

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Individual Education Accounts

STATUTORY AUTHORITY: Tennessee Public Chapter Nos. 305 (2017), 431 (2015), 620 (2015), and 793 (2015). T.C.A. §§ 49-10-140 *et seq.*

EFFECTIVE DATES: September 22, 2017 through March 21, 2018

FISCAL IMPACT: These revisions will not affect state or local expenditures.

STAFF RULE ABSTRACT: These emergency rules effectuate the Individualized Education Act as required by Public Chapter 431 (2015). The Act provides options for account holders to choose the educational opportunities that best meet the individual needs of the eligible child by giving him or her direct access to state and local public education funds. These amendments are to address changes in the Act as provided in Public Chapter 305 (2017).

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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

Not applicable

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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 effectuate the Individualized Education Act as required by Public Chapter 431 (2015). The Act provides options for account holders to choose the educational opportunities that best meet the individual needs of the eligible child by giving him or her direct access to state and local public education funds. These amendments are to address changes in the Act as provided in Public Chapter 305 (2017)

- (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;

Tennessee Public Chapters Nos. 305 (2017), 431 (2015), 620 (2015), and 793 (2015). T.C.A. §§ 49-10-140 *et seq.*

- (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;

Parents of students with disabilities and local school districts are most directly affected by this rule. Feedback will be gathered at a rulemaking hearing on September 29, 2017.

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

None

- (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;

These revisions will not affect state or local expenditures

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

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

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Sequence Number: 09-19-17
 Rule ID(s): 6601
 File Date (effective date): 9/22/17
 End Effective Date: 3/21/18

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	State Board of Education
Division:	
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment
 New
 Repeal

Statement of Necessity:

On May 5, 2017, Governor Haslam signed into law Public Chapter 305, which made revisions to the Individualized Education Act. The State Board of Education ("Board") and the Department of Education ("Department") are committed to an ongoing review of the proposed rules based on feedback from stakeholders and members of the public. As part of that ongoing review, the Department and Board identified clean-up edits to make the rules consistent with state law in regards to student eligibility and approved uses of funds and to clarify the appeals review process and timeline.

Some of the changes in the rules would impact the decision on some of the forms that parents have been submitting to participate in the program, thus, the rule will need to be effective as soon as possible in order for the Department of Education to be able to implement them. This rule governs the educational welfare of some of the most vulnerable student, thus it the emergency rule is necessary for timely implementation of the statutory changes.

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

Chapter Number	Chapter Title
0520-01-11	Individual Education Accounts
Rule Number	Rule Title
0520-01-11-.02	Definitions
0520-01-11-.03	Application
0520-01-11-.04	Term of the IEA
0520-01-11-.05	Agreement and Funds Transfer
0520-01-11-.06	Use of Funds
0520-01-11-.07	Monitoring and Compliance
0520-01-11-.08	Participating Schools
0520-01-11-.09	Return to Local Education Agency
0520-01-11-.10	Appeal Procedures
0520-01-11-.11	Conflict of Interest

**RULES
 OF
 STATE BOARD OF EDUCATION
 CHAPTER 0520-01-11
 INDIVIDUALIZED EDUCATION ACCOUNTS**

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0520-01-11-01 PURPOSE:

The purpose of these rules is to effectuate the Individualized Education Act as required by Public Chapter 431 (2015), T.C.A. § 49-10-1401, *et seq.*

Authority: T.C.A. §§ 49-1-302, 49-10-1401, *et seq.*

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0520-01-11-02 DEFINITIONS:

- (1) "Account holder" means a parent as defined in subsection (18) of this section or a student who has attained the age of majority who signs the IEA contract, is the ~~account holder~~ Account Holder for the IEA funds, and is responsible for complying with all of the requirements of the IEA Program.
- (2) "Act" means the Individualized Education Act.
- (3) "Agreement" means a document signed by a parent of ~~an participating eligible student or an eligible a participating student~~ who has attained the age of majority and a designee of the Department, which qualifies the parent or student who has attained the age of majority to participate in the Program.
- (4) "~~Standard Application Form~~" means a document whereby parents and participating eligible students may seek to establish an Individualized Education Account (IEA).
- (5) "~~Computer hardware or other technological devices~~" means computer hardware or technological devices approved by the Department or a licensed treating physician that is used for the student's educational needs. Computer hardware and technological devices must meet one (1) of the following criteria:
 - (a) Is a required device for communication or for physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, or
 - (b) Allows a student to access instruction or instructional content.

- (6) "Criminal background check" at a minimum shall include, but not be limited to, a check of the following: Tennessee's Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All providers as defined in subsection (23) of this section and employers of providers must maintain documentation that any persons providing services to participating students has have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act. All participating schools must maintain documentation that all persons working on school grounds when students are present and/or providing services to students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act.
- (7) "Department" means the Tennessee Department of Education.
- (8) "Educational purposes" means tuition, fees, and/or required textbooks at a participating school curriculum of a participating school and educational therapies. Fees do not include: room and board or meals, meal plans, food, or consumable materials.
- (9) "Educational therapies" means individualized services designed to develop or improve academic performance through instructional and therapeutic techniques, and provided by therapists that meet the requirements set by the Department and the State Board of Education.
- (10) "Eligible postsecondary institution" means a Tennessee public community college, college of applied technology, or university of the University of Tennessee system or a locally governed state university within the Tennessee Board of Regents system university of the University of Tennessee system or the Tennessee Board of Regents system, a Tennessee public postsecondary institution, or an accredited a private postsecondary institution accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association with Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).
- (11) "Eligible student" means:
- (a) A resident of this state with an active individualized eEducation pProgram (IEP) in accordance with 34 C.F.R § 300 et seq., § 49-10-102, and regulations of the State Board of Education with one (1) --any of the following disabilities as defined by the rules of the State Board of Education 0520-01-09-02 as the primary or secondary disability in effect at the time the Department receives the request for participation in--the program the Program as documented in their individualized education program (IEP) at the time of their application and defined in the rules of the State Board of Education 0520-01-09-02:
1. Autism;
 2. Deaf-blindness;

- ~~2.3. Developmental delay;~~
- ~~3.4. Hearing impairments;~~
- ~~5. Intellectual disability;~~
- ~~4.6. Multiple disabilities;~~
- ~~5.7. Orthopedic impairments;~~
- ~~6.8. Traumatic brain injury; or~~
- ~~7. Visual impairments;~~
- ~~8.9. Has an IEP in effect at the time the Department receives the request for participation in the program; and~~

(b) Meets at least one (1) of the following requirements:

1. ~~Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year in which the student receives an individualized education account (IEA), in a Tennessee public school during the two (2) semesters immediately preceding the semester in which the student receives an IEA; For the purposes of these rules, prior two (2) full semesters in enrollment one (1) full school year means that the student was counted in the enrollment figures for the LEA(s) for the entire school year as reported in the state's student information system; that the student was counted in the enrollment figures for the Local Education Agency (LEA) in months two (2), three (3), six (6) and seven (7) for purposes of calculating the basic education program (BEP) funding.~~
 2. ~~Has not previously attended a K-12 school in Tennessee, but is currently eligible to enroll in a kindergarten program in a public school in this state; Students meeting this eligibility requirement shall inform the LEA in which they reside of the student's intent to enroll in the program prior to August 1 of the year in which they are enrolled in the IEA program; or~~
 3. ~~Has not previously attended a school in Tennessee during the one (1) full school year two (2) semesters immediately preceding the school year semester in which the student receives an IEA, and moved to Tennessee less than one (1) year prior to the date of enrollment in the IEA Program; or is eligible to enroll in a public school in this state; or When a student has an active IEP in another state and moves to Tennessee, the student shall register with the LEA in which he/she resides in order to be eligible to participate in the IEA program. The LEA shall then request a copy of the student's IEP from the student's previous out-of-state school;~~
- ~~Has an active Individualized Education Program (IEP) in accordance with 34 C.F.R. § 300. et seq., § 49-10-102, and regulations of the State Board of Education with one (1) of the disabilities pursuant to subdivision (3)(A) as the primary or secondary~~

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~~disability in effect at the time the Department receives the request for participation in the Program; or~~

~~4. Received an IEA in the previous school year; or~~

~~5.4. If a student has an IEP prior to enrolling in kindergarten, the student will be eligible to receive an IEA without having to attend a Tennessee public school; however, the student would have to register with the LEA in which they reside for purposes of calculating the amount of IEA funding the student would be eligible to receive.~~

- (12) "Fee for service transportation provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a parent or participating student in accordance with the conflict of interest provision in these rules.
- (13) "Financial institution" or "private financial management firm" means an institution selected by the Department to administer the individualized education accounts.
- (14) "IEA" means a Tennessee individualized education account.
- (15) "IEP" means an individualized education program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1400, et seq.
- (16) "Local education ~~Agency~~ Agency (LEA)," "school system," "public school system," "local school system," "school district," or "local school district" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.
- (17) "Nonpublic online learning program or course" means online programs or courses that meet the requirements set by the Department ~~designated and approved by the Department.~~
- (18) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child; ~~means the parent, legal guardian, person who has custody of the child pursuant to an order of a court of competent jurisdiction, or person with caregiving authority pursuant to a power of attorney for care of a minor child pursuant to T.C.A. § Title 34, Chapter 6, Part 3.~~
- (19) "Participating school" means a nonpublic school that meets the requirements established in T.C.A. § 49-10-1401, et seq. And seeks to enroll eligible students, the Act, and meets related rules, regulations, policies, and procedures of the State Board of Education ~~state board of education and the Department. Participating schools must be a Category I, II, or III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02.~~
- (20) "Participating student" means an eligible student whose parent is participating in the ~~IEA program~~ IEA Program or an eligible student who has attained the age of majority and is participating in the IEA Program.
- (21) "Physician" means a person licensed under T.C.A. § Title 63, Chapter 6 or T.C.A. § Title 63, Chapter 9.

- (22) "Program" means the individualized education account (IEA) program created in T.C.A. § 49-10-1401, et seq.
- (23) "Provider" means an individual or business that meets the requirements for accreditation or licensure established by the Tennessee Department of Health pursuant to T.C.A. Title § 63 or T.C.A. § Title 68 or Tennessee Department of Education and pursuant to the application and approval process created by the Departments of ~~education~~ Education and ~~health~~ Health for participating providers.
- (24) ~~"Technological device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability in the curriculum of a participating school or the program of a participating provider.~~
- (25)(24) "Tutoring services" means services provided by a tutor that meets the requirements set by the Department, accredited by a state, regional, or national accrediting organization.

Authority: T.C.A. §§ 49-1-302 and 49-10-1401 et seq.

0520-01-11-.03-APPLICATION03 APPLICATION.

- (1) To apply to receive an IEA the parent of an eligible student, or an eligible student who has attained the age of majority, must first request an IEA by filing a notice of intent with the Department and fully completing ~~complete an application~~ Standard Application Form available through the Department's website or through the Department's office by the deadline set by the Department.
- (a) A school district, a nonpublic school, or the Department may assist a parent of an eligible student or and eligible student who has attained the age of majority in filing the Standard Application Form.
- (b) An application The Standard Application Form must include all information requested by the Department and must be approved by the Department.
- (2) ~~The Department shall make a determination of eligibility to participate in the Program and notify the parent of an eligible student, or and eligible student who has reached the age of majority.~~
- (2)(3) Once an completed Standard Application Form application has been approved the parent of an eligible student, or an eligibler student who has reached the age of majority shall complete the enrollment procedures set by the Department to become enrolled in the pProgram, including execution of an Agreement to participate in the Program.

Authority: T.C.A. §§ 49-1-302 and 49-10-1405

0520-01-11-.04-TERM04 TERM OF THE IEA

- (1) For purposes of continuity of educational attainment, a student who enrolls in the program-Program shall remain eligible until the participating student meets one of the following, whichever occurs first:
 - (a) Enrolls full-time in a public school ~~in the LEA in which the parent or student who has attained the age of majority resides;~~
 - (b) Graduates from high school. The student may continue in the program-Program until such time as he or she receives a high school diploma, or receives a passing score on all subtests of the GED or HiSET. Certificates of attendance do not constitute graduation from high school for the purpose of this program-Program; or
 - (c) Reaches twenty-two (22) years of age. The student may complete the school year in which he or she reaches the age of twenty-two (22), provided a student shall not be enrolled in the program-Program past August 15 of the next school year after they have reached twenty-two (22) years of age.
- (2) ~~The account-Account holder-Holder may remove the participating student from the nonpublic school and place the student in a public school. The account-Account hHolder shall complete the procedures for withdrawal from the IEA pProgram set by the Department of the student's withdrawal from the IEA program~~
- (3) ~~Upon reasonable notice to the Department, [the student's parent (of a student who has attained the age of majority)-Account Holder may move the student from one participating nonpublic school to another participating nonpublic school in accordance with procedures set by the Department.~~
- (4) ~~In order for students to continue in the program-Program, the parent or participating student who has attained the age of majority-Account Holder shall annually renew the IEA by following the procedures posted on the Department's website.~~
- (5) ~~After graduating from high school or reaching twenty-two (22) years of age, unused funds in an IEA from prior years can be used in subsequent years, up to four (4) consecutive years after a student has aged out of the pProgram, provided the student attends or takes courses from an eligible postsecondary institution and the expenditures are determined to be qualifying expenses.~~
- (5)(6) ~~Account holders-Holders are not required to spend the entire sum each year; however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the IEA program-Program and overall spending must equal fifty (50) percent of the annual award at the close of each contract year (twelve [12] months) by the deadline for submission of the last expense report of the contract year.~~
 - (a) ~~If overall spending does not equal fifty (50) percent by the deadline for submission of the last expense report at the close of the contract year and if the IEA is renewed for the following year, the Department will subtract the difference from the payments in the next contract year. If a student withdraws from the IEA program-IEA Program or if the IEA is not renewed, the IEA shall be closed and any remaining funds shall be returned to the state treasurer to be placed in the basic-Basic education-Education program-Program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.~~

Authority: T.C.A. § 49-1-302

0520-01-11-05 - AGREEMENT ~~05~~ AGREEMENT AND FUNDS TRANSFER-

- (1) Upon notification by the Department that an IEA may be established, a parent of an eligible student, or an eligible student who has attained the age of majority shall sign an agreement to:
 - (a) Provide an education for the participating student in at least the subjects of reading, grammar English language arts, mathematics, social studies, and science;
 - (b) Not to enroll the participating student in a public school during the time the student is enrolled in the IEA pProgram; and
 - (c) Release the LEA in which the student resides and the school for which the student is zoned to attend from all obligations to educate the student during the time the student is enrolled in the IEA pprogram.
- (2) ~~The Department shall provide the Agreement template shall be available on the Department's website to parents of an eligible student or eligible students or students who have attained the age of majority. Parents of an eligible student or eligible r-students that who have attained the age of majority shall complete the Agreement and submit it along with all information requested by the Department by the date set by the Department before the first IEA payment is disbursed.~~
- (3) Participation in the Program shall have the same effect as a parental refusal to consent to the receipt of specially designed instruction and related services pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1414.
- (4) The Agreement shall be signed by the parent of an eligible student or by the eligible student who has attained the age of majority and a designee of the Department to be effective. The Agreement shall specify the anticipated participating school or participating provider(s); acceptable uses of IEA funds; and the responsibilities of the parent of an eligible student or an eligible student or student that who has attained the age of majority, the duties of the Department, and shall specify the financial institution to which the IEA funds shall be electronically transferred.
- (5) ~~Upon~~ After receipt of the completely signed agreement, the Department shall remit the first payment to the IEA via electronic funds transfer. IEA funds shall be remitted to the IEA thereafter until termination of the Agreement.
- (6) The Department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.
- (7) After the initial payment to the IEA, the acAccount Hholder shall submit expense reports and receipts for all IEA funds expended by the date set by the Department following in accordance with the procedures set by the Department before the next IEA payment is disbursed.
- (8) In accordance with the procedures of the Department, the Department may remove any account holder- Account Holder from eligibility for an IEA if the aAccount Hholder fails to comply with the terms of the IEA-agreement or applicable laws, rules or procedures, or misuses monies. The Account Holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

- (9) If the Department determines that IEA funds have been misspent, the Department shall notify the Account Holder, and the Account Holder shall repay the misspent amount in the manner and within the timeframe set by the Department. The Department is authorized to freeze and/or withdraw funding directly from the student's IEA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with the terms of the state laws, rules, procedures or the Agreement, if the student returns to the LEA, or if funds were deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

Authority: T.C.A. § 49-1-302

0520-01-11-.06-USE06 USE OF FUNDS:

- (1) Account Holders shall agree to use the funds deposited in the IEA for any, or any combination of, the following expenses:
- (a) Tuition or fees at a participating school;
 - (b) Textbooks required by a participating school;
 - (c) Tutoring services provided by an individual tutor that meets the requirements set by the Department or a tutoring organization accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE);
 - (d) Payment for purchase of curriculum, defined as instructional educational materials for an academic complete-course of study for a particular content-area or grade level, including any supplemental materials required by the curriculum;
 - (e) Fees for transportation paid to a fee-for-service transportation provider. Transportation fees can only be used for transportation to participating schools and providers (including approved tutors and therapists);
 - (f) Tuition or fees for a nonpublic online learning program or course that meets the requirements set by the Department provided by a Category III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02;
 - (g) Fees for nationally standardized norm-referenced achievement tests, Advanced Placement examinations, or any examinations related to college or university admission;
 - (h) Contributions to a Coverdell education savings account established under 26 U.S.C. § 530 for the benefit of the participating student;

- (i) Educational therapies or services for participating students from a licensed or accredited practitioner or provider provided by a therapist who meets the qualifications set by the Department and the State Board of Education;
 - (j) Services provided under a contract with a public school, including individual classes and extracurricular programs;
 - (k) Tuition or fees at an eligible postsecondary institution. Eligible postsecondary institutions include Tennessee public community colleges, colleges of applied technology, or universities of the University of Tennessee system or locally governed state universities within the Tennessee Board of Regents systems community colleges, colleges of applied technology, or universities of the University of Tennessee system or the Tennessee Board of Regents system, Tennessee public postsecondary institutions, or private postsecondary institutions accredited by one (1) of the following: any accreditation division of AdvanceED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).
 - (l) Textbooks required for courses at an eligible postsecondary institution;
 - (m) Fees for the management of the IEA by private financial management firms;
 - (n) Computer hardware and technological devices approved by the Department or a licensed treating physician, if the computer hardware is used for the student's educational needs and is a required device for communication or physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA or allows a student to access instruction or instructional content. Before purchasing computer hardware or technological devices using IEA funds, Account Holders must receive notification of pre-approval from the Department. An account holder Account Holder may request pre-approval for computer hardware and technological devices by:
 1. Completing and submitting the Department's pre-approval form; or
 2. Submitting the Physician's pre-approval form completed by a licensed treating physician.
 - (o) Contributions to an Achieving a Better Life Experience (ABLE) account, for the benefit of a participating student; provided, that the funds are used only for the student's education expenses subject to the rules established by the ABLE Program and that the student meets the qualifications to participate in the ABLE Program pursuant to the ABLE Act, and § 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A), as amended, and all rules, regulations, notices, and interpretations released by the United States department of treasury, including the internal revenue service.
- (2) Account Holders shall obtain pre-approval for educational therapies, and/or tutoring services, and any other expenses identified by the Department that the Department requires pre-approval for. If pre-approval is not obtained, the expense will be deemed an unapproved expenditure. An

~~account holder.~~ Account Holder may request pre-approval by completing and submitting the Department's pre-approval form.

Authority: T.C.A. § 49-1-302

0520-01-11-07- MONITORING~~07~~ MONITORING AND COMPLIANCE.

- (1) The Department shall conduct fiscal and program compliance reviews of all IEAs pursuant to procedures developed by the Department for this purpose. ~~The Department shall conduct random reviews as determined appropriate pursuant to procedures established by the Department for this purpose.~~
- (2) The Department shall conduct an annual review of all IEAs.
- (3) The Department shall establish or contract for the establishment of an online anonymous fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an account holder, nonpublic school, school district, or participating school(s), or participating provider(s) of state laws, rules, or procedures relating to ~~the program~~ the Program participation. The Department shall conduct an inquiry of any written report of fraud, or make a referral to the appropriate agency for an investigation.
- (4) ~~The Department may terminate a participating school/ participating provider or participating student/ parent from participation in the program upon finding that a participating school/ provider or student/ parent has failed to comply with the provisions of the Act, rules, or procedures. The Department may prohibit a provider from receiving IEA funds in the future upon finding that a participating school or student/ parent has failed to comply with the provisions of the Act, rules, or procedures. A participating school/ participating provider or participating student/ parent may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.~~
- (5) ~~Notice of termination shall be provided to participating schools and participating student/ parent electronically and via first-class USPS mail.~~

Authority: T.C.A. § 49-1-302

0520-01-11-08- PARTICIPATING~~08~~ PARTICIPATING SCHOOLS~~08~~ AND PROVIDERS.

- (1) For the purposes of the IEA P~~r~~rogram, a participating nonpublic school is considered to have an inclusive educational setting if the following two (2) criteria are met:
 - (a) Students with disabilities are educated with non-disabled children; and
 - (b) No more than fifty (50) percent (%) of the students in an individual classroom or setting are students with disabilities.

- (2) Nonpublic schools interested in enrolling students receiving IEAs shall submit an application to the Department by the deadline set by the Department.
- (a) The Department shall determine the application process for nonpublic schools to participate in ~~the program~~ the Program. The Department shall create a standard application which shall include, at a minimum, the eligibility requirements set forth in the Act and these rules, and may also include additional eligibility requirements set by the Department.
 - (b) The Department shall review the application and notify the school as to whether the school meets the requirements to enroll students receiving IEAs.
 - (c) If the Department determines that a school is eligible to enroll students receiving IEAs, the Department shall list the school on the Department's website.
- (3) Participating schools shall include in their initial application to participate in ~~the IEA program~~ IEA Program and in their annual renewal application the maximum number of students receiving IEAs the school has the capacity to enroll.
- (a) Participating schools must demonstrate financial viability to repay any funds that may be owed to the state by filing with the Department with the application, ~~prior to the start of each school year~~, financial information verifying the school has the ability to pay an aggregate amount equal to the amount of the scholarships IEA funds expected to be paid during the school year set by the Department. The school may comply with this requirement by filing a surety bond payable to the state from a surety, and in an amount determined by the Department.
 - (b) Participating schools shall provide to the Department all required ~~documentation for a student's participation~~, including the school calendar and the nonpublic school's and student's fee schedules.
- (4) Participating schools and participating providers shall:
- (a) Be academically accountable to ~~the account holder~~ Account Holder for meeting the educational needs of the student by:
 1. At a minimum, annually providing to the ~~account holder~~ Account Holder a written explanation of the student's progress; and
 2. Cooperating with the parent of a student enrolled in the IEA Program, or a student enrolled in ~~the IEA program~~ IEA Program who has attained the age of majority, who chooses for the student to participate in the statewide assessments.
 - (b) Comply with all health and safety laws or codes that apply to nonpublic schools and the profession of the participating provider;
 - (c) Certify that they shall not discriminate against students or applicants on the basis of race, color, or national origin;
 - (d) Conduct criminal background checks on employees;

- (e) Exclude from employment any person not permitted by state law to work in a nonpublic school or as a participating provider; and
 - (f) Exclude from employment any person who might reasonably pose a threat to the safety of students.
- (5) The funds in an IEA may be used only for educational purposes. Participating schools, postsecondary institutions, and education providers that enroll participating students shall provide ~~account-holders~~ Account Holders with a receipt for all qualifying expenses.
- (6) Participating schools shall verify each student's continued enrollment and attendance by following the procedures posted on the Department's website ~~and by the deadline set by the Department~~. The Department may suspend or remove a school from participating in the ~~IEA program~~ IEA Program if the school fails to verify a student's continued enrollment and attendance. A participating school or ~~participating provider~~ may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.
- ~~(6)(7) Participating schools shall annually submit to the Department the graduation and completion information of participating students by following the in accordance with procedures posted on the Department's website and by the deadline set by the Department. The Department may suspend or remove a school from participating in the IEA program if the school fails to submit the graduation and completion information of participating students. A participating school may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.~~
- (7)(8) Annually, participating schools shall submit a notice to the Department if they intend to continue participating in the program the Program by following the procedures developed by the Department.
- (8)(9) The Department may require participating schools to submit to the Department a financial audit of the school conducted by a certified public accountant. Such audit shall include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the Department to be expended in a manner inconsistent with this part shall be returned to the state.
- (9)(10) The Department may suspend or terminate a participating school or ~~participating provider~~ from participating in the program the Program if the Department determines the school or provider has failed to comply with the requirements of the Act, these rules, and/or the procedures set by the Department.
- (a) If the Department suspends or terminates a school's or ~~provider's~~ participation, the Department shall notify ~~affected participating students and/or their parent of the~~ the Account Holder of the decision. If a participating school or ~~provider~~ is suspended or if a participating school or provider withdraws from the program the Program, affected participating students remain eligible to participate in the program the Program.
 - (b) A participating school or ~~participating provider~~ may appeal the Department's decision pursuant to the appeals procedures in the Rules of the State Board of Education.
- (10)(11) If a student withdraws from a participating school and transfers to another participating nonpublic school or returns to the LEA, the participating school shall refund the tuition and fees on a prorated

basis based on the number of days the student was enrolled in the school. If the student transfers to another participating nonpublic school, the funds shall be returned to the student's IEA. If the student returns to the LEA, the funds from the IEA shall be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

~~(11)~~(12) Third parties are prohibited from sending IEAs to collections in order to settle unpaid debts. All contracts entered into are the responsibility of the private parties involved.

Authority: T.C.A. §§ ~~49~~49-1-302 and 49-10-1405

0520-01-11-09-RETURN09 RETURN TO LOCAL EDUCATION AGENCY:

- (1) A participating student may return to the LEA in which ~~the student resides and the school which the student is zoned to attend~~ upon termination of the student's participation in ~~the program the Program~~.
- (2) If the student transfers from a nonpublic school and enrolls in the LEA ~~for which the student is zoned to attend~~, the parent or student shall notify the Department and the LEA in which the student resides, by following the procedures and timeline set by the Department.
- (3) Upon ~~termination of a student's participation in the program the Program~~, a student's return to the LEA, the Department shall close the participating student's IEA. Upon a student's withdrawal from the nonpublic school, participating schools and ~~providers~~ shall send all educational records of the participating student to the LEA or other nonpublic school identified by the parent.
- (4) The LEA shall enroll the student and provide instruction in the general education curriculum.
- (5) If the parent or student who has attained the age of majority requests, in writing, an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

Authority: T.C.A. §§ 49-1-302 and 49-10-1403

0520-01-11-10 APPEAL PROCEDURES:

- (1) Participating schools and ~~providers~~ may appeal the denial, suspension, or termination of the entity's participation in the IEA program, IEA Program and a parent or student who has attained the age of majority may appeal a denial of determination of eligibility, ~~preauthorization request~~, a denial of an expense paid for using IEA funds, or removal of the student from ~~the IEA program~~ IEA Program pursuant to the following two (2) step appeal process:
 - (a) Step one (1): ~~The appeal should~~ shall be on the form provided by the Department and ~~should~~ shall be submitted to the commissioner of education within ten (10) business days of receipt of the notice of application denial, suspension, termination, and/or removal. Notice of application denial, suspension, termination, and/or removal shall be provided electronically and via first-class USPS mail and be deemed received three (3) business days after the date of postmark. The appeal shall be reviewed by the commissioner of education, or the commissioner's designee, and a decision shall be issued within forty-five

~~(45) calendar days. The commissioner of education, or the commissioner's designee shall review the appeal within thirty (30) calendar days. The commissioner's decision shall be rendered within ten (10) business days of the date of the review.~~

- (b) ~~Step two (2): The account holder~~ Account Holder or participating school shall be notified of the commissioner's decision ~~for in the step one (1) appeal electronically and via first-class USPS. Such notice shall be deemed received three (3) business days after the date of postmark. An appeal of the commissioner's decision in step one (1) shall be filed with the commissioner by the account holder~~ Account Holder or participating school within thirty calendar (30) days and shall conform to the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

Authority: T.C.A. § 49-1-302

0520-01-11-.11 -CONFLICT OF INTEREST-

- (1) Use of IEA funds must be for the sole benefit of the participating student for which the IEA is established. Any services, resources, and/or equipment purchased using IEA funds shall only be used by the participating student whose IEA paid for said services, resources, and/or equipment.
- (a) It is a conflict of interest and is considered a misuse of IEA funds ~~against IEA program~~ IEA Program rules and procedures for a family member of a participating student, including step parent, or member of an eligible student's household to derive any financial benefit from the ~~IEA program~~ IEA Program.
- (b) It is also a conflict of interest and ~~against IEA program~~ IEA Program rules and procedures for a family member of a participating student, including a step parent, or a member of a participating student's household to provide a professional recommendation or approval for a service or the use of computer hardware or other technological device for the participating student.

Authority: T.C.A. § 49-1-302

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bawcum	X				
Chancey	X				
Cobbins	X				
Edwards				X	
Ferguson	X				
Hartgrove	X				
Kim	X				
Lane				X	
Rolston	X				
Tucker	X				

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 9/15/2017

Signature: _____

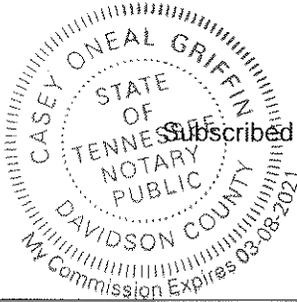
Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____



All emergency 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
 Herbert H Slatery, III
 Attorney General and Reporter
9/20/2017
 Date

Department of State Use Only

Filed with the Department of State on: _____

9/22/17

Effective for: _____

180

*days

Effective through: _____

3/21/18

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett

Tre Hargett
 Secretary of State

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 PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Educator Licensure

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-1-302

EFFECTIVE DATES: September 5, 2017 through March 4, 2018

FISCAL IMPACT: There will be no substantial fiscal impact to state or local governments as a result of these revisions.

STAFF RULE ABSTRACT: Rule 0520-02-03-.09 governs the process of the State Board of Education issuing formal reprimands of educators as well as the denial, suspension, and revocation of educator licenses for certain instances of misconduct. This emergency rule repeals the prior Educator Licensure Rule 0520-02-03-.09 and replaces it with a rule that contains a clearly defined discipline schedule that imposes a specified range of discipline for the enumerated offenses. This revision also defines and explains the types of offenses for which educators may be disciplined. By doing so, both the State Board and those persons holding educator licenses will have a clear understanding and expectation of the discipline imposed for education indiscretions.

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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

Not applicable

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

Rule 0520-02-03-.09 governs the process of the State Board of Education issuing formal reprimands of educators as well as the denial, suspension, and revocation of educator licenses for certain instances of misconduct. This item repeals the prior Educator Licensure Rule 0520-02-03-.09 and replaces it with a rule that contains a clearly defined discipline schedule that imposes a specified range of discipline for the enumerated offenses. This revision also defines and explains the types of offenses for which educators may be disciplined. By doing so, both the State Board and those persons holding educator licenses will have a clear understanding and expectation of the discipline imposed for education indiscretions.

- (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;

Pursuant to T.C.A. § 49-1-302, the State Board has the power to adopt policies governing the revocation of licenses and certificates for misconduct.

- (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;

This rule most directly affects educators and local boards of education. The State Board sought feedback from stakeholders including the Tennessee Educator's Association (TEA), Tennessee Organization of School Superintendents (TOSS), and the Tennessee Association of School Personnel Administrators (TASPA). TEA provided feedback some of which was incorporated in the rule revisions. The other organization did not provide feedback. TEA urges rejection of this rule. The State Board urges adoption of this rule and has not received any objection from the other stakeholders consulted.

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

None

- (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;

There will be no substantial fiscal impact to state or local governments as a result of these revisions.

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

(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

Elizabeth Taylor
General Counsel, Tennessee State Board of Education
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

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For Department of State Use Only

Sequence
 Number: 09-07-17
 Rule ID(s): 6599
 File Date (effective date): 9/5/17
 End Effective Date: 3/4/18

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	Andrew Johnson Tower, 1st Floor
Zip:	710 James Robertson Pkwy
Phone:	37243
Email:	615-253-5707

Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

The Tennessee State Board of Education voted on revisions to its rule regarding the formal reprimand, suspension, and revocation of educator licenses for misconduct at its October 2016 Board meeting. A proposed rule was filed with the Secretary of State and approved unanimously by the Joint Government Operations Committee; however, prior to the effective date, a rulemaking hearing was requested, thereby converting the Proposed Rule to a Rulemaking Hearing rule and restarting the promulgation process. The rulemaking hearing is scheduled to be held on 9/19/2017. During the revision of the rule, a chancery court order invalidated the Board's ability to use the "other good cause" language in its existing rule upon which the board frequently used to take licensure actions for instances of misconduct. The health, safety, and welfare of school children depends on the Board's ability to take action against the license of someone who should not be in front of children. To ensure that board is able to take licensure actions to protect the health, safety and welfare of students, the Board is filing an emergency rule, which will ensure that the rule language is in effect until the permanent rule can complete its way through the rule promulgation process. In addition, re-approval of the permanent rule on teacher licensure is also required.

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

Chapter Number	Chapter Title
0520-02-03	Educator Licensure
Rule Number	Rule Title
0520-02-03-.09	Denial, Formal Reprimand, Suspension, and Revocation

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-02-03
EDUCATOR LICENSURE**

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0520-02-03-.09 DENIAL, FORMAL REPRIMAND, SUSPENSION, AND REVOCATION.

(1) Definitions and Examples:

- (a) Conviction - Conviction resulting from a judgment of conviction or Conviction on a plea of guilty, a plea of [no contest], or an order granting diversion under T.C.A. §§ 40-15-101 et seq. or 40-35-313.
- (b) Formal Reprimand - A less harsh licensing action than the suspension, revocation, or denial of a license, which admonishes an educator for certain conduct under this rule. An educator who has been reprimanded by the Board will receive a letter from the State Board of Education, which will become part of the educator's state and local record, indicating that the inappropriate conduct is discouraged and shall be subject to further disciplinary action if repeated.
- (c) Inappropriate Communication (Explicit) - Any communication between an educator and a student that describes, represents, or alludes to sexual activity or any other illicit activity.
- (d) Inappropriate Communication (Non-Explicit) – Any communication between an educator and a student that is beyond the scope of the educator's professional responsibilities. Examples of such non-explicit inappropriate communications include, but are not limited to, those communications that discuss the teaching staff member's or student's past or current romantic relationships; those that include the use of profanities or obscene language; those that are harassing, intimidating, or bullying; those that attempt to establish a personal relationship with a student; and those that are related to personal or confidential information regarding another school staff member or student.
- (e) Inappropriate Physical Contact - Unnecessary and unjustified physical contact with a student. Examples of such unnecessary and unjustified contact include, but are not limited to sexual contact, physical altercations, horseplay, tickling, improper use of corporal punishment, and rough housing.

- (f) Inappropriate Physical Contact With Harm – Inappropriate physical contact as described in subsection (e) above that results in physical or mental harm or the potential of physical or mental harm to a student.
- (g) Major Testing Breach - A breach of test security that results in nullification of test scores, as determined by the Department of Education.
- (h) Minor Testing Breach - A breach of test security that does not result in nullification of any test scores, as determined by the Department of Education.
- (i) Negligence - Failure to exercise the care toward others that a reasonable or prudent person would exercise under the circumstances or taking action that a reasonable person would not.
- (j) Official School Business – Any activity undertaken by an educator in an official capacity and in connection with the educator's employment.
- (k) Other Good Cause – Conduct that calls into question the fitness of an educator to hold a license including, but not limited to, noncompliance with security guidelines for Tennessee Comprehensive Assessment Program (TCAP) or successor tests pursuant to T.C.A. § 49-1-607, failure to report licensure actions under parts (3) (4), or (45), or violation of any provision in the Teacher Code of Ethics as contained in T.C.A. § 49-5-10031, et seq.
- (l) Permanent Revocation – The nullification of an educator's license without eligibility for future reinstatement.
- (m) School Premises – Any real property and/or land owned, leased, managed, controlled, or under the custody of a state or local education agency, school system, or school.
- (n) School Property – Any property owned, leased, managed, controlled, or under the custody of a state or local education agency, school system, or school.
- (o) School Related Activity – Any activity in which a student participates, including but not limited to classes, meetings, extracurricular activities, clubs, athletics, and field trips, sponsored by the school, state educational agency, or local educational agency.
- (p) Suspension – The nullification of an educator's license for a predetermined term, after which the license is automatically reinstated. Reinstatement may be subject to the completion of terms and conditions contained in the order of suspension.
- (q) Revocation – The nullification of an educator's license for a period of at least five (5) years, after which an educator may petition the State Board for reinstatement.
- (2) Notification of Office of Educator Licensing - It is the responsibility of the Director of Schools of the employing public or non-public school or school system or his or her designee to inform the Office of Educator Licensing of licensed educators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under parts (3), (4), or (45). The report shall be submitted within

thirty (30) days of the suspension, dismissal, or resignation. The Director of Schools or his or her designee shall also report felony convictions of licensed educators within thirty (30) days of receiving knowledge of the conviction. School systems have a duty to respond to State Board inquiries –and provide to the State Board, except when prohibited by law, –any available documentation -requested concerning the allegations contained in the notice.

(3) The State Board of Education may revoke, suspend, formally reprimand, or refuse to issue or renew an educator's license for any of the following reasons:

- (a) Conviction of a felony;
- (b) Conviction of possession of illegal drugs;
- (c) Being on school premises, at a school-related activity involving students, or on official school business, while possessing or consuming alcohol or illegal drugs;
- (d) Falsification or altering of a license or documentation required for licensure;
- (e) Inappropriate physical contact with a student;
- (f) Denial, suspension, or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension, or revocation under this rule;
- (g) Other good cause as defined in section (1)(k) of this rule; or
- (h) Any offense contained in parts (4) and/or (5) of this rule.

~~(1) The State Board of Education may revoke, suspend, reprimand formally, or refuse to issue or renew a license for the following reasons:~~

- ~~(a) Conviction of a felony;~~
- ~~(b) Conviction of possession of narcotics;~~
- ~~(c) Being on school premises, at a school-related activity involving students, or on official school business while documented as being under the influence of, possessing or consuming alcohol or illegal drugs;~~
- ~~(d) Falsification or alteration of a license or documentation required for licensure;~~
- ~~(e) Denial, suspension or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension or revocation under this rule; or~~
- ~~(f) Other good cause.~~

~~1. For purposes of part (f), "other good cause" shall include, but is not limited to, the following:~~

- ~~(i) Noncompliance with security guidelines for Tennessee Comprehensive Assessment Program (TCAP) or successor tests pursuant to T.C.A. § 49-1-607~~
- ~~(ii) Default on a student loan pursuant to T.C.A. § 49-5-108(d)(2)~~
- ~~(iii) Failure to report licensure actions under part (e), or~~
- ~~(iv) Violation of any provision in the Teacher Code of Ethics as contained in T.C.A. §§ 49-5-1003.~~

2. ~~For purposes of this part, "conviction" includes entry of a plea of guilty or nolo contendere or entry of an order granting pre-trial or judicial diversion, in addition to a judgment of conviction.~~

(4) Disciplinary Actions Automatic Revocation and Suspension

(a) Automatic Revocation of License -- The State Board of Education shall automatically revoke, without the right to a hearing, the license of an educator upon receiving verification of the identity of the licensed educator together with a certified copy of a criminal record showing that the licensed educator has been convicted of any offense listed at T.C.A. §§ 40-35-501(i)(2), 39-17-417, a sexual offense or a violent sexual offense as defined in 40-39-202, any offense in title 39, chapter 13, 39-14-301 and 39-14-302, 39-14-401 and 39-14-404, 39-15-401 and 39-15-402, 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction for the same or similar offense in any jurisdiction). The Board will notify persons whose licenses are subject to automatic revocation at least thirty (30) days prior to the Board meeting at which such revocation shall occur.

~~(g) Automatic Revocation of License. The State Board of Education shall automatically revoke the license of a licensed teacher or administrator without the right to a hearing upon receiving verification of the identity of the teacher or administrator together with a certified copy of a criminal record showing that the teacher or school administrator has been convicted of any felony or offense listed at T.C.A. §§ 40-35-501(i)(2), 39-17-417, a sexual offense or a violent sexual offense as defined in 40-39-202, any offense in title 39, chapter 13, 39-14-301 and 39-14-302, 39-14-401 and 39-14-404, 39-15-401 and 39-15-402, 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction on a plea of guilty or nolo contendere, conviction for the same or similar offense in any jurisdiction, or conviction for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to such offenses). The Board will notify persons whose licenses are subject to automatic revocation at least thirty (30) days prior to the Board meeting at which such revocation shall occur.~~

(b) Automatic Suspension of License - The State Board of Education shall automatically suspend the license of ~~ana licensed n~~ teacher or administrator ~~an educator~~, without the right to a hearing, the license of an educator upon receiving notice from the responsible state agency of the identity of the licensed educator together with notification that the educator has committed any of ~~for~~ the following offenses:

1. Default on a student loan pursuant to T.C.A. § 49-5-108(d)(2); or

2. Failure to comply with an order of support for alimony or child support, pursuant to T.C.A. §36-5-706.

(5) Disiplinary Actions

(a) For the following categories of offenses, the State Board of Education shall impose uniform disciplinary action as detailed below:

1. Conviction of a felony

(i) Upon receiving notification that an individual has been convicted of a felony, the board shall ~~may~~ revoke or permanently revoke the convicted individual's educator license.

2. Use or possession of alcohol or illicit substances

(i) An individual holding an educator's ~~educator's~~ license who is found to be in possession of, or otherwise using, alcohol or illicit substances while on school grounds ~~premises or property~~ when children are present, shall be subject to a disciplinary action within the range of suspension for not less than one (1) year, up to and including revocation.

(ii) An individual holding an educator's ~~educator's~~ license who is found to be in possession of, or otherwise using, alcohol or illicit substances while on school grounds ~~premises or property~~ when ~~without~~ children are ~~not~~ present, shall be subject to a disciplinary action within the range of suspension for not less than one (1) year, up to and including revocation.

(iii) An individual holding an educator's ~~educator's~~ license who is found to be in possession of, or otherwise using, alcohol or illicit substances while ~~not~~ while ~~not~~ on school grounds ~~premises or property~~, but while participating in school related activities with children present, shall be subject to a disciplinary action within the range of suspension for not less than one (1) year, up to and including revocation.

(iv) An individual holding an educator's ~~educator's~~ license who is found to be in possession of, or otherwise using, alcohol or illicit substances while ~~not~~ while ~~not~~ on school grounds ~~premises or property~~, but participating in school related activities without children present, shall be subject to a disciplinary action within the range of suspension for not less than six ~~(6)~~ months, up to and including a two (2) - year - suspension.

3. Negligence in the commission of duties as an educator

(i) An individual holding an educator's license who is found to be negligent in his or her commission of duties as an educator in such a manner that does not result in harm to a child, shall be subject to a disciplinary action within the range of a letter of formal reprimand, up to and including a two (2)-year suspension.

(ii) An individual holding an educator's license who is found to be negligent in their commission of duties as an educator in such a manner that results in harm to a child, shall be subject to a disciplinary action within the range of suspension for ~~not~~ no less than one (1) year, up to and including permanent revocation.

~~(i) Nothing in this part shall prevent a teacher or principal from exercising his or her lawful authority to reasonable force when necessary under the~~

circumstances to correct or restrain a student or prevent bodily harm or death to another person pursuant to 49-6-4107.

4. Testing breaches

(i) An individual holding an educator's license who is found to have committed a minor breach of test security~~minor testing breach~~, which shall be defined as a breach of test security that does not result in nullification of any test scores, ~~testing breach~~ shall be subject to a disciplinary action within the range of a letter of formal reprimand up to and including a suspension not to exceed one (1) year.

(ii) An individual holding an educator's license who is found to have committed a major testing breach~~breach of test security~~, which shall be defined as a breach of test security that results in nullification of test scores, shall be subject to a disciplinary action within the range of a suspension of ~~not~~ no less than one (1) year, up to and including revocation.

5. Unprofessionalism

(i) An individual holding an educator's license who is found to have administered inappropriate disciplinary measures to a student, shall be subject to a disciplinary action within the range of a suspension for ~~not~~ no less than one (1) year, up to and including permanent revocation.

(ii) An individual holding an educator's license who is found to have engaged in non-explicit inappropriate communication with a student, shall be subject to a disciplinary action within the range of a suspension for ~~not~~ no less than three (3) months, up to and including revocation.

(iii) An individual holding an educator's license who is found to have engaged in inappropriate communication of an explicit nature with a student, shall be subject to permanent revocation.

(iv) An individual holding an educator's license who is~~is~~ found to have inappropriately used school property, shall be subject to a disciplinary action within the range of a suspension for ~~not~~ no less than three (3) months, up to and including revocation.

6. Inappropriate Physical Contact

(i) An individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that does not result in harm or potential harm to the student shall be subject to a disciplinary action within the range of a formal reprimand up to and including suspension for two (2) years.

(ii) An individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that results in harm or potential harm to the student shall be subject to a disciplinary action within the range of

a suspension for not less than two (2) years up to and including permanent revocation.

7. Falsification of Licensure Documentation - An individual holding an educator's license who is found to have falsified licensure documentation shall be subject to a disciplinary action within the range of revocation or permanent revocation.

8. Violation of the Teacher Code of Ethics - An individual holding an educator's license who is found to have violated the teacher code of ethics shall be subject to a disciplinary action within the range of suspension within the range of a suspension for no less than one (1) year ~~one (1) year~~ up to and including revocation.

(b) Similar offenses — Actions related or similar to the above-~~enumerated~~above-~~enumerated~~ offenses shall carry recommended disciplinary action commensurate with the range established for the similar offense.

(c) Nothing in this part shall prevent an educator from exercising his or her lawful authority to use reasonable force when necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another person pursuant to T.C.A. § 49-6-4107.

(d) Repeated violations — Individuals holding an educator's license who are subject to multiple disciplinary actions by the Board, shall face disciplinary action in excess of the recommended ranges. A ~~fourth~~third violation, regardless of severity, shall be subject to a recommendation for ~~of~~ revocation.

(h)(e) Nothing in this rule shall prohibit the State Board from imposing a disciplinary action outside of the uniform discipline range upon good cause shown in extraordinary circumstances.

Discipline Schedule—the following chart outlines the disciplinary ranges for the offenses listed as indicated by the shaded squares.

		Letter of Formal Reprimand	Suspension of 3-6 months	Suspension of 6 months - 1 Year	Suspension of 1 Year-18 Months	Suspension of 18 months - 2 Years	Suspension of 2 years - Revocation
Class 4	Minor testing breaches						
	Negligence with no harm to a student						
Class 3	Unprofessionalism - Inappropriate Communication (Non-Explicit)						
	Unprofessionalism - Inappropriate Use of School Property						

	Intoxication—off school grounds-w/o children						
Class 2	Major testing breaches						
	Negligence with harm to a student						
Class 4	Intoxication—on school grounds, w/o children	-	-	-			
	Intoxication—on school grounds-w/ children	-	-	-			
	Intoxication—off school grounds-w/ children	-	-	-			
	Unprofessionalism—Inappropriate Communication (Explicit)	-	-	-	-	-	
	Felony conviction	-	-	-	-	-	

(6) Restoration of License

(a) Suspension

1. A person whose license has been suspended under parts (3), (4), or (54) of this rule shall ~~may~~ have the ~~his~~ or her educator's license restored after the period of suspension has been completed, and, where applicable, the person has complied with ~~any~~ all terms prescribed by the State Board. Suspended licenses are subject to the expiration and renewal rules of the State Board.

(b) Denial or Revocation

1. A person whose license has been denied or revoked under parts (313), (4), or (2454) of this rule may apply to the State Board to have the license issued or restored upon application showing that the cause for denial or revocation no longer exists and that the person has complied with any terms imposed in the order of denial or revocation. In the case of a felony conviction, before an application will be considered, the person must also show that any sentence imposed, including any pre-trial diversion or probationary period, has been completed. Application for such issuance or restoration shall be made to the Office of Educator Licensing and forwarded to State Board counsel.

2. A person whose license has been revoked under parts (313), (4), or (2544) of this rule shall not be eligible to reapply for licensure for a period of ~~notno~~ not less than five (5) years from the time at which the license was initially revoked.

3. In any deliberation by the Board of Education to restore a license that has been revoked, there will be a rebuttable presumption that an educator ~~teacher~~ whose license has been revoked is unfit for licensure. Nothing in this section is intended to guarantee restoration of a license.

(7) Presumptive Denial – There shall be a rebuttable presumption that Any person applying for an educator's license who has committed an offense that would subject him or her to revocation if licensed shall be presumed ineligible to receive a Tennessee educator's license.

(8) Scope of Disciplinary Action – A person whose license has been denied, suspended, or revoked may not serve as a volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide, substitute teacher, or in any other position during the period of the denial, suspension, or revocation.

(9) Notice of Hearing — Any person who is formally reprimanded or whose license is to be denied, suspended, or revoked under parts (23) or ~~who is refused a license or certificate under part (3)~~ (45) of this rule shall be entitled to written notice and an opportunity for a hearing to be conducted as a contested case under the Tennessee Uniform Administrative Procedures Act, T.C.A. § 4-5-301, *et seq.*

(2) Discipline Schedule— the following chart outlines the disciplinary ranges for the offenses listed as indicated by the shaded squares.

(10) Discipline Schedule – The following chart outlines the least and greatest disciplinary ranges for the offenses listed as indicated by the shaded squares.

	<u>Letter of Formal Reprimand</u>	<u>Suspension of 3- months up to and including 6 months</u>	<u>Suspension of 6 months up to and including -1 Year</u>	<u>Suspension of 1 Year up to and including -18 Months</u>	<u>Suspension of 18 months up to and including- 2 Years</u>	<u>Suspension of 2 years up to and including -Revocation</u>	<u>Revocation</u>	<u>Permanent Revocation</u>
<u>Minor Testing Breach</u>								
<u>Negligence w/o Harm or Potential Harm</u>								
<u>Inappropriate Physical Contact w/o Harm</u>								
<u>Unprofessionalism — Inappropriate Communication (Non-Explicit)</u>								
<u>Unprofessionalism — Inappropriate Use of School Property</u>								
<u>Possession/Intoxication Use - Off School Premises/Property w/o Children Present During School Related Activity</u>								
<u>Possession/Use - Off School Premises/Property w/ Children</u>								
<u>Possession/Use - On School Premises/Property w/o Children</u>								
<u>Possession/Use - On School Premises/Property w/ Children Use</u>								
<u>Major Testing Breach</u>								
<u>Violation of Teacher Code of Ethics Use</u>								
<u>Negligence w/ Harm or Potential Harm to a Student</u>								
<u>Inappropriate Disciplinary Measures Negligence with harm or potential harm to a student</u>								
<u>Inappropriate Physical Contact with Harm Inappropriate Disciplinary Measures</u>								
<u>Felony Conviction</u>								

Falsification of Licensure Documentation	-	-	-	-	-	-	-		
Unprofessionalism - Inappropriate Communication (Explicit)	-	-	-	-	-	-	-		

~~(3) Notification of Office of Educator Licensing – It is the responsibility of the superintendent of the employing public or non-public school or school system to inform the Office of Educator Licensing of licensed teachers or administrators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under parts (1) or (2). The report shall be submitted within thirty (30) days of the suspension, dismissal or resignation. The superintendent shall also report felony convictions of licensed teachers or administrators within thirty (30) days of receiving knowledge of the conviction.~~

Authority: *T.C.A. §§ 49-1-302, 49-1-607, 49-5-108. Administrative History: Repeal and new rule filed December 18, 2015; effective March 18, 2015. A stay of the rule was filed January 28, 2015; new effective date June 1, 2015. Amendment filed May 29, 2015; effective August 27, 2015. Emergency rule filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

Authority: T.C.A. §§ 49-1-302, 49-1-607, 49-5-108. **Administrative History:** Repeal and new rule filed December 18, 2015; effective March 18, 2015. A stay of the rule was filed January 28, 2015; new effective date June 1, 2015. Amendment filed May 29, 2015; effective August 27, 2015. Emergency rule filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bawcum	X				
Chancey	X				
Cobbins	X				
Edwards				X	
Ferguson	X				
Hartgrove	X				
Kim	X				
Lane				X	
Rolston	X				
Tucker	X				

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: August 28, 2017

Signature: [Signature]

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

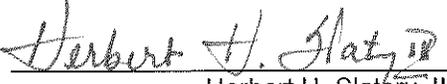


Subscribed and sworn to before me on: 8-28-17

Notary Public Signature: [Signature]

My commission expires on: 3-8-21

All emergency 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
9/1/2017
Date

Department of State Use Only

Filed with the Department of State on: 9/5/17
Effective for: 180 *days
Effective through: 3/4/18

* Emergency rule(s) may be effective for up to 180 days from the date of filing.


Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Board of Medical Examiners Committee for Clinical Perfusionists

SUBJECT: Licensure Fees for Clinical Perfusionists

STATUTORY AUTHORITY: No federal or state law or regulation has mandated the promulgation of this rule.

EFFECTIVE DATES: October 1, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This proposed rule will reduce the initial licensure fee and the biennial licensure renewal fee from \$350.00 to \$250.00. This rule amendment was approved by the Committee in December 2014 for a rulemaking hearing. However, failure to achieve a quorum prevented the Committee from conducting a rulemaking hearing.

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.

- (1) **The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

This rule amendment is established with clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

This rule amendment does not establish flexible compliance and/or reporting requirements for small businesses.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

This rule amendment does not establish friendly schedules or deadlines for compliance reporting requirements for small businesses.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

This rule amendment does not consolidate or simplify compliance or reporting requirements for small businesses.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Medical Examiners Committee of Clinical Perfusionists

Rulemaking hearing date: N/A

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

Clinical Perfusionists and those that employ them, such as hospitals, will be affected. These groups will benefit from the fee reductions. Currently, there are one hundred and thirty-two (132) licensees.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

This proposed rule amendment will not affect reporting or recordkeeping and does not involve administrative costs.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

The Committee does not anticipate that there will be any adverse impacts to small businesses as small businesses could benefit from the fee reductions. The proposed rule amendment should not have any impact on consumers.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

There are no less burdensome, less intrusive or less costly methods of achieving the purpose and/or objectives of the proposed rule amendment. On the contrary, this rule amendment could have a positive impact on business.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: None.

State: Many boards and committees, currently operating at a surplus, are reducing some licensure fees according to the formula provided by the budget office.

- 6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

This proposed rule amendment does not provide exemptions for 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule amendment should not have a financial 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;

This rule amendment will reduce the initial licensure fee and the biennial licensure renewal fee from \$350.00 to \$250.00. This rule amendment was approved by the Committee in December 2014 for a rulemaking hearing. However, failure to achieve a quorum prevented the Committee from conducting a rulemaking hearing.

- (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;

None.

- (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;

Clinical Perfusionists and those that employ them, such as hospitals, will be affected. Currently, there are one hundred and thirty-two (132) licensees.

- (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;

None.

- (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;

This rule amendment should not result in any increase or decrease in state or local government revenues or expenditures.

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

Nathaniel Flinchbaugh, Assistant General Counsel, Department of Health.

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

Nathaniel Flinchbaugh, Assistant General Counsel, Department of Health.

- (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

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Nathaniel.Flinchbaugh@tn.gov.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**Department of State
Division of Publications**

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Nashville, TN 37243
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 07-07-17
Rule ID(s): 6560
File Date: 7/3/17
Effective Date: 10/1/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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:	Board of Medical Examiners Committee for Clinical Perfusionists
Division:	
Contact Person:	Nathaniel Flinchbaugh, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Nathaniel.Flinchbaugh@tn.gov

Revision Type (check all that apply):

- Amendment
 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)

Chapter Number	Chapter Title
0880-11	General Rules and Regulations Governing the Practice of Clinical Perfusionists
Rule Number	Rule Title
0880-11-.06	Fees

(Rule 0880-11-.05, continued)

- (a) Pursuant to licensure/certification in another state:
 - 1. Comply with all the requirements of paragraph (2) of this rule except subparagraphs (d) and (j); and
 - 2. Cause to be submitted the information necessary for the Committee to determine that the state of licensure/certification has licensure or certification requirements substantially equivalent to the requirements of the Tennessee "Clinical Perfusionist Licensure Act" (T.C.A. §§ 63-28-101, et seq.) and this chapter of rules; and
 - 3. Cause the certification issued pursuant to subparagraph (2) (h) to show that the licensure or certification in another state is current, active and is in good standing without any restriction or encumbrance.
- (b) Pursuant to ABCP certification:
 - 1. Comply with all requirements of paragraph (2) of this rule except subparagraphs (d) and (j); and
 - 2. Have the ABCP submit directly to the Committee's administrative office satisfactory evidence of current ABCP certification as a certified clinical perfusionist.

(4) Application review and licensure decisions shall be governed by Rule 0880-11-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-6-101, 63-28-103, 63-28-104, 63-28-105, 63-28-106, 63-28-109, 63-28-114, 63-28-117, 63-28-118, and 68-11-114. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002. Amendment filed May 8, 2003; effective July 22, 2003. Amendment filed April 5, 2006; effective June 19, 2006.

0880-11-.06 FEES. All fees provided for in this rule are non-refundable.

- | | |
|--|---------------------|
| (1) Initial licensure fee to be submitted at the time of application..... | \$350.00 |
| (1) Initial licensure fee to be submitted at the time of application..... | \$250.00 |
| (2) Biennial renewal fee to be submitted every two (2) years when licensure renewal is due..... | \$350.00 |
| (2) Biennial renewal fee to be submitted every two (2) years when licensure renewal is due..... | \$250.00 |
| (3) Late renewal fee | \$100.00 |
| (4) Licensure reinstatement/restoration fee | \$ 50.00 |
| (5) Duplication of license fee | \$ 25.00 |
| (6) Biennial state regulatory fee to be submitted at the time of application | \$ 10.00 |
| (7) Fees may be paid in the following manner: | |

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(Rule 0880-11-.06, continued)

- (a) All fees paid by money order, certified, personal, or corporate check must be submitted to the Committee's Administrative Office and made payable to the Committee for Clinical Perfusionists.
- (b) Fees may be paid by Division-approved credit cards or other Division-approved electronic methods.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-107, 63-6-101, 63-28-107, 63-28-114, and 63-28-118. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002. Amendment filed March 10, 2005; effective May 24, 2005.

