Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Tennessee Department of Finance and Administration
Division: Division of TennCare
Contact Person: George Woods
Address: Division of TennCare
310 Great Circle Road
Nashville, TN 37243
Phone: (615) 507-6446
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Revision Type (check all that apply):
X Amendments
X New
___ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row.)

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Chapter 1200-13-13 TennCare Standard Table of Contents is amended by adding a new rule number and title “1200-13-13-.15 BESMART” at the end of the Table.

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

   ([#]) Buprenorphine Enhanced Supportive Medication-Assisted Recovery and Treatment ("BESMART"). A treatment model comprised of comprehensive treatment and recovery related supports for adult (21 and older) enrollees with opioid use disorder (OUD) ("participants").


Chapter 1200-13-13 is amended by inserting a new Rule .15 BESMART which shall read as follows:

1200-13-13-.15 BESMART. This rule supersedes any other rules related to the use of buprenorphine products for treatment of opioid use disorder (OUD) in office based opioid treatment (OBOT) or an opioid treatment program (OTP) by a treating provider participating in an MCO’s network of BESMART providers.

   (1) BESMART treatment is a component of covered outpatient substance abuse benefits and consists of a set of coordinated medically necessary covered services which includes:

   (a) Psychosocial assessment and development of a treatment plan;

   (b) Individual or group counseling;

   (c) Peer recovery services;

   (d) Care coordination;

   (e) Opioid-agonist therapy consisting of buprenorphine products that have been FDA approved for OUD treatment and may be prescribed in excess of the limits described in rules .04 and .10, when determined to be medically necessary by a treating provider in an MCO’s network of BESMART providers and under the participant’s plan of care.

   1. Except as otherwise provided for in this rule, participants may receive up to sixteen (16) mg of buprenorphine containing products daily; however, providers shall initiate and lead a discussion regarding a participant’s readiness to taper down or off treatment at any time upon a participant’s request, but no later than one (1) year after initiating treatment and every six (6) months thereafter.

   2. Under the best practices for treatment of OUD, the BESMART provider shall utilize the lowest effective dose of Medication-Assisted Treatment (MAT).

   3. The following adult populations shall be eligible to receive a maximum daily dosage of twenty-four (24) mg of buprenorphine, not to exceed one (1) year in duration:

      (i) Pregnant participants confirmed by provider attestation.

      (ii) Postpartum participants for a period of twelve (12) months from delivery date as shown by medical records or insurance claim.

      (iii) Recent intravenous (IV) drug users confirmed by prescriber attestation and a positive urine drug screen.
(iv) Current users receiving greater than fifty (50) mg of methadone for OUD treatment transitioning to buprenorphine agonist therapy demonstrated by paid claims data from the participant's health insurer, provider attestation, or medical records.

(v) Current users of sixteen (16) mg to twenty-four (24) mg per day of buprenorphine demonstrated by paid claims data from the participant's previous health insurer.

(vi) For one (1) year from the effective date of this rule, a member who does not qualify under the criteria of this part but receives greater than sixteen (16) mg per day of buprenorphine as demonstrated by the controlled substance monitoring database shall be eligible to receive a maximum daily dose of twenty-four (24) mg.

(2) BESMART treatment requires medical office visits at least weekly for participants in the induction and stabilization phase of treatment; at least every two (2) to four (4) weeks for participants in the maintenance phase of treatment; and at least every two (2) months for participants who have been in the maintenance phase of treatment for one (1) year or longer.

(3) To be reimbursed for a BESMART covered service, treating providers must demonstrate an ability to provide all BESMART services in a coordinated, person-centric way, including the ability to facilitate access to all related treatment modalities and provider types, and must participate in at least one (1) MCO's network of BESMART providers.

(4) Prescriptions of buprenorphine containing products to TennCare enrollees by nurse practitioners and physician assistants for the treatment of OUD will not be reimbursed unless the nurse practitioner or physician assistant participates in at least one (1) MCO's network of BESMART providers.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Division of TennCare (board/commission/other authority) on 06/01/2021 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 03/09/2021

Rulemaking Hearing(s) Conducted on: (add more dates). 05/03/2021

Date: June 1, 2021

Signature: ____________________________

Name of Officer: Stephen Smith

Title of Officer: Director, Division of TennCare

Tennessee Department of Finance and Administration

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

Date

6/29/2021

9/27/2021

Department of State Use Only

Filed with the Department of State on: 6/29/2021

Effective on: 9/27/2021

Tre Hargett
Secretary of State
Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

TennCare received one comment in response to this rulemaking. The commenter recommended that language in the rule about “physician office visits” be changed to “medical office visits” in order to account for services provided by certain mid-level practitioners, such as advanced nurse practitioners and physicians assistants. TennCare modified the rule to reflect the commenter’s recommendation.
Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rule amendments do not specifically affect small businesses.
Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pcl070.pdf) of the 2010 Session of the General Assembly.)

The rules are not anticipated to have an impact on local governments.
Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are being adopted to implement a CMS approved TennCare State Plan Amendment for a Buprenorphine Enhanced Supportive Medication-Assisted Recovery and Treatment (BESMART) program to combat the opioid epidemic and public health emergency.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Rules are lawfully adopted by the Bureau of TennCare under T.C.A. §§ 4-5-202, 71-5-105, 71-5-107 and 71-5-109.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by these Rules are TennCare enrollees, providers and the managed care contractors. The governmental entity most directly affected by these Rules is the Division of TennCare, Tennessee Department of Finance and Administration.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

The rules were approved by the Tennessee Attorney General. No additional opinion was given or requested.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency’s annual budget or five hundred thousand dollars ($500,000), whichever is less;

The adoption of these Rules is projected to have a minimal impact on state expenditures as the BESMART program does not offer new services, rather a comprehensive method of service delivery.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Donna K. Tidwell
Deputy General Counsel

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Donna K. Tidwell
Deputy General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

310 Great Circle Road
Nashville, TN 37243
(615) 507-6852
donna.tidwell@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.
1200-13-13 TennCare Standard Table of Contents

1200-13-13-.15 BESMART

1200-13-13-.01 Definitions

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