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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:	Bureau of TennCare
Contact Person:	George Woods
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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:	ADA Coordinator
Address:	310 Great Circle Road, Nashville, TN 37243
Phone:	(615) 507-6474
Email:	helen.moore@tn.gov

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

Address 1:	310 Great Circle Road, Conference Room 1 East A		
Address 2:			
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	08/08/2013		
Hearing Time:	9:00a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendments
- 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-.13	Members Abuse and Overutilization of the TennCare 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 <http://state.tn.us/sos/rules/1360/1360.htm>)

The Table of Contents of Rule Chapter 1200-13-13 TennCare Medicaid is amended by deleting the Title of Rule Number 1200-13-13-.13 Members Abuse and Overutilization of the TennCare Program from the Table of Contents in its entirety and replacing the Rule Title in the Table of Contents as follows:

1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program.

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

Rule 1200-13-13-.01 Definitions is amended by deleting Paragraph (66) Lock-In Provider and replacing it with amended Paragraph (66) Lock-In Provider as follows:

(66) Lock-In Provider. A provider, pharmacy or physician, chosen by an enrollee on pharmacy lock-in status to whom the enrollee is assigned by TennCare for the purpose of receiving covered pharmacy services.

Rule 1200-13-13-.01 Definitions is amended by deleting Paragraph (67) Lock-In Status and replacing it with amended Paragraph (67) Lock-In Status as follows:

(67) Lock-In Status. The restriction of an enrollee to a specified physician, or to a specified pharmacy provider at a specified single location.

Rule 1200-13-13-.01 Definitions is amended by deleting the word "provide" from current Paragraph (91) PBM (Pharmacy Benefits Manager) and replacing it with the word "administer" so that as amended Paragraph (91) PBM (Pharmacy Benefits Manager) reads as follows:

(91) PBM (Pharmacy Benefits Manager) shall mean an organization approved by the Tennessee Department of Finance and Administration to administer pharmacy benefits to enrollees to the extent such services are covered by the TennCare Program. A PBM may have a signed TennCare Contractor Risk Agreement with the State, or may be a subcontractor to an MCO.

Rule 1200-13-13-.01 Definitions is amended by inserting alphabetically the following new Paragraphs and numbering all definitions appropriately:

() Controlled Substance. A drug, substance, or immediate precursor identified by the U.S. Department of Justice, Drug Enforcement Administration or by the Tennessee Drug Control Act as having the potential for abuse and the likelihood of physical or psychological dependence if used incorrectly.

() Prescriber. An individual authorized by law to prescribe drugs.

() Targeted Pharmacy. A pharmacy meeting one of the following criteria:

(a) It is located outside the State of Tennessee.

(b) It has had previous controlled substance violations with the Tennessee State Board of Pharmacy.

(c) It appears to be an outlier to the norm in its dispensing of controlled substances.

(d) It has filled controlled substance prescriptions that are covered by TennCare for members locked in to a different pharmacy after being notified that the member was locked in to a different pharmacy.

() Targeted Prescriber. A prescriber with prescribing authority who is ranked as a top prescriber of controlled substances based on multiple factors which may include but are not limited to any of the following:

(a) The percentage of controlled substances prescribed.

(b) The percentage of Schedule II controlled substances prescribed.

(c) The percentage of Schedule III controlled substances prescribed.

- (d) The percentage of short acting single ingredient opiates prescribed.
- (e) The percentage of short acting combination product opiates prescribed.
- (f) The percentage of long acting opiates prescribed.
- (g) The average morphine equivalents per day prescribed.
- (h) The percentage of rejected claims of controlled substances.

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

Rule 1200-13-13-.13 "Members Abuse and Overutilization of the TennCare Program" is deleted in its entirety and replaced with the following:

1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program.

- (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 or prior approval status include but are not limited to the following:
 - (a) Forging or altering a prescription for drugs.
 - (b) Selling TennCare paid prescription drugs.
 - (c) Failing to control pharmacy overutilization activity while on lock-in status.
 - (d) Visiting multiple prescribers or pharmacies to obtain controlled substances.
 - (e) Trading, swapping or selling a TennCare card.
 - (f) Failing to promptly report the loss or theft of a TennCare card.
 - (g) Forging or altering a TennCare card.
 - (h) Knowingly providing false, incomplete, inaccurate or erroneous information to provider(s) in order to receive covered services for which the member is ineligible.
 - (i) Permitting the use of a TennCare card by anyone other than the member to whom the card is assigned in order to receive or attempt to receive services.
- (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 TennCare 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 or potentially appropriate for the lock-in program as follows:
 - (a) Appropriate for the lock-in program:
 - 1. Any enrollee who has been identified by the OIG as having been convicted of TennCare fraud or a drug-related offense.
 - 2. Any enrollee who has used buprenorphine/naloxone (Suboxone[®]) or buprenorphine (Subutex[®]) for office based opioid addiction treatment within the previous six (6) months.
 - (b) Potentially appropriate for the lock-in program:
 - 1. Any enrollee who has been arrested for TennCare fraud.

