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Sequence Number: 01-07-24
Notice ID(s): 3775-3776
File Date: 1/9/2024

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Division of TennCare
Contact Person:	Aaron Butler
Address:	Division of TennCare 310 Great Circle Road Nashville, TN 37243
Phone:	(615) 507-6448
Email:	aaron.c.butler@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Talley A. Olson
Address:	Division of TennCare 310 Great Circle Road Nashville, TN 37243
Phone:	(855) 857-1673 TTY dial 711 and ask for 855-857-1673
Email:	hcfa.fairtreatment@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	TennCare Building 310 Great Circle Road		
Address 2:	Conference Room 1 East A		
City:	Nashville		
Zip:	37243		
Hearing Date:	03/07/2024		
Hearing Time:	2:00 p.m.	<u> X </u> CST/CDT	<u> </u> EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

 X Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1200-13-13	TennCare Medicaid
Rule Number	Rule Title
1200-13-13-.01	Definitions
1200-13-13-.04	Covered Services
1200-13-13-.13	Member Abuse or Overutilization of the TennCare Pharmacy Program

Chapter Number	Chapter Title
1200-13-14	TennCare Standard
Rule Number	Rule Title
1200-13-14-.01	Definitions
1200-13-14-.04	Covered Services
1200-13-14-.13	Member Abuse or Overutilization of the TennCare Pharmacy Program

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Rule 1200-13-13-.01 Definitions is amended by inserting in alphabetical order the following new paragraphs, with all subsequent paragraphs renumbered appropriately so that the new paragraphs shall read as follows:

- (#) PHARMACY LOCK-IN PROGRAM shall mean the program designed to reduce enrollee pharmacy benefit Abuse or Overutilization, as set forth in 1200-13-13-.13.
- (#) PRIOR AUTHORIZATION STATUS (PA STATUS) shall mean the status wherein an enrollee must acquire a prior authorization for every prescription fill of any controlled substance, with the exclusion of medications intended for the treatment of opioid use disorder (i.e., buprenorphine or buprenorphine/naloxone).

Subparagraph (c) of Paragraph (121) of Rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new Subparagraph (c) which shall read as follows:

- (c) The Bureau has knowledge that the pharmacy is under investigation.

Subparagraph (d) of Paragraph (121) of Rule 1200-13-13-.01 Definitions is deleted in its entirety.

Paragraph (122) of Rule 1200-13-13-.01 Definitions is deleted in its entirety with all subsequent paragraphs renumbered appropriately.

Statutory Authority: T.C.A §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109

(E) of column three "Benefit for Persons Aged 21 and Older" of Part 25 Pharmacy Services of Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is amended by adding the phrase "except as specified in (G) and (H) below" after the phrase "shall not be covered" so that as amended (E) shall read as follows:

25. Pharmacy Services [defined at 42 C.F.R. § 440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility)		(E) Subject to (C) and (D) above, pharmacy services for Medicaid adults age 21 and older are limited to five (5) prescriptions and/or refills per enrollee per month, of which no more than two (2) of the five (5) can be brand name drugs. Additional drugs for individuals in (E) shall not be covered except as specified in (G) and (H) below.
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resident].		
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(F) of column three “Benefit for Persons Aged 21 and Older” of Part 25 Pharmacy Services of Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is amended by deleting the sentence “A prescription or refill can be for no more than a thirty-one (31) day supply.” in its entirety so that as amended (F) shall read as follows:

25. Pharmacy Services [defined at 42 C.F.R. § 440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].		(F) Prescriptions shall be counted beginning on the first day of each calendar month. Each prescription and/or refill counts as one (1).
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(G) of column three “Benefit for Persons Aged 21 and Older” of Part 25 Pharmacy Services of Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is amended by deleting the word “Exception” and replacing it with the word “Exemption” each time it appears, and by deleting the phrase “via the internet from the TennCare website and upon request by mail through the DHS Family Assistance Service Center” and replacing it with the phrase “via the internet on the TennCare website at www.tn.gov/tenncare and upon request by calling TennCare Connect at the toll-free number in the Member Handbook”, and by deleting the word “Only” at the beginning of the fourth sentence and replacing it with the word “The”, and by deleting the phrase “that is available on the TennCare website located on the World Wide Web at www.tn.gov/tenncare” in the fourth sentence in its entirety so that as amended (G) shall read as follows:

25. Pharmacy Services [defined at 42 C.F.R. § 440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].		(G) The Bureau of TennCare shall maintain an Automatic Exemption List of medications which shall not count against such limit. The Bureau of TennCare may modify the Automatic Exemption List at its discretion. The most current version of the Automatic Exemption List will be made available to enrollees via the internet on the TennCare website at www.tn.gov/tenncare and upon request by calling TennCare Connect at the toll-free number in the Member Handbook. The medications that are specified on the current version of the Automatic Exemption List on the date of service shall be considered exempt from applicable prescription limits.
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(H) of column three “Benefit for Persons Aged 21 and Older” of Part 25 Pharmacy Services of Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is amended by deleting the word “shall” from the first sentence and replacing it with the word “may”, and by deleting the word “State” and replacing it with the word “Bureau” each time it appears, and by deleting the capital “S” at the beginning of the phrase “Special exemption” at the end of the third sentence and replacing it with a lower case “s”, and by adding two sentences to the end of (H) so that as amended (H) shall read as follows:

<p>25. Pharmacy Services [defined at 42 C.F.R. § 440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].</p>		<p>(H) The Bureau of TennCare may also maintain a Prescriber Attestation List of medications available when the prescriber attests to an urgent need. The Bureau may include certain drugs or categories of drugs on the list, and may maintain, and make available to physicians, providers, pharmacists, and the public, a list that shall indicate the drugs or types of drugs the Bureau has determined to so include. The Prescriber Attestation List drugs may be approved for enrollees who have already met an applicable benefit limit only if the prescribing professional seeks and obtains a special exemption. In order to obtain a special exemption, the prescribing provider must submit an attestation as directed by TennCare regarding the urgent need for the drug. TennCare will approve the prescribing provider's determination that the criteria for the special exemption are met, without further review, within 24 hours of receipt. Enrollees will not be entitled to a hearing regarding their eligibility for a special exemption if (i) the prescribing provider has not submitted the required attestation, or (ii) the requested drug is not on the Prescriber Attestation List. At its discretion, TennCare may combine the Prescriber Attestation List with the Automatic Exemption List and thereby suspend the requirement that prescribing providers seek a special exemption. In so doing, TennCare will treat the drugs on the Prescriber Attestation List as if they appeared on the Automatic Exemption List and thus, those drugs will also be exempt from the applicable prescription limits. TennCare must specify on its website the decision to combine the Prescriber Attestation List with the Automatic Exemption List.</p>
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(I) of column three "Benefit for Persons Aged 21 and Older" of Part 25 Pharmacy Services of Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and subsequent (J) re-lettered appropriately.