0880-11-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

- (1) Review of all applications to determine whether or not the application file is complete may be delegated to the Committee's administrator.
- (2) A temporary authorization to practice, as described in T.C.A. § 63-1-142 may be issued to an applicant pursuant to an initial determination made by a Committee and Board designee who have both reviewed the completed application and determined that the applicant has met all the requirements for licensure, renewal or reinstatement. The temporary authorization to practice is valid for a period of six (6) months from the date of issuance of the temporary authorization to practice and may not be extended or renewed. If the Committee or Board subsequently makes a good faith determination that the applicant has not met all the requirements for licensure, renewal or reinstatement and therefore denies, limits, conditions or restricts licensure, renewal or reinstatement, the applicant may not invoke the doctrine of estoppel in a legal action brought against the state based upon the issuance of the temporary authorization to practice and the subsequent denial, limitation, conditioning or restricting of licensure.
- (3) If an application is incomplete when received by the Administrative Office, or the reviewing Committee and/or Board member or the Committee's/Board's designee determine additional information is required from an applicant before an initial determination can be made, the Board administrator shall notify the applicant of the information required. The applicant shall cause the requested information to be received in the Administrative Office on or before the sixtieth (60th) day after receipt of the notification.
 - (a) Such notifications shall be sent certified mail, return receipt requested, from the Administrative Office.
 - (b) If requested information is not timely received, the application file may be considered abandoned and may be closed by the administrator. If that occurs, the applicant shall be notified that the Committee and Board will not consider issuance of a license until a new application is received pursuant to the rules governing that process, including another payment of all fees applicable to the applicant's circumstances and submission of such new supporting documents as is required by the Committee and Board.
- (4) If a reviewing Committee and/or Board member or Committee and/or Board designee initially determines that a completed application should be denied, limited, conditioned or restricted, a temporary authorization shall not be issued. The applicant shall be informed of the initial decision and that a final determination on the application will be made by the Committee and the Board at their next appropriate meeting. If the Committee and Board ratify the initial denial, limitation, condition or restriction, the action shall become final and the following shall occur:

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board of Medical Examiners Committee for Clinical Perfusionists (board/commission/other authority) on 12/16/2014 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: May 31, 2017

Signature: Nathaniel R. Flinchbaugh

Name of Officer: Nathaniel Flinchbaugh

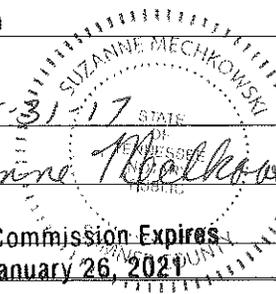
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 5-31-17

Notary Public Signature: Suzanne Mechkowski

My commission expires on: My Commission Expires January 26, 2021



All proposed 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. Stately III

Herbert H. Stately III
Attorney General and Reporter

6/27/2017 Date

Department of State Use Only

Filed with the Department of State on: 7/3/17

Effective on: 10/1/17

Tre Hargett

Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	State Board of Education
<u>DIVISION:</u>	
<u>SUBJECT:</u>	Charter Schools
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 49-1-302(a)(4)(A)
<u>EFFECTIVE DATES:</u>	December 21, 2017 through June 30, 2018
<u>FISCAL IMPACT:</u>	Not Applicable
<u>STAFF RULE ABSTRACT:</u>	<p>T.C.A. § 49-13-112 provides that allocations to charter schools from the local board of education "shall be in accordance with the rules and regulations promulgated by the department of education." The allocation of state and local funds rule was originally promulgated in 2010 and recently there have been several questions and concerns from schools and districts as well as from the Tennessee Comptroller's office.</p> <p>This proposed rule seeks to provide clarity around charter school funding and aligns to legislation that has been introduced by the department of education.</p> <p>The following changes have been made to the rule:</p> <ul style="list-style-type: none">• Clarifies language for the calculation of funding for each charter school.• Clarifies growth funding and capital outlay funding.• Clarifies authorizing LEAs may not charge an administrative fee to charter schools and outlines the conditions that LEAs may withhold funding from a charter for certain services.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not Applicable

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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This item may impact the funding allocations for any local school district that was using prior year enrollment numbers.

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;

T.C.A. § 49-13-112 provides that allocations to charter schools from the local board of education "shall be in accordance with the rules and regulations promulgated by the department of education." The allocation of state and local funds rule was originally promulgated in 2010 and recently there have been several questions and concerns from schools and districts as well as from the Tennessee Comptroller's office.

This item seeks to provide clarity around charter school funding and aligns to legislation that has been introduced by the department of education.

The following changes have been made to the rule:

Clarifies language for the calculation of funding for each charter school.

Clarifies growth funding and capital outlay funding.

Clarifies authorizing LEAs may not charge an administrative fee to charter schools and outlines the conditions that LEAs may withhold funding from a charter for certain services.

- (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;

Pursuant to T.C.A. § 49-1-302(a)(4)(A), it is the duty of the State Board of Education and it has the power to develop and adopt policies, formulas and guidelines for the fair and equitable distribution and use of public funds among public schools and for the funding of all requirements of state laws, rules, regulations and other required expenses, and to regulate expenditures of state appropriations for public education, kindergarten through grade twelve (K-12).

- (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;

Local Education Agencies and Charter Management Organizations are most directly affected by this rule. Neither of which has urged adoption or rejection of this rule. After first reading, the Comptroller's Office of Research and Education Accountability (OREA) provided feedback on the proposed rule which was considered in making changes between first and final reading. The OREA urges adoption of this rule. The Tennessee Department of Education and the Tennessee State Board of Education urge adoption of this rule.

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

Tenn. Op. Atty. Gen. No. 13-34 (Tenn. A.G.), 2013 WL 1856670
Tenn. Op. Atty. Gen. No. 13-72 (Tenn. A.G.), 2013 WL 5303888
Tenn. Op. Atty. Gen. No. 08-169 (Tenn. A.G.), 2008 WL 4759874

- (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;

N/A

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

(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

Elizabeth Taylor
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Elizabeth.Taylor@tn.gov

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Elizabeth Fiveash
Assistant Commissioner Policy & Legislative Affairs, Tennessee Department of Education
9th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615) 253-1960
Elizabeth.Fiveash@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

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For Department of State Use Only

Sequence Number: 09-20-17
 Rule ID(s): 6602
 File Date: 9/22/17
 Effective Date: 12/21/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	710 James Robertson Pkwy
Zip:	1st floor
Phone:	37243
Email:	615-253-5707

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.03	Allocation of State and Local Funds

RULES
OF THE
STATE BOARD OF EDUCATION
CHAPTER 0520-14-01
CHARTER SCHOOLS

0520-14-01-.03 ALLOCATION OF STATE AND LOCAL FUNDS.

- (1) A local board of education shall allocate to each charter school an amount equal to ~~the per~~ the per student state and local funds received by the charter LEA and authorizer and all appropriate allocations under federal laws or regulations.
- (2) Student enrollments used in per pupil calculations shall be based on current year average daily membership (ADM) for the LEA in which the school resides (inclusive of all charter school enrollment). The charter school's allocation shall be calculated by multiplying the per pupil amount by the charter school's current year ADM.
- (3) Allocations to charter schools shall be based on one hundred percent (100%) of state and local funds received by the charter authorizer-LEA, including any current year growth funds received by the authorizing chartering LEA and authorizer and the required local match for the state funds generated under the Basic Education Program (BEP) for capital outlay current funds allocated for capital outlay purposes (excluding the proceeds of debt obligations and associated debt service).
- (4) The department of education shall calculate the amount of state funding required under the BEP for capital outlay to be received in a fiscal year by the LEA in which the charter school resides and shall distribute directly to each charter school its total per pupil state share.
- ~~(3) Student enrollments used in per pupil allocations calculations shall be based on current year enrollment for the charter schools and for the authorizing LEA. The charter school's allocation shall be calculated by multiplying the per pupil amount by the charter school's current year enrollment.~~
- (54) Allocations to a the charter school may not be reduced by the charter authorizer LEA for administrative, indirect, or any other category of cost except for the annual authorizer fee. If the charter agreement includes a provision whereby the charter authorizer will provide for employee benefits or retirement, then the authorizer may withhold funds to cover the costs of those services. or charge except as specifically provided in a charter agreement. Any educational or operational services the charter school chooses to purchase from the charter authorizer authorizer provides for a fee may also exist in a separate services contract contractual agreement between the charter school and the authorizer. However, approval of a separate services contract may not be a condition of approval of the charter agreement. If a services contract is executed with the charter authorizer, then the authorizer may withhold funds to cover the costs of those services.
- ~~(5) New charter schools or charter schools adding a new grade shall be funded based on anticipated enrollment in the charter agreement. Those figures shall be subsequently adjusted to reflect the actual number of students enrolled.~~

(Rule 0520-14-01-.04, continued)

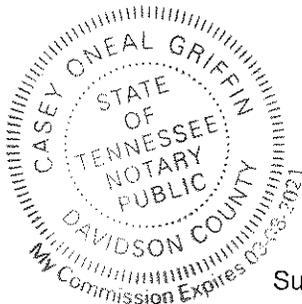
- (6) Each charter authorizer ~~LEA~~ shall include as part of its budget submitted pursuant to T.C.A. § 49-2-203, the per pupil amount of local money it will pass through to charter schools during the upcoming school year. Allocations to the charter schools during that year shall be based on that figure. The charter authorizer ~~LEA~~ shall distribute the portion of local funds it expects to receive in no fewer than nine (9) equal installments to the charter schools in the same manner as state funds are distributed. The initial per pupil amount of funding shall be calculated using the number of BEP funded ADMs for the first payments. ~~An~~ charter authorizer ~~LEA~~ shall adjust payments to its charter schools, at a minimum, in October, February and June, based on changes in revenue, student enrollment, or student services. Beginning with the first such adjustment, and continuing for the remainder of the school year, the charter authorizer ~~LEA~~ shall use current year enrollment to calculate the adjusted per pupil amount.
- (7) New charter schools or charter schools adding a new grade shall be funded based on anticipated enrollment in the charter agreement. Those figures shall be subsequently adjusted to reflect the actual number of students enrolled.
- (87) Pursuant to T.C.A. § 49-13-124, the charter authorizer ~~chartering authority~~ may endorse the submission of the qualified zone academy bond application to the local taxing authority. The charter authorizer ~~chartering authority~~ may endorse such a bond application submitted by the charter school governing body, or the charter authorizer ~~chartering authority~~ may include the charter school's project as part of the ~~chartering authority's bond~~ authorizer's bond application.
- (98) If charter schools provide school nutrition programs, they may provide their own programs in compliance with United States Department of Agriculture regulations and State law or they may contract with the charter ~~LEA for~~ authorizer for the provision of school nutrition programs.
- (109) Charter schools that provide transportation in accordance with the provisions of T.C.A. § 49-6-2100 *et seq.*, other than through an agreement with the charter authorizer ~~LEA~~, shall receive the State and local funds generated through the BEP for such transportation.

Authority: T.C.A. §§ 49-2-203, 49-13-112, 49-13-124, 49-13-126, and 49-6-2100 et seq., T.C.A. §§ 49-13-112 and 49-13-126. **Administrative History:** Original rule filed March 25, 2010; effective August 29, 2010. Repeal and new rule filed March 21, 2012; effective August 29, 2012.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Cook	X				
Edwards	X				
Ferguson				X	
Hartgrove	X				
Kim	X				
Rolston	X				
Tucker	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 05/24/2017, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: 9/12/17

Signature: [Handwritten Signature]

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 9/12/17

Notary Public Signature: [Handwritten Signature]

My commission expires on: 3-8-21

State Board of Education Rules
Chapter 0520-14-01 – Charter Schools
Rule 0520-14-01-.03 – Allocation of State and Local Funds

All proposed 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

9/20/2017
Date

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Filed with the Department of State on: 9/22/17

Effective on: 12/21/17


Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Technological University

DIVISION:

SUBJECT: Student Conduct

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 4-5-102(12)(E)(ii)

EFFECTIVE DATES: November 30, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: In 2016, Tennessee Tech University (TTU) initiated a comprehensive review of the Student Conduct policy. This review was initiated due to the separation of TTU from the Tennessee Board of Regents system. TTU is in the process of establishing rules for necessary key areas.

This proposed rule describes the expectations for student conduct and the disciplinary sanctions that TTU may impose through the disciplinary procedures outlined in this rule.

NOTE: This rule contains all new language that is not underlined in the redline copy.

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 is not anticipated to have an impact on 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

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;

In 2016, Tennessee Tech University (TTU) initiated a comprehensive review of the Student Conduct policy. This review was initiated due to the separation of TTU from the Tennessee Board of Regents system. TTU is in the process of establishing rules for necessary key areas.

This rule describes the expectations for student conduct and the disciplinary sanctions that TTU may impose through the disciplinary procedures outlined in this rule.

- (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;

T.C.A. 4-5-102(12)(E)(ii)-the definition of "rule" under the UAPA includes agency statements that relate too discipline of students.

- (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;

Students of TTU are most directly affected by this rule. A policy that mirrors the proposed rule was reviewed and approved by the Administrative Council at TTU. The Council includes student, staff, and faculty representatives.

- (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;

None

- (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;

None

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

Kae Carpenter, TTU University Counsel and Katie Williams, TTU Dean of Students

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

Kae Carpenter, TTU University Counsel and Katie Williams, TTU Dean of Students

- (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

Kae Carpenter, TTU University Counsel
1 William L. Jones Drive
Cookeville, TN 38505
931-372-3269
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Katie Williams, Dean of Students
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kwilliams@tntech.edu

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Sequence Number: 09-01-17
Rule ID(s): 6594
File Date: 9/1/17
Effective Date: 11/30/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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 Technological University
Division:	
Contact Person:	Kae Carpenter, University Counsel
Address:	1 William L. Jones Drive, Cookeville, TN
Zip:	38505
Phone:	931-372-3269
Email:	kcarpenter@tntech.edu

Revision Type (check all that apply):

- Amendment
 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)

Chapter Number	Chapter Title
0240-09-01	Student Conduct
Rule Number	Rule Title
0240-09-01-.01	Scope
0240-09-01-.02	Definitions
0240-09-01-.03	General Provisions
0240-09-01-.04	Prohibited Conduct
0240-09-01-.05	Disciplinary Sanctions
0240-09-01-.06	Disciplinary Holds on Records
0240-09-01-.07	Disciplinary Procedures
0240-09-01-.08	Appeals

[Redacted]

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

[Redacted]

Rules
Of
Tennessee Technological University, Cookeville
CHAPTER 0240-09-01
Student Conduct

New

Table of Contents is added to Chapter 0240-09-01 Student Conduct and shall read as follows:

Table of Contents

- 0240-09-01.01 Scope
- 0240-09-01.02 Definitions
- 0240-09-01.03 General Provisions
- 0240-09-01.04 Prohibited Conduct
- 0240-09-01.05 Disciplinary Sanctions
- 0240-09-01.06 Disciplinary Holds on Records
- 0240-09-01.07 Disciplinary Procedures
- 0240-09-01.08 Appeals

0240-09-01-.01 Scope is added to Chapter 0240-09-01 Student Conduct and shall read as follows:

0240-09-01-.01 Scope

- (1) This rule and related policies apply both to Student or Registered Student Organization prohibited conduct on and off Tennessee Tech Property. In the case of prohibited conduct that occurs off Tennessee Tech Property, Tennessee Tech will take into account whether the prohibited conduct adversely affects the interests of Tennessee Tech, including, but not limited to, prohibited conduct that:
 - (a) Occurs in connection with a Tennessee Tech Activity, including, but not limited to, a study abroad program, clinical, internship, service learning placement, or similar program; or
 - (b) Involves another member of the Tennessee Tech community; or
 - (c) Poses a credible, serious threat to the health and safety of the Tennessee Tech community or Tennessee Tech Property.
- (2) Tennessee Tech will take into consideration the following standards when deciding whether misconduct is associated with a Registered Student Organization:
 - (a) The prohibited conduct is endorsed by the organization or any of its officers. "Endorsed by" includes, but is not limited to, the following: active or passive consent or support, having prior knowledge that the conduct was likely to occur, or helping to plan, advertise, or promote the conduct;
 - (b) The prohibited conduct took place during the course of an activity paid for by the organization or paid by members of the organization to support the activity or conduct in question;

- (c) The prohibited conduct occurred on property owned, controlled, rented, leased, or used by the organization or any of its members for an organizational event;
- (d) The prohibited conduct was related to initiation, admission into, affiliation with, or as a condition for continued membership in the organization;
- (e) One or more officers of the organization had prior knowledge or reasonably should have known the prohibited conduct would likely take place.

(3) This policy does not apply to academic misconduct.

Authority: T.C.A. § 49-8-203 (a)(1)(D); T.C.A. § 49-8-101 (a)(2)(A).

0240-09-01-.02 Definitions is added to Chapter 0240-09-01 Student Conduct and shall read as follows:

0240-09-01-.02 Definitions

- (1) "Student" – any individual who is admitted, enrolled, or registered for credit courses at Tennessee Tech or who may no longer be enrolled or registered for credit courses, but engaged in prohibited conduct while the individual was a Student at Tennessee Tech. For the purposes of this rule, "admitted" means in attendance at Tennessee Tech on either the first day of classes, or on the first day residence halls are open, or the first day of the student orientation, advising, and registration program, whichever is earlier.
- (2) "Registered Student Organization" ("RSO") – Any organization comprised primarily of currently enrolled Students that have successfully completed the registration process and otherwise complied with Tennessee Tech policies and requirements related to student organizations.
- (3) "Tennessee Tech Property" – all land, buildings, facilities, grounds, structures, or any other property including but not limited to movable objects owned, leased, used, maintained, or operated by Tennessee Tech. For purposes of this rule, Tennessee Tech Property includes all streets, alleys, sidewalks, and public ways abutting such property. Tennessee Tech Property also includes computers and network systems owned, maintained, or controlled by Tennessee Tech or funded by Tennessee Tech.
- (4) "Tennessee Tech Activity" – any activity on or off Tennessee Tech Property that is initiated, aided, authorized, sponsored, or supervised by Tennessee Tech.
- (5) "University Official" – an employee or agent of Tennessee Tech, including but not limited to university police, faculty members and staff acting in the performance of his/her/its duties as well as Student employees (e.g., event staff, resident assistants, graduate or teaching assistants, etc.).

Authority: T.C.A. § 49-8-203 (a)(1)(D); T.C.A. § 49-8-101 (a)(2)(A).

0240-09-01-.03 General Provisions is added to Chapter 0240-09-01 Student Conduct and shall read as follows:

0240-09-01-.03 General Provisions

- (1) Each Student or RSO shall be responsible for his/her/its conduct from the time of admission to Tennessee Tech through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms.
- (2) A Student or RSO is responsible for his/her/its guests or visitors and may be held accountable for the behavior of his/her/its guests or visitors on Tennessee Tech Property or in the handling or use of Tennessee Tech Property.
- (3) Any Student that chooses to take a leave of absence or withdraw from Tennessee Tech during any academic period prior to graduation with a pending disciplinary matter will be subject to a disciplinary hold placed on the Student's account preventing reenrollment until resolution of the conduct in question.

Authority: T.C.A. § 49-8-203 (a)(1)(D); T.C.A. § 49-8-101 (a)(2)(A).

0240-09-01-.04 Prohibited Conduct is added to Chapter 0240-09-01 Student Conduct and shall read as follows:

0240-09-01-.04 Prohibited Conduct

(1) Prohibited conduct includes, but is not limited to the following:

- (a) Physical Violence: Violence of any nature within the scope of this rule other than for self-defense. This includes fighting; battery; the use of a weapon; restraining or transporting someone against his/her/its will; or any action that constitutes a true threat or endangers the physical health or safety of any person or causes reasonable apprehension of such harm;
- (b) Any conduct that falls within the terms of § T.C.A. § 39-17-308 (Harassment) or T.C.A. § 39-17-315 (Stalking) or "student-on-student harassment", which means unwelcome conduct directed toward a person that is discriminatory on a basis prohibited by federal, state, or local law, and that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to educational opportunity or benefit;
- (c) Discrimination: Any conduct that falls within the terms of any Tennessee Tech policy related to discrimination and harassment;
- (d) Sexual Misconduct: The act of domestic violence, dating violence, sexual assault, and stalking as defined by Tennessee Tech policy;
- (e) Hazing: Any conduct that falls within T.C.A. § 49-17-123 (a)(1), including, but not limited to, intentional or reckless act on or off Tennessee Tech Property by one (1) Student acting alone or with others that is directed against any other Student, that endangers the mental or physical health or safety of that Student or that induces or coerces a Student to endanger the Student's mental or physical health or safety;
- (f) Retaliation: Interfering with any aspect of a disciplinary matter or disciplinary hearing, including, but not limited to threatening or intimidating a complainant or witnesses or attempting to do the same;
- (g) Disruptive Behavior: Any individual or group behavior that unreasonably disrupts the academic environment (e.g. interferes with teaching, classroom operations, research, etc.) or unreasonably interferes with operations, events, or programs on Tennessee Tech Property or during a Tennessee Tech Activity;
- (h) Obstruction of or Interference with Activities on Tennessee Tech Property or Facilities: Any substantial interference with or substantial obstruction of any Tennessee Tech program, event, or facility including the following:
 - 1. Any unauthorized occupancy of facilities owned or controlled by Tennessee Tech or blockage of access to or from such facilities;
 - 2. Interference with the right of any Tennessee Tech member or other authorized person to gain access to any activity, program, event, or facilities sponsored or controlled by Tennessee Tech;
 - 3. Any obstruction or delay of a public safety officer, security officer, firefighter, EMT, or any University Official;
 - 4. Participation in a demonstration that substantially impedes Tennessee Tech operations; or
 - 5. Obstruction of the free flow of pedestrian or vehicular traffic on Tennessee Tech Property or at a Tennessee Tech Activity;
- (i) Failure to Comply: Refusing or ignoring directions of a University Official acting in the performance of his/her/its duties;

- (j) Falsification: Providing information that is materially false to, or withholding necessary information from, any University Official acting in the performance of his/her/its duties;
- (k) Fraud: Deception, forgery, or alteration, including, but not limited to, the unauthorized use of Tennessee Tech documents, records, identification, computers, parking permits, identity theft, or any other similar actions prohibited by law;
- (l) Theft: Unauthorized possession of Tennessee Tech Property or personal property of a member of the Tennessee Tech community;
- (m) Misuse or Damage of Property: Any act of misuse, vandalism, malicious or unwarranted damage or destruction, defacing, disfiguring or unauthorized use of property belonging to Tennessee Tech or a member of the Tennessee Tech community including, but not limited to, any personal property, fire alarms, fire equipment, elevators, telephones, Tennessee Tech keys, library materials and/or safety devices;
- (n) Trespassing or Unauthorized Entry: Unauthorized access or attempting to gain access to any Tennessee Tech Property;
- (o) Weapons: Possession or carrying, whether openly or concealed, with the intent to go armed, any firearm, explosive, explosive weapon, bowie knife, hawk bill knife, ice pick, dagger, slingshot, leaded cane, switchblade knife, blackjack, knuckles, or any other weapon of like kind, not used solely for instructional or school-sanctioned ceremonial purposes, in any Tennessee Tech building or bus, campus, grounds, recreation area, athletic field, or any other property owned, operated, or while in use by Tennessee Tech as prohibited by state law. No Student shall use a weapon or instrument to simulate a weapon in acts that endanger or threaten any person;
- (p) Hazardous Materials: Possession, ignition, or detonation of explosives, fireworks, flammable materials, ammunition, gasoline or other hazardous liquids, chemicals or hazardous materials, and any other material or item of like kind representing a potential danger to the Tennessee Tech community;
- (q) Substance Abuse: The unlawful manufacture, distribution, possession, use or abuse of any controlled substance, illegal drug or alcohol on Tennessee Tech Property or as part of any activity sponsored by Tennessee Tech in violation of state or federal law or related Tennessee Tech policies;
- (r) Paraphernalia: The use or possession of equipment, products, or materials that are used or intended for use in the unlawful manufacture, growth, use, or distribution of any drug or controlled substance. This offense includes the violation of any local ordinance, state, or federal law concerning the unlawful possession of drug paraphernalia;
- (s) Parking or Traffic Violations: In addition to the penalties described in Tennessee Tech rules or policies related to traffic, parking, and safety and elsewhere in this rule, the possession or use of a motor vehicle on Tennessee Tech Property may be limited or revoked for any of the following:
 1. Possession or use of alcoholic beverages or drugs while operating a vehicle;
 2. Irresponsible operation of a vehicle;
 3. Leaving the scene of an accident;
 4. Failure to report an accident involving personal injury or property damage;
 5. Excessive violations of policies to include excessive parking citations;
 6. Falsifying vehicle registration or gaining such registration under false pretense; or
 7. Possession, use, or sale of fraudulent parking permits;
- (t) Violation of Information Technology Acceptable Use: Violation of any provision related to Tennessee

Tech information technology facilities and resources as defined in related state or federal laws or Tennessee Tech policies;

- (u) Unauthorized Use of Personal Recording Devices: Use of electronic or other devices to make a photographic, audio, or video record of any person without his/her/its prior knowledge or consent in a violation of Tennessee Tech policies;
- (v) Invasion of Privacy: Making, or causing to be made, unauthorized video/audio recordings or photographic images of a person in a location in which that person has a reasonable expectation of privacy, without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian. This includes, but is not limited to, taking video or photographic images in shower/locker rooms, residence hall rooms, and restrooms, as well as any storing, sharing, and/or distributing of such unauthorized recordings/images by any means;
- (w) Violation of Student Housing Policy: Violation of any provision outlined in Tennessee Tech rules, policies and procedures related to housing;
- (x) Gambling: Unlawful gambling in any form;
- (y) Financial Irresponsibility: Failure to meet financial responsibilities to Tennessee Tech including, but not limited to, knowingly passing a worthless check or money order in payment to Tennessee Tech;
- (z) Unacceptable Conduct in Disciplinary Proceedings: Conduct at any stage of a disciplinary proceeding or investigation that is contemptuous, threatening, or disorderly, including, but not limited to:
 1. Failure to obey the directives of a disciplinary body or University Official in the performance of its/his/her/its duties;
 2. Falsification, distortion, or misrepresentation of information during a disciplinary proceeding;
 3. Disruption or interference with the orderly conduct of a disciplinary proceeding;
 4. Attempting to influence the impartiality of a member of a disciplinary body prior to, or during the course of, a disciplinary proceeding; or
 5. Harassment, intimidation, or retaliating against any participant in the Tennessee Tech disciplinary process;
- (aa) Attempting to Violate the Student Conduct rule or related policies;
- (bb) Aiding/Abetting a Violation: Any attempt to commit any of the offenses identified as prohibited conduct, or the aiding/abetting of the commission of any of the offenses listed as such. An attempt to commit an offense is defined as the intention to commit the offense coupled with the taking of some action toward its commission. Being present during the planning or commission of any offense listed under this section will be considered as aiding and abetting. Students who anticipate or observe an offense must remove themselves from the situation and are required to report the offense to Tennessee Tech;
- (cc) Violation of Policies: Any violation of the general policies of Tennessee Tech as published in Tennessee Tech publications including, but not limited to, policies or procedures published on Tennessee Tech's web site;
- (dd) Violations of State or Federal Laws: Any violation of state or federal laws, rules, regulations, etc. proscribing conduct or establishing offenses;
- (ee) Violation of Imposed Disciplinary Sanctions: Violation of a disciplinary sanction officially imposed during a Tennessee Tech hearing proceeding.

Authority: T.C.A. § 49-8-203 (a)(1)(D); T.C.A. § 49-8-101 (a)(2)(A).

0240-09-01-.05 Disciplinary Sanctions is added to Chapter 0240-09-01 Student Conduct and shall read as follows:

0240-09-01-.05 Disciplinary Sanctions

- (1) Upon a determination by clear and convincing evidence (unless otherwise required by federal or state law, rule, or regulation) that a Student or RSO has engaged in prohibited conduct, the following disciplinary sanctions may be imposed, either singly or in combination, by the Dean of Students and/or a Tennessee Tech Judicial council:
 - (a) Informal Warning: An oral or written warning to the Student or RSO found responsible for a violation when the circumstances and severity of actions do not warrant the development of an official record;
 - (b) Official Warning: A written notice to the Student or RSO found responsible for a violation. The warning will serve as official notification that continuation or repetition of specified conduct will be cause for further disciplinary action;
 - (c) No Contact Order: An order of no contact with any individuals who are complainants, victims or witnesses in the student conduct process. This includes, but is not limited to, verbal, written, electronic, cellular, physical, or social contact, or allowing others to make any similar contacts on a Student's behalf. An order of no contact can also be issued as an interim measure prior to the completion of the disciplinary process;
 - (d) Restitution: A measure intended to compensate for the loss, damage, or injury caused by the Student or an RSO. This action may take the form of appropriate service, monetary compensation, or material replacement;
 - (e) Restriction of Privileges: A restriction upon a Student or RSO's privileges for a period of time. These restrictions may include, but are not limited to denial of the following:
 1. The ability to represent Tennessee Tech at any event;
 2. Use of Tennessee Tech facilities;
 3. Parking privileges;
 4. Participation in, election to, or appointment as a member or officer of Student Government or any RSO; or
 5. Application for use of Tennessee Tech funds;
 - (f) Educational Action: A measure intended to educate the Student or members of the RSO on the responsibilities to refrain from prohibited conduct and learn from the violation. Educational actions include, but are not limited to:
 1. Attendance at educational activities or substance education workshops;
 2. Completion of a prescribed number of community service hours;
 3. Participation in a counseling assessment; or
 4. Attendance at community education classes;
 - (g) Parental or Legal Guardian Notification: Pursuant to T.C.A. § 49-7-146, Tennessee Tech is required to notify a parent or legal guardian of a Student under age twenty-one (21) if the Student "has committed a disciplinary violation with respect to the use or possession of alcohol, or a controlled substance, or a controlled substance analogue that is a violation of any federal, state, or local law, or any rule or policy of [Tennessee Tech], except as prohibited by the Federal Education Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g)." Tennessee Tech will provide such notice if:

1. The student admits responsibility for engaging in the prohibited conduct; or
 2. There is a final finding of responsibility pursuant to Tennessee Tech disciplinary procedures;
- (h) Disciplinary Probation: Continued enrollment of a Student or recognition of an RSO on probation may be conditioned upon adherence to Tennessee Tech rules and policies related to student conduct. Probation may include restrictions of privileges or any other appropriate conditions. Any conduct in further violation of Tennessee Tech rules and policies related to student conduct while on probationary status or the failure to comply with the terms of the probationary period may result in the imposition of further disciplinary action up to and including expulsion or withdrawal of recognition;
- (i) Housing Probation: Continued residence in Tennessee Tech student housing may be conditioned upon adherence to Tennessee Tech rules and policies related to student conduct as well as Tennessee Tech housing policies and requirements. Probation may include restrictions upon the activities of the resident, including any other appropriate conditions;
- (j) Interim Measures: The Dean of Students or designee may impose temporary measures prior to the beginning of a formal student conduct process. If Tennessee Tech imposes an interim measure, the Student or RSO may contest the measure following the procedures in 0240-09-01-.07 Disciplinary Procedures, Section 8. (Procedures Related to Interim Action). Interim measures may become permanent depending on the outcome of the formal disciplinary hearing. Interim measures may include, but are not limited to:
1. No contact orders;
 2. Removal from or reassignment of housing;
 3. Removal from or reassignment of on campus work study or work assignments;
 4. Removal from or reassignment of a specific class or academic activity;
 5. Restriction of access to specified buildings or Tennessee Tech Property;
 6. Restriction of privileges; or
 7. Other types of temporary measures;
- (k) Interim Suspension:
1. Interim suspension is the immediate removal of a Student from Tennessee Tech Property, including but not limited to, facilities, programs, privileges, classes, and premises pending a formal disciplinary hearing.
 2. The Dean of Students or designee may impose an interim suspension if, after an individualized assessment, the Dean of Students or designee determines that the Student's behavior poses a significant risk to the health or safety of others that cannot be eliminated by other interim measures.
 3. The Dean of Students or designee may also impose an interim suspension when a Student is determined to constitute an immediate threat to Tennessee Tech Property or a substantial disruption to classroom and/or Tennessee Tech operations.
 4. A Student placed on interim suspension status must obtain advance permission from the Dean of Students or designee to be present on Tennessee Tech Property. The Dean of Students or designee will grant such permission only in cases where the Student has identified a legitimately necessary reason for his/her/its presence on campus.
 5. If Tennessee Tech imposes an interim suspension, the Student may contest the matter following the procedures in 0240-09-01-.07 Disciplinary Procedures, Section 7. (Procedures Related to Interim Action);

- (l) Revocation of Registered Student Organization Status: A designated period of time in which an RSO is not recognized by Tennessee Tech and does not receive designated privileges as defined by Tennessee Tech policies related to student organizations;
- (m) Suspension of Housing Contract: The separation of a Student or members of an RSO from facilities maintained by Residential Life for a temporary or definite period of time, after which the Student or RSO is eligible to return or may be conditionally allowed to return. Subsequent policy violations may result in cancellation of the housing contract(s);
- (n) Cancellation of Housing Contract: A permanent separation of the Student or RSO from facilities maintained by Residential Life. A Student or RSO dismissed from these facilities is not eligible for readmission into any Residential Life facilities maintained by Tennessee Tech;
- (o) Suspension: The separation of a Student or RSO from Tennessee Tech for a specified period of time. Suspension may be accompanied by special conditions for readmission. All Students suspended from Tennessee Tech will be issued a no trespass directive barring them from Tennessee Tech Property and all Tennessee Tech Activities. A suspended Student must submit a written request to the Dean of Students or designee at least three (3) business days, absent good cause, in advance to request permission to be present on Tennessee Tech Property or at a Tennessee Tech Activity. This request must specifically identify the nature of the official business that the suspended Student wishes to conduct as well as the locations that the Student wishes to visit;
- (p) Expulsion: A permanent separation from Tennessee Tech. The imposition of this sanction is a permanent bar to the Student's admission to, or an RSO's recognition at, Tennessee Tech. Any Student that receives this sanction will be issued a no trespass directive barring him/her from Tennessee Tech Property and all Tennessee Tech Activities;
- (q) Withholding Degree: The awarding of a degree may be withheld until all disciplinary processes are complete and all sanctions, if any, are satisfactorily completed;
- (r) Revocation of Degree: Revocation of a degree in cases when a Student has engaged in serious misconduct while enrolled, but not discovered until after graduation;
- (s) Revocation of Admission: Revocation of admission when a person previously admitted to Tennessee Tech has engaged in serious misconduct prior to the first day of classes, or on the first day residence halls are open, or the first day of the student orientation, advising, and registration program, whichever is earlier.
- (t) Any alternate sanction deemed necessary and appropriate to address the prohibited conduct.

Authority: T.C.A. § 49-8-203 (a)(1)(D); T.C.A. § 49-8-101 (a)(2)(A).

0240-09-01-.06 Disciplinary Holds on Records is added to Chapter 0240-09-01 Student Conduct and or shall read as follows:

0240-09-01-.06 Disciplinary Holds on Records

- (1) Tennessee Tech may place a registration hold on a Student record when the Student has:
 - (a) Withdrawn from Tennessee Tech and a disciplinary meeting and/or proceeding is pending,
 - (b) Not responded to the Dean of Students Office's request for a meeting or a hearing, or
 - (c) Been suspended or expelled.
- (2) Tennessee Tech will not confer a degree when a Student has a pending disciplinary meeting and/or disciplinary proceeding.

Authority: T.C.A. § 49-8-203 (a)(1)(D); T.C.A. § 49-8-101 (a)(2)(A).

0240-09-01-.07 Disciplinary Procedures is added to Chapter 0240-09-01 Student Conduct and shall read as follows:

0240-09-01-.07 Disciplinary Procedures

(1) Responsibility for Administration

- (a) The Dean of Students Office is responsible for matters that are within the scope of this rule and related policies. The Provost's Office is responsible for matters that fall within Tennessee Tech policies related to student academic misconduct. In situations where the conduct could fall within both areas of responsibility, the two (2) Offices will confer, decide which rule or policies will apply to the matter, and advise the Student in writing of their decision.
- (b) Complaints related to discrimination, harassment, and sexual misconduct will be investigated in accordance with applicable Tennessee Tech policies. If Tennessee Tech determines that a discrimination, harassment, or sexual misconduct violation occurred, the Student will be subject to the disciplinary procedures outlined in this rule and related policies.
- (c) Other than the matters listed in 0240-09-01-.07 Section 1.(b), reports of acts and incidents involving Students or RSOs should be referred to the Dean of Students' Office for investigation.

(2) Notice and Due Process Rights

- (a) A Student or RSO accused of any violation of this rule or related policies will receive written notice of the alleged violation. The notification letter will include a written statement of the alleged violation and description of the alleged behavior including time, date, and place of occurrence if such information is available. The Student or RSO will also receive information regarding due process rights, which includes:
 - 1. The right to present his/her/its case to the appropriate disciplinary authority;
 - 2. The right to be accompanied by an advisor of choice, provided the Student or RSO consents to the release of necessary education records to the advisor. The advisor, however, may not speak on behalf of the Student or RSO in the preliminary meeting;
 - 3. The right to identify witnesses who can speak on his/her/its behalf; and
 - 4. The right to review and address any information that is used by Tennessee Tech in a disciplinary proceeding.
- (b) Upon receipt of the notification letter, the Student or RSO must contact the Dean of Students Office within forty-eight (48) hours to schedule a preliminary meeting. Failure to do so will result in a disciplinary hold placed on the Student's account or in the case of an RSO, suspension of privileges.

(3) Preliminary Meeting

- (a) During the preliminary meeting with the Dean of Students, the Student or RSO will have the opportunity to contest the alleged violation and present information.
- (b) The Student or RSO has the right to be accompanied by an advisor of choice, provided the Student or RSO consents to the release of necessary education records to the advisor. The advisor, however, may not speak on behalf of the Student or RSO in the preliminary meeting.
- (c) The Dean of Students may interview potential witnesses or victims necessary to conduct a thorough investigation of the alleged violation.
- (d) Following the preliminary meeting and investigation of the complaint, the Dean of Students will determine if sufficient information exists for the disciplinary process to continue.

1. If the Dean of Students concludes a violation did not occur, the conduct matter will be closed.
 2. If the Dean of Students determines there is sufficient information to proceed with the disciplinary process, the Student or RSO will have a hearing regarding the alleged violation.
 3. If the Dean of Students determines the alleged misconduct does not warrant consideration of suspension, expulsion, or revocation of degree or credential of a Student or revocation of registration of an RSO, the Student or RSO will have a hearing with the Dean of Students following the procedures in Section 6 (Hearings Before the Dean of Students).
- (4) Hearing Options in Cases of Possible Suspension, Expulsion, or Revocation of Degree or RSO Registration
- (a) If the Dean of Students determines the alleged misconduct could warrant consideration of suspension, expulsion or revocation of degree or credential of a Student or revocation of registration of an RSO, the Student or RSO will have the opportunity to:
 1. Contest the alleged violation(s) under the Uniform Administration Procedures Act (UAPA) in accordance with provisions outlined in the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 et seq. and related rules; or,
 2. Waive a hearing pursuant to UAPA and choose a hearing before the Dean of Students; or,
 3. Waive a UAPA hearing and choose a hearing before the Judicial Council.
- (5) Hearings before the Dean of Students
- (a) The Dean of Students will follow the procedures described in this section.
 1. The hearing shall be conducted consistent with the following Student or RSO rights:
 - (i) The right to receive notice described in 0240-09-01-.07 Section 2 (Notice and Due Process Rights) prior to the hearing;
 - (ii) The right to have the case heard based only on the alleged violation of the prohibited conduct specified in the written notice;
 - (iii) The right to be accompanied by an advisor of choice, provided the Student or RSO consents to the release of necessary education records to the advisor. The advisor, however, may not speak on behalf of the Student in the hearing. An advisor may:
 - (I.) Address questions of procedure to the Dean of Students to the extent that the questions do not interfere with the orderly proceeding of the hearing; and
 - (II.) Request a recess to confer in private with the Student or RSO.
 - (iv) The right to speak on his/her/its behalf, to call witnesses, to question all witnesses, to present evidence, to challenge the admissibility of evidence; and
 - (v) The right to remain silent in a hearing.
 2. Formal rules of evidence shall not be applicable. The Dean of Students may exclude evidence which, in his/her/its sole judgment, is immaterial, irrelevant, unduly repetitious, unduly prejudicial, etc.
 3. The Dean of Students shall determine responsibility using the clear and convincing standard of proof unless otherwise required by federal or state law, rule, regulation, or Tennessee Tech policies.
 4. The Dean of Students shall issue a written decision that includes his/her/its findings and

conclusions within three (3) business days after the conclusion of the hearing and all evidence is submitted.

5. The Student or RSO will be advised in writing of the decision and all sanctions imposed as a result of the disciplinary hearing via Tennessee Tech email account and via the contact address on record.
6. Any sanction imposed as a result of a hearing before the Dean of Students will be effective immediately upon notification to the Student or RSO.

(6) Hearings before the Judicial Council

- (a) The Judicial Council is comprised of six (6) faculty members, two (2) administrators, and six (6) Students. The Dean of Students serves as an ex-officio member. Faculty members of the Judicial Council are appointed for a two (2) year term by the Tennessee Tech president. Student members of the Judicial Council are appointed for a one (1) year term by the President of the Student Government Association.
- (b) The Chairperson shall be elected by the Judicial Council membership on an annual basis.
- (c) A minimum of seven (7) members of the Judicial Council are required to hear a disciplinary case, composed of at least three (3) Students and four (4) faculty members, unless otherwise agreed by the parties.
- (d) The Dean of Students will train and advise all members of the Judicial Council regarding Tennessee Tech hearing procedures on an annual basis or as necessary.
- (e) The hearing shall be conducted consistent with the following Student or RSO rights:
 1. The right to receive notice described in 0240-09-01-.07 Section 2 (Notice and Due Process Rights) prior to the hearing.
 2. The right to have the case heard based only on the alleged violation of the prohibited conduct specified in the written notice.
 3. The right to be accompanied by an advisor of choice, provided the Student or RSO consents to the release of necessary education records to the advisor. The advisor, however, may not speak on behalf of the Student in the hearing. An advisor may:
 - (i) Address questions of procedure to the Dean of Students to the extent that the questions do not interfere with the orderly proceeding of the hearing; and
 - (ii) Request a recess to confer in private with the Student or RSO.
 4. The right to speak on his/her/its behalf, to call witnesses, to question all witnesses, to present evidence, to challenge the admissibility of evidence; and
 5. The right remain silent in a hearing; and
 6. The right to challenge the seating of any Judicial Council member for good cause. The dismissal of a challenged hearing board member will be determined at the discretion of the Judicial Council chairperson. If the chairperson is challenged, s/he may be excused by a majority vote of the Judicial Council.
- (f) All hearings shall be closed unless the respondent and the complainant both elect in writing to have an open hearing.
- (g) Formal rules of evidence shall not be applicable. The Judicial Council may exclude evidence which, in its judgment, is immaterial, irrelevant, unduly repetitious, or unduly prejudicial, etc.

- (h) The Judicial Council shall determine responsibility using the clear and convincing standard of proof unless otherwise required by federal or state law, rule, regulation, or Tennessee Tech policies.
- (i) The Judicial Council shall issue a written decision that includes its findings and conclusions within three (3) business days after the conclusion of the hearing and all evidence is submitted.
- (j) The Student or RSO will be advised in writing of the decision and all sanctions imposed as a result of the disciplinary hearing via Tennessee Tech email account and via the contact address on record.
- (k) Any sanction imposed as a result of a Tennessee Tech hearing will be effective immediately upon notification to the Student or RSO.

(7) Procedures Related to Interim Measures or Interim Suspensions

- (a) When the Dean of Students determines that interim measures or an interim suspension are required for the health and safety of the Tennessee Tech community and/or property, the Student or RSO will be given an opportunity for an informal hearing with the Dean of Students to contest the interim measure;
- (b) The informal hearing will be held within five (5) calendar days, absent good cause;
- (c) The information presented at the hearing will be limited to that which is relevant to the basis asserted for imposition of the interim measures; and
- (d) The Student or RSO will be entitled to formal hearing in accordance with the procedures described in 0240-09-01-.07 Section 2 (Notice and Due Process Rights) before a permanent measure is imposed.

Authority: T.C.A. § 49-8-203 (a)(1)(D); T.C.A. § 49-8-101 (a)(2)(A).

0240-09-01-.08 Appeals is added to Chapter 0240-09-01 Student Conduct and shall read as follows:

0240-09-01-.08 Appeals

- (1) A Student or RSO may appeal a sanction imposed by the Dean of Students or Judicial Council following the procedures in this section.
- (2) The Student Conduct Appeal Committee will hear all appeals.
 - (a) The Student Conduct Appeal Committee is comprised of one (1) faculty member, one (1) administrator, and one (1) student.
 - (b) A pool of eligible committee members will be identified by the Dean of Students annually to ensure a quorum can be achieved throughout the year.
- (3) A Student or RSO must file a written appeal with the Dean of Students within ten (10) calendar days from the date of the decision letter, absent good cause.
- (4) The bases for an appeal are as follows:
 - (a) New information, not available at the time of the original hearing, has become available and would substantially alter the outcome of the hearing;
 - (b) Tennessee Tech failed to conduct the disciplinary process in accordance with its procedures in such a way as to disadvantage the Student or RSO; or
 - (c) The sanction is disproportionate to the violation.
- (5) The Student Conduct Appeal Committee will consider the appeal based on the record and statements submitted by the Student or RSO and the Dean of Students. The Student Conduct Appeal Committee

may request the Student or RSO and the Dean of Students to appear before the Student Conduct Appeal Committee to clarify any questions regarding the appeal record or statements.

- (6) The Student Conduct Appeal Committee will make its decision within ten (10) business days of receipt of all relevant information. This period may be extended in circumstances where it is not possible to establish a quorum (e.g. holidays, breaks, etc.).
- (7) The Student Conduct Appeal Committee may take the following action(s) upon consideration of the merit of the appeal:
 - (a) Affirm the original decision;
 - (b) Reverse the original decision;
 - (c) Reduce the sanction prescribed in the original decision; and/or
 - (d) Remand the matter to the original hearing body for reconsideration.
- (8) The standard of proof required to overturn a finding of a violation shall be the clear and convincing evidence and the Student or RSO bears the burden of proof.
- (9) A Student or RSO may file a written appeal of the Student Conduct Appeal Committee's decision with the Vice President for Student Affairs. The Student or RSO must file a written appeal with the Vice President for Student Affairs' office within ten (10) business days of the date of the decision letter. The appeal must state the reasons why the Student or RSO believes the decision should be overturned. After consideration of the appeal, the record, and any other relevant information, the Vice President for Student Affairs will issue a written decision within five (5) business days of receipt of the appeal and all relevant material.
- (10) The Vice President for Student Affairs' decision is final, except in cases where a Student has been expelled or the Student's degree has been revoked. In those cases, the Student may appeal the Vice President for Student Affairs' decision to the President. The Student must file a written appeal with the President's office within ten (10) business days of the date of the decision letter. The appeal must state the reasons why the Student believes the decision should be overturned. After consideration of the appeal, the record, and any other relevant information, the President will issue a written decision as soon as reasonably possible.

Authority: T.C.A. § 49-8-203 (a)(1)(D); T.C.A. § 49-8-101 (a)(2)(A).

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Barbara Fleming	X				
Melissa Geist	X				
Trudy Harper	X				
Millard Oakley	X				
Purna Saggurti	X				
Johnny Stites	X				
Teresa Vanhooser	X				
Barry Wilmore	X				
Tom Jones	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Tech Board of Trustees on 06/15/2017, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: July 19, 2017

Signature: Kae Carpenter

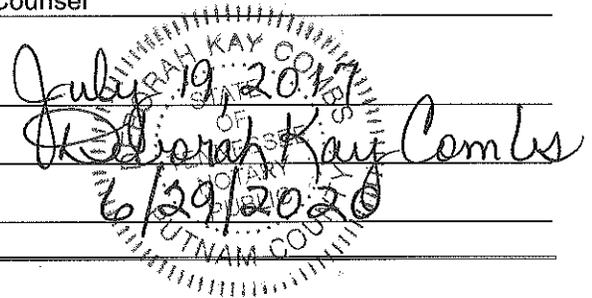
Name of Officer: Kae Carpenter

Title of Officer: University Counsel

Subscribed and sworn to before me on: July 19, 2017

Notary Public Signature: Deborah Kay Combs

My commission expires on: 6/29/2020



Agency/Board/Commission: Tennessee Technological University

Rule Chapter Number(s): Chapter 0240-09-01 Student Conduct

All proposed 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
8/1/2017

Date

Department of State Use Only

Filed with the Department of State on: 9/1/17

Effective on: 11/30/17



Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Technological University

DIVISION:

SUBJECT: Student Housing Regulations

STATUTORY AUTHORITY: The promulgation of this rule is not mandated by any federal or state law or regulation.

EFFECTIVE DATES: November 30, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: In 2016, Tennessee Tech University (TTU) initiated a comprehensive review of the Student Housing policy. This review was initiated due to the separation of TTU from the Tennessee Board of Regents system. TTU is in the process of establishing rules for necessary key areas.

This proposed rule describes the terms and conditions under which students may apply for, reside in, or be removed from Tennessee Tech's main campus residential facilities.

NOTE: This rule contains all new language that is not underlined in the redline copy.

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 is not anticipated to have an impact on 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

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;

In 2016, Tennessee Tech University (TTU) initiated a comprehensive review of the Student Housing policy. This review was initiated due to the separation of TTU from the Tennessee Board of Regents system. TTU is in the process of establishing rules for necessary key areas.

This rule describes the terms and conditions under which students may apply for, reside in, or be removed from Tennessee Tech's main campus residential facilities.

- (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;

- (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;

Students of TTU are most directly affected by this rule. A policy that mirrors the proposed rule was reviewed and approved by the Administrative Council at TTU. The Council includes students, staff, and faculty representatives.

- (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;

None

- (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;

None

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

Kae Carpenter, TTU University Counsel and Charlie Macke, TTU Residential Life Director

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

Kae Carpenter, TTU University Counsel and Charlie Macke, TTU Residential Life Director

- (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

Kae Carpenter, University Counsel 1 William L. Jones Drive Cookeville, TN 38505 931-372-3269 kcarpenter@tntech.edu	Charlie Macke, TTU Residential Life Director 1005 N. Dixie Avenue Cookeville, TN 38505 cmacke@tntech.edu
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Sequence Number: 09-02-17
Rule ID(s): 6595
File Date: 9/1/17
Effective Date: 11/30/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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 Technological University
Division:	
Contact Person:	Kae Carpenter, University Counsel
Address:	1 William L. Jones Drive, Cookeville, TN
Zip:	38505
Phone:	931-372-3269
Email:	kcarpenter@ntech.edu

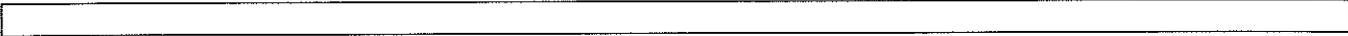
Revision Type (check all that apply):

- Amendment
 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)

Chapter Number	Chapter Title
0240-09-02	Student Housing Regulations
Rule Number	Rule Title
0240-09-02-.01	Definitions
0240-09-02-.02	Eligibility
0240-09-02-.03	Student Housing Agreement and Terms
0240-09-02-.04	Reservation, Deposit, Cancellation, and Refund Policies
0240-09-02-.05	Conduct and Disciplinary Sanctions
0240-09-02-.06	Resident Responsibility
0240-09-02-.07	Appeals

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.



Rules
Of
Tennessee Technological University, Cookeville

Chapter 0240-09-02
Student Housing

New

Table of Contents is added to Chapter 0240-09-02 Student Housing Regulations and shall read as follows:

- 0240-09-02.01 Definitions
- 0240-09-02.02 Eligibility
- 0240-09-02.03 Student Housing Agreement and Terms
- 0240-09-02.04 Reservation, Deposit, Cancellation, and Refund Policies
- 0240-09-02.05 Conduct and Disciplinary Sanctions
- 0240-09-02.06 Resident Responsibility
- 0240-09-02.07 Appeals
- 0240-09-02.08 Student Housing at Other Tennessee Tech Sites

0240-09-02-.01 Definitions is added to Chapter 0240-09-02 Student Housing Regulations and shall read as follows:

0240-09-02-.01 Definitions

- (1) Occupant – Spouses, children, immediate family members, and/or other persons residing with a student resident in a Student Residence Facility/Unit.
- (2) Reservation Deposit – A payment required by Tennessee Tech to secure accommodation within a Student Residence Facility/Unit prior to taking occupancy of a particular room, bed, or unit and is applied to the housing fee.
- (3) Student Residence Facility/Unit – Any residence hall, dormitory building, apartment, or other facility owned or operated by Tennessee Tech and located on Tennessee Tech's main campus.
- (4) Student Housing Agreement – The terms and conditions contained in Tennessee Tech's application for housing, in this rule, and in Tennessee Tech policies.
- (5) Guest/Visitor – Any person invited by a Student Resident/Occupant or Tennessee Tech to visit in a residence facility/unit.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. §49-8-101(a)(2)(A).

0240-09-02-.02 Eligibility is added to Chapter 0240-09-02 Student Housing Regulations and shall read as follows:

0240-09-02-.02 Eligibility

- (1) All Student Residence Facilities/Units shall be limited to occupancy by Tennessee Tech students and Office of Residential Life staff, unless otherwise designated by the Director of Residential Life.

- (a) Student Residents must be full-time students in order to reside in Tennessee Tech housing, unless the Director of Residential Life waives this requirement for a student.
 - (b) All students, with the exception of students who are prohibited by federal or state law from residing in Student Residence Facilities/Units for any reason, shall have an equal opportunity to reside in Student Residence Facilities/Units, without regard to any protected category, provided that separate housing may be provided on the basis of gender.
- (2) All freshmen are required to live in residence halls unless granted a waiver by the Director of Residential Life or designee.
 - (3) The bases for such freshmen housing waivers include, but are not limited to:
 - (a) Students commuting from a parent's or legal guardian's home that is within a fifty (50) mile radius of Tennessee Tech's campus;
 - (b) Students living with a sibling who is enrolled full-time at Tennessee Tech and is at least a sophomore status and lives within a fifty (50) mile radius of Tennessee Tech's campus;
 - (c) Students with disabilities who have an approved housing accommodation through the Office of Disability Services (ODS) Housing Committee;
 - (d) Married students or a single parent student;
 - (e) Students who are twenty-one (21) years old by the first day of class of the semester; or
 - (f) Circumstances that the Director of Residential Life, in his/her sole discretion, determines warrant a waiver.
 - (4) Students who request housing within a Student Residence Facility/Unit and are assigned to a Student Residence Facility/Unit are responsible for full payment of the housing fee, unless the Student timely withdraws, or receives a waiver from the Director of Residential Life.
 - (5) Students may be subject to disciplinary action for living off-campus without authorization.
 - (6) No person who is registered, or required to register, as a sex offender shall be eligible to reside in any on-campus Student Residence Facility/Unit.
 - (7) Any student who willfully provides false or materially inaccurate information on his/her housing application may be removed from housing after notice and an opportunity to be heard.
 - (8) All new incoming students who are under twenty-two (22) years of age and are living in on-campus housing are required to produce proof of adequate immunization against meningococcal disease (meningitis). Students who fail to provide adequate documentation in advance of move-in will not be allowed to take up residence in Student Residence Facilities/Units.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. §49-8-101(a)(2)(A).

0240-09-02-.03 Student Housing Agreement and Terms is added to Chapter 0240-09-02 Student Housing Regulations and shall read as follows:

0240-09-02-.03 Student Housing Agreement and Terms

- (1) A student who submits a housing application and accepts housing is obligated to fulfill the terms and conditions of the agreement for the duration of the agreement. A fall semester-only agreement can be renewed for the following spring semester.
- (2) Tennessee Tech accepts student applications for housing beginning in the fall through the summer preceding the academic year for which the housing is sought.

- (a) Housing is assigned on a first-come, first-serve basis, using the date on which Tennessee Tech received a completed application.
- (b) A Reservation Deposit is due at the time of application, which is applied to the housing fee.
- (3) All Student Housing Agreements are limited to a maximum term of one (1) academic year for halls and one (1) calendar year for apartments, but may be renewable for additional terms at the discretion of the Director of Residential Life.
- (4) Assignment to or occupancy of a residence hall does not include vacation periods but begins and ends on the dates of the semester(s) as indicated in the Tennessee Tech calendar indicating established hall opening and closing dates.
- (5) The term of the Student Housing Agreement for an apartment unit may be for the fall or spring semester and/or summer term/period, or all of a calendar year, including all break periods within the term.
- (6) The terms of the Student Housing Agreement are not modified in any way by the verbal or written comments of a Tennessee Tech student or employee not authorized to modify the Student Housing Agreement.
- (7) Tennessee Tech's acceptance of a student's housing application and agreement does not guarantee assignment to a particular type of accommodation.
- (8) Tennessee Tech's acceptance of a student's housing application and agreement is not evidence of admission to Tennessee Tech.
- (9) Student Residence Facility/Unit assignment is contingent upon final admission to Tennessee Tech.
- (10) The Student Housing Agreement is not valid unless the student has paid the applicable Reservation Deposit or this requirement is waived by the Director of Residential Life.
- (11) The housing fee shall be established by Tennessee Tech prior to the beginning of any academic term, and may be subject to increase by Tennessee Tech for a subsequent academic term.
- (12) In the event, any Resident of a multiple occupancy residence hall unit ceases to reside in the unit for any reason, Tennessee Tech shall have the right to reassign the remaining Residents to other Student Residence Facilities/Units on campus. When available, and at the student's request, a multiple occupancy student residence unit may be occupied individually at a higher rental rate for a particular semester.
- (13) In the event any student or other Occupant of a Student Residence Facility/Unit fails to comply with any terms or conditions of the Student Housing Agreement, including the timely payment of the housing fee, or with any rule, regulation, or policy, Tennessee Tech may declare the Student Housing Agreement terminated, and may enter and take possession of the premises after it has given notice to the student or other Occupant to vacate the premises within twenty-four (24) hours of the notice.
- (14) Any student or other Occupant of a Student Residence Facility/Unit who fails to make timely payment of all rental due or for any and all damages caused to the premises shall be liable to Tennessee Tech for all expenses, including collection costs and reasonable attorney's fees, incurred by Tennessee Tech in the enforcement or collection of the obligation involved.
- (15) Students must occupy the Student Residence Facility/Unit assigned by the Office of Residential Life during the time period specified by the Student Housing Agreement. Any change in assignment must be approved by the Office of Residential Life.
- (16) No student shall assign the Student Housing Agreement of any Student Residence Facility/Unit or sublet the unit, and any attempted assignment or sublease shall be void, unless the student has obtained the written consent of the Office of Residential Life.
- (17) Tennessee Tech may, in its sole discretion, make all housing assignments and any housing assignment

changes deemed necessary.

(18) Tennessee Tech reserves the right to refuse an application for Student Residence Facility/Unit.

(19) Tennessee Tech shall not be liable for any damages or injuries to any student or Occupant of Student Residence Facilities/Units, or to guests or invitees of such Residents or Occupants, resulting from any act or failure to act by the student or Occupant or Guest or Invitee or any accident occurring in or about the facility, except as authorized by and allowed pursuant to T.C.A. § 9-8-301 et seq. Each student or Occupant who resides or occupies any Student Residence Facility/Unit agrees to indemnify and hold Tennessee Tech harmless from and against all claims, damages, or causes of action whatsoever, asserted by any person arising out of or in any way connected with the use of the premises by the student, the Occupant, or the guest or invitee of the student or the Occupant.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. §49-8-101(a)(2)(A).

