Division of TennCare

TennCare II Demonstration

Project No. 11-W-00151/4

Amendment 37

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Amendment 37 to the TennCare II Demonstration

TennCare is an integrated managed care program that provides medical and behavioral health benefits to approximately 1.4 million Tennesseans. Since 2010, TennCare has also provided managed long-term services and supports (MLTSS) to eligible older adults and adults with physical disabilities in the CHOICES program, and beginning in July 2016, to individuals with intellectual and developmental disabilities in the Employment and Community First (ECF) CHOICES program.

In Amendment 37, the State proposes to add two new benefits and two new benefit groups to the ECF CHOICES program. These new benefits are targeted to people with intellectual or developmental disabilities who also have severe co-occurring psychiatric or behavioral health needs. Amendment 37 also includes a number of other refinements to the ECF CHOICES program based on learnings from the first two years of program implementation, as well as feedback from stakeholders.

In Amendment 37, the State is also proposing a change in the populations assigned to the TennCare Select health plan, as well as one technical correction to Attachment B of the demonstration. The State's requested technical correction is presented in Appendix A of this document.

I. Description of the Amendment

Employment and Community First CHOICES

In Amendment 37, the State is proposing a number of changes to ECF CHOICES, TennCare's MLTSS program for individuals with intellectual and developmental disabilities. The proposed changes encompass the addition of two new benefit groups and an array of other adjustments based on learnings from the first two years of the program's implementation.

The changes to the ECF CHOICES program proposed in Amendment 37 are:

1. Establishing two new benefits and two new benefit groups in which these benefits will be available. The two new benefit groups will be knowns as ECF CHOICES Group 7 and ECF CHOICES Group 8.
2. Modifying the expenditure caps for the existing ECF CHOICES Groups 5 and 6. These modifications will give the State additional flexibility to target services based on a person's identified needs and will enhance access to Supported Employment and/or Individual Employment Support benefits.
3. Expanding the existing exception for persons who are transitioning into ECF CHOICES Group 6 from one of the State's 1915(c) waiver programs and who are "at risk" of institutionalization to also apply to persons who are transitioning into ECF CHOICES from an ICF/IID setting.
4. Clarifying that a person who meets the nursing facility level of care criteria may be enrolled in ECF CHOICES Group 5 so long as the person's needs can be safely met in Group 5.
5. Modifications and clarifications to certain ECF CHOICES service definitions.

Each of these proposed changes is discussed in detail below.

1. Establish two new benefits and two new benefit groups in which these benefits will be available.

Intensive Behavioral Family-Centered Treatment, Stabilization and Supports

(Available in the new ECF CHOICES Group 7: Intensive Behavioral Family Supports)

Intensive Behavioral Family-Centered Treatment, Stabilization and Supports (IBFCTSS) is an integrated behavioral health and HCBS benefit targeted to providing intensive in-home, family-centered[1] behavior supports, behavioral-focused supportive home care, caregiver training and support, combined with crisis intervention and stabilization assistance that is available 24 hours a day, 7 days a week, and in-home behavioral respite when needed for a relatively small group of children (under age 21) who live with their family and have intellectual and/or developmental disabilities (I/DD) and severe co-occurring behavioral health and/or psychiatric conditions that place the child or others at imminent and significant risk of serious physical harm (that does not rise to the level of inpatient treatment or for which such treatment would not be appropriate), and threaten the sustainability of the family living arrangement.[2] These are children at imminent and significant risk of placement outside the home (e.g., state custody, hospitalization, residential treatment, incarceration).

Families who have children with I/DD and severe behavioral health and/or psychiatric conditions may be experiencing significant amounts of physical and emotional distress resulting from the continuous needs and risks associated with their child's behavior. While the family and the person may desire to continue living together, they may be faced with the need for a higher level of care (e.g., hospitalization, residential treatment) or other placement outside the home (e.g., State custody, incarceration), if they do not get the assistance needed within the home.

IBFCTSS combines family-centered behavioral health treatment services with family-centered HCBS. Qualified providers are licensed by the Department of Mental Health and Substance Abuse Services for

[1] *Family-centered* behavior supports include working with family members to understand their strengths, needs, preferences, goals and challenges; developing a collaborative relationship with the family; and providing support in a way that helps to engage, strengthen, support, and build the capacity and confidence of the family in order to help ensure safety, well-being, and permanency.

[2] "*Significant risk of harm*" means that serious physical injury to the person or other persons in the home is more than likely to happen imminently (very soon). Note that the words *"imminent"* and *"serious physical"* have been added for clarity, while also clarifying that the harm does not rise to the level of inpatient psychiatric placement or that such placement would not be appropriate. Generally, *"[imminent and] significant risk of [serious physical] harm"* is evidenced by a well-documented, persistent and continuing pattern of behaviors that has resulted in serious physical injury to the person or others, and regarding which previous interventions (also documented) have been unsuccessful in reducing the risk to an acceptable level. The terms "*threaten the sustainability of the family living*" and "*significant risk of placement outside the home*" mean that as a result of the ongoing challenge of trying unsuccessfully to manage the behaviors which place the child and others at *"[imminent and] significant risk of [serious physical] harm*" as described above, the family has recently placed (in the last 180 days) or is actively pursuing placement outside the home for the child in order to keep the child or other family members safe, as evidenced by out-of-home placement, requests for out of home placement, or intervention by DCS. Placement outside the home may include state custody, inpatient hospitalization, residential treatment, and incarceration.

the delivery of behavioral health services and by the Department of Intellectual and Developmental Disabilities for the delivery of HCBS for individuals with I/DD. Behavioral health assessment, planning and treatment components of the new benefit are provided by a Masters level licensed Mental Health professional and tailored to the needs of children with I/DD. Supportive service components (i.e., "Intensive Behavioral Supportive Home Care") are provided by Bachelor level[3] Behavior Support Specialists and organized around the needs of the person served, their preferences, and their stated goals including (a) enhancement of their understanding of and ability to manage and cope with their psychiatric disabilities and/or behavioral challenges; (b) self-care and independent living skills; (c) relationship building and use of leisure time; (d) employment; and (e) economic self-sufficiency and income budget maintenance. These HCBS will utilize a trauma informed care approach and be integrated with treatment services and with ongoing implementation of Behavior Support (or other behavior management) Plans and the PCSP, and will provide supportive services in a way that helps to engage, strengthen, support, and build the capacity and confidence of the family in the consistent and effective implementation of the child's behavior support (or other behavior management) plan in all aspects of daily life[4] in order to help ensure safety, well-being, and permanency. Behavior Support Specialists will have ongoing access to direct guidance from the Masters level mental health professionals who are employed by or contracted with the IBFCTSS provider. Providers of IBFCTSS must maintain a written agreement with or employ a psychiatrist or other appropriately licensed psychiatric professional[5] to facilitate timely access to psychiatric care, as needed. While the service is intended to provide support for family caregivers, it is not intended to supplant the supports provided by natural caregivers, but rather to build the capacity of families to better provide natural supports by teaching, training and supporting them in their caregiving role.

Outcomes for persons receiving IBFCTSS include:

- Improve the person's quality of life and community integration through support and development of family capacity to consistently and effectively implement the behavior support (or other behavior management) plan throughout daily tasks;
- Improve the family's quality of life by reducing the physical and emotional stress of severe behavioral outbursts and crises, and increasing their capacity to support their child;
- Maintain community tenure by lessening the risk for placement outside the home; and
- Decrease the cost of care and life disruptions associated with crisis events and out-of-home placement (e.g., emergency department visits, hospitalization, residential treatment facility, State custody).

[3] Behavior Support Specialists are expected to have substantial education, training, and experience in providing these types of supports to persons with I/DD in a family-centered way (i.e., a Bachelor's degree in a relevant field plus at least one year experience working with individuals with I/DD who have challenging behavior support needs, including internship experience. Equivalent experience may be substituted for educational requirements, when appropriate—e.g., an Associates' degree with three years of experience, or five years of experience if no post-secondary degree.) TennCare may establish alternative competency-based requirements to deliver these services, while ensuring the appropriate level of expertise to deliver high quality and effective supports.

[4] IBFCTSS is an integrated family-centered behavioral health treatment and home and community-based service, not an educational or related service. These benefits will not be provided in education settings. However, the MCO and IBFCTSS provider is expected to coordinate with the Local Education Agency to help ensure consistent implementation of behavior support (or other behavior management) plans across daily environments.

[5] A child and adolescent psychiatrist with experience serving children and youth with I/DD is preferred.

Group 7

(Intensive Behavioral Family Supports) – Children under age twenty one (21) who live at home with family caregivers and have I/DD and severe co-occurring behavioral health and/or psychiatric conditions that place the child or others at imminent and significant risk of serious physical harm (that does not rise to the level of inpatient treatment or for which such treatment would not be appropriate), significantly strain the family's ability to adequately respond to the child's needs, threaten the sustainability of the family living arrangement, and place the child at imminent and significant risk of placement outside the home (e.g., State custody, hospitalization, residential treatment, incarceration). As a condition of enrollment, the child's family must provide informed consent, including a commitment to actively participate in a family-centered therapeutic approach to treatment and support. The child must meet the nursing facility level of care and need and receive HCBS as an alternative to NF Care. To qualify in this group, an individual must be SSI eligible or qualify in the ECF CHOICES 217-Like Demonstration Group, or upon implementation of Phase 2, the ECF CHOICES Working Disabled Demonstration Group. This group shall be implemented by MCO based on TennCare's determination of the MCO's readiness to deliver services statewide and in accordance with program requirements.

In addition to IBFCTSS, benefits available to individuals enrolled in ECF CHOICES Group 7 (Intensive Behavioral Family Supports) will include (subject to limitations specified in Attachment G of the TennCare demonstration):

- Employment services/supports, as follows:
  - Exploration
  - Benefits counseling
  - Discovery
  - Situational observation and assessment
  - Job development plan or self-employment plan
  - Job development or self-employment start up
  - Job coaching for individualized, integrated employment or self-employment
  - Co-worker supports
  - Career advancement
  - Supported employment—small group
  - Integrated employment path services
- Community integration support services
- Community transportation
- Independent living skills training
- Assistive technology, adaptive equipment and supplies
- Minor home modifications
- Community support development, organization and navigation
- Family caregiver education and training
- Family-to-family support
- Decision making supports and options
- Health insurance counseling/forms assistance

Expenditures for individuals enrolled in Group 7 will be subject to an expenditure cap. The expenditure cap for Group 7 will be based on the comparable cost of institutional care. While integrated in the delivery system, behavioral health services (other than IBFCTSS) will not be counted against the expenditure cap.

The enrollment target range for this group will be:

Benefit Group	Lower Limit	Upper Limit
Intensive Behavioral Family Supports (ECF CHOICES Group 7)	25	50

Intensive Behavioral Community Transition and Stabilization Services

(Available in the new ECF CHOICES Group 8: Comprehensive Behavioral Supports for Employment and Community Living)

Intensive Behavioral Community Transition and Stabilization Services (IBCTSS) is an integrated benefit that combines generally short-term intensive 24/7 community-based residential services with behavioral health treatment and supports to assist certain adults aged 18 years and older with intellectual and/or developmental disabilities (I/DD) and severe behavioral and/or psychiatric conditions who are transitioning out of a highly structured and supervised environment to achieve and maintain stable, integrated lives in their communities.[6]

People with I/DD and co-occurring severe behavioral health conditions who have been either living in their family's home or residing in a setting that provided a high degree of structure, supervision, and/or treatment may experience significant challenges when moving to a more independent life in the community. Sometimes the very structure, supervision, and treatment they were receiving contained the severe behaviors and limited the factors that may create the challenges to be faced in the community. For example, a person who has been incarcerated for months following an aggravated assault has not had the opportunity to be in situations that may have been a factor in that assaultive behavior. Thus, planning for a return to the community with the supports and services in place to ensure the person's and others' safety is actually hindered by the inability to adequately assess the person's needs in a community environment. Likewise, a person transitioning from a long-term residential or inpatient setting may still have significant psychiatric and behavioral needs, though s/he no longer meets criteria for a continued inpatient stay. While in the hospital, the person had limited and supervised social interactions, so how s/he may respond to stressors and freedoms in a community setting is largely an unknown.