Subpart (iv) of Part 12 of Subparagraph (c) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is amended by inserting the phrase ", sickle cell and related disorders, severe burn victims," after the words "palliative cancer

treatment” so that as amended Subpart (iv) shall read as follows:

- (iv) The restrictions in Subpart (iii) do not apply for enrollees with severe cancer pain undergoing active or palliative cancer treatment, sickle cell and related disorders, severe burn victims, and enrollees in hospice and palliative care.

Subpart (v) of Part 12 of Subparagraph (c) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services, including Items (I) and (II) of Subpart (v) of Part 12 of Subparagraph (c) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services, is deleted in its entirety and subsequent subparts renumbered appropriately.

Statutory Authority: T.C.A §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109

Paragraph (1) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase “pharmacy lock-in program” and replacing it with the phrase “Pharmacy Lock-in Program”, and by deleting the word “abuse” and replacing it with the word “Abuse” in both sentences, and by deleting the word “overutilization” and replacing it with the word “Overutilization” in both sentences, and by deleting “lock-in or prior approval status” and replacing it with “Lock-in Status or Prior Authorization Status (PA Status)”, and by inserting a comma “,” after the word “include”, and by inserting a comma “,” after the phrase “limited to”, such that as amended Paragraph (1) shall read as follows:

- (1) The Bureau is authorized to implement and maintain a Pharmacy Lock-in Program designed to address member Abuse or Overutilization. Activities which may indicate Abuse or Overutilization justifying placement on Lock-in Status or Prior Authorization Status (PA Status) include, but are not limited to, the following:

Subparagraph (c) of Paragraph (1) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is deleted in its entirety with all subsequent subparagraphs re-lettered appropriately.

Paragraph (2) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase “pharmacy lock-in program” from the first sentence and replacing it with the phrase “Pharmacy Lock-in Program”, and by deleting the word “TennCare” in the second sentence and replacing it with the word “Tennessee”, and by deleting the word “abuse” in the third sentence and replacing it with the word “Abuse”, and by deleting the word “overutilization” in the third sentence and replacing it with the word “Overutilization”, and by deleting the phrase “or potentially appropriate” from the third sentence, and by deleting the phrase “lock-in program” from the third sentence and replacing it with the phrase “Pharmacy Lock-in Program” so that as amended Paragraph (2) shall read as follows:

- (2) The TennCare Pharmacy Lock-in Program shall be administered by the Bureau. Monitoring of enrollee activities listed in Paragraph (1) shall be conducted by the Bureau, the MCCs, including the PBM, and the Tennessee Office of Inspector General (OIG). When an enrollee has been identified as having participated in any Abuse or Overutilization activities, including but not limited to the activities listed in Paragraph (1), the enrollee’s name shall be referred to the Bureau as appropriate for the Pharmacy Lock-in Program as follows:

Subparagraph (a) of Paragraph (2) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program, including Parts 1 and 2 of Subparagraph (a) of Paragraph (2) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program, is deleted in its entirety and replaced with a new Subparagraph (a) that shall read as follows:

- (a) Any enrollee who has been identified by the OIG as having been convicted of TennCare Fraud or a drug-related offense.

Subparagraph (b) of Paragraph (2) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program, including Parts 1, 2, and 3 of Subparagraph (b) and all related subparts, is deleted in its entirety and replaced with a new Subparagraph (b) that shall read as follows:

- (b) Any enrollee who has been arrested for or charged with TennCare Fraud.

Paragraph (2) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by adding a new Subparagraph (c) and a new Subparagraph (d) that shall read as follows:

- (c) Any enrollee who has been arrested for or charged with a drug-related offense.

- (d) Any enrollee who has obtained multiple controlled substance prescriptions over a ninety (90) day period when the prescriptions were filled by three (3) or more different pharmacies and written by three (3) or more different prescribers.

Paragraph (3) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase “lock-in” and replacing it with the phrase “Lock-in Program” so that as amended Paragraph (3) shall read as follows:

- (3) Pharmacy Lock-in Program procedures shall include:

Subparagraph (a) of Paragraph (3) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase “or potentially appropriate”, and by deleting the phrase “lock-in program” and replacing it with the phrase “Pharmacy Lock-in Program”, and by deleting the phrase “lock-in status” and replacing it with the phrase “Lock-in Status” so that as amended Subparagraph (a) shall read as follows:

- (a) A determination to place an enrollee who has been referred as appropriate for the Pharmacy Lock-in Program on Lock-in Status shall be made by the TennCare Pharmacy Director or designee after the enrollee’s relevant pharmacy claims data has been reviewed by clinical staff.

Subparagraph (b) of Paragraph (3) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase “lock-in program” and replacing it with the phrase “Pharmacy Lock-in Program” each time it appears, and by deleting the phrase “lock-in status” and replacing it with the phrase “Lock-in Status” each time it appears, and by deleting the phrase “lock-in” in the second sentence and replacing it with the phrase “Lock-in Status”, and by adding a new sentence to the end of the subparagraph so that as amended Subparagraph (b) shall read as follows:

- (b) Any enrollee determined to be appropriate for the Pharmacy Lock-in Program shall be notified by the Bureau or the MCC prior to the imposition of Lock-in Status. The notice shall include a brief explanation of the Pharmacy Lock-in Program, the reason for the determination to place the enrollee on Lock-in Status, the date the Lock-in Status will become effective, and the information necessary for the enrollee to appeal the decision of the Bureau, pursuant to Rule 1200-13-13-.11. If the enrollee has an authorized representative on file on their profile, the notice shall be sent to the enrollee’s authorized representative.