0240-09-02-.04 Reservation, Deposit, Cancellation, and Refund Policies is added to Chapter 0240-09-02 Student Housing Regulations and shall read as follows:

0240-09-02-.04 Reservation, Deposit, Cancellation, and Refund Policies

(1) Student Residence Facility/Unit

(a) Any Student Housing Agreement shall terminate at Tennessee Tech's discretion in the event of any of the following:

1. The premises or the Student Residence Facility/Unit is destroyed or, in the opinion of Tennessee Tech, unsuitable for occupancy for any reason;
2. The student resident ceases to remain a student in good standing during any regular term within the period of the Student Housing Agreement;
3. The student resident or Occupant violates any covenant, term, or condition of the Student Housing Agreement or violates any applicable law or Tennessee Tech rule, policy, or procedure; or
4. Tennessee Tech gives the student resident written notice of termination at least thirty (30) days prior to the date when such termination will be effective.

(b) A student may be released from the Student Housing Agreement before the effective date of the agreement by submitting written notification of cancellation to the Office of Residential Life, provided:

1. The student has not checked in to his/her room; and
2. It is prior to the first day of classes of the initial semester of the agreement; and
3. The student withdraws from Tennessee Tech.

(c) A student who has entered into a Student Housing Agreement but is otherwise not obligated to reside in a Student Residence Facility may request an early termination of the agreement. A fee for such early termination will be calculated at fifty percent (50%) of the current rental rate. Requests must be submitted in writing to the Office of Residential Life.

(d) A student may be released from the Student Housing Agreement after the effective date of the Student Housing Agreement by:

1. Withdrawal or graduation from Tennessee Tech;
2. Participation in one (1) of Tennessee Tech's full-time academic internship programs; or
3. Other circumstances that the Director of Residential Life deems, in his/her sole discretion, to

warrant a release from the Student Housing Agreement.

(e) Refund of housing fee and reservation deposits.

1. Refunds will be made consistent with Tennessee Tech's rules, policies, or procedures related to refunds of student fees.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. §49-8-101(a)(2)(A).

0240-09-02-.05 Conduct and Disciplinary Sanctions is added to Chapter 0240-09-02 Student Housing Regulations and shall read as follows:

0240-09-02-.05 Conduct and Disciplinary Sanctions

- (1) Student misconduct related to residence hall or student apartment life that is subject to disciplinary sanction shall include, but not be limited to, any misconduct described by Tennessee Tech policies related to student misconduct.
- (2) Residents are required to abide by all resident regulations and responsibilities included in Tennessee Tech policies and posted on the Residential Life website. Failure to comply with any rule, regulation, or policy may subject the resident to disciplinary action under Tennessee Tech policies. Examples of prohibited conduct include but are not limited to:
 - (a) Tampering with security devices, fire safety fighting equipment, smoke detectors, and/or fire alarms.
 - (b) The use and/or possession of alcoholic beverages in all Student Residence Facilities/Unit.
 - (c) The unlawful use and/or possession of drugs and/or drug paraphernalia are prohibited in all Student Residence Facilities/Units.
 - (d) Use of tobacco products or electronic nicotine delivery systems (e.g. e-cigarettes). Smoking is only permitted in private vehicles.
- (3) Student residents and Occupants shall comply with Tennessee Tech policies and related procedures at all times. Student residents and Occupants shall be responsible for compliance with same by their invited guests.
- (4) All students and Occupants are expected to respect the personal and property rights of all other persons and of Tennessee Tech.
- (5) Tennessee Tech officials and agents may enter a Student Residence Facility/Unit at all reasonable times to examine and inspect the facility/unit for maintenance, health, safety, emergency purposes, or to render service and/or repairs to any unit. Any Student Residence Facility/Unit may be searched with the consent of the student resident or any other Occupant of the unit. All entries/searches, other than those described above, shall be conducted in accordance with federal and state law.
- (6) Upon a determination that a student or Occupant or guest/invitee has violated any applicable rules, regulations, or policies, the disciplinary sanctions listed in Tennessee Tech policies, which are incorporated herein by reference, may be imposed, either singly or in combination, by the appropriate Tennessee Tech officials.
- (7) Tennessee Tech reserves the right to move a student resident when it is in the best interest of the student, other residents on the floor, or Tennessee Tech.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. §49-8-101(a)(2)(A).

0240-09-02-.06 Resident Responsibility is added to Chapter 0240-09-02 Student Housing Regulations and shall read as follows:

0240-09-02-.06 Resident Responsibility

- (1) All Student Residence Facilities/Units shall be used by students as private residences only.
- (2) Spouses, children, dependents, and/or other persons residing with the student resident must be identified on the Student Housing Agreement document or in writing to the Assignment Office.
- (3) All personal property of residents or Occupants on the premises shall be at the risk of the resident or Occupants. Tennessee Tech shall not be liable for any damages to or theft of personal property of students or Occupants in the Student's Residential Facility/Unit or on its grounds prior to, during, or subsequent to the period of the Student Housing Agreement. Any abandoned property collected by Tennessee Tech will be disposed of in accordance with Tennessee Tech policy or state regulations.
- (4) All student residents or Occupants who occupy any Student Residence Facility/Unit shall maintain the unit in the same condition and repair as accepted at the commencement of the period of occupancy, and, upon termination of such occupancy, shall surrender the premises in the same condition and repair, ordinary wear and tear excepted. No student resident or Occupants may make any alterations, additions, or improvements to a Student Residence Facility/Unit without the written consent of the Office of Residential Life.
- (5) Students and/or Occupants will be responsible for any and all damages. Charges will be divided evenly between roommates if the responsible party cannot be identified.
- (6) Failure to check out of the Student Residence Facility/Unit including failure to sign the room inventory sheet may result in a charge to the student's account and/or a hold on the student's academic records account.
- (7) Students in Student Residence Facilities/Units may be assessed on a pro-rata basis for damages in public areas or other common areas within or around the facility in which they reside, either by floor or area or by the entire facility, following a review by the Director of Residential Life or other appropriate Tennessee Tech official. Students will be notified in advance of this mass assessment.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. §49-8-101(a)(2)(A).

0240-0-02-.07 Appeals is added to Chapter 0240-09-02 Student Housing Regulations and shall read as follows:

0240-09-02-.07 Appeals

- (1) A student who wants to appeal a decision related to housing, except a disciplinary matter, may file a written appeal within five (5) business days of the decision. Such appeals must be filed with the Director of Residential Life.
- (2) Within ten (10) business days of the receipt of all information related to the appeal, the Director of Residential Life will notify the student of the decision in writing.
- (3) The Director of Residential Life's decision is final.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. §49-8-101(a)(2)(A).

0240-09-02-.08 Student Housing at Other Tennessee Tech Sites is added to Chapter 0240-09-02 Student Housing Regulations and shall read as follows:

0240-09-02-.08 Student Housing at Other Tennessee Tech Sites

- (1) Other Tennessee Tech sites that offer housing must apply substantially similar housing policies and procedures consistent with the needs and organizational structure of the site offering such housing.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. §49-8-101(a)(2)(A).

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Barbara Fleming	X				
Melissa Geist	X				
Trudy Harper	X				
Millard Oakley	X				
Purna Saggurti	X				
Johnny Stites	X				
Teresa Vanhooser	X				
Barry Wilmore	X				
Tom Jones	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Tech Board of Trustees on 06/15/2017, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: July 19, 2017

Signature: Kae Carpenter

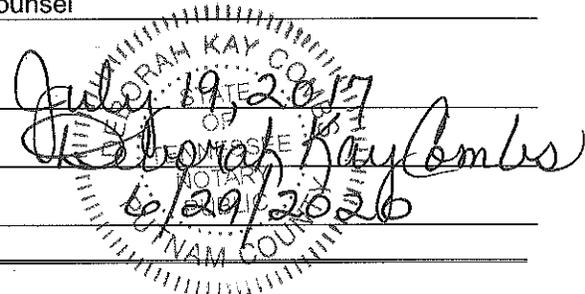
Name of Officer: Kae Carpenter

Title of Officer: University Counsel

Subscribed and sworn to before me on: July 19, 2017

Notary Public Signature: Elizabeth Kay Amber

My commission expires on: 6/29/2020



Agency/Board/Commission: Tennessee Technological University

Rule Chapter Number(s): Chapter 0240-09-02 Student Housing

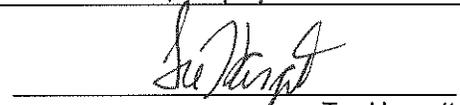
All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Herbert H. Slatery III
Attorney General and Reporter
7/31/2017 Date

Department of State Use Only

Filed with the Department of State on: 9/11/17

Effective on: 11/30/17


Tre Hargett
Secretary of State

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REGISTRATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Technological University

DIVISION:

SUBJECT: Parking, Traffic, and Safety Enforcement

STATUTORY AUTHORITY: The promulgation of this rule is not mandated by any federal or state law or regulation.

EFFECTIVE DATES: November 30, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: In 2016, Tennessee Tech University (TTU) initiated a comprehensive review of the Parking, Traffic, and Safety Enforcement policy. This review was initiated due to the separation of TTU from the Tennessee Board of Regents system. TTU is in the process of establishing rules for necessary key areas.

This proposed rule describes the terms and conditions under which students, employees, and visitors may park on Tennessee Tech's campus. This rule also describes the appeal process for citations.

NOTE: This rule contains all new language that is not underlined in the redline copy.

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 is not anticipated to have an impact on 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

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;

In 2016, Tennessee Tech University (TTU) initiated a comprehensive review of the Parking, Traffic, and Safety Enforcement policy. This review was initiated due to the separation of TTU from the Tennessee Board of Regents system. TTU is in the process of establishing rules for necessary key areas.

This rule describes the terms and conditions under which students, employees, and visitors may park on Tennessee Tech's campus. This rule also describes the appeal process for citations.

- (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;

- (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;

Students and employees of TTU are most directly affected by this rule. A policy that mirrors the proposed rule was reviewed and approved by the Administrative Council at TTU. The Council includes student, staff, and faculty representatives.

- (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;

None

- (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;

None

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

Kae Carpenter, TTU University Counsel and Tony Nelson, TTU Chief of Police

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

Kae Carpenter, TTU University Counsel and Tony Nelson, TTU Chief of Police

- (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

Kae Carpenter, University Counsel 1 William L. Jones Drive Cookeville, TN 38505 931-372-3269 kcarpenter@tntech.edu	Tony Nelson, TTU Chief of Police 242 E. 10 th Street Cookeville, TN 38501 tnelson@tntech.edu
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Sequence Number: 09-03-17
Rule ID(s): 6596
File Date: 9/1/17
Effective Date: 11/30/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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 Technological University
Division:	
Contact Person:	Kae Carpenter, University Counsel
Address:	1 William L. Jones Drive, Cookeville, TN
Zip:	38505
Phone:	931-372-3269
Email:	kcarpenter@tntech.edu

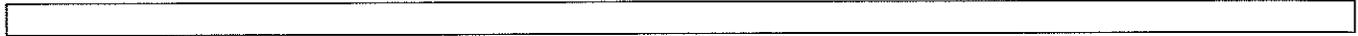
Revision Type (check all that apply):

- Amendment
 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)

Chapter Number	Chapter Title
0240-09-03	Parking, Traffic, and Safety Enforcement
Rule Number	Rule Title
0240-09-03-.01	Definitions
0240-09-03-.02	General Provisions
0240-09-03-.03	Parking Areas and Zones Enforcement
0240-09-03-.04	Fines
0240-09-03-.05	Motor Vehicle Operation
0240-09-03-.06	Traffic and Parking Citation Disputes and Appeals
0240-09-03-.07	Liability for Theft or Damage

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.



Rules
Of
Tennessee Technological University, Cookeville

Chapter 0240-09-03
Parking, Traffic, and Safety Enforcement

New Chapter

Table of Contents is added to Chapter 0240-09-03 Parking, Traffic, and Safety Enforcement and shall read as follows:

- 0240-09-03.01 Definitions
- 0240-09-03.02 General Provisions
- 0240-09-03.03 Parking Areas and Zones Enforcement
- 0240-09-03.04 Fines
- 0240-09-03.05 Motor Vehicle Operation
- 0240-09-03.06 Traffic and Parking Citation Disputes and Appeals
- 0240-09-03.07 Liability for Theft or Damage

0240-09-03-.01 Definitions is added to Chapter 0240-09-03 Parking, Traffic, and Safety Enforcement and shall read as follows:

0240-09-03-.01 Definitions

- (1) Motor Vehicle - Any self-propelled vehicle designed for transport of a person or persons and is capable of exceeding twenty-five (25) miles per hour over level, paved surfaces, shall be deemed a motor vehicle.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. § 49-8-101(a)(2)(A).

0240-09-03-.02 General Provisions is added to Chapter 0240-09-03 Parking, Traffic, and Safety Enforcement and shall read as follows:

0240-09-03-.02 General Provisions

- (1) Tennessee Tech will regulate the use and/or parking of all Motor Vehicles on the campus in accordance with this policy and any applicable rule, regulation, ordinance, or statute.
- (2) All employees and students must register Motor Vehicle(s) and purchase a parking permit in order to park on Tennessee Tech property. Motor Vehicles that are parked on campus without a current parking permit may be issued a parking citation for the violation by the Tennessee Tech Police Department.
- (3) Parking citations are the responsibility of
 - a. the registered owner of the parking permit and the user of the parking permit; or
 - b. the registered owner of the vehicle in cases where no permit has been issued.
- (4) Moving violations will be charged to the operator of the Motor Vehicle at the time of the violation.

- (5) No individual is allowed to give, transfer, furnish, or sell a Tennessee Tech parking permit to another individual.
- (6) Motor Vehicles are to be parked within two (2) marked lines and not protruding into another marked space. Violations of this type may result in a citation being issued by the Tennessee Tech Police Department.
- (7) Disabled vehicles will not be permitted to remain on campus beyond seven (7) days without the written approval of the Chief of the Tennessee Tech Police Department.
- (8) Trailers and boats cannot not be parked on campus without the prior written approval of the Chief of the Tennessee Tech Police Department.
- (9) Motor Vehicles or other means of conveyance parked in such a way as to create a traffic hazard, including, but not limited to, blocking dumpsters, wheelchair ramps, sidewalks, crosswalks, and other parked vehicles may be cited by the Tennessee Tech Police Department for illegal parking and/or may be towed or impounded at the owner's expense.
- (10) Motor Vehicles not displaying a parking permit during zoned parking enforcement may be restrained by the Tennessee Tech Police Department with a wheel lock in order to identify the owner/operator of the Motor Vehicle during the times of zoned parking.
- (11) Repeated Citations
 - (a) Repeated and/or flagrant parking violations may result in the Motor Vehicle being towed at the owner's expense.
 - (b) Tennessee Tech may revoke an individual's parking privileges for repeated and flagrant parking violations.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. § 49-8-101(a)(2)(A).

0240-09-03-.03 Parking Areas and Zones Enforcement is added to Chapter 0240-09-03 Parking, Traffic, and Safety Enforcement and shall read as follows:

0240-09-03-.03 Parking Areas and Zones Enforcement

- (1) Parking areas are marked by color-coded signs that match the color-coded permits indicating the zone in which a Motor Vehicle may be parked. Zone restrictions are effective and enforced by the Tennessee Tech Police Department from 7:30 am to 4:30 pm Monday through Friday during times when classes are in session.
- (2) Zone restrictions are not enforced after 4:30 p.m. Motor Vehicles parked on campus after 4:30 pm Monday through Friday when classes are in session must have a parking permit displayed.
- (3) No permit is required when classes are not in session.
- (4) Residence halls and Tech Village parking zones are reserved for Motor Vehicles displaying the residential parking permits and are enforced by the Tennessee Tech Police Department twenty-four (24) hours a day. Visitors to residents of Tech Village are permitted to park at the Tech Village community center.
- (5) Reserved spaces, including, but not limited to, the President, Police, Facilities, Residential Life Faculty Head, and Hall Directors, are reserved and enforced by the Tennessee Tech Police Department twenty-four (24) hours a day.
- (6) Tennessee Tech Police Department enforces parking in visitor spaces from 7:30 am to 4:30 pm Monday through Friday when classes are in session. These spaces are for visitors to Tennessee Tech and employees and students cannot park in those spaces during this period.
- (7) Tennessee Tech Police Department enforces parking in thirty (30) minute zones from 7:30 am to 4:30 pm

Monday through Friday when classes are in session and are available to anyone for the time allotted.

(8) Disabled Parking

- (a) Tennessee Tech Police Department enforces parking in disabled parking spaces twenty-four (24) hours a day. These reserved spaces are for individuals that have been issued a state disabled placard or license plate.
- (b) The individual to whom the license plate or placard has been issued must be using the Motor Vehicle in order for the Motor Vehicle to be parked in the disabled space. Tennessee Tech will charge the owner of the parking decal or registered owner of the Motor Vehicle the maximum fine allowed by law for improper use of a disabled placard or license plate.
- (c) Individuals that have been issued a state placard or license plate for disabled parking may purchase a Tennessee Tech disabled parking permit. This permit allows the individual to park in any legal parking space on campus, should a disabled space not be available.
- (d) Pursuant to T.C.A. § 55-21-108, fines for violating the disabled parking law cannot be suspended or waived.

(9) Temporary and visitor parking permits

- (a) Campus visitor permits are required for visitors to park on campus Monday through Friday when classes are in session. Visitor permits allow an individual to park in the visitor parking when available or the perimeter (purple) color-coded lots on the campus. These permits can be obtained at the Tennessee Tech Police Department twenty-four (24) hours a day.
- (b) Official visitor parking permits are available for individuals that are on campus for official business with Tennessee Tech. These permits must be approved by designated Tennessee Tech administrators. An official visitor permit allows the Motor Vehicle to park in any legal space on campus that is not specifically reserved.
- (c) The Tennessee Tech Police Department may issue a temporary parking permit to individuals who have a parking permit on file and who have lost, misplaced, etc. the original hang tag.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. § 49-8-101(a)(2)(A).

0240-09-03-.04 Fines is added to Chapter 0240-09-03 Parking, Traffic, and Safety Enforcement and shall read as follows:

0240-09-03-.04 Fines

- (1) Fines may be set as determined by Tennessee Tech, but shall not exceed the amounts set by state/county/municipal ordinance for the same offense. Such fines are subject to the prior review and approval of the Tennessee Tech Board of Trustees. Proposed fines shall be submitted to the Tennessee Tech Board of Trustees together with information sufficient to justify the fine. Such information shall include consideration of state/county/municipal fines for the same offense, fines for the same offense at similarly situated institutions, association to enforcement costs at the institution, and/or the unique traffic/parking considerations at each institution. Once adopted or amended, all fines shall be affirmatively communicated to the faculty, staff, and students of the institution through Tennessee Tech's website.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. § 49-8-101(a)(2)(A).

0240-09-03-.05 Motor Vehicle Operation is added to Chapter 0240-09-03 Parking, Traffic, and Safety Enforcement and shall read as follows:

0240-09-03-.05 Motor Vehicle Operation

- (1) Operators of Motor Vehicles on Tennessee Tech property must obey all traffic rules, regulations,

postings, or directions, regardless of whether the rule, regulation, posting, or direction is included in this policy.

- (2) The speed limit on all Tennessee Tech streets as well as city streets running through Tennessee Tech are enforced by the Tennessee Tech Police Department. Violations of this may result in the operator of the Motor Vehicle receiving a speeding citation by Tennessee Tech Police.
- (3) The reckless operation of a Motor Vehicle on the Tennessee Tech campus including, but not limited to, squealing tires, sliding the Motor Vehicle, and operating the Motor Vehicle at a high rate of speed are serious safety hazards and strictly prohibited. Operators may be issued a citation by Tennessee Tech Police as well as face disciplinary action for a violation of this nature.
- (4) Operators of Motor Vehicles are prohibited from overtaking/passing another Motor Vehicle in operation on streets within the Tennessee Tech campus. Violations of this may result in the operator of the Motor Vehicle receiving a citation from Tennessee Tech Police.
- (5) Operators of Motor Vehicles must observe and obey all traffic control devices (e.g., STOP signs, traffic lights). Failure to do so may result in the operator of the Motor Vehicle receiving a citation from Tennessee Tech Police for the violation.
- (6) Operators of Motor Vehicles must yield the right of way and come to a complete stop for pedestrians in the crosswalks. Operators of Motor Vehicles must also show due care for all pedestrian traffic while operating a Motor Vehicle on the Tennessee Tech campus. Failure to do so may result in the operator of the Motor Vehicle receiving a citation for the violation from Tennessee Tech Police.
- (7) Operators of Motor Vehicles must pull to the edge of the roadway and come to a complete stop to yield the right of way to emergency vehicles displaying active lights and/or sirens. Failure to do so may result in the operator of the Motor Vehicle receiving a citation for the violation from Tennessee Tech Police.
- (8) Individuals riding bicycles on the Tennessee Tech campus must observe and obey all traffic control devices on all Tennessee Tech and city streets within the Tennessee Tech campus. Failure to do so may result in the operator of the bicycle being issued a citation for the violation by Tennessee Tech Police.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. § 49-8-101(a)(2)(A).

0240-09-03-.06 Traffic and Parking Citation Disputes and Appeals is added to Chapter 0240-09-03 Parking, Traffic, and Safety Enforcement and shall read as follows:

0240-09-03-.06 Traffic and Parking Citation Disputes and Appeals

- (1) Officers of the Tennessee Tech Police Department may issue citations for violations under certain circumstances in either Cookeville City Court for violations of city ordinances or Putnam County General Sessions Court for violations of state laws. Individuals that receive a City Court or General Sessions Court citation must either appear in court on the court date listed on the citation or pay the citation fine if appearance in court is not required.
- (2) Any Tennessee Tech student who has received a Tennessee Tech traffic and/or parking citation may appeal the citation within fifteen (15) business days of the date of issue to the Student Traffic Appeals Committee.
- (3) Any Tennessee Tech employee who has received a Tennessee Tech citation for traffic and/or parking violation may appeal the citation within fifteen (15) business days of the date of issue to the Faculty and Staff Traffic Appeals Committee. Appeals may be filed in the Parking Portal.
- (4) Any non-Tennessee Tech employee or student who has received a Tennessee Tech parking citation may appeal the citation within fifteen (15) business days of the date of issue to the Faculty and Staff Traffic Appeals Committee. These appeals can be filed by contacting the Tennessee Tech Police Department.

- (5) The Student Traffic Appeals Committee will meet regularly during the Fall and Spring semesters. Students will be notified in writing of the Committee's decision. The Faculty and Staff Traffic Appeals Committee will meet once in the Fall semester and once in the Spring semester, absent good cause. Tennessee Tech employees will be notified in writing of the Committee's decision.
- (6) The Student Traffic Appeals Committee and the Faculty and Staff Traffic Appeals Committee decisions may be appealed to the Vice President for Student Affairs by submitting a written appeal with all relevant documentation attached within five (5) business days of the notification of the appropriate committees decision.
- (7) The Vice President for Student Affairs will communicate his/her decision in writing to the individual making the appeal within five (5) business days after receiving the written appeal along with all relevant documentation. The decision of the Vice President for Student Affairs is final.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. § 49-8-101(a)(2)(A).

0240-09-03-.07 Liability for Theft or Damage is added to Chapter 0240-09-03 Parking, Traffic, and Safety Enforcement and shall read as follows:

0240-09-03-.07 Liability for Theft or Damage

- (1) Tennessee Tech assumes no financial responsibility for theft or damage to Motor Vehicles or their contents when parked or operated on campus.

Authority: T.C.A. § 49-8-203(a)(1)(D); T.C.A. § 49-8-101(a)(2)(A).

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Barbara Fleming	X				
Melissa Geist	X				
Trudy Harper	X				
Millard Oakley	X				
Purna Saggurti	X				
Johnny Stites	X				
Teresa Vanhooser	X				
Barry Wilmore	X				
Tom Jones	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Tech Board of Trustees on 06/15/2017, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: July 19, 2017

Signature: Kae Carpenter

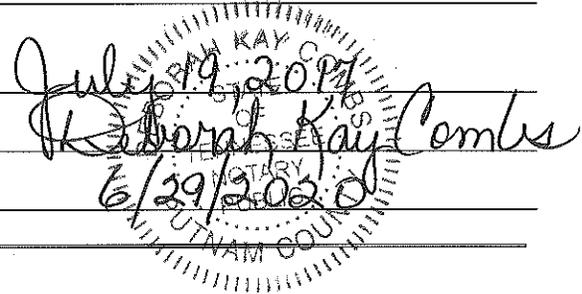
Name of Officer: Kae Carpenter

Title of Officer: University Counsel

Subscribed and sworn to before me on: July 19, 2017

Notary Public Signature: Robert Kay Combs

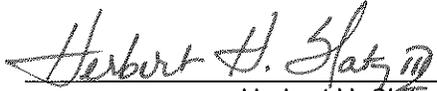
My commission expires on: 6/29/2020



Agency/Board/Commission: Tennessee Technological University

Rule Chapter Number(s): Chapter 0240-09-03 Parking, Traffic, and Safety Enforcement

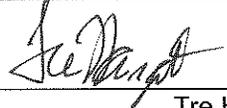
All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Herbert H. Slatery III
Attorney General and Reporter
7/31/2017
Date

Department of State Use Only

Filed with the Department of State on: 9/1/17

Effective on: 11/30/17


Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY: University of Tennessee

SUBJECT: Charges for Producing Copies of Public Records

STATUTORY AUTHORITY: Public Chapter 722 (2016)

EFFECTIVE DATES: December 25, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: A new state law, Public Chapter 722 (2016), requires every governmental entity in Tennessee to establish a written public records policy properly adopted by the appropriate governing authority prior to July 1, 2017. The University of Tennessee Board of Trustees adopted a new public records policy that complies with Public Chapter 722 and other provisions of the Tennessee Public Records Act. In compliance with Public Chapter 722, the new policy does not impose requirements on persons requesting records that are more burdensome than state law and describes: (1) the process for making requests to inspect public records or receive copies of public records and a copy of any required request forms; (2) the process for responding to requests, including redaction practices; (3) a statement of fees that will be charged for copies of public records and the procedures for billing and payment; and (4) the names or titles and the contact information for the individuals within the University designated as public records request coordinators. Chapter 1720-01-11 of the Rules of The University of Tennessee, which addresses only the subject of charges the University assesses for producing public records and will be superseded by the new policy.

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 Regulatory Flexibility Addendum is not applicable.

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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The University of Tennessee anticipates that this rule change will have no 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;

A new state law, Public Chapter 722 (2016), requires every governmental entity in Tennessee to establish a written public records policy properly adopted by the appropriate governing authority prior to July 1, 2017. The University of Tennessee Board of Trustees adopted a new public records policy that complies with Public Chapter 722 and other provisions of the Tennessee Public Records Act. In compliance with Public Chapter 722, the new policy does not impose requirements on persons requesting records that are more burdensome than state law and describes: (1) the process for making requests to inspect public records or receive copies of public records and a copy of any required request forms; (2) the process for responding to requests, including redaction practices; (3) a statement of fees that will be charged for copies of public records and the procedures for billing and payment; and (4) the names or titles and the contact information for the individuals within the University designated as public records request coordinators. Chapter 1720-01-11 of the Rules of The University of Tennessee, which addresses only the subject of charges the University assesses for producing public records and will be superseded by the new policy.

- (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;

Public Chapter 722 (2016)

- (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 University has not received any feedback from citizens or the media about the new policy.

- (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 University's Office of the General Counsel consulted with the Office of the Attorney General prior to the University's repeal of Chapter 1720-01-11.

- (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;

None

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

Matthew Scoggins
General Counsel
University of Tennessee

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

Matthew Scoggins
General Counsel
University of Tennessee

University of Tennessee Rules
Chapter 1720-01-11 Charges for Producing Copies of Public Records

- (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

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 09-26-17
Rule ID(s): 6608
File Date: 9/26/17
Effective Date: 12/25/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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: University of Tennessee
Division:
Contact Person: Matthew Scoggins, General Counsel
Address: 719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip: 37996-0170
Phone: 865-974-3245
Email: scoggins@tennessee.edu

Revision Type (check all that apply):

- Amendment
 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)

Chapter Number	Chapter Title
1720-01-11	Charges for Producing Copies of Public Records
Rule Number	Rule Title

**RULES
OF
THE UNIVERSITY OF TENNESSEE
(ALL CAMPUSES)**

**CHAPTER 1720-1-11
CHARGES FOR PRODUCING COPIES OF PUBLIC RECORDS REPEALED**

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1720-1-11-.02	Definitions	1720-1-11-.07	Payment of Production Costs
1720-1-11-.03	Production Costs	1720-1-11-.08	Waiver of Production Costs
1720-1-11-.04	Copying Costs	1720-1-11-.09	Requests for Copies Following Inspection
1720-1-11-.05	Labor Costs		

~~**1720-1-11-.01 PURPOSE.** Following the publication of the Schedule of Reasonable Charges for Copies of Public Records developed by the Office of Open Records Counsel pursuant to T.C.A. § 8-4-604(a), these Rules are promulgated for the purpose of establishing and implementing charges for producing copies of public records of The University of Tennessee. Other statutory provisions, such as T.C.A. § 10-7-506(c), describe charges that may be assessed when specific records are requested for a specific use.~~

~~*Authority:* T.C.A. § 49-9-209(e) and § 10-7-506(a). *Administrative History:* Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~**1720-1-11-.02 DEFINITIONS.**~~

- ~~(1) "Labor" means the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.~~
- ~~(2) "Labor threshold" means the labor of the employee(s) reasonably necessary to produce requested records for the first hour incurred by the University in producing the records.~~
- ~~(3) "Production costs" means all reasonable costs the University incurred to produce the public records requested by the requesting party. Production costs include copying costs, labor costs, and delivery costs, as described in these Rules.~~
- ~~(4) "Public record" means any record of the University that is required to be open to inspection under the provisions of the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-501 et seq.~~
- ~~(5) "Public Records Designee" or "PRD" means the person at each campus, institute, or other unit of the University who receives and coordinates public records requests and maintains documentation of public records requests, responses, and charges. For purposes of these Rules, this term includes Human Resource and Purchasing Department employees who independently respond to public records requests for personnel or purchasing records.~~
- ~~(6) "Requesting party" means the person who requests to inspect or copy public records of the University. To have access to public records, a requesting party must be a citizen of the State of Tennessee.~~

~~*Authority:* T.C.A. § 49-9-209(e) and § 10-7-506(a). *Administrative History:* Public necessity rule filed~~

~~October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~**1720-1-11-.03 PRODUCTION COSTS.** Except as otherwise provided in these Rules, the PRD shall charge the requesting party for production costs as defined in Rule 1720-1-11-.02(3). The production costs charged to the requesting party shall be reasonable. The Schedule of Reasonable Charges for Copies of Public Records, published by the Office of Open Records Counsel, will be used as a guideline to determine the amount a requesting party will be charged for producing copies of public records. The PRD shall utilize the most cost efficient method of producing copies of public records.~~

~~*Authority:* T.C.A. § 49-9-209(e) and § 10-7-506(a). *Administrative History:* Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~**1720-1-11-.04 COPYING COSTS.** Copying costs include the costs related to making copies of the public records requested by the requesting party, by photographic, or other means of duplication.~~

- ~~(1) The PRD shall assess a charge of fifteen cents (\$0.15) per page for each standard 8 ½ x 11" or 8 ½ x 14" black and white copy produced.~~
- ~~(2) If a public record is maintained in color, the PRD shall advise the requesting party that the record can be produced in color if the requesting party is willing to pay the higher charge for a color copy. If the citizen then requests a color copy, the PRD shall assess a copy charge of fifty (50) cents per page for each 8 ½ x 11" or 8 ½ x 14" color copy produced.~~
- ~~(3) The charge for a duplex copy shall be the same as the charge for two (2) separate copies.~~
- ~~(4) If a copy of a public record is produced on a medium other than 8 ½ x 11" or 8 ½ x 14" paper, the PRD shall assess a copy charge equal to the actual cost of producing a copy of the public record, taking into consideration the amount of material, equipment costs, and the cost of the alternative medium.~~
- ~~(5) If the requested records exist electronically, but not in the format requested or a new or modified computer program or application is necessary to put the records in a readable and reproducible format or it is necessary to access backup files, and the PRD shall charge the requesting party the actual costs incurred in producing the records in the format requested or in creating or modifying a computer program or application necessary to put the records in a readable and reproducible format or in accessing backup files.~~
- ~~(6) Electronic records will be produced only in a read-only format.~~
- ~~(7) If the PRD utilizes an outside vendor to produce copies of the requested records because the University is legitimately unable to produce the copies, the cost charged by the vendor to the University shall be recovered from the requesting party.~~
- ~~(8) If the PRD is charged a fee to retrieve requested records from the Tennessee State Library and Archives or from any other entity having possession of requested records, the PRD shall charge the requesting party the cost charged the University for retrieval of the records.~~

~~*Authority:* T.C.A. § 49-9-209(e) and § 10-7-506(a). *Administrative History:* Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~1720-1-11-.05 LABOR COSTS.~~ The PRD shall charge the requesting party the hourly wage of the employee(s) reasonably necessary to produce the requested records above the labor threshold defined in Rule 1720-1-11.02(2). The "hourly wage" is based upon the employee(s) base salary and does not include benefits. In calculating the labor costs to be charged to the requesting party, the PRD shall:

- ~~(1) First, determine the number of hours each employee spent producing the requested public records;~~
- ~~(2) Second, subtract the one (1) hour threshold from the number of hours the highest paid employee spent producing the request;~~
- ~~(3) Third, multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage; and~~
- ~~(4) Fourth, add together the totals for all the employees involved in the request to determine the total amount of the labor costs to be charged to the requesting party.~~

~~*Authority:* T.C.A. § 49-9-209(e) and § 10-7-506(a). *Administrative History:* Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~1720-1-11-.06 DELIVERY COSTS.~~ The PRD shall charge the requesting party for the costs incurred by the PRD in delivering the records to the requesting party, in addition to any other charge permitted by these Rules.

- ~~(1) Delivery of copies of public records to the requesting party shall be by hand delivery when the requesting party returns to the PRD's office to retrieve the requested records. If the requesting party chooses not to return to the PRD's office to retrieve the copies, the PRD shall deliver records to the requesting party through the United States Postal Service.~~
- ~~(2) In the discretion of the PRD, copies of public records may be delivered through other means, including electronically.~~

~~*Authority:* T.C.A. § 49-9-209(e) and § 10-7-506(a). *Administrative History:* Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~1720-1-11-.07 PAYMENT OF PRODUCTION COSTS.~~ If the requesting party requests copies of public records, the following provisions concerning payment of production costs shall apply:

- ~~(1) The PRD shall provide the requesting party an estimate of the production costs before initiating the production of copies of the requested public records.~~
- ~~(2) The PRD may require payment in full of all production costs before copies of public records are delivered or otherwise made available to the requesting party.~~
- ~~(3) Production costs must be paid by cash or check. Cash payments must be for the exact amount of the production costs. Checks must be made payable to The University of Tennessee for the exact amount of the production costs.~~
- ~~(4) The PRD will provide a receipt to the requesting party upon receipt of payment of the production costs.~~

~~*Authority:* T.C.A. § 49-9-209(e) and § 10-7-506(a). *Administrative History:* Public necessity rule filed~~

~~October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~**1720-1-11-.08 WAIVER OF PRODUCTION COSTS.** Waiver of production costs for copies of public records shall be in accordance with the following provisions:~~

- ~~(1) The PRD shall provide copies of public records without charge if all production costs, as defined in Rule 1720-1-11-.02(3), do not exceed three dollars (\$3.00).~~
- ~~(2) The PRD shall provide copies of materials for meetings of the Board of Trustees and its committees without charge when requested contemporaneously with the meeting.~~
- ~~(3) When the requesting party is a federal, state, or local government agency, the PRD shall provide the requested copies of public records without charge.~~
- ~~(4) When the requesting party is a current employee of the University, the PRD shall provide the requesting party copies of his/her employment records without charge.~~
- ~~(5) The PRD may provide copies of the following records without charge if the University will not incur significant production costs in providing the records: current enrollment data, basic budget information, history of the University, biographical data for University employees, University policies and procedures, general facts and figures about the University, and similar information.~~

~~**Authority:** T.C.A. § 49-9-209(e) and § 10-7-506(a). **Administrative History:** Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

~~**1720-1-11-.09 REQUESTS FOR COPIES FOLLOWING INSPECTION.** The PRD shall not assess a charge to inspect public records, unless otherwise required by law. However, if the requesting party, after requesting to inspect public records, requests copies of public records, the PRD shall charge the requesting party for all production costs.~~

~~**Authority:** T.C.A. § 49-9-209(e) and § 10-7-506(a). **Administrative History:** Public necessity rule filed October 31, 2008; effective through April 14, 2009. Public necessity rule filed October 31, 2008, and effective through April 14, 2009, expired effective April 15, 2009, and rule reverted to its previous status. Original rule filed February 26, 2009; effective June 26, 2009.~~

University of Tennessee Rules
 Chapter 1720-01-11 Charges for Producing Copies of Public Records

The University of Tennessee
 Chapter 1720-01-11
 Charges for Producing Copies of Public Records

Repeal

Rule 1720-01-11 Charges for Producing Copies of Public Records is repealed in its entirety.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

*If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Charles C. Anderson, Jr.	X				
Shannon Brown				X	
George E. Cates				X	
Dr. Terrance G. Cooper (non-voting)					
Dr. Susan C. Davidson	X				
Spruell Driver, Jr.	X				
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg	X				
Raja J. Jubran	X				
Mike Krause (non-voting)					
Brad A. Lampley	X				
Andrew P. McBride (non-voting)					
Sharon J. Pryse	X				
Rhedona Rose	X				
David A. Shepard	X				
Rachel M. Smith	X				
John D. Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-01-11 Charges for Producing Copies of Public Records

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/22/2017, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 09/07/2017

Signature: _____

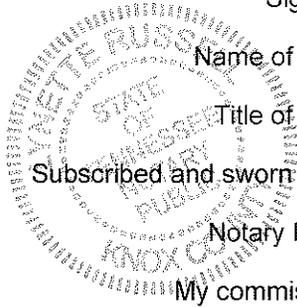
Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: 9-7-17

Notary Public Signature: _____

My commission expires on: _____



Agency/Board/Commission: The University of Tennessee

Rule Chapter Number(s): Chapter 1720-01-11

All proposed 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
Herbert H. Slatery III
Attorney General and Reporter
9/18/2017
Date

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9/26/17

Effective on: _____

12/25/17

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY: Tennessee Board of Nursing

DIVISION:

SUBJECT: Medication Aides Certified - Fees, Standards of Practice, Application, Certification, Renewal, Supervision, and Training Program Requirements

STATUTORY AUTHORITY: 2016 Public Chapter 1051, signed by the Governor on April 28, 2016.

EFFECTIVE DATES: December 10, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These rulemaking hearing rule amendments implement legislative changes to the medication aide profession arising from 2016 Public Chapter 1051, signed by the Governor on April 28, 2016.

These amendments additionally remove the word "certified" from the profession title wherever it appears.

Substantive amendments are being made to definitions, fees, standards of practice, application, certification, renewal, supervision, and training program requirements.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There was one written comment and one oral comment received regarding the proposed rules.

A letter was submitted by the Tennessee Nurses Association (TNA), signed by Sharon Adkins who is the Executive Director.

Sharon Adkins also orally addressed the Board with TNA's concerns, including those concerns stated in the letter. She expressed TNA's concerns that allowing medication aides, unlicensed individuals, to administer controlled medications would increase access to controlled substances and put more drugs on the streets in Tennessee, a state with a growing addiction epidemic, and would be dangerous for vulnerable and fragile patients in nursing homes and assisted care living facilities. Ms. Adkins requested that the Board add a new subparagraph to Rule 1000-05-11(15), "[a]n MA shall not: (k) Administer Schedule II medications." Ms. Adkins stated that TNA strongly opposes the proposed rules.

The Board Chair responded to Ms. Atkins and stated that there is not much the Board can do to implement the requested change because the legislature intended to allow medication aides to administer controlled substances. The Board agreed with TNA's concerns regarding the distribution of controlled substances and also addressed its own concern for overprescribing issues in Tennessee.

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.

- (1) **The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

These rules do not overlap, duplicate, or conflict with other federal, state, and local government rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

These rules are established with clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

These rules do not establish any new reporting requirements.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

These rules do not establish any new reporting requirements.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

These rules do not establish any new reporting requirements.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

These rules do not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

These rules do not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Board of Nursing

Rulemaking hearing date: May 18, 2017

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

Nursing homes, assisted care living facilities, and Programs for All-inclusive Care for the Elderly (PACE) who choose to use Medication Aides will be directly affected by the proposed rules. These businesses will bear the cost of and directly benefit from the proposed rules.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

Qualified entities offering Medication Aide training programs will be required to maintain transcripts and other records of the training provided, including the results of a board approved examination, for each student. Otherwise, these rules should have a minimal impact on reporting, recordkeeping and other administrative costs.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

Small businesses and consumers will be positively affected by the proposed rules.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rules.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: None.

State: Several other states have implemented similar rules.

- 6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

These proposed rules do not provide for any exemptions of 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule amendments should not have a financial 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 rule amendments implement legislative changes to the medication aide profession arising from 2016 Public Chapter 1051, signed by the Governor on April 28, 2016.

These amendments additionally remove the word "certified" from the profession title wherever it appears.

Substantive amendments are being made to definitions, fees, and standards of practice, application, certification, renewal, supervision, and training program requirements.

- (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;

2016 Public Chapter 1051, signed by the Governor on April 28, 2016

- (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;

Nursing homes, assisted care living facilities, and Programs for All-inclusive Care for the Elderly (PACE) who choose to use Medication Aides will be directly affected by the proposed rules.

- (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;

None.

- (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;

These rules should not result in any increase or decrease in state or local government revenues or expenditures.

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

Mark Waters, Deputy General Counsel, Department of Health.

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

Mark Waters, Deputy General Counsel, Department of Health.

- (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

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Mark.S.Waters@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**Department of State
Division of Publications**

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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 09-12-17
Rule ID(s): 6600
File Date: 9/11/17
Effective Date: 12/10/17

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 Board of Nursing
Division:	
Contact Person:	Mark S. Waters, Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Mark.S.Waters@tn.gov

Revision Type (check all that apply):

- Amendment
 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)

Chapter Number	Chapter Title
1000-05	Medication Aides Certified
Rule Number	Rule Title
1000-05-.01	Purpose
1000-05-.02	Definitions
1000-05-.03	Application, Certification and Renewal
1000-05-.05	Fees
1000-05-.06	Disciplinary Actions and Civil Penalties
1000-05-.07	Training Programs
1000-05-.08	Peer Assistance Programs
1000-05-.09	Continuing Education
1000-05-.10	Supervision and Delegation
1000-05-.11	Standards of Practice

**RULES
OF
TENNESSEE BOARD OF NURSING**

**CHAPTER 1000-05
MEDICATION AIDES CERTIFIED**
Medication Aides

TABLE OF CONTENTS

1000-05-.01	Purpose	1000-05-.07	Training Programs
1000-05-.02	Definitions	1000-05-.08	Peer Assistance Program
1000-05-.03	Application, Certification and Renewal	1000-05-.09	Continuing Education
1000-05-.04	Reinstatement	1000-05-.10	Supervision and Delegation
1000-05-.05	Fees	1000-05-.11	Standards of Practice
1000-05-.06	Disciplinary Actions and Civil Penalties		

1000-05-.01 PURPOSE.

~~The rules in this chapter implement the certification program for medication aides certified, T.C.A. § 63-7-427.~~

The rules in this chapter implement the certification program for medication aides, T.C.A. § 63-7-127.

Authority: T.C.A. §§ 63-7-127 and 63-7-207. **Administrative History:** Original rule filed May 15, 2012; effective August 13, 2012. The Government Operations Committee filed a 60-day stay of the rule on July 13, 2012; new effective date October 12, 2012.

1000-05-.02 DEFINITIONS.

In addition to the definitions contained in T.C.A. § 63-7-127(a), the following definitions are applicable to this chapter:

- ~~(1) "Applicant" means a person filing an application for a certificate as a MAC.~~
- (1) "Applicant" means a person filing an application for a certificate as an MA.
- (2) "As Needed Medication" means any oral or topical medication for a specified condition that is not scheduled to be administered to a resident at a routine time but is given in response to a resident's complaint or expression of discomfort.
- (3) "Assisted Care Living Facility" shall have the same meaning as set forth in T.C.A. § 68-11-201.
- (4) "Board" means the Tennessee Board of Nursing.
- (5) "Certified Nurse Aide" means an individual who has successfully completed an approved nursing assistant training program and is registered with the department.
- ~~(6) "Clinical Practice Component" means tasks or activities planned as part of a medication aide certified training program to provide MAC students with the opportunity to administer medications in a nursing home or an assisted care living facility setting.~~
- (6) "Clinical Practice Component" means tasks or activities planned as part of a medication aide training program to provide Medication Aide students with the opportunity to administer medications in a nursing home, an assisted care living facility setting, or a Program for All-Inclusive Care for the Elderly (P.A.C.E.).

(Rule 1000-05-.02, continued)

- (7) "Clock Hour or Contact Hour" means fifty (50) to sixty (60) minutes of qualifying or continuing education.
- (8) "Controlled Substances" shall have the same meaning as set forth in T.C.A. § 63-10-204(7).
- ~~(9) "Delegation" means the transfer of responsibility, but not the accountability, for the administration of medication from the delegating licensed nurse to a MAC.~~
- ~~(9) "Curriculum" means the standard minimum curriculum to be used in a board-approved training program for medication aides in accordance with T.C.A. § 63-7-127.~~
- ~~(10) "Delegation" means the transfer of responsibility, but not the accountability, for the administration of medication from the delegating licensed nurse to a Medication Aide.~~
- (11)(40) "Department" means the Tennessee Department of Health.
- (12)(41) "Drug" shall have the same meaning as set forth in T.C.A. § 63-10-204(16).
- ~~(12) "Licensed Nurse" means a registered nurse or licensed practical nurse licensed under T.C.A. § 63-7-101 et. seq., including an advanced practice nurse.~~
- ~~(13) "General Supervision" means a licensed nurse overseeing with authority an MA who is performing medication administration in a nursing home, assisted care living facility, or P.A.C.E. The delegating licensed nurse shall be immediately available. If not required to be on-site, the delegating nurse shall be immediately available for a two way telephone conversation.~~
- ~~(14) "Licensed Nurse" means a registered nurse or licensed practical nurse licensed under T.C.A. § 63-7-101 et. seq., including an advanced practice registered nurse.~~
- (15)(43) "Medication Administration" means giving a drug to a resident to be orally ingested by the resident or topically applied to the resident's body.
- (16)(44) "Medication Administration Record" (MAR) means a written or electronic record of the medication ordered for and administered to a patient or resident of a nursing home or assisted care living facility.
- ~~(15) "Medication Aide Certified" (MAC) means a certified nurse aide who holds a current, valid certificate as a medication aide certified issued by the Board and who administers medications (pursuant to T.C.A. § 63-7-127) under the general supervision of a licensed nurse.~~
- ~~(17) "Medication Aide" (MA) means a certified nurse aide who holds a current, valid certificate as a medication aide issued by the Board and who administers medications (pursuant to T.C.A. § 63-7-127) under the general supervision of a licensed nurse.~~
- ~~(16) "Medication Aide Certified Training Program" means a formal program of study approved by the Board and required for certification as a medication aide certified.~~
- ~~(18) "Medication Aide Training Program" means a program of study approved by the Board and required for certification as a medication aide.~~
- (19)(47) "Nursing Home" shall have the same meaning as set forth in T.C.A. § 68-11-201.

(Rule 1000-05-.02, continued)

- (20) "P.A.C.E." means a Program for All-Inclusive Care for the Elderly as defined in T.C.A. §56-2-121(b).
- (18) ~~"Patient" or "Resident" means a person receiving the services of a medication aide certified in a nursing home or assisted care living facility.~~
- (21) "Patient" or "Resident" means a person receiving the services of a medication aide in a nursing home, assisted care living facility, or P.A.C.E.
- (22)(19) "Peer Support Program" means a program that provides monitoring of rehabilitation services to health care professionals who may be impaired by substance abuse or a psychological condition.
- (23)(20) "Person" is defined as an individual, natural person.
- (24)(24) "PHI" means individually identifiable health information (IIHI) created, received, or maintained by a covered entity and transmitted or maintained in any form or medium. 45 C.F.R. Part 160.103; 42 U.S.C. §§ 1320d – 1320d-8 (HIPAA).
- (22) ~~"Qualified Educational Institution" means an institution accredited by the Southern Association of Colleges and Schools (or equivalent regional accredited agency) or the Council on Occupational Education that currently or in the future operates as a fully approved Tennessee School of Registered or Practical Nursing.~~
- (23) ~~"General Supervision" means a licensed nurse overseeing with authority a MAC who is performing medication administration in a nursing home or assisted care living facility. The delegating licensed nurse shall be on-site and immediately available where required by law. If not required to be on-site, the delegating nurse shall be immediately available for a two-way telephone conversation.~~
- (25) "Prescription" means a written, electronic, or oral order, issued by a licensed health professional authorized to prescribe drugs, for any drug, including an over the counter drug to be used by a particular resident.
- (26) "Professional boundaries" means the limits of the professional relationship that allow for a safe therapeutic relationship between the resident and the medication aide.
- (27) "Survey visit" means an announced or unannounced visit to a medication aide training program by a representative of the board to determine whether the program meets or maintains the minimum standards required by the board.

Authority: T.C.A. §§ 63-7-127 and 63-7-207. **Administrative History:** Original rule filed May 15, 2012; effective August 13, 2012. The Government Operations Committee filed a 60-day stay of the rule on July 13, 2012; new effective date October 12, 2012.

1000-05-.03 APPLICATION, CERTIFICATION AND RENEWAL.

- (1) Application.
 - (a) An applicant for certification as a MAC shall complete an application on a form prescribed by the Board. The training program shall submit the application for certification by examination to the Board office.
 - (b) ~~Any application submitted which lacks the required information or fails to meet any requirement for certification will be returned to the applicant with written notification of deficiency and will be held in "pending" status for a reasonable period of time, not to~~

(Rule 1000-05-.03, continued)

~~exceed ninety (90) days from the date of application, so that the applicant may cure any deficiency, if possible.~~

~~(b) Any application submitted which lacks the required information or fails to meet any requirement for certification will be returned to the applicant with written notification of deficiency and will be held in "pending" status for a reasonable period of time, not to exceed one year from the date of application, so that the applicant may cure any deficiency, if possible.~~

(c) An application may be withdrawn unless it has been denied.

(d) Application fees are not refundable.

(2) Certification.

~~(a) An applicant for certification as a MAC shall submit an application to the Board office along with the required information and application and certification fees.~~

~~(a) An applicant for certification as an MA shall submit an application to the Board office along with the required information and application and certification fees.~~

(b) An applicant shall furnish evidence to the Board office, along with a completed application and applicable fees, that the applicant:

1. Is at least eighteen (18) years of age;
2. Has completed the twelfth (12th) grade or its equivalent or has successfully passed the test for and has received a general equivalency diploma;
3. Is a certified nurse aide;
- ~~4. Has worked as a certified nurse aide in a nursing home or assisted care living facility for at least 365 days of continuous, uninterrupted, full-time work at no more than two (2) different facilities, at the time the applicant submits an application;~~
4. Has worked as a certified nurse aide in a nursing home, assisted care living facility, or a P.A.C.E. for at least 365 days of continuous, uninterrupted, full-time work at no more than two (2) different facilities, at the time the applicant submits an application;
5. Has successfully completed a course of instruction provided by a training program approved by the Board under rule 1000-05-.07 and in compliance with T.C.A. § 63-7-127(i);
- ~~6. Has passed a medication aide certification examination approved by the Board;~~
6. Has passed a medication aide certification examination approved by the Board; a student who fails the examination a second time must enroll or re-enroll in and satisfactorily complete a board approved training program in order to be eligible to take the examination again;
- ~~7. Has caused the results of a criminal background check to be submitted to the Board's administrative office directly from one of the vendors identified in the Board's licensure application materials; and~~

(Rule 1000-05-.03, continued)

~~7. Has caused the results of a criminal background check to be submitted to the Board's administrative office directly from one of the vendors identified in the Board's licensure application materials;~~

~~8. Does not have an encumbrance on any professional license or certificate.~~

~~8. Does not have an encumbrance on any professional license or certificate; and~~

~~9. Is not currently listed on any abuse or sex offender registry.~~

~~(e) An applicant must take the approved MAC examination.~~

~~1. An applicant must become eligible for certification by examination by applying to the board within thirty (30) days after completing a training program;~~

~~2. An applicant must then take the examination within ninety (90) days of being made eligible by the board;~~

~~3. An applicant taking the examination a second time must re-take the examination and complete the certification process no later than 365 days after filing the initial application; and~~

~~4. An applicant not successful after two (2) examination attempts must repeat the training program and reapply.~~

~~(c) An applicant must take the approved MA examination:~~

~~1. An applicant must become eligible for certification by examination by applying to the board within thirty (30) days after completing a training program;~~

~~2. An applicant must complete the certification process no later than 365 days after filing the initial application; and~~

~~3. An applicant not successful after two (2) examination attempts must repeat the training program and reapply.~~

(3) Renewal.

~~(a) Certification is valid for two (2) years from the date of its issuance and shall become invalid on such date unless renewed, unless earlier suspended or revoked.~~

~~(a) With the exception of the initial certification period, certification is valid for two (2) years from the date of its issuance and shall become invalid on such date unless renewed, or earlier suspended or revoked.~~

~~(b) A MAC may renew a current, valid certification by submitting a renewal form approved by the Board, the required renewal fee and regulatory fee, and attestation of having completed six (6) contact hours of Board-approved continuing education each year prior to the expiration date of the certificate.~~

~~(b) An MA may renew a current, valid certification by submitting a renewal form approved by the Board, the required renewal fee and regulatory fee, and attestation of having completed six (6) contact hours of continuing education each year, provided that five (5) hours of the continuing education shall be in pharmacology provided by a licensed pharmacist or registered nurse prior to the expiration date of the certificate.~~

(Rule 1000-05-.03, continued)

- ~~(c) A renewal form and the fees must be actually received by the Board office on or before the due date, whether submitted in person, by the U.S. Mail, or other delivery service.~~
- (c) A renewal form and the fees must be actually received by the Board office on or before the due date.

Authority: T.C.A. §§ 63-7-127 and 63-7-207. **Administrative History:** Original rule filed May 15, 2012; effective August 13, 2012. The Government Operations Committee filed a 60-day stay of the rule on July 13, 2012; new effective date October 12, 2012.

1000-05-.04 REINSTATEMENT.

- (1) Any person seeking reinstatement of a certification after the expiration date of the certification is required to reapply for certification, fulfill all of the requirements of initial certification, show proof of having completed all past due continuing education, and may be required to submit proof of additional education or testing to show continued competency.

Authority: T.C.A. §§ 63-7-127 and 63-7-207. **Administrative History:** Original rule filed May 15, 2012; effective August 13, 2012. The Government Operations Committee filed a 60-day stay of the rule on July 13, 2012; new effective date October 12, 2012.

1000-05-.05 FEES.

- ~~(1) Application and Initial Certification Fee by Examination.....\$ 150.00~~
- ~~(2) An applicant shall pay the examination fee set by the test service directly to the test service designated by the State to administer the examination.~~
- ~~(3) Renewal Fee.....\$ 125.00~~
- ~~(4) Replacement/Duplicate Certificate Fee.....\$ 25.00~~
- ~~(5) State Regulatory Fee.....\$ 10.00~~
- ~~(6) Training Program Initial Application Fee to offset the cost of two or more survey visits to evaluate the program for board review, consultation by a registered nurse, preparation of reports and other responsibilities as the board may require.....\$ 2,500.00~~
- ~~(7) Training Program Annual Survey Fee to offset the cost of survey visits, compilation of annual reports and statistics and other duties as required by the Board of Nursing.....\$ 1,500.00~~
- ~~(8) Peer Assistance Program Fee to offset the added cost of adding medication aides certified to contract for professional assistance.....\$ 15.00~~
- ~~(9) Name Change Fee.....\$ 25.00~~
- ~~(10) Reinstatement Fee.....\$ 100.00~~

- (1) Application and Initial Certification Fee by Examination.....\$ 90.00
- (2) An applicant shall pay the examination fee set by the test service directly to the test service designated by the State to administer the examination.

(Rule 1000-05-.05, continued)

(3) Renewal Fee.....	\$ 90.00
(4) Biennial State Regulatory Fee (To be paid whenever an application for examination, renewal, or reinstatement is submitted).....	\$ 10.00
(5) Training Program Initial Application Fee.....	\$ 500.00
(6) Training Program Annual Renewal Survey Fee to offset the cost of survey visits, compilation of annual reports and statistics and other duties as required by the Board of Nursing.....	\$ 250.00
(7) Peer Assistance Program Fee to offset the added cost of adding medication aides to contract for professional assistance.....	\$ 10.00
(8) Name Change Fee.....	\$ 0.00
(9) Reinstatement Fee.....	\$ 100.00

Authority: T.C.A. §§ 63-7-127 and 63-7-207. **Administrative History:** Original rule filed May 15, 2012; effective August 13, 2012. The Government Operations Committee filed a 60-day stay of the rule on July 13, 2012; new effective date October 12, 2012.

1000-05-.06 DISCIPLINARY ACTIONS AND CIVIL PENALTIES.

~~(1) The Board has the power to discipline medication aides certified based on the grounds set forth in T.C.A. § 63-7-127 and may deny, revoke or suspend any certificate to practice as a medication aide certified, or otherwise discipline a certificate holder, including but not limited to the imposition of civil penalties as are specified below.~~

(1) The Board has the power to discipline medication aides based on the grounds set forth in T.C.A. § 63-7-127 and may deny, revoke or suspend any certificate to practice as a medication aide, or otherwise discipline a certificate holder, including but not limited to the imposition of civil penalties as are specified below.

(2) Schedule of Civil Penalties

~~(a) A Type A Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or authorized by the Board, guilty of a violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto, to such an extent that there is, or likely to be, an imminent, substantial threat to health, safety and welfare of an individual patient or the public. For the purpose of this section, practicing as a MAC without a certification from the Board is one of the violations of the statute for which a Type A Civil Penalty is assessable.~~

(a) A Type A Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or authorized by the Board, guilty of a violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto, to such an extent that there is, or likely to be, an imminent, substantial threat to health, safety and welfare of an individual patient or the public. For the purpose of this section, practicing as an MA without a certification from the Board is one of the violations of the statute for which a Type A Civil Penalty is assessable.

(b) A Type B Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or authorized by the Board, guilty of a

(Rule 1000-05-.06, continued)

violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto in such manner as to impact directly the care of patients of the public.