IBCTSS offers a short-term (initial authorization period of up to 90 days with limited extensions) behavioral-focused residential planning, stabilization and treatment program that addresses the mental health and stabilization needs of: 1) adults[7] with severe psychiatric or behavioral symptoms whose family is no longer capable of supporting the individual due to the severity and frequency of behaviors; 2) emerging young adults (age 18-21) with I/DD and severe psychiatric or behavioral symptoms aging out of the foster care system; and 3) adults with I/DD and severe psychiatric or behavioral symptoms following a crisis event and/or psychiatric inpatient stay and/or transitioning out of the criminal justice

[6] In rare instances, IBCTSS may be utilized to support longer term implementation of a plan to fade from high intensity community-based supports following a transition or when necessary to support continued stability in the community and diversion from (re)institutionalization. A tiered structure of reimbursement will provide for step-down intensity of supports in these limited instances.

[7] As it relates to ECF CHOICES, "adults" generally refers to individuals no longer eligible for the EPSDT benefit, i.e., individuals age 21 and older. However, IBCTSS and enrollment into ECF CHOICES Group 8 may be permitted for emerging young adults, and on a case-by-case basis, for late adolescents with severe psychiatric or behavioral symptoms in one of the circumstances described above in order to avoid placement in DCS custody.

system or a long-term (two or more years) institutional placement (including residential psychiatric treatment facility). The purpose of Comprehensive Behavioral Supports for Employment and Community Living (Group 8) is to help stabilize the individual in the community and to help plan and prepare for transition to the appropriate ECF CHOICES Group (likely to be Group 6 in most cases), once it is possible to conduct appropriate assessments and determine the level of services and supports that will be needed going forward.

Qualified providers are licensed by the Department of Mental Health and Substance Abuse Services for the delivery of behavioral health services and by the Department of Intellectual and Developmental Disabilities for the delivery of residential services for individuals with I/DD. Behavioral health assessment, planning and treatment components of the new benefit are provided by a Masters level licensed Mental Health professional and tailored to the needs of individuals with I/DD. Residential service components are provided by Bachelor level[8] Behavior Support Specialists with training and expertise in serving individuals with I/DD who have a severe behavioral and/or psychiatric condition. This team provides comprehensive person-centered (including behavior supports) planning; coordination with the treating mental health practitioner (i.e., psychiatrist or other licensed prescriber); and intensive therapeutic support and intervention, up to 24 hours a day, as needed, across the person's day-to-day life domains, including home, school,[9] work[10] and community, in order to achieve stability, support the person in building healthy relationships, and successfully plan and transition to other long-term services and supports with appropriate behavioral health treatment services. Providers of IBCTSS must maintain a written agreement with or employ a psychiatrist or other appropriately licensed psychiatric professional to facilitate timely access to psychiatric care, as needed.

Outcomes for persons receiving IBCTSS include:

- Facilitate safe transition to and stabilization in the community;
- Assess and plan for successful transition to an appropriate level of community-based services and supports in a stable community-based living arrangement;
- Improve the person's quality of life and increase the person's independence and integration through consistent implementation of the person-centered support plan and behavior support plan;
- Establish and maintain community tenure by lessening the risk for incarceration and/or high-intensity treatment in a facility (e.g., inpatient psychiatric or residential treatment facility); and
- Decrease the cost of care and life disruptions associated with crisis events, emergency department visits, property damage, physical injuries, and high intensity treatment.

[8] Behavior Support Specialists are expected to have substantial education, training, and experience in providing these types of supports to persons with I/DD in a family-centered way (i.e., a Bachelor's degree in a relevant field plus at least one year experience working with individuals with I/DD who have challenging behavior support needs, including internship experience. Equivalent experience may be substituted for educational requirements, when appropriate—e.g., an Associates' degree with three years of experience, or five years of experience if no post-secondary degree.) TennCare may establish alternative competency-based requirements to deliver these services, while ensuring the appropriate level of expertise to deliver high quality and effective supports.

[9] IBCTSS is an integrated behavioral health treatment and home and community-based service, not an educational or related service. These benefits are not provided for individuals under age 22 in secondary education settings. However, the MCO and IBCTSS provider is expected to coordinate with the Local Education Agency to help ensure consistent implementation of behavior support (or other behavior management) plans across daily environments.

[10] The IBCTSS provider is responsible for the provision of therapeutic support and intervention during the provision of employment services/supports, as needed.

Group 8

(Comprehensive Behavioral Supports for Employment and Community Living) – Adults age twenty-one (21) and older, unless otherwise specified by TennCare, with I/DD and severe behavioral and/or psychiatric conditions, who are transitioning out of a highly structured and supervised environment, meet nursing facility level of care, and need and are receiving specialized services for I/DD. To qualify for enrollment, a person's psychiatric symptoms or behaviors must place the person or others at imminent and significant risk of serious physical harm (that does not rise to the level of inpatient treatment or for which such treatment would not be appropriate), and necessitate continuous monitoring and supervision by 24-hour staff to ensure the person's safety and/or the safety of others. (The intensity of supports needed is expected to lessen as the person achieves stabilization in the community and readies for transition to a different benefit group.) To enroll in this group, a person must be in one of the following target groups: 1) adults with severe psychiatric or behavioral symptoms whose family is no longer capable of supporting the individual due to the severity and frequency of behaviors; 2) emerging young adults (age 18-21) with I/DD and severe psychiatric or behavioral symptoms aging out of the foster care system; and 3) adults with I/DD and severe psychiatric or behavioral symptoms following a crisis event and/or psychiatric inpatient stay and/or transitioning out of the criminal justice system or a long-term institutional placement (including residential psychiatric treatment facility). To qualify in this group, an individual must be SSI eligible or qualify in the ECF CHOICES 217-Like Demonstration Group, or upon implementation of Phase 2, the ECF CHOICES Working Disabled Demonstration Group. On a case-by-case basis, TennCare may grant an exception to permit adults ages eighteen (18) to twenty (20) with I/DD not living at home with family, including young adults with I/DD transitioning out of State custody, to enroll in Group 8, if they meet eligibility criteria. This group shall be implemented by MCO based on TennCare's determination of the MCO's readiness to deliver services statewide and in accordance with program requirements.

In addition to IBCTSS, benefits available to individuals enrolled in ECF CHOICES Group 8 (Comprehensive Behavioral Supports for Employment and Community Living) will include (subject to limitations specified in Attachment G of the TennCare demonstration):

- Employment services/supports, as follows:
  - Exploration
  - Benefits counseling
  - Discovery
  - Situational observation and assessment
  - Job development plan or self-employment plan
  - Job development or self-employment start up
  - Job coaching for individualized, integrated employment or self-employment
  - Co-worker supports
  - Career advancement
  - Supported employment—small group
  - Integrated employment path services
- Assistive technology, adaptive equipment and supplies
- Minor home modifications
- Decision making supports and options
- Individual education and training
- Peer-to-peer person-centered planning, self-direction, employment and community support and navigation
- Specialized consultation and training

- Adult dental services

Expenditures for individuals enrolled in Group 8 will be subject to an expenditure cap. The expenditure cap for Group 8 will be based on the comparable cost of institutional care, which may, as determined appropriate, take into account the cost of short-term inpatient psychiatric hospitalization or other restrictive treatment setting for which the MCO would otherwise be responsible for payment. While integrated in the delivery system, behavioral health services (other than IBCTSS) will not be counted against the expenditure cap.

The enrollment target range for this group will be:

Benefit Group	**Lower Limit**	**Upper Limit**
Comprehensive Behavioral Supports for Employment and Community Living (ECF CHOICES Group 8)	25	50

2. Modify Expenditure Caps for ECF CHOICES Groups 5 and 6

Proposed Changes in Expenditure Cap for ECF CHOICES Group 5

Currently, the special terms and conditions of TennCare's approved 1115 demonstration waiver provide for an expenditure cap of $30,000 for members enrolled in ECF CHOICES Group 5, and an exception based on emergency needs up to $6,000 per member per year.

Based on experience from the first two years of the program's implementation, TennCare proposes to amend the demonstration to provide additional flexibilities in the expenditure cap for ECF CHOICES Group 5 as follows:

- Consistent with the HCBS Settings Rule, for a Group 5 member receiving Community Living Supports, TennCare requests authority to exceed the applicable expenditure cap when necessary to permit access to Supported Employment and/or Individual Employment Support benefits.

- For a Group 5 member requiring a Community Stabilization and Transition rate of reimbursement for Community Living Supports, TennCare requests authority to exclude the higher cost of transitional Community Living Supports from the Group 5 member's expenditure cap, for the year in which the transitional Community Living Supports are required, when a member is expected to be safely and appropriately served within the Group 5 expenditure cap, once transition to the appropriate ongoing Community Living Supports level occurs and the transitional rate ends.[11]

[11] CLS Community Stabilization and Transition rates of reimbursement are for people who have been in highly structured (or supports intensive) settings, or for Emergency Placement for individuals referred by Adult Protective Services who need immediate and temporary housing supports because their home is uninhabitable or they have been subject to abuse and neglect to the degree that their immediate safety, health and welfare is in jeopardy. The purpose of such higher short-term rates of reimbursement for CLS is to allow time for stabilization, assessment and planning, and transition to the appropriate ongoing level of CLS reimbursement.

Proposed Changes in Expenditure Caps for ECF CHOICES Group 6

Currently, the special terms and conditions of TennCare's approved 1115 demonstration waiver provide for the following tiers of expenditure caps in ECF CHOICES Group 6:

ECF CHOICES Groups Annual Expenditure Caps Chart

GROUP 6 Level of Need	**ID**	**DD**
Low to moderate needs	$45,000	$45,000
High needs	$60,000	$60,000
Exceptional medical and/or behavioral needs	Average annualized cost ICF/IID	Average annualized cost of NF + Specialized Services **

Based on experience from the first 18 months of the program's implementation, TennCare proposes to adjust expenditure caps in ECF CHOICES Group 6 as follows:

The expenditure cap for low-to-moderate needs will be divided into two separate expenditure caps, one for low needs and one for moderate needs. This will allow the State to better target resources based on the needs of each group.

Group 6 Level of Need (NO exceptional medical or behavioral needs)	**Current Expenditure Cap (ID and DD)**	**Proposed New Expenditure Cap (ID and DD)**
Low (l)	$45,000	$45,000
Moderate (m)	$45,000	$67,500
High (h)	$60,000	$88,250

In addition, on a case-by-case basis and applicable only to an ECF CHOICES Group 6 member who is assessed to have low, moderate, or high needs only (but not exceptional medical or behavioral needs), TennCare requests authority to grant an exception for emergency or one-time (including transitional assessment) needs up to seven thousand five hundred dollars ($7,500) per calendar year. Any exception that may be granted will apply only for the calendar year in which the exception is approved.