Subparagraph (c) of Paragraph (3) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase “lock-in program” and replacing it with the phrase “Pharmacy Lock-in Program”, and by deleting the phrase “lock-in provider” and replacing it with the phrase “Lock-in Provider” so that as amended Subparagraph (c) shall read as follows:

- (c) If an enrollee fails to appeal placement in the Pharmacy Lock-in Program or an appeal is not resolved in his favor, the enrollee will be provided TennCare pharmacy services only at the Lock-in Provider to which the enrollee is assigned.

Paragraph (3) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by adding a new Subparagraph (d) that shall read as follows:

- (d) Any enrollee who has a diagnosis of metastatic neoplasm or Sickle-cell shall not be placed in the Pharmacy Lock-in Program. Any enrollee currently in the Pharmacy Lock-in Program shall be removed from the Pharmacy Lock-in Program if the enrollee’s medical records indicate one of these diagnoses. However, this exception shall not apply if the enrollee has been arrested for, charged with, or convicted of an activity outlined in paragraph (1) of this rule (1200-13-13-.13(1)), or been convicted of TennCare Fraud.

Paragraph (4) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the word “provider” in the first sentence and replacing it with the word “Provider”, and by deleting the phrase “lock-in provider” in the second sentence and replacing it with the phrase “Lock-in Provider” so that as amended Paragraph (4) shall read as follows:

- (4) Lock-in Provider selection. A pharmacy will qualify for and may be selected by the enrollee as a Lock-in Provider only if it meets all the following criteria:

Subparagraph (g) of Paragraph (4) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by adding a sentence to the end of the subparagraph so that as amended Subparagraph (g) shall read as follows:

- (g) It is in proximity to the enrollee's residence, which must be the current address on file with the Bureau. If no pharmacy is available within fifteen (15) miles of the enrollee's residence, reasonable efforts shall be made to use the nearest qualifying pharmacy.

Paragraph (5) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase "lock-in provider" and replacing it with the phrase "Lock-in Provider" so that as amended Paragraph (5) shall read as follows:

- (5) After twelve (12) months a member may request a change of Lock-in Provider once each year. Additional changes are limited to the following reasons:

Paragraph (6) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase "lock-in status" and replacing it with the phrase "Lock-in Status" each time it appears, and by deleting the phrase "prior approval status" and replacing it with the phrase "Prior Authorization Status", and by adding a new sentence to the end of the paragraph so that as amended Paragraph (6) shall read as follows:

- (6) Review of Lock-in Status. The Bureau or the MCC shall periodically review the claims information of members on Lock-in Status to determine the need for continued lock-in or escalation to Prior Authorization Status. This review shall occur at least one time annually.

Subparagraph (a) of Paragraph (6) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting word "status" and replacing it with the word "Status" so that as amended Subparagraph (a) shall read as follows:

- (a) Lock-in Status will be discontinued if the Bureau determines that a member has met all of the following criteria for at least six (6) consecutive months:

Part 1 of Subparagraph (a) of Paragraph (6) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is deleted in its entirety and all subsequent parts renumbered appropriately.

Part 2 of Subparagraph (a) of Paragraph (6) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by deleting the word "narcotic" and replacing it with the word "opioid", and by adding the phrase ", unless it is established that opioid use was/is appropriate according to the enrollee's provider of addiction therapy" at the end of the part so that as amended previously numbered Part 2 shall be renumbered as Part 1 and shall read as follows:

1. Has not received any opioid medications while on buprenorphine-containing products for addiction, unless it is established that opioid use was/is appropriate according to the enrollee's provider of addiction therapy.

Part 3 of Subparagraph (a) of Paragraph (6) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by deleting the period "." at the end of the part, and by adding the phrase ", except under the following:" at the end of the part, and by adding three new subparts so that as amended previously numbered Part 3 shall be renumbered as Part 2 and shall read as follows:

2. Has received TennCare reimbursed controlled substance prescriptions from only one (1) provider, except under the following:
 - (i) If the enrollee is under the care of two (2) providers, and claims data shows consistent, appropriate use of controlled substances within standards of care from both providers, an exception can be made if both providers acknowledge in writing that they are aware of the other provider's care and prescribing and agree that the enrollee is being treated appropriately within standards of care.
 - (ii) Enrollees with claims from multiple providers all in the same practice or in different locations within the same practice will be considered to have used one (1) provider.

- (iii) Enrollees with claims from multiple BESMART providers will be considered to have used one (1) provider.

Part 4 of Subparagraph (a) of Paragraph (6) of Rule 1200-13-13-13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by adding a new sentence to the end of the part so that as amended previously numbered Part 4 shall be renumbered as Part 3 and shall read as follows:

- 3. Has received TennCare reimbursed prescriptions from only one (1) pharmacy. However, if the enrollee has changed his or her pharmacy by requesting a Lock-in Provider change that was approved by the Bureau during the review period, an exception can be made to consider the enrollee as having used one (1) pharmacy.

Subparagraph (b) of Paragraph (6) of Rule 1200-13-13-13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase "lock-in status" and replacing it with the phrase "Lock-in Status" each time it appears so that as amended Subparagraph (b) shall read as follows:

- (b) If a member is removed from Lock-in Status, the Bureau or the MCC will monitor the member for changes in utilization patterns and return him to Lock-in Status if appropriate.

Paragraph (7) of Rule 1200-13-13-13 Member Abuse or Overutilization of the TennCare Pharmacy Program is deleted in its entirety and replaced with a new Paragraph (7) that shall read as follows:

(7) Prior Authorization Status (PA Status).

Subparagraph (a) of Paragraph (7) of Rule 1200-13-13-13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the word "fraud" and replacing it with the word "Fraud" each time it appears, and by deleting the phrase "prior approval status" and replacing it with the phrase "PA Status" so that as amended Subparagraph (a) shall read as follows:

- (a) A member against whom criminal process alleging TennCare Fraud has been issued or who has been convicted of TennCare Fraud shall automatically be placed on PA Status.