- (c) A Type C Civil Penalty may be imposed whenever the Board finds a person who is required to be certified, permitted or authorized by the Board, guilty of a violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only an indirect relationship to patient care or the public.
- (3) Amount of Civil Penalties
- (a) A Type A Civil Penalty may be assessed in an amount of not less than \$500 or more than \$1,000.
 - (b) A Type B Civil Penalty may be assessed in an amount of not less than \$100 or more than \$750.
 - (c) A Type C Civil Penalty may be assessed in an amount of not less than \$50 or more than \$500.
- (4) In assessing the Civil Penalties pursuant to these rules the Board may consider the following factors:
- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and the risk of harm to the public;
 - (d) The economic benefits gained by the violator as a result of non-compliance;
 - (e) The interest of the public; and
 - (f) Willfulness of the violation.

Authority: T.C.A. §§ 63-1-134, 63-7-127 and 63-7-207. **Administrative History:** Original rule filed May 15, 2012; effective August 13, 2012. The Government Operations Committee filed a 60-day stay of the rule on July 13, 2012; new effective date October 12, 2012.

1000-05-.07 TRAINING PROGRAMS.

- (1) ~~Any qualified educational institution seeking to conduct a MAC training program shall make application with a letter of intent and submit to the Board any documents, statements and forms as the Board may require and pay a training program application fee and annual fee. The complete application shall be submitted to the Board no later than forty-five (45) days prior to a scheduled Board of Nursing meeting. A representative of the Board shall conduct a site visit to survey the educational and clinical facilities prior to the program presenting a letter of intent to the Board. At a minimum, the institution seeking approval to conduct a training program shall provide the following in the letter of intent:~~
- ~~(a) Name and address of qualified educational institution;~~
 - ~~(b) Contact person with address, telephone number, fax number and email address;~~
 - ~~(c) The name and address of principal clinical facilities;~~

(Rule 1000-05-.07, continued)

- ~~(d) — The location(s) of the courses or programs;~~
 - ~~(e) — Letters of support;~~
 - ~~(f) — Documentation of need for the program; and~~
 - ~~(g) — Demonstration of the financial ability to support the program.~~
- ~~(2) — After the Board approves the letter of intent and prior to the acceptance of students, the institution shall submit documentation no later than forty five (45) days prior to a scheduled Board meeting in order to obtain initial approval:~~
- ~~(a) — The number and type of education clock hours requested for each course;~~
 - ~~(b) — The name(s), license number(s), educational credentials and teaching and nursing experience of the director and all instructors;~~
 - ~~(c) — The program catalog;~~
 - ~~(d) — The topic outlines, which list the summarized topics covered in each course and upon request, a copy of any course materials;~~
 - ~~(e) — A summarization of any changes to the curriculum, should the prior approved program be substantially changed. A summarization of any changes should be submitted to the Board office at least forty five (45) days prior to a scheduled Board meeting; and~~
 - ~~(f) — The submission of any other such information that the Board may deem necessary.~~
- ~~(3) — The qualified educational institution providing the training program shall:~~
- ~~(a) — Provide sufficient numbers of qualified faculty to implement the curriculum;~~
 - ~~(b) — Provide sufficient numbers of qualified faculty to assure that the students receive appropriate training from supervising licensed nurses in the nursing home or assisted care living facility:
 - ~~1. — with which the training program has a written agreement to provide licensed nurse supervision in the supervised clinical practice component of the training program; and~~
 - ~~2. — so that the students are prepared to administer medications as a MAC in a safe and effective manner.~~~~
 - ~~(c) — Provide financial support and resources adequate to teach the students the curriculum established in T.C.A. § 63-7-127, including, but not limited to classrooms, laboratories, equipment, supplies, and qualified administrative, instructional, and support personnel and services;~~
 - ~~(d) — Employ or contract with a registered nurse with an unencumbered Tennessee license who may teach a course or courses within the scope of practice and areas of competency;~~
 - ~~(e) — Ensure that the training program instructors have an unencumbered license to engage in the practice of nursing as a registered nurse with at least two (2) years of nursing experience and with medication administration experience and knowledge of the regulations and competence to administer medication in the long term care setting.~~

(Rule 1000-05-.07, continued)

- ~~(f) — Withdrawn;~~
 - ~~(g) — Inform each student of the requirements for certification;~~
 - ~~(h) — Provide a written program grading system policy which reflects a numerical grading system or scaled grading system. Students must make a passing grade in both didactic and clinical courses;~~
 - ~~(i) — Provide a written protocol or policy on the mechanism to evaluate a student's performance. At least one (1) written evaluation is required within the first half of the program;~~
 - ~~(j) — Provide a written policy on the dismissal of students;~~
 - ~~(k) — Provide a copy of a student's transcript to the student upon the student's written request and upon the student's completion of or withdrawal from the program; and~~
 - ~~(l) — Engage in program evaluation that includes, but is not limited to, obtaining feedback from students, instructors, and employers of individuals who have successfully completed the MAC training program.~~
- ~~(4) — The program shall not advertise that is approved by the Board prior to or after a loss of Board approval.~~
 - ~~(5) — The program shall retain records of attendees of each course and the Board may at any time examine the records.~~
 - ~~(6) — The program shall ensure a first time test taker examination pass rate minimum of eighty-five per cent (85%). The Board will evaluate the program's examination pass rate on a quarterly and annual basis.~~
 - ~~(7) — The program shall file with the Board office an annual report containing, at a minimum, the following information:

 - ~~(a) — The number of students currently enrolled;~~
 - ~~(b) — The total enrollment for the year;~~
 - ~~(c) — The attrition and retention rate of students and faculty;~~
 - ~~(d) — The employment placement data;~~
 - ~~(e) — The number of students graduated;~~
 - ~~(f) — The number of students dismissed or withdrawn for the year;~~
 - ~~(g) — The number of students taking the certification examination; and~~
 - ~~(h) — The percentage of students taking the test for the first (1st) time and passing the certification examination.~~~~
 - ~~(8) — The program shall obtain approval by the Board on an annual basis thirty (30) days before the program commences each year.~~

(Rule 1000-05-.07, continued)

- ~~(9) — A representative of the Board shall inspect the institution that provides the program on an annual basis or as directed by the Board or Board's representative and shall submit a written report to the Board. If any deficiencies are noted, the Board may grant the institution a conditional approval of the training program until all deficiencies are corrected. The institution shall have thirty (30) days from the date the conditional approval is granted by the Board to correct the deficiencies. Upon correction of the deficiencies, the Board may grant full approval.~~
- ~~(10) — If deficiencies are not corrected within the Board's prescribed time frame, the program will be denied approval or removed from approved status and must reapply for approval. Notice will be sent to the program upon denial or removal of approved status.~~
- ~~(11) — In addition to the minimum standard curriculum provided in T.C.A. § 63-7-127(i)(2), the qualified educational institution shall provide courses relative to the following topics:~~
 - ~~(a) — Role of the MAG;~~
 - ~~(b) — Federal and state laws and rules relative to nursing homes and assisted care living facilities relative to medication aides certified;~~
 - ~~(c) — Confidentiality of protected health information;~~
 - ~~(d) — Drug mathematics, weights, and measures;~~
 - ~~(e) — Drug side effects;~~
 - ~~(f) — Drug administration requirements;~~
 - ~~(g) — Drug packaging systems;~~
 - ~~(h) — Drug storage, destruction, or return of medication;~~
 - ~~(i) — Documentation of medication administration; and~~
 - ~~(j) — Drug interactions.~~
- (1) Any qualified entity or combination of entities seeking to conduct an MA training program shall make application and submit to the Board any documents, statements and forms as the Board may require and pay a training program initial application fee and annual renewal survey fee. The complete application shall be submitted to the Board no later than ninety (90) days prior to a scheduled Board of Nursing meeting. A representative of the Board may conduct a site visit to survey the educational and clinical facilities prior to the presentation of the program application to the Board. At a minimum, the entity or combination of entities seeking approval to conduct a training program shall provide the following:
 - (a) Name(s) and address(es) of qualified entity(ies);;
 - (b) The program's organizational chart;
 - (c) The name and credentials of the program's director;
 - (d) The name and address of clinical facilities;
 - (e) The location(s) of the courses or programs;
 - (f) Demonstration of the financial ability to support the program;

(Rule 1000-05-.07, continued)

- (g) The number and type (classroom/clinical) of education clock hours for each course;
- (h) The name(s), license number(s), nursing education, teaching and nursing experience of the program director and all instructors;
- (i) The program documentation containing curriculum, admissions, progression, and completion policies;
- (j) The topic outlines, which list the summarized topics covered in each course and upon request, a copy of any course materials; and
- (k) The submission of any other such information that the Board may deem necessary.

(2) The qualified entity providing the training program shall:

- (a) Employ or contract with sufficient numbers of qualified instructors to teach and ensure that the students are prepared to administer medications in a safe and effective manner;
 - 1. Director of program qualifications:
 - (i) current, active, unencumbered registered nurse in Tennessee or multistate privilege to practice in Tennessee; and
 - (ii) at least one (1) year of nursing experience and medication administration experience in long term care.
 - 2. Instructor qualifications:
 - (i) current, active, unencumbered registered or licensed practical nurse in Tennessee or multistate privilege to practice in Tennessee; and
 - (ii) at least one (1) year of nursing experience and medication administration experience in long term care.
- (b) Provide financial support and resources adequate to teach the students the curriculum established in T.C.A. § 63-7-127 and these rules, including, but not limited to classrooms, equipment, supplies, and qualified administrative, instructional, and support personnel and services;
- (c) Inform each student of the requirements for certification;
- (d) Provide a written program grading system policy which reflects a numerical grading system or scaled grading system. Students must make a passing grade in both didactic and clinical courses;
- (e) Provide a written protocol or policy on the mechanism to evaluate a student's performance. At least one (1) written evaluation is required within the first half of the program;
- (f) Provide a written policy on the dismissal of students;
- (g) Provide a copy of a student's transcript to the student upon the student's written request and upon the student's completion of or withdrawal from the program;
- (h) Engage in program evaluation that includes, but is not limited to, obtaining feedback

(Rule 1000-05-.07, continued)

- from students, instructors, and employers of individuals who have successfully completed the MA training program; and
- (i) Maintain records including results of a board approved examination for each student for a period of six years following the date the student enrolled in the program.
- (3) The program shall not advertise that it is approved by the Board prior to or after a loss of Board approval.
 - (4) The program shall retain records of attendees of each course and the Board may at any time examine the records.
 - (5) The program shall ensure a first time test taker examination pass rate minimum of eighty-five per cent (85%). The Board will evaluate the program's examination pass rate on a quarterly and annual basis.
 - (6) The program shall file with the Board office an annual report containing, at a minimum, the following information:
 - (a) The total enrollment for the year;
 - (b) The number of students graduated;
 - (c) The employment placement data;
 - (d) The number of students dismissed or withdrawn for the year;
 - (e) The number of students taking the certification examination; and
 - (f) A list of training program instructors and qualifications.
 - (7) The program shall obtain approval by the Board on an annual basis.
 - (8) The program shall submit a training program annual renewal survey fee.
 - (9) A representative of the Board may inspect the program on an annual basis or as directed by the Board or Board's representative and shall submit a written report to the Board. If any deficiencies are noted, the program shall have ten (10) days to correct the deficiencies.
 - (10) If deficiencies are not corrected within the Board's prescribed time frame, the program will be denied approval or removed from approved status and will be prohibited from enrolling students. Notice will be sent to the program upon denial or removal of approved status.
 - (11) In addition to the minimum standard curriculum provided in T.C.A. § 63-7-127(i)(2), the qualified entity shall provide the following content:
 - (a) Federal and state laws and rules relative to medication aides who administer medications in a nursing home, assisted care living facility, and P.A.C.E.;
 - (b) Confidentiality of protected health information;
 - (c) Program objectives and outcomes, course objectives or outcomes, teaching strategies, and core competencies or other evaluation methods that are:
 - 1. Consistent with the law and rules applicable to medication aides, as set forth in this chapter;

(Rule 1000-05-.07, continued)

- 2. Internally consistent;
- 3. Implemented as written; and
- 4. Made available to students in medication aide training programs;
- (d) A curriculum plan showing the sequence of classroom content, clinical experiences, and the number of clock hours allotted to instruction and clinical experience related to medication administration;
- (e) At least sixty (60) hours of instruction, consisting of forty (40) classroom hours and twenty (20) clinical hours:
 - 1. During the clinical components, students and instructors must be present in the same location, and the instruction must be provided in person; and
 - 2. Students must satisfactorily complete the classroom component prior to participating in the supervised clinical component of the medication aide training program;
- (f) A standard minimum curriculum including:
 - 1. Communication and interpersonal skills;
 - 2. Resident rights related to medication administration, including the right of a resident to refuse medications;
 - 3. The six rights of medication administration:
 - (i) The right medication;
 - (ii) The right route;
 - (iii) The right time;
 - (iv) The right patient;
 - (v) The right dosage; and
 - (vi) The right documentation.
 - 4. Drug terminology, storage and disposal, including:
 - (i) Medical terminology, symbols, and accepted abbreviations;
 - (ii) Dosage measurement;
 - (iii) Reference resources;
 - (iv) Principles of safe medication storage and disposal;
 - 5. Fundamentals of the following body systems, including:
 - (i) Gastrointestinal;

(Rule 1000-05-.07, continued)

- (ii) Musculoskeletal;
 - (iii) Nervous and sensory;
 - (iv) Urinary/renal;
 - (v) Cardiovascular;
 - (vi) Respiratory;
 - (vii) Endocrine;
 - (viii) Male and female reproductive; and
 - (ix) Integumentary and mucous membranes;
6. Basic pharmacology, drug classifications and medications affecting body systems, including:
- (i) Purposes of various medications;
 - (ii) Schedule II, III, IV, and V controlled substances;
 - (iii) Special considerations surrounding controlled substances such as:
 - (I) Diversion;
 - (II) Overdose and naloxone;
 - (III) Security and access;
 - (IV) Accountability;
7. Safe administration of medications including:
- (i) Oral medications;
 - (ii) Topical medications;
 - (iii) Metered hand-held inhalers with spacer;
 - (iv) Proper resident positioning;
 - (v) Measurement of apical pulse and blood pressure in association with medication administration;
8. Principles of standard precautions;
9. Documentation of medications in residents' clinical records, including as-needed medications;
10. Circumstances in which a medication aide should report to, or consult with, a nurse concerning a resident or residents to whom medications are administered, including:
- (i) The potential need of a resident for the administration of an as-needed

(Rule 1000-05-.07, continued)

- (c) The name and signature of the faculty member who supervised the student's successful performance of the skill.
- (15) The training program shall provide a copy of the medication skills checklist, certified by the program to be true and accurate, to each student upon completion of the medication aide training program.
- (16) A medication aide training program shall close a program, if necessary, in an orderly manner including providing thirty (30) days advance written notice to the board, current students, and program applicants of the following:
 - (a) Tentative date of the closing;
 - (b) The location where the program's student records and other records will be retained; and
 - (c) The name, address, and other contact information of the custodian of all program records after the program is closed.

Authority: T.C.A. §§ 63-7-127 and 63-7-207. **Administrative History:** Original rule filed May 15, 2012; effective August 13, 2012. The Government Operations Committee filed a 60-day stay of the rule on July 13, 2012; new effective date October 12, 2012. The Board of Nursing filed a withdrawal of 1000-05-.07(3)(f) effective August 27, 2012.

1000-05-.08 PEER ASSISTANCE PROGRAM.

- ~~(1) A peer assistance program (approved by the Board) must provide at a minimum the following services to a MAC:~~
- (1) A peer assistance program (approved by the Board) must provide at a minimum the following services to an MA:
 - (a) Referral for assessment of dependency and addiction;
 - (b) Referral to treatment centers and programs;
 - (c) Referral to aftercare treatment and counseling;
 - (d) Referral for psychological issues; and
 - (e) Ongoing monitoring of recovering professionals.

Authority: T.C.A. §§ ~~63-4-138~~63-1-136, 63-7-127 and 63-7-207. **Administrative History:** Original rule filed May 15, 2012; effective August 13, 2012. The Government Operations Committee filed a 60-day stay of the rule on July 13, 2012; new effective date October 12, 2012.

1000-05-.09 CONTINUING EDUCATION.

- (1) As a prerequisite to renewal, all certificate holders shall complete the following continuing education requirements:
 - (a) Complete any and all continuing education or continued competency requirements, or both, necessary to maintain nurse aide certification under T.C.A. § 68-11-209(e), and the rules promulgated pursuant thereto; and

(Rule 1000-05-.09, continued)

- ~~(b) A total of six (6) contact hours per year of continuing education; five (5) of which shall be in pharmacology provided by a licensed pharmacist or registered nurse and one (1) of which shall be relative to medication administration consistent with the functions of a MAC.~~
- ~~(b) In addition to that which is required to maintain nurse aide certification, an MA shall complete six (6) contact hours per year of continuing education, five (5) of which shall be in pharmacology provided by a licensed pharmacist or registered nurse and one (1) of which shall be relative to medication administration consistent with the functions of an MA.~~
- ~~(2) Each MAC shall attest to the timely attendance and completion of the required continuing education hours on the biennial certificate renewal form.~~
- ~~(2) Each MA shall attest to the timely attendance and completion of the required continuing education hours on the biennial certificate renewal form.~~
- ~~(3) Each MAC shall retain independent documentation of attendance and completion of all continuing education courses for a period of two (2) years from the date of attendance. This documentation shall be produced for inspection and verification, if requested in writing by the Board.~~
- ~~(3) Each MA shall retain independent documentation of attendance and completion of all continuing education courses for a period of two (2) years from the date of attendance. This documentation shall be produced for inspection and verification, if requested in writing by the Board.~~

Authority: T.C.A. §§ 63-7-127 and 63-7-207. **Administrative History:** Original rule filed May 15, 2012; effective August 13, 2012. The Government Operations Committee filed a 60-day stay of the rule on July 13, 2012; new effective date October 12, 2012.

1000-05-.10 SUPERVISION AND DELEGATION.

- ~~(1) A licensed nurse who provides care to nursing home or assisted care living facility residents may delegate the task of medication administration to a MAC in accordance with T.C.A. § 63-7-127(k)(1)(B) and these rules.~~
- ~~(1) A licensed nurse who provides care to nursing home, assisted care living facility or P.A.C.E. residents may delegate the task of medication administration to an MA in accordance with T.C.A. § 63-7-127(k) and these rules.~~
- ~~(2) A licensed nurse who delegates medication administration to a MAC shall supervise the MAC by:

 - ~~(a) Reviewing the medication delivery process to assure that there have been no errors in the stocking or preparing the medications;~~
 - ~~(b) Accepting, transcribing, and reviewing resident medication orders;~~
 - ~~(c) Monitoring residents to whom medications are administered for side effects or changes in health status;~~
 - ~~(d) Reviewing documentation completed by the MAC, including, but not limited to the medication administration record;~~~~

(Rule 1000-05-.10, continued)

- ~~(e) Providing on-site supervision and availability for immediate direction while in a nursing home setting;~~
 - ~~(f) Providing on-site supervision or immediate and continuous availability through telecommunication while in an assisted care living facility setting; and,~~
 - ~~(g) Delegating the administration of medication for each resident in writing to the MAC.~~
- (2) A licensed nurse who delegates medication administration to an MA shall supervise the MA by:
- (a) Reviewing the medication delivery process to assure that there have been no errors in stocking or preparing the medications;
 - (b) Accepting, transcribing, and reviewing resident medication orders;
 - (c) Monitoring residents to whom medications are administered for side effects or changes in health status;
 - (d) Reviewing documentation completed by the MA, including, but not limited to the medication administration record;
 - (e) Providing on-site supervision and availability for immediate direction while in a nursing home setting;
 - (f) Providing on-site supervision or immediate and continuous availability through telecommunication while in an assisted care living facility or P.A.C.E. setting; and
 - (g) Delegating the administration of medication for each resident in writing to the MA.
- ~~(3) Prior to delegating medication administration to a MAC, a licensed nurse shall evaluate the following upon admission, and after any change in status or acuity, or any change in medication:~~
- (3) Prior to delegating medication administration to an MA, a licensed nurse shall evaluate the following upon admission, and after any change in status or acuity, or any change in medication:
- (a) The patient and the medication needs of the patient, including:
 1. The patient's mental and physical stability;
 2. The medication to be administered;
 3. The time frame during which the medication is to be administered;
 4. The route or method by which the medication is to be administered; and
 - ~~(b) The licensed nurse has determined that it is appropriate for the resident to receive medication from the MAC.~~
 - (b) The licensed nurse has determined that it is safe for the resident to receive medication from the MA.

(Rule 1000-05-.10, continued)

- ~~(4) When delegating the task of medication administration to a MAC, the licensed nurse shall communicate, in writing, the following to the MAC:~~
- (4) When delegating the task of medication administration to an MA, the licensed nurse shall communicate, in writing, the following to the MA:
 - ~~(a) The patient to whom the MAC shall administer medications;~~
 - (a) The patient to whom the MA shall administer medications;
 - ~~(b) The medications the MAC shall administer;~~
 - (b) The medications the MA shall administer
 - (c) The time frames during which the medications are to be administered; and
 - (d) Any special instructions concerning the administration of medications to specific patients.
- ~~(5) A licensed nurse who is on site at the nursing home or assisted care living facility may delegate the administration of as-needed medications to a MAC provided the licensed nurse completes a nursing assessment of the resident to whom the as-needed medication is to be administered immediately prior to the medication being administered.~~
- (5) A licensed nurse may delegate the administration of as-needed medications to an MA provided the licensed nurse completes a nursing assessment of the resident to whom the as-needed medication is to be administered immediately prior to the medication being administered.

Authority: T.C.A. §§ 63-7-127 and 63-7-207. **Administrative History:** Original rule filed May 15, 2012; effective August 13, 2012. The Government Operations Committee filed a 60-day stay of the rule on July 13, 2012; new effective date October 12, 2012.

1000-05-.11 STANDARDS OF PRACTICE.

- ~~(1) A MAC shall demonstrate competence and responsibility in the task of medication administration.~~
- ~~(2) A MAC shall ensure and promote a safe environment for nursing home or assisted care living facility residents.~~
- ~~(3) A MAC shall accurately document in the patient's or resident's record the following information immediately after the administration of a medication:~~
 - ~~(a) The name of the medication and the dosage administered;~~
 - ~~(b) The route of the administration;~~
 - ~~(c) The date and time of the administration;~~
 - ~~(d) The name and credentials of the MAC who administered the medication;~~
 - ~~(e) The name of the licensed nurse who delegated the administration of the medication;~~
 - ~~(f) The resident's refusal or inability to ingest the medication or comply with the administration of the medication; and~~

(Rule 1000-05-.11, continued)

- ~~(g) Any complaints by the resident about the medication administration or medication administered.~~
- ~~(4) A MAC shall report the following to the delegating nurse or the delegating nurse's supervisor in a timely manner:

 - ~~(a) The resident's request for an as-needed medication;~~
 - ~~(b) The resident's refusal or inability to ingest the medication or comply with the administration of the medication;~~
 - ~~(c) Any deviation from the delegated medication administration; and~~
 - ~~(d) Any observations or information about the resident's condition that causes concern.~~~~
- ~~(5) A MAC shall store drugs in accordance with the pharmacist's instructions.~~
- ~~(6) A MAC shall remove drugs only from a properly labeled container or packaging that has been dispensed by a licensed pharmacist that contains the drug name; dosage; strength; name of the resident to whom it is to be dispensed; and drug expiration date.~~
- ~~(7) A MAC shall complete all necessary tasks to ensure safe medication administration to a resident, including, but not limited to the following:

 - ~~(a) Verifying the identify of the resident to whom the medication is to be administered;~~
 - ~~(b) Ensuring that medication administration for the resident has been delegated and documented by the delegating licensed nurse prior to the administration of the medication;~~
 - ~~(c) Ensuring that the medication is being administered to the resident in accordance with the delegation and prescriber instructions;~~
 - ~~(d) Ensuring that the correct medication in the correct dosage is administered to the resident;~~
 - ~~(e) Witnessing the resident swallowing a drug that is to be ingested orally; and~~
 - ~~(f) Documenting and reporting a medication error to the delegating licensed nurse who is on-site at the nursing home or assisted care living facility, or via a two-way telephone conversation.~~~~
- ~~(8) A MAC shall maintain the confidentiality of protected health information obtained in the course of the MAC's duties and responsibilities.~~
- ~~(9) A MAC shall not delegate the task of medication administration to any other person.~~
- ~~(10) A MAC shall not falsify any resident record or any other document prepared or utilized in the course of, or in conjunction with, the administration of medication.~~
- ~~(11) A certified MAC shall maintain professional boundaries with each resident.~~
- ~~(12) A MAC shall not:~~

(Rule 1000-05-.11, continued)

- ~~(a) — Administer medications containing a controlled substance, as defined in T.C.A. § 63-10-201 et seq.;~~
 - ~~(b) — Administer medications when such administration would require a dosage calculation by the medication aide;~~
 - ~~(c) — Directly receive orders from a physician or other medication prescriber;~~
 - ~~(d) — Administer barium or other contrast media;~~
 - ~~(e) — Administer chemotherapeutic agents;~~
 - ~~(f) — Administer medications administered as drops to the eye, ear or nose;~~
 - ~~(g) — Administer rectal and vaginal medications;~~
 - ~~(h) — Administer medications delivered by metered hand-held inhalers;~~
 - ~~(i) — Administer medications delivered by aerosol/nebulizer;~~
 - ~~(j) — Apply topical medications ordered for the treatment of pressure ulcers or skin grafts; or~~
 - ~~(k) — Change a dosage amount to adhere to a change in a physician's order.~~
- ~~(13) A MAC shall not, under any circumstances, administer medications by certain methods or routes, or both. These include, but are not necessarily limited to, the following:~~
- ~~(a) — Injection;~~
 - ~~(b) — Intravenous;~~
 - ~~(c) — Central lines;~~
 - ~~(d) — Intrathecal;~~
 - ~~(e) — Colostomy;~~
 - ~~(f) — A surgically placed feeding tube, e.g., gastrostomy, jejunostomy;~~
 - ~~(g) — Nasogastric;~~
 - ~~(h) — Non-metered inhaler;~~
 - ~~(i) — Intradermal;~~
 - ~~(j) — Urethral;~~
 - ~~(k) — Epidural;~~
 - ~~(l) — Endotracheal;~~
 - ~~(m) — Intramuscular; or~~
 - ~~(n) — Subcutaneous.~~

(1) A medication aide shall maintain knowledge of the duties, responsibilities, and

(Rule 1000-05-.11, continued)

- accountabilities of a medication aide and shall act in accordance with the statutes and rules pertaining to the administration of medication by a medication aide.
- (2) A medication aide shall display the title "medication aide" at all times when administering medications to residents of a nursing home, assisted care living facility, or P.A.C.E.
 - (3) An MA shall demonstrate competence and responsibility in the task of medication administration including any observation about the condition of a resident that should cause concern to a medication aide and reporting to the delegating nurse.
 - (4) An MA shall ensure and promote a safe environment for nursing home, assisted care living facility, or P.A.C.E. residents.
 - (5) An MA shall accurately document in the patient's or resident's record the following information immediately after the administration of a medication:
 - (a) The name of the medication and the dosage administered;
 - (b) The route of the administration;
 - (c) The date and time of the administration;
 - (d) The name and credentials of the MA who administered the medication;
 - (e) The name of the licensed nurse who delegated the administration of the medication;
 - (f) The resident's refusal or inability to ingest the medication or comply with the administration of the medication; and
 - (g) Any complaints by the resident about the medication administration or medication administered.
 - (6) An MA shall document in the medical record and report the following to the delegating nurse or the delegating nurse's supervisor in a timely manner:
 - (a) The resident's request for an as-needed medication;
 - (b) The resident's refusal or inability to ingest the medication or comply with the administration of the medication;
 - (c) Any deviation from the delegated medication administration; and
 - (d) Any observations or information about the resident's condition that causes concern.
 - (7) An MA shall document contact with the supervising nurse in the medical record.
 - (8) An MA shall store drugs in accordance with the pharmacist's instructions.
 - (9) An MA shall remove drugs only from a properly labeled container or packaging that has been dispensed by a licensed pharmacist that contains the drug name; dosage; strength; name of the resident to whom it is to be dispensed; and drug expiration date.
 - (10) An MA shall complete all necessary tasks to ensure safe medication administration to a resident, including, but not limited to the following:
 - (a) Verifying the identity of the resident to whom the medication is to be administered;

(Rule 1000-05-.11, continued)

- (b) Ensuring that medication administration for the resident has been delegated and documented by the delegating licensed nurse prior to the administration of the medication;
 - (c) Ensuring that the medication is being administered to the resident in accordance with the delegation and prescriber instructions;
 - (d) Ensuring that the correct medication in the correct dosage and route is administered to the resident;
 - (e) Documenting and reporting a medication error to the delegating licensed nurse who is on-site at the nursing home, assisted care living facility, or P.A.C.E. or via a two-way telephone conversation.
- (11) An MA shall maintain the confidentiality of protected health information obtained in the course of the MA's duties and responsibilities.
- (12) An MA shall not delegate the task of medication administration to any other person.
- (13) An MA shall not falsify any resident record or any other document prepared or utilized in the course of, or in conjunction with, the administration of medication.
- (14) An MA shall maintain professional boundaries with each resident.
- (15) An MA shall not:
 - (a) Administer medication when such administration would require a dosage decision or calculation, including splitting medications, by the medication aide;
 - (b) Directly receive orders from a physician or other medication prescriber;
 - (c) Administer barium or other contrast media;
 - (d) Administer chemotherapeutic agents;
 - (e) Administer rectal and vaginal medications;
 - (f) Administer medications delivered by metered hand-held inhalers without a spacer;
 - (g) Administer medications delivered by aerosol/nebulizer;
 - (h) Apply topical medications ordered for the treatment of pressure ulcers or skin grafts;
 - (i) Change a dosage amount to adhere to a change in a physician's/prescriber's order; or
 - (j) Administer the initial dose of a medication ordered for a resident until after a new evaluation has been performed by a licensed nurse.
- (16) An MA shall not, under any circumstances, administer medications by certain methods or routes, or both. These include, but are not necessarily limited to, the following:
 - (a) Injection;
 - (b) Intravenous;

(Rule 1000-05-.11, continued)

- (c) Central lines;
 - (d) Intrathecal;
 - (e) Colostomy;
 - (f) A surgically placed feeding tube, e.g., gastrostomy, jejunostomy;
 - (g) Nasogastric;
 - (h) Non-metered inhaler;
 - (i) Intradermal;
 - (j) Urethral;
 - (k) Epidural
 - (l) Endotracheal;
 - (m) Intramuscular; or
 - (n) Subcutaneous.
- (17) An MA shall not:
- (a) Engage in sexual conduct with a resident or conduct that may reasonably be interpreted as sexual; or
 - (b) Engage in any verbal behavior that is seductive or sexually demeaning to a resident, or that may reasonably be interpreted as seductive, or sexually demeaning to a resident. (For purposes of this paragraph, the resident is always presumed incapable of giving free, full, or informed consent to sexual activity with a medication aide); or
 - (c) Make any false, misleading or deceptive statements, or submit or cause to be submitted any false, misleading, or deceptive information or documentation to the board or any representative of the board; or
 - (d) Use social media, texting, emailing, or other forms of communication with, or about, a resident, for non-health care purposes or for purposes other than fulfilling the aide's assigned job responsibilities.

Authority: T.C.A. §§ 63-7-127 ~~and~~ 63-7-207 ~~and~~ 63-10-204. **Administrative History:** Original rule filed May 15, 2012; effective August 13, 2012. The Government Operations Committee filed a 60-day stay of the rule on July 13, 2012; new effective date October 12, 2012.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Brent Earwood	X				
Juanita Turnipseed	X				
Leslie Nelson Akins	X				
Martha M. Buckner	X				
Janell Rae Cecil	X				
Donald Lee Mills	X				
Lisa A Heaton	X				
Marietha O. Silvers	X				
Lee Ann Stearnes	X				
Arthur L. Thompson	X				
Mark Allen Young	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Nursing (board/commission/ other authority) on 05/18/2017 (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: 1/31/17 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 05/18/17 (mm/dd/yy)

Date: 6/12/17

Signature: Mark S. Waters

Name of Officer: Mark S. Waters

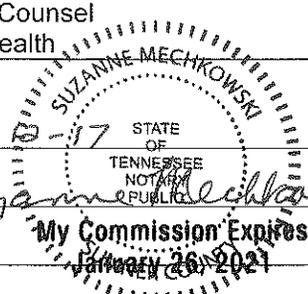
Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 6-12-17

Notary Public Signature: Suzanne Mechkowski

My commission expires on: January 26, 2021



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. Slattery III

Herbert H. Slattery III
Attorney General and Reporter

9/5/2017

Date

Department of State Use Only

Filed with the Department of State on: 9/11/17

Effective on: _____

12/10/17

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY: Tennessee Motor Vehicle Commission

DIVISION: Regulatory Boards

SUBJECT: Inspection of Business Records

STATUTORY AUTHORITY: This rule is not mandated by any federal or state law or regulation.

EFFECTIVE DATES: November 30, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This proposed rule will require motor vehicle and recreational vehicle dealers to provide information showing compliance with newly enacted statutes T. C.A. §§ 55-17-129 and -416 allowing additional businesses. These sections allow for additional businesses up to a certain amount of combined gross income of the dealership. This rule allows the Commission to require information from dealers showing compliance in order to effectively enforce the new statutes.

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.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

There are approximately 3,700 licensed motor vehicle and recreational vehicle dealers in Tennessee that will be substantially impacted by these rules.

For the new recordkeeping requirements there is an expected nominal cost for these dealers to implement new, if any, recordkeeping techniques as the statute currently requires such. However, this rule is necessary for the implementation and enforcement of T.C.A. §§ 55-17-129 and -416, allowing dealerships to maintain a separate, unrelated business at the dealership location within specified physical area and income parameters.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

Reporting, recordkeeping or other administrative costs are expected in order to comply with any Commission request for certification of compliance with T.C.A. §§ 55-17-129 and -416. The rule will assist inspectors in performing their annual inspections to ensure compliance. These rules should not require any new professional skills necessary for preparation of the records other than basic business profit and losses tracking.

(3) A statement of the probable effect on impacted small businesses and consumers.

There is no expected impact on small businesses or consumers who do not elect to operate an additional business at its dealership location. Any impact on small businesses choosing to operate an additional business is required in order to effectively enforce T.C.A. § 55-17-129 and -416. This rule enhances consumer protection by enforcing the current requirement that dealers' primary business is that of selling motor or recreational vehicles.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

The Commission crafted this rule in a less burdensome way in that any dealer electing to maintain an ancillary business will only have to show compliance with the rules regarding gross income when specifically requested by the Commission to do so.

(5) A comparison of the proposed rule with any federal or state counterparts.

There are no known federal or state counterparts to these rules.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption from these rules would render enforcement of these provisions unattainable.

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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have a projected 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;

This rule will require motor vehicle and recreational vehicle dealers to provide information showing compliance with newly enacted statutes T.C.A. §§ 55-17-129 and -416 allowing additional businesses. These new sections allow for additional businesses up to a certain amount of combined gross income of the dealership. This new rule allows the Commission to require information from dealers showing compliance in order to effectively enforce the new statutes.

- (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;

This rule is not mandated by any federal or state law or regulation.

- (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;

All motor vehicle dealers and recreational vehicle dealers who operate an additional business from their dealership location will be affected by the recordkeeping rules.

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

There are no known attorney general opinions or judicial rulings that directly relate to this rule.

- (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;

This rule is not estimated to have a probable increase or decrease in state and local government revenue and expenditures.

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

Elizabeth Goldstein – Assistant General Counsel
TN Department of Commerce and Insurance

Paula Shaw – Executive Director
TN Motor Vehicle Commission
TN Department of Commerce and Insurance

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

Elizabeth Goldstein – Assistant General Counsel
TN Department of Commerce and Insurance

Paula Shaw – Executive Director
TN Motor Vehicle Commission
TN Department of Commerce and Insurance

(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

Elizabeth Goldstein
500 James Robertson Parkway
Nashville, TN 37243
615-532-6304
Elizabeth.Goldstein@tn.gov

Paula Shaw
500 James Robertson Parkway
Nashville, TN 37243
615-253-1312
Paula.j.shaw@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

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 Nashville, TN 37243
 Phone: 615-741-2650
 Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 09-06-17
 Rule ID(s): 6598
 File Date: 9/1/17
 Effective Date: 11/30/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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 Motor Vehicle Commission
Division:	Department of Commerce and Insurance Regulatory Boards Division
Contact Person:	Elizabeth Goldstein
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-532-6304
Email:	Elizabeth.Goldstein@tn.gov

Revision Type (check all that apply):

- Amendment
 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)

Chapter Number	Chapter Title
0960-01	General Rules
Rule Number	Rule Title
0960-01-.11	Inspection of Business Records

Amendments

Chapter 0960-01 General Rules Amendments

Rule 0960-01-.11 Inspection of Business Records is amended by adding new paragraph (4), so that, as amended, new paragraph (4) shall read:

- (4) All motor vehicle dealers or recreational vehicle dealers who are operating an additional business at the dealership in accordance with T.C.A. § 55-17-129 or T.C.A. § 55-17-416, as applicable, shall, upon written request by the Commission, or its agent:
- (a) Within fifteen (15) days of receipt of the written request, provide certification to the Commission, or its agents, certifying that the space used by the motor vehicle dealer or recreational vehicle dealer, and the space used by the additional business, are in compliance with T.C.A. § 55-17-129 or T.C.A. § 55-17-416, as applicable. This certification shall be completed on a form approved by the Commission, if any such form exists at the time of request.
- (b) Within thirty (30) days of receipt of the written request, provide certification to the Commission, or its agents, certifying that the gross income of the motor vehicle dealer or recreational vehicle dealer, and the gross income of the additional business, are in compliance with T.C.A. § 55-17-129 or T.C.A. § 55-17-416, as applicable. The certification shall be completed on a form approved by the Commission, if any such form exists at the time of request. In addition to the certification, the motor vehicle dealer or recreational vehicle dealer shall provide proof, satisfactory to the Commission, of the claimed gross income of the dealership, and income of the additional business. This may include, but is not limited to, past financial statements, current financial statements, and CPA audits.
- (c) The Commission may discipline a licensee, up to and including suspension or revocation, for a licensee's failure to comply with subparagraphs (a) and (b) above.

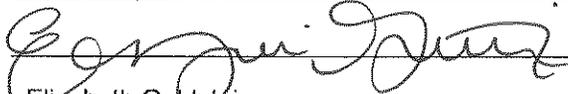
Authority: T.C.A. §§ 55-17-107, 55-17-129, and 55-17-416.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Eddie Roberts	X				
Stan Norton	X				
Ian Leavy				X	
Nathaniel Jackson	X				
Don Parr				X	
Stephen Tomaso	X				
Karl Kramer	X				
B. Joe Clayton	X				
Ronald Fox	X				
Kahren White	X				
Chris Lee	X				
Reed Trickett				X	
Jim Galvin Jr.	X				
John S. Murrey	X				
Debbie Melton	X				
Farrar Schaeffer Vaughan	X				
Victor Evans	X				

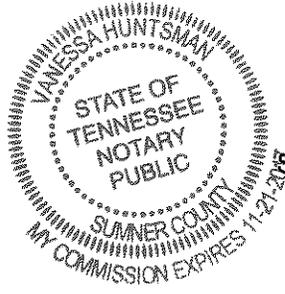
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Motor Vehicle Commission on 4/24/2017 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 8/11/2017

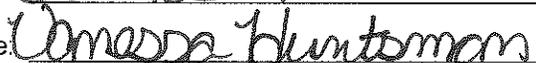
Signature: 

Name of Officer: Elizabeth Goldstein

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: 08/11/2017

Notary Public Signature: 

My commission expires on: 11/21/2017

Rules of the Tennessee Motor Vehicle Commission
0960-01-.11 Inspection of Business Records

All proposed 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. Slattery III
Herbert H. Slattery III
Attorney General and Reporter
8/23/2017 Date

Department of State Use Only

Filed with the Department of State on: 9/11/17

Effective on: 11/30/17

Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY: Commerce and Insurance

DIVISION: Securities

SUBJECT: Tennessee Securities Act - Filing Forms

STATUTORY AUTHORITY: This rule amendment is authorized by various provisions of the Tennessee Securities Act of 1980 (T.C.A. §§ 48-1-101 et seq.), particularly T.C.A. § 48-1-116, which provides that the Commissioner "may from time to time make, promulgate, amend, and rescind such rules, forms, and orders as are necessary to carry out this part[.]" Additionally, T.C.A. § 48-1-103(a)(13) provides for the inclusion of the "Notice of Exemption" form for securities issued pursuant to the Invest Tennessee exemption. This rule is further authorized by the National Securities Market Improvement Act of 1996, which expressly provides that the states may collect notice filings for covered securities which are exempt from federal registration (e.g., Form D), and the Jumpstart Our Business Startups Act, which expanded Regulation A and prompted the SEC to establish a new class of covered securities for crowdfunding offerings.

EFFECTIVE DATES: December 27, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This proposed rule amendment will update the list of forms accepted by the Securities Division to include forms that have come into popular use since the last revision to the rule. This amendment does not eliminate any forms currently approved and listed for acceptance by the Division.

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.

This proposed rule amendment will not 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This proposed rule amendment will not have an impact on local government.

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;

This proposed rule amendment will update the list of forms accepted by the Securities Division to include forms that have come into popular use since the last revision to the rule. This amendment does not eliminate any forms currently approved and listed for acceptance by the Division.

- (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;

This rule amendment is authorized by various provisions of the Tennessee Securities Act of 1980 (T.C.A. §§ 48-1-101 *et seq.*), particularly T.C.A. § 48-1-116, which provides that the Commissioner "may from time to time make, promulgate, amend, and rescind such rules, forms, and orders as are necessary to carry out this part[.]" Additionally, T.C.A. § 48-1-103(a)(13) provides for the inclusion of the "Notice of Exemption" form for securities issued pursuant to the Invest Tennessee exemption. This rule is further authorized by the National Securities Market Improvement Act of 1996, which expressly provides that the states may collect notice filings for covered securities which are exempt from federal registration (e.g., Form D), and the Jumpstart Our Business Startups Act, which expanded Regulation A and prompted the SEC to establish a new class of covered securities for crowdfunding offerings.

- (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;

This rule will only affect securities professionals who wish to submit forms to the Securities Division which were not previously authorized by this rule.

- (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;

There are no known opinions of the attorney general or judicial rulings that directly relate to this rule.

- (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;

This rule will not affect state or local government revenues and expenditures.

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

Frank Borger-Gilligan, Assistant Commissioner;
Elizabeth Bowling, Director of Registration for the Securities Division;
Kaycee Wolf, Chief Counsel for Insurance, Securities, and TennCare Oversight

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

Kelsey Bridges, Assistant General Counsel for Securities

- (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

500 James Robertson Parkway, Nashville, TN 37243; (615) 350-7984; Kelsey.j.bridges@tn.gov.

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 09-29-17
Rule ID(s): 6609
File Date: 9/28/17
Effective Date: 12/27/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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:	Department of Commerce and Insurance
Division:	Securities
Contact Person:	Kelsey Bridges
Address:	500 James Robertson Parkway
Zip:	37243
Phone:	615-350-7984
Email:	Kelsey.j.bridges@tn.gov

Revision Type (check all that apply):

- Amendment
 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)

Chapter Number	Chapter Title
0780-04-01	General Administration
Rule Number	Rule Title
0780-04-01-.04	Administration of the Act

Chapter Number	Chapter Title
Rule Number	Rule Title

(4) Forms.

(a) All filings submitted with the Division shall be on the proper form as designated under these Rules~~[An application shall be prepared in accordance with the form prescribed thereof as in effect on the date of filing].~~ An application shall be deemed submitted~~[filed]~~ on the proper form unless objection to the form is made by the Division prior to the effective date of the application. The following forms, as in effect at the time of use, are approved for filing with the Division:

1. "Form U-1", Uniform Application to Register Securities;
2. "Form U-2", Uniform Consent to Service of Process (naming the commissioner ~~[Commissioner of Commerce and Insurance]~~ as the party to be served);
3. "Form U-2A", Uniform Form of Corporate Resolution;
4. "Form U4", Uniform Application for Securities Industry Registration or Transfer;
5. "Form U5", Uniform Termination Notice for Securities Industry Registration;
6. "Form U7", Small Company Offering Registration Form;
7. "Form U-CF", Uniform Notice of Federal Crowdfunding Offering;
8. "Form USB", Uniform Surety Bond;
- ~~9~~6. "Form BD", Uniform Application for Broker-Dealer Registration;
- ~~10~~7. "Form BDW", Uniform Request for Broker-Dealer Withdrawal;
- ~~11~~8. "Form ADV", Uniform Application for Investment Adviser Registration;
- ~~12~~9. "Form ADV-E", Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser;
- ~~13~~10. "Form ADV-W", Notice of Withdrawal from Registration as an Investment Adviser;
- ~~14~~11. "Form D", Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption;
- ~~15~~12. "Form NF", Uniform Investment Company Notice Filing~~["IN-0911", Application for Registration as an Oil and Gas Issuer-Dealer];~~
- ~~16~~13. "Form IN-0911", Application for Registration as an Oil and Gas Issuer-Dealer ~~["Form NF", Uniform Investment Company Notice Filing];~~
- ~~17~~14. "Form IN-1460", Notice of Sale of Securities Pursuant to Accredited Investor Exemption~~[Form for Accredited Investors Notice Filing];~~
- ~~18~~15. "Form IN-1461", Notice of Sale of Securities Pursuant to Employee Stock Purchase/Option Plan Exemption~~[Form for Employee Stock Option/Purchase Plan Notice Filing; and]~~

~~19[46].~~ "Form IN-1493", Designation of Accountant;~~]~~

~~20.~~ "Regulation A – Tier 2", Uniform Notice Filing of Regulation A – Tier 2 Offering;
and

~~21.~~ "Notice of Exemption," Notice of Intention to Offer or Sell Securities Pursuant to
the Invest Tennessee Exemption.

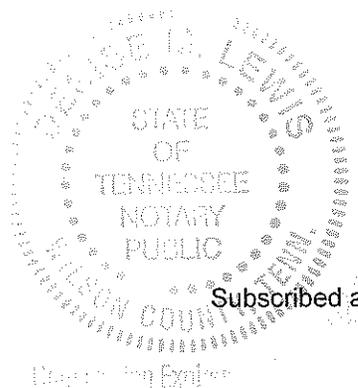
- (b) All instructions on the above named forms are applicable, except as expressly provided elsewhere in these Rules, and are adopted verbatim and incorporated herein by reference.
- (c) In cases where a form, as set out in ~~[this]~~ subparagraph (4)(a), directly or indirectly requires the maintenance of certain books and records, the registrant shall maintain adequate books and records to comply with the filing requirements of the form and all books and records requirements as provided in the Act and the Rules.

Authority: *T.C.A. §§ 48-1-103(b)(11), 48-1-104, 48-1-107(b), 48-1-108, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-117, 48-1-118, 48-1-121, 48-1-125, 4-5-105, and 10-7-503(a)(2)(A-B);* ~~Public Acts of 1997, Chapter 164, §8, and Public Acts of 2001, Chapter 64].~~

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner on 5/19/17 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 5/19/17

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of the Department of Commerce and Insurance

Subscribed and sworn to before me on: 5/19/17

Notary Public Signature: Denise McLeish

My commission expires on: 1/15/20

All proposed 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
 Herbert H. Slatery III
 Attorney General and Reporter
9/20/2017
 Date

Department of State Use Only

Filed with the Department of State on: 9/28/17

Effective on: 12/27/17

Tre Hargett
 Tre Hargett
 Secretary of State

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G.O.C. STAFF RULE ABSTRACT

AGENCY: Commerce and Insurance

DIVISION: Insurance

SUBJECT: Tennessee Captive Insurance Companies

STATUTORY AUTHORITY: There are no federal regulations mandating promulgation of this rule. The Commissioner is authorized to promulgate rules to affect the Revised Tennessee Captive Insurance Act of 2011. T.C.A. § 56-13-121. This rule also implements the authorization given in 2017 Tenn. Public Acts Ch. 354, § 1 (to be codified at T.C.A. § 56-13-114(k)) to establish a fee for the electronic payment of premium taxes.

EFFECTIVE DATES: December 21, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The proposed rules embody six years of sessions learned in licensing and regulating captive insurance companies. In addition to a number of typographical and stylistic amendments, there are numerous substantive changes which are explained below:

0780-01 -41 -.02. Annual Reporting Requirements. The revisions to this section were made to eliminate rules that duplicated T.C.A. § 56-13-108 and to reflect changes made in 2016 Tenn. Pub. Acts Ch. 1018. The 2016 update changed the premium tax due date to March 15 annually and eliminated specific references to certain forms for companies that are on a fiscal year. The proposed change likewise eliminates specific references to certain titled forms that are no longer used by the Captive Section. The revision also incorporates a new Appendix into the rule, which is required by T.C.A. § 56-13-108 to be adopted by rule. The new appendix is the annual statement form that captive

insurance companies file annually with the Department.

This section also implements changes made in 2017 Tenn. Public Acts Ch. 354, § 1 (to be codified at T.C.A. § 56-13-114(k)) which authorizes the Commissioner to require that premium taxes be paid electronically and authorizes a fee to pay for this cost.

0780-01 -41 -.03. Audits. The revisions in paragraph (1) clarify the statutory intent that a company must file audited financials each year in order to receive an exam deferral from 3 to 5 years. This also clarifies the procedures when such reports may be filed late and still count toward a deferral. This rule also allows for a deferral of audited financial reporting for newly formed captives or cells when formed within the last quarter of their operating year. Paragraph (5)(e) clarifies the expectations on actuarial review of protected cell companies. As originally written, protected cell captives were reviewed on an aggregate basis. However, each cell carries some or all of its own risk, often without recourse to any other cell. This revision was designed to better identify situations where one cell may be overcapitalized and, on paper, obscure the financial condition of another cell if it were undercapitalized.

0780-01 -41-.04. Deposit Requirements. Updates requirements to reflect 2015 statutory revisions allowing for cash equivalents. See T.C.A. § 56-13-105(c).

0780-01-41 -.06. Limited Scope Examination and Informal Visitation. This is an entirely new section drafted from scratch and is designed to clarify the procedures on the examination of captive insurance companies short of triggering a full scope exam. T.C.A. § 56-13-109 authorizes the commissioner to visit and examine a company whenever it is deemed prudent. This rule carries out that authority for situations where specific limited questions have arisen about the operation of a company but the company and the department both wish to avoid the time and expense of a full exam.

0780-01 -41 -.08. Directors. Revision to clarify who is required to submit a biographical affidavit. Allows Commissioner to waive the requirement.

0780-01 -41 -.09. Managers. Adds captive managers to the list of persons to whom the conflict of interest rule applies.

0780-01 -41 - .12. Change of Business Plan. This rewrites the existing rule, which used similar wording about business plan changes. The old wording is removed to avoid any conflict between the statute and rule over the definition of a material change of business plan. See T.C.A. § 56-13-103(c)(1)(E). This clarifies the procedure for filing changes of business plans that do not meet the statutory definition of a material change and thus not subject to an additional fee.

0780-01 -41 - .13. Designation of a Captive Manager. This adds a new requirement that the Commissioner must approve any change in captive manager. The role of the captive manager is critical in the Department's oversight of a captive insurance company, as the department holds the captive manager responsible for ensuring that the captive is run in accordance with the law. It is common in the captive insurance industry to refer to the captive manager as the eyes and ears of the regulator. Under existing law, the Department only approves the captive manager as part of the initial application. After formation, a captive insurance company could terminate the contract of its approved captive manager and install a new manager that was never approved by the Department. The position of captive manager is not, in and of itself, a position requiring a formal license or credential. The captive section approves captive managers for individual captives on a case by case basis, based on their reputation and experience. This requirement ensures that only approved captive managers may serve in that capacity.

Public Hearing Comments

Comment 1

One comment received asked the department to modify proposed Rule 0780-01-41-.03(1)(d) to only require on an omission election the signature of the captive manager and one officer, as this would aid captive managers in gathering the required signatures.

Response to Comment 1

Rule 0780-01-41-.03(1)(d) has been modified to require the signature of at least one officer instead of two officers along with the signature of the captive manager.

Comment 2

One comment was received in regard to proposed Rule 0780-01-41-.03(5)(e) recommending that the loss reserve certification should be filed independently of the audited annual financial report prepared by a Certified Public Accountant. A second comment received asked the Department to clarify in the rule whether or not the actuarial report must be filed separately from the audited financial statements or included with the audited financial statements.

Response to Comment 2

These comments exceed the scope of the proposed rulemaking. The Department will take these concerns raised into consideration at a future rulemaking.

Comment 3

One comment was received asking the Department to use the word "examination" instead of "audit" in proposed Rule 0780-01-41-.03.

Response to Comment 3

The Department believes that the word choice used in Rule 0780-01-41-.03 is appropriate and reflects the commonly understood usage in the industry.

Comment 4

One comment was received expressing support for the modifications made in proposed Rules 0780-01-41-.03, 0780-01-41-.06, 0780-01-41-.12, and 0780-01-41-.13.

Response to Comment 4

No response required.

Comment 5

Two comments were received inquiring whether in proposed Rule 0780-01-41-.09 the word "manager" referred to a captive manager or the manager of a limited liability company.

Response to Comment 5

The Department's intent is to use the phrase "captive manager" when referring to a captive manager. Any other use of the word manager would rely upon the ordinary meaning of the word when used in its context. In Rule 0780-01-41-.09, the word "manager" would apply to the manager of a limited liability company sitting in the equivalent position of a director of a corporation.

Comment 6

One comment received asked if proposed Rule 0780-01-41-.02(2)(c), which authorizes the Department to impose a \$10 fee for use of the OptIns system, created a new tax by rule.

Response to Comment 6

The fee created in this rule was specifically authorized in 2017 Tenn. Public Acts Ch. 354, § 1.

Comment 7

One comment received asked for a clarification of proposed Rule 0780-01-41-.02(2)(d) as to how a taxpayer would know when electronic funds would be available. The commenter stated that he thought it would be more appropriate to require that the transfer of funds be ordered or posted by the due date.

Response to Comment 7

The date of electronic filing is the "date available" as specified in the rule, so long as the funds clear in the normal course of the electronic payment process. Should the funds not be available, the taxpayer would not be able to claim the electronic filing date as the date of filing.

Comment 8

One comment received asked that in proposed Rule 0780-01-41-.02(3) the word "full" be changed to "estimated."

Response to Comment 8

Rule 0780-01-41-.02(3) has been modified from requiring payment of the "full premium tax due" to requiring payment of the "full estimated premium tax due."

Comment 9

One comment asked for clarification in proposed Rule 0780-01-41-.03(2) of when an auditor must be identified since the filing of audited financials is optional.

Response to Comment 9

An auditor must be identified when the captive elects to file audited financial statements.

Comment 10

One comment was received concerning proposed Rule 0780-01-41-.03(5)(e), Certification of Loss Reserves and Loss Expense Reserves. The commenter expressed concern that this was creating an additional requirement for actuaries to individually review each cell to determine whether the cell was inadequate or redundant. The commenter expressed concern that this additional requirement would take additional time for reviewing actuaries to prepare and increase the compliance costs on captive insurance companies.

Three comments were received by separate actuarial firms in support of this proposed rule. The three actuarial firms stated that they already as a matter of practice reviewed the reserving of individual cells and that this proposed rule was merely a clarification of existing practice. All three comments received from the actuarial firms stated that they did not envision compliance with the proposed rule to lengthen the time required to complete the review or place additional costs on captive insurance companies.

Response to Comment 10

The concerns about the compliance cost for this rule are noted. However, the comments received from three actuarial firms indicating that the work required by this rule is already performed as a matter of routine practice and that captive insurance companies would not be subject to any higher costs to comply with this rule are persuasive. Accordingly, no modifications were made to Rule 0780-01-41-.03(5)(e).

Comment 11

One comment received from an actuary noted that proposed Rule 0780-01-41-.03(5)(e) used the term "adequacy" when referring to the actuarial review of a captive insurance company's loss reserves and loss expense reserves. The commenter stated that the more appropriate word that is used by the actuarial community in this context is "reasonableness" and recommended that the rule be modified to change the word "adequacy" to "reasonableness."

Response to Comment 11

Rule 0780-01-41-.03(5)(e) was modified to change the word "adequacy" in three instances to the word "reasonableness."

Comment 12

One comment was received requesting that proposed Rule 0780-01-41-.03(5)(e) be modified to allow the Commissioner to grant a waiver of the required statement of actuarial opinion.

Response to Comment 12

This comment exceeds the scope of the proposed rulemaking. The Department will take this suggestion into consideration at a future rulemaking.

Comment 13

One comment noted that in proposed Rule 0780-01-41-.06, the terms "thorough examination" and "comprehensive examination" were used interchangeably and asked that the final rule use one term.

Response to Comment 13

Rule 0780-01-41-.06(3) and (4) were modified to replace the word "comprehensive" and substitute the word "thorough."

Comment 14

One commenter recommended that in proposed Rule 0780-01-41-.06, the word "a" be changed with the word "such."

Response to Comment 14

This comment is taken as a request to clarify that a captive insurance company can only request an informal visitation on itself, and may not request that an informal visitation be conducted on another unrelated captive. Rule 0780-01-41-.06 was modified to make the recommended change.

Comment 15

One comment asked that proposed Rules 0780-01-41-.08 and 0780-01-41-.09 be modified to clarify that these rules apply to a captive insurance company's governing body.

Response to Comment 15

This comment exceeds the scope of the proposed rulemaking. The Department will take this suggestion into consideration at a future rulemaking.

Comment 16

Two comments were received regarding proposed Rule 0780-01-41-.12. One noted that this proposed rule is titled "change of business plan" while the statute uses the phrase "plan of operation" and recommended that the

rule's title be changed to be consistent with the statute. A second commenter asked whether this proposed rule would apply to minor changes to a company's business plan that are not subject to a fee.

Response to Comment 16

The title of Rule 0780-0-1-41-.12 was changed from "Change of Business" to "Change of Business Plan" in this rulemaking. The rule references three statutory business plan change procedures. They are: T.C.A. §§ 56-13-103(c)(2)(B) (applicable to most captive insurance companies; 56-13-204(14) (applicable to protected cell companies); and 56-13-416 (applicable to special purpose captives). The phrase "plan of operation" is used by T.C.A. § 56-13-204 and also referenced in T.C.A. § 56-13-416, which applies to special purpose captives that could also operate as protected cell captives. T.C.A. § 56-13-103(c)(2)(B) assigns no specific label to the action of changing a business plan.

The statute which imposes the applicable fee, T.C.A. § 56-4-101(a)(8), does specifically refer to a "change of business plan." The Department believes that the phrase "Change of Business Plan" is appropriate in the context of T.C.A. § 56-4-101(a)(8) and fairly encompasses changes in a plan of operations. As the relevant statutes are specifically referenced in the rule, additional descriptive words are not required.