Finally, also on a case-by-case basis and applicable only to an ECF CHOICES Group 6 member who is assessed to have low, moderate, or high needs only (but not exceptional medical or behavioral needs) and consistent with the HCBS Settings Rule, TennCare requests authority to exceed the applicable expenditure cap when necessary to permit access to Supported Employment and/or Individual Employment Support benefits.

Except for new benefit groups 7 and 8, expenditure caps for individuals with exceptional medical and/or behavioral needs, which are based on the comparable cost of institutional care, remain unchanged.

GROUP 6 Level Of Need	**ID**	**DD**
Exceptional medical and/or behavioral needs	Average annualized cost	Average annualized cost of NF + Specialized Services **

	of ICF/IID	

3. Expand NF LOC exception to include persons transitioning from an ICF/IID

Under the current terms and conditions for ECF CHOICES, an individual must meet nursing facility (NF) level of care criteria in order to enroll in ECF CHOICES Group 6. However, pursuant to STC 32.c.i., "For enrollment in Comprehensive Supports for Employment and Community Living (ECF CHOICES Group 6), the State may grant an exception to individuals transitioning from the Statewide or Comprehensive Aggregate Cap Waivers who are 'at risk' of institutionalization and meet the ICF/IID but not the NF level of care." The State proposes to expand this exception to also include persons transitioning from an ICF/IID. This will help to ensure the availability of HCBS alternatives to institutional care that will allow individuals to be served in the most integrated setting appropriate. The State also proposes to apply this exception to the newly proposed Group 8 (Comprehensive Behavioral Supports for Employment and Community Living).

4. Clarify that a person who meets NF LOC may also be enrolled in Group 5 so long as the person's needs can be safely met in Group 5

In order to advance the goals of the TennCare II demonstration, Tennessee "[p]rovides different benefit packages to individuals needing HCBS in order to best meet their needs."[12] By targeting the most comprehensive benefit package to adults determined to meet institutional level of care, Tennessee is able to provide HCBS more cost-effectively in order to serve more people with intellectual and developmental disabilities. However, there are instances in which an adult seeking enrollment into ECF CHOICES meets NF level of care, but only requires the level of services and supports available in ECF CHOICES Group 5: Essential Supports for Employment and Independent Living. Further, there are instances in which all available Group 6 slots may be filled, but the person qualifies to enroll in an available slot in ECF CHOICES Group 5. And finally, pursuant to legislation passed by the Tennessee General Assembly, Tennessee Code Annotated, Section 33-5-112:

> *(a) An eligible person with an intellectual disability who is on the referral list for services and whose older custodial parent, or custodial caregiver, attains seventy-five (75) years of age shall be enrolled in employment and community first choices Group 5 or a similarly capped home and community based services program within six (6) months of the person's parent or caregiver attaining that age.*
>
> *(b) An eligible person with a developmental disability other than an intellectual disability who is on the referral list for services and whose older custodial parent, or custodial caregiver, attains eighty (80) years of age shall be enrolled in employment and community first choices Group 5 or a similarly capped home and community based services program within six (6) months of the person's parent or caregiver attaining that age.*

In each such instance, even when a person meets NF LOC, the State requests flexibility to enroll the person into CHOICES Group 5, provided that the person's needs can be safely and effectively met with the benefits available in that group.

[12] See Section II of the TennCare II demonstration.

5. Proposed changes in certain ECF CHOICES service definitions in Attachment G

The State proposes a number of modifications and clarifications to the ECF CHOICES service definitions set forth in Attachment G of the demonstration waiver. These modifications are illustrated in a document accompanying this demonstration amendment.

TennCare Select

In Amendment 37, the State is also proposing to change the populations assigned to TennCare Select. TennCare Select is a prepaid inpatient health plan (PIHP) which operates in all areas of the state and which administers the same package of covered benefits as the MCOs. TennCare Select enrolls the TennCare Medicaid and TennCare Standard populations specified in STC 37 of the TennCare demonstration. One of the populations included in TennCare Select is children who are receiving Supplemental Security Income (SSI).

The State proposes to change its approach to new enrollment of children receiving SSI. Rather than being automatically assigned to TennCare Select upon their initial enrollment, these enrollees will be presented with the same choice of managed care plans as virtually all other TennCare members when they enroll in TennCare. This change will benefit these enrollees by engaging them more actively in choosing their managed care plan upon their initial enrollment in TennCare, rather than passively enrolling them in a pre-selected plan. Children receiving SSI who are already enrolled in TennCare Select will remain in that plan unless they choose to disenroll from TennCare Select and enroll in another managed care plan.

II. Description of the Proposed Health Care Delivery System, Eligibility Requirements, Benefit Coverage, and Cost Sharing

Amendment 37 will result in the addition of two new benefits to the ECF CHOICES program: Intensive Behavioral Supportive Home Care and Intensive Behavioral Community Transition and Stabilization Services. These new benefits are described in detail above. These benefits will be added to the array of medical, behavioral health, and ECF CHOICES benefits administered by the managed care organizations participating in the TennCare demonstration.

TennCare eligibility will continue to be determined in accordance with Section IV of the TennCare demonstration. To enroll in ECF CHOICES Group 7, the individual may be SSI-eligible or may qualify in the ECF CHOICES 217-Like HCBS Group (i.e., individuals with I/DD who would be Medicaid-eligible under Section 1902(a)(10)(A)(ii)(VI) and 42 CFR § 435.217, if the services they received under ECF CHOICES were provided under a Section 1915(c) waiver). To qualify in ECF CHOICES Group 8, the individual may be SSI-eligible, may qualify in the ECF CHOICES 217-Like HCBS Group, or upon implementation of ECF CHOICES Phase 2, could potentially qualify in the ECF CHOICES Working Disabled Group. Enrollment into any of the ECF CHOICES demonstration eligibility categories is conditioned on meeting all applicable eligibility and enrollment criteria for the ECF CHOICES group in which the person will be enrolled, the availability of a slot within the established enrollment target for the group, and the need for and receipt of ECF CHOICES HCBS.

Enrollees receiving benefits in ECF CHOICES Groups 7 and 8 will not be subject to cost sharing. Section VII of the TennCare demonstration (which specifies groups subject to/not subject to cost sharing) will be updated to reflect the addition of these two benefit groups.

The State's proposed change to the TennCare Select assignment process will have no impact on benefits, eligibility, or cost sharing.

III. Expected Impact on Enrollment and Expenditures

Amendment 37 will likely result in a slight increase in enrollment in the TennCare demonstration. This is because a person who qualifies for and receives HCBS may qualify in one or more of the demonstration eligibility categories approved under the demonstration. Persons enrolled into ECF CHOICES Groups 7 or 8 could be SSI-eligible, but if not, could qualify not just for HCBS, but also for Medicaid by virtue of enrolling into ECF CHOICES. Any increase in enrollment will be consistent with the enrollment target ranges for ECF CHOICES Groups 7 and 8 presented in Section I.

Expenditures will also increase based on the addition of the two new ECF CHOICES benefits groups. The projected cost of this increase is $10 million in annual aggregate expenditures. A spreadsheet illustrating the anticipated impact of Amendment 37 on expenditures under the TennCare demonstration accompanies this demonstration amendment.

IV. Waiver and Expenditure Authorities Requested

All waiver and expenditure authorities currently approved for the TennCare demonstration will continue to be in effect. Since this amendment reflects adjustments to already approved program components, no additional waiver or expenditure authorities are needed.

V. Research Hypotheses and Evaluation

The State's proposed evaluation design focuses primarily on MLTSS program components of the demonstration: CHOICES and ECF CHOICES. The State will consider whether the program changes requested in Amendment 37 will require additional adjustments to the evaluation design.

VI. Documentation of Public Notice and Input

The State has used multiple mechanisms for notifying the public about Amendment 37 and for soliciting public input on the amendment. These public notice and input procedures are informed by—and comply with—the requirements specified at 42 CFR § 431.408.

The State's public notice and comment period began on August 31, 2018, and lasted through October 1, 2018. During this time, a comprehensive description of the amendment to be submitted to CMS was made available for public review and comment on an amendment-specific webpage on the TennCare

website. An abbreviated public notice—which included a summary description of Amendment 37; the locations, dates, and times of two public hearings; and a link to the full public notice on the State's amendment-specific webpage—was published in the newspapers of widest circulation in Tennessee cities with a population of 50,000 or more. TennCare disseminated information about the proposed amendment, including a link to the relevant webpage, via its social media accounts (e.g., Facebook, Twitter). TennCare also notified the members of the Tennessee General Assembly of Amendment 37 via an electronically transmitted letter.

The State held two public hearings to seek comments on Amendment 37. The first hearing took place on September 10, 2018, at 9:00 a.m. Central Time at the TennCare Building, 310 Great Circle Road in Nashville. The second public hearing took place on September 11, 2018, at 1:00 p.m. at the Looby branch of the Nashville Public Library, 2301 Rosa L. Parks Boulevard in Nashville. Telephonic access to the September 10 hearing was offered to individuals who were unable to attend in person and who notified the State of their desire to participate by telephone.

Tennessee has no federally recognized Indian tribes, Indian health programs, or urban Indian health organizations with which to consult or from which to seek advice.

A summary of comments received during the public notice and comment period is included as Appendix B of this document.

Appendix A

Technical Correction to the TennCare Demonstration

Technical Correction to the TennCare Demonstration

Attachment B to the TennCare demonstration sets forth definitions and coverage limitations applicable to home health services provided under the demonstration. As specified in Attachment B, home health services are generally limited to 27 hours per week of nursing care, and 35 hours per week of combined nursing services and home health aide services. However, on a case-by-case basis, the weekly total for nursing services may be increased to 30 hours and the weekly total for nursing services and home health aide care combined may be increased to 40 hours "for patients qualifying for Level 2 skilled nursing care."

On July 1, 2018, the State implemented a new reimbursement methodology for nursing facility providers participating in TennCare. Under the State's new methodology, the distinction between "Level 1" (intermediate care) and "Level 2" (skilled nursing care) has been eliminated in favor of a single blended rate.

In order to ensure clarity and consistency in use of language, the State requests to modify the language in Attachment B to remove the obsolete references to Level 2 skilled nursing care. This is a change in terminology only, not a change in policy. Individuals who meet the State's criteria for skilled nursing care will continue to be able to access the additional hours of home health services specified in Attachment B. The State has not changed its criteria for skilled nursing care.

The State's requested change is illustrated below:

1. Home health services shall include any of the following services ordered by a treating physician and provided by a licensed home health agency pursuant to a plan of care at an enrollee's place of residence.

    a. Part-time or intermittent nursing services.

        (1) To be considered "part-time and intermittent," nursing services must be provided as no more than one visit per day, with each visit lasting less than eight (8) hours, AND no more than 27 total hours of nursing care may be provided per week. In addition, nursing services and home health aide services combined must total less than or equal to eight (8) hours per day and 35 or fewer hours per week. On a case-by-case basis, the weekly total for nursing services may be increased to 30 hours and the weekly total for nursing services and home health aide care combined may be increased to 40 hours for patients ~~qualifying for Level 2 skilled nursing care~~ determined by their MCO to need one or more of the skilled or rehabilitative services specified in state rules and in accordance with the criteria set forth therein. The above limits may be exceeded when medically necessary for children under the age of 21.

        (2) Part-time or intermittent nursing services are not covered if the only skilled nursing function needed is administration of medications on an as needed basis. Part-time or skilled nursing services may include medication administration; however, a nursing visit will not be extended in order to administer medication or perform other skilled nursing functions at more than one point during the day, unless skilled nursing services are medically necessary throughout the intervening period.

    b. Home health aide services.