2. Any enrollee who has been arrested for a drug-related offense.
 3. Any enrollee who has obtained multiple controlled substance prescriptions over a 90-day period that meet one of the following conditions:
 - (i) The prescriptions were filled at three (3) or more pharmacies and written by three (3) or more prescribers.
 - (ii) The prescriptions were filled at one (1) or more targeted pharmacies and written by two (2) or more prescribers.
 - (iii) The prescriptions were filled at two (2) or more targeted pharmacies and written by one (1) or more prescribers.
 - (iv) The prescriptions were filled at one (1) or more targeted pharmacies and written by one (1) or more targeted prescribers.
 - (v) The prescriptions were filled at two (2) or more pharmacies and written during three (3) or more emergency room visits.
- (3) Pharmacy lock-in procedures shall include:
- (a) A determination to place an enrollee who has been referred as appropriate or potentially appropriate for the 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.
 - (b) Any enrollee determined to be appropriate for the 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 lock-in program, the reason for the determination to place the enrollee on lock-in status, the date the lock-in will become effective, and the information necessary for the enrollee to appeal the decision of the Bureau, pursuant to Rule 1200-13-13-.11.
 - (c) If an enrollee fails to appeal placement in the 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.
- (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:
- (a) It is enrolled in the TennCare Pharmacy Network;
 - (b) It is within the State of Tennessee;
 - (c) It is a full-service pharmacy that carries all medications normally carried by pharmacies;
 - (d) It is not a mail order or specialty pharmacy;
 - (e) It is not a targeted pharmacy;
 - (f) It is a single pharmacy location at a specific address. A chain pharmacy may be selected but only the specific named location may be used, not multiple locations or outlets of the chain; and
 - (g) It is in proximity to the enrollee's residence, which must be the current address on file with the Bureau.
- (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:
- (a) The member has moved and his new address is at least fifteen (15) miles from the lock-in pharmacy and he has updated his address with the Bureau.

- (b) The member's lock-in pharmacy has permanently closed.
 - (c) The member's lock-in pharmacy has voluntarily dismissed the enrollee from its practice and has notified the Bureau and the PBM.
 - (d) The Bureau may, at its sole discretion, determine that there is a compelling need to change the member's lock-in pharmacy.
- (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 approval status.
- (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:
 - 1. Has not paid cash for any controlled substance prescriptions covered by TennCare.
 - 2. Has not received any narcotic medications while on buprenorphine or buprenorphine/naloxone for addiction.
 - 3. Has received TennCare reimbursed controlled substance prescriptions from only one (1) provider.
 - 4. Has received TennCare reimbursed prescriptions from only one (1) pharmacy.
 - (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.
- (7) Prior approval status.
- (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 prior approval status.
 - (b) Lock-in status shall be escalated to prior approval status if a member on lock-in status meets three (3) of the following criteria over a 90 day period:
 - 1. Has paid cash for three (3) or more controlled substance prescriptions covered by TennCare.
 - 2. Has filled prescriptions for controlled substances at two (2) or more pharmacies.
 - 3. Has received controlled substance prescriptions from two (2) or more prescribers.
 - 4. Has received a narcotic prescription while receiving buprenorphine or buprenorphine/naloxone for addiction.
 - (c) A member who has been treated in a hospital emergency department for an overdose of a controlled substance (as identified in the most recently available TennCare data) or an illicit substance identified by toxicology shall automatically be placed on prior approval status.
- (8) 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.

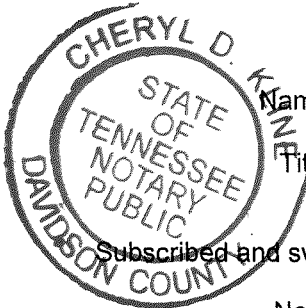
Date: 6/10/2013

Signature: *D. J. Gordon*

Name of Officer: Darin J. Gordon

Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 6/10/13

Notary Public Signature: *Cheryl D. Kline*

My commission expires on: 8/23/16

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Filed with the Department of State on: 6/11/13

Tre Hargett

Tre Hargett
Secretary of State

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