A change of business plan fee (T.C.A. § 56-4-101(a)(8)) is only intended to apply to required material changes that are outlined in T.C.A. §§ 56-13-103(c)(2)(B) or 56-13-204(14). The purpose of the changes to rule 0780-01-41-.12 is to clarify that any business plan change that does not constitute a change under T.C.A. §§ 56-13-103(c)(2)(B) or 56-13-204(14) would not incur a fee under § 56-4-101(a)(8).

Comment 17

One comment received asked whether in proposed Appendix A, page 1, for the listing of directors, if this was applicable to a manager-managed LLC.

Response to Comment 17

Appendix A was modified to clarify that the Department was asking captive insurance company to list their Directors or Managers as appropriate.

Comment 18

One comment received asked whether in proposed Appendix A, Item 4 which asks for the name of the "Management Firm or Administrator," whether this was asking for the address of the captive manager or some other service provider like a third party administrator.

Response to Comment 18

Appendix A, Item 4 was modified to clarify that the Department is asking for the address of the Captive Manager.

Comment 19

Two comments received expressed concerns about proposed Appendix A, Item 7, requiring the filing of a Statement of Retained Earnings and a Statement of Cash Flows as these are items not always compiled by all captive insurance companies.

Response to Comment 19

Appendix A, Item 7 was modified to not require the filing of a Statement of Retained Earnings or Statement of Cash Flows. Captive insurance companies must still file a balance sheet and income statement.

Comment 20

Three comments received expressed concern about proposed Appendix A, Item 18 requiring captive insurance companies that participate in a reinsurance pool to include details about assumed and ceded reinsurance by other pool members. Comments received noted that this requirement would be extremely burdensome and

require in some instances the filing of a large quantity of documentation. Commenters also stated that the information requested is not always shared with other pool participants and would potentially not be available to an individual captive that is a pool participant.

Response to Comment 20

Appendix A, Item 18 was modified to only require captives who participate in pooling arrangements to identify the name of the pool and the pool's domicile or the names and domiciles of the other pool participants. The requirement to file information about other pool participants' reinsurance transactions was eliminated.

Comment 21

Three comments received expressed concern about proposed Appendix A, Item 21, which would require each captive to file a narrative of the management's understanding of the captive's financial condition. Commenters expressed concern that this requirement was unreasonably burdensome. Commenters noted that captive managers have an obligation to report to regulators any adverse developments.

Response to Comment 21

Appendix A, Item 21 was modified to only require checking a Yes or No box as to whether there were any material changes in the management's understanding of a company's financial condition or any trends or uncertainties which have or would cause the company to deviate from its filed business plan. Only if a "Yes" answer was indicated would an explanatory statement be required.

Comment 22

One comment received noted that in proposed Appendix A, Oversight Documents Checklist, Item 1, the item asks for a copy of the executed agreement between the owner and the captive manager. However, the agreement with the captive manager was ordinarily with the captive insurance company and not with the captive's owner.

Response to Comment 22

Appendix A, Oversight Documents Checklist, Item 1 was modified to replace the phrase "Executed agreement between owner and captive manager" with the phrase "Executed agreement between the captive and the captive manager."

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 Department of Commerce and Insurance has considered whether the proposed rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). These rules directly regulate the operation of captive insurance companies licensed by the Department. By their nature, captive insurance companies are themselves small businesses that rarely, if ever, directly employ any person. Captive insurance companies are almost always run for the benefit of their parent company, which may itself be a small business but more frequently ranges in size from a mid-size company to a large multinational family of companies. Captive insurance companies are typically run exclusively by contracted service providers which also range in size from boutique professional businesses to the largest financial and insurance institutions in the world.

The proposed rules embody an assortment of changes to the regulatory system first made by the Revised Tennessee Captive Insurance Act of 2011. These changes reflect six years of lessons learned in licensing and regulating captive insurance companies.

(1) There are 162 captive insurance companies licensed by the Department as of August 1, 2017. There are also 393 approved protected cells operating through Tennessee captive insurance companies.

(2) The proposed changes to the existing rule are not anticipated to measurably increase the administrative cost of compliance over the requirements of the previously enacted rule. Preparation of the reports required by this rule will typically require the use of a professional captive manager, actuary, and accountancy services. The cost of compliance varies greatly depending on the complexity of the captive insurance company. The minimum annual administrative cost of compliance is estimated to be approximately \$5000.

(3) The proposed rules are designed to strengthen Tennessee as a captive insurance domicile by clarifying reporting requirements, rights, and responsibilities of captive insurance companies and their service providers. The proposed rules make it easier to do business in Tennessee. As such, the proposed rules are anticipated to have a positive impact on the Tennessee captive insurance industry.

(4) The proposed rules embody the Department's commitment to the reasonable regulation of captive insurance. While less burdensome requirements could be adopted, captive insurance companies depend on the reputation of their regulator assuring other marketplace participants that the captive is under proper oversight. Captive insurance company owners have in most cases the ability to domicile their company in a wide array of jurisdictions. The Department believes that the proposed rules strike the right balance between appropriate oversight of captive insurance companies and the flexibility and minimization of cost to ensure their success.

(5) There are no counterpart federal rules for captive insurance. The proposed rules are consistent with the regulatory systems in other leading captive insurance domiciles.

(6) As all captive insurance companies qualify under the definition of a small business, it is impractical to implement a small business exception to any of the proposed rules.

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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not 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;

The proposed rules embody six years of lessons learned in licensing and regulating captive insurance companies. In addition to a number of typographical and stylistic amendments, there are numerous substantive changes which are explained below:

0780-01-41-.02. Annual Reporting Requirements. The revisions to this section were made to eliminate rules that duplicated T.C.A. § 56-13-108 and to reflect changes made in 2016 Tenn. Pub. Acts Ch. 1018. The 2016 update changed the premium tax due date to March 15 annually and eliminated specific references to certain forms for companies that are on a fiscal year. The proposed change likewise eliminates specific references to certain titled forms that are no longer used by the Captive Section. The revision also incorporates a new Appendix into the rule, which is required by T.C.A. § 56-13-108 to be adopted by rule. The new appendix is the annual statement form that captive insurance companies file annually with the Department.

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Paragraph (5)(e) clarifies the expectations on actuarial review of protected cell companies. As originally written, protected cell captives were reviewed on an aggregate basis. However, each cell carries some or all of its own risk, often without recourse to any other cell. This revision was designed to better identify situations where one cell may be overcapitalized and, on paper, obscure the financial condition of another cell if it were undercapitalized.

0780-01-41-.04. Deposit Requirements. Updates requirements to reflect 2015 statutory revisions allowing for cash equivalents. See T.C.A. § 56-13-105(c).

0780-01-41-.06. Limited Scope Examination and Informal Visitation. This is an entirely new section drafted from scratch and is designed to clarify the procedures on the examination of captive insurance companies short of triggering a full scope exam. T.C.A. § 56-13-109 authorizes the commissioner to visit and examine a company whenever it is deemed prudent. This rule carries out that authority for situations where specific limited questions have arisen about the operation of a company but the company and the department both wish to avoid the time and expense of a full exam.

0780-01-41-.08. Directors. Revision to clarify who is required to submit a biographical affidavit. Allows Commissioner to waive the requirement.

0780-01-41-.09. Managers. Adds captive managers to the list of persons to whom the conflict of interest rule applies.

0780-01-41-.12. Change of Business Plan. This rewrites the existing rule, which used similar wording about business plan changes. The old wording is removed to avoid any conflict between the statute and rule over the definition of a material change of business plan. See T.C.A. § 56-13-103(c)(1)(E). This clarifies the procedure for filing changes of business plans that do not meet the statutory definition of a material change and thus not subject to an additional fee.

0780-01-41-.13. Designation of a Captive Manager. This adds a new requirement that the Commissioner must approve any change in captive manager. The role of the captive manager is critical in the Department's oversight of a captive insurance company, as the department holds the captive manager responsible for

ensuring that the captive is run in accordance with the law. It is common in the captive insurance industry to refer to the captive manager as the eyes and ears of the regulator. Under existing law, the Department only approves the captive manager as part of the initial application. After formation, a captive insurance company could terminate the contract of its approved captive manager and install a new manager that was never approved by the Department. The position of captive manager is not, in and of itself, a position requiring a formal license or credential. The captive section approves captive managers for individual captives on a case by case basis, based on their reputation and experience. This requirement ensures that only approved captive managers may serve in that capacity.

- (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;

There are no federal regulations mandating promulgation of this rule. The Commissioner is authorized to promulgate rules to effect the Revised Tennessee Captive Insurance Act of 2011. T.C.A. § 56-13-121. This rule also implements the authorization given in 2017 Tenn. Public Acts Ch. 354, § 1 (to be codified at T.C.A. § 56-13-114(k)) to establish a fee for the electronic payment of premium taxes.

- (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;

Tennessee Captive Insurance Association is expected to urge adoption of this rule.

- (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;

None known.

- (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;

None.

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

Michael Humphreys, Assistant Commissioner for Insurance; Rachel Jrade-Rice, Director of Insurance; Michael Corbett, Director of Captive Insurance; Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance.

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

Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance.

- (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

Davy Crockett Tower, 8th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243; 615-741-2616; ben.whitehouse@tn.gov

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**Department of State
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Sequence Number: 09-21-17
Rule ID(s): 6603
File Date: 9/22/17
Effective Date: 12/21/17

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:	Department of Commerce and Insurance
Division:	Insurance
Contact Person:	Benjamin Whitehouse, Assistant General Counsel for Insurance
Address:	Davy Crockett Tower, 8 th Floor 500 James Robertson Parkway Nashville, Tennessee
Zip:	37243
Phone:	615-741-2616
Email:	ben.whitehouse@tn.gov

Revision Type (check all that apply):

- Amendment
- 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)

Chapter Number	Chapter Title
0780-01-41	Tennessee Captive Insurance Companies
Rule Number	Rule Title
0780-01-41-.01	Purpose and Authority.
0780-01-41-.02	Annual Reporting and Premium Tax Payment Requirements.
0780-01-41-.03	Audits.
0780-01-41-.04	Deposit Requirement.
0780-01-41-.05	Organizational Examination.
0780-01-41-.06	Limited Scope Examination and Informal Visitation.
0780-01-41-.07	Insurance Managers and Intermediaries.
0780-01-41-.08	Biographical Affidavits and Compensation.
0780-01-41-.09	Conflict of Interest.
0780-01-41-.10	Revocation or Suspension of Captive License.

0780-01-41-.11	Acquisition of Control of or Merger with Domestic Company.
0780-01-41-.12	Change of Business Plan.
0780-01-41-.13	Designation of a Captive Manager.
0780-01-41-.14	Regulation for Captive Insurance Companies Issuing Annuities.
0780-01-41-.15	Regulation for Captive Insurance Companies Reinsuring Life Insurance Policies.
0780-01-41-.16	Severability Provision.
APPENDIX A	Tennessee Captive Insurer Annual Report.

Amendments

Chapter 0780-1-41 Tennessee Captive Insurance Companies is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

Chapter 0780-01-41 Tennessee Captive Insurance Companies

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0780-01-41-.01	Purpose and Authority	0780-01-41-.11	Acquisition of Control of or Merger with Domestic Company
0780-01-41-.02	Annual Reporting and Premium Tax Payment Requirements	0780-01-41-.12	Change of Business Plan
0780-01-41-.03	Audits	0780-01-41-.13	Designation of a Captive Manager
0780-01-41-.04	Deposit Requirement	0780-01-41-.14	Regulation for Captive Insurance Companies Issuing Annuities
0780-01-41-.05	Organizational Examination	0780-01-41-.15	Regulation for Captive Insurance Companies Reinsuring Life Insurance Policies
0780-01-41-.06	Limited Scope Examination and Informal Visitation	0780-01-41-.16	Severability Provision
0780-01-41-.07	Insurance Managers and Intermediaries	APPENDIX A	Tennessee Captive Insurer Annual Report
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0780-01-41-.09	Conflict of Interest		
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Tennessee Captive Insurance Companies

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0780-01-41-.04	Deposit Requirement	0780-01-41-.134	Regulation for Captive Insurance Companies Issuing Annuities.
0780-01-41-.05	Organizational Examination	0780-01-41-.145	Regulation for Captive Insurance Companies Reinsuring Life Insurance Policies
0780-01-41-.06	<u>Limited Scope Examination and Informal Visitation</u>	0780-01-41-.156	Severability Provision
0780-01-41-.067	Insurance Managers and Intermediaries	APPENDIX A	<u>Tennessee Captive Insurer Annual Report</u>
0780-01-41-.078	<u>Directors Biographical Affidavits and Compensation</u>		
0780-01-41-.089	Conflict of Interest		
0780-01-41-.910	Revocation or Suspension of Captive License		

0780-01-41-.01 Purpose and Authority.

The purpose of this Chapter is to set forth the financial and reporting requirements that the commissioner deems necessary for the regulation of captive insurance companies, as authorized by the Revised Tennessee Captive Insurance Act, Title 56, Chapter 13 of the Tennessee Code Annotated, (the "Act"). Reference in this Chapter to "company" shall mean captive insurance company or companies, unless otherwise specified. Terms of this Chapter employ definitions found in the Act as the context may require.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, T.C.A. §§ 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.02 Annual Reporting and Premium Tax Payment Requirements.

- (1) The report of financial condition required by T.C.A. §§ 56-13-108, 56-13-204(12), 56-13-305 and 56-13-416(d) shall be made by completing and submitting each of the forms and schedules prescribed by the Tennessee Captive Insurer Annual Report found at Appendix A of this rule, which is incorporated herein by reference. Prior to March 1, each association captive insurance company doing business in this state shall annually submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that report prescribed by the commissioner as "Captive Annual Statement: Association Captive."
- (2) The OPTins system is hereby designated as the approved method of receiving premium tax, penalty, and interest forms and payments owed by a captive insurance company.
 - (a) Premium tax forms and payments shall be filed and paid in electronic form through the OPTins system no later than the date such payment is required.
 - (b) Filings and payments made through OPTins on or before the due date shall be deemed received by the department on the date received by OPTins.
 - (c) Every filing and payment made through OPTins shall be subject to a convenience fee of up to ten dollars (\$10.00) per filing to cover the department's actual costs incurred by accepting electronic payments through OPTins. Such convenience fee shall be assessed in addition to any applicable premium tax, penalty, or interest.

- (d) If a tax payment due date falls on a Saturday, Sunday or banking holiday, the electronic payment must be made so that the funds are immediately available on the first business day after the due date.
- (e) The commissioner may waive the requirement for electronic payment through OPTins and allow filing and payment by mail on a case by case basis for good cause shown.

~~Prior to March 15, all other captive insurance companies doing business in this state, except for Branch Captive insurance companies and Special Purpose Financial Captive insurance companies, shall annually submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that prescribed by the commissioner as "Captive Annual Statement: Pure or Industrial Insured." The current version of the report is found on the website of the Tennessee Department of Commerce and Insurance, Insurance Division, Captives section. The report shall be that required by T.C.A. § 56-13-108. Branch Captive insurance companies shall file the "Captive Annual Statement: Pure or Industrial Insured" in accordance with T.C.A. § 56-13-305. Special Purpose Financial Captive insurance companies shall report in accordance with all applicable laws in Title 56, Chapter 13, Part 4.~~

- (3) ~~An alternative reporting date at fiscal year-end may be granted by the commissioner upon written request by a pure captive insurance company or an industrial insured captive insurance company. If such request is granted the report is due one hundred and eighty (180) days after the fiscal year end per T.C.A. § 56-13-108.~~
- (34) For a company that has received approval from the commissioner to utilize ~~In the case of an alternative reporting date of its the annual report pursuant to T.C.A. § 56-13-108(c), the full estimated premium tax due should be submitted paid to the Department by the March 15 of each year along with an estimated premium tax return deadlines. In order to provide sufficient detail to support the premium tax return, the company shall file, prior to March 15 of each year for each calendar year end, pages 1, 2, 3, and 5 of the annual statement, verified by oath of two (2) of its executive officers per T.C.A. § 56-13-108.~~
- (45) ~~If, in accordance with Pparagraph (43) above, the submitted paid premium tax is less than eighty percent (80%) of the premium tax due as calculated from the annual report filed at the end of the extension period fiscal year, the commissioner may impose monetary penalties on said company in an amount up to one thousand dollars (\$1,000).~~

(6) Financial Statements

~~Statements required shall be as follows:~~

- ~~1. Balance sheet reporting assets, liabilities, capital and surplus;~~
- ~~2. Statement of gain or loss from operations;~~
- ~~3. Statement of changes in capital and surplus;~~
- ~~4. Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus);~~
- ~~5. The notes to financial statements shall be those required by generally accepted accounting principles;~~
- ~~6. A summary of ownership and relationship of the company and all affiliated~~

corporations or companies insured by the captive; and,

~~7. A narrative explanation of all material transactions and balances with the company.~~

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-114, 56-13-115, 56-13-120, 56-13-121, 56-13-204, 56-13-305 and 56-13-416.

0780-01-41-.03 Audits.

- (1) (a) Each captive insurance company shall be thoroughly examined at least once every three (3) years by the commissioner. The three year period may be extended up to a five (5) year period provided that the company is subject to a comprehensive annual financial audits as provided for in T.C.A. § 56-13-109(a). To qualify for this extension, the comprehensive audits shall be conducted by an independent certified public accountant authorized by the commissioner. The authorized accountant shall prepare and sign an audited annual financial report in a format specified by the commissioner. This report is hereinafter referred to in this rule as the "audited annual financial report." To qualify for the extension provided for in T.C.A. § 56-13-109(a), the audited annual financial report shall be filed and shall file such audited financial report with the commissioner on or before June 30th of each year or 180 days after the end of the fiscal year. The audited annual financial audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.
- ~~(b) To be eligible for an extension up to a five (5) year period between thorough examinations, the captive insurance company must have filed timely audited annual financial reports covering all periods of operation from the later of the date of formation or the end date of the previous examination. For good cause shown in exceptional circumstances, the commissioner may allow the late filing of the audited annual financial report to preserve a captive insurance company's eligibility for a thorough examination extension.~~
- ~~(c) A newly formed captive insurance company or a newly formed protected cell or incorporated protected cell of a captive insurance company that is in operation for less than ninety (90) days before the end of its fiscal year may elect to defer conducting a comprehensive annual audit under this Chapter so long as the first filed audited annual financial report includes audit data from the date of formation to the end of the first complete fiscal year that the captive insurance company or protected cell was in operation.~~
- ~~(d) A protected cell or incorporated protected cell captive insurance company may elect to omit from its audited annual financial report one or more individual cells that collected no premium and wrote no policies during the calendar or fiscal year and was under no liability or potential liability for any policies issued in prior years. This action is hereinafter referred to in this rule as an "omission election." The omission election shall be made on a form prescribed by the commissioner and signed under oath by the captive manager and at least one officer of the company and filed with the audited annual financial report. No omission election may be made in the calendar or fiscal year in which occurs the fifth anniversary of the company's formation or fifth anniversary of the final date covered by the company's last T.C.A. § 56-13-109 thorough examination. In the next year subsequent to the taking of an omission election where no omission election is made or following after a year in which no omission election may be made, the~~

filed audited annual financial report shall include a cumulative report on the protected cell's activity during all preceding years for which an omission election was made. No omission election may be made on a protected cell or incorporated protected cell's core or general account. The commissioner, in his or her sole discretion, may disallow a protected cell or incorporated protected cell captive insurance company from taking any future omission elections on one or more cells upon notice.

(e) A captive insurance company that has been issued a letter of dormancy may elect to defer conducting a comprehensive annual audit under this Chapter and maintain eligibility for a five (5) year period between thorough examinations. To maintain this eligibility, the captive insurance company must file a cumulative audited financial report that includes audit data from the preceding years since the last filed audited annual financial report. Such filing shall be due with the first audited annual financial report filed subsequent to the rescission or expiration of the letter of dormancy.

(2) Designation of Independent Certified Public Accountant.

Companies, after becoming subject to this ~~rule-regulation~~, shall within ninety days report to the commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this ~~rule-regulation~~. The certified public accountant that is retained to conduct the annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner. The independent certified public accountant retained to conduct the annual audit shall apply, on a form adopted by the commissioner, for approval by the commissioner.

(3) Notification of Adverse Financial Condition.

A company shall require the certified public accountant to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner as required in Tenn.-Code-Ann. § 56-13-108. The company shall furnish such notification to the commissioner within five (5) working days of receipt thereof.

(4) Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

(a) Each company shall require the independent certified public accountant to make available for review by the commissioner or the commissioner's appointed agent the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than five (5) years after the period reported upon.

(b) The aforementioned review by the commissioner shall be considered examinations and all working papers obtained during the course of such examinations shall be confidential. The company shall require that the independent certified public accountant provide photocopies or equivalent copy of any of the working papers which the Department considers relevant. Such working papers may be retained by the Department.

(c) "Work Papers" or "Working Papers" as referred to in this rule include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other

documents prepared or obtained by the accountant and the accountant's employees in the conduct of their examination of the company.

(d) The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five (5) consecutive years. The person shall be disqualified from acting in that or similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
2. Premium volume of the insurer; or
3. Number of jurisdictions in which the insurer transacts business.

(5) The annual audited annual financial report shall consist of the following:

(a) Opinion of Independent Certified Public Accountant.

Financial statements furnished pursuant to this rule shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants or statutory accounting principles in accordance with the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in effect for the period covered by the report. The opinion of the independent certified public accountant shall cover all years presented. The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures, and shall be dated.

(b) Report of Evaluation of Internal Controls.

Every company that has annual direct written and assumed premiums of five hundred million dollars (\$500,000,000) or more shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties. The review shall be conducted in accordance with generally accepted auditing standards or statutory accounting principles and the report shall be filed with the commissioner. An exemption from this evaluation may be granted on a case by case basis upon written request to the Commissioner.

(c) Accountant's Letter.

The accountant shall furnish the company, for inclusion in the filing of the audited annual financial report, a letter stating:

1. That the accountant is independent with respect to the company and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the

Financial Accounting Standards Board.

2. The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.
 3. That the accountant understands that the audited annual report and the accountant's opinions thereon will be filed in compliance with this Chapter with the Tennessee Department of Commerce and Insurance.
 4. That the accountant consents to the requirements of Rule 0780-01-41-.03(4) of this Chapter and that the accountant consents and agrees to make available for review by the commissioner, the commissioner's designee or the commissioner's appointed agent, the work papers as defined therein.
 5. That the accountant is properly licensed by an appropriate state licensing authority and that the accountant is a member in good standing in the American Institute of Certified Public Accountants.
- (d) Financial Statements as required under Rule 0780-01-41-.02, Annual Reporting Requirements.
- (e) Certification of Loss Reserves and Loss Expense Reserves.

~~The annual audit~~ audited annual financial report shall include an opinion as to the ~~reasonableness~~ adequacy of the company's loss reserves and loss expense reserves. The individual who certifies as to the ~~reasonableness~~ adequacy of reserves shall apply, on a form adopted by the commissioner, for approval by the commissioner, and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his or her competence in loss reserve evaluation to the commissioner. Certification shall be in such form as the commissioner deems appropriate. For protected cell captive insurance companies, this opinion shall also include a statement identifying any one or more protected cells for which the carried reserves are either inadequate (i.e. – below the minimum amount the actuary believes is reasonable) or redundant (i.e. – greater than the maximum amount the actuary believes is reasonable). For exceptional cause shown, the commissioner may waive the requirement of filing an opinion as to reasonableness of loss reserves and loss expense reserves by a company.

Authority: ~~2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-109, 56-13-115 and 56-13-121.~~ 2017 Public Acts, Chapter 354, § 3.

0780-01-41-.04 Deposit Requirement.

- (1) Whenever the commissioner deems that the financial condition of the company warrants additional security, the commissioner may require a company to deposit cash or securities approved by the commissioner in addition to statutory prescribed amounts. The deposit shall be in the form of cash or cash equivalent or an irrevocable letter of credit issued by a bank acceptable to the commissioner.
- (2) The company may receive interest or dividends from said deposit; however the company may not exchange the deposits for others of equal value without the approval of the commissioner.

- (3) If such company discontinues business, the commissioner shall release any claim to such deposit only after being satisfied that all obligations of the company have been discharged.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-105, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.05 Organizational Examination.

In addition to the processing of the application, an organizational examination shall be performed before an applicant is licensed. Such examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the commissioner deems necessary.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-1-401, 56-13-103, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.06 Limited Scope Examination and Informal Visitation

- (1) Pursuant to T.C.A. § 56-13-109(a) the commissioner may direct a limited scope examination be conducted upon a captive insurance company. Such an exam may be ordered when questions arise about a captive insurance company's solvency, governance, operating practices, or other specific areas that the commissioner may determine.
- (2) The limited scope examination order shall identify the specific limited areas that the examination will cover. If, in the course of the examination, the examiner believes that the scope of the examination should be broadened, the examiner shall file a recommendation with the commissioner and with the captive insurance company under examination, which company shall have ten (10) days to file any response to the recommendation. The commissioner shall thereafter determine if the scope of the examination should be broadened and the additional areas that the examination should cover.
- (3) A limited scope examination under this rule does not waive or extend the period of time between thorough examinations conducted pursuant to T.C.A. § 56-13-109. A copy of any limited scope examination reports should be reviewed and included in the thorough examination of any captive insurance company. However, within ten (10) days of issuance of the limited scope examination order, the captive insurance company may file an election with the commissioner to convert the examination to a thorough examination conducted pursuant to T.C.A. § 56-13-109(a).
- (4) At the request of a captive insurance company, the commissioner may, in person or by designee, conduct an informal visitation of such captive insurance company. Such informal visitation may include, but is not limited to, a review of the books and records of the captive insurance company, review of governance, internal practices, controls, policies and procedures. A visitation may include a site visit to the captive insurance company's principal place of business, the offices of its captive manager, accountant, and/or principal or beneficial owner, or other service provider. At the conclusion of such a visitation, the commissioner or commissioner's designee shall send a report to the captive insurance company that shall include any suggestions or recommendations. This report shall be reviewed and included in the next subsequent thorough examination of the captive insurance company.
- (5) The expenses and charges of any limited scope examination and informal visitation shall

be paid by the captive insurance company.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-1-409, 56-1-413, 56-13-103, 56-13-108, 56-13-109, 56-13-115 and 56-13-121.

0780-01-41-.067 Insurance Managers and Intermediaries.

No person shall, in or from within this state, act as a managing general agent, producer, or reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

~~Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.~~

0780-01-41-.087 Directors--Biographical Affidavits and Compensation.

- (1) Every company shall report to the commissioner within thirty (30) days after any change in its executive officers, managers, or directors, including in its report a biographical affidavit. If a manager is a corporation, trustee, partnership or limited liability company, the report shall include a biographical affidavit from such person or persons who exercise ultimate control over the manager as determined by the commissioner. For good cause shown, the commissioner may waive the requirement for a biographical affidavit under this rule.
- (2) No director, officer, manager, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other compensation because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

~~Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.~~

0780-01-41-.098 Conflict of Interest.

- (1) Each company chartered in this state is required to adopt a conflict of interest statement for officers, directors, managers, and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from their duty to further the interests of the company they represent but this shall not preclude such person from being a director or officer in more than one insurance company.
- (2) Each officer, director, manager, and key employee shall file such disclosure with the Board of Directors yearly.

~~Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.~~

0780-01-41-.910 Revocation or Suspension of Captive License.

The commissioner may, subject to the provisions of this rule, by order suspend or revoke the license of the company for any of the following:

- (1) At the request of the company; or

- (2) For any reason provided in T.C.A. § 56-13-110.

Before the commissioner rescinds the license of a company under (1) or (2), the commissioner shall give the company notice in writing of the grounds on which the commissioner proposes to cancel the license, and shall afford the company an opportunity to make objection in writing within the period of thirty (30) days after receipt of notice. The commissioner shall take into consideration any objection received by the commissioner within that period and, if the commissioner decides to cancel the license, cause the order of cancellation to be served on the company.

Authority: ~~2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-110, 56-13-115 and 56-13-121.~~

0780-01-41-.110 Acquisition of Control of or Merger with Domestic Company.

No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic company if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the commissioner. In considering any application for acquisition of control or merger with a domestic company, the commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in this chapter.

Authority: ~~2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-107, 56-13-108, 56-13-115 and 56-13-121.~~

0780-01-41-.412 Change of Business Plan.

(1) ~~—A change in any information filed with the application that does not constitute a material change as identified in T.C.A. §§ 56-13-103(c)(2)(B) or 56-13-416 or a change requiring commissioner approval in T.C.A. § 56-13-204(14)~~

(2) ~~—Any change in any other information filed with the application must be filed with the commissioner within sixty (60) days but does not require prior approval.~~

Authority: ~~2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-103, 56-13-108, 56-13-115, and 56-13-121, 56-13-204, and 56-13-416.~~

0780-01-41-.132 Designation of a Captive Manager.

Companies, before becoming licensed, shall report to the commissioner in writing, the name and address of the designated captive manager retained to manage the company. The captive manager shall apply, on a form adopted by the commissioner, for approval by the commissioner. Any change of designated captive manager for a captive insurance company must be approved, in advance, by the commissioner.

Authority: ~~2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.~~

0780-01-41-.143 Regulation for Captive Insurance Companies Issuing Annuities.

- (1) This Rule 0780-01-41-.134 establishes reserve requirements, separate accounts and the form of the annual statement required of any captive insurance company that issues

annuity contracts (which may have life or other benefits that constitute a subsidiary or incidental part of the entire contract).

- (2) This Rule shall apply to any captive insurance company formed or licensed under the provisions of Title 56, Chapter 13 of the Tennessee Code Annotated issuing annuity contracts (which may have life or other benefits that constitute a subsidiary or incidental part of the entire contract).
- (3) Any captive insurance company that issues contracts that provide variable benefits shall establish separate accounts. Such accounts shall be subject to the requirements of T.C.A. § 56-3-501.
- (4) A captive insurance company that issues annuity contracts shall maintain reserves that are actuarially sufficient to support the liabilities provided by the contracts.
- (5) A captive insurance company that issues annuity contracts shall submit its annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers, as modified or supplemented by the commissioner.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-3-501, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.154 Regulation for Captive Insurance Companies Reinsuring Life Insurance Policies.

- (1) This Rule 0780-01-41-.154 establishes reserve requirements and the form of the annual report required of a captive insurance company that reinsures life insurance policies, including term, universal and variable life policies, and related guarantees and riders (collectively, "Life Insurance Policies").
- (2) This Rule shall apply to any captive insurance company formed or licensed under the provisions of title 56, chapter 13 of the Tennessee Code Annotated that reinsures Life Insurance Policies, with respect to fiscal years ending on and after December 31, 2013.
- (3) A captive insurance company described in ~~paragraph rule 0780-01-41-.154(2)~~ shall maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company in reinsuring Life Insurance Policies.
- (4) For purposes of the annual report required by Tenn. Code Ann. § 56-13-108(b):
 - (a) A captive insurance company described in ~~paragraph rule 0780-01-41-.154(2)~~ that uses statutory accounting principles (i.e., the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual, including any appropriate or necessary modifications or adaptations thereto approved by the Commissioner of Commerce and Insurance) shall submit the annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers, as modified or supplemented by the Commissioner, unless the Commissioner requires or approves a different form of annual report; and
 - (b) A captive insurance company described in ~~paragraph rule 0780-01-41-.154(2)~~ that uses generally accepted accounting principles, including any appropriate or necessary modifications or adaptations thereto approved by the commissioner, shall submit the annual report in the form approved by the commissioner.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.165 Severability Provision.

If any Rule or portion of a Rule of this Chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the Chapter or the applicability of the provision to other persons or circumstances shall not be affected. To this end, the provisions of this Chapter are declared severable.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

APPENDIX A
TENNESSEE CAPTIVE INSURER ANNUAL REPORT

As of _____ (date)
of the Condition and Affairs of

(Name of Captive Insurance Company)

Date of License: _____
Company Street Address: _____
Company City, State, Zip Code: _____
Books and Records Street Address: _____
Captive Manager Name: _____
Captive Manager Street Address: _____
Annual Report Contact Name: _____
Annual Report Contact Number: _____
Annual Report Contact Email: _____

Officers:

President: _____
Secretary: _____
Treasurer: _____
: _____
: _____
: _____

Directors / Managers:

1. List the name(s) and address(es) of the beneficial owners of the captive and corresponding percentages of ownership:

Name	Address	% Ownership

2. Type of Captive: Pure Association Risk Retention Group Protected Cell
 Industrial Insured Special Purpose

3. Organizational form:

If organized as a stock company, please include a description of all authorized stock classes, whether the class is preferred or common stock, and for each class, the number of shares authorized, shares outstanding, and the par value.

4. Provide the name and address of the Captive Manager.

Has the Captive Manager changed from the last annual filing? Yes No

5. Provide the individual name, firm name and firm address of the Actuary.

Has the Actuary changed from the last annual filing? Yes No

6. Provide the individual name, firm name and firm address of the Certified Public Accountant.

Has the Certified Public Accountant changed from the last annual filing? Yes No

7. Attach a complete copy of the company's unaudited financial statements as of prior year end that include the balance sheet and income statement.

8. Were any changes made to the charter, bylaws or articles since the last annual filing? Yes No

9. Did the company provide notification to and receive approval from the Captive Insurance Section for all material transactions? Yes No

If no, provide a brief description including the dollar amount on a separate attachment.

10. Since the last annual filing, were there any related party transactions? Yes No

If yes, provide a brief description including the dollar amount on a separate attachment.

11. Have all assets been valued in accordance with GAAP? Yes No

If other than GAAP was used, please explain:

12. Do the company's assets include any loans to its parent, affiliates, or unaffiliated companies?

Yes No

If yes, please answer the following:

(a) Were any of these loans entered into this year? Yes No

If yes, what is the date of Captive Insurance Section approval? _____

(b) Amount of the loan as of the end of the year: _____

(c) Describe the terms of the loan on a separate attachment.

(d) Have all interest payments due for the year been collected? Yes No

If no, when are the interest payments expected? _____

(e) Attach copies of current financial statements of the company or companies to whom loans have been made.

13. Were any of the company's assets or stock pledged as collateral at any time during the year or did the captive provide any outside guarantees? Yes No

If yes, please provide the date of Captive Insurance Section approval and a brief description on a separate attachment.

14. Has each officer, director and key employee for the current reporting year filed a disclosure with the captive's board of directors disclosing any potential conflicts of interest as outlined in the captive's conflict of interest policy? Yes No

15. Have loss and loss adjustment expense (LAE) reserves been discounted? Yes No

If yes, what interest rate was used? _____

16. Were any dividends paid during the year? Yes No

If yes, provide the date of approval by the Captive Insurance Section, the date(s) paid and amounts paid.

17. Did the company hold a board of directors meeting in Tennessee during the reporting period as required by Tenn. Code Ann. § 56-13-103(b)? Yes No

18. Does the company participate in a reinsurance pooling arrangement? Yes No

If yes, include other pool members in the assumed and/or ceded section of the reinsurance schedule below.

19. Did the company write any new lines of business this year? Yes No

If yes, identify the name of the pool and either the pool's domicile or the domiciles of the other pool participants.

20. Did the company write premiums this year? Yes No

If not, does the company plan to write insurance in the next year? Yes No

If not, does the company plan on going dormant or dissolving in the next year? Yes, Dormancy

Yes, Dissolving No

21. In the past year were there any material changes in the management's understanding of the company's financial condition or any trends, events or uncertainties that have had or will likely cause the company to substantially deviate from its filed business plan. If yes, please attach an explanatory statement. Yes No

22. Please complete the following:

EXHIBIT OF PREMIUMS AND LOSSES

Premium Schedule				
1	2	3	4	5
Lines of Coverage	Direct Business	Reinsurance Assumed	Reinsurance Ceded	Net Premiums Written
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
Totals				

Paid Loss Schedule				
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Lines of Coverage</u>	<u>Direct Business</u>	<u>Assumed Reinsurance</u>	<u>Ceded Reinsurance</u>	<u>Net Losses Paid</u>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
<u>Totals</u>				

Loss Reserve Schedule				
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Lines of Coverage</u>	<u>Direct Business</u>	<u>Assumed Reinsurance</u>	<u>Ceded Reinsurance</u>	<u>Net Loss Reserves</u>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
<u>Totals</u>				

SCHEDULE OF REINSURANCE					
Assumed Reinsurance as of Current Year End					
<u>1</u>	<u>2</u>	<u>3</u>	<u>4*</u>	<u>5**</u>	<u>6***</u>
<u>Federal ID Number</u>	<u>Name of Reinsured (include pool participants)</u>	<u>State or Country of Domicile</u>	<u>Assumed Premiums</u>	<u>Assumed Paid Losses</u>	<u>Assumed Loss Reserves</u>
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
<u>Totals</u>					

- * Total for Column 4 must agree to Premium Schedule
- ** Total for Column 5 must agree to Paid Loss Schedule
- *** Total for Column 6 must agree to Loss Reserve Schedule

Ceded Reinsurance as of Current Year End					
<u>1</u>	<u>2</u>	<u>3</u>	<u>4*</u>	<u>5**</u>	<u>6***</u>
<u>Federal ID Number</u>	<u>Name of Reinsured (include pool participants)</u>	<u>State or Country of Domicile</u>	<u>Ceded Premiums</u>	<u>Ceded Paid Losses</u>	<u>Ceded Loss Reserves</u>
<u>1.</u>					
<u>2.</u>					
<u>3.</u>					
<u>4.</u>					
<u>5.</u>					
<u>6.</u>					
<u>7.</u>					
<u>8.</u>					
<u>9.</u>					
<u>Totals</u>					

* Total for Column 4 must agree to Premium Schedule

** Total for Column 5 must agree to Paid Loss Schedule

*** Total for Column 6 must agree to Loss Reserve Schedule

INVESTMENTS OWNED AT CURRENT YEAR END

<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>Description</u>	<u>Investment Type*</u>	<u>Cost</u>	<u>Statement Value</u>
<u>1.</u>			
<u>2.</u>			
<u>3.</u>			
<u>4.</u>			
<u>5.</u>			
<u>6.</u>			
<u>7.</u>			
<u>8.</u>			
<u>Totals</u>			

* Enter the corresponding numbers for the investment type as noted below:

1. Bonds

2. Stocks

3. Cash and Short-Term Investments

4. Loans and Notes Receivable

5. Cash Surrender Value of Life Insurance

6. Letters of Credit

7. Other

CERTIFICATION

The officers of this company, being duly sworn, each depose and say that they are the described officers of said insurer and attest to the following:

(1) that as of the date of this Annual Report (as noted above), the company has maintained the minimum capital and surplus requirements pursuant to Tenn. Code Ann. § 56-13-105.

(2) the attached schedules, exhibits, and explanations therein contained, annexed or referred to are a full and true statement, in all material respect of the company's financial condition and results of operations, according to the best of their information, knowledge, and belief respectively.

(3) that pursuant to Tenn. Code Ann. § 56-13-109 and Tenn. Comp. R. & Regs. 0780-01-41-.03, the company will will not (check one) file an independently audited financial report, including an actuarial opinion, with the Tennessee Department of Commerce and Insurance on or before June 30 for the period covered by this Annual Report, or alternative filing date of _____ as approved by the Department. NOTE: A company that does not annually file independently audited financial reports must be examined at least every three years. Tenn. Code Ann. § 56-13-109. Companies who file independently audited financial reports must be examined at least every five years.

Original, sworn, and notarized signatures of two officers are required. Tenn. Code Ann. § 56-13-108.

<u>Printed Name: _____</u>	<u>Printed Name: _____</u>
<u>Title: _____</u>	<u>Title: _____</u>

Subscribed to and sworn before me this _____ day of _____.

(seal)

Notary Public

Is this an original filing? yes no

If no,

1. State the amendment #: _____
2. Date filed: _____
3. Number of pages attached: _____

OVERSIGHT DOCUMENT CHECKLIST

Please certify that the following documents are current as filed with the Captive Insurance Section, are new (and attached), or are not applicable at this time for: _____ (Name of Captive Insurance Company) _____

1. Executed agreement between the captive and captive manager. Current as filed New N/A

2. Executed agreement with audit firm. Current as filed New N/A

3. Executed agreement with actuarial firm. Current as filed New N/A

4. Sample policy form(s) used by captive. Current as filed New N/A

5. Minutes and resolutions of all board meetings. Current as filed New N/A

6. Executed reinsurance and/or pooling agreements. Current as filed New N/A

7. Statement of Investment Policy. Current as filed New N/A

8. Code of ethics and certificate of acknowledgement by owners. Current as filed New N/A

9. Conflict of interest policy statement and owner's certificate of acknowledgement.

Current as filed New N/A

To the best of my knowledge, the above documents have either been filed with the Captive Insurance Section (and no changes have been made), are attached hereto, or are not applicable.

Captive Manager

Date

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

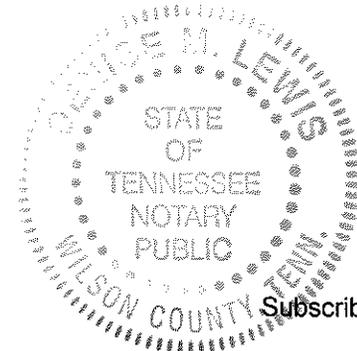
Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/ other authority) on 09/12/2017 (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: 05/10/2017

Rulemaking Hearing(s) Conducted on: (add more dates). 07/26/2017



Date: 9/12/17

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner

Subscribed and sworn to before me on: 9/12/17

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Tennessee Department of Commerce & Insurance

Rule Chapter Number(s): 0780-01-41

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
 Herbert H. Slatery III
 Attorney General and Reporter
9/20/2017
 Date

RECEIVED
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Filed with the Department of State on: 9/22/17

Effective on: 12/21/17

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY: Commerce and Insurance

DIVISION: Tennessee Corrections Institute

SUBJECT: Minimum Standards for Local Correctional Facilities

STATUTORY AUTHORITY: T.C.A. § 41 -4-140(a) provides that the Tennessee Corrections Institute has the power and duty: to establish minimum standards for local jails, lock-ups and workhouses, including, but not limited to, standards for physical facilities and standards for correctional programs of treatment, education and rehabilitation of inmates and standards for the safekeeping, health and welfare of inmates; to establish guidelines for the security of local jails, lock-ups and workhouses for the purpose of protecting the public from criminals and suspected criminals by making the facilities more secure and thereby reducing the chances that a member of the public or a facility employee will be killed or injured during an escape attempt or while an inmate is fleeing from law enforcement officials following an escape; to inspect all local jails, lock-ups, workhouses and detention facilities at least once a year and publish the results of the inspections; and, to establish and enforce procedures to ensure compliance with the adopted minimum standards so as to ensure the welfare of all persons committed to the institutions. T.C.A. § 41 -7-106(c) authorizes the Tennessee Corrections Institute Board of Control to promulgate rules and regulations for the implementation and the effective operation of the agency's responsibilities.

EFFECTIVE DATES: November 30, 2017 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rulemaking hearing rules establish the minimum standards for local correctional facilities, including jails and workhouses. The amendment to

Rule 1400-01-.02 Basic Information adds a new classification type of local correctional facilities (Type IV). Many subsequent amendments in the rules clarify and establish standards for this new classification type of facility. A substantial portion of the amendments to the rules may be considered as housekeeping in nature as the purpose of the changes are to add the terms "only" and "Facilities" throughout all of the rules where the terms are applicable and relevant for clarification in the adopted standards. The amendments also include updating and adding new definitions in Rule 1400-01-.03 Definitions to clarify the following terms: Correctional Employee, Criminal History Check, Flushable Drain, Furnishings, Impartial Disciplinary Officer, Non-facility Support Staff, Physical Force, Sally Port, Special Purpose Cell, Support Employee, Temporary Holding Cell, Trusty, and Type IV Facility. Rule 1400-01-.04 Physical Plant is amended to add the requirements that all facilities be constructed with security grade walls, ceilings, floors, doors, locks, windows and glass glazing in the perimeter and in housing/holding units. Rule 1400-01-.05 Administration/Management is amended to clarify the records, plans, policies and procedures required for the four (4) classifications of facilities (Type I, II, III or IV). Rule 1400-01-.06 Personnel is amended to clarify which job functions can be performed by personnel in Type IV facilities. Rule 1400-01-.07 Security is amended to clarify the requirement that a facility administrator to document weekly meetings to the living activity areas. Rule 1400-01-.08 Discipline is amended to require a disciplinary board or impartial disciplinary officer to preside over disciplinary hearings. Rule 1400-01-.09 Sanitation/Maintenance is amended to include temporary holding areas as an area that must be free of pictures and other objects to prevent fire hazards and hiding places for vermin. Rule 1400-01-.11 Mail and Visiting is amended to require the proper personnel, under the proper authority, to perform strip or body cavity searches of visitors. Rule 1400-01-.13 Medical Services is amended to require a suicide prevention program, approved by the health authority and reviewed by the facility administrator, and a suicide prevention plan to identify specific intake, screening, identification and supervision. Rule 1400-01-.16 Supervision of Prisoners is amended to clarify the

requirement to document each formal count of inmates.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable

No public comments were made at the rulemaking hearing and no written comments were received in the two (2) week open comment period following the hearing.

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.

1. The types and estimated number of small businesses directly affected:

Only small businesses that operate correctional facilities, including jails and workhouses, for a municipal or county government will be affected by the promulgation of these rules. There are relatively few private entities, currently less than five (5), that operate local correctional facilities for a municipal or county government.

2. The projected reporting, recordkeeping, and other administrative costs:

There is no foreseeable alteration in small business reporting or recordkeeping that will result from the promulgation of these rules.

3. The probable effect on small businesses:

Only small businesses that operate correctional facilities, including jails and workhouses, for a municipal or county government will be affected by the promulgation of these rules. The effect is anticipated as minimal.

4. Less burdensome, intrusive, or costly alternative methods:

No recommendations for less burdensome, intrusive or costly alternative methods have been offered, identified or recommended for use.

5. Comparison with federal and state counterparts:

These rules will amend existing Chapter 1400-01, but there is no other comparison to federal or state counterparts.

6. Effect of possible exemption of small businesses:

There are no exemptions to the requirements contained in these rules for 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules will impact local municipal or county governments that operate correctional facilities, including jails and workhouses.

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;

The rules establish the minimum standards for local correctional facilities, including jails and workhouses. The amendment to Rule 1400-01-.02 Basic Information adds a new classification type of local correctional facilities (Type IV). Many subsequent amendments in the rules clarify and establish standards for this new classification type of facility. A substantial portion of the amendments to the rules may be considered as housekeeping in nature as the purpose of the changes are to add the terms "only" and "Facilities" throughout all of the rules where the terms are applicable and relevant for clarification in the adopted standards. The amendments also include updating and adding new definitions in rule 1400-01-.03 Definitions to clarify the following terms: Correctional Employee, Criminal History Check, Flushable Drain, Furnishings, Impartial Disciplinary Officer, Non-facility Support Staff, Physical Force, Sally Port, Special Purpose Cell, Support Employee, Temporary Holding Cell, Trusty, and Type IV Facility. Rule 1400-01-.04 Physical Plant is amended to add the requirements that all facilities be constructed with security grade walls, ceilings, floors, doors, locks, windows and glass glazing in the perimeter and in housing/holding units. Rule 1400-01-.05 Administration/Management is amended to clarify the records, plans, policies and procedures required for the four (4) classifications of facilities (Type I, II, III or IV). Rule 1400-01-.06 Personnel is amended to clarify which job functions can be performed by personnel in Type IV facilities. Rule 1400-01-.07 Security is amended to clarify the requirement that a facility administrator to document weekly meetings to the living activity areas. Rule 1400-01-.08 Discipline is amended to require a disciplinary board or impartial disciplinary officer to preside over disciplinary hearings. Rule 1400-01-.09 Sanitation/Maintenance is amended to include temporary holding areas as an area that must be free of pictures and other objects to prevent fire hazards and hiding places for vermin. Rule 1400-01-.11 Mail and Visiting is amended to require the proper personnel, under the proper authority, to perform strip or body cavity searches of visitors. Rule 1400-01-.13 Medical Services is amended to require a suicide prevention program, approved by the health authority and reviewed by the facility administrator, and a suicide prevention plan to identify specific intake, screening, identification and supervision. Rule 1400-01-.16 Supervision of Prisoners is amended to clarify the requirement to document each formal count of inmates.

- (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;

T.C.A. § 41-4-140(a) provides that the Tennessee Corrections Institute has the power and duty: to establish minimum standards for local jails, lock-ups and workhouses, including, but not limited to, standards for physical facilities and standards for correctional programs of treatment, education and rehabilitation of inmates and standards for the safekeeping, health and welfare of inmates; to establish guidelines for the security of local jails, lock-ups and workhouses for the purpose of protecting the public from criminals and suspected criminals by making the facilities more secure and thereby reducing the chances that a member of the public or a facility employee will be killed or injured during an escape attempt or while an inmate is fleeing from law enforcement officials following an escape; to inspect all local jails, lock-ups, workhouses and detention facilities at least once a year and publish the results of the inspections; and, to establish and enforce procedures to ensure compliance with the adopted minimum standards so as to ensure the welfare of all persons committed to the institutions. T.C.A. § 41-7-106(c) authorizes the Tennessee Corrections Institute Board of Control to promulgate rules and regulations for the implementation and the effective operation of the agency's responsibilities.

- (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;

Any entity that operates correctional facilities, including jails and workhouses, for a municipal or county government will be affected by these rules. The Tennessee Sheriffs' and Police Chiefs' Associations were notified of the rulemaking hearing and were consulted in the preparation of the amendments to the rules.

- (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;

OAG 03-101 (8/19/03), OAG 04-026 (2/12/04), and OAG 11-063 (8/26/11).

(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;

Minimal

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

Beth Ashe, Executive Director of Tennessee Corrections Institute; Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement

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

Beth Ashe, Executive Director of Tennessee Corrections Institute; Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement

(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

Beth Ashe, Executive Director of Tennessee Corrections Institute, 500 James Robertson Parkway, Nashville, TN 37243, beth.ashe@tn.gov (615-741-3816); Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement, 500 James Robertson Parkway, Nashville, TN 37243, joseph.underwood@tn.gov (615-741-3899).

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

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 Phone: 615-741-2650
 Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 09-05-17
 Rule ID(s): 6597
 File Date: 9/11/17
 Effective Date: 11/30/17

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:	Department of Commerce and Insurance
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Revision Type (check all that apply):

- Amendment
 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)

Chapter Number	Chapter Title
1400-01	Minimum Standards for Local Correctional Facilities
Rule Number	Rule Title
1400-01-.02	Basic Information
1400-01-.03	Definitions
1400-01-.04	Physical Plant
1400-01-.05	Administration/Management
1400-01-.06	Personnel
1400-01-.07	Security
1400-01-.08	Discipline
1400-01-.09	Sanitation/Maintenance
1400-01-.10	Food Services
1400-01-.11	Mail and Visiting
1400-01-.12	Inmate Programs and Activities
1400-01-.13	Medical Services
1400-01-.14	Admission, Records, and Release
1400-01-.15	Hygiene
1400-01-.16	Supervision of Inmates
1400-01-.17	Classification

**RULES
OF
THE TENNESSEE CORRECTIONS INSTITUTE
CORRECTIONAL FACILITIES INSPECTION**

**CHAPTER 1400-01
MINIMUM STANDARDS FOR LOCAL CORRECTIONAL FACILITIES**

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1400-01-.01 PREFACE.

- (1) Under the authority of T.C.A. 41-4-140, the Tennessee Corrections Institute is required to establish minimum standards for local jails, lock-ups, workhouses and detention facilities in the state and conduct an annual inspection of each facility.
- (2) Local correctional facilities are the first step in the handling of the arrested offender and in it he receives his first impression of the correctional process. His experience in a county jail or a municipal lock-up facility will be a potent force molding his attitude toward law enforcement officials, the correctional system and the community itself.
- (3) The Board of Control of the Tennessee Corrections Institute hopes that in carrying out the responsibilities of Tennessee Code Annotated 41-4-140, avenues of communication and cohesiveness will be developed with local agencies that will tend to upgrade the correctional system in the State of Tennessee.

Authority: T.C.A. §41-4-140. **Administrative History:** Original rule filed August 8, 1982; effective September 9, 1982. Repeal and new chapter filed June, 1984; effective September 11, 1984.

1400-01-.02 BASIC INFORMATION.

- (1) **Statutory Authority:** The standards contained in this document are authorized pursuant to T.C.A. § 41-4-140 to establish minimum standards for the inspection of local jails, lock-ups, workhouses and detention facilities.
- (2) **Categories Covered by Standards:** The minimum standards established and recorded herein will cover the following categories:
 - (a) Physical Plant
 - (b) Administration/Management
 - (c) Personnel
 - (d) Security
 - (e) Discipline

- (f) Sanitation/Maintenance
 - (g) Food Services
 - (h) Mail and Visiting
 - (i) Inmate Programs and Activities
 - (j) Medical Services
 - (k) Admission Records and Release
 - (l) Hygiene
 - (m) Supervision of Inmates
 - (n) Classification
- (3) Other Standards: Nothing contained in these standards shall be construed to prohibit a city, county, or city and county agency operating a local correctional agency from adopting standards governing its personnel and facility, provided such standards meet or exceed and do not conflict with the standards established and recorded herein. Nor shall these standards be construed as authority to violate any state fire safety standards, building standards or health and safety codes.
- (4) Validity: In determining the application of these minimum facility standards, the Tennessee Corrections Institute Board of Control has enacted the following:
- (a) Standards contained herein shall apply to specific types of local correctional facilities as noted at the end of each standard. For the purpose of this document, primarily adult jails or workhouses which house inmates for over seventy-two (72) hours will be considered Type I; primarily adult jails which house inmates for no more than seventy-two (72) hours will be considered Type II; and primarily adult jails which house inmates ~~between one (1) and no more than twelve (12) hours~~ will be considered Type III. Type III does not include facilities used primarily for fingerprinting, photographing, interviewing or interrogating. A Type IV Facility is a municipal government facility, either permanent or mobile, used for in-processing, booking, fingerprinting, photographing, and bonding, of primarily adults and where they shall be released or transferred to another type of facility within two (2) hours of arrest. A Type IV Facility shall submit a Letter of Assurance to the Tennessee Corrections Institute outlining the facility's intent to adhere to all applicable standards and required time parameters. All types of facilities shall comply with the applicable standards, state law and adopted rules, and the Tennessee Corrections Institute has the authority to inspect all facilities annually to verify compliance and report results of inspections to the Board of Control.
 - (b) Detention facilities shall be classified according to construction date. Facilities constructed after June 2000, shall be considered as new, while facilities constructed prior to or during the month of June 2000, shall be considered existing facilities.
 - (c) An existing facility must meet all applicable standards referring to such facilities and all other applicable standards. A new facility must comply with all applicable standards referring to such facilities and all other applicable standards.
 - (d) Any additions or renovations to existing facilities must comply with all applicable standards for new facilities.
 - (e) The number of inmates awaiting transfer to the Department of Correction penal system may be discounted from any computations used to determine compliance with

standards (2), (3), (4), (5), (6), and (7) of Section 1400-01-.04 Physical Plant under the following conditions:

1. The Governor must have invoked the power of delayed intake pursuant to T.C.A. § 41-1-504(a) (2) and/or a federal or state court has delayed intake into the Department of Correction penal system and,
 2. More than six percent (6%) of the county's total average inmate population over the preceding ninety (90) days in all of its correctional facilities consists of inmates sentenced to the Department of Corrections whose commitments have been delayed pursuant to 1 then,
 3. The number of inmates awaiting transfer to the Department of Correction at a particular facility in excess of six percent (6%) shall not be used in any computations used to determine compliance with the above stated standards.
- (5) **Certification of Facilities:** Facilities that meet all applicable standards as determined by an annual inspection by Tennessee Corrections Institute shall be recommended for certification by the inspecting party or to the Tennessee Corrections Institute's Board of Control during the first board meeting following the completion of the inspection. Facilities that do not meet all applicable standards shall be recommended for non-certification. Facilities whose annual inspections are completed prior to the fifteenth (15th) of the month shall be recommended for certification or non-certification to be effective on the first (1st) day of the month during which the inspection was completed. Facilities whose annual inspections are completed after the fifteenth (15th) of the month shall be recommended for certification or non-certification to be effective on the first (1st) day of the month following the month in which the inspection was completed. The Judicial Cost Accountant in the Office of the Comptroller shall be immediately notified of any proposed change in a facility's status.
- (6) No currently certified local facility shall be decertified if the local government has submitted a plan of action within sixty (60) days of the initial annual inspection that is reasonably expected to eliminate fixed ratio deficiencies in that facility and cause that facility to remain certified.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed March 4, 1988; effective April 18, 1988. Amendment filed April 3, 1988; effective July 27, 1988. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed July 29, 2004; effective November 26, 2004. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.03 DEFINITIONS.

- (1) **Basic Training** - The introductory training provided by the Tennessee Corrections Institute which prepares a facility employee with general and specific knowledge about the detention of inmates in a local facility.
- (2) **Booking** - An official recording of an arrest and the identification of the person, place, time, arresting authority, and the reason for the arrest. It is the procedure for the admission of a person charged with or convicted of an offense, which includes searching, fingerprinting, photographing, medical screening, and collecting personal history data. Booking also includes the inventory and storage of the individual's personal property.
- (3) **Cell Block** - A separate, secure group or cluster of single and/or multiple occupancy cells or detention rooms immediately adjacent and directly accessible to a day or activity room. In some facilities the cell block consists of a row of cells fronted by a dayroom or corridor-like proportion.
- (4) **Censor** - To read communications such as letters to delete material which might be considered harmful to the interests of the organizations, agency or facility.