(1) Home health aide care must be provided as no more than two visits per day with care provided less than or equal to eight (8) hours per day. Nursing services and home health aide services combined must total less than or equal to eight (8) hours per day and 35 or fewer hours per week. On a case-by-case basis, the weekly total may be increased to 40 hours for patients ~~qualifying for Level 2 skilled nursing care~~ determined by their MCO to need one or more of the skilled or rehabilitative services specified in state rules and in accordance with the criteria set forth therein.

(2) The above limits may be exceeded when medically necessary for children under the age of 21.

Appendix B

Summary of Public Comments Received

1. Entity - Denise Hoolhorst (Tristen Shackelford's mom) (615) 801-2904	**Comments on amendment 37**
One of the major issues for us is months with 31 days. I would like to suggest that we have WEEKLY budgets (52 each year) vs monthly budgets since when you have 24/7 care, the money runs out on day 30 and there are no funds for day 31 on long months. And you don't allow carry-over from short months. Thank you for that consideration!	
Thank you for your comment. TennCare's 1115 waiver does not specify the duration (e.g., annual, monthly) of service budgets in Consumer Direction; nor does this amendment propose to establish the duration of service budgets in Consumer Direction. The monthly budget for Personal Assistance, Supportive Home Care and Community Transportation in Consumer Direction are set forth in TennCare Rule 1200-13-01-.31(8). A shorter budget period (e.g., weekly) is generally not preferred because it further limits flexibility for individuals receiving services through Consumer Direction to use services as they are needed. We will look into this issue to determine if there are any adjustments that could be made to address your concern while not limiting flexibility for other Consumer Direction participants. If so, a rule change might be required, but it would not require a waiver amendment.	
2. Entity - TNCO	**Comments on amendment 37**
Page 2 First Paragraph | Last Line These are children at significant risk of placement outside the home (e.g., state custody, hospitalization, residential treatment, incarceration.) **Comment: Change wording to "including, but not limited to state custody……."**	
Thank you for the suggestion. "E.g.," is used to give examples which are not necessarily exhaustive. However, generally we expect that applicable placements for children who would qualify for Group 7 include those listed, i.e., state custody, hospitalization, residential treatment, and incarceration.	
3. Entity -TNCO	**Comments on amendment 37**
Page 2 Third Paragraph IBSHC and delivery process **Comment: Need more clarification on exactly how this will look.**	
Thank you for this request. An 1115 demonstration waiver does not generally specify operational level details regarding how a service is implemented. However, based on public input, some adjustments are being made in the final waiver amendment to further clarify expectations regarding this benefit, which will be renamed to Intensive Behavioral Family Centered Treatment, Stabilization and Supports (IBFCTSS). IBFCTSS is an integrated behavioral health and HCBS benefit which combines family-centered behavioral health treatment services with family-centered HCBS. Behavioral health assessment, planning and treatment components of the new benefit are provided by a Masters level licensed Mental Health professional. Supportive service components (i.e., "Intensive Behavioral Supportive Home Care") will be organized around the needs of the person served, their preferences, and their stated goals including (a) Enhancement of their understanding of and ability to manage and cope with their	

psychiatric disabilities and/or behavioral challenges; (b) Self-care and independent living skills; (c) Relationship building and use of leisure time; (d) Employment; and (e) Economic self-sufficiency and income budget maintenance. However, these HCBS will utilize a trauma informed care approach and be integrated with ongoing implementation of Behavior Support plans and the PCSP and will provide supportive services in a way that helps to engage, strengthen, support, and build the capacity and confidence of the family in order to help ensure safety, well-being, and permanency.

Qualified persons to deliver these supportive services, called Behavior Support Specialists are expected to have substantial education, training, and experience in providing these types of supports to persons with I/DD in a family-centered way (i.e., a Bachelor's degree in a relevant field plus at least one year experience working with individuals with I/DD who have challenging behavior support needs, including internship experience. Equivalent experience may be substituted for educational requirements, when appropriate—e.g., an Associates' degree with three years of experience, or five years of experience if no post-secondary degree.)

Additional details regarding the benefit, including provider qualifications and expectations will be specified in TennCare Rule and other documents.

4. Entity -TNCO	**Comments on amendment 37**

Page 3
Employment services.
Comment: It does not specify at what age these services would be available to the child

Thank you for this question. TennCare Rule 1200-13-01 specifies the age at which each employment services may be offered (generally, certain pre-employment services are offered at age 14, with other services available at age 16). Age restrictions for each service are the same across benefit groups, including new Groups 7 and 8.

5. Entity -TNCO	**Comments on amendment 37**

Page 3-4
Group 8
Provider requirements and expectations for service delivery
Comment: Will there be additional provider requirements for groups 8? For example, it appears there will be requirements over and above what is currently accepted for DSP's, as well as requirements for BA's and Master level staff. (Comment also applies to Group 7.)
Comment: IBCTSS - It sounds like this support includes residential placement during the provision of this service but it is unclear to me?
Comment: Team lead by Master's level mental health clinician and bachelor's level mental health workers OR qualified DSPs with training and expertise… They are not specifying behavior analysts so this could include any master's level mental health clinicians? Does the "qualified" DSP simply mean DSP with all current training as well as training/expertise in severe behavioral/psychiatric issues? This should be more clear

Thank you for these comments and questions.

IBCTSS will integrate generally short-term intensive 24/7 community-based residential services

with behavioral health treatment and supports that are designed to help certain adults with I/DD and severe behavioral and/or psychiatric conditions transition from a highly structured and supervised environment into stable integrated community settings.

Yes, both Groups 7 and 8 integrate HCBS with behavioral health treatment supports. Thus, a dual license will be required—the appropriate DIDD license and the appropriate DMHSAS license. TennCare will require that behavioral health assessment, planning and treatment components of the new IBFCTSS and IBCTSS are provided by a Masters level licensed Mental Health professional. Supportive service components (IBSHC and residential components of the IBCTSS benefit) will be integrated with ongoing implementation of Behavior Support plans and in the case of IBFCTSS, will provide supportive services in a way that helps to engage, strengthen, support, and build the capacity and confidence of the family in order to help ensure safety, well-being, and permanency. Qualified persons to deliver these supportive services, called Behavior Support Specialists must have a Bachelor's degree in a relevant field plus at least one year experience working with individuals with I/DD who have challenging behavior support needs (including internship experience). Equivalent experience may be substituted for educational requirements, when appropriate—e.g., an Associates' degree with three years of experience, or five years of experience if no post-secondary degree. TennCare plans to develop a competency-based training program that may provide for additional flexibility in qualifications of supportive service staff, based on demonstration of competencies required to provide these services.

6. Entity -TNCO	**Comments on amendment 37**

Page 6-7
Proposed changes in expenditure caps for Group 6
The expenditure cap for low-to-moderate needs will be divided….
Comment: Thank you for this increase.

Thank you. These changes are responsive to stakeholder feedback.

7. Entity -TNCO	**Comments on amendment 37**

Appendix A
Technical Correction to the TennCare Demonstration
Redlined change to home health nursing services
Comment: There is no specific State rule referenced in this section. It would be helpful to state the specific rule in the document for easier review and comment.

This is a technical edit which aligns the waiver with the new reimbursement methodology for nursing facilities, which as noted, eliminates the former distinction between "intermediate" and "skilled" levels of nursing facility reimbursement. Skilled and/or rehabilitative services that were previously used to establish eligibility for the "skilled" level of nursing facility reimbursement, and which will continue to be used to determine eligibility for additional hours of home health services are currently described in TennCare Rule 1200-13-01-.10(5).

8. Entity -TNCO	**Comments on amendment 37**

General Comment
Lower Limit and Upper Limit
Benefit Groups have a lower limit of 25 and an Upper Limit of 50 throughout the document.

<u>Comment:</u> Need more clarification on what these numbers mean. Are these the targeted number of people per FY?
Thank you for this question. As described in the approved 1115 demonstration waiver, "The upper limit will serve as a ceiling on the enrollment target; TennCare will not set the target above the upper limit. The lower limit will serve as an enrollment floor; TennCare will not set the target below the lower limit." Enrollment targets are established for each program (i.e., fiscal year) based on the funding approved by the General Assembly for that year. For FY2019, TennCare received funding for up to 100 individuals to be served in Groups 7 & 8 (50 individuals in each Group). However, because of the time required to obtain CMS approval of a waiver amendment and to develop capacity to provide the new benefits, we will begin with an enrollment target of 25 in each Group. The enrollment target for each Group may be increased later in the year or at the start of FY 2020 as need for the benefits and statewide capacity to provide the benefits increase (up to a total of 50 in each Group).
9. Entity -DRT **Comments provided below on amendment 37**
Disability Rights Tennessee (DRT) is very thankful for the opportunity to publically comment on Amendment 37. We always appreciate these opportunities, especially when the proposed changes we are commenting on will lead to increased opportunities for people with disabilities in the State of Tennessee. DRT is in support of the addition of Group 7 and Group 8 to the ECF CHOICES program. Individuals with disabilities who experience co-occurring psychiatric or behavioral health diagnoses have not received the supports they need within existing ECF groups, and Amendment 37 is a concrete step toward making that happen. What DRT would also like to see is a plan to attract qualified providers for the services needed in these new groups, as provider capacity to support people with these needs has been an ongoing challenge across all waivers. Adding new groups acknowledges the need but doesn't guarantee that services will be readily available or of a high quality.
Thank you for your comments and concerns. TennCare is working closely with contracted MCOs to prepare for implementation of these benefits and benefit groups, including the development of an adequate network of qualified providers and an appropriate reimbursement structure for these services. As described in previous responses, Groups 7 and 8 contemplate a new service model which integrates HCBS with behavioral health treatment supports. MCOS are working to identify and/or develop agencies with a dual (HCBS and MH) license that have staff who are appropriately qualified to provide these benefits. TennCare will monitor the network development as part of extensive readiness review processes, and on an ongoing basis as the new Groups are implemented and expanded. Challenges in building the capacity of health care systems and providers to support people with I/DD are not unique to Tennessee. Proposed federal legislation—the HEADs Up Act of 2018 (Healthcare Extension and Accessibility for Developmentally Disabled and Underserved Populations)—would recognize individuals with I/DD as a Medically Underserved Population, and open up federal programs and funding to help states address what has long been a challenge in supporting individuals with I/DD. The implementation of Employment and Community First CHOICES and these new groups in particular is providing opportunities for innovative and integrated approaches to building capacity to serve people with I/DD that will put Tennessee on the forefront of helping address

this national problem. The more we can partner together, the greater impact we can have on the lives of Tennesseans and individuals with I/DD across the country.	
10. Entity -DRT	**Comments on amendment 37**
DRT would also like to commend TennCare for proposing increases in expenditure caps for Group 6.	
Thank you. These changes are responsive to stakeholder feedback.	
11. Entity -DRT	**Comments on amendment 37**
Lastly, DRT greatly appreciates TennCare's reframing of "Conservatorships and Alternatives to Conservatorship" to "Decision Making Supports." We believe that this focusses correctly on supporting people with disabilities to make their own decisions and will lead to more decision-making and less rushing to conservatorship.	
Thank you. These changes are responsive to stakeholder feedback and align with our System Transformation Plan.	
12. Entity - Family Voices of Tennessee at the Tennessee Disability Coalition	**Comments on amendment 37**
Comments are numbered in relationship to the numbered list on page one of Amendment 37, "Description of the Amendment". **1. Establishing two new benefits and two new benefit groups** Addressing the needs of adults and children with I/DD and severe co-occurring behavioral health and/or psychiatric conditions is a much needed addition to the ECF program. The families and professional we work with have learned over the first two years of the program that safely and appropriately serving individuals with I/DD who have significant needs and/or challenges is an area that needs to be addressed. General Comments: The ability of the proposed design to address the needs of adults and children with I/DD is a bit challenging to judge based on the information given. The current descriptions lack critical information such as: • **Clearly defining eligibility and the eligibility process for enrollment in Groups 7 & 8**. Having set enrollment targets for each group, it is reasonable to assume that some criteria have been set. These criteria should be included. • **Outlining provider qualifications and requirements.** There is a lack of information about the qualifications required of "Direct Support Professionals who have targeted training and expertise in supporting people with significant behavioral challenges". The benefits are highly dependent on these professionals who do not currently exist in our system. • **Service definitions.** The new services and their processes are not clearly defined as are most other ECF services. This is especially troublesome because these critical services have to be carefully integrated into all aspects of an individual's life, and in the case of Group 7, into family life and the lives of family members.	
TennCare appreciates that people are anxious to understand more about these new benefits and benefit groups. Waiver documents do not generally include all of the operational level detail about each benefit—in part, because it limits flexibility to make programmatic adjustments based on key learnings. However, based on public input, we will be adding more specificity around eligibility and enrollment criteria to the final waiver amendment. We are also adding detail to the service definitions for the two new benefits (IBFCTSS and IBCTSS).	