Subparagraph (b) of Paragraph (7) of Rule 1200-13-13-13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the word "status" at the beginning of the subparagraph and replacing it with the word "Status", and by deleting the phrase "prior approval status" and replacing it with the phrase "PA Status", and by deleting the phrase "lock-in status" and replacing it with the phrase "Lock-in Status" so that as amended Subparagraph (b) shall read as follows:

- (b) Lock-in Status shall be escalated to PA Status if a member on Lock-in Status meets three (3) of the following criteria over a 90 day period:

Part 1 of Subparagraph (b) of Paragraph (7) of Rule 1200-13-13-13 Member Abuse or Overutilization of the TennCare Pharmacy Program is deleted in its entirety and all subsequent parts renumbered appropriately.

Part 2 of Subparagraph (b) of Paragraph (7) of Rule 1200-13-13-13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by deleting the word and number "two (2)" and replacing them with the word and number "three (3)", and by adding a new sentence to the end of the part so that as amended previously numbered Part 2 shall be renumbered as Part 1 and shall read as follows:

- 1. Has filled prescriptions for controlled substances at three (3) or more pharmacies. However, if the enrollee has changed his or her pharmacy by requesting a Lock-in Provider change that was approved by the Bureau during the review period, an exception can be made to consider the enrollee as having used one (1) pharmacy.

Part 3 of Subparagraph (b) of Paragraph (7) of Rule 1200-13-13-13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by deleting the word and number "two (2)" and replacing them with the word and number "three (3)", and by deleting the period "." at the end of the part, and by adding the phrase ", except under the following:" at the end of the part, and by adding three new subparts so that as amended previously numbered Part 3 shall be renumbered as Part 2 and shall read as follows:

2. Has received controlled substance prescriptions from three (3) or more prescribers, except under the following:
 - (i) If the enrollee is under the care of two (2) providers, and claims data shows consistent, appropriate use of controlled substances within standards of care from both providers, an exception can be made if both providers acknowledge in writing that they are aware of the other provider's care and prescribing and agree that the enrollee is being treated appropriately within standards of care.
 - (ii) Enrollees with claims from multiple providers all in the same practice or in different locations within the same practice will be considered to have used one (1) provider.
 - (iii) Enrollees with claims from multiple BESMART providers will be considered to have used one (1) provider.

Part 4 of Subparagraph (b) of Paragraph (7) of Rule 1200-13-13-13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by deleting the phrase "a narcotic" and replacing it with the phrase "an opioid", and by adding the phrase ", unless it is established that opioid use was/is appropriate according to the enrollee's provider of addiction therapy" at the end of the part so that as amended previously numbered Part 4 shall be renumbered as Part 3 and shall read as follows:

3. Has received an opioid prescription while receiving buprenorphine-containing products for addiction, unless it is established that opioid use was/is appropriate according to the enrollee's provider of addiction therapy.

Subparagraph (c) of Paragraph (7) of Rule 1200-13-13-13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase "a controlled substance" and replacing it with the phrase "an illicit controlled substance," and by inserting the word "diagnosis" after the word "TennCare", and by inserting a comma "," after the word "data", and by deleting the phrase "or an illicit substance identified by toxicology", and by deleting the phrase "prior approval status" and replacing it with the phrase "PA Status" so that as amended Subparagraph (c) shall read as follows:

- (c) A member who has been treated in a hospital emergency department for an overdose of an illicit controlled substance, as identified in the most recently available TennCare diagnosis data, shall automatically be placed on PA Status.

Rule 1200-13-13-13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by inserting a new Paragraph (8), with subsequent paragraphs to be renumbered appropriately so that as amended Paragraph (8) shall read as follows:

- (8) Review of Prior Authorization Status (PA Status). The Bureau or the MCC shall periodically review the claims information of members on PA Status to determine the need for continued PA Status.
 - (a) PA Status for enrollees will be discontinued if TennCare determines that a member has met all of the following criteria for at least six (6) consecutive months:
 1. Has not received any opioid medications while on buprenorphine or buprenorphine/naloxone for addiction unless the enrollee's provider of addiction therapy is aware, and the opioid was used appropriately.
 2. Has received TennCare reimbursed controlled substance prescriptions from only one (1) provider.
 - (i) If the enrollee is under the care of two (2) providers, and claims data shows consistent, appropriate use of controlled substances within standards of care from both providers, an exception can be made if both providers acknowledge in writing that they are aware of the other provider's care and prescribing and agree that the enrollee is being treated appropriately within standards of care.
 - (ii) Enrollees with claims from multiple providers all in the same practice or in different locations within the same practice will be considered to have used one (1) provider.

- (iii) Enrollees with claims from multiple BESMART providers will be considered to have used one (1) provider.
- 3. Has received TennCare reimbursed prescriptions from only one (1) pharmacy. For purposes of determining this provision, if the enrollee has changed his or her pharmacy by requesting a Lock-in Provider change that was approved by the Bureau during the review period, an exception can be made to consider the enrollee as having used one (1) pharmacy.
- (b) Enrollees removed from PA Status remain in the Pharmacy Lock-in Program and are required to qualify for removal from the Pharmacy Lock-in Program after a re-review of their prescription claims as in Paragraph (6) of this rule. If an enrollee is removed from PA Status, TennCare or the MCC will monitor the enrollee for changes in utilization patterns and return the enrollee to PA Status if appropriate.
- (c) Enrollees who are not eligible for review of PA Status:
 - 1. When the Bureau has been notified by OIG that an enrollee has been identified as having participated in any Abuse or Overutilization activities, including but not limited to the activities listed in Paragraph (1) of this rule, then that enrollee is not eligible for review of PA Status.
 - 2. An enrollee who has been convicted of TennCare Fraud is not eligible for review of PA Status.
 - 3. If an enrollee was charged or arrested for TennCare Fraud, the enrollee is not eligible for PA Status review pending the final resolution of the charge or allegation. If the enrollee's TennCare Fraud charges are dismissed or if the enrollee is otherwise not convicted of TennCare Fraud and that TennCare Fraud charge was the sole basis for the enrollee's Lock-in Status, all Pharmacy Lock-in Program and PA Status edits will be terminated on the day that the TennCare Fraud charge was closed.