- (5) Chemical Agent - An active substance, such as pepper spray, used to deter acts that might cause personal injury or property damage.
- (6) Classification - A process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and programs according to their needs and existing resources.
- (7) Clear Floor Space - Floor space that is free of obstructions such as bunks, showers, commodes, and lavatories.
- (8) Contraband - An item that has not been approved for possession or use by inmates or detainees by those legally charged with the responsibility for administration and operation of the facility.
- (9) Control Center - A very secure, self-contained unit designed to maintain the security of the facility. Policies governing the design, staffing, and accessibility of the control center should ensure that it cannot be commandeered by unauthorized persons.
- (10) Correctional Employee - Full and part time employees on the facility payroll, or reserve personnel, whose primary duties include the industry, custody, or treatment of prisoners.
- (11) Criminal History Check - An informational inquiry through the NCIC Database (FBI/TBI) regarding a detainee's or inmate's background to identify conviction history for housing classification purposes as well as the presence of any outstanding victim notifications, warrants, wants, or detainers through local and federal indices. A Criminal History Check as it relates to correctional employees is an informational inquiry through the NCIC Database to determine the suitability for employment in a correctional setting.
- ~~(102) Corporal Punishment - Physical punishment, as distinguished from pecuniary punishment, inflicted on the body of an inmate or detainee for the purpose of interrupting an impermissible act or deterring undesirable behavior. Any act of inflicting punishment directly on the body, causing pain or injury.~~
- ~~(113) Daily Log - A record of all significant activities that take place during the course of a day.~~
- ~~(124) Dayroom - A secure area directly adjacent to inmate living area, to which inmates may be admitted for activities such as bathing, exercise, recreation and dining. Spaces originally designed for circulation, such as corridors, are not dayrooms.~~
- ~~(135) Detainee - A person confined in a local facility not serving a sentence for a criminal offense.~~
- ~~(146) Detainer - A writ or instrument, issued or made by a competent officer, authorizing the keeper of a prison/jail to keep in his custody a person therein named.~~
- ~~(157) Detention - The confinement of an inmate in a secure area (usually pretrial inmates).~~
- ~~(168) Detention Facility - A confinement facility, usually operated by a local law enforcement agency, which holds persons detained pending adjudication and/or persons committed after adjudication.~~
- ~~(179) Detention Officer - A person who is employed or authorized to detain or guard inmates. See Correctional Employee.~~
- ~~(1820) Disciplinary Action - An action taken upon an inmate that is intended to correct or discipline.~~
- ~~(1921) Disciplinary Hearing - A non-judicial administrative procedure to determine if substantial evidence exists to find an inmate guilty of a rule violation.~~

- (202) Disciplinary Report - An account, or announcement that is prepared, presented or delivered, usually in formal or organized form based on the possibility of a rule violation.
- (243) Disciplinary Segregation - A form of separation from the general population in which inmates who committed serious violations of conduct regulations are confined for short periods of time to individual cells separated from the general population by the disciplinary committee or other authorized group. Placement in disciplinary detention may only occur after a finding of a rule violation at an impartial hearing and when there is not an adequate alternative disposition to regulate the inmate's behavior.
- (224) Document - To support with written sources.
- (235) Due Process Guarantees - Those procedures that ensure just, equal, and lawful treatment of an individual involved in all stages of the criminal justice system, such as a notice of allegations, impartial and objective fact finding, a written record of the proceedings, a statement of any disposition ordered with the reasons for it, and the right to confront accusers, call witnesses, and present evidence.
- (246) Existing Facility - Detention facility built prior to or during the month of June 2000.
- (257) Facility Administrator - An official who has primary responsibility for managing and operating a local detention facility.
- (268) Flushable Drain - A pipe or channel which is cleaned by a rapid, brief gush of water which can be mechanically operated from outside the cell.
- (279) Foot-candle - A unit for measuring the intensity of illumination; the amount of light thrown on a surface one foot away from the light source.
- (2830) Furnishings - Applies to all living quarters. Includes and includes, but is not limited to, draperies, curtains, furniture, mattresses and bedding, upholstered or cushioned furniture, wastebaskets, decorations, and similar materials that can burn.
- (2931) General Population - A group of individuals confined in an institution who have no institutional restrictions on them, such as segregation.
- (302) Grievance/Grievance Process - A circumstance or action considered to be unjust and grounds for complaint or resentment and/or a response to that circumstance in the form of a written complaint filed with the appropriate body.
- (313) Health/Medical Screen - A structured inquiry and observation to prevent newly-arrived offenders who pose a health and safety threat to themselves or others from being admitted to the general population and to identify offenders who require immediate medical attention. The screen can be initiated at the time of admission by health care personnel or by a health-trained correctional officer.
- (324) Housing Area - A high-security, medium-security, or low-security cell or room, excluding holding, detoxification, infirmary, and segregation cells or rooms.
- (35) Impartial Disciplinary Officer - An officer appointed by facility administration to the disciplinary review board who is responsible for conducting disciplinary hearings. In order to maintain impartiality, the designated disciplinary officer must not have any connection or involvement to the incident requiring the disciplinary hearing.
- (336) Informed Consent - The agreement by a patient to a treatment, examination, or procedure after the patient receives the material facts regarding the nature, consequences, risks, and alternatives concerning the proposed treatment, examination, or procedure.
- (347) Inmate - A person, whether in pretrial, un-sentenced, or sentenced status, who is confined in

- (358) In-Service Training - Training which is given to an employee on an annual basis to reinforce or add to his basic training.
- (369) Jail - A confinement facility, usually operated by a local law enforcement agency, which holds persons detained pending adjudication and/or persons committed after adjudication. Jails, while intended for the confinement of adults, may also confine juveniles.
- (3740) Jailer - A person who is charged by an institution to detain or guard inmates.
- (3841) Library Service - A service that provides reading materials for convenient use; circulation of reading materials; service to help provide users with library materials, educational and recreational materials, or a combination of these services.
- (3942) Medical Records - Records of medical examinations and diagnoses maintained by the responsible medical provider for each inmate separate from the inmate's file. Medical records shall include the date and time of the medical examination and copies of standing or direct medical orders from the physician.
- (403) Medication Receipt System - A method that accounts for the administering of medications.
- (414) Menu Pattern - The outline of food items to be included in each meal.
- (425) Monitor - To keep watch over, supervise.
- (436) New Facility - Detention facility built after June 2000.
- (47) Non-Facility Support Staff - Staff not on the facility payroll who work for or volunteer through an agency outside the local correctional facility who have regular or daily contact with inmates. Volunteers, contractors, professionals, health care personnel, clergy, etc. are examples of persons labeled as non-facility support staff.
- (448) Physical Force - Any use of firearms, chemical agents, clubs or other devices in controlling an inmate. Also, any situation which requires an officer to "lay hands" on make physical contact with an inmate or the use of physical force used which subjects an inmate to pain, discomfort or physical incapacitation.
- (459) Physical Plant - A building, set of buildings, portion of a building, or area that is used for the lawful custody and/or treatment of individuals.
- (4650) Plan of Action - A written plan that will eliminate or correct deficiencies noted in the annual inspection.
- (4751) Potentially Hazardous Food - Any food that consists, in whole or in part, of milk or milk products, eggs, meat, poultry, fish, shellfish, edible Crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. This does not include clean, whole, un-cracked, odor-free shell eggs, foods which have a pH level of 4.6 or below, or a water activity (aw) value of 0.85 or less.
- (4852) Pre-Service Orientation - Training accomplished prior to assignment of duty, which is intended to familiarize new employees with the operations of the particular jail to which they are to be assigned.
- (4953) Preventative Maintenance - A system designed to enhance the longevity and/or usefulness of buildings or equipment in accordance with a planned schedule.
- (504) Range of Sanctions - The various penalties for noncompliance of rules specified by the

- (515) Receiving Area - The point of inmate entry into a jail or detention facility where an inmate undergoes admission processing, which may include orientation and initial classification prior to regular assignment to the housing area.
- (526) Receiving Screening - An observation/initial health assessment to identify newly-arrived inmates who pose a health or safety threat to themselves or others.
- (537) Regular Access - The documented number of hours an inmate may utilize additional living space available as described by facility policy.
- (548) Sally Port - An enclosure situated either in the perimeter wall or fence of the facility or within the interior of the facility, containing gates or doors at both ends, only one of which opens at a time ~~This method of entry and exit and~~ ensures there will be no breach in the perimeter or interior security of the facility.
- (559) Security Devices - Locks, gates, doors, bars, fences, screens, ceilings, floors, walls, and barriers used to confine and control inmates. Also, electronic monitoring equipment, security alarm systems, security light units, auxiliary power supply, and other equipment used to maintain facility safety.
- (5660) Security Perimeter - Outer portions of a facility which provide for secure confinement of inmates. This perimeter may vary for individual facilities, depending upon their security classification.
- (5761) Segregation - Confinement of an inmate to an individual cell separated from the general population.
- (5862) Sick Call - A function which provides inmates the opportunity to receive required medical attention.
- (63) Special Purpose Cell - A cell used for the short term detention of persons under the influence of intoxicants until they are cleared by medical personnel for release or transfer to another detention or medical facility.
- (5964) Strip Search - Examination of an inmate's naked body for weapons, contraband, and physical abnormalities and includes a thorough search of all of the individual's clothing while it is not being worn.
- (605) Structural Projections - Some part of the construction that protrudes with sharp or pointed edges.
- (66) Support Employee - Full and part time employees on the facility payroll, or reserve personnel who have periodic but minimal contact with inmates.
- (67) Temporary Holding Cell - A cell used to detain a person for minimal periods of time until cleared to transition to general population or transfer to another facility.
- (648) Trusty - An inmate, usually in a minimum security classification, who is responsible for performing various maintenance tasks under supervision in a jail. May also be referred to as "Trustee"
- (629) Type I Facility - A detention facility housing primarily adults for more than seventy-two (72) hours.
- (6370) Type II Facility - A detention facility housing primarily adults for not more than seventy-two (72) hours.
- (6471) Type III Facility - A detention facility ~~where persons~~ housing primarily adults that are detained

~~between one (1) and up to no more than~~ twelve (12) hours and does not include detention facilities used primarily for fingerprinting, photographing, interviewing or interrogating.

(72) Type IV Facility - A municipal government facility, permanent or mobile, used for in-processing, booking, fingerprinting, photographing, and bonding of arrestees and where an arrestee shall be released or transferred to another type of facility within two (2) hours of arrest.

(6573) Unencumbered Space - Usable space that is not encumbered by furnishings or fixtures. In determining unencumbered space in the area, the total square footage is obtained and the square footage of fixtures and equipment is subtracted. All fixtures and equipment must be in operable position.

(6674) Work Stoppage - A halt by those employed by the facility; usually refers to a strike.

(6775) Workhouse - A county detention facility operated by or for a county which holds primarily sentenced, minimum security inmates.

(6876) Working Inmate - An inmate who has been screened, selected, and assigned to a formal jail work program (occurring within the security area of the jail, or external to the jail). This includes those inmates who are taken out by various persons/agencies to work offsite (for example, a county employee comes to the jail each day to take a group of inmates to work at a recycling center).

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed March 4, 1988; effective April 18, 1988. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed July 29, 2004; effective November 26, 2004. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.04 PHYSICAL PLANT.

(1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.

(12) ~~All types of f~~Facilities shall meet the following requirements:

- (a) New and existing facilities shall have, on average, lighting of at least twenty (20) foot candles in activity areas to be measured three (3) feet off the floor.
- (b) New and existing facilities shall have forced air ventilation in sleeping and activity areas.
- (c) New facilities shall have access to natural light in sleeping and activity areas.
- (d) New and existing facilities shall have a temperature of not less than sixty-five (65) degrees Fahrenheit and not more than eighty (80) degrees Fahrenheit in sleeping and activity areas.
- (e) New facilities shall have lighting of not less than five (5) average foot-candles in sleeping areas to be measured three (3) feet off the floor.

~~Applies~~These requirements apply only to Types I, II, and III Facilities.

(23) In new and existing facilities, the minimum size of a single-occupancy cell shall be thirty-five (35) square feet of clear floor space with a ceiling height of not less than eight (8) feet. At least seventy (70) square feet of total floor space shall be provided when the occupant is confined for more than ten (10) hours per day. All dimensions of cell length and width for both single and multiple-occupancy cells shall allow for a reasonable amount of usable floor space for any in-cell activities of inmates. Each cell shall contain a bunk, ~~water closet and lavatory~~

sink and toilet. Any questions pertaining to sufficiency of cell dimensions shall be decided by the Tennessee Corrections Institute.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (34) In new and existing facilities, the minimum size of a multiple-occupancy cell (2-64 occupants) shall be twenty-five (25) square feet of clear floor space for each occupant in the sleeping areas, with a ceiling elevation of not less than eight (8) feet. At least thirty-five (35) square feet of clear floor space shall be provided for each occupant when the occupant is confined for more than ten (10) hours per day.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (45) In new jails and workhouses, dormitories shall be designed to accommodate not more than sixty-four (64) persons. A minimum of twenty-five (25) square feet of clear floor space for each inmate must be provided in the housing area with a ceiling elevation of not less than eight (8) feet.

In existing jails and workhouses, dormitories shall provide not less than twenty-five (25) square feet of floor space per occupant, exclusive of the area occupied by bunks, and a ceiling height of not less than eight (8) feet. If an inmate who occupies a dormitory has regular access to additional living areas, the additional area may be added on a pro rata basis to the square footage available to an inmate.

A dayroom is required with thirty-five (35) square feet per inmate for the maximum number of users at one time.

~~Applies~~ This requirement applies only to Type I Facilities.

- (56) New facilities shall have a dayroom for each cell block or cluster of cells, which has a minimum of thirty-five (35) square feet of floor space per inmate.

Existing facilities are not required to provide dayrooms.

~~Applies~~ This requirement applies only to Type I Facilities.

- (67) Inmates, including those in medical housing units or infirmaries, shall have access to toilets and ~~washbasins~~ sinks with temperature-controlled hot and cold running water twenty-four (24) hours per day. All facilities shall provide operable toilets and ~~washbasins~~ sinks to inmates on a ratio of at least one (1) toilet and ~~washbasin~~ sink to every twelve (12) male inmates and one (1) toilet and ~~washbasin~~ sink for every eight (8) female inmates and one (1) toilet and ~~washbasin~~ sink accessible to occupants of any single-occupancy cell without their having to leave their cell. Urinals may be substituted for up to one-half of the toilets in male facilities. Inmates shall be able to use toilet facilities without staff assistance when they are confined in their cells/sleeping areas. All new facilities constructed after January 1, 2015 shall be required to provide an unbreakable toilet, ~~washbasin or water closet~~ and sink in maximum security areas.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (78) Jails shall have at least one (1) operable shower for every sixteen (16) inmates, which shall be accessible to inmates without their having to leave their cell block.

Workhouses shall have at least one (1) operable shower for every sixteen (16) inmates, which shall be accessible to inmates on a daily basis.

~~Applies~~ This requirement applies only to Type I and II Facilities.

- (89) New facilities shall have at least one (1) single cell for the separation and control of problem inmate(s). The cell shall conform to the single-occupancy cell dimensions and shall have, at a

minimum:

- (a) High security light fixture;
- (b) ~~Unbreakable water-closet toilet and lavatory sink~~ with control valve located outside the cell;
- (c) Forced air ventilation; and,
- (d) Concrete bed, a minimum of twelve (12) inches off of the floor and no higher than sixteen (16) inches off of the floor, with rounded edges.

The cell shall contain no structural projections or furnishings that would allow the inmate to harm himself/herself. The cell shall be located to allow continuous monitoring by detention officers.

~~Applies~~ These requirements apply only to Types I, II, and III Facilities.

- (910) (a) All facilities shall have at least one (1) special purpose cell for males and one (1) special purpose cell for females to provide for the temporary detention of persons under the influence of intoxicants. The special purpose or temporary holding cells shall conform to multiple-occupancy cell dimensions and capacity. These cells shall have, at a minimum:
- 1. Flushable drain or ~~unbreakable water-closet toilet and lavatory sink~~;
 - 2. High security light fixture;
 - 3. Forced air ventilation; and,
 - 4. No structural projections.
- (b) New facilities shall also provide a concrete bed in the special purpose cell, a minimum of twelve (12) inches off of the floor and no higher than sixteen (16) inches off of the floor with rounded edges.
- (c) In new facilities, this cell shall be located so as to allow continuous monitoring by detention officers.
- (d) The requirement for one (1) special purpose cell applies only to facilities that have construction plans reviewed and approved by the Tennessee Corrections Institute after June 1, 2000. The requirement for two (2) special purpose cells applies to plans reviewed and approved after January 1, 2015.

~~Applies only to Types I, II, and III~~

- (101) New facilities shall provide space inside the security perimeter, separate from inmate living areas and administrative offices, for inmate processing as inmates are received and discharged from the facility. This space shall have the following components:
- (a) Pedestrian and/or vehicle sally port;
 - (b) Telephone facilities for inmate use;
 - (c) Temporary holding rooms which have fixed benches to seat inmates; and,
 - (d) A shower, toilet and washbasin sink.

Existing facilities shall provide space where inmates are received, searched, showered, and issued clothing (if provided by the facility) prior to assignment to the living quarters.

~~Applies~~ These requirements apply only to Types I and II Facilities.

- (142) Provisions shall be made for a visiting area which shall allow each inmate at least one (1) hour of visitation each week.

~~Applies~~ This requirement applies only to Type I Facilities.

- (123) Provisions shall be made for a private interview room for the use of attorneys and for interrogation of inmates by law enforcement agencies.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (134) New facilities shall have at least one (1) multi-purpose room for conducting programs and for inmate exercise.

~~Applies~~ This requirement applies only to Type I Facilities.

- (145) New facilities shall provide a secure outdoor recreation area with dimensions of at least nine hundred (900) square feet. Covered/enclosed exercise areas in facilities where less than one hundred (100) inmates utilize one recreation area shall have fifteen (15) square feet per inmate for the maximum number of inmates expected to use the space at one time, but not less than five hundred (500) square feet of unencumbered space.

~~Applies~~ This requirement applies only to Type I Facilities.

- (156) Facilities shall have space where a physician may conduct sick call, examine patients in privacy and render routine medical treatment.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (167) Facilities shall have a secure control center, manned twenty-four (24) hours per day, through which telephone and other communications are channeled. The location of the control center shall provide good visibility or be equipped with a monitoring device. The control center shall monitor the operation of various systems, including fire alarm, smoke and thermal detection, public address, radio and other mechanical and electrical systems as warranted.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (178) Access to potable water shall be located in all housing areas. In existing facilities, if the water from washbasins sinks is potable, drinking cups must be made available.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (189) Facilities shall have an emergency power source of sufficient capacity to operate security and evacuation electrical devices and equipment and to provide minimum lighting within the facility and its perimeter at times of power failure. The power source shall be checked for functional readiness quarterly and the dates logged.

~~Applies to Types I, II, and III.~~

- (4920) Facilities shall be constructed with correctional security grade walls, ceilings, floors, doors, locks, windows and glass glazing throughout the security perimeter and inmate housing or holding units. Facilities shall provide that any electric locks have the capability for manual operation.

~~Applies to Types I, II, and III.~~

- (201) Facilities shall have exit signs at each exit which are distinctly marked and continuously illuminated. Exits shall be kept clear and in usable condition to insure the timely evacuation

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (212) Facilities shall have documentation of compliance with applicable sanitation and fire safety standards.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (223) All kitchens, dining rooms, multiple toilet areas and corridors shall contain operable floor drains.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (234) Facilities shall have cells to accommodate the facility's classification plan. Facilities that house males and females, and juveniles and adults shall have provisions to separate accordingly. Such provisions shall not allow physical contact or sight and sound communication. Provisions shall also be made to separate minimum, medium, and maximum security inmates.

~~Applies to Types I, II, and III.~~

- (245) Plans for any new facility to be built and for any existing facility to be renovated shall be in compliance with minimum standards recorded herein and be submitted to the Tennessee Corrections Institute for review and the State Fire Marshal's Office for review and approval pursuant to Tenn. Comp. R. & Regs 0780-02-03.

Plans for the construction of any new facility and the renovation of any existing facility shall state whether the facility's function will be for temporary holding or for permanent confinement of inmates. The facility's primary function may encompass both of these functions.

A plan for operating the facility shall be developed in the initial stages of planning the facility so that the facility can be designed around the operating plan, rather than the reverse. This approach will contribute to the simplification of design and effective use of operating controls.

~~Applies to Types I, II, and III.~~

- (256) Any temporary inmate housing shall meet all standards for existing facilities. Temporary housing for inmates shall not be in use for more than eighteen (18) months unless an extension is approved by the Tennessee Corrections Institute Board of Control.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed March 4, 1988; effective April 18, 1988. Amendment filed April 23, 1990; effective July 29, 1990. Amendment filed December 10, 1992; effective March 31, 1993. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed July 29, 2004; effective November 26, 2004. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.05 ADMINISTRATION/MANAGEMENT.

- (1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified

- (42) Facilities shall maintain fiscal records which clearly indicate the total cost for operating the facility according to generally accepted accounting principles. Such records shall have an itemized breakdown of the total operating expenses, such as wages and salaries, food, and operating supplies.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (23) Facilities shall maintain written policies and procedures governing the facility's operations. The policies and procedures shall be reviewed at least annually and updated as needed. These policies and procedures shall be approved by the sheriff, chief, or warden and shall be made available to all facility employees.

~~Applies to Types I, II, and III.~~

- (34) Facilities shall maintain written plans developed in advance for dealing with emergencies such as escape, inmate disturbances, assaults on facility employees, hostage taking, and emergency evacuation plans. The written plans shall be incorporated into the facility's manual. Each facility employee shall be familiar with these plans.

~~Applies to Types I, II, and III.~~

- (45) Facilities shall maintain a written policy and procedure to provide for fire drills every three (3) months for all staff members on every shift and document dates of said drills.

~~Applies to Types I, II, and III.~~

- (56) Facility administrators shall develop a list of articles and materials that shall be allowed in the cell area. Inmates shall be informed of this list upon admission.

~~Applies~~This requirement applies only to Types I and II Facilities.

- (67) Facilities shall have a written and graphic evacuation plan posted in the housing area, as well as any other specified locations. The plan shall be approved by a contractor or local fire inspector trained in the application of fire safety codes and shall be reviewed annually by facility administration to ensure accuracy.

~~Applies to Types I, II, and III.~~

- (78) Written policy and procedure shall ensure that inmates shall not be subjected to discrimination based on race, national origin, color, creed, sex, economic status or political belief. When both males and females are housed in the same facility, available services and programs shall be comparable.

~~Applies~~This requirement applies only to Types I and II Facilities.

- (89) A facility preventative maintenance and repair program shall be in place. All equipment shall be in working order. Safety and security equipment shall be repaired or replaced without undue delay. The use of padlocks and/or chains to secure inmate cells or housing area doors is prohibited.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (910) All equipment shall be in working order. Safety and security equipment shall be repaired or replaced without undue delay. The use of padlocks and/or chains to secure inmate cells or housing area doors is prohibited.

~~Applies to Types I, II, and III.~~

- (101) Each facility relying on regular access to additional living space to comply with minimum cell size requirements under Tenn. Comp. R. & Regs. 1400-01-.04 shall maintain a written policy regarding the number of hours of access to additional living space outside an inmate's cell that inmates will be allowed. This policy should take into consideration any relevant factors regarding inmates, including but not limited to inmate classifications. Records shall be

maintained on the number of hours per day inmates have access to additional living areas in such facilities.

~~Applies~~This requirement applies only to Types I and II Facilities.

- (142) Facilities shall provide an inmate grievance procedure to all inmates. The grievance procedure must include at least one (1) level of appeal.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

Authority: T.C.A. Authority; T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed July 29, 2004; effective November 26, 2004. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.06 PERSONNEL.

- (1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.

- (12) A criminal ~~record~~history check shall be conducted on all new facility employees, service providers with continuous access to restricted areas, contractors, and volunteers prior to their assuming duties to identify if there are criminal convictions that have a specific relationship to job performance. This criminal ~~record~~history check includes comprehensive identifier information to be collected and run against law enforcement indices. If suspect information on matter with potential terrorism connections is returned on the person, this information shall be forwarded to the local Joint Terrorism Task Force (JTTF) or other similar agency.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (23) Facilities shall develop a personnel policy manual made available to each employee, and which provides information on the following subjects:

- (a) Description of organizational structure;
- (b) Position descriptions;
- (c) Personnel rules and regulations;
- (d) Recruitment procedures;
- (e) Equal employment opportunity provisions;
- (f) Work hours;
- (g) Personnel records;
- (h) Employee evaluation;
- (i) In-Service training;
- (j) Hostage policy; and;
- (k) Use of force.

~~Applies~~These requirements apply only to Type I Facilities.

- (34) Prior to assuming duties, all detention facility employees, support employees and non-facility support staff shall receive orientation training regarding the functions and mission of the facility under the supervision of a qualified detention officer. This training may be

accomplished through classroom instruction, supervised on-the-job training, an individual review of policies and procedures, or any combination of the three and shall include:

- (a) Facility policies and procedures;
- (b) Suicide prevention;
- (c) Use-of-force;
- (d) Report writing;
- (e) Inmate rules and regulations;
- (f) Key control;
- (g) Emergency plans and procedures;
- (h) Cultural diversity;
- (i) Communication skills; and,
- (j) Sexual misconduct.

Applies These requirements apply only to Types I, II, and III Facilities.

- (45) A Facility Training Officer (FTO) shall coordinate the staff development and training program. This person shall have specialized training for that position (assigned as a primary or additional duty). The FTO shall complete the Training the Trainer (3T) course and attend the annual FTO Conference conducted by the Tennessee Corrections Institute.

Applies This requirement applies only to Types I, II, and III Facilities.

- (56) All support employees who have minimal inmate contact shall receive at least sixteen (16) hours of facility training during their first year of employment. All employees in this category shall receive an additional sixteen (16) hours of facility training each subsequent year of employment.

Applies This requirement applies only to Types I, II, and III Facilities.

- (67) All non-facility support staff who have regular or daily inmate contact, shall receive a minimum of four (4) hours continuing annual training, which may include:

- (a) Security procedures and regulations;
- (b) Supervision of inmates;
- (c) Signs of suicide risk;
- (d) Suicide precautions;
- (e) Use-of-force regulations and tactics;
- (f) Report writing;
- (g) Inmate rules and regulations;
- (h) Key control;
- (i) Rights and responsibilities of inmates;

- (j) Safety procedures;
- (k) All emergency plans and procedures;
- (l) Interpersonal relations;
- (m) Social/cultural lifestyles of the inmate population;
- (n) Cultural diversity;
- (o) CPR/first aid;
- (p) Counseling techniques;
- (q) Sexual harassment/sexual misconduct awareness;
- (r) Purpose, goals, policies, and procedures for the facility and the parent agency;
- (s) Security and contraband regulations;
- (t) Appropriate conduct with inmates;
- (u) Responsibilities and rights of employees;
- (v) Universal precautions;
- (w) Occupational exposure;
- (x) Personal protective equipment;
- (y) Bio-hazardous waste disposal; and;
- (z) Overview of the correctional field.

~~Applies~~ These requirements apply only to Types I, II, and III Facilities.

- (78) All detention or correctional facility employees, including part-time employees, whose primary duties include the industry, custody, or treatment of inmates shall be required during the first year of employment to complete a basic training program consisting of a minimum of forty (40) hours and provided or approved by the Tennessee Corrections Institute.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (89) All detention or correctional facilities employees, including part-time employees, whose primary duties include the industry, custody, or treatment of inmates shall be required to complete an annual in-service program designed to instruct them in specific skill areas of facility operations. This annual in-service shall consist of forty (40) hours with at least sixteen (16) of these hours provided or approved by the Tennessee Corrections Institute. The remaining twenty-four (24) hours may be provided by the facility if course content is approved and monitored by the Tennessee Corrections Institute.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (910) A minimum number of hours of training and any additional courses for basic and in-service training shall be in compliance with the requirements established by the Tennessee Corrections Institute Board of Control.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (101) All facility employees who are authorized to use firearms and less lethal weapons shall

receive basic and ongoing in-service training in the use of these weapons. Training shall include decontamination procedures for individuals exposed to chemical agents. All such training shall be recorded with the dates completed and kept in the employee's personnel file.

~~Applies~~This requirement applies only to Types I and II Facilities.

- (14~~2~~) Facilities shall maintain records on the types and hours of training completed by each correctional employee, support employee and non-facility support staff.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (13) Tennessee P.O.S.T. certified officers may perform the basic functions outlined within the standards, if the correctional facility has been approved as a Type IV facility by the Tennessee Corrections Institute Board of Control. Any employee who does not possess or maintain a P.O.S.T. Certification as specified in this rule, shall be required to comply with all training and reporting standards outlined within the minimum jail standards and policy contained in Tenn. Comp R. & Regs. 1400-06. Under no circumstances shall any employee of a correctional facility be allowed to perform correctional functions without possessing a valid Tennessee P.O.S.T. Certification (for Type IV Facility) or certification from the Tennessee Corrections Institute (All Facilities) as it relates to the duties of a correctional employee.

This requirement applies only to Type IV Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new chapter filed June 29, 1984; effective September 11, 1984. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-07 SECURITY.

- (1) Types I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.

- (4~~2~~) Each newly admitted inmate shall be thoroughly searched for weapons and other contraband immediately upon arrival in the facility, regardless of whether the arresting officer previously conducted a search.

~~Applies to Types I, II, and III.~~

- (2~~3~~) A record shall be maintained on a search administered to a newly admitted inmate.

~~Applies to Types I, II, and III.~~

- (3~~4~~) Facilities shall maintain policy and procedures to require that all inmates, including trustees, shall be searched thoroughly by detention officers when the inmates enter and leave the security area.

~~Applies~~This requirement applies only to Type I Facilities.

- (4~~5~~) Facilities shall maintain a written policy and procedure to provide for searches of the facilities and inmates to control contraband.

~~Applies~~This requirement applies only to Type I Facilities.

- (5~~6~~) Procedure shall differentiate between the searches allowed (orifice, pat, or strip) and identify when these shall occur and by whom such searches may be conducted. All orifice searches shall be done under medical supervision. Inmates shall be searched by facility employees of the same sex, except in emergency situations.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (67) Facilities shall maintain a written policy and procedure for key control, including the inventory and use of keys, and the operator of the control center shall have knowledge of who has the keys in use and the location of duplicate keys. All day-to-day operations shall be centralized and controlled through the control center.

~~Applies~~ This requirement applies only to Types I Facilities.

- (78) There shall be one (1) full set of well-identified keys, other than those in use, secured in a place accessible only to facility personnel for use in the event of an emergency. These keys shall be easily identifiable by sight and touch under adverse conditions.

~~Applies to Types I~~

- (89) Written policy and procedures shall govern the availability, control, inventory, storage, and use of firearms, less-lethal weapons, and related security devices, and specify the level of authority required for their access and use. Chemical agents and electrical disablers shall be used only with the authorization of the facility administrator or designee. Access to storage areas shall be restricted to authorized facility employees and the storage space shall be located in an area separate from and apart from inmate housing or activity areas. A written report shall be submitted to the facility administrator when such weapons are used.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (910) Facilities shall develop a written policy and procedure to require that firearms, chemical agents, and related security and emergency equipment are inventoried and tested at least quarterly to determine the condition and expiration dates. This written policy and procedure shall provide for regular inspection of ABC type fire extinguishers, smoke detectors, and other detection and suppression systems.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (101) All tools, toxic, corrosive and flammable substances and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area. Tools, supplies and equipment which are particularly hazardous shall be used by inmates only under direct supervision.

~~Applies~~ This requirement applies only to Types I and II Facilities.

- (112) Facilities shall develop a written policy and procedure to require at least weekly inspection of all security facilities and documentation of the dates of inspections.

~~Applies~~ This requirement applies only to Types I and II Facilities.

- (123) Facilities shall develop a written policy and procedure to provide for continuous inspection, inventory, and maintenance of all locks, tools, kitchen utensils, toxic, corrosive, and flammable substances and other potentially dangerous supplies and equipment.

~~Applies~~ This requirement applies only to Type I Facilities.

- (134) Facilities shall develop a written plan that provides for continuing operations in the event of a work stoppage or other job action. Copies of this plan shall be available to all supervisory personnel who are required to familiarize themselves with it.

~~Applies~~ This requirement applies only to Type I Facilities.

- (145) Detention officer posts shall be located in close proximity to inmate living areas to permit officers to see or hear and respond promptly to emergency situations. There shall be written orders for every detention officer duty and post.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (156) The facility administrator or designee shall visit the facility's living and activity areas at least weekly which shall be documented.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (167) The ~~facility~~security perimeter shall ensure that inmates are secured and that access by the general public without proper authorization is denied.

~~Applies to Types I, II, and III.~~

- (178) All inmate movement from one area to another shall be controlled by facility employees.

~~Applies to Types I, II, and III.~~

- (189) Facility employees shall maintain a permanent log and prepare shift reports that record routine information, emergency situations, and unusual incidents.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (192) Facilities shall have sufficient staff, including a designated supervisor, to provide, at all times, the performance of functions relating to the security, custody, and supervision of inmates as needed to operate the facility in conformance with the standards.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (201) Restraint devices shall never be applied as punishment. Facilities shall define circumstances under which supervisory approval is needed prior to application.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (242) Four/five-point restraints shall be used only in extreme instances and only when other types of restraints have proven ineffective. Advance approval shall be secured from the facility administrator/ designee before an inmate is placed in a four/five-point restraint. Subsequently, the health authority or designee shall be notified to assess the inmate's medical and mental health condition, and to advise whether, on the basis of serious danger to self or others, the inmate should be in a medical/mental health unit for emergency involuntary treatment with sedation and/or other medical management, as appropriate. If the inmate is not transferred to a medical/mental health unit and is restrained in a four/five-point restraint, the following minimum procedures shall be followed:

- (a) Continuous direct visual observation by facility employees prior to an assessment by the health authority or designee;
- (b) Subsequent visual observation is made at least every fifteen (15) minutes;
- (c) Restraint procedures are in accordance with guidelines approved by the designated health authority; and
- (d) Documentation of all decisions and actions.

~~Applies~~These requirements apply only to Types I, II, and III Facilities.

- (223) The use of firearms shall comply with the following requirements:

- (a) A written policy and procedure that governs the availability, control, and use of chemical agents and firearms;
- (b) Firearms, chemical agents, and related security and emergency equipment are

- (c) Weapons are subjected to stringent safety regulations and inspections;
- (d) A secure weapons locker is located outside the secure perimeter of the facility;
- (e) Except in emergency situations, firearms and authorized weapons are permitted only in designated areas to which inmates have no access;
- (f) Facility employees supervising inmates outside the facility perimeter follow procedures for the security of weapons;
- (g) Facility employees are instructed to use deadly force only after other actions have been tried and found ineffective, unless the employee believes that a person's life is immediately threatened;
- (h) Facility employees on duty use only firearms or other security equipment that has been approved by the facility administrator;
- (i) Appropriate equipment is provided to facilitate safe unloading and loading of firearms; and;
- (j) A written report shall be submitted to the facility administrator when such weapons are used.

Applies These requirements apply only to Types I, II, and III Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed July 2, 1985; effective October 14, 1985. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.08 DISCIPLINE.

- (1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.
- (42) Facilities shall maintain policies and procedures to insure that written or electronic facility rules along with the corresponding range of sanctions for rule violations and disciplinary procedures to be followed shall be provided to each inmate during the booking process prior to being placed into the general population. A record shall be maintained of this transaction. Socially, mentally, or physically impaired inmates shall be assisted by facility employees in understanding the rules. The rules and regulations shall be available for viewing during confinement and shall be translated into those languages spoken by a significant number of inmates.

Applies This requirement applies only to Type I Facilities.

- (23) Disciplinary reports shall be prepared by facility employees and must include, but are not limited to, the following information:
 - (a) Names of persons involved;
 - (b) Description of the incident;
 - (c) Specific rule(s) violated;
 - (d) Employee or inmate witnesses;

- (e) Any immediate action taken, including use of force; and;
- (f) Reporting staff member's signature, date and time report is made.

~~Applies~~ This requirement applies only to Type I Facilities.

- (34) Facilities shall maintain written policies and procedures governing disciplinary actions, administrative actions, and criminal offenses. Each county is required by T.C.A § 41-2-111 to have a disciplinary review board.

~~Applies~~ This requirement applies only to Type I Facilities.

- (45) Facilities shall maintain written policies and procedures to provide for disciplinary hearings, which shall be presided over by a disciplinary board or impartial disciplinary officer, to be held in cases of alleged violations of inmate conduct rules. Hearings shall include the following administrative procedures:

- (a) ~~The~~An inmate shall receive written notice of charges and time of hearing;
- (b) ~~The~~An inmate shall be allowed time, not less than twenty-four (24) hours, to prepare for an appearance before an impartial disciplinary officer or board;
- (c) ~~The~~An inmate shall have the right to call and cross examine witnesses and present evidence in his/her own defense, when permitting him/her to do so will not be unduly hazardous to institutional safety or correctional goals;
- (d) An inmate may be excluded during testimony. An inmate's absence or exclusion shall be documented;
- (e) The reasons for any limitations placed on testimony or witnesses shall be stated in writing by the hearing officer;
- (f) There must be a written statement by the fact finders to include, at a minimum, evidence relied on and reasons for the disciplinary action; and;
- (g) An appeals process is available.

~~Applies~~ These requirements apply only to Type I Facilities.

- (56) Facilities shall maintain a written policy and procedure to allow inmates to receive a hearing prior to segregation, except in cases where the security of the facility is threatened, as determined by the facility administrator or his/her designee.

~~Applies~~ This requirement applies only to Type I Facilities.

- (67) For segregated inmates, a disciplinary hearing must be held within seventy-two (72) hours of placement in segregation, excluding holidays, weekends and emergencies, and for other inmates, a disciplinary hearing must be held within seven (7) days of the ~~write-up~~ disciplinary incident.

~~Applies~~ This requirement applies only to Type I Facilities.

- (78) The facility shall give the inmate a copy of the disciplinary decision and the facility shall keep a copy of the disciplinary decision in the inmate's record.

~~Applies~~ This requirement applies only to Type I Facilities.

- (89) Facilities shall maintain a written policy and procedure to provide that the disciplinary reports are removed from all files on inmates found not guilty of an alleged violation.

~~Applies~~This requirement applies only to Type I Facilities.

(910) Corporal punishment is not permitted under any circumstance in a disciplinary proceeding.

This requirement applies only to Types I, II, and III Facilities.

(101) Use of physical force may be used when authorized and shall be thoroughly documented with detailed account of who was involved, the force that was used, and justification for its use. This report shall be submitted to the facility administrator. Force may be used to:

- (a) Overcome resistance;
- (b) Repel aggression;
- (c) Protect life; and,
- (d) Retake inmate or property.

~~Applies~~These requirements apply only to Type I Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed July 31, 2000; effective November 28, 2000. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.09 SANITATION/MAINTENANCE.

(1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.

(42) Facilities shall be clean and in good repair. Floors throughout the facility shall be kept clean, dry, and free of any hazardous materials or substance.

~~Applies to Types I, II, and III.~~

(23) A facility employee shall make daily sanitation and safety inspections. Dates of inspections shall be recorded and conditions noted. Any maintenance problems shall be recorded on a regular maintenance report.

~~Applies~~This requirement applies only to Type I Facilities.

(34) Facilities shall provide for regularly scheduled disposal of liquid, solid, and hazardous material complying with applicable government regulations.

~~Applies~~This requirement applies only to Type I Facilities.

(45) Facilities shall provide for control of vermin and pests and shall remove inmates from treatment areas if there is a risk of illness.

~~Applies to Types I, II, and III~~

(56) Inmate housing and temporary holding area walls shall be kept clean and free of pictures or other objects which provide hiding places for vermin or create a fire hazard.

~~Applies to Type I~~

(67) All walls, ceilings, floors, showers, and toilets shall be kept free from mold and mildew.

~~Applies to Types I, II, and III.~~

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed July 31, 2000; effective November 28, 2000. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.10 FOOD SERVICES.

(1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.

(42) Food service guidelines and a menu pattern approved by a dietician, at least annually, shall be used by each facility in the preparation of meals. Menu evaluations shall be conducted, at least quarterly, by food service supervisory staff to verify adherence to the established basic dietary servings.

~~Applies~~ This requirement applies only to Type I Facilities.

(23) Working inmates shall receive at least three (3) meals every twenty-four (24) hours with no more than fourteen (14) hours between any two (2) meals. At least two (2) of these meals shall be hot. Non-working inmates shall receive at least two (2) meals every twenty-four (24) hours with no more than fourteen (14) hours between any two (2) meals. Variations may be allowed based on weekend and holiday food service demands, as long as basic nutritional goals are met.

~~Applies~~ This requirement applies only to Type I Facilities.

(34) All meals shall be prepared (except when catered) and served under the direct supervision of staff.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

(45) Inmates involved in the preparation of the food shall receive an agency-approved pre-assignment medical screening to ensure freedom from illness transmittable by food or utensils. Facilities shall have a policy to insure those currently assigned to food service preparation duties who are identified by food service staff as having an illness or infection shall be removed from those duties.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

(56) Written policy and procedure shall require that accurate records are maintained on the number of meals served per day, the actual food served, and meal schedule.

~~Applies~~ This requirement applies only to Type I Facilities.

(67) Facilities shall inspect all food service areas on a weekly basis, including dining and food preparation areas and equipment by administrative, medical, or food service personnel.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

(78) Written policy shall require that food shall never be used as a reward or disciplinary measure.

~~Applies~~ This requirement applies only to Types I and II Facilities.

(89) Modified diets shall be prepared for inmates when requested by medical staff or by a physician's order, and all reasonable efforts shall be made to accommodate the dietary needs of a religion.

~~Applies~~ This requirement applies only to Types I and II Facilities.

(910) Shelf goods shall be maintained between forty-five (45) degrees and eighty (80) degrees

Fahrenheit; refrigerated foods between thirty-five (35) degrees and forty (40) degrees Fahrenheit; and frozen foods at zero (0) degrees Fahrenheit or below.

This requirement applies only to Types I, II, and III Facilities.

- (101) The preparation or storage of open food, other than a reasonable amount of commissary food, shall not be permissible in the immediate housing area.

This requirement applies only to Types I, II, and III Facilities.

- (142) Refrigerators shall be clean and contain a thermometer.

Applies This requirement applies only to Types I, II, and III Facilities.

- (123) All food products shall be stored at least six (6) to eight (8) inches off the floor on shelves or in shatter-proof containers with tight fitting lids.

Applies This requirement applies only to Types I, II, and III Facilities.

- (134) Insecticide, cleaning agents and poisonous substances shall be plainly labeled and stored away from food.

Applies This requirement applies only to Types I, II, and III Facilities.

- (145) Culinary equipment (knives and other sharp instruments) shall be securely stored, inventoried and their use controlled.

Applies This requirement applies only to Types I, II, and III Facilities.

- (156) Stoves shall be equipped with operable hooded exhaust systems and the filters shall be kept clean.

Applies This requirement applies only to Types I, II, and III Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed July 31, 2000; effective November 28, 2000. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.11 MAIL AND VISITING.

- (1) Type I, II, III, and IV facilities shall meet the following requirements unless otherwise specified.

- (42) Facilities shall maintain a written policy outlining the facility's procedures governing inmate mail.

Applies This requirement applies only to Type I Facilities.

- (23) Facilities shall develop a written policy governing the censoring of mail. Any regulation for censorship must meet the following criteria:

- (a) The regulation must further an important and substantial governmental interest unrelated to the suppression of expression (e.g., detecting escape plans which constitute a threat to facility security and/or the well-being of employees and/or inmates); and;

- (b) The limitation must be no greater than is necessary for the protection of the particular governmental interest involved.

Applies These requirements apply only to Type I Facilities.

- (34) Both incoming and outgoing mail shall be inspected for contraband items prior to delivery, unless received from the courts, attorney of record, or public officials, where the mail shall be opened in the presence of the inmate.

~~Applies~~This requirement applies only to Type I Facilities.

- (45) Outgoing mail shall be collected and incoming mail shall be delivered without unnecessary delay.

~~Applies~~This requirement applies only to Type I Facilities.

- (56) An inmate shall be notified if a letter addressed to the inmate or written by the inmate is rejected. If the inmate wrote the rejected letter, the inmate must be given a reasonable opportunity to protest the rejection.

~~Applies~~This requirement applies only to Type I Facilities.

- (67) Written policy and procedure shall provide that the facility permits postage for two (2) free personal letters per week for inmates who have less than two dollars (\$2.00) in their account. Facilities shall also provide postage for all legal or official mail.

~~Applies~~This requirement applies only to Type I Facilities.

- (78) Facilities shall maintain a written policy to define the facility's visitation policies which shall include, at a minimum:

- (a) One (1) hour of visitation each week for each inmate;
- (b) A list of possible visitors ~~submitted by each inmate~~;
- (c) Children shall be allowed to visit their parents;
- (d) Visitors shall register before admission and may be denied admission for refusal to register, for refusal to consent to search, or for any violation of posted institutional rules; and,
- (e) Probable cause shall be established in order to perform a strip or body cavity search of a visitor. When probable cause exists, the search shall be documented and performed by the proper authority and by authorized personnel.

~~Applies~~These requirements apply only to Type I Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new chapter filed June 29, 1984; effective September 11, 1984. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-12 INMATE PROGRAMS AND ACTIVITIES.

- (1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.

- (42) Library services shall be made available to all inmates.

~~Applies~~This requirement applies only to Type I Facilities.

- (23) Inmates shall have access to exercise and recreation opportunities. A written plan shall provide that all inmates have the opportunity to participate in an average of one (1) hour of physical exercise per day outside the cell. Outdoor recreation may be available when weather and staffing permit.

~~Applies~~ This requirement applies only to Type I Facilities.

- (34) Written policy and procedure requires that the facility shall provide for inmates to voluntarily participate in religious activity at least once each week.

~~Applies~~ This requirement applies only to Type I Facilities.

- (45) Policy and procedure shall provide that the inmates have reasonable access to a telephone. Telephone procedure, including any limitations, shall be in writing and posted so as to be conspicuous to inmates. The procedure shall include, at a minimum:
- (a) The hours during which such access shall generally be provided;
 - (b) A statement regarding the privacy of telephone communication; and,
 - (c) Inmates with hearing and/or speech disabilities shall be afforded access to a Telecommunications Device for the Deaf (TDD), or comparable equipment. Public telephones with volume control shall be made available to inmates with a hearing impairment. Information regarding the availability of TDD communication devices shall be posted. Inmates with hearing and/or speech impairments shall be afforded access similar to those inmates without impairments.

~~Applies~~ These requirements apply only to Types I, II, and III Facilities.

- (56) Release programs shall require:
- (a) Written operational procedures;
 - (b) Careful screening and selection procedures;
 - (c) Written rules of inmate conduct;
 - (d) A system of supervision to minimize inmate abuse of program privileges;
 - (e) A complete record-keeping system;
 - (f) A system for evaluating program effectiveness; and,
 - (g) Efforts to obtain community cooperation and support.

~~Applies~~ These requirements apply only to Type I Facilities.

- (67) Written policy shall provide that inmates be allowed to have confidential access to attorneys and their authorized representatives at any reasonable hour.

~~Applies to Types I, II, and III.~~

- (78) Inmates shall have unrestricted and confidential access to the courts. Inmates shall have the right to present any issue before a court of law or governmental agency. The facility shall establish reasonable hours during which attorneys may visit and/ or telephonically communicate. Inmates shall have access to legal materials.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (89) Written policy shall provide that pretrial detainees shall not be required to work, except to do personal housekeeping.

~~Applies~~ This requirement applies only to Types I and II Facilities.

- (910) Foreign nationals shall have access to the diplomatic representatives of their country of citizenship through the State Department consular notification protocols and contact information.

~~Applies to Types I, II, and III.~~

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-13 MEDICAL SERVICES.

- (1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.

- (42) The provision of medical services for the facility shall be the responsibility of a designated health authority such as a hospital, clinic, or physician. There shall be an agreement between the governmental funding agency responsible for the facility and the hospital/clinic/physician responsible for such services. The designated health authority must be notified in instances where an inmate may be in need of medical treatment and the facility shall document this notification. The health authority shall meet with the Sheriff and/ or facility administrator at least annually.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (23) Medical decisions are the sole province of the responsible health care provider and shall not be countermanded by non-medical personnel.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (34) All health care professional staff shall comply with applicable state and federal licensure, certification, or registration requirements. Verification of current credentials shall be available upon request from the provider. Health care staff shall work in accordance with profession-specific job descriptions approved by the health authority. If inmates are assessed or treated by non-licensed health care personnel, the care shall be provided pursuant to written standing or direct orders by personnel authorized to give such orders.

~~Applies~~This requirement applies only to Type I, II, and III Facilities.

- (45) Continuity of care is required from admission to transfer or discharge from the facility, including referral to community-based providers, when indicated. When health care is transferred to providers in the community, appropriate information shall be shared with the new providers in accordance with consent requirements. Prior to release from custody or transfer, inmates with known serious health conditions shall be referred to available community resources by the facility's health care provider currently providing treatment.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (56) Written policy and procedure shall prohibit inmates from performing patient care services, scheduling health care appointments or having access to medications, health records or medical supplies and equipment.

~~Applies~~This requirement applies only to Type I Facilities.

- (67) First aid kits shall be available and a physician shall approve the number, contents, and location of such kits on an annual basis. Documentation of such approval must be in the facility's permanent records or attached to the kit itself.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (78) Receiving screening shall be performed on all inmates upon admission to the facility and

before placement in the general housing area. The findings shall be recorded on a printed screening form. The officer performing this duty shall check for:

- (a) A serious illness;
- (b) A comatose state;
- (c) Obvious wounds;
- (d) Prescribed medications; and,
- (e) Suicide risk assessment, including suicidal ideation or history of suicidal behavior or other mental health illness.

~~Applies~~ These requirements apply only to Types I, II, and III Facilities.

(89) A more complete examination shall be completed on inmates within fourteen (14) days of the inmate's initial confinement date. If the facility can document that a health appraisal was conducted within the previous ninety (90) days, this fourteen (14) day physical is not required unless medical conditions dictate otherwise. This examination shall be performed by a physician or a person who has been designated by a physician as capable of performing such examination. If a designee performs the examination, he/she must do so under supervision of a physician and with a protocol or set of instructions and guidelines from the physician. This examination shall include:

- (a) Inquiry into current illness and health problems, including those specific to women;
- (b) Inquiry into medications taken and special health requirements;
- (c) Screening of other health problems designated by the responsible physician;
- (d) Behavioral observation, including state of consciousness and mental status;
- (e) Notification of body deformities, trauma markings, bruises, lesions, jaundice, ease of movement, etc.
- (f) Condition of skin and body orifices, including rashes and infestations;
- (g) Disposition/referral of inmates to qualified medical personnel on an emergency basis;
- (h) A review of the initial intake receiving screening; and,
- (i) An individual treatment plan as appropriate.

~~Applies~~ These requirements apply only to Type I Facilities.

(910) All intersystem transfer inmates (transferred from one confinement facility to another within the same county's jurisdiction) shall receive a health screening by trained or qualified health care personnel, which commences on their arrival at the facility. All findings are recorded on a screening form approved by the health authority. At a minimum, the screening includes the following:

- (a) A review of the inmate's medical, dental, and mental health problems;
- (b) Current medications; and,
- (c) Current treatment plan.

~~Applies~~ These requirements apply only to Types I, II, and III Facilities.

- (101) Sick call, conducted by a physician or other person designated by a physician as capable of performing such duty, shall be available to each inmate according to written procedure for sick call. The inmate shall be informed of these procedures, including any copayment requirements, as well as procedures for submitting grievances, upon admission.

Applies This requirement applies only to Types I, II, and III Facilities.

- (142) Inmates shall have access to mental health services as clinically warranted in accordance with protocols established by the health authority that include:
- (a) Screening for mental health problems;
 - (b) Referral to outpatient services, including psychiatric care;
 - (c) Crisis intervention and management of acute psychiatric episodes;
 - (d) Stabilization of the mentally ill and prevention of psychiatric deterioration in the facility;
 - (e) Referral and admission to inpatient facilities; and,
 - (f) Informed consent for treatment.

Applies These requirements apply only to Types I, II, and III Facilities.

- (123) A suicide prevention program shall be approved by the health authority and reviewed by the facility administrator. The program includes specific procedures for handling intake, screening, identifying, and continually supervising the suicide-prone inmate. All facility employees responsible for supervising suicide-prone inmates shall be trained annually on program expectations.

Applies This requirement applies only to Types I, II, and III Facilities.

- (134) The All facilities shall have a suicide prevention program plan which must include specific procedures for handling intake, screening, identifying, and continually supervising the suicide-prone inmate.

Applies to Types I, II, and III.

- (145) At least one (1) person per shift, assigned to work at the facility, shall be trained in First Aid/CPR, as defined by the American Red Cross or American Heart Association, and CPR, as defined by the American Red Cross or American Heart Association. Training shall also cover:
- (a) Awareness of potential emergency situations;
 - (b) Transfer to appropriate health care provider;
 - (c) Recognition of symptoms of illness most common to the facility; and,
 - (d) Giving of medication to inmates.

In addition, the health authority shall approve policies and procedures that insure that emergency supplies and equipment are readily available and in working order.

Applies These requirements apply only to Types I, II, and III Facilities.

- (156) Detoxification from alcohol, opiates, hypnotics, and other stimulants shall be conducted under medical supervision in accordance with local, state, and federal laws. When performed at the facility, detoxification shall be prescribed in accordance with clinical protocols approved by the health authority. Specific criteria shall be established for referring symptomatic inmates

suffering from withdrawal or intoxication for more specialized care at a hospital or detoxification center.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (167) Facilities shall provide dental treatments, not limited to extractions, when the health of the inmate would otherwise be adversely affected during confinement, as determined by a physician or dentist.

~~Applies~~ This requirement applies only to Type I Facilities.

- (178) Facilities shall confiscate all medications in the possession of an inmate at the time of admission to the facility. The identification of and the need for such medication shall be verified by a physician or qualified health care personnel before it is administered.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (189) Medications issued to inmates shall be strictly controlled and shall be kept in a secure place within the administrative or medical offices in the facility.

~~Applies~~ This requirement applies only to Types I and II Facilities.

- (1920) All medications shall be prescribed by a physician or his/her designee at the time of use. An officer or qualified health care personnel shall verify that the medication is taken as directed and a medication receipt system established. This shall include controlled drugs and injections.

~~Applies~~ This requirement applies only to Types I and II Facilities.

- (1921) Medical and mental health records on the inmate's physical condition on admission, during confinement, and at discharge shall be kept in a separate file from the inmate's other facility records. The medical record shall indicate all medical orders issued by the facility's physician and/or any other health care personnel who are responsible for rendering health care services. These medical records shall be retained for a period of ten (10) years after the inmate's release.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (242) Informed consent standards of the jurisdiction shall be observed and documented for inmate care in a language understood by the inmate. In the case of minors, the informed consent of a parent, guardian, or a legal custodian applies when required by law. Inmates routinely have the right to refuse medical interventions. When health care is rendered against the inmate's will, it shall be in accordance with state and federal laws and regulations.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (223) Involuntary administration of psychotropic medication(s) to inmates shall be authorized by a physician and provided in accordance with policies and procedures approved by the health authority, and in accordance with applicable laws and regulations of the jurisdiction.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (234) The use of inmates in medical, pharmaceutical, or cosmetic experiments is prohibited. This does not preclude inmate access to investigational medications on a case-by-case basis for therapeutic purposes in accordance with state and federal regulations.

~~Applies~~ This requirement applies only to Types I, II, and III Facilities.

- (245) In case of medical emergencies, there shall be specific information readily accessible to all employees, such as telephone numbers and names of persons to be contacted, so that

professional medical care can be received. There shall also be available the names and telephone numbers of persons to contact in case of death.

~~Applies to Types I, II, and III.~~

- (256) Inmates suffering from communicable diseases and those who are sick but do not require hospitalization shall be housed separate from other inmates as recommended by health care authorities.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (267) When an inmate is placed in segregation for health concerns, health care personnel shall be informed as soon as practical and provide assessment and review as indicated by the protocols established by the health authority.

~~Applies~~This requirement applies only to Types I and II Facilities.

- (278) Medical/dental instruments and supplies (syringes, needles, and other sharp instruments) shall be inventoried, securely stored, and their use shall be controlled.

~~Applies~~This requirement applies only to Types I and II Facilities.

- (289) Pregnant inmates shall have access to obstetrical services (prenatal, partum, and post-partum care) by a qualified health care provider.

~~Applies~~This requirement applies only to Types I and II Facilities.

- (2930) Inmates with chronic medical conditions, such as diabetes, hypertension, and mental illness shall receive periodic care by a qualified health care provider in accordance with individual treatment plans that include monitoring of medications and laboratory testing.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (301) Information shall be provided to inmates about sexual abuse/assault including:

- (a) Prevention/ intervention;
- (b) Self-protection;
- (c) Reporting sexual abuse/assault; and,
- (d) Treatment and counseling.

This information shall be communicated in writing or electronically, in a language clearly understood by the inmate, upon arrival at the facility.

~~Applies~~These requirements apply only to Types I, II, and III Facilities.

- (342) Sexual conduct between facility employees, volunteers or contract personnel and inmates is prohibited and subject to administrative, disciplinary and criminal sanctions. The prohibition applies regardless of consent.

~~Applies to Types I, II, and III.~~

- (323) The health authority shall develop and approve protocols for identifying and evaluating major risk management events related to inmate health care, including inmate deaths, preventable adverse outcomes, and serious medication errors.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed July 2, 1985; effective October 14, 1985. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.14 ADMISSION, RECORDS AND RELEASE.

- (1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.
- (42) An intake form shall be completed for every inmate, except detainees, admitted to the facility and shall contain the following information, unless otherwise prohibited by statute:
 - (a) Picture;
 - (b) Booking number;
 - (c) Date and time of intake;
 - (d) Name and aliases of person;
 - (e) Last known address;
 - (f) Date and time of commitment and authority therefore;
 - (g) Names, title, signature and authority therefore;
 - (h) Specific charge(s);
 - (i) Sex;
 - (j) Age;
 - (k) Date of birth;
 - (l) Place of birth;
 - (m) Race;
 - (n) Occupation;
 - (o) Last place of employment;
 - (p) Education;
 - (q) Name and relationship of next of kin;
 - (r) Address of next of kin;
 - (s) Driver's license and social security numbers;
 - (t) Disposition of vehicle, where applicable;
 - (u) Court and sentence (if sentenced inmate);
 - (v) Notation of cash and property;
 - (w) Bonding company;
 - (x) Amount of bond;

- (y) Date of arrest;
 - (z) Warrant number;
 - (aa) Court date and time;
 - (bb) Cell assignment;
 - (cc) Fingerprints; and,
 - (dd) Criminal history check.
- Applies to Types I, II, and III.
- (23) The admitting officer shall ensure that each inmate received is committed under proper legal authority.
- Applies This requirement applies only to Types I, II, and III Facilities.
- (34) At the time of booking, a telephone shall be available within the receiving or security area. The detainee shall be allowed to complete at least one (1) telephone call to the person of his/her choice. Pursuant to T.C.A. § 40-7-106(b), no person under arrest by any officer or private citizen shall be named in any book, ledger, or any other record until after the person has successfully completed a telephone call to an attorney, relative, minister, or any other person that the person shall choose, without undue delay. One (1) hour shall constitute a reasonable time without undue delay.
- Applies to Types I, II, and III.
- (45) Cash and personal property shall be taken from the inmate upon admission, listed on a receipt form in duplicate, and securely stored pending the inmate's release. The receipt shall be signed by the receiving officer and the inmate, the duplicate given to the inmate, and the original kept for the record. If the inmate is in an inebriated state, there shall be at least one witness to verify this transaction. As soon as the inmate is able to understand what he/she is doing, he/she shall sign and be given the duplicate of the receipt.
- Applies This requirement applies only to Types I, II, and III Facilities.
- (56) Facilities shall maintain custody records on all inmates committed to or assigned to the facility, which shall include but are not limited to the following:
- (a) Intake/ booking information.
 - (b) Court generated background information. This requirement applies only to Type I, II, and III Facilities.
 - (c) Cash and property receipts.
 - (d) Reports of disciplinary actions, grievances, incidents, or crime(s) committed while in custody. This requirement applies only to Type I, II, and III Facilities.
 - (e) Disposition of court hearings. This requirement applies only to Type I, II, and III Facilities.
 - (f) Records of program participation. This requirement applies only to Type I, II, and III Facilities.
 - (g) Work assignments. This requirement applies only to Type I, II, and III Facilities.
 - (h) Classification records. This requirement applies only to Type I, II, and III Facilities.