Other operational level requirements will be set forth in TennCare Rule, contract, and other documents.	
13. Entity - Family Voices of Tennessee at the Tennessee Disability Coalition	**Comments on amendment 37**
Comments, Group 7: Population served: Please define what constitutes "significant risk of harm and threaten the sustainability of the family living" and "significant risk of placement outside the home". These definitions, including identifying who makes this determination in a managed care environment, are very important and should be a part of the amendment. Beyond eligibility – We are concerned that, as written, there is a risk for Group 7 minors who reach age 21. If they continue to need in-home and other behavioral supports to prevent institutionalization, Group 8 is not designed as a continuation of needed services. Supporting Families v. Direct Supports to Child – page 2, paragraph 3. We understand that direct behavioral services to the child will be delivered as a part of the basic TennCare benefit. The IBSHC benefit is identified as one that supports the family to implement the child's support plan in all aspects of daily life. It is indicated that Direct Support Professionals will deliver the service, and describes the services as teaching, training, and supporting families in their caregiving role. Families we work with have identified a number of concerns. 1. Although families expect DSPs to be supportive of families, their main expectation is to provide direct support to their family member. Specifics on how direct and supportive services are to be provided are not clear. 2. Families who have experience with family members who have significant behavioral challenges express concern that paraprofessional caregivers are not qualified to teach and train them to deliver behavioral support services to their family member. Some indicate that as family members, learning these skills from highly qualified mental health professionals and trainers can be difficult, let alone from paraprofessionals who are not hired for their adult teaching expertise. 3. Families who reviewed the amendment expressed concerns about family members who are not able to participate in training "to build the capacity of families" because of other factors such as single parenthood, employment obligations (often 2 or 3 jobs) or other caregiving obligations (young children, aging parents). As designed this benefit could actually create more problems and stress for families. 4. Other than a reference to "all aspects of daily life" there is no indication of how this benefit will be integrated into educational services a child receives. Inconsistent or conflicting behavioral support plans are generally ineffective. There needs to be clarity about how integration will occur, and the respective roles of behavioral professionals involved in a child's life.	
Thank you for your comments and questions. For purposes of enrollment in Group 7, "significant risk of harm" means that serious physical injury to the person or other persons in the home is more than likely to happen imminently (very soon). Note that the words "imminent" and "serious physical" have been added for clarity, while also clarifying that the harm does not rise to the level of inpatient psychiatric placement or that such placement would not be appropriate. Generally, "imminent risk of	

serious physical harm" is evidenced by a well-documented, persistent and continuing pattern of behaviors that has resulted in serious physical injury to the person or others, and regarding which previous interventions (also documented) have been unsuccessful in reducing the risk to an acceptable level.

The terms "threaten the sustainability of the family living [arrangement]" and "significant risk of placement outside the home" mean that as a result of the ongoing challenge of trying unsuccessfully to manage the behaviors which place the child and others at "[imminent] and significant risk of [serious physical] harm" as described above, the family has recently placed (in the last 180 days) or is actively pursuing placement outside the home for the child in order to keep the child or other family members safe, as evidenced by out-of-home placement, requests for out of home placement, or intervention by DCS. Placement outside the home may include state custody, inpatient hospitalization, residential treatment, and incarceration.

Eligibility for enrollment in any ECF CHOICES Group, including Groups 7 and 8, is determined by TennCare.

Based on public input, it is clear that there is a misunderstanding (or incomplete understanding) of the intent of this benefit and the target population for this benefit group. This is not simply a Supportive Home Care benefit for people with behavior support needs. It is an integrated behavioral health and HCBS benefit which combines family-centered behavioral health treatment services with family-centered HCBS. To further clarify expectations, we are re-naming the new benefit: Intensive Behavioral Family-Centered Treatment, Stabilization and Supports (IBFCTSS). Behavioral health assessment, planning and treatment components of the new benefit are provided by a Masters level licensed Mental Health professional. Supportive service components (i.e., "Intensive Behavioral Supportive Home Care") will be organized around the needs of the person served, their preferences, and their stated goals including (a) Enhancement of their understanding of and ability to manage and cope with their psychiatric disabilities and/or behavioral challenges; (b) Self-care and independent living skills; (c) Relationship building and use of leisure time; (d) Employment; and (e) Economic self-sufficiency and income budget maintenance. However, these HCBS will utilize a trauma informed care approach and be integrated with ongoing implementation of Behavior Support plans and the PCSP and will provide supportive services in a way that helps to engage, strengthen, support, and build the capacity and confidence of the family in order to help ensure safety, well-being, and permanency. Because it is a family-centered treatment model, participation in the benefit and Group 7 will be appropriate only for families who want to and are able to engage in the treatment process. For other families, other benefits and benefit groups will be more appropriate.

This benefit and ECF CHOICES Group 7 is not for families who already have the tools they need to successfully support their child and manage their child's behaviors and need only some in-home assistance in doing so, but for those families who currently feel ill-equipped to successfully do so and for whom a more intensive family-centered treatment model is needed. Qualified persons to deliver these supportive services, called Behavior Support Specialists are

expected to have substantial education, training, and experience in providing these types of supports to persons with I/DD in a family-centered way (i.e., a Bachelor's degree in a relevant field plus at least one year experience working with individuals with I/DD who have challenging behavior support needs, including internship experience. Equivalent experience may be substituted for educational requirements, when appropriate—e.g., an Associates' degree with three years of experience, or five years of experience if no post-secondary degree.) We recognize that this is a new service delivery model, and we will be working to build the capacity of the system to provide these supports. At the same time, we will be adding behavioral health capacity with particular expertise in serving people with I/DD broadly, as well as a cadre of staff who are able to provide what could be in the future a standalone "Intensive Behavioral Supportive Home Care" benefit or rate in Group 4. TennCare plans to develop a competency-based training program that may provide for additional flexibility in qualifications of supportive service staff, based on demonstration of competencies required to provide these services.

To be clear, this is an integrated family-centered behavioral health treatment and home and community-based service, not an educational or related service. These benefits will not be provided in education settings. However, the MCO and IBFCTSS provider will be expected to coordinate with the Local Education Agency to help ensure consistent implementation of behavior support plans across daily environments.

14. Entity - Family Voices of Tennessee at the Tennessee Disability Coalition	**Comments on amendment 37**

Comments, Group 8:
Population served: Page 3 – Intensive Behavioral Community Transition and Stabilization Services, paragraph 1. The initial paragraph indicates the benefit is to "assist adults age 18 and older with I/DD and severe behavioral and/or psychiatric conditions who are transitioning out of a highly structured and supervised environment." The first full paragraph on page 4 offers a list of three population groups, including adults whose family is no longer capable of supporting the individual due to the severity and frequency of behaviors. It is not clear if an individual can move into group 8 while still in the family home or whether he/she must have been moved from home to a "highly structured and supervised environment" in which to transition from.
Sufficiency of benefit – While a short- term intensive benefit is an important new benefit, it may not be sufficient to address mid-term or longer-term needs for ECF beneficiaries with significant behavioral health to become stabilized and make a successful transition. The benefit should also take into account the need to address times of crisis during transition to protect the individual and others. Finally, families expressed a need to include a benefit that would provide intensive in-home preventative services to try to avoid the need for highly structured and supervised placements in the first place.
Provider requirements and capacity - Families that have experience with seeking behavioral supports for their family members have expressed concerns about access and availability of both mental health professionals and qualified paraprofessionals (DSPs) to successfully implement this benefit – and to meet existing need. Beyond a written agreement or employment of a psychiatrist or other appropriate professional, detail about provider standards and training requirements is needed.

Thank you for the comments and concerns.

An individual cannot be enrolled in Group 8 while still in the family home, but could potentially transition out of a family home into an available slot in Group 8 when all applicable eligibility and enrollment criteria are met.

The following footnote was part of the draft language but was inadvertently omitted from the proposed amendment: *"In rare instances, IBCTSS may be utilized to support longer term implementation of a plan to fade from high intensity community-based supports following a transition or when necessary to support continued stability in the community and diversion from (re)institutionalization. A tiered structure of reimbursement will provide for step-down intensity of supports in these limited instances."*

Group 7 will provide intensive in-home family-centered treatment and supports.

Qualified entities to provide the new IBFCTSS and IBCTSS benefits will have the appropriate DIDD license and the appropriate DMHSAS license, with linkage to psychiatry. TennCare will require that behavioral health assessment, planning and treatment components of the new IBFCTSS and IBCTSS are provided by a Masters level licensed Mental Health professional. Supportive service components (IBSHC and residential components of the IBCTSS benefit) will be integrated with ongoing implementation of Behavior Support plans and in the case of IBFCTSS, will provide supportive services in a way that helps to engage, strengthen, support, and build the capacity and confidence of the family in order to help ensure safety, well-being, and permanency. Qualified persons to deliver these supportive services, called Behavior Support Specialists must have a Bachelor's degree in a relevant field plus at least one year experience working with individuals with I/DD who have challenging behavior support needs (including internship experience). Equivalent experience may be substituted for educational requirements, when appropriate—e.g., an Associates' degree with three years of experience, or five years of experience if no post-secondary degree. TennCare plans to develop a competency-based training program that may provide for additional flexibility in qualifications of supportive service staff, based on demonstration of competencies required to provide these services.