Paragraph (8) of Rule 1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by deleting the phrase "lock-in status" and replacing it with the phrase "Lock-in Status" so that as amended previously numbered Paragraph (8) shall be renumbered as Paragraph (9) and shall read as follows:

- (9) Emergency pharmacy services may be obtained with a TennCare or MCC override of a member's Lock-in Status. The PBM has clinical staff available at all times to respond to emergency situations. The PBM must verify that a genuine emergency exists, such as documented proof from the lock-in pharmacy that it is temporarily out of stock of a needed medication. A lock-in override will not be provided simply because a pharmacy is closed for the day unless a true medical emergency exists.

Statutory Authority: T.C.A §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109, and 71-5-146.

Rule 1200-13-14-.01 Definitions is amended by inserting in alphabetical order the following new paragraphs, with all subsequent paragraphs renumbered appropriately so that the new paragraphs shall read as follows:

- (#) PHARMACY LOCK-IN PROGRAM shall mean the program designed to reduce enrollee pharmacy benefit Abuse or Overutilization, as set forth in 1200-13-14-.13.
- (#) PRIOR AUTHORIZATION STATUS (PA STATUS) shall mean the status wherein an enrollee must acquire a prior authorization for every prescription fill of any controlled substance, with the exclusion of medications intended for the treatment of opioid use disorder (i.e., buprenorphine or buprenorphine/naloxone).

Subparagraph (c) of Paragraph (128) of Rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new Subparagraph (c) which shall read as follows:

- (c) The Bureau has knowledge that the pharmacy is under investigation.

Subparagraph (d) of Paragraph (128) of Rule 1200-13-14-.01 Definitions is deleted in its entirety.

Paragraph (129) of Rule 1200-13-14-.01 Definitions is deleted in its entirety with all subsequent paragraphs renumbered appropriately.

(E) of column three “Benefit for Persons Aged 21 and Older” of Part 25 Pharmacy Services of Subparagraph (b) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services is amended by adding the phrase “except as specified in (G) and (H) below” after the phrase “shall not be covered” so that as amended (E) shall read as follows:

25. Pharmacy Services [defined at 42 C.F.R. § 440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].		(E) For all other non-Medicare enrollees, coverage is limited to five (5) prescriptions and/or refills per enrollee per month, of which no more than two (2) of the five (5) can be brand name drugs. Additional drugs for these enrollees shall not be covered except as specified in (G) and (H) below.
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(F) of column three “Benefit for Persons Aged 21 and Older” of Part 25 Pharmacy Services of Subparagraph (b) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services is amended by deleting the sentence “A prescription or refill can be for no more than a thirty-one (31) day supply.” in its entirety so that as amended (F) shall read as follows:

25. Pharmacy Services [defined at 42 C.F.R. § 440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].		(F) Prescriptions shall be counted beginning on the first day of each calendar month. Each prescription and/or refill counts as one (1).
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(G) of column three “Benefit for Persons Aged 21 and Older” of Part 25 Pharmacy Services of Subparagraph (b) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services is amended by deleting the word “Exception” and replacing it with the word “Exemption” each time it appears, and by deleting the phrase “via the internet from the TennCare website and upon request by mail through the DHS Family Assistance Service Center” and replacing it with the phrase “via the internet on the TennCare website at www.tn.gov/tenncare and upon request by calling TennCare Connect at the toll-free number in the Member Handbook”, and by deleting the word “Only” at the beginning of the fourth sentence and replacing it with the word “The”, and by deleting the phrase “that is available on the TennCare website located on the World Wide Web at www.tn.gov/tenncare” in the fourth sentence in its entirety so that as amended (G) shall read as follows:

25. Pharmacy Services [defined at 42 C.F.R. § 440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those		(G) The Bureau of TennCare shall maintain an Automatic Exemption List of medications which shall not count against such limit. The Bureau of TennCare may modify the Automatic Exemption List at its discretion. The most current version of the Automatic Exemption List will be made available to enrollees via
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administered to a long-term care facility (nursing facility) resident].		the internet on the TennCare website at www.tn.gov/tenncare and upon request by calling TennCare Connect at the toll-free number in the Member Handbook. The medications that are specified on the current version of the Automatic Exemption List on the date of service shall be considered exempt from applicable prescription limits.
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(H) of column three “Benefit for Persons Aged 21 and Older” of Part 25 Pharmacy Services of Subparagraph (b) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services is amended by deleting the word “shall” from the first sentence and replacing it with the word “may”, and by deleting the word “State” and replacing it with the word “Bureau” each time it appears, and by adding two sentences to the end of (H) so that as amended (H) shall read as follows:

25. Pharmacy Services [defined at 42 C.F.R. § 440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].		(H) The Bureau of TennCare may also maintain a Prescriber Attestation List of medications available when the prescriber attests to an urgent need. The Bureau may include certain drugs or categories of drugs on the list, and may maintain and make available to physicians, providers, pharmacists and the public, a list that shall indicate the drugs or types of drugs the Bureau has determined to so include. Drugs on the Prescriber Attestation List may be approved for enrollees who have already met an applicable benefit limit only if the prescribing professional seeks and obtains a special exemption. In order to obtain a special exemption, the prescribing provider must submit an attestation as directed by TennCare regarding the urgent need for the drug. TennCare will approve the prescribing provider’s determination that the criteria for the special exemption are met, without further review, within 24 hours of receipt. Enrollees will not be entitled to a hearing regarding their eligibility for a special exemption if (i) the prescribing provider has not submitted the required attestation, or (ii) the requested drug is not on the Prescriber Attestation List. At its discretion, TennCare may combine the Prescriber Attestation List with the Automatic Exemption List and thereby suspend the requirement that prescribing providers seek a special exemption. In so doing, TennCare will treat the drugs on the
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		Prescriber Attestation List as if they appeared on the Automatic Exemption List and thus, those drugs will also be exempt from the applicable prescription limits. TennCare must specify on its website the decision to combine the Prescriber Attestation List with the Automatic Exemption List.
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(I) of column three “Benefit for Persons Aged 21 and Older” of Part 25 Pharmacy Services of Subparagraph (b) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services is deleted in its entirety and subsequent (J) re-lettered appropriately.