Inmates shall have reasonable access to information in their records. Access is only limited due to safety or security concerns for the inmate, other inmates, or the facility.

~~Applies to Types I, II, and III.~~

- (67) Written policy and procedure shall ensure that inmate records are current and accurate.

~~Applies~~This requirement applies only to Types I, II, and III Facilities.

- (78) Inmate records shall be safeguarded from unauthorized and improper disclosure.

~~Applies to Types I, II, and III.~~

- (89) As part of the inmate accounting system, facilities shall maintain on a daily basis the following information:

(a) Admissions

1. Adult - Juvenile
2. Male - Female
3. Race
4. Charge

(b) Releases

1. Adult - Juvenile
2. Male - Female
3. Race
4. Charge

(c) Inmate Population

1. Sentenced - Non-sentenced
2. Adult - Juvenile
3. Male - Female
4. Felons - Misdemeanants
5. Race

~~Applies~~These requirements apply only to Type I Facilities.

- (910) Facilities shall keep records on each inmate specifying:

- (a) Date of confinement;
- (b) Length of sentence;
- (c) Reduction of sentences provided by statutes; and,
- (d) Release date.

~~Applies~~ These requirements apply only to Type I Facilities.

(101) The administrator of a facility or designee shall maintain a record which indicates:

- (a) When an inmate is to be discharged and under what conditions;
- (b) If any detainers or pending detainers are placed against the inmate and if so, the appropriate authorities to be notified of his/her release date; and,
- (c) The time when and the authority by which the inmate was released.

~~Applies~~ These requirements apply only to Type I Facilities.

(142) Facilities shall maintain written policy and procedures for releasing inmates from the facility which include, but are not limited to, the following:

- (a) Identification of outstanding warrants, wants, or detainers;
- (b) If released into the custody of another officer, appropriate credentials must be reviewed;
- (c) Positive identification of the inmate by the releasing officer;
- (d) Verification of release papers;
- (e) Completion of release arrangements, including notification of the parole authorities in the jurisdiction of release, if required; This requirement applies only to Type I, II, and III Facilities;
- (f) Return of personal property including cash. All items shall be inventoried on a receipt and witnessed by the releasing officer. This receipt shall be kept in the permanent records of the facility; This requirement applies only to Type I, II, and III Facilities;
- (g) Provision of a listing of available community resources; and, This requirement applies only to Type I, II, and III Facilities; and
- (h) Provision of medication as directed by the health authority. This requirement applies only to Type I, II, and III Facilities.

Applies to Types I, II, and III.

(123) All inmates released from the facility shall sign a receipt for property, valuables and cash returned at the time of release. All items shall be carefully inventoried on the receipt and witnessed by the releasing officer. The receipt shall be kept in the permanent records of the facility.

Applies This requirement applies only to Types I, II, and III Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed July 31, 2000; effective November 28, 2000. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.15 HYGIENE.

- (1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.
- (42) Inmates shall be issued clothing within a reasonable time frame that is properly fitted and suitable for the climate and shall include the following:

- (a) Clean socks;
- (b) Clean undergarments;
- (c) Clean outer garments; and;
- (d) Footwear.
- (e) Inmates' personal clothing (if available and clean) may be substituted for institutional clothing at the discretion of the facility administrator.

~~Applies~~These requirements apply only to Types I and II Facilities.

- (23) Provisions shall be made so that inmates can regularly obtain the following minimum hygiene items:
- (a) Soap;
 - (b) Toothbrush;
 - (c) Toothpaste or toothpowder;
 - (d) Comb;
 - (e) Toilet paper;
 - (f) Hygiene materials for women; and;
 - (g) Shaving equipment.
 - (h) These items or services shall be made available at the inmate's expense unless the inmate cannot afford to pay, in which case the inmate shall be provided the item or services free of charge.

~~Applies~~These requirements apply only to Types I and II Facilities.

- (34) An inmate commissary may be available by which inmates can purchase approved items that are not furnished by the facility. The commissary operations shall be strictly controlled using standard accounting procedures.

~~Applies~~This requirement applies only to Types I and II Facilities.

- (45) Inmates shall be allowed freedom in personal grooming except when a valid governmental interest justifies otherwise. Arrangements for haircuts shall be made available, at the inmate's expense, on a regular basis. If an inmate cannot afford this service, it shall be provided free of charge.

~~Applies~~This requirement applies only to Type I Facilities.

- (56) Each inmate who is detained overnight shall be provided with the following standard issue:
- (a) One (1) clean fire-retardant mattress in good repair;
 - (b) One (1) clean mattress cover or sheet;
 - (c) If pillows are provided, they shall be fire-retardant and a clean pillowcase shall be provided;
 - (d) Sufficient clean blankets to provide comfort under existing temperature conditions; and;

- (e) One (1) clean bath-size towel.

Applies These requirements apply only to Types I and II Facilities.

- (67) Facilities shall maintain an adequate supply of bedding and towels so that the following laundry or cleaning frequencies may be adhered to:

(a) Sheets, pillowcases, mattress covers, and towels shall be changed and washed at least once a week;

(b) All mattresses shall be disinfected quarterly and documented; and

(c) Blankets shall be laundered monthly and sterilized before re-issue.

These requirements apply only to Type I Facilities.

- (78) Inmate clothing, whether personal or institutional, shall be exchanged and cleaned at least twice weekly unless work, climatic conditions or illness necessitate more frequent change.

Applies This requirement applies to Type I Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed July 31, 2000; effective November 28, 2000. Repeal and new rule Filed October 29, 2014; effective January 27, 2015.

1400-01-.16 SUPERVISION OF PRISONERS INMATES.

- (1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.

- (12) All inmates shall be personally observed by a facility employee at least once every hour on an irregular schedule. More frequent observation shall be provided for inmates who are violent, suicidal, mentally ill, intoxicated, and for inmates with other special problems or needs. The time of all such checks shall be logged, as well as the results.

Applies to Types I, II, and III.

- (23) The facility shall have a system to physically count inmates and record the results on a twenty-four (24) hour basis. At least one (1) formal count shall be conducted and documented for each shift.

Applies This requirement applies only to Types I, II, and III Facilities.

- (34) Incidents which involve or endanger the lives or physical welfare of staff or inmates shall be recorded in a daily log and retained. Incidents shall include, at a minimum:

- (a) Death;
- (b) Attempted suicide;
- (c) Escape;
- (d) Attempted escape;
- (e) Fire;
- (f) Riot;
- (g) Battery on a staff member or inmate;

- (h) Serious infectious disease within facility; and;
- (i) Sexual assault.
 1. An investigation shall be conducted and documented whenever a sexual assault or threat is reported; and;
 2. Victims of sexual assault are referred under appropriate security provisions to a community facility for treatment and gathering of evidence.

Applies These requirements apply only to Types I, II, and III Facilities.

- (45) Facilities that are utilized for the confinement of females shall have a trained female officer on duty or on call when a female is confined in the facility, to perform the following functions:
- (a) Searches; and;
 - (b) Health and welfare checks.

Applies These requirements apply only to Types I, II, and III Facilities.

- (56) Inmates shall not be permitted to supervise, control, assume or exert authority over other inmates.

Applies This requirement applies to Type I Facilities.

- (67) Nonsmoking inmates shall not be exposed to second-hand smoke.

Applies This requirement applies only to Types I, II, and III Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

1400-01-.17 CLASSIFICATION₂

- (1) Type I, II, III, and IV Facilities shall meet the following requirements unless otherwise specified.
- (42) There shall be a written plan for inmate classification specifying criteria and procedures for classifying inmates in terms of level of custody required, housing assignment and participation in correctional programs. The plan shall include a process for review and appeal of classification decisions.

Applies This requirement applies only to Types I, II, and III Facilities.

- (23) This plan ensures total sight, sound or physical contact separation between male and female inmates and between adults and juveniles being tried as adults.

Applies This requirement applies only to Types I, II, and III Facilities.

- (34) Inmates with disabilities, including temporary disabilities, shall be housed and managed in a manner that provides for their safety and security. Housing used by inmates with disabilities, including temporary disabilities, shall be designed for their use and shall provide for integration with other inmates. Program and service areas shall be accessible to inmates with disabilities.

Applies This requirement applies only to Types I, II, and III Facilities.

Authority: T.C.A. § 41-4-140. **Administrative History:** Original rule filed August 9, 1982; effective September 8, 1982. Repeal and new rule filed June 29, 1984; effective September 11, 1984. Amendment filed July 31, 2000; effective November 28, 2000. Repeal and new rule filed October 29, 2014; effective January 27, 2015.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Mayor Dan Hughes	X				
Chief Buddy Lewis	X				
Sheriff Armando Fontes	X				
Dr. Elizabeth Lewis	X				
Commissioner Tony Parker	X				
Don Johnson	X				
Sheriff William Oldham				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Control for the Tennessee Corrections Institute (board/commission/ other authority) on 02/08/2017 (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: 12/10/16

Rulemaking Hearing(s) Conducted on: (add more dates). 02/08/17

Date: 5/8/17

Signature: *Joseph M. Underwood*

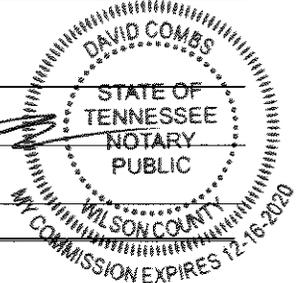
Name of Officer: Joseph M. Underwood

Title of Officer: Chief Counsel for Fire Prevention & Law Enforcement

Subscribed and sworn to before me on: 5/8/17

Notary Public Signature: *[Signature]*

My commission expires on: 12/16/20



Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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

Herbert H. Slatery III
Attorney General and Reporter

5/18/2017

Date

Department of State Use Only

Filed with the Department of State on: 9/11/17

Effective on: 11/30/17

Tre Hargett
Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: TennCare

SUBJECT: TennCare Medicaid

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, 71-5-109, and 71-5-113; 42 C.F.R. Part 431, Subpart E; and 42 C.F.R. Part 438, Subpart F.

EFFECTIVE DATES: December 24, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These rulemaking hearing rules are being promulgated to bring the TennCare rules into compliance with federal regulations regarding appeals and state fair hearings under Title XIX, following the vacatur of the federal court order known as "Grier" which previously controlled the conduct of TennCare medical service appeals.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

HCFA received comments from two individuals or entities concerning these rules. The comments and HCFA's responses to the comments are summarized below.

Two commenters expressed concern about the deletion of the modifier "impartial" from the description of hearing officer in the rule and suggested this deletion may be a violation of due process. HCFA noted that it is updating the terminology in its rules to match the terminology used in federal regulations and that this change in terminology does not relieve HCFA of its obligation to comply with state and federal due process requirements. The fair hearing process provided for in the rule is an impartial process.

One commenter expressed concern that the definition of "state fair hearing" in the rule does not explicitly include the right to an in-person hearing, and that a reference to in-person hearings elsewhere in the rule is deleted. In response, HCFA noted that the definition of "state fair hearing" in the rule specifically references the state and federal requirements for the conduct of hearings, which clearly afford enrollees the right to an in-person hearing. HCFA will not withhold an in-person hearing from any enrollee who requests it during the course of an appeal.

One commenter expressed concern that the definition of "readable" in the rule is too vague, and suggested that HCFA retain existing language in the rule referring to specific reading proficiency levels. The commenter also noted that other state Medicaid programs commonly use specific reading proficiency levels to draft their written materials. HCFA noted that the definition in the rule is taken directly from federal regulation concerning enrollee information; this regulation entails a broader set of requirements than reading proficiency level of written materials.

One commenter expressed concern about the use of citations to federal regulations in the rule to denote required timeframes, rather than specifying the timeframes within the rule itself. This commenter suggested that the rule's reliance on federal regulations is problematic because applicants and enrollees would be required to refer to federal regulations to discern the applicable timeframes. In response, HCFA noted that the Code of Federal Regulations is readily accessible online, including through links on HCFA's web site, and that it is unnecessary for HCFA to duplicate requirements from federal regulations in its rules. In addition, enrollee handbooks provide information about required timeframes in an accessible manner, and it is more likely that enrollees and applicants would refer to these and other member materials rather than federal regulations or state rules.

Two commenters expressed concern that the rule deletes the right of enrollees to receive a written notice when their managed care contractor expects there will be a delay in receiving covered services. These commenters suggested that this deletion is inconsistent with federal Medicaid requirements. In response, HCFA clarified that the deletion of the language referenced by the commenters conforms the rule to federal regulations. The rule does not delete the requirement to provide notice of delay, but rather deletes the requirement to provide notice of an anticipated delay. HCFA noted that an expectation of delay is not included within the definition of adverse benefit determination.

Two commenters expressed concern about the deletion of certain requirements for the content of written notices, and suggested that certain information must be provided in notices for them to be constitutionally adequate. In response, HCFA noted that the federal regulations cited in the rule provide adequate guidance for the content of notices and that it is unnecessary for HCFA to duplicate federal regulations in its rules.

Two commenters expressed concern that the rule deletes information about pharmaceuticals dispensed on a short-term basis in emergency situations and noted that this coverage is required by federal law. In response, HCFA noted that it is unnecessary to duplicate this federal requirement in its rules.

Two commenters expressed concern that the rule deletes information about the obligation of prescribing providers (not enrollees) to obtain prior authorizations for prescription medications, as well as the obligations of pharmacists in situations when an enrollee's provider did not obtain prior authorization. In response, HCFA noted that the paragraph in question pertains to pharmacy operations and was not appropriately placed in a rule governing

enrollee appeals. HCFA further noted that participating pharmacies are required to comply with the notice requirements expressed in federal regulations, as well as other federal requirements for pharmacy providers, and that it is not necessary for HCFA to duplicate these federal requirements in its rules.

Two commenters suggested that HCFA should continue to provide annual notice of notice and appeal rights to TennCare enrollees. In response, HCFA noted that notice of appeal rights is provided to TennCare enrollees as required by federal law.

Two commenters expressed concern that the rule deletes corrective action requirements for managed care contractors that violate requirements related to notices or resolution of appeals. These commenters suggested that corrective action requirements provide necessary incentives to HCFA and its contractors to comply with rules regarding the content and timing of notices. In response, HCFA noted that the failure of contractors to adhere to contract requirements is more appropriately addressed in the contracting process rather than in rules.

One commenter opposed the deletion of information in the rule about an enrollee's right to appeal when the enrollee seeks to contest denial of TennCare coverage for services already received, regardless of the cost or value of the services at issue. This commenter noted that there are multiple circumstances in which a TennCare enrollee may receive services before those services have been approved, and yet have a right to coverage of those services. In response, HCFA clarified that the language cited by the commenter is not being deleted.*

One commenter expressed concern about the deletion of certain corrective action requirements when TennCare or its managed care contractors fail to timely act on requests for prior authorization or fail to resolve appeals timely. This commenter suggested that such corrective action requirements provide valuable incentives to TennCare and its contractors. This commenter acknowledged that the deleted language emanated from a series of consent decrees that have now been vacated, but stated that the requirements were informed by historical efforts to comply with due process requirements and should therefore be retained. In response, HCFA thanked the commenter for its expression of concern and advice and noted that the updates to its rules reflect current federal regulations governing Medicaid managed care programs.

*During legal review of the rule amendments, it was determined that since an enrollee's request for appeal of dissatisfaction or disagreement with adverse benefit determinations made or proposed may not be denied, the listing of instances in which an appeal may be made is unnecessary. The rule was amended to remove the non-exclusive list, Parts 1 through 8, of reasons for appeal in favor of the more expansive language contained in Subparagraph (b) of Paragraph (2).

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 rules are not anticipated to have an effect on 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://state.tn.us/sos/acts/106/pub/pc1070.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 promulgated to bring the TennCare rules into compliance with federal regulations regarding appeals and state fair hearings under Title XIX, following the vacatur of the federal court order know as "Grier" which previously controlled the conduct of TennCare medical service appeals.

- (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;

These rules are lawfully adopted by the Bureau of TennCare in accordance with T.C.A. §§ 4-5-202, 71-5-105, 71-5-109, 71-5-113, 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F.

- (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 managed care contractors. The governmental entity most directly affected by these Rules is the Bureau of TennCare, Tennessee Department of Finance & 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 promulgation of these rules is not anticipated to affect State expenditures.

- (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

(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

GW10217096abdktrev(3)

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For Department of State Use Only

Sequence Number: 09-22-17
 Rule ID(s): 66604
 File Date: 9/25/17
 Effective Date: 12/24/17

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 & Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):

- Amendments
 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)

Chapter Number	Chapter Title
1200-13-13	TennCare Medicaid
Rule Number	Rule Title
1200-13-13-.01	Definitions
1200-13-13-.10	Exclusions
1200-13-13-.11	Appeal of Adverse Actions Affecting TennCare Services or Benefits
1200-13-13-.12	Other Appeals By TennCare Applicants and Enrollees

**RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

TABLE OF CONTENTS

1200-13-13-.01	Definitions	1200-13-13-.09	Third Party Resources
1200-13-13-.02	Eligibility	1200-13-13-.10	Exclusions
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			<u>Adverse Benefit Determinations</u>
	Contractors (MCCS)	1200-13-13-.12	Other Appeals by TennCare Applicants and Enrollees
1200-13-13-.04	Covered Services	1200-13-13-.13	Member Abuse or Overutilization of the TennCare Pharmacy Program
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1200-13-13-.07	Managed Care Organization Payment		
1200-13-13-.08	Providers		

1200-13-13-.01 DEFINITIONS.

- (3) ~~ADMINISTRATIVE HEARING shall mean a contested case proceeding held pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq., except as noted otherwise herein, to allow an enrollee to appeal an adverse decision of the TennCare Program. An evidentiary hearing is held before an impartial hearing officer or administrative judge who renders an initial order under Tennessee Code Annotated §4-5-314. If an enrollee appeals the initial order under Tennessee Code Annotated §4-5-315, the Commissioner may render a final order.~~
- (4) ~~ADVERSE ACTION AFFECTING TENNCARE SERVICES OR BENEFITS as it relates to actions under the *Grier Revised Consent Decree*~~ BENEFIT DETERMINATION shall mean, but is not limited to, a delay, denial, reduction, suspension or termination of TennCare benefits, as well as any other act or omission of the TennCare Program which impairs the quality, timeliness, or availability of such benefits. See 42 C.F.R. § 438.400.
- (23) ~~CONTINUATION OR REINSTATEMENT of BENEFITS (COB) shall mean that the following services or benefits are subject to continuation or reinstatement pursuant to an appeal of an adverse decision affecting a TennCare service(s) or benefit(s), unless the services or benefits are otherwise exempt from this requirement as described in rule 1200-13-13-.11, if the enrollee appeals within ten (10) days of the date of the notice of action or prior to the date of the adverse action, whichever is later~~ the circumstances under which an enrollee may keep receiving, or, in the case of reinstatement, get back and keep receiving, the benefit under appeal until the appeal is resolved. See 42 C.F.R. §§ 431.230, 431.231 and 438.420.
- (a) ~~For services on appeal under *Grier Revised Consent Decree*:~~
1. ~~Those services currently or in the case of reinstatement, most recently provided to an enrollee; or~~
 2. ~~Those services provided to an enrollee in an inpatient psychiatric facility or residential treatment facility where the discharge plan has not been accepted by the enrollee or appropriate step-down services are not available; or~~

3. ~~Those services provided to treat an enrollee's chronic condition across a continuum of services when the next appropriate level of covered services is not available; or~~
4. ~~Those services prescribed by the enrollee's provider on an open ended basis or with no specific ending date where the MCC has not reissued prior authorization; or~~
5. ~~A different level of covered services, offered by the MCC and accepted by the enrollee, for the same illness or medical condition for which the disputed service has previously been provided.~~

- (b) ~~For eligibility terminations, coverage will be continued or reinstated for an enrollee currently enrolled in TennCare who has received notice of termination of eligibility and who appeals within ten (10) days of the date of the notice or prior to the date of termination, whichever is later.~~

(35) **DELAY** shall mean, but is not limited to:

- (a) ~~Any any failure to provide timely receipt of TennCare services, and no specific waiting period may be required before the enrollee can appeal;~~
- (b) ~~An MCC's failure to provide timely prior authorization of a TennCare service. A prior authorization decision may be deemed a delay when such decision is not granted within fourteen (14) days of the MCC's receipt of a request for such authorization or as expeditiously as the enrollee's health condition requires.~~

(42) ~~EMERGENCY MEDICAL CONDITION, including emergency mental health and substance abuse emergency treatment services, shall mean the sudden and unexpected onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to potentially result in:~~

- (a) ~~Placing the person's (or with respect to a pregnant woman, her unborn child's) health in serious jeopardy; or~~
- (b) ~~Serious impairment to bodily functions; or~~
- (c) ~~Serious dysfunction of any bodily organ or part.~~

~~For Medicaid enrollees only, copayments are not required for emergency services.~~

(49) **FINAL AGENCY ACTION** shall mean the resolution of an appeal by the TennCare Bureau or an initial decision on the merits of an appeal by an ~~impartial~~ administrative judge or hearing officer when such initial decision is not modified or overturned by the TennCare Bureau. Final agency action shall be treated as binding for purposes of these rules.

(59) **IMPARTIAL HEARING OFFICER** shall mean an administrative judge or hearing officer who is not an employee, agent or representative of the MCC ~~and or~~ who did not participate in, nor was consulted about, any TennCare Bureau review prior to the Administrative State Fair Hearing (SFH).

(71) **MCC (MANAGED CARE CONTRACTOR)** shall mean:

- (a) A Managed Care Organization, Pharmacy Benefits Manager and/or a Dental Benefits Manager which has signed a TennCare Contractor Risk Agreement with the State and

- operates a provider network and provides covered health services to TennCare enrollees; or
- (b) A Pharmacy Benefits Manager, Behavioral Health Organization or Dental Benefits Manager which subcontracts with a Managed Care Organization to provide services; or
- (c) A State government agency (i.e., Department of Children's Services and Division of Intellectual Disabilities Services) that contracts with TennCare for the provision of services.
- ~~(78) MEDICALLY CONTRAINDICATED shall mean a TennCare benefit or service which it is necessary to withhold in order to safeguard the health or safety of the enrollee.~~
- (112) **READABLE** shall mean no more than a sixth grade level of reading proficiency is needed to understand notices or other written communications, as measured by the Fogg index, the Flesch Index, the Flesch-Kincaid Index, or other recognized readability instrument. The preprinted language approved by the US District Court following entry of the *Grier Revised Consent Decree* and distributed to MCCs as templates is deemed readable. It is the responsibility of the entity issuing the notice to ensure that text added to the template is deemed readable, with the exception of medical, clinical or legal terminology easily understood language and format. See 42 C.F.R. § 438.10.
- (116) **RECONSIDERATION** shall mean the mandatory process, triggered by an enrollee's request for a SFH, by which an MCC reviews and renders a decision regarding affirming or reversing an enrollee's appeal of the MCC's adverse action benefit determination affecting TennCare benefits. An MCC satisfies the plan-level requirements of 42 C.F.R. Part 438 Subpart F when the review includes all available, relevant, clinical documentation (including documentation which may not have been considered in the original review); is performed by a physician other than the original reviewing physician; and produces a timely written finding. See June 5, 2017, CMS letter from Jackie Glaze to Wendy Long, M.D., M.P.H.
- ~~(118) REDUCTION, SUSPENSION OR TERMINATION shall mean the acts or omissions by TennCare or others acting on its behalf which result in the interruption of a course of necessary clinical treatment for a continuing spell of illness or medical condition. MCCs are responsible for the management and provision of medically necessary covered services throughout an enrollee's illness or need for such services, and across the continuum of covered services, including, but not limited to behavioral health services and appropriate transition plans specified in the applicable TennCare contract. The fact that an enrollee's medical condition requires a change in the site or type of TennCare service does not lessen the MCC's obligation to provide covered treatment on a continuous and ongoing basis as medically necessary.~~
- ~~(119) RESOURCES FOR MEDICAID-ELIGIBLE INDIVIDUALS shall mean those resources as defined in Chapter 1240-03-03-.05-.06 of the rules of the Tennessee Department of Human Services - Division of Medical Services.~~
- (121) **SERIOUSLY EMOTIONALLY DISTURBED (SED)** shall mean persons who have been identified by the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) or its designee as meeting the criteria provided below.
- (a) Age from birth to age eighteen (18), and
- (b) Currently, or at any time during the past year, has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the DSM-IV-TR (and subsequent revisions) of the American Psychiatric Association, with the exception of the DSM-IV-TR (and subsequent revisions) "V"

~~codes, substance abuse, and developmental disorders, unless these disorders co-occur with another diagnosable serious emotional disturbance. All of these disorders have episodic, recurrent, or persistent features; however, the disorders may vary in terms of severity and disabling effects; and~~

- ~~(c) The diagnosable mental, behavioral, or emotional disorder identified above has resulted in functional impairment, which substantially interferes with or limits the child's role or functioning in family, school, and community activities. Functional impairment is defined as difficulties that substantially interfere with or limit a child or adolescent in achieving or maintaining developmentally appropriate social, behavioral, cognitive, communicative, or adapted skills and is evidenced by a Global Assessment of Functioning score of fifty (50) or less in accordance with the DSM-IV-TR (and subsequent revisions).~~

~~(122) SEVERELY AND/OR PERSISTENTLY MENTALLY ILL (SPMI) shall mean individuals who have been identified by the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) or its designee as meeting the criteria in (a) below. These persons will be identified as belonging in one of Clinically Related Groups listed in (b) below Reserved.~~

~~(a) Criteria~~

- ~~1. Age eighteen (18) and over; and~~
- ~~2. Currently, or at any time during the past year, has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified within the DSM-IV-TR (and subsequent revisions) of the American Psychiatric Association, with the exception of the DSM-IV-TR (and subsequent revisions) "V" codes, substance abuse, and developmental disorders, unless these disorders co-occur with another diagnosable serious emotional disturbance. All of these disorders have episodic, recurrent, or persistent features; however, the disorders may vary in terms of severity and disabling effects; and~~
- ~~3. The diagnosable mental, behavioral, or emotional disorder identified above has resulted in functional impairment which substantially interferes with or limits major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning in major life activities including the basic living skills (e.g., eating, bathing, dressing); instrumental living skills (maintaining a household, managing money, getting around in the community, taking prescribed medication); and functioning in social, family, and vocational/educational contexts. This definition includes adults who would have met functional impairment criteria during the referenced year without the benefit of treatment or other support services.~~

~~(b) Definitions of Clinically Related Groups (CRGs).~~

- ~~1. Clinically Related Group 1. Any person eighteen (18) years or older whose functioning is, or in the last six (6) months has been, severely impaired and the duration of the impairment totals six (6) months or longer in the past year. This person requires constant assistance or supervision with daily living activities and displays an inability to relate to others which interferes with his/her ability to work and his/her family relationships and usually results in social isolation in the community. Changes in the environment are stressful and may result in further withdrawal or dysfunction in other areas. Support is needed to insure the person's safety and survival.~~

2. ~~Clinically Related Group 2. Any person eighteen (18) years or older whose functioning is, or in the last six (6) months has been, severely impaired and the duration of the impairment totals six (6) months or longer in the past year. This individual has extensive problems with performing daily routine activities and requires frequent assistance. S/he has substantial impairment in his/her ability to take part in social activities or relationships, which often results in social isolation in the community. The person has extensive difficulty in adjusting to change. Assistance with activities of daily living is necessary to survival in the community. This person has difficulty completing simple tasks but with assistance could work in a highly supervised setting.~~
3. ~~Clinically Related Group 3. Any person eighteen (18) years or older whose functioning has not been severely impaired recently (within the last six (6) months), but has been severely impaired in the past to the extent that he or she needs services to prevent relapse. This individual generally needs long term continued support. Characteristics of this population may include regular or frequent problems performing daily routine activities. S/he may require some supervision although s/he can survive without it. This person has noticeable disruption in social relations, although he or she is capable of taking part in a variety of social activities. Inadequate social skills have a serious negative impact on the person's life; however, some social roles are maintained with support. This person can complete tasks without prompting and help and can function in the workplace with assistance even though the experience may be stressful. There is sometimes noticeable difficulty in accepting and adjusting to change, and the person may require some intervention.~~

(i) STATE FAIR HEARING (SFH) shall mean an evidentiary hearing requested by or on behalf of an enrollee to allow the enrollee to appeal an adverse benefit determination, which is conducted in accordance with 42 C.F.R. Part 431 Subpart E and the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301, et seq. An initial order under T.C.A. § 4-5-314 shall be entered when an evidentiary hearing is held before a hearing officer. If any party appeals the initial order under T.C.A. § 4-5-315, the Commissioner may render a final order.

~~(125) TARGET POPULATION GROUP (TPG) shall mean a group identified by means of an assessment mechanism for children and adolescents under the age of eighteen (18) which determines a service recipient's level of functioning and severity of impairment due to mental illness. Based on the assessment criteria, there are two (2) target population groups:~~

~~(a) TPG 2: Seriously Emotionally Disturbed (SED).~~

~~These are children and adolescents who are under eighteen (18) years of age with a valid DSM-IV-TR (and subsequent revisions) diagnosis excluding substance use disorders, developmental disorders or V-codes. These children are currently severely impaired as evidenced by a Global Assessment of Functioning score of 50 or less.~~

~~(b) TPG 3: At Risk of being SED.~~

~~These are children and adolescents who are under eighteen (18) years of age without a valid DSM-IV-TR (and subsequent revisions) diagnosis excluding substance use disorders, developmental disorders or V-codes. These children may or may not be currently seriously impaired as evidenced by a Global Assessment of Functioning. These children have psychosocial issues that can potentially place them at risk of becoming SED.~~

~~(128) TDHS or DHS (TENNESSEE DEPARTMENT OF HUMAN SERVICES) shall mean the State agency under contract with the Bureau of TennCare to determine eligibility for individuals~~

applying for TennCare Medicaid or TennCare Standard, except for those determined to be eligible for SSI benefits by the Social Security Administration. DHS is not responsible for making decisions about the presence of a qualifying medical condition for those applying as medically eligible persons under TennCare Standard.

(131) TENNCARE APPEAL FORM shall mean the TennCare form(s) which are completed by an enrollee or by a person authorized by the enrollee to do so, when an enrollee appeals an adverse action affecting TennCare services benefit determination.

(144) TIME SENSITIVE CARE shall mean care which requires a prompt medical response in light of the beneficiary's condition and the urgency of her need, as defined by a prudent lay person; provided, however, that a case may be treated as non-time sensitive upon written certification of the beneficiary's treating physician.

1200-13-13-.10 EXCLUSIONS.

- (1) General exclusions. The following items and services shall not be considered covered services by TennCare:
 - (b) Provision of services to persons who are not enrolled in TennCare, either on the date the services are delivered or retroactively to the date the services are delivered, except for limited special appeal provisions pertaining to children who are placed in Youth Development Centers as defined in the Grier Revised Consent Decree, Section C.15.f. and pursuant to the DCS Interagency Agreement.

1200-13-13-.11 APPEAL OF ADVERSE ACTIONS AFFECTING TENNCARE SERVICES OR BENEFITS APPEAL OF ADVERSE BENEFIT DETERMINATIONS.

- (1) Notice Requirements.
 - (a) When Written Notice is Required.
 1. A written notice shall be given to an enrollee by his/her MCC of any adverse action taken benefit determination by the MCC to deny, reduce, suspend, or terminate medical assistance.
 2. A written notice shall be given to an enrollee whenever his/her MCC has reason to expect that covered medical assistance for the enrollee will be delayed beyond the time lines prescribed by the TennCare contract or the terms and conditions of the TennCare waiver. Actions which can reasonably be anticipated to delay or disrupt access to medical assistance include:
 - (i) Change of primary care provider;
 - (ii) Pharmacy "lock-in";
 - (iii) Decisions affecting the designation of a person as severely and persistently mentally ill (SPMI) or severely emotionally disturbed (SED);
 - (iv) Termination of a provider's contract, by either party to the contract; or
 - (v) Inability to provide an adequate provider network.
 3. A written notice shall be given to an enrollee of any MCC-initiated reduction, termination or suspension of inpatient hospital care.

(Rule 1200-13-13-.11, continued)

4. A written notice shall be given to an enrollee of any provider-initiated reduction, termination or suspension of:
 - ~~(i) Any behavioral health service for a severely and persistently mentally ill (SPMI) adult enrollee or severely emotionally disturbed (SED) child;~~
 - ~~(ii) Any inpatient psychiatric 24-hour or residential service;~~
 - ~~(iii) Any service being provided to treat a patient's chronic condition across a continuum of services when the next appropriate level of medical service is not immediately available; or~~
 - ~~(iv) Home health services.~~

~~The enrollee's MCC shall be promptly notified of a provider's proposal to reduce, terminate or suspend one of the above services and of the recommended discharge plan, if any, to insure compliance with this rule.~~

5. Appropriate notice shall be given to an enrollee by the State or MCC when a claim for service or reimbursement is denied because an enrollee has exceeded a benefit limit. Such notice shall not be subject to the requirements of rule 1200-13-13-.11(1)(c)1. During the applicable time period for each benefit limit, such notice shall only be provided the first time a claim is denied because an enrollee has exceeded a benefit limit. The State or MCC will not be required to provide any notice when an enrollee is approaching or reaches a benefit limit.
6. Appropriate notice shall be given to an enrollee by a provider when an enrollee exceeds a non-pharmacy benefit limit in the following circumstances:
 - (i) The provider denies the request for a non-pharmacy service because an enrollee has exceeded the applicable benefit limit; or
 - (ii) The provider informs an enrollee that the non-pharmacy service will not be covered by TennCare because he/she has exceeded the applicable benefit limit and the enrollee chooses not to receive the service.

During the applicable time period for each non-pharmacy benefit limit, providers shall only be required to issue this notice the first time an enrollee does not receive a non-pharmacy service from the provider because he/she has exceeded the applicable benefit limit. Such notice shall not be subject to the requirements of rule 1200-13-13-.11(1)(c)1. Providers will not be required to issue any notice when an enrollee is approaching or reaches a non-pharmacy benefit limit.

(b) Timing of Written Notice.

1. Written notice of MCC-initiated reduction, termination or suspension of medical assistance must be provided to an enrollee within the time frames required by 42 C.F.R. §§ 431.210 - ~~431.214~~ (usually ten (10) days in advance). However, in instances of MCC-initiated reduction, termination or suspension of inpatient hospital treatment, the notice ~~must~~ may be provided to an enrollee ~~at least two business days in advance~~ the same day of the proposed action. Where applicable and not in conflict with this rule, the exceptions set out at 42 C.F.R. §§ 431.211 - ~~431.214~~ permit or require reduction of the time frames within which advance notice must be provided.

(Rule 1200-13-13-.11, continued)

2. An MCC must notify an enrollee of its decision in response to a request by or on behalf of an enrollee for medical or related services within fourteen (14) days of the request for prior authorization, or as expeditiously as the enrollee's health condition requires. If the request for prior authorization is denied, the MCC shall provide a written notice to the enrollee prior authorization for medical or related services as set out in 42 C.F.R. § 438.210(d).
3. Written notice of delay of covered medical assistance must be provided to an enrollee immediately upon an MCC's receipt of information leading it to expect that such delay will occur.
4. ~~Where required by paragraph (1)(a)4. of this rule, w~~Written notice of provider-initiated reduction, termination or suspension of services must be provided to an enrollee at least two (2) business days in advance of the proposed action in compliance with 42 C.F.R. §§ 431.211, 431.213 and 431.214.
5. Written notice is deemed to be provided to an enrollee upon deposit with the US Postal Service or other commercial mail carrier, or upon hand-delivery to an enrollee or his/her representative.

(c) Notice Contents.

1. Whenever this rule requires that a TennCare enrollee receive written notice of an adverse action affecting medical assistance benefit determination, the notice must contain the following elements, written in concise, readable terms: be readable and must comply with the requirements of 42 C.F.R. §§ 431.210 and 438.404.
 - (i) ~~The type and amount of TennCare services at issue and the identity of the individual, if any, who prescribed the services, so long as such information is applicable and has been provided to the MCC.~~
 - (ii) ~~A statement of reasons for the proposed action. The statement of reasons shall include the specific facts, personal to the enrollee, which support the proposed action and sources from which such facts are derived. If the proposed action turns on a determination of medical necessity or other clinical decision regarding a medical item or service that has been recommended by the treating physician, the statement of reasons shall:~~
 - (I) ~~Identify by name those clinicians who were consulted in reaching the decision at issue;~~
 - (II) ~~Identify specifically those medical records upon which those clinicians relied in reaching the decision; and~~
 - (III) ~~Specify what part(s) of the criteria for medical necessity or coverage was not met; and~~
 - (IV) ~~Include a statement of reasons for the weight given to the treating provider. Such criteria may be satisfied by:~~
 - I. ~~Citing an MCC policy that:~~
 - A. ~~Lists the UM approval criteria for the requested service; and~~

(Rule 1200-13-13-.11, continued)

- B. ~~Includes references to the evidence on which the policy is based; and~~
- II. ~~Explaining how the enrollee can obtain a copy of the policy; and~~
- III. ~~Explaining why the service was denied in light of the enrollee's individual circumstances (i.e., how the treating physician's recommendation deviated significantly from the MCC's evidence-based criteria).~~
- (iii) ~~Reference to the legal or policy basis for a proposed adverse action, including a plain and concise statement of, and official citation to, the applicable law, federal waiver provision, or TennCare contract provision relied upon.~~
- (iv) ~~To the extent that the initial notice of adverse action is issued prior to the member's filing a medical appeal, inform the enrollee about the opportunity to contest the decision, including the right to an expedited appeal in the case of time-sensitive care and the right to continuation or reinstatement of benefits pending appeal, when applicable.~~
- (v) ~~If the enrollee has an ongoing illness or condition requiring medical care and the MCC or its network provider is under a duty to provide a discharge plan or otherwise arrange for the continuation of treatment following the proposed adverse action, the notice must include a readable explanation of the discharge plan, if any, and a description of the specific arrangements in place to provide for the enrollee's continuing care.~~
2. **Remedying of Notice.** ~~If a notice of adverse action benefit determination provided to an enrollee does not meet the notice content requirements of rule 1200-13-13-.11(1)(c)1., TennCare will not automatically resolve the appeal in favor of the enrollee. TennCare or the MCC may cure any such deficiencies by providing one corrected notice to enrollees prior to issuance of the notice of hearing. If a corrected notice is provided to an enrollee, the reviewing authority shall consider only the factual reasons and legal authorities cited in the corrected notice, except that additional evidence beneficial to the enrollee may be considered on appeal.~~
3. ~~If a determination that a notice of adverse action fails to satisfy notice content requirements of rule 1200-13-13-.11(1)(c)1. is made after issuance of the notice of hearing or after a corrected notice has already been provided to an enrollee, unless the service at issue is non-covered or medically contraindicated, TennCare will automatically resolve the appeal in favor of the enrollee, subject to the MCC's right to take subsequent adverse action following the issuance of a new notice of action.~~
- (d) ~~Special Provisions Pertaining to Pharmacy Notice.~~
- ~~If an enrollee does not receive medication of the type and amount prescribed because the pharmacy services are not covered by TennCare, the enrollee shall receive appropriate notice as described below. Such notice shall not be subject to the requirements of rule 1200-13-13-.11(1)(c)1.~~
1. ~~When the enrollee has exceeded a benefit limit. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees through the PBM. If the PBM denies coverage because an enrollee has exceeded the applicable~~

(Rule 1200-13-13-.11, continued)

~~pharmacy benefit limit and the drug is not included on the Pharmacy Short List, the PBM will provide appropriate notice to the enrollee, informing his/her of the right to appeal the denial. This notice will only be provided upon the first denial of coverage of a pharmacy service sought by the enrollee that exceeds the applicable monthly limits.~~

- ~~2. When a request for prior authorization for a prescription has already been denied. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because a prior authorization request has already been denied, the enrollee will receive notice as described in rule 1200-13-13-.11(1)(d)3.(ii). No additional notice will be provided to the enrollee.~~
- ~~3. When a request for prior authorization has not been obtained for a prescription. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the pharmacist denies coverage because a request for prior authorization has not been obtained, the following will apply:
 - ~~(i) The pharmacists will attempt to contact the prescribing physician to seek prior authorization from the PBM or make a change in the prescription. If the pharmacist remains unable to resolve the enrollee's request for the prescription:
 - ~~(I) The pharmacist will dispense a 72-hour interim supply of the medication in an emergency situation if such supply would not exceed applicable pharmacy benefit limits. An emergency situation is a situation that, in the judgment of dispensing pharmacists, involves an immediate threat of severe adverse consequences to the enrollee, or the continuation of immediate and severe adverse consequences to the enrollee, if the outpatient drug is not dispensed when the prescription is submitted. The 72-hour interim supply shall only be dispensed by the pharmacist once per prescription. If the pharmacist determines that an emergency situation does not exist, the pharmacist will not dispense the 72-hour interim supply and shall not provide a written notice to the enrollee for this determination. Enrollees may not appeal the denial by the pharmacist of a 72-hour interim supply of a prescription.~~
 - ~~(II) The pharmacist will provide the enrollee with a notice that advises the enrollee how prior authorization may be requested for the prescription.~~~~
 - ~~(ii) If the prescribing physician seeks prior authorization for the prescription, the PBM will respond to this request within twenty-four (24) hours of receipt if the prescribing physician has provided all of the information necessary to facilitate the determination. If the PBM grants this request, the PBM will provide notice to the enrollee informing him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continuation or reinstatement of benefits, when applicable.~~
 - ~~(iii) If an enrollee seeks prior authorization before he/she contacted the prescribing physician, the PBM will advise the enrollee that he/she must attempt to contact the prescribing physician and allow twenty-four (24) hours to lapse from the denial of coverage for the prescription.~~~~

(Rule 1200-13-13-.11, continued)

- (iv) ~~If an enrollee seeks prior authorization after attempting to contact the prescribing physician and has allowed twenty-four (24) hours to lapse since the denial of coverage for the prescription, the PBM will review this request. A decision will be made within twenty-four (24) hours of receipt of a complete prior authorization request, but no more than three (3) business days after receipt of the enrollee's call seeking prior authorization. If the request is resolved as a result of the prescribing physician making a therapy change, the PBM will provide notice to the enrollee informing him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continue or reinstate benefits, when applicable.~~
4. ~~When the requested drug is not a category or class of drugs covered by TennCare. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because the drug is not a category or class of drugs covered by TennCare, the PBM will provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.~~
5. ~~When the enrollee has been locked into one pharmacy, as described in rule 1200-13-13-.13 and the enrollee seeks to fill a prescription at another pharmacy. Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because the pharmacy is not the enrollee's "lock-in" pharmacy, the PBM will provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.~~
6. ~~When an enrollee submits a pharmacy reimbursement and billing claim:~~
- (i) ~~TennCare will first determine whether the claim has been previously denied or whether a request for prior authorization has been denied. If the claim was paid upon approval of prior authorization or the enrollee received an alternative prescription ordered by his/her prescribing physician, TennCare will provide appropriate notice to the enrollee, informing them that the request has already been resolved.~~
- (ii) ~~If the claim or request for prior authorization had already been denied, TennCare will determine the reason for such denial and follow the applicable processes identified in rule 1200-13-13-.11(1)(d) 1. to 3.~~
- (iii) ~~If a claim had not already been submitted to the MCC or TennCare, TennCare will determine whether such claim is eligible for reimbursement. If TennCare denies the claim, TennCare will determine the reason for such denial and follow the applicable processes identified in rule 1200-13-13-.11(1)(d)1. to 3.~~
- (e) ~~Notice of Rights. The Bureau of TennCare shall provide annual notice to TennCare enrollees of his/her notice and appeal rights established by this rule, including the enrollee's recourse when billed by a provider for TennCare covered services. Additionally, upon enrollment in an MCC, the MCC shall give the enrollee a plain language explanation of appeal rights.~~
- (f) ~~Proper use of the approved template notices designated by the *Grier Revised Consent Decree* shall be deemed to satisfy the notice requirements specified by this rule.~~
- (g) ~~Violation of Notice Requirements and Corrective Action.~~

(Rule 1200-13-13-.11, continued)

1. ~~No adverse action affecting TennCare services shall be effective unless the notice requirements of the federal regulations (42 C.F.R. §§431.210—.214), as enhanced or otherwise modified herein, have been complied with. TennCare shall not withhold, or permit others acting on its behalf to withhold, any TennCare services in violation of this requirement.~~
 2. ~~Whenever it comes to the attention of the Bureau of TennCare or an MCC that a TennCare covered service will be or has been delayed, denied, reduced, suspended or terminated in violation of any of the notice requirements of this rule:~~
 - (i) ~~Prior to an appeal or in the early stages of an appeal (i.e., before issuance of a timely notice of hearing), TennCare or the MCC may cure any such deficiencies by providing one corrected notice to a TennCare beneficiary. If the beneficiary has not yet filed an appeal, the time limit permitted for the beneficiary's response will be restarted upon issuance of the corrected notice;~~
 - (ii) ~~In the later stages of an appeal (i.e., after issuance of a timely notice of hearing), TennCare or the MCC will immediately provide that service in the quantity and for the duration prescribed, subject to TennCare's or the MCC's right to reduce or terminate the service in accordance with the procedures required by this rule.~~
 3. ~~In the event that the enrollee lacks a prescription for the covered TennCare service which has been delayed, denied, reduced, suspended or terminated in violation of notice requirements, the following shall occur:~~
 - (i) ~~The enrollee will be immediately afforded access, at the earliest time practicable, to a qualified provider to determine whether the service should be prescribed;~~
 - (ii) ~~The provider will be informed that the service will be authorized if prescribed and found to be medically necessary; and~~
 - (iii) ~~Entitlement to the service will not be controlled by the MCC's utilization review process.~~
 4. ~~In the event that the notice violation has occurred with regard to a delay of access to a physician to secure the requested medical assistance, such access shall be provided as soon as practicable. The enrollee shall be entitled to continue to receive such service until such time as the MCC takes those actions required by federal regulations and this rule as a prerequisite to taking any adverse action affecting TennCare services.~~
- (2) **Appeal Rights of Enrollees. Enrollees have the following rights:**
- (a) **To appeal adverse actions affecting TennCare services benefit determinations.**
 - (b) **An enrollee's request for appeal, including oral or written expressions by the enrollee, or on his behalf, of dissatisfaction or disagreement with adverse actions benefit determinations that have been taken made or are proposed to be taken made, may not be denied, including instances in which:**

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- ~~1. The enrollee lacks an order or prescription from a provider supporting the appeal, provided however, that the State may create an administrative grievance or other informal process to address appeals by enrollees without an order or prescription;~~
 - ~~2. TennCare or an MCC has agreed to cover a prescribed service in an amount that is less than the amount or duration sought by the enrollee;~~
 - ~~3. TennCare or an MCC has agreed to provide a covered service that is different from that sought by the enrollee;~~
 - ~~4. An enrollee seeks to contest a delay or denial of care resulting from the MCC's failure or refusal to make a needed service available, due to the inadequacy of the MCC's provider network;~~
 - ~~5. An enrollee seeks to contest a denial of his right under the TennCare waiver to choose his own primary care provider (PCP) from among a panel offered by the MCC, or seeks to contest a delay or denial of care resulting from the involuntary assignment of a PCP;~~
 - ~~6. An enrollee seeks to contest denial of TennCare coverage for services already received, regardless of the cost or value of the services at issue; and~~
 - ~~7. An enrollee seeks to contest a decision granting or withholding designation as severely and persistently mentally ill (SPMI) or severely emotionally disturbed (SED); and~~
 - ~~8. An enrollee seeks to change health plans after the initial forty-five (45) days pursuant to 1200-13-13-.03(2)(b)2.~~
- (c) To have the appeal rights that are prescribed by 42 C.F.R. Part 431, Subpart E and Tennessee Code Annotated §§ 4-5-301, et seq.
- (d) To be allowed ~~thirty (30)~~ sixty (60) days from receipt of written notice or, if no notice is provided, from the time the enrollee becomes aware of an adverse action benefit determination, to appeal any adverse action affecting TennCare services benefit determination.
- (e) To appeal in person, by telephone, or in writing. Reasonable accommodations shall be made for any person with disabilities who requires assistance with his/her appeal, such as an appeal by TDD services or other communication device for people with disabilities. Written requests for appeals made at county TDHS offices shall be stamped and immediately forwarded to the TennCare Bureau for processing and entry in the central registry.
- ~~(f) To file an appeal through a toll-free phone number on a twenty-four (24) hours a day, seven (7) days a week basis. Resolution of appeals outside of regular business hours will be available only in cases of emergency medical condition.~~
- (g) For ongoing services, have the right to continuation or reinstatement of services, pursuant to 42 C.F.R. §§ 431.230 and 431.231 as modified by this rule, pending resolution of the appeal when the enrollee submits a timely appeal and timely request for COB such services. When an enrollee is so entitled to continuation or reinstatement of services, this right may not be denied for any reason, including:
1. An MCC's failure to inform an enrollee of the availability of such continued services;

(Rule 1200-13-13-.11, continued)

2. An MCC's failure to reimburse providers for delivering services pending appeal; or
 3. An MCC's failure to provide such services when timely requested.
- (h) To an impartial appeals process. But for initial reconsideration by an MCC as permitted by this rule, no person who is an employee, agent or representative of an MCC may participate in deciding the outcome of a ~~TennCare appeal~~^{SFH}. No state official who was directly involved in the initial determination of the action in question may participate in deciding the outcome of an enrollee's appeal who was directly involved in the initial determination of the action in question.
- (3) Special Provisions Relating to Appeals.
- (a) Individualized Decisions Required. Neither the TennCare program nor its MCCs may employ utilization control guidelines or other quantitative coverage limits, whether explicit or de facto, unless supported by an individualized determination of medical necessity based upon the needs of each TennCare enrollee and his or her medical history.
 - (b) ~~Medical Decisions to be Supported by Substantial and Material Evidence.~~ Throughout all stages of an appeal of an adverse action affecting TennCare services, decisions shall be based upon substantial and material evidence. ~~In cases involving clinical judgments, this requirement means that:~~
 1. ~~Appeal decision must be supported by medical evidence, and it is the MCCs' and TennCare's responsibility to elicit from enrollees and his/her treating providers all pertinent medical records that support an appeal; and Appeal decisions must be based on an evaluation of pertinent medical evidence. TennCare and the MCCs shall elicit from enrollees and their treating providers all pertinent medical records that support an appeal; and~~
 2. ~~Medical opinions shall be evaluated in accordance with the Grier Revised Consent Decree and pursuant to TennCare Medical Necessity rule 1200-13-16. Reliance upon insurance industry guidelines or utilization control criteria of general application, without consideration of the individual enrollee's medical history, does not satisfy this requirement and cannot be relied upon to support an adverse benefit determination action affecting TennCare services.~~
 - (c) Record on Review. When TennCare receives an appeal from an enrollee regarding an adverse action affecting TennCare services benefit determination, TennCare is responsible for obtaining from the MCC any and all records or documents pertaining to the MCC's decision to take the contested action. TennCare shall correct any violation of this rule that is evident from a review of those records.
 - (d) Valid Factual Disputes. When TennCare receives an appeal from an enrollee, TennCare will dismiss this appeal unless the enrollee has established a valid factual dispute relating to an adverse action affecting TennCare services benefit determination.
 1. Processing of Appeals. TennCare shall screen all appeals submitted by TennCare enrollees to determine if the enrollees have presented a valid factual dispute. If TennCare determines that an enrollee failed to present a valid factual dispute, TennCare will immediately provide the enrollee with a notice, informing him/her that the enrollee must provide additional information as identified in the notice. If the enrollee does not provide this information, the appeal shall be

(Rule 1200-13-13-.11, continued)

dismissed without the opportunity for a state fair hearing within ten (10) days of the date of the notice. If the enrollee adequately responds to this notice, TennCare shall inform the enrollee that the appeal will proceed to a hearing. If the enrollee responds but fails to provide adequate information, TennCare will provide a notice to the enrollee, informing him/her that the appeal is dismissed without the opportunity for a state fair hearing. If the enrollee does not respond, the appeal will be dismissed without the opportunity for a state fair hearing, without further notice to the enrollee.

2. Information Required to Establish Valid Factual Disputes. In order to establish a valid factual dispute, TennCare enrollees must provide the following information: Enrollee's name; member SSN or TennCare ID#; address and phone; identification of the service or item that is the subject of the adverse ~~action~~ benefit determination; and the reason for the appeal, including any factual error the enrollee believes TennCare or the MCC has made. For reimbursement and billing appeals, enrollees must also provide the date the service was provided, the name of the provider, copies of receipts which prove that the enrollee paid for the services or copies of a bill for the services, whichever is applicable.

- (e) ~~Appeals When Enrollees Lack a Prescription. If~~ When a TennCare enrollee ~~appeals an adverse action and TennCare determines that the basis of the appeal is that~~ attempts to lodge an appeal for a benefit for which the enrollee lacks a prescription, TennCare may require the enrollee to exhaust the following administrative process before an appeal can proceed:

1. TennCare will provide appropriate notice to the enrollee informing him/her that he/she will be required to complete an administrative process. Such administrative process requires the enrollee to contact the MCC to make an appointment with a provider to evaluate the request for the service. The MCC shall be required to make such appointment for the enrollee within a 3-week period or forty-eight (48) hours for urgent care from the date the enrollee contacts the MCC. Appeal timeframes will be tolled during this administrative process.
2. In order for this appeal to continue, the enrollee shall be required to contact TennCare after attending the appointment with a physician and demonstrate that he/she remains without a prescription for the service. If the enrollee fails to contact TennCare within sixty (60) days from the date of the notice described in subparagraph (e)1., TennCare will dismiss the appeal without providing an opportunity for a hearing for the enrollee.

- (f) ~~Appeals When No Adverse Action is Taken~~ Benefit Determination Has Been Made. Enrollees shall not possess the right to appeal when no adverse action has been taken related to TennCare services benefit determination has been made. If enrollees request a hearing when no adverse action has been taken in this circumstance, their request shall be denied by the TennCare bureau without the opportunity for a hearing. Such circumstances include but are not limited to when enrollees appeal and no ~~claim request~~ request for services had previously been denied.

(4) Hearing Rights of Enrollees.

- (a) ~~TennCare shall inform enrollees of their~~ that they have the right to an in-person hearing, a telephone hearing state fair hearing rights or other hearing accommodation as may be required for enrollees with disabilities;
- (b) Enrollees shall be entitled to a hearing before an ~~impartial~~ a hearing officer that affords each enrollee the right to:

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1. Representation at the hearing by anyone of his/her choice, including a lawyer;
 2. Review information and facts relied on for the decisions by the MCC and the TennCare Bureau before the hearing;
 3. Cross-examine adverse witnesses;
 4. Present evidence, including the right to compel attendance of witnesses at hearings;
 5. Review and present information from his/her medical records;
 6. Present evidence at the hearing challenging the adverse decision by his/her MCC;
 7. Ask for an independent medical opinion, at no expense to the enrollee;
 8. Continue or reinstate ongoing services pending a hearing decision, as specified in this rule;
 9. A written decision setting out the impartial hearing officer's rulings on findings of fact and conclusions of law; and
 10. Resolution, including a hearing with an ALJ before a hearing officer if the case has not been previously resolved in favor of the enrollee, within ninety (90) days for standard appeals or thirty-one (31) days (or forty-five (45)) days when additional time is required to obtain an enrollee's medical records) for expedited appeals, from the date of receipt of the appeal pursuant to 42 C.F.R. § 431.244.
- (c) TennCare shall not impair the ability of an enrollee to appeal an adverse hearing decision by requiring that the enrollee bear the expense of purchasing a hearing transcript when such purchase would be a financial hardship for the enrollee.
- (d) Parties to an Appeal. Under this rule, the parties to an administrative a state fair hearing are limited to the enrollee and TennCare, those permitted by federal regulations as modified by CMS letter dated June 5, 2017. The purpose of the hearing is to focus on the enrollee's medical needs. MCCs are not permitted to intervene or participate as parties in an enrollee's hearing. However, MCC employees may participate as witnesses in hearings. Further, nothing in this provision bars participation by an MCC in any informal resolution phase of the appeal process prior to a hearing before the impartial hearing officer.
- (e) Consistent with the Code of Judicial Conduct, impartial hearing officers shall assist pro se enrollees in developing the factual record and shall have authority to order second medical opinions at no expense to the enrollee.
- (f) Review of Hearing Decisions.
1. Impartial hearing officers shall promptly issue an Order of their decision. Impartial hearing officers shall provide enrollees with copies of such Orders. Hearing officers shall promptly issue an Order of their decision. Any Order delivered orally from the bench in an expedited hearing by a hearing officer shall be effective immediately as to the provision or denial of benefits. In accordance with 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F, the hearing officer shall enter a written order as soon as practicable and shall provide the parties

(Rule 1200-13-13-.11, continued)

with copies of such Orders. The time for appealing any oral Order shall not begin to run until entry of the written Order.

2. The TennCare Bureau shall have the opportunity to review all decisions of impartial hearing officers, in accordance with T.C.A. §§ 4-5-314 and 4-5-315, to determine whether such decisions are contrary to applicable law, regulations or policy interpretations, which shall include but not be limited to decisions regarding the defined package of covered benefits, determinations of medical necessity and decisions based on the application of the *Grier Revised Consent Decree* this chapter and 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F.

~~(i) TennCare shall attempt to complete such review within five (5) days of the issuance of the decision of the impartial hearing officer.~~

~~(ii) If TennCare is unable to take final agency action within five (5) days of the issuance of such decision, prompt corrective action by the fifth (5th) day is required, pursuant to rule 1200-13-13-.11(7)(f). However, the State shall not be prohibited from taking final agency action as expeditiously as possible and may immediately implement such final agency action to reduce, suspend, or terminate a service for which corrective action had been provided.~~

(iii) If TennCare modifies or overturns the decision of the impartial hearing officer, TennCare shall issue a written decision that will be provided to the enrollee and the impartial hearing officer. TennCare's decision shall constitute final agency action.

(iv) If TennCare does not modify or overturn the decision of the impartial hearing officer, the impartial hearing officer's decision shall constitute final agency action without additional notice to the enrollee.

(v) Review of final agency action shall be available to enrollees pursuant to the Tennessee Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq T.C.A. § 4-5-322.

(vi) An impartial A hearing officer's decision in an enrollee's appeal shall not be deemed precedent for future appeals.

(g) Continuation or Reinstatement of TennCare Services.

1. Except as As permitted under 42 C.F.R. §§ 431.213, 431.214 and 431.220, as modified by this rule, 431.230, 431.231 and 438.420, if required or if the enrollee requests, TennCare services shall continue or be reinstated until the earlier of dismissal of the appeal through the valid factual dispute process, enrollee's withdrawal of the appeal, or an initial hearing decision if the enrollee appeals and requests: adverse to the enrollee.