15. Entity - Family Voices of Tennessee at the Tennessee Disability Coalition	**Comments on amendment 37**
2. Proposed Changes on Expenditure Caps for Groups 5 & 6 These proposed changes are necessary and appropriate to better support the needs of members as they seek to achieve their employment and community living goals. We support this change.	
Thank you. These changes are based on Stakeholder feedback and align with our System Transformation Plan.	
16. Entity - Family Voices of Tennessee at the Tennessee Disability Coalition	**Comments on amendment 37**
3. Expand NFLOC exception to include persons transitioning from and ICF/IID, and those in	

Group 8 This proposed change appears to have the effect of providing more opportunities for individuals to access HCBS services. We support this change.	
Thank you for this positive feedback. This will help us to support people who want to transition from institutional settings to HCBS.	
17. Entity - Family Voices of Tennessee at the Tennessee Disability Coalition	**Comments on amendment 37**
A.5. Self Employment. Page 5. Professionals and families we work with indicate that an estimate of eight hours of service to develop an effective business plan for self-employment is unrealistic. Self-employment is an important option for many individuals with disabilities. Success depends on the ability to develop an effective plan.	
Thank you for this comment. TennCare will delete the proposed new language which says that "This service is expected to involve, on average, eight (8) hours of service." We will further discuss these comments with Employment Specialists, providers, and other stakeholders to determine if any adjustments are needed.	
18. Entity - Family Voices of Tennessee at the Tennessee Disability Coalition	**Comments provided below on amendment 37**
II. Other ECF Services – Family Caregiver Stipend. Page 13, paragraph 1. Families who have reviewed this change are deeply concerned about this language. While all supported the philosophy and goals behind this section, these definitions are neither person-centered nor family-centered. Rather the requirements appear to express an interest in substituting government judgement for individual and family decision-making and autonomy and controlling family dynamics. We do not support this change and believe that if additional clarity is needed for this definition, it should be developed in a person- and family-centered way.	
Thank you for sharing these concerns. This is a very challenging and emotive issue. TennCare values family caregivers and is committed to supporting family caregivers not just as a source of natural support, but also as a critical aspect of the relationships that are essential to a person's quality of life. That said, no ECF CHOICES benefit has been more challenging to administer than the Family Caregiver Stipend. We have seen multiple situations where families have decided on behalf of the person who has a disability to forego services that would support the person in pursuing employment, community integration, or independent living skills in order to maximize the amount of funding available for the stipend, which is of great concern. Our primary goal—in particular for adults—must be to help support the person's growth and opportunities for independence and inclusion. We believe this aligns with the *Joint Position Statement on Family Support* issued by the American Association on Intellectual and Developmental Disabilities and The Arc: *"Family support services and other means of supporting families should be available to all families to strengthen families' capacities to support family members with intellectual and/or developmental disabilities (IDD) in achieving equal opportunity, independent living, full*	

participation, and economic self-sufficiency."

Far from "substituting government judgement for individual and family decision-making and autonomy," the intent of the changes in this service definition are to further clarify our commitment to family support that is consistent with the goals of supporting individuals with I/DD to achieve "equal opportunity independent living, full participation, and economic self-sufficiency."

19. Entity - Family Voices of Tennessee at the Tennessee Disability Coalition	**Comments on amendment 37**

Page 14, paragraph 2. The language that indicates that the stipend is not intended to provide payment for supports already being provided prior to enrollment is a significant problem. In many cases, enrollment is sought precisely because a family
can no longer sustain it caregiving roles. Family members may have had to reduce or end employment to care for a family member prior to receiving ECF, causing significant economic distress. Others may have not been able to work because of family member responsibilities, keeping a family in poverty and reliant on other public supports. Incapacitation of a family caregiver who had been providing supports or a reduction of their ability due to their own physical or mental health may also be a reason that maintaining a previous level of "natural supports" is not possible. This is an unreasonable and un-family-centered definition.

Thank you for sharing your concerns. The proposed language says that, "The Family Caregiver Stipend is not intended to supplant natural family caregiving supports by providing a payment for family caregiver supports that were already being provided prior to program enrollment **and that are expected to continue at the same level [emphasis added].** ECF CHOICES benefits are intended to **sustain [emphasis added]** and enhance natural supports rather than replacing or supplanting them with paid supports." In each of the scenarios described above, the natural family caregiving supports are not expected to continue at the same level without support. The intent of the benefit includes providing support that families may need to sustain caregiving supports.

20. Entity - Family Voices of Tennessee at the Tennessee Disability Coalition	**Comments on amendment 37**

Page 14, paragraph 4
The inclusion of detail about how a stipend is determined is appropriate and helpful in the definitions, however we do not support the methodology as drafted. The language appears to demonstrate a distrust of family judgement and decision-making on a family member's behalf and substitutes the government's judgement at a micro-level to control families without regard to family and individual circumstance.
We do not support this change and believe that if additional clarity is needed for this definition, it should be developed in a person- and family-centered way.

Thank you for your comments. There must be a methodology for determining the amount of any benefit that is appropriate. (It cannot be based simply on what is requested.) The intent of these changes is to help clarify how the amount of the Family Caregiver Stipend is determined. The methodology explicitly takes into the accounts the needs and circumstances of the person and the family, i.e., " (1) the needs of the person supported; (2) the family's need for support in order to support the person's continued growth, independence and self-determination; and (4)

the extent of the supports being provided by the family caregiver; and may take into account the family's intent to use some or all of the funds to provide other services and supports the person needs that are not covered under this program." It also takes into account the amount of funds available once supports for community integration and employment are addressed, i.e., "(3) the availability of funds within the member's Expenditure Cap, after supports for age-appropriate community integration, the development of age-appropriate skills for independence and personal growth and, for members age 14 and older, supports for employment have been addressed."

21. Entity - Family Voices of Tennessee at the Tennessee Disability Coalition	**Comments on amendment 37**
Conservatorship/Decision-Making Supports. Page 15. Families who reviewed this service definition expressed some confusion about its application. Changing the title to Decision-Making Supports makes the purpose of this benefit less clear. We would propose that including both conservatorship and decision-making supports in the title make purpose of the benefit more clear. Families who are knowledgeable about and supportive of supported decision-making also recognize that there is a role for conservatorship in some individuals' lives. Conservatorship is not just about "decision-making" but also about the authority to exercise certain legal rights and responsibilities. Beyond "deciding" to do something, there are legal implications in executing a contract or executing a fiduciary instrument. We support alternative language that acknowledges supported decision-making and alternatives, focuses on least restrictive alternatives and addresses the serious legal implications families have to consider. Suggested alternative language: This service offers up to $500 in one-time consultation, education and assistance to family caregivers in understanding legal, financial and decision-making support options for a person supported who cannot make some or all of their own decisions. These services shall be provided in a manner that seeks to provide support in the least-restrictive manner, preserving the rights and freedoms of the individual to the maximum extent possible and appropriate. This service may include assistance with completing necessary paperwork and processes to establish formal, financial or legal infrastructure for informed consent, decision-making supports such as supported decision-making, Power of Attorney, or limited or full conservatorship, if it is determined to be the least restrictive alternative. Reimbursable services may include payment of legal or court fees necessary to formalize an alternative or conservatorship, but only upon completion of education and consultation from a qualified professional to help preserve the person's rights and freedoms to the maximum extent possible and appropriate	
Thank you for your comments and concerns. The new title for this benefit and the slight revisions in the service definition were proposed by other Advocacy organizations representing persons with I/DD, and are consistent with the intent of how this benefit should be delivered. We are fully cognizant of the significant legal implications of conservatorship, which typically removes **all** of the person's rights, as well as the tremendous challenge of having such rights restored. The intent of these changes is to help ensure that less-restrictive alternatives are explored and considered *in a meaningful way*, and not merely as an obstacle to be overcome in order to obtain financial assistance in establishing conservatorship. In that regard, we are not	

willing to keep “Conservatorship” in the title, but will change the title to “ Decision Making Supports and Options” and are incorporating much of your suggested language in the service definition, with slight adjustments. We appreciate your suggestions.	
22. Entity - Tennessee Justice Center	**Comments on amendment 37**
Advocates for Families in Need Thank you for the opportunity to comment on Amendment 37 before it is filed with the Centers for Medicare & Medicaid Services. The following comments are based on Tennessee Justice Center’s experience representing clients who are enrolled in the Employment and Community First (ECF) CHOICES program, as well as the knowledge of other organizations that serve consumers of the ECF CHOICES program with whom we collaborate. **Establishing two new benefits and two new benefit groups:** We appreciate the attempt to better address the needs of adults and children with intellectual/developmental disabilities (I/DD) who also have behavioral health and/or psychiatric conditions. To better evaluate the efficacy of the proposed changes, it would be helpful to have more details concerning the following: 1. What will be the selection criteria for the limited slots available for enrollment in Groups 7 & 8? Given that only 25-50 slots are proposed for each group, it is reasonable to anticipate that applications will exceed the available slots. Also, regarding eligibility for group 8, what constitutes a “highly structured and supervised environment”? Specific criteria concerning eligibility should be included to facilitate a fair selection process.	
Thank you for this question. In response to your comments and to ensure a fair and transparent process, additional details regarding eligibility and enrollment criteria for these groups will be added to the amendment prior to submission. Other operational level requirements will be set forth in TennCare Rule, contract, and other documents. The number of proposed slots for each group is based in part on the need to develop capacity to provide these benefits which are new, but also on the actual number of people we expect could qualify to enroll in these groups, based on program experience to date. These benefits are targeted to a small subset of the population with extraordinary behavior support challenges. “Highly structured and supervised environments” are generally environments that are institutional in nature, with intensive staffing and/or restrictions which limit a person’s ability to act independently, and which thus, mitigate the significant harm that would otherwise be expected to result from the person’s behaviors, but also limit the opportunity to learn more appropriate strategies for managing behavior in positive ways. This includes incarceration, psychiatric hospitals, longer-term placements in residential psychiatric treatment facilities or other institutions, and restrictive child custody placements. In limited instances, the benefit may be appropriate for persons with I/DD and severe behavioral conditions who are transitioning from a family home because the family is no longer capable of supporting the individual due to the severity and frequency of behaviors, when intensive supervision and restrictions have been used to manage behaviors that are expected to result in serious physical harm to the person or others once the person is in a more integrated setting.	
23. Entity - Tennessee Justice Center	**Comments on amendment 37**
2. What are the qualifications and requirements for “Direct Support Professionals”? There are	

widespread issues related to provider capacity, training, and retention in the current program. It is important to ensure that an adequate number of properly trained and credentialed providers can provide services within these two new benefit groups.
Thank you for your comment and concerns. Qualified entities to provide the new IBFCTSS and IBCTSS benefits will have the appropriate DIDD license and the appropriate DMHSAS license, with linkage to psychiatry. TennCare will require that behavioral health assessment, planning and treatment components of the new IBFCTSS and IBCTSS are provided by a Masters level licensed Mental Health professional. Supportive service components (IBSHC and residential components of the IBCTSS benefit) will be integrated with ongoing implementation of Behavior Support plans and in the case of IBFCTSS, will provide supportive services in a way that helps to engage, strengthen, support, and build the capacity and confidence of the family in order to help ensure safety, well-being, and permanency. Qualified persons to deliver these supportive services, called Behavior Support Specialists must have a Bachelor's degree in a relevant field plus at least one year experience working with individuals with I/DD who have challenging behavior support needs (including internship experience). Equivalent experience may be substituted for educational requirements, when appropriate—e.g., an Associates' degree with three years of experience, or five years of experience if no post-secondary degree. TennCare plans to develop a competency-based training program that may provide for additional flexibility in qualifications of supportive service staff, based on demonstration of competencies required to provide these services. TennCare is working closely with contracted MCOs to prepare for implementation of these benefits and benefit groups, including the development of an adequate network of qualified providers. As described in previous responses, Groups 7 and 8 contemplate a new service model which integrates HCBS with behavioral health treatment supports. MCOS are working to identify and/or develop agencies with a dual (HCBS and MH) license that have appropriately qualified staff to provide these benefits. TennCare will monitor the network development as part of extensive readiness review processes, and on an ongoing basis as the new Groups are implemented and expanded.