Subpart (iv) of Part 12 of Subparagraph (c) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services is amended by inserting the phrase “, sickle cell and related disorders, severe burn victims,” after the words “palliative cancer treatment” so that as amended Subpart (iv) shall read as follows:

- (iv) The restrictions in Subpart (iii) do not apply for enrollees with severe cancer pain undergoing active or palliative cancer treatment, sickle cell and related disorders, severe burn victims, and enrollees in hospice and palliative care.

Subpart (v) of Part 12 of Subparagraph (c) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services, including Items (I) and (II) of Subpart (v) of Part 12 of Subparagraph (c) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services, is deleted in its entirety and subsequent subparts renumbered appropriately.

Statutory Authority: T.C.A §§ 4-5-202, 4-5-203, 71-5-105 and 71-5-109

Paragraph (1) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase “pharmacy lock-in program” and replacing it with the phrase “Pharmacy Lock-in Program”, and by deleting the word “abuse” and replacing it with the word “Abuse” in both sentences, and by deleting the word “overutilization” and replacing it with the word “Overutilization” in both sentences, and by deleting “lock-in or prior approval status” and replacing it with “Lock-in Status or Prior Authorization Status (PA Status)”, and by inserting a comma “,” after the word “include”, and by inserting a comma “,” after the phrase “limited to”, such that as amended Paragraph (1) shall read as follows:

- (1) The Bureau is authorized to implement and maintain a Pharmacy Lock-in Program designed to address member Abuse or Overutilization. Activities which may indicate Abuse or Overutilization justifying placement on Lock-in Status or Prior Authorization Status (PA Status) include, but are not limited to, the following:

Subparagraph (c) of Paragraph (1) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is deleted in its entirety with all subsequent subparagraphs re-lettered appropriately.

Paragraph (2) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase “pharmacy lock-in program” from the first sentence and replacing it with the phrase “Pharmacy Lock-in Program”, and by deleting the word “TennCare” in the second sentence and replacing it with the word “Tennessee”, and by deleting the word “abuse” in the third sentence and replacing it with the word “Abuse”, and by deleting the word “overutilization” in the third sentence and replacing it with the word “Overutilization”, and by deleting the phrase “or potentially appropriate” from the third sentence, and by deleting the phrase “lock-in program” from the third sentence and replacing it with the phrase “Pharmacy Lock-in Program” so that as amended Paragraph (2) that shall read as follows:

- (2) The TennCare Pharmacy Lock-in Program shall be administered by the Bureau. Monitoring of enrollee activities listed in Paragraph (1) shall be conducted by the Bureau, the MCCs, including the PBM, and the Tennessee Office of Inspector General (OIG). When an enrollee has been identified as having participated in any Abuse or Overutilization activities, including but not limited to the activities listed in Paragraph (1), the enrollee’s name shall be referred to the Bureau as appropriate for the Pharmacy Lock-in Program as follows:

Subparagraph (a) of Paragraph (2) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program, including Parts 1 and 2 of Subparagraph (a) of Paragraph (2) of Rule 1200-13-14-.13 Member

Abuse or Overutilization of the TennCare Pharmacy Program, is deleted in its entirety and replaced with a new Subparagraph (a) that shall read as follows:

- (a) Any enrollee who has been identified by the OIG as having been convicted of TennCare Fraud or a drug-related offense.

Subparagraph (b) of Paragraph (2) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program, including Parts 1, 2, and 3 of Subparagraph (b) and all related subparts, is deleted in its entirety and replaced with a new Subparagraph (b) that shall read as follows:

- (b) Any enrollee who has been arrested for or charged with TennCare Fraud.

Paragraph (2) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by adding a new Subparagraph (c) and a new Subparagraph (d) that shall read as follows:

- (c) Any enrollee who has been arrested for or charged with a drug-related offense.
- (d) Any enrollee who has obtained multiple controlled substance prescriptions over a ninety (90) day period when the prescriptions were filled by three (3) or more different pharmacies and written by three (3) or more different prescribers.

Paragraph (3) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase "lock-in" and replacing it with the phrase "Lock-in Program" so that as amended Paragraph (3) shall read as follows:

- (3) Pharmacy Lock-in Program procedures shall include:

Subparagraph (a) of Paragraph (3) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase "or potentially appropriate", and by deleting the phrase "lock-in program" and replacing it with the phrase "Pharmacy Lock-in Program", and by deleting the phrase "lock-in status" and replacing it with the phrase "Lock-in Status" so that as amended Subparagraph (a) shall read as follows:

- (a) A determination to place an enrollee who has been referred as appropriate for the Pharmacy Lock-in Program on Lock-in Status shall be made by the TennCare Pharmacy Director or designee after the enrollee's relevant pharmacy claims data has been reviewed by clinical staff.

Subparagraph (b) of Paragraph (3) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase "lock-in program" and replacing it with the phrase "Pharmacy Lock-in Program" each time it appears, and by deleting the phrase "lock-in status" and replacing it with the phrase "Lock-in Status" each time it appears, and by deleting the phrase "lock-in" in the second sentence and replacing it with the phrase "Lock-in Status", and by deleting the phrase "Rule 1200-13-13-.11" and replacing it with the phrase "Rule 1200-13-14-.11", and by adding a new sentence to the end of the subparagraph so that as amended Subparagraph (b) shall read as follows:

- (b) Any enrollee determined to be appropriate for the Pharmacy Lock-in Program shall be notified by the Bureau or the MCC prior to the imposition of Lock-in Status. The notice shall include a brief explanation of the Pharmacy Lock-in Program, the reason for the determination to place the enrollee on Lock-in Status, the date the Lock-in Status will become effective, and the information necessary for the enrollee to appeal the decision of the Bureau, pursuant to Rule 1200-13-14-.11. If the enrollee has an authorized representative on file on their profile, the notice shall be sent to the enrollee's authorized representative.

Subparagraph (c) of Paragraph (3) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase "lock-in program" and replacing it with the phrase "Pharmacy Lock-in Program", and by deleting the phrase "lock-in provider" and replacing it with the phrase "Lock-in Provider" so that as amended Subparagraph (c) shall read as follows:

- (c) If an enrollee fails to appeal placement in the Pharmacy Lock-in Program or an appeal is not resolved in his favor, the enrollee will be provided TennCare pharmacy services only at the Lock-in Provider to which the enrollee is assigned.

