. Withdrawal from Consumer Direction of HCBS

Protocol:

This CHOICES Withdrawal from Consumer Direction Protocol sets forth specific requirements and processes regarding a CHOICES member’s withdrawal from participation in consumer direction.

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Voluntary Withdrawal from Participation in Consumer Direction



A member may withdraw from participation in Consumer Direction **voluntarily**. Reasons for voluntary disenrollment from CHOICES may include (but are not limited to):

- The member or their Representative for Consumer Direction no longer wants the responsibility of employing and supervising staff.
- The member is no longer able to perform the employer responsibilities required for participation in Consumer Direction and does not have or wish to appoint a Representative to assume such responsibilities on their behalf.
- The member’s Representative for Consumer Direction is no longer able or willing to serve in that capacity and the member does not have or wish to appoint another Representative to assume such responsibilities on their behalf.
- The member or their Representative for Consumer Direction is unable to employ and/or maintain a staff of reliable workers to perform needed care.

Upon receipt of a member’s request to voluntarily withdraw from participation in Consumer Direction of HCBS, the MCO shall conduct a face-to-face visit and update the member’s plan of care, as appropriate, and shall transition the member to contract providers as expeditiously as possible as warranted by the member’s circumstances, but no more than ten (10) days following receipt of the member’s request.

Voluntary withdrawal from participation in Consumer Direction shall proceed **only** upon receipt of a statement signed by the member or their authorized Representative, specifying the reason for their request to voluntarily withdraw from participation in Consumer Direction. The signed statement shall be maintained in the member’s file and a copy shall be provided to the FEA.

Because voluntary withdrawal from participation in Consumer Direction is based on a member’s request, notice of adverse action is not required, even when the member has been receiving Companion Care services. In such case, the member is making an informed choice to stop



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receiving Companion Care services and to instead receive other appropriate and cost-neutral HCBS.

Involuntary Withdrawal from Participation in Consumer Direction

An MCO may initiate **involuntary** withdrawal of a member’s participation in Consumer Direction of HCBS when:



- The person is no longer enrolled in TennCare;
- The person is no longer enrolled in either CHOICES Group 2 or CHOICES Group 3;
- The member no longer needs any of the Eligible CHOICES HCBS, as specified in the plan of care;
- The member is no longer willing or able to serve as the Employer of Record for their Consumer-Directed Workers and to fulfill all of the required responsibilities for Consumer Direction, and does not have a qualified Representative who is willing and able to serve as the Employer of Record and to fulfill all of the required responsibilities for Consumer Direction;
- The member is unwilling to sign a Risk Agreement, as applicable, which identifies and addresses any additional risks associated with the member’s decision to participate in Consumer Direction, or the risks associated with the member’s decision to participate in Consumer Direction pose too great a threat to the member’s health, safety and welfare;
- The health, safety and welfare of the member may be in jeopardy if the member or their Representative continues to employ a Worker but the member or Representative does not want to terminate the Worker;
- The member does not have an adequate Back-up Plan for Consumer Direction;

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- The member’s needs cannot be met safely and appropriately in the community while participating in Consumer Direction;
- The member or their Representative for Consumer Direction, or Consumer-Directed Workers the member wants to employ are unwilling to use the services of TennCare’s contracted FEA to perform required Financial Administration and Supports Brokerage functions;
- The member or their Representative for Consumer Direction is unwilling to abide by the requirements of the CHOICES Consumer Direction program;
- A member’s Representative fails to perform in accordance with the terms of the Representative agreement, the health, safety, and welfare of the member is at risk, and the member wants to continue to use the Representative;
- A member has consistently demonstrated that he/she is unable to manage, with sufficient supports (including appointment of a Representative) their services and the Care Coordinator or FEA has identified health, safety and/or welfare issues;
- A Care Coordinator has determined that the health, safety, and welfare of the member may be in jeopardy if the member continues to employ a worker but the member and/or Representative does not want to terminate the worker; and/or
- There are other significant concerns regarding the member’s participation in Consumer Direction, which jeopardize the health, safety, or welfare of the member.

The MCO shall forward to TennCare a written request to involuntarily withdraw a member from participation in Consumer Direction of HCBS. The request shall include the reasons for withdrawing the member’s participation in Consumer Direction, and the measures taken by the MCO and/or the FEA to address and resolve identified issues and concerns prior to such action being initiated.



Involuntary termination of a member’s participation in Consumer Direction may proceed only *after* review and receipt of written approval by TennCare.

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When a member is involuntarily withdrawn from participation in Consumer Direction, such withdrawal is not an adverse action regarding the *services* s/he may receive, unless the member has been receiving Companion Care services, which may be provided only under Consumer Direction. Except for Companion Care services, the member will simply begin receiving eligible HCBS through a contract provider. Such change to the more “traditional” contract provider model of service delivery does not constitute a reduction or adverse action regarding the member’s long-term services and supports and does not, therefore, give rise to due process rights pursuant to the *Grier* Revised Consent Decree.