24. Entity - Tennessee Justice Center	**Comments on amendment 37**
3. What specific services would be included in Intensive Behavioral Supportive Home Care and Intensive Behavioral Community Transition and Stabilization Services? As described, it is unclear what the services would entail, particularly given that it is unknown who would qualify to provide services. Some clarification is also needed concerning what supports will be provided to the individual with I/DD as opposed to supporting family members in the caregiving role. It is important that value-added services and supports are available in these groups and that providers are not simply there to micro-manage family members who are caring for the individuals with I/DD. Also, would caregiver training and support be offered on an individual basis in the home or would caregivers be expected to take time away from other obligations to attend a group training? While well-intentioned, offering training could create additional burdens and stressors for families.	
Thank you for your concerns and questions.	

The now-named Intensive Behavioral Family-Centered Treatment, Stabilization and Supports (IBFCTSS) benefit is an integrated behavioral health and HCBS benefit which combines family-centered behavioral health treatment services with family-centered HCBS. Behavioral health assessment, planning and treatment components of the new benefit are provided by a Masters level licensed Mental Health professional. Supportive service components (i.e., "Intensive Behavioral Supportive Home Care") will be organized around the needs of the person served, their preferences, and their stated goals including (a) Enhancement of their understanding of and ability to manage and cope with their psychiatric disabilities and/or behavioral challenges; (b) Self-care and independent living skills; (c) Relationship building and use of leisure time; (d) Employment; and (e) Economic self-sufficiency and income budget maintenance. However, these HCBS will utilize a trauma informed care approach and be integrated with ongoing implementation of Behavior Support plans and the PCSP and will provide supportive services in a way that helps to engage, strengthen, support, and build the capacity and confidence of the family in order to help ensure safety, well-being, and permanency. Family-centered training and support is individualized, based on the needs of the child and family, and provided in the home, at times convenient for the family.

Qualified persons to deliver these supportive services, called Behavior Support Specialists are expected to have substantial education, training, and experience in providing these types of supports to persons with I/DD in a family-centered way (i.e., a Bachelor's degree in a relevant field plus at least one year experience working with individuals with I/DD who have challenging behavior support needs, including internship experience. Equivalent experience may be substituted for educational requirements, when appropriate—e.g., an Associates' degree with three years of experience, or five years of experience if no post-secondary degree.) We recognize that this is a new service delivery model, and we will be working to build the capacity of the system to provide these supports. At the same time, we will be adding behavioral health capacity with particular expertise in serving people with I/DD broadly, as well as a cadre of staff who are able to provide what could be in the future a standalone "Intensive Behavioral Supportive Home Care" benefit or rate in Group 4. TennCare plans to develop a competency-based training program that may provide for additional flexibility in qualifications of supportive service staff, based on demonstration of competencies required to provide these services.

Intensive Behavioral Community Transition and Stabilization Services (IBCTSS) will integrate generally short-term intensive 24/7 community-based residential services with behavioral health treatment and supports that are designed to help certain adults with I/DD and severe behavioral and/or psychiatric conditions transition from a highly structured and supervised environment into stable integrated community settings. Dual licensure for the provider agency, and the qualifications of Mental Health professionals and Intensive Behavior Support Specialists who will provide day-to-day support are the same.

25. Entity - Tennessee Justice Center	**Comments on amendment 37**
4. How will the new benefits be integrated into an individual's education plan?	
Thank you for your question. To be clear, this is an integrated family-centered behavioral health treatment and home and community-based service, not an educational or related	

service. These benefits will not be provided in education settings. However, the MCO and IBFCTSS provider will be expected to coordinate with the Lead Education Agency (LEA) to help ensure consistent implementation of behavior support plans across daily environments.	
26. Entity - Tennessee Justice Center	**Comments on amendment 37**
Overlapping eligibility and transitioning between groups: If an individual is eligible for more than one group, who determines which group best serves their needs? If an individual is enrolled in a group but feels that a different group would better serve their needs, even if it is a lower intensity group, how does that process work? What happens when an individual in Group 7 reaches age 21 and still needs behavioral supports? Additional guidance on transitioning between groups should be included, especially for Group 8, which is intended to be short-term, if individuals continue to have needs beyond the stated term.	
Thank you for the questions and concerns. We do not expect that a person would ever qualify for both groups 7 and 8. Group 7 is for a child under age 21 who lives at home with family, and where the desire is to for the child to continue living there, but intensive family-centered behavioral treatment and support is needed to make that possible. Group 8 is only for adults (generally 21 and older, but in some circumstances, 18 and older) transitioning out of a highly structured and supervised setting. A person who would qualify for either Group 7 or 8 would not be able to be safely served in any other ECF CHOICES Group at the time that they qualify for either of these groups. TennCare expects transition planning for those in Group 7 to be individualized and begin well in advance of the child's 21st birthday. The child would transition to the most appropriate benefits (or benefit group). With regard to Group 8, discharge criteria and transition processes will be specified in Rule, contract and other TennCare documents. Note however that the following footnote was part of the draft language but was inadvertently omitted from the proposed amendment and could provide for longer term benefits in limited circumstances: *"In rare instances, IBCTSS may be utilized to support longer term implementation of a plan to fade from high intensity community-based supports following a transition or when necessary to support continued stability in the community and diversion from (re)institutionalization. A tiered structure of reimbursement will provide for step-down intensity of supports in these limited instances."*	
27. Entity - Tennessee Justice Center	**Comments on amendment 37**
Proposed changes in certain ECF CHOICES service definitions in Attachment G: Regarding the "Family Caregiver Stipend in lieu of Supportive Home Care," supports should be not only age-appropriate (as noted) but also suited to the individuals' abilities, in keeping with a person-centered approach. Equal opportunity, economic productivity, independent living, and full participation are all relative terms that depend to a large extent on the individuals' abilities. Family members are often in the best position to provide person- and family-centered supports based on the needs of the individual. Yet, this definition supplants the family members' judgment for TennCare's judgment.	
Thank you for your comments. TennCare believes that all people, regardless of their level of abilities (or disabilities) should be supported to achieve "equal opportunity independent living,	

full participation, and economic self-sufficiency." Far from supplanting family members' judgment with TennCare's judgment, the intent of the changes in this service definition are to further clarify our commitment to family support that is consistent with the goals of supporting individuals with I/DD to achieve these critically important goals.

28. Entity - Tennessee Justice Center	**Comments on amendment 37**

We also suggest revising who is eligible to receive the Family Caregiver Stipend. Because there is a shortage of providers, continuing to disqualify immediate family members and family members who reside with the individual with I/DD leaves many families without a solution. In Kentucky, for example, a consumer may in certain situations, hire mothers, fathers, brothers, sisters, grandparents, aunts or uncles, representatives or guardians as employees if certain criteria are met including if *the nearest other employee or agency is more than 30 miles away from the participant's home or another employee cannot be found who can provide the care needed or be able to work the schedule that is needed by the employer.* See 907 KAR 12:010. Some flexibility in this regard would help alleviate the burden that many family members currently face where they cannot find a provider to deliver Supportive Home Care (including Personal Assistance) and they forced to forego gainful employment and become impoverished to stay home and provide family caregiver supports.
Thank you for considering these comments. If you have any questions, please feel free to contact me at kyoung@tnjustice.org.

Thank you for your comments. It is unclear whether this comment pertains to the Family Caregiver Stipend or to Consumer Directed Supportive Home Care/Personal Assistance services.

Amendment 37 does not propose to add the Family Caregiver Stipend to other benefit groups. For adult benefit groups, we think it is particularly important to maintain clear focus on supporting individuals with I/DD to achieve "equal opportunity independent living, full participation, and economic self-sufficiency."

With respect to Consumer Directed Supportive Home Care/Personal Assistance services, please note that a person may hire family members, including immediate family members, to provide these services, so long as the family member does not live with the person supported.

29. Entity - The Arc Tennessee	**Comments on amendment 37**

Thank you for the opportunity to comment on Amendment 37- the proposed changes to the Employment and Community First (ECF) CHOICES Program. The Arc Tennessee staff and board of directors appreciate the ongoing dialogue with stakeholders and your consideration of our comments. Below is a summary of our feedback:

Amendment 37

1. We support the addition of Group 7 and Group 8 into the ECF CHOICES program. We agree that people with disabilities who experience co-occurring psychiatric or behavior health diagnoses do not currently receive the supports they need most within the existing ECF groups. We are concerned, however, that individuals with complex medical needs are in a similar situation and there does not appear to be a plan in place to

address their needs.
Thank you for sharing your concern. The Employment and Community First (ECF) Program is currently serving people with the most complex medical needs. The expenditure cap structure which takes into account individuals with enhanced respiratory care needs and provides for services in the community up to the comparable cost of institutional care, well defined-transition planning processes for adults turning age 21, certain flexibilities for individuals with skilled nursing needs electing to receive services through consumer direction which allow them to employ nurses to provide Personal Assistance services and perform skilled nursing tasks, allowing individuals in Employment and Community First CHOICES to self-direct health care tasks, and developing competency-based training programs to support members in training staff to perform these tasks are important aspects of supporting individuals with complex medical needs

30. Entity - The Arc Tennessee	**Comments on amendment 37**
2. On page 1 under the Description of the Amendment, #3, we would like clarification as to whether or not an individual that transitions to ECF CHOICES from an ICF-IID comes with their own funding or if they will take up an available slot for someone who is on the referral list. We support the transition of people from ICF-IIDs to less restrictive settings. However, we do not support transitions that remove funding from individuals who have no services at all.	
Thank you for your question and comments. Under the current federal and state regulatory framework, there is no way for TennCare to have funding follow a person out of an ICF/IID into the community. As a practical matter, the ICF/IID bed is a licensed bed and because the ICF/IID benefit is covered under the State Plan, becomes immediately available to be filled by an eligible individual, requiring that funding remain "with" the bed. At the same time, we have an obligation under the ADA and are committed to assisting people in transitioning out of institutional settings into the community and will continue to prioritize them for placement using ECF CHOICES funds. We are certainly open to working together to explore potential strategies that might allow such funding to follow the person, providing for their transition to more integrated community settings, while not reducing the availability of HCBS funding to provide services to others who do not have them.	
31. Entity - The Arc Tennessee	**Comments on amendment 37**
3. On page 3, for Group 7, we seek clarification as to whether or not family income will be counted in determining eligibility for the children in this group.	
Thank you for the comment. Family income will not be counted as individuals must meet Nursing Facility LOC, and therefore the deeming of the parents' income to the child is waived. Please note that this is how the "Katie Beckett" option is operationalized in Tennessee.	
32. Entity - The Arc Tennessee	**Comments on amendment 37**
4. Again, we support the addition of Group 7 and Group 8. People IDD with co-occurring psychiatric or behavioral health diagnoses. We are concerned about provider capacity to support people with these needs. Provider capacity for this population has been an ongoing challenge across all waivers. Adding new groups acknowledges the need, but doesn't necessarily mean the services will be readily available or guarantee the quality of the services. What will be done to attract qualified providers for the services needed	

in Groups 7 and 8?
Thank you for your comments and concerns. TennCare is working closely with contracted MCOs to prepare for implementation of these benefits and benefit groups, including the development of an adequate network of qualified providers and an appropriate reimbursement structure for these services. As described in previous responses, Groups 7 and 8 contemplate a new service model which integrates HCBS with behavioral health treatment supports. MCOS are working to identify and/or develop agencies with a dual (HCBS and MH) license that have appropriately qualified staff to provide these benefits. TennCare will monitor the network development as part of extensive readiness review processes, and on an ongoing basis as the new Groups are implemented and expanded. As noted above, challenges in building the capacity of health care systems and providers to support people with I/DD are not unique to Tennessee. Proposed federal legislation—the HEADs Up Act of 2018 (Healthcare Extension and Accessibility for Developmentally Disabled and Underserved Populations)—would recognize individuals with I/DD as a Medically Underserved Population, and open up federal programs and funding to help states address what has long been a challenge in supporting individuals with I/DD. The implementation of Employment and Community First CHOICES and these new groups in particular is providing opportunities for innovative and integrated approaches to building capacity to serve people with I/DD that will put Tennessee on the forefront of helping address this national problem. The more we can partner together, the greater impact we can have on the lives of Tennesseans and individuals with I/DD across the country.