Paragraph (3) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is

amended by adding a new Subparagraph (d) that shall read as follows:

- (d) Any enrollee who has a diagnosis of metastatic neoplasm or Sickle-cell shall not be placed in the Pharmacy Lock-in Program. Any enrollee currently in the Pharmacy Lock-in Program shall be removed from the Pharmacy Lock-in Program if the enrollee's medical records indicate one of these diagnoses. However, this exception shall not apply if the enrollee has been arrested for, charged with, or convicted of an activity outlined in paragraph (1) of this rule (1200-13-14-.13(1)), or been convicted of TennCare Fraud.

Paragraph (4) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the word "provider" in the first sentence and replacing it with the word "Provider", and by deleting the phrase "lock-in provider" in the second sentence and replacing it with the phrase "Lock-in Provider" so that as amended Paragraph (4) shall read as follows:

- (4) Lock-in Provider selection. A pharmacy will qualify for and may be selected by the enrollee as a Lock-in Provider only if it meets all the following criteria:

Subparagraph (g) of Paragraph (4) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by adding a sentence to the end of the subparagraph so that as amended Subparagraph (g) shall read as follows:

- (g) It is in proximity to the enrollee's residence, which must be the current address on file with the Bureau. If no pharmacy is available within fifteen (15) miles of the enrollee's residence, reasonable efforts shall be made to use the nearest qualifying pharmacy.

Paragraph (5) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase "lock-in provider" and replacing it with the phrase "Lock-in Provider" so that as amended Paragraph (5) shall read as follows:

- (5) After twelve (12) months a member may request a change of Lock-in Provider once each year. Additional changes are limited to the following reasons:

Paragraph (6) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase "lock-in status" and replacing it with the phrase "Lock-in Status" each time it appears, and by deleting the phrase "prior approval status" and replacing it with the phrase "Prior Authorization Status", and by adding a new sentence to the end of the paragraph so that as amended Paragraph (6) shall read as follows:

- (6) Review of Lock-in Status. The Bureau or the MCC shall periodically review the claims information of members on Lock-in Status to determine the need for continued lock-in or escalation to Prior Authorization Status. This review shall occur at least one time annually.

Subparagraph (a) of Paragraph (6) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting word "status" and replacing it with the word "Status" so that as amended Subparagraph (a) shall read as follows:

- (a) Lock-in Status will be discontinued if the Bureau determines that a member has met all of the following criteria for at least six (6) consecutive months:

Part 1 of Subparagraph (a) of Paragraph (6) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is deleted in its entirety and all subsequent parts renumbered appropriately.

Part 2 of Subparagraph (a) of Paragraph (6) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by deleting the word "narcotic" and replacing it with the word "opioid", and by adding the phrase ", unless it is established that opioid use was/is appropriate according to the enrollee's provider of addiction therapy" at the end of the part so that as amended previously numbered Part 2 shall be renumbered as Part 1 and shall read as follows:

1. Has not received any opioid medications while on buprenorphine-containing products for addiction, unless it is established that opioid use was/is appropriate according to the enrollee's provider of addiction therapy.

Part 3 of Subparagraph (a) of Paragraph (6) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by deleting the period "." at the end of the part, and by adding the phrase ", except under the following:" at the end of the part, and by adding three new subparts so that as amended previously numbered Part 3 shall be renumbered as Part 2 and shall read as follows:

2. Has received TennCare reimbursed controlled substance prescriptions from only one (1) provider, except under the following:
 - (i) If the enrollee is under the care of two (2) providers, and claims data shows consistent, appropriate use of controlled substances within standards of care from both providers, an exception can be made if both providers acknowledge in writing that they are aware of the other provider's care and prescribing and agree that the enrollee is being treated appropriately within standards of care.
 - (ii) Enrollees with claims from multiple providers all in the same practice or in different locations within the same practice will be considered to have used one (1) provider.
 - (iii) Enrollees with claims from multiple BESMART providers will be considered to have used one (1) provider.

Part 4 of Subparagraph (a) of Paragraph (6) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by adding a new sentence to the end of the part so that as amended previously numbered Part 4 shall be renumbered as Part 3 and shall read as follows:

3. Has received TennCare reimbursed prescriptions from only one (1) pharmacy. However, if the enrollee has changed his or her pharmacy by requesting a Lock-in Provider change that was approved by the Bureau during the review period, an exception can be made to consider the enrollee as having used one (1) pharmacy.

Subparagraph (b) of Paragraph (6) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase "lock-in status" and replacing it with the phrase "Lock-in Status" each time it appears so that as amended Subparagraph (b) shall read as follows:

- (b) If a member is removed from Lock-in Status, the Bureau or the MCC will monitor the member for changes in utilization patterns and return him to Lock-in Status if appropriate.

Paragraph (7) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is deleted in its entirety and replaced with a new Paragraph (7) that shall read as follows:

(7) Prior Authorization Status (PA Status).

Subparagraph (a) of Paragraph (7) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the word "fraud" and replacing it with the word "Fraud" each time it appears, and by deleting the phrase "prior approval status" and replacing it with the phrase "PA Status" so that as amended Subparagraph (a) shall read as follows:

- (a) A member against whom criminal process alleging TennCare Fraud has been issued or who has been convicted of TennCare Fraud shall automatically be placed on PA Status.

Subparagraph (b) of Paragraph (7) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the word "status" at the beginning of the subparagraph and replacing it with the word "Status", and by deleting the phrase "prior approval status" and replacing it with the phrase "PA Status", and by deleting the phrase "lock-in status" and replacing it with the phrase "Lock-in Status" so that as amended Subparagraph (b) shall read as follows:

- (b) Lock-in Status shall be escalated to PA Status if a member on Lock-in Status meets three (3) of the following criteria over a 90 day period:

Part 1 of Subparagraph (b) of Paragraph (7) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is deleted in its entirety and all subsequent parts renumbered appropriately.