The only exception is when a member is involuntarily withdrawn from participation in Consumer Direction and has been receiving Companion Care services. In such case, the member’s termination of participation in Consumer Direction will also result in the termination of Companion Care services. While other HCBS that can be cost-effectively provided will be offered as an alternative to Companion Care, notice of action and due process rights pursuant to the *Grier* Revised Consent Decree is nonetheless required. In such case, the reason for termination of Companion Care shall be that the member’s participation in Consumer Direction is being involuntarily terminated and Companion Care is not covered outside of Consumer Direction. A *Grier* non-covered notice template shall be utilized. The legal basis for this action is established in the approved 1115 Demonstration Waiver Amendment, and is set forth in TennCare Rule. Any appeal regarding the termination of Companion Care services based on involuntary termination of participation in Consumer Direction shall be a non-valid factual dispute as it relates to termination of Companion Care services.

However, the member shall also have the right to notice, including a due process right to fair hearing regarding the adverse action which *is* based on a valid factual dispute—namely, the involuntary termination of their participation in Consumer Direction. In addition to the *Grier* notice of action regarding termination of Companion Care services (which shall be issued in accordance with *Grier* notice timelines), the MCO shall, using a template provided by TennCare, issue notice of the member’s involuntary termination from participation in Consumer Direction. While the denial of a member’s request to participate in Consumer Direction or the termination of a member’s participation in Consumer Direction gives rise to notice and due process including the right to fair hearing, such appeals are not *Grier* appeals and shall be processed by the

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TennCare Division of LTSS rather than the TennCare Solutions Unit, which manages medical appeals pertaining to TennCare benefits (i.e., services).



In most cases, the advance notice period for involuntary termination of a member’s participation in Consumer Direction shall be at least ten (10) days, but may be extended when necessary to allow adequate time to transition the member to contract provider services as seamlessly as possible. Should the member appeal their involuntary termination from participation in Consumer Direction prior to the date the action is taken, the member may remain in Consumer Direction during the pendency of the appeal, unless the MCO demonstrates, subject to review and approval by TennCare, that the member will be in imminent and serious jeopardy of harm by continuing to participate in Consumer Direction, in which case, the member may be transitioned to services from a contract provider at the expiration of the advance notice period. If the member prevails at hearing, s/he may then be reinstated to participate in Consumer Direction, and the member’s plan of care, risk assessment and risk agreement, and back-up plan shall be updated accordingly.

Except as noted above, upon expiration of the advance notice period or the resolution of a timely filed appeal, the MCO, in conjunction with the FEA, shall facilitate as seamless a transition as possible to contract providers, with no interruptions or gaps in services.

Enrollment in CHOICES

Voluntary or involuntary withdrawal of a member from Consumer Direction of HCBS shall not generally affect a member’s eligibility for long-term care services or enrollment in CHOICES.

It is also possible, however, if a member can no longer safely participate in Consumer Direction and thus no longer receive Companion Care services and the member is unwilling to accept or does not qualify to receive other community-based residential alternative services, that the MCO will no longer be able to safely and effectively meet the member’s needs in the home and community setting and at a cost that does not exceed the average cost of reimbursement for nursing facility services that would be paid for the member in a nursing home. In such case, the MCO must take action not only to withdraw the member from participation in consumer direction, but to also request the member’s involuntary disenrollment from CHOICES unless the

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member is willing and can be appropriately transitioned to a more appropriate and cost-effective long-term care service delivery setting. Such action shall be processed in accordance with the *CHOICES Disenrollment Protocol*.

Reinstatement into Consumer Direction

Members who have been involuntarily withdrawn may request to be re-instated in Consumer Direction of HCBS. The Care Coordinator shall work with the FEA to ensure that the issues previously identified as reasons for withdrawal from participation in Consumer Direction of HCBS have been adequately addressed prior to re-instatement. All members shall be required to participate in Consumer Direction training programs prior to re-instatement in Consumer Direction of HCBS.

Notification to the FEA

The MCO shall notify the FEA in advance of the member’s withdrawal from participation in Consumer Direction, within twenty-four (24) hours, (i.e., upon receipt of a member’s request to voluntarily withdraw from participation, upon (or even prior to) TennCare’s approval of the MCO’s request to involuntarily terminate the member’s participation in Consumer Direction, or when a member is disenrolled from CHOICES or from TennCare).

However, the MCO shall **not** reduce or terminate the member’s services authorized to be delivered through Consumer Direction, and the FEA shall **not** take action to reduce or terminate the provision of services by or payment to a consumer directed worker for any services that have been authorized by the MCO. Continuation of services in accordance with the member’s plan of care and MCO service authorizations shall continue to be provided until any applicable advance notice period has ended, or upon the expiration of any timely filed appeal regarding the member’s involuntary termination from participation in Consumer Direction (except in instances of imminent and serious jeopardy as described above), and the MCO and FEA have helped to facilitate as seamless a transition as possible to HCBS delivered by contract providers.