33. Entity - The Arc Tennessee	**Comments on amendment 37**
5. On page 4, the second paragraph, we seek clarification on how long the "limited extensions" will be for IBCTSS and how many extensions can be given.	
Thank you for the question. TennCare is not specifying a number of extensions at this time. We would like to allow flexibility to understand how the benefit needs to be administered. The following footnote was part of the draft language but was inadvertently omitted from the proposed amendment: *"In rare instances, IBCTSS may be utilized to support longer term implementation of a plan to fade from high intensity community-based supports following a transition or when necessary to support continued stability in the community and diversion from (re)institutionalization. A tiered structure of reimbursement will provide for step-down intensity of supports in these limited instances."*	
34. Entity - The Arc Tennessee	**Comments on amendment 37**
6. On page 4, the third paragraph describes the integrated behavioral health and IBCTSS. We support the concept of the services. Again, we are concerned about where these providers will be found and if the rates will be sufficient to attract/maintain them.	
Thank you for your comments and concerns. Please see comments above. TennCare is working closely with contracted MCOs to prepare for implementation of these benefits and benefit groups, including the development of an adequate network of qualified providers and an appropriate reimbursement structure for these services.	
35. Entity - The Arc Tennessee	**Comments on amendment 37**
7. On page 4, the 4th bullet point, the word "tenure" doesn't quite fit. While we	

understand the point (we want people to remain in the community for longer periods of time and not end up in jail or other institutional settings), maybe a word like "inclusion" or "residence" would work better.

Thank you for the suggestion. "Community tenure" is a term of art used in HCBS performance measurement that refers to the period of time that a person is supported in the community without institutionalization.

36. Entity - The Arc Tennessee	**Comments on amendment 37**

8. On page 5, the 1st bullet at the top of the page, we recommend rewording this statement. While we understand that reducing costs is always a goal, it should be the "front and center" goal. The primary goal should be increasing an individual's independence and inclusion in inclusion in their community – not reducing costs. We recommend rewording the bullet to read: "Increase the quality of supports to minimize the life disruptions associated with crisis events, emergency department visits, property damage, physical injuries, and high intensity treatment." The benefit of minimizing all these issues is, of course, reduced cost of support (please do not use the word "care"). However, when worded this way it focuses more on the individual instead of the dollars.

Thank you for the suggestion. We will consider adjustments in the final amendment. Please note that this bullet is the 5th of five (5) bullets listed. We believe the first four bullets address these other important goals:

- Facilitate safe transition to and stabilization in the community;
- Assess and plan for successful transition to an appropriate level of community-based services and supports in a stable community-based living arrangement;
- Improve the person's quality of life and increase the person's independence and integration through consistent implementation of the person-centered support plan and behavior support plan;
- Establish and maintain community tenure by lessening the risk for incarceration and/or high intensity treatment in a facility (e.g., inpatient psychiatric or residential treatment facility);

37. Entity - The Arc Tennessee	**Comments on amendment 37**

9. On page 5, in the section that lists the services in Attachment G, please update the language of "conservatorships and alternatives to conservatorships counseling and assistance" to mirror the new language proposed in Attachment G.

Thank you. This change had been made, but was inadvertently omitted in the posted version of the proposed amendment. We will ensure it is corrected in the final submission.

38. Entity - The Arc Tennessee	**Comments on amendment 37**

10. On page 3 & 5, the bottom of the page, please clarify if the number of people listed as being accepted into Groups 7 & 8 is just for this fiscal year or for subsequent fiscal years as well.

Thank you for this question. For FY2019, TennCare received funding for up to 100 individuals to be served in Groups 7 & 8 (50 individuals in each Group). However, because of the time required to obtain CMS approval of a waiver amendment and to develop capacity to provide the new benefits, we will begin with an enrollment target of 25 in each Group. The enrollment

target for each Group may be increased later in the year or at the start of FY 2020 as need for the benefits and statewide capacity to provide the benefits increase (up to a total of 50 in each Group). These are recurring funds; thus, up to 50 slots will continue to be available in each Group in subsequent program years. The ability to add more slots on will require additional funding.

39. Entity - The Arc Tennessee	**Comments on amendment 37**

11. On page 6, 2nd bullet point, please clarify the reference "for the year in which the transitional living supports are required." Are you referencing the individual's PCSP plan year, a calendar year, or fiscal year? We assume it means the plan year, but want to be certain.

Thank you for your question. Pursuant to TennCare Rule, the Expenditure Cap is applied both on a calendar year basis, and also on a plan year basis. For a Group 5 member, the Community Stabilization and Transition Rate for CLS would be excluded for both when the person is expected to safely and appropriately served within the Group 5 Expenditure Cap once the stabilization and transition period ends.

40. Entity - The Arc Tennessee	**Comments on amendment 37**

12. On page 6-7, we support and appreciate the increase in the expenditure caps.

Thank you. These changes are responsive to stakeholder input and align with our System Transformation Plan.

41. Entity - The Arc Tennessee	**Comments on amendment 37**

13. On page 9, we support and appreciate that Groups 7 and 8 will not be subject to cost sharing.

Thank you. As a general rule, individuals enrolled in LTSS programs who meet institutional level of care are exempt from cost sharing.

42. Entity - The Arc Tennessee	**Comments on amendment 37**

14. On page 10 where it lists the public hearings that were held, we were curious how the public hearings were advertised because we somehow missed those meetings.

Thank you for feedback. Information on the public hearings was included in the public notice posted on the TennCare website at: (https://www.tn.gov/content/dam/tn/tenncare/documents2/Amendment37ComprehensiveNotice.pdf). We sent an email providing a link to the public notice to ECF stakeholders the day it was posted (August 31st, 2018).

43. Entity - The Arc Tennessee	**Comments on amendment 37**

Attachment G

1. Under Integrated Employment Path Services, footnote #3, we are seeking clarification as to why Union EDGE is the only post-secondary program listed. Is it simply because they have applied to be ECF CHOICES providers and the other post-secondary programs for students with IDD have not? Have the other post-secondary programs been contacted to become ECF CHOICES providers? All the programs boast strong employment outcomes and would be great additions to the provider network.

Thank you for this feedback. Vanderbilt University Next Steps should also be listed as an approved post-secondary internship program. No other post-secondary programs have applied through TennCare to be an approved Integrated Employment Path Services Internship Program.

We will follow up with MCOs regarding opportunities to include additional post-secondary internship programs as part of the IEPS benefit. It is important to understand, however, how IEPS is used in the internship programs. IEPS may be used to support an ECF member in an internship program, like an approved Post-Secondary Program. The Post-Secondary programs can apply to become an approved program, but the college/university is not the provider of IEPS. An approved ECF IEPS provider must have a job coach on staff to provide the service and must partner with the Post-Secondary program to provide support while the member is participating in work-based components of the internship program (not classroom instruction time), in accordance with specified staffing ratios. IEPS cannot be used to offset tuition for these programs, but should be used when a person needs more support than the program can provide during their internships.

44. Entity - The Arc Tennessee	**Comments on amendment 37**
2. Under Integrated Employment Path Services, please clarify whether or not the 1:4 ratio for the internship programs applies to the classroom time in addition to the work time.	
Thank you for your question. The 1:4 ratio may *only* be used for classroom time associated with approved internship programs. It may not be used for any other purpose, including work time during these internship opportunities, in which it is expected that support staff will float between participants to provide *individualized* (1:1) supports as needed for learning and skill development.	

45. Entity - The Arc Tennessee	**Comments on amendment 37**
3. Under Community Integration Support Services, the 3rd paragraph from the end of that section, we recommend a change in wording. Again, we recognize and agree that the goal is to fade paid supports and that there should be outcomes in place to make that happen. However, as written, the language may worry families with members who have significant disabilities and perpetuate the myth that ECF CHOICES is not for their family member. We recommend the following: "For individuals of appropriate age (18+), it is expected that individuals will become more independent in their community activities and develop a natural support network. Strategies to increase their independence, similar to those strategies used in Supported Employment Job Coaching, should be utilized. Milestones for increasing a natural support network and reducing paid supports should be included in the PCSP and reviewed for progress at least annually."	
Thank you for the suggestion. Please note that the only changes Amendment 37 proposes to this service definition are with regard to Employment Informed Choice. We have made some additional adjustments based on your suggestions. We would, however, be concerned about reviewing progress toward goals only annually. We are also concerned that the greater myth may be that people with significant disabilities cannot achieve some level of independence, with or without natural supports. We want to be careful about lowering expectations of what people can achieve, including people with significant disabilities.	

46. Entity - The Arc Tennessee	**Comments on amendment 37**
4. Under Non-Residential Habilitation Services, the first paragraph is missing a parenthesis in the 5th line between the words "employment" and "or."	
Thank you. We have made this technical correction.	

47. Entity - The Arc Tennessee	**Comments on amendment 37**
5. We are concerned in general that persons of retirement age have to jump through too many hoops to get services other than employment and that this may scare off families from accepting ECF CHOICES services. If someone of retirement age does not want to work, there should be an exception to some of the processes that they must go through.	
Thank you for your comment and concern. To be clear, there are no "hoops" that "persons of retirement age have to jump through…to get services other than employment." Far from "hoops," the Employment Informed Choice process offers important opportunities for people with disabilities who may have had few employment opportunities to understand their employment options in a meaningful way in order to make an informed decision about employment. The current rate of people choosing to pursue employment following the Employment Informed Choice Process affirms that it is a critical aspect of the person-centered planning process, without which many people would elect not to pursue employment simply because they have not have the experience to make an informed decision. Further, pursuant to TennCare Rule 1200-13-01-.02(67), the Employment Informed Choice process is limited to working age individuals (16-62). This clarification will also be added to the waiver amendment.	
48. Entity - The Arc Tennessee	**Comments on amendment 37**
6. Under the Family Caregiver Stipend In lieu of Supportive Home Care, 3rd paragraph, 3rd line from the bottom of that paragraph, we recommend changing the word "entailed" to "incurred" for clarity.	
Thank you for the suggestion. On review, we believe "entailed" to be the most appropriate term, meaning "to cause or involve by necessity or as a consequence;" or "to impose as a burden."	
49. Entity - The Arc Tennessee	**Comments on amendment 37**
7. We support the name change of "Conservatorship and Alternatives to Conservatorship Counseling and Assistance" to Decision Making Supports and the accompanying definition. We believe this may help the service be viewed as something other than a "pass through" to conservatorship and really help people consider other options. Once again, The Arc Tennessee staff and board thank you for the opportunity to comment on the proposed amendments to the ECF CHOICES program. Should you have any questions about the comments or wish to discuss them further, please do not hesitate to contact me at cguiden@thearctn.org or 615-248-5878 x14.	
Thank you. These changes are responsive to stakeholder feedback and align with our System Transformation Plan.	