Part 2 of Subparagraph (b) of Paragraph (7) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by deleting the word and number “two (2)” and replacing them with the word and number “three (3)”, and by adding a new sentence to the end of the part so that as amended previously numbered Part 2 shall be renumbered as Part 1 and shall read as follows:

1. Has filled prescriptions for controlled substances at three (3) or more pharmacies. However, if the enrollee has changed his or her pharmacy by requesting a Lock-in Provider change that was approved by the Bureau during the review period, an exception can be made to consider the enrollee as having used one (1) pharmacy.

Part 3 of Subparagraph (b) of Paragraph (7) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by deleting the word and number “two (2)” and replacing them with the word and number “three (3)”, and by deleting the period “.” at the end of the part, and by adding the phrase “, except under the following:” at the end of the part, and by adding three new subparts so that as amended previously numbered Part 3 shall be renumbered as Part 2 and shall read as follows:

2. Has received controlled substance prescriptions from three (3) or more prescribers, except under the following:
 - (i) If the enrollee is under the care of two (2) providers, and claims data shows consistent, appropriate use of controlled substances within standards of care from both providers, an exception can be made if both providers acknowledge in writing that they are aware of the other provider’s care and prescribing and agree that the enrollee is being treated appropriately within standards of care.
 - (ii) Enrollees with claims from multiple providers all in the same practice or in different locations within the same practice will be considered to have used one (1) provider.
 - (iii) Enrollees with claims from multiple BESMART providers will be considered to have used one (1) provider.

Part 4 of Subparagraph (b) of Paragraph (7) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by deleting the phrase “a narcotic” and replacing it with the phrase “an opioid”, and by adding the phrase “, unless it is established that opioid use was/is appropriate according to the enrollee’s provider of addiction therapy” at the end of the part so that as amended previously numbered Part 4 shall be renumbered Part 3 and shall read as follows:

3. Has received an opioid prescription while receiving buprenorphine-containing products for addiction, unless it is established that opioid use was/is appropriate according to the enrollee’s provider of addiction therapy.

Subparagraph (c) of Paragraph (7) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by deleting the phrase “a controlled substance” and replacing it with the phrase “an illicit controlled substance,”, and by inserting the word “diagnosis” after the word “TennCare”, and by inserting a comma “,” after the word “data”, and by deleting the phrase “or an illicit substance identified by toxicology”, and by deleting the phrase “prior approval status” and replacing it with the phrase “PA Status” so that as amended Subparagraph (c) shall read as follows:

- (c) A member who has been treated in a hospital emergency department for an overdose of an illicit controlled substance, as identified in the most recently available TennCare diagnosis data, shall automatically be placed on PA Status.

Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is amended by inserting a new Paragraph (8), with subsequent paragraphs to be renumbered appropriately so that as amended Paragraph (8) shall read as follows:

- (8) Review of Prior Authorization Status (PA Status). The Bureau or the MCC shall periodically review the claims information of members on PA Status to determine the need for continued PA Status.

- (a) PA Status for enrollees will be discontinued if TennCare determines that a member has met all of the following criteria for at least six (6) consecutive months:
 - 1. Has not received any opioid medications while on buprenorphine or buprenorphine/naloxone for addiction unless the enrollee's provider of addiction therapy is aware, and the opioid was used appropriately.
 - 2. Has received TennCare reimbursed controlled substance prescriptions from only one (1) provider.
 - (i) If the enrollee is under the care of two (2) providers, and claims data shows consistent, appropriate use of controlled substances within standards of care from both providers, an exception can be made if both providers acknowledge in writing that they are aware of the other provider's care and prescribing and agree that the enrollee is being treated appropriately within standards of care.
 - (ii) Enrollees with claims from multiple providers all in the same practice or in different locations within the same practice will be considered to have used one (1) provider.
 - (iii) Enrollees with claims from multiple BESMART providers will be considered to have used one (1) provider.
 - 3. Has received TennCare reimbursed prescriptions from only one (1) pharmacy. For purposes of determining this provision, if the enrollee has changed his or her pharmacy by requesting a Lock-in Provider change that was approved by the Bureau during the review period, an exception can be made to consider the enrollee as having used one (1) pharmacy.
- (b) Enrollees removed from PA Status remain in the Pharmacy Lock-in Program and are required to qualify for removal from the Pharmacy Lock-in Program after a re-review of their prescription claims as in Paragraph (6) of this rule. If an enrollee is removed from PA Status, TennCare or the MCC will monitor the enrollee for changes in utilization patterns and return the enrollee to PA Status if appropriate.
- (c) Enrollees who are not eligible for review of PA Status:
 - 1. When the Bureau has been notified by OIG that an enrollee has been identified as having participated in any Abuse or Overutilization activities, including but not limited to the activities listed in Paragraph (1) of this rule, then that enrollee is not eligible for review of PA Status.
 - 2. An enrollee who has been convicted of TennCare Fraud is not eligible for review of PA Status.
 - 3. If an enrollee was charged or arrested for TennCare Fraud, the enrollee is not eligible for PA Status review pending the final resolution of the charge or allegation. If the enrollee's TennCare Fraud charges are dismissed or if the enrollee is otherwise not convicted of TennCare Fraud and that TennCare Fraud charge was the sole basis for the enrollee's Lock-in Status, all Pharmacy Lock-in Program and PA Status edits will be terminated on the day that the TennCare Fraud charge was closed.

Paragraph (8) of Rule 1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program is renumbered and amended by deleting the phrase "lock-in status" and replacing it with the phrase "Lock-in Status" so that as amended previously numbered Paragraph (8) shall be renumbered as Paragraph (9) and shall read as follows:

- (9) Emergency pharmacy services may be obtained with a TennCare or MCC override of a member's Lock-in Status. The PBM has clinical staff available at all times to respond to emergency situations. The PBM must verify that a genuine emergency exists, such as documented proof from the lock-in pharmacy that it is temporarily out of stock of a needed medication. A lock-in override will not be provided simply because a pharmacy is closed for the day unless a true medical emergency exists.

Statutory Authority: T.C.A §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109, and 71-5-146.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: January 9, 2024

Signature: _____



Name of Officer: Stephen Smith

Director, Division of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Department of State Use Only

Filed with the Department of State on: 1/9/2024



Tre Hargett
Secretary of State

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Jan 09 2024, 4:00 pm

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