~~(i) Continuation of services within two (2) business days of the receipt of MCC-initiated notice of action to terminate, suspend or reduce ongoing inpatient hospital treatment; or~~

~~(ii) Continuation of services within two (2) business days of the receipt of provider-initiated notice of action to terminate, suspend or reduce any behavioral health service for a severely and persistently mentally ill (SPMI) adult enrollee or severely emotionally disturbed (SED) child, any inpatient psychiatric or residential service, any service being provided to treat a~~

(Rule 1200-13-13-.11, continued)

~~patient's chronic condition across a continuum of services when the next appropriate level of medical service is not immediately available, or home health services; or~~

- ~~(iii) Continuation or reinstatement of services within ten (10) days of MCC-initiated notice of adverse benefit determination to terminate, suspend or reduce other ongoing services or prior to the date of action.~~
- ~~2. In the case of a timely request for continuation or reinstatement of the TennCare services described in paragraph (4)(g)1.(ii) above, the enrollee shall be afforded access to a written second medical opinion from a qualified provider who participates in the MCC's network. If there has not already been a break in receipt of the services, the benefits shall continue until receipt of the written second medical opinion. Services shall continue or be reinstated thereafter pending appeal only if and to the extent prescribed by the second provider.~~
- 3. In the case of a timely request for continuation or reinstatement of the TennCare services described in paragraph (4)(g)1.(i) and (iii) above, the services shall continue or be reinstated pending appeal only if and to the extent prescribed by the enrollee's treating clinician.**
- ~~4. Services shall not continue, but may be immediately reduced, terminated, or suspended if the services are determined medically contraindicated in accordance with the provisions of paragraph (8) below.~~
- ~~5. Resolution, including a hearing with an ALJ if the case has not been previously resolved in favor of the enrollee, of expedited appeals shall be provided within thirty-one (31) days or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received from the enrollee. TennCare is permitted to seek final agency review by the TennCare Commissioner or his designee in any appeal in which the enrollee prevails by a decision of an administrative law judge (ALJ) who is not an employee or official of the Department of Finance and Administration or Bureau of TennCare. Provided however, that if the enrollee prevails at any stage of the appeal process and TennCare seeks final agency review, the State may not await the conclusion of this review before providing prompt corrective action. If an enrollee makes a timely request for continuation or reinstatement of a disputed TennCare service pending appeal, receives the continued or reinstated service, and subsequently requests a continuance of the proceedings without presenting a compelling justification, the impartial hearing officer shall grant the request for continuance conditionally. The condition of such continuance is the enrollee's waiver of his right to continue receiving the disputed service pending a decision if:~~
- ~~(i) The impartial hearing officer finds that such continuance is not necessitated by acts or omissions on the part of the State or MCC;~~
- ~~(ii) The enrollee lacks a compelling justification for the requested delay; and~~
- ~~(iii) The enrollee received at least three (3) weeks notice of the hearing, in the case of a standard appeal, or at least one (1) week's notice, in the case of an expedited appeal.~~
- 6. Notwithstanding the requirements of this part, TennCare enrollees are not entitled to continuation or reinstatement of services pending an appeal related to the following:**

(Rule 1200-13-13-.11, continued)

- (i) When a service is denied because the enrollee has exceeded the benefit limit applicable to that service;
 - (ii) When a request for prior authorization is denied for a prescription drug, with the exception of:
 - (I) Pharmacists shall provide a single 72-hour interim supply in emergency situations for the non-authorized drug, unless such supply would exceed applicable pharmacy benefit limits; or
 - (II) When the drug has been prescribed on an ongoing basis or with unlimited refills and becomes subject to prior authorization requirements.
 - (iii) When coverage of a prescription drug or service is denied because the requested drug or service is not a category or class of drugs or services covered by TennCare;
 - (iv) When coverage for a prescription drug is denied because the enrollee has been locked into one pharmacy and the enrollee seeks to fill a prescription at another pharmacy;
 - (v) When a request for reimbursement is denied and the enrollee appeals this denial;
 - (vi) When a physician has failed to prescribe or order the service or level of service for which continuation or reinstatement is requested; or
 - (vii) If TennCare had not paid for the type and amount of service for which continuation or reinstatement is requested prior to the appeal.
- (h) Expedited appeals. Reserved.
- ~~1. Expedited appeals of any action involving time sensitive care must be resolved within thirty one (31) days, or forty five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received the time constraints set out at 42 C.F.R. § 431.244. An enrollee may request an expedited appeal, and the MCC shall grant the request, if he/she meets the criteria for expedited resolution as set forth in 42 C.F.R. §§ 431.244 and 438.410.~~
 - ~~2. An enrollee may request an expedited appeal, applying a prudent layperson's understanding regarding whether the care at issue is time sensitive, i.e., whether such care constitutes an "emergency". In this context, an emergency is a situation in which a covered benefit has been delayed, denied, terminated or suspended and in the judgment of the enrollee's treating physician or a prudent layperson, waiting 90 days to receive such service will result in:

 - ~~(i) Serious health problems or death;~~
 - ~~(ii) Serious dysfunction of a bodily organ or part; or~~
 - ~~(iii) Hospitalization.~~~~
 - ~~3. The enrollee may (but is not required to) submit with his/her request for an expedited appeal, certification by his/her treating physician that such appeal is an emergency.~~

(Rule 1200-13-13-.11, continued)

4. ~~An enrollee's request for an expedited appeal may be overcome only if:~~

- ~~(i) The item or service at issue is not a covered benefit;~~
- ~~(ii) The enrollee's treating provider certifies in writing that the appeal is not an emergency; or~~
- ~~(iii) The service is one which, by its nature, never constitutes an emergency, and is specified on a list of non-emergency items or services by the Bureau of TennCare and made available upon request to providers, enrollees, and the public.~~

(5) Special Provisions Pertaining to Pharmacy Reserved.

~~(a) When a provider with prescribing authority prescribes a medication for an enrollee, and the prescription is presented at a pharmacy that participates in the enrollee's MCC, the enrollee is entitled to:~~

- ~~1. The drug as prescribed, if the drug is on the MCC's formulary and does not require prior authorization.~~
- ~~2. The drug as prescribed, if the prescribing provider has obtained prior authorization.~~
- ~~3. An alternative medication, if the pharmacist consults the prescribing provider when the enrollee presents the prescription to be filled, and the provider prescribes a substituted drug; or~~
- ~~4. Subject to the provisions of rule 1200-13-13-.11(1)(d), if the pharmacist is unable to obtain the prescribing physician's approval to substitute a drug or authorization for the original prescription, the pharmacist will dispense a seventy-two (72) hour interim supply of the medication in an emergency situation and shall not impose any cost sharing obligations upon the enrollee for this supply. Such supply shall count towards the enrollee's applicable pharmacy benefit limit and the pharmacist shall not dispense this supply if the supply would otherwise exceed these limits. In the event that a prescribing physician obtains prior authorization or changes the drug to an alternative that does not require prior authorization, the remainder of the drug shall not count towards the enrollee's applicable pharmacy benefit limit if the enrollee receives the prescription drug within fourteen (14) days of dispensing the seventy-two (72) hour interim supply.~~

~~(b) A pharmacist shall dispense a seventy-two (72) hour interim supply of the prescribed drug, as mandated by the preceding paragraph, provided that:~~

- ~~1. The medication is not classified by the FDA as Less Than Effective (LTE) and DESI drugs or any drugs considered to be Identical, Related and Similar (IRS) to DESI or LTE drugs or any medication for which no federal financial participation (FFP) is available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age; or~~
- ~~2. The medication is not a drug in one of the non-covered TennCare therapeutic categories that include:~~
 - ~~(i) agents for weight loss or weight gain;~~

(Rule 1200-13-13-.11, continued)

- ~~(ii) — agents to promote fertility or to treat impotence;~~
 - ~~(iii) — agents for cosmetic purposes or hair growth;~~
 - ~~(iv) — agents for the symptomatic relief of coughs and colds;~~
 - ~~(v) — prescription vitamins and mineral products except prenatal vitamins and fluoride preparations;~~
 - ~~(vi) — nonprescription drugs; or~~
 - ~~(vii) — covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.~~
- ~~3. — Use of the medication has not been determined to be medically contraindicated because of the patient's medical condition or possible adverse drug interaction; or~~
 - ~~4. — If the prescription is for a total quantity less than a seventy-two (72) hour supply, the pharmacist must provide a supply up to the amount prescribed.~~
 - ~~5. — In some circumstances, it is not feasible for the pharmacist to dispense a seventy-two (72) hour supply because the drug is packaged by the manufacturer to be sold as the original unit or because the usual and customary pharmacy practice would be to dispense the drug in the original packaging. Examples would include, but not be limited to, inhalers, eye drops, ear drops, injections, topicals (creams, ointments, sprays), drugs packaged in special dispensers (birth control pills, steroid dose packs), and drugs that require reconstitution before dispensing (antibiotic powder for oral suspension). When coverage of a seventy-two (72) hour supply of a prescription would otherwise be required and when, as described above, it is not feasible for the pharmacist to dispense a seventy-two (72) hour supply, it is the responsibility of the MCC to provide coverage for either the seventy-two (72) hour supply or the usual dispensing amount, whichever is greater.~~
 - ~~6. — The Bureau of TennCare shall establish a tolerance level for early refills of prescriptions. Such established tolerance level may be more stringent for narcotic substances. Notwithstanding the requirements of this part, if an enrollee requests a refill of a prescription prior to the tolerance level for early refills established by the Bureau, the pharmacy will deny this request as a service which is non-covered until the applicable tolerance period has lapsed, and will not provide a seventy-two (72) hour supply of the prescribed drug.~~
- (6) Release of Enrollees' Medical Records.
- (a) When a request is made, by or on behalf of a TennCare enrollee, for approval of a TennCare service or for an appeal of an adverse action affecting TennCare services benefit determination, the enrollee is deemed to have consented to release of his/her relevant medical records to his/her MCC and the TennCare Bureau for the purposes of acting upon the enrollee's request.
 - (b) Providers shall promptly provide copies of an enrollee's medical records to the enrollee's MCC(s) and to the TennCare Bureau upon being informed by the MCC(s) or TennCare Bureau that the records have been requested for the purpose of acting upon

(Rule 1200-13-13-.11, continued)

an enrollee's request for approval of a TennCare service or an enrollee's appeal of an adverse action affecting TennCare services benefit determination.

- (c) An enrollee's consent to release of his/her medical records may be evidenced by his signature (or his provider's or authorized representative's signature) upon the enrollee's initial application for TennCare, upon his TennCare appeal form or other written request for authorization or appeal, or, in the event of an appeal by telephone, by a TennCare Bureau employee's signing of an appeal form on behalf of an enrollee with documentation of consent to do so.
 - (d) The medical records obtained by MCCs and the TennCare Bureau under this rule remain confidential. MCCs and the TennCare Bureau may use and disclose the records only as necessary in their consideration of the enrollee's request for approval of a TennCare service or the enrollee's appeal of an adverse action affecting TennCare services benefit determination.
- (7) Time Requirements and Corrective Action.
- (a) ~~MCCs must act upon a request for prior authorization within fourteen (14) days as provided in rule 1200-13-13-.11(1)(b)2. or as expeditiously as the enrollee's health condition requires. Failure by the MCCs to act upon a request for prior authorization within twenty one (21) days shall result in an automatic authorization of the requested service, subject to the provision of (7)(e) below, and to provisions relating to medical contraindication at rule 1200-13-13-.11(8) 42 C.F.R. § 438.210.~~
 - (b) ~~MCCs must complete reconsideration of non-expedited standard appeals within fourteen (14) calendar days of the request from TennCare. MCCs must complete reconsideration of expedited appeals involving time sensitive care within seventy-two (72) hours of the request for SFH, five (5) days, which shall be extended to fourteen (14) days if additional time is required to obtain an enrollee's medical records. Failure by the MCCs to meet these deadlines shall not result in an immediate resolution of the appeal in favor of the enrollee provided that the missed deadline may be remedied early in the appeals process such that the appeal is resolved within the 31, 45 or 90 day deadline, whichever is appropriate.~~
 - (c) ~~All standard and expedited appeals, including, if not previously resolved in favor of the enrollee during reconsideration, shall be set for a hearing before an impartial hearing officer, and shall be resolved within ninety (90) days of receipt of the enrollee's request for an appeal. All expedited appeals involving time sensitive care shall be resolved within thirty-one (31) days of receipt of the request for appeal, unless extended to forty-five days when additional time is required to obtain an enrollee's medical records. Calculation of the ninety (90) day, thirty-one (31) day or forty-five (45) day deadline may be adjusted so that pursuant to the timeframes set forth in 42 C.F.R. § 431.244. In accordance with 42 C.F.R. § 438.410(a) and 42 C.F.R. § 431.244(f)(2), SFH requests which are approved for expedited resolution and which are not resolved in the enrollee's favor during MCC's reconsideration, shall be resolved by TennCare within three (3) working days from the date of the MCC's reconsideration determination. TennCare is not charged with any delays attributable to the enrollee. However, no delay may be attributed to an enrollee's request for a continuance of the hearing, if s/he received less than three (3) weeks' notice of the hearing, in the case of a standard appeal, or less than one (1) week's notice, in the case of an expedited appeal involving time sensitive care. An enrollee may only be charged with the amount of delay occasioned by his/her acts or omissions, and any other delays shall be deemed to be the responsibility of TennCare.~~

(Rule 1200-13-13-.11, continued)

- (d) ~~Failure to meet the ninety (90) day or thirty-one (31) day (extended to forty-five (45) calendar days when necessary to allow sufficient time to obtain the enrollee's medical records) deadline, as applicable, shall result in automatic TennCare coverage of the services at issue pending a decision by the impartial hearing officer, subject to the provisions of subparagraphs (7)(e) and (f) below, and to provisions relating to medical contraindication at rule 1200-13-13-.11(8). This conditional authorization will neither meet the pending appeal nor be evidence of the enrollee's satisfaction of the criteria for disposing of the case, but is simply a compliance mechanism for disposing of appeals within the required time frames. In the event that the appeal is ultimately decided against the enrollee, s/he shall not be liable for the cost of services provided during the period required to resolve the appeal. Notwithstanding, upon resolving an appeal against an enrollee, TennCare may immediately implement such decision, thereby reducing, suspending, or terminating the provision or payment of the service.~~
- (e) ~~When, under the provisions of rule 1200-13-13-.11(7)(a) or (d), a failure to comply with the time frames would require the immediate provision of a disputed service, TennCare may decline to provide the service pending a contrary order on appeal, based upon a determination that the disputed service is not a TennCare-covered service. A determination that a disputed service is not a TennCare-covered service may not be based upon a finding that the service is not medically necessary. Rather, it may only be made with regard to a service that:~~
- ~~1. Is subject to an exclusion that has been reviewed and approved by the federal Center for Medicare and Medicaid Services (CMS) and incorporated into a properly promulgated state regulation, or~~
 - ~~2. Which, under Title XIX of the Social Security Act, is never federally reimbursable in any Medicaid program.~~
- (f) ~~Except upon a showing by an MCC of good cause requiring a longer period of time, within five (5) days of a decision in favor of an enrollee at any stage of the appeal process, the MCC shall take corrective action to implement the decision. For purposes of meeting the five (5) day time limit for corrective action, the State and/or its MCCs shall ensure, whenever an appeal is resolved in favor of the beneficiary:~~
- ~~1. The enrollee's receipt of the services at issue, or acceptance and receipt of alternative services; or~~
 - ~~2. Reimbursement for the enrollee's cost of services, if the enrollee has already received the services at his/her own expense; or~~
 - ~~3. If the enrollee has already received the service, but has not paid the provider, that the enrollee is not billed for the service and that the enrollee's care is not jeopardized by non-payment.~~
- ~~In the event that a decision in favor of an enrollee is modified or overturned, TennCare shall possess the authority to immediately implement such decision, thereby reducing, suspending, or terminating the provision or payment of the service in dispute.~~
- (g) ~~In no circumstance will a directive be issued by the TennCare Solutions Unit Bureau or an impartial a hearing officer to provide a service to an enrollee if, when the appeal is resolved, the service is no longer covered by TennCare for the enrollee. A directive also will not be issued by the TennCare Solutions Unit Bureau if the service cannot reasonably be provided to the enrollee before the date when the service is no longer covered by TennCare for the enrollee and such appeal will proceed to a hearing.~~

(Rule 1200-13-13-.11, continued)

(8) ~~Medical Contraindication. Reserved.~~

- (a) ~~Whenever the terms of this rule require the provision of TennCare benefits or services to an enrollee, such obligation shall be relieved upon the written certification of a provider who is familiar with the beneficiary's medical condition that the TennCare benefit or service in question is medically contraindicated. The provider must either be employed by the state or, if a licensed pharmacist determining contraindication with regard to a prescribed drug, must be making such determination consistent with pre-established standards and procedures approved by the state.~~
- (b) ~~If a TennCare service is determined to be medically contraindicated as set out above, written notice must be immediately provided to the enrollee, and the notice must be accompanied by the provider's certification that the service must be withheld in order to protect the enrollee's health or safety. A copy of the notice and provider certification must be forwarded to the Tennessee Justice Center.~~

(9) **Special Provisions Relating to Children in State Custody.**

~~In addition to Children in the custody of the State have the rights and protections established by 42 C.F.R. Part 431, Subpart E and the terms of this rule, children in state custody shall also receive the following enhanced notice and appeal rights: regarding TennCare services and benefits.~~

- (a) ~~The Tennessee Department of Children's Services (DCS) must provide notice of any delay in providing a TennCare service that is administered by DCS. Such delay is immediately appealable on that child's behalf and cannot be required to last a particular length of time before issuance of the notice or processing of an appeal.~~
- (b) ~~Whenever there is an adverse action affecting TennCare services (regardless of which contractor or government agency is administering such services), timely notices required by this rule must be sent to the individuals specified in the DCS implementation plan which was approved by the Court in *Grier Revised Consent Decree*. In the case of services administered by MCCs other than DCS, the responsible MCC shall provide notice to DCS, which shall ensure that timely notice is provided to the required individuals. Delivery of notice triggering the right to appeal is not complete until notice is received by those individuals.~~
- (c) ~~An appeal from any individual specified in paragraph (9)(b) above must be accepted as an appeal on behalf of the child.~~

1200-13-13-.12 OTHER APPEALS BY TENNCARE APPLICANTS AND ENROLLEES. Notwithstanding Rule 1200-13-19-.01, or any rule to the contrary, appeals by applicants and enrollees of all non-medical eligibility matters are removed to Rule Chapter 1200-13-19, effective upon expiration of the TDHS contract to determine eligibility matters.

(1) ~~Appeal Rights of TennCare Medicaid Applicants or Enrollees.~~(a) ~~Appeal Time; Continuation of Services.~~1. ~~TennCare Medicaid Appeals.~~

- (i) ~~TennCare Medicaid applicants or enrollees will be given the opportunity to have an administrative hearing before a Hearing Officer or an Administrative Judge, as determined by the Department of Human Services, regarding valid factual disputes concerning denial of his/her~~

(Rule 1200-13-13-.14, continued)

~~application, cost-sharing disputes, limitation, reduction, suspension or termination of eligibility, failure to act upon a request or application within required timeframes, and disputes regarding disenrollment from TennCare Medicaid. A valid factual dispute is a dispute that, if resolved in favor of the appellant, would prevent the state from taking the action that is the subject of the appeal. The TennCare Bureau designates TDHS to review each request for a hearing to determine if it is based on a valid factual dispute. If TDHS determines that an appeal does not present a valid factual dispute, then TDHS will send the appellant a letter asking him or her to submit additional clarification regarding the appeal within ten (10) days (inclusive of mail time). Unless such clarification is timely received and is determined by TDHS to establish a valid factual dispute, TDHS will dismiss the appeal. TDHS' decisions with respect to determination of whether an appeal raises a valid factual dispute shall not be appealable.~~

- ~~(ii) Requests for appeals must be made within forty (40) calendar days (inclusive of mail time) of the date of the notice to the applicant/enrollee regarding the intended action or prior to the date of action specified in the notice, whichever is later, notwithstanding anything else in these rules or in the Department of Human Services' administrative procedures rules to the contrary.~~
- ~~(iii) Enrollees who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of the notice or prior to the date of action specified in the notice, whichever is later, shall retain their eligibility (subject to any changes in covered services generally applicable to enrollees in their TennCare category) pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first. If the appeal results in the State's action being sustained, the State reserves its right to recover from the enrollee the cost of services provided to the enrollee during the pendency of the appeal.~~
- ~~(iv) Enrollees disputing the applicability of changes in coverage to their current TennCare category who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of the notice or prior to the date of action specified in the notice, whichever is later, shall, notwithstanding subsection (1)(a)1.(iii), continue to receive benefits at the level for the eligibility category alleged by the enrollee to be currently applicable, pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first. If the enrollee does not clearly allege the applicability of a particular eligibility category, benefits will be continued at the level for Non-Institutionalized Medicaid Adults pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first. If TDHS subsequently determines that the enrollee is alleging that a particular eligibility category is currently applicable, benefits will be prospectively continued at the level for such eligibility category pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.~~

- ~~(b) To the extent not otherwise modified by this rule, such appeals will be conducted by the Department of Human Services for TennCare Medicaid applicants/enrollees under the Department of Human Services' administrative procedures rules, and in accordance with any other applicable rules, laws or court orders governing those programs, provided that the finality of initial orders shall be governed by the provisions of Tennessee Code Annotated Section 4-5-314(b).~~

(Rule 1200-13-13-.14, continued)

~~(c) Appeal Rights for Disenrollment Related to TennCare Medicaid Eligibility Reforms.~~

- ~~1. TennCare Medicaid enrollees, who have not been determined eligible for open Medicaid categories pursuant to the Ex Parte Review or Request for Information processes described in 1200-13-13-.02, will have the right to request a hearing for 40 days (inclusive of mail time) from the date of the Termination Notice, notwithstanding anything else in these rules or in the Department of Human Services' administrative procedures rules to the contrary.~~
- ~~2. To the extent not otherwise modified by this rule, such appeals will be conducted by the Department of Human Services for TennCare Medicaid applicants/enrollees under the Department of Human Services' administrative procedures rules, and in accordance with any other applicable rules, laws or court orders governing those programs, provided that the finality of initial orders shall be governed by the provisions of Tennessee Code Annotated Section 4-5-314(b).~~
- ~~3. Enrollees will not have the opportunity to request an extension for good cause of the forty (40) day timeframe in which to request a hearing.~~
- ~~4. Enrollees who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of notice or prior to the date of termination specified in the Termination Notice, whichever is later, shall retain their eligibility (subject to any changes in covered services generally applicable to enrollees in their TennCare Medicaid category) pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.~~
- ~~5. The TennCare Bureau designates TDHS to review each request for hearing to determine if it is based on a valid factual dispute. Enrollees will be given the opportunity to have an administrative hearing before a Hearing Officer or an Administrative Judge, as determined by TDHS, regarding valid factual disputes related to termination. If TDHS makes an initial determination that the request for a hearing is not based on a valid factual dispute, the appellant will receive a notice which provides ten (10) days (inclusive of mail time) to provide additional clarification of any factual dispute on which his/her appeal is based. Unless such clarification is timely received and is determined by TDHS to establish a valid factual dispute, a fair hearing will not be granted.~~
- ~~6. TDHS will grant hearings only for those enrollees raising valid factual disputes related to the action of disenrollment. A valid factual dispute is a dispute that, if resolved in favor of the appellant, would prevent the state from taking the action that is the subject of the appeal. Appeals that do not raise a valid factual dispute will not proceed to a hearing. Valid factual disputes include, but are not limited to:
 - ~~(i) Enrollee received the Termination Notice in error (e.g., they are currently enrolled in a TennCare Medicaid category that is not ending);~~
 - ~~(ii) TDHS failed to timely process information submitted by the enrollee during the requisite time period following the Request for Information or Verification Request;~~
 - ~~(iii) TDHS granted a "good cause" extension of time to reply to the Request for Information Notice but failed to extend the time (this is the only circumstance surrounding good cause which can be appealed);~~~~

(Rule 1200-13-13-.14, continued)

- ~~(iv) Enrollees requested assistance because of a health, mental health, learning problem or disability but did not receive this assistance; or~~
 - ~~(v) The TennCare Bureau sent the Request for Information or Termination Notice to the wrong address as defined under state law.~~
- ~~7. If the enrollee does not appeal prior to the date of termination as identified in the Termination Notice, the enrollee will be terminated from TennCare Medicaid.~~
 - ~~8. If the enrollee is granted a hearing and the hearing decision sustains the State's action, the State reserves its right to recover from the enrollee the cost of services provided during the hearing process.~~
- ~~(2) Other Appeals. Enrollees applying for Seriously and Persistently Mentally Ill (SPMI) or Seriously Emotionally Disturbed (SED) determination shall apply for each determination to the Department of Mental Health and Developmental Disabilities unless otherwise directed by the Commissioner. SPMI and SED determinations for the state only category shall be appealed in accordance with the provisions of state and federal law.~~

GW10117101dkt(3)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance & Administration (board/commission/ other authority) on 07/26/2017 (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: 01/04/17

Rulemaking Hearing(s) Conducted on: (add more dates). 02/28/17

Date: 7/26/17

Signature: [Handwritten Signature]

Name of Officer: John G. Roberts

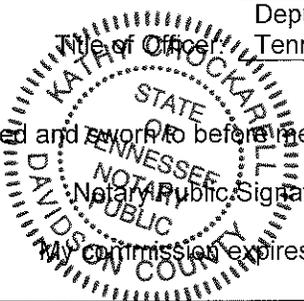
Deputy Director

Title of Officer: Tennessee Department of Finance & Administration

Subscribed and sworn to before me on: Kathy Crookarell 7/26/17 ^{RC}

Notary Public Signature: Kathy Crookarell

My commission expires on: 1/8/2019



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.

[Handwritten Signature]

Herbert H. Slatery III
Attorney General and Reporter

9/20/2017

Date

Department of State Use Only

Filed with the Department of State on: 9/25/17

Effective on: 12/24/17

[Handwritten Signature]

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: TennCare

SUBJECT: TennCare Standard

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, 71-5-109, and 71-5-113; 42 C.F.R. Part 431, Subpart E; and 42 C.F.R. Part 438, Subpart F.

EFFECTIVE DATES: December 24, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These rulemaking hearing rules are being promulgated to bring the TennCare rules into compliance with federal regulations regarding appeals and state fair hearings under Title XIX, following the vacatur of the federal court order known as "Grier" which previously controlled the conduct of TennCare medical service appeals.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

HCFA received comments from two individuals or entities concerning these rules. The comments and HCFA's responses to the comments are summarized below.

Two commenters expressed concern about the deletion of the modifier "impartial" from the description of hearing officer in the rule and suggested this deletion may be a violation of due process. HCFA noted that it is updating the terminology in its rules to match the terminology used in federal regulations and that this change in terminology does not relieve HCFA of its obligation to comply with state and federal due process requirements. The fair hearing process provided for in the rule is an impartial process.

One commenter expressed concern that the definition of "state fair hearing" in the rule does not explicitly include the right to an in-person hearing, and that a reference to in-person hearings elsewhere in the rule is deleted. In response, HCFA noted that the definition of "state fair hearing" in the rule specifically references the state and federal requirements for the conduct of hearings, which clearly afford enrollees the right to an in-person hearing. HCFA will not withhold an in-person hearing from any enrollee who requests it during the course of an appeal.

One commenter expressed concern that the definition of "readable" in the rule is too vague, and suggested that HCFA retain existing language in the rule referring to specific reading proficiency levels. The commenter also noted that other state Medicaid programs commonly use specific reading proficiency levels to draft their written materials. HCFA noted that the definition in the rule is taken directly from federal regulation concerning enrollee information; this regulation entails a broader set of requirements than reading proficiency level of written materials.

One commenter expressed concern about the use of citations to federal regulations in the rule to denote required timeframes, rather than specifying the timeframes within the rule itself. This commenter suggested that the rule's reliance on federal regulations is problematic because applicants and enrollees would be required to refer to federal regulations to discern the applicable timeframes. In response, HCFA noted that the Code of Federal Regulations is readily accessible online, including through links on HCFA's web site, and that it is unnecessary for HCFA to duplicate requirements from federal regulations in its rules. In addition, enrollee handbooks provide information about required timeframes in an accessible manner, and it is more likely that enrollees and applicants would refer to these and other member materials rather than federal regulations or state rules.

Two commenters expressed concern that the rule deletes the right of enrollees to receive a written notice when their managed care contractor expects there will be a delay in receiving covered services. These commenters suggested that this deletion is inconsistent with federal Medicaid requirements. In response, HCFA clarified that the deletion of the language referenced by the commenters conforms the rule to federal regulations. The rule does not delete the requirement to provide notice of delay, but rather deletes the requirement to provide notice of an anticipated delay. HCFA noted that an expectation of delay is not included within the definition of adverse benefit determination.

Two commenters expressed concern about the deletion of certain requirements for the content of written notices, and suggested that certain information must be provided in notices for them to be constitutionally adequate. In response, HCFA noted that the federal regulations cited in the rule provide adequate guidance for the content of notices and that it is unnecessary for HCFA to duplicate federal regulations in its rules.

Two commenters expressed concern that the rule deletes information about pharmaceuticals dispensed on a short-term basis in emergency situations and noted that this coverage is required by federal law. In response, HCFA noted that it is unnecessary to duplicate this federal requirement in its rules.

Two commenters expressed concern that the rule deletes information about the obligation of prescribing providers (not enrollees) to obtain prior authorizations for prescription medications, as well as the obligations of pharmacists in situations when an enrollee's provider did not obtain prior authorization. In response, HCFA noted that the paragraph in question pertains to pharmacy operations and was not appropriately placed in a rule governing

enrollee appeals. HCFA further noted that participating pharmacies are required to comply with the notice requirements expressed in federal regulations, as well as other federal requirements for pharmacy providers, and that it is not necessary for HCFA to duplicate these federal requirements in its rules.

Two commenters suggested that HCFA should continue to provide annual notice of notice and appeal rights to TennCare enrollees. In response, HCFA noted that notice of appeal rights is provided to TennCare enrollees as required by federal law.

Two commenters expressed concern that the rule deletes corrective action requirements for managed care contractors that violate requirements related to notices or resolution of appeals. These commenters suggested that corrective action requirements provide necessary incentives to HCFA and its contractors to comply with rules regarding the content and timing of notices. In response, HCFA noted that the failure of contractors to adhere to contract requirements is more appropriately addressed in the contracting process rather than in rules.

One commenter opposed the deletion of information in the rule about an enrollee's right to appeal when the enrollee seeks to contest denial of TennCare coverage for services already received, regardless of the cost or value of the services at issue. This commenter noted that there are multiple circumstances in which a TennCare enrollee may receive services before those services have been approved, and yet have a right to coverage of those services. In response, HCFA clarified that the language cited by the commenter is not being deleted.*

One commenter expressed concern about the deletion of certain corrective action requirements when TennCare or its managed care contractors fail to timely act on requests for prior authorization or fail to resolve appeals timely. This commenter suggested that such corrective action requirements provide valuable incentives to TennCare and its contractors. This commenter acknowledged that the deleted language emanated from a series of consent decrees that have now been vacated, but stated that the requirements were informed by historical efforts to comply with due process requirements and should therefore be retained. In response, HCFA thanked the commenter for its expression of concern and advice and noted that the updates to its rules reflect current federal regulations governing Medicaid managed care programs.

*During legal review of the rule amendments, it was determined that since an enrollee's request for appeal of dissatisfaction or disagreement with adverse benefit determinations made or proposed may not be denied, the listing of instances in which an appeal may be made is unnecessary. The rule was amended to remove the non-exclusive list, Parts 1 through 8, of reasons for appeal in favor of the more expansive language contained in Subparagraph (b) of Paragraph (2).

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 rules are not anticipated to have an effect on 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://state.tn.us/sos/acts/106/pub/pc1070.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 promulgated to bring the TennCare rules into compliance with federal regulations regarding appeals and state fair hearings under Title XIX, following the vacatur of the federal court order known as "Grier" which previously controlled the conduct of TennCare medical service appeals.

- (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;

These rules are lawfully adopted by the Bureau of TennCare in accordance with T.C.A. §§ 4-5-202, 71-5-105, 71-5-109, 71-5-113, 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F.

- (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 managed care contractors. The governmental entity most directly affected by these Rules is the Bureau of TennCare, Tennessee Department of Finance & 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 promulgation of these rules is not anticipated to affect State expenditures.

- (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

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(615) 507-6852
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(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

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For Department of State Use Only

Sequence Number: 09-23-17
 Rule ID(s): 6605
 File Date: 9/25/17
 Effective Date: 12/24/17

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 & Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):

- Amendments
- 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)

Chapter Number	Chapter Title
1200-13-14	TennCare Standard
Rule Number	Rule Title
1200-13-14-.01	Definitions
1200-13-14-.10	Exclusions
1200-13-14-.11	Appeal of Adverse Actions Affecting TennCare Services or Benefits
1200-13-14-.12	Other Appeals By TennCare Applicants and Enrollees

**RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

**CHAPTER 1200-13-14
TENNCARE STANDARD**

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1200-13-14-.01 DEFINITIONS.

- (3) ~~ADMINISTRATIVE HEARING shall mean a contested case proceeding held pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq., except as noted otherwise herein, to allow an enrollee to appeal an adverse decision of the TennCare Program. An evidentiary hearing is held before an impartial hearing officer or administrative judge who renders an initial order under Tennessee Code Annotated §4-5-314. If an enrollee appeals the initial order under Tennessee Code Annotated §4-5-315, the Commissioner may render a final order.~~
- (4) ~~ADVERSE ACTION AFFECTING TENNCARE SERVICES OR BENEFITS as it relates to actions under the Grier Revised Consent Decree~~ BENEFIT DETERMINATION shall mean, but is not limited to, a delay, denial, reduction, suspension or termination of TennCare benefits, as well as any other act or omission of the TennCare Program which impairs the quality, timeliness, or availability of such benefits. See 42 C.F.R. § 438.400.
- (26) ~~CONTINUATION OR REINSTATEMENT of BENEFITS (COB) shall mean that the following services or benefits are subject to continuation or reinstatement pursuant to an appeal of an adverse decision affecting a TennCare service(s) or benefit(s), unless the services or benefits are otherwise exempt from this requirement as described in rule 1200-13-13-.11, if the enrollee appeals within ten (10) days of the date of the notice of action or prior to the date of the adverse action, whichever is later the circumstances under which an enrollee may keep receiving, or, in the case of reinstatement, get back and keep receiving, the benefit under appeal until the appeal is resolved. See 42 C.F.R. §§ 431.230, 431.231 and 438.420.~~
- (a) ~~For services on appeal under Grier Revised Consent Decree:~~
1. ~~Those services currently or in the case of reinstatement, most recently provided to an enrollee; or~~
 2. ~~Those services provided to an enrollee in an inpatient psychiatric facility or residential treatment facility where the discharge plan has not been accepted by the enrollee or appropriate step-down services are not available; or~~

(Rule 1200-13-14-.01, continued)

3. ~~Those services provided to treat an enrollee's chronic condition across a continuum of services when the next appropriate level of covered services is not available; or~~
4. ~~Those services prescribed by the enrollee's provider on an open-ended basis or with no specific ending date where the MCC has not reissued prior authorization; or~~
5. ~~A different level of covered services, offered by the MCC and accepted by the enrollee, for the same illness or medical condition for which the disputed service has previously been provided.~~
- (b) ~~For eligibility terminations, coverage will be continued or reinstated for an enrollee currently enrolled in TennCare who has received notice of termination of eligibility and who appeals within ten (10) days of the date of the notice or prior to the date of termination, whichever is later.~~
- (40) **DELAY** shall mean, but is not limited to:
- (a) ~~Any, any failure to provide timely receipt of TennCare services, and no specific waiting period may be required before the enrollee can appeal;.~~
- (b) ~~An MCC's failure to provide timely prior authorization of a TennCare service. A prior authorization decision may be deemed a delay when such decision is not granted within fourteen (14) days of the MCC's receipt of a request for such authorization or as expeditiously as the enrollee's health condition requires.~~
- (47) **EMERGENCY MEDICAL CONDITION**, including emergency mental health and substance abuse emergency treatment services, shall mean the sudden and unexpected onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to potentially result in:
- (a) ~~Placing the person's (or with respect to a pregnant woman, her unborn child's) health in serious jeopardy; or~~
- (b) ~~Serious impairment to bodily functions; or~~
- (c) ~~Serious dysfunction of any bodily organ or part.~~
- ~~For Medicaid enrollees only, copayments are not required for emergency services.~~
- (54) **FINAL AGENCY ACTION** shall mean the resolution of an appeal by the TennCare Bureau or an initial decision on the merits of an appeal by an impartial administrative judge or hearing officer when such initial decision is not modified or overturned by the TennCare Bureau. Final agency action shall be treated as binding for purposes of these rules.
- (64) **IMPARTIAL HEARING OFFICER** shall mean an administrative judge or hearing officer who is not an employee, agent or representative of the MCC and or who did not participate in, nor was consulted about, any TennCare Bureau review prior to the Administrative State Fair Hearing (SFH).
- (76) **MCC (MANAGED CARE CONTRACTOR)** shall mean:
- (a) A Managed Care Organization, Pharmacy Benefits Manager and/or a Dental Benefits Manager which has signed a TennCare Contractor Risk Agreement with the State and

(Rule 1200-13-14-.01, continued)

- operates a provider network and provides covered health services to TennCare enrollees; or
- (b) A Pharmacy Benefits Manager, Behavioral Health Organization or Dental Benefits Manager which subcontracts with a Managed Care Organization to provide services; or
- (c) A State government agency (i.e., Department of Children's Services and Division of Intellectual Disabilities Services) that contracts with TennCare for the provision of services.
- ~~(83) MEDICALLY CONTRAINDICATED shall mean a TennCare benefit or service which it is necessary to withhold in order to safeguard the health or safety of the enrollee.~~
- (118) ~~READABLE shall mean no more than a sixth grade level of reading proficiency is needed to understand notices or other written communications, as measured by the Fogg index, the Flesch Index, the Flesch-Kincaid Index, or other recognized readability instrument. The preprinted language approved by the US District Court following entry of the *Grier Revised Consent Decree* and distributed to MCCs as templates is deemed readable. It is the responsibility of the entity issuing the notice to ensure that text added to the template is deemed readable, with the exception of medical, clinical or legal terminology easily understood language and format. See 42 C.F.R. § 438.10.~~
- (122) RECONSIDERATION shall mean the mandatory process, triggered by an enrollee's request for a SFH, by which an MCC reviews and renders a decision regarding affirming or reversing an enrollee's appeal of the MCC's adverse action benefit determination affecting TennCare benefits. An MCC satisfies the plan-level requirements of 42 C.F.R. Part 438 Subpart F when the review includes all available, relevant, clinical documentation (including documentation which may not have been considered in the original review); is performed by a physician other than the original reviewing physician; and produces a timely written finding. See June 5, 2017, CMS letter from Jackie Glaze to Wendy Long, M.D., M.P.H.
- ~~(124) REDUCTION, SUSPENSION OR TERMINATION shall mean the acts or omissions by TennCare or others acting on its behalf which result in the interruption of a course of necessary clinical treatment for a continuing spell of illness or medical condition. MCCs are responsible for the management and provision of medically necessary covered services throughout an enrollee's illness or need for such services, and across the continuum of covered services, including, but not limited to behavioral health services and appropriate transition plans specified in the applicable TennCare contract. The fact that an enrollee's medical condition requires a change in the site or type of TennCare service does not lessen the MCC's obligation to provide covered treatment on a continuous and ongoing basis as medically necessary.~~
- ~~(125) RESOURCES FOR MEDICAID-ELIGIBLE INDIVIDUALS shall mean those resources as defined in Chapter 1240-03-03-.05 -.06 of the rules of the Tennessee Department of Human Services - Division of Medical Services.~~
- ~~(127) SERIOUSLY EMOTIONALLY DISTURBED (SED) shall mean persons who have been identified by the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) or its designee as meeting the criteria provided below.~~
- ~~(a) Age from birth to age eighteen (18), and~~
- ~~(b) Currently, or at any time during the past year, has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the DSM-IV-TR (and subsequent revisions) of the American Psychiatric Association, with the exception of the DSM-IV-TR (and subsequent revisions) "V"~~

(Rule 1200-13-14-.01, continued)

~~codes, substance abuse, and developmental disorders, unless these disorders co-occur with another diagnosable serious emotional disturbance. All of these disorders have episodic, recurrent, or persistent features; however, the disorders may vary in terms of severity and disabling effects; and~~

- ~~(c) The diagnosable mental, behavioral, or emotional disorder identified above has resulted in functional impairment, which substantially interferes with or limits the child's role or functioning in family, school, and community activities. Functional impairment is defined as difficulties that substantially interfere with or limit a child or adolescent in achieving or maintaining developmentally appropriate social, behavioral, cognitive, communicative, or adapted skills and is evidenced by a Global Assessment of Functioning score of fifty (50) or less in accordance with the DSM-IV-TR (and subsequent revisions).~~

~~(128) SEVERELY AND/OR PERSISTENTLY MENTALLY ILL (SPMI) shall mean individuals who have been identified by the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) or its designee as meeting the criteria in (a) below. These persons will be identified as belonging in one of Clinically Related Groups listed in (b) below.~~

~~(a) Criteria~~

- ~~1. Age eighteen (18) and over; and~~
- ~~2. Currently, or at any time during the past year, has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified within the DSM-IV-TR (and subsequent revisions) of the American Psychiatric Association, with the exception of the DSM-IV-TR (and subsequent revisions) "V" codes, substance abuse, and developmental disorders, unless these disorders co-occur with another diagnosable serious emotional disturbance. All of these disorders have episodic, recurrent, or persistent features; however, the disorders may vary in terms of severity and disabling effects; and~~
- ~~3. The diagnosable mental, behavioral, or emotional disorder identified above has resulted in functional impairment which substantially interferes with or limits major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning in major life activities including the basic living skills (e.g., eating, bathing, dressing); instrumental living skills (maintaining a household, managing money, getting around in the community, taking prescribed medication); and functioning in social, family, and vocational/educational contexts. This definition includes adults who would have met functional impairment criteria during the referenced year without the benefit of treatment or other support services.~~

~~(b) Definitions of Clinically Related Groups (CRGs).~~

- ~~1. Clinically Related Group 1. Any person eighteen (18) years or older whose functioning is, or in the last six (6) months has been, severely impaired and the duration of the impairment totals six (6) months or longer in the past year. This person requires constant assistance or supervision with daily living activities and displays an inability to relate to others which interferes with his/her ability to work and his/her family relationships and usually results in social isolation in the community. Changes in the environment are stressful and may result in further withdrawal or dysfunction in other areas. Support is needed to insure the person's safety and survival.~~

(Rule 1200-13-14-01, continued)

2. ~~Clinically Related Group 2. Any person eighteen (18) years or older whose functioning is, or in the last six (6) months has been, severely impaired and the duration of the impairment totals six (6) months or longer in the past year. This individual has extensive problems with performing daily routine activities and requires frequent assistance. S/he has substantial impairment in his/her ability to take part in social activities or relationships, which often results in social isolation in the community. The person has extensive difficulty in adjusting to change. Assistance with activities of daily living is necessary to survival in the community. This person has difficulty completing simple tasks but with assistance could work in a highly supervised setting.~~
3. ~~Clinically Related Group 3. Any person eighteen (18) years or older whose functioning has not been severely impaired recently (within the last six (6) months), but has been severely impaired in the past to the extent that he or she needs services to prevent relapse. This individual generally needs long term continued support. Characteristics of this population may include regular or frequent problems performing daily routine activities. S/he may require some supervision although s/he can survive without it. This person has noticeable disruption in social relations, although he or she is capable of taking part in a variety of social activities. Inadequate social skills have a serious negative impact on the person's life; however, some social roles are maintained with support. This person can complete tasks without prompting and help and can function in the workplace with assistance even though the experience may be stressful. There is sometimes noticeable difficulty in accepting and adjusting to change, and the person may require some intervention.~~

(i) STATE FAIR HEARING (SFH) shall mean an evidentiary hearing requested by or on behalf of an enrollee to allow the enrollee to appeal an adverse benefit determination, which is conducted in accordance with 42 C.F.R. Part 431 Subpart E and the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301, et seq. An initial order under T.C.A. § 4-5-314 shall be entered when an evidentiary hearing is held before a hearing officer. If any party appeals the initial order under T.C.A. § 4-5-315, the Commissioner may render a final order.

~~(131) TARGET POPULATION GROUP (TPG) shall mean a group identified by means of an assessment mechanism for children and adolescents under the age of eighteen (18) which determines a service recipient's level of functioning and severity of impairment due to mental illness. Based on the assessment criteria, there are two (2) target population groups:~~

~~(a) TPG 2: Seriously Emotionally Disturbed (SED).~~

~~These are children and adolescents who are under eighteen (18) years of age with a valid DSM-IV-TR (and subsequent revisions) diagnosis excluding substance use disorders, developmental disorders or V-codes. These children are currently severely impaired as evidenced by a Global Assessment of Functioning score of 50 or less.~~

~~(b) TPG 3: At Risk of being SED.~~

~~These are children and adolescents who are under eighteen (18) years of age without a valid DSM-IV-TR (and subsequent revisions) diagnosis excluding substance use disorders, developmental disorders or V-codes. These children may or may not be currently seriously impaired as evidenced by a Global Assessment of Functioning. These children have psychosocial issues that can potentially place them at risk of becoming SED.~~

~~(134) TDHS or DHS (TENNESSEE DEPARTMENT OF HUMAN SERVICES) shall mean the State agency under contract with the Bureau of TennCare to determine eligibility for individuals~~

(Rule 1200-13-14-.01, continued)

~~applying for TennCare Medicaid or TennCare Standard, except for those determined to be eligible for SSI benefits by the Social Security Administration. DHS is not responsible for making decisions about the presence of a qualifying medical condition for those applying as medically eligible persons under TennCare Standard.~~

(137) **TENNCARE APPEAL FORM** shall mean the TennCare form(s) which are completed by an enrollee or by a person authorized by the enrollee to do so, when an enrollee appeals an adverse action affecting TennCare services benefit determination.

(150) ~~TIME SENSITIVE CARE~~ shall mean care which requires a prompt medical response in light of the beneficiary's condition and the urgency of her need, as defined by a prudent lay person; provided, however, that a case may be treated as non-time sensitive upon written certification of the beneficiary's treating physician.

1200-13-14-.10 EXCLUSIONS.

- (1) General exclusions. The following items and services shall not be considered covered services by TennCare:
 - (b) Provision of services to persons who are not enrolled in TennCare, either on the date the services are delivered or retroactively to the date the services are delivered, ~~except for limited special appeal provisions pertaining to children who are placed in Youth Development Centers as defined in the Grier Revised Consent Decree, Section C.15.f. and pursuant to the DCS Interagency Agreement.~~

1200-13-14-.11 APPEAL OF ADVERSE ACTIONS AFFECTING TENNCARE SERVICES OR BENEFITS APPEAL OF ADVERSE BENEFIT DETERMINATIONS.

- (1) Notice Requirements.
 - (a) When Written Notice is Required.
 1. A written notice shall be given to an enrollee by his/her MCC of any adverse action taken benefit determination by the MCC to deny, reduce, suspend, or terminate medical assistance.
 2. ~~A written notice shall be given to an enrollee whenever his/her MCC has reason to expect that covered medical assistance for the enrollee will be delayed beyond the time lines prescribed by the TennCare contract or the terms and conditions of the TennCare waiver. Actions which can reasonably be anticipated to delay or disrupt access to medical assistance include:~~
 - (i) ~~Change of primary care provider;~~
 - (ii) ~~Pharmacy "lock-in";~~
 - (iii) ~~Decisions affecting the designation of a person as severely and persistently mentally ill (SPMI) or severely emotionally disturbed (SED);~~
 - (iv) ~~Termination of a provider's contract, by either party to the contract; or~~
 - (v) ~~Inability to provide an adequate provider network.~~
 3. A written notice shall be given to an enrollee of any MCC-initiated reduction, termination or suspension of inpatient hospital care.

(Rule 1200-13-14-.11, continued)

4. A written notice shall be given to an enrollee of any provider-initiated reduction, termination or suspension of:
- ~~(i) Any behavioral health service for a severely and persistently mentally ill (SPMI) adult enrollee or severely emotionally-disturbed (SED) child;~~
 - ~~(ii) Any inpatient psychiatric 24-hour or residential service;~~
 - ~~(iii) Any service being provided to treat a patient's chronic condition across a continuum of services when the next appropriate level of medical service is not immediately available; or~~
 - ~~(iv) Home health services.~~
- ~~— The enrollee's MCC shall be promptly notified of a provider's proposal to reduce, terminate or suspend one of the above services and of the recommended discharge plan, if any, to insure compliance with this rule.~~
5. Appropriate notice shall be given to an enrollee by the State or MCC when a claim for service or reimbursement is denied because an enrollee has exceeded a benefit limit. Such notice shall not be subject to the requirements of rule 1200-13-14-.11(1)(c)1. During the applicable time period for each benefit limit, such notice shall only be provided the first time a claim is denied because an enrollee has exceeded a benefit limit. The State or MCC will not be required to provide any notice when an enrollee is approaching or reaches a benefit limit.
6. Appropriate notice shall be given to an enrollee by a provider when an enrollee exceeds a non-pharmacy benefit limit in the following circumstances:
- (i) The provider denies the request for a non-pharmacy service because an enrollee has exceeded the applicable benefit limit; or
 - (ii) The provider informs an enrollee that the non-pharmacy service will not be covered by TennCare because he/she has exceeded the applicable benefit limit and the enrollee chooses not to receive the service.

During the applicable time period for each non-pharmacy benefit limit, providers shall only be required to issue this notice the first time an enrollee does not receive a non-pharmacy service from the provider because he/she has exceeded the applicable benefit limit. Such notice shall not be subject to the requirements of rule 1200-13-14-.11(1)(c)1. Providers will not be required to issue any notice when an enrollee is approaching or reaches a non-pharmacy benefit limit.

(b) Timing of Written Notice.

1. Written notice of MCC-initiated reduction, termination or suspension of medical assistance must be provided to an enrollee within the time frames required by 42 C.F.R. §§ 431.210 - ~~431.214~~ (usually ten (10) days in advance). However, in instances of MCC-initiated reduction, termination or suspension of inpatient hospital treatment, the notice ~~must~~ may be provided to an enrollee ~~at least two business days in advance~~ the same day of the proposed action. Where applicable and not in conflict with this rule, the exceptions set out at 42 C.F.R. §§ 431.211 - ~~431.214~~ permit or require reduction of the time frames within which advance notice must be provided.

(Rule 1200-13-14-.11, continued)

2. ~~An MCC must notify an enrollee of its decision in response to a request by or on behalf of an enrollee for medical or related services within fourteen (14) days of the request for prior authorization, or as expeditiously as the enrollee's health condition requires. If the request for prior authorization is denied, the MCC shall provide a written notice to the enrollee prior authorization for medical or related services as set out in 42 C.F.R. § 438.210(d).~~
3. Written notice of delay of covered medical assistance must be provided to an enrollee immediately upon an MCC's receipt of information leading it to expect that such delay will occur.
4. ~~Where required by paragraph (1)(a)4. of this rule, wWritten notice of provider-initiated reduction, termination or suspension of services must be provided to an enrollee at least two (2) business days in advance of the proposed action in compliance with 42 C.F.R. §§ 431.211, 431.213 and 431.214.~~
5. Written notice is deemed to be provided to an enrollee upon deposit with the US Postal Service or other commercial mail carrier, or upon hand-delivery to an enrollee or his/her representative.

(c) Notice Contents.

1. ~~Whenever this rule requires that a TennCare enrollee receive written notice of an adverse action affecting medical assistance benefit determination, the notice must contain the following elements, written in concise, readable terms: be readable and must comply with the requirements of 42 C.F.R. §§ 431.210 and 438.404.~~
 - (i) ~~The type and amount of TennCare services at issue and the identity of the individual, if any, who prescribed the services, so long as such information is applicable and has been provided to the MCC.~~
 - (ii) ~~A statement of reasons for the proposed action. The statement of reasons shall include the specific facts, personal to the enrollee, which support the proposed action and sources from which such facts are derived. If the proposed action turns on a determination of medical necessity or other clinical decision regarding a medical item or service that has been recommended by the treating physician, the statement of reasons shall:

 - (I) ~~Identify by name those clinicians who were consulted in reaching the decision at issue;~~
 - (II) ~~Identify specifically those medical records upon which those clinicians relied in reaching the decision; and~~
 - (III) ~~Specify what part(s) of the criteria for medical necessity or coverage was not met; and~~
 - (IV) ~~Include a statement of reasons for the weight given to the treating provider. Such criteria may be satisfied by:

 - I. ~~Citing an MCC policy that:

 - A. ~~Lists the UM approval criteria for the requested service; and~~~~~~~~

(Rule 1200-13-14-.11, continued)

- ~~B. Includes references to the evidence on which the policy is based; and~~
- ~~II. Explaining how the enrollee can obtain a copy of the policy; and~~
- ~~III. Explaining why the service was denied in light of the enrollee's individual circumstances (i.e., how the treating physician's recommendation deviated significantly from the MCC's evidence-based criteria).~~
- ~~(iii) Reference to the legal or policy basis for a proposed adverse action, including a plain and concise statement of, and official citation to, the applicable law, federal waiver provision, or TennCare contract provision relied upon.~~
- ~~(iv) To the extent that the initial notice of adverse action is issued prior to the member's filing a medical appeal, inform the enrollee about the opportunity to contest the decision, including the right to an expedited appeal in the case of time-sensitive care and the right to continuation or reinstatement of benefits pending appeal, when applicable.~~
- ~~(v) If the enrollee has an ongoing illness or condition requiring medical care and the MCC or its network provider is under a duty to provide a discharge plan or otherwise arrange for the continuation of treatment following the proposed adverse action, the notice must include a readable explanation of the discharge plan, if any, and a description of the specific arrangements in place to provide for the enrollee's continuing care.~~
2. **Remedying of Notice.** ~~If a notice of adverse action benefit determination provided to an enrollee does not meet the notice content requirements of rule 1200-13-14-.11(1)(c)1., TennCare will not automatically resolve the appeal in favor of the enrollee. TennCare or the MCC may cure any such deficiencies by providing one corrected notice to enrollees prior to issuance of the notice of hearing. If a corrected notice is provided to an enrollee, the reviewing authority shall consider only the factual reasons and legal authorities cited in the corrected notice, except that additional evidence beneficial to the enrollee may be considered on appeal.~~
3. ~~If a determination that a notice of adverse action fails to satisfy notice content requirements of rule 1200-13-14-.11(1)(c)1. is made after issuance of the notice of hearing or after a corrected notice has already been provided to an enrollee, unless the service at issue is non-covered or medically contraindicated, TennCare will automatically resolve the appeal in favor of the enrollee, subject to the MCC's right to take subsequent adverse action following the issuance of a new notice of action.~~
- (d) ~~Special Provisions Pertaining to Pharmacy Notice.~~
- ~~If an enrollee does not receive medication of the type and amount prescribed because the pharmacy services are not covered by TennCare, the enrollee shall receive appropriate notice as described below. Such notice shall not be subject to the requirements of rule 1200-13-14-.11(1)(c)1.~~
- ~~1. When a request for prior authorization for a prescription has already been denied. Pharmacists will verify TennCare coverage for all prescriptions presented by~~

(Rule 1200-13-14-.11, continued)

~~TennCare enrollees. If the PBM denies coverage because a prior authorization request has already been denied, the enrollee will receive notice as described in rule 1200-13-14-.11(1)(d)2.(ii). No additional notice will be provided to the enrollee.~~

~~2. When a request for prior authorization has not been obtained for a prescription, pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the pharmacist denies coverage because a request for prior authorization has not been obtained, the following will apply:~~

~~(i) The pharmacists will attempt to contact the prescribing physician to seek prior authorization from the PBM or make a change in the prescription. If the pharmacist remains unable to resolve the enrollee's request for the prescription:~~

~~(I) The pharmacist will dispense a 72-hour interim supply of the medication in an emergency situation if such supply would not exceed applicable pharmacy benefit limits. An emergency situation is a situation that, in the judgment of dispensing pharmacists, involves an immediate threat of severe adverse consequences to the enrollee, or the continuation of immediate and severe adverse consequences to the enrollee, if the outpatient drug is not dispensed when the prescription is submitted. The 72-hour interim supply shall only be dispensed by the pharmacist once per prescription. If the pharmacist determines that an emergency situation does not exist, the pharmacist will not dispense the 72-hour interim supply and shall not provide a written notice to the enrollee for this determination. Enrollees may not appeal the denial by the pharmacist of a seventy-two (72) hour interim supply of a prescription~~

~~(II) The pharmacist will provide the enrollee with a notice that advises the enrollee how prior authorization may be requested for the prescription.~~

~~(ii) If the prescribing physician seeks prior authorization for the prescription, the PBM will respond to this request within twenty-four (24) hours of receipt if the prescribing physician has provided all of the information necessary to facilitate the determination. If the PBM grants this request, the PBM will provide notice to the enrollee informing him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continuation or reinstatement of benefits, when applicable.~~

~~(iii) If an enrollee seeks prior authorization before he/she contacted the prescribing physician, the PBM will advise the enrollee that he/she must attempt to contact the prescribing physician and allow twenty-four (24) hours to lapse from the denial of coverage for the prescription.~~

~~(iv) If an enrollee seeks prior authorization after attempting to contact the prescribing physician and has allowed twenty-four (24) hours to lapse since the denial of coverage for the prescription, the PBM will review this request. A decision will be made within twenty-four (24) hours of receipt of a complete prior authorization request, but no more than three (3) business days after receipt of the enrollee's call seeking prior authorization. If the request is resolved as a result of the prescribing physician making a therapy change, the PBM will provide notice to the enrollee informing~~

(Rule 1200-13-14-.11, continued)

him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continue or reinstate benefits, when applicable.

3. ~~When the requested drug is not a category or class of drugs covered by TennCare, Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because the drug is not a category or class of drugs covered by TennCare, the PBM will provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.~~
 4. ~~When the enrollee has been locked into one pharmacy, as described in rule 1200-13-14-.13 and the enrollee seeks to fill a prescription at another pharmacy, Pharmacists will verify TennCare coverage for all prescriptions presented by TennCare enrollees. If the PBM denies coverage because the pharmacy is not the enrollee's "lock-in" pharmacy, the PBM will provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.~~
 5. ~~When an enrollee submits a pharmacy reimbursement and billing claim:

 - (i) ~~TennCare will first determine whether the claim has been previously denied or whether a request for prior authorization has been denied. If the claim was paid upon approval of prior authorization or the enrollee received an alternative prescription ordered by his/her prescribing physician, TennCare will provide appropriate notice to the enrollee, informing them that the request has already been resolved.~~
 - (ii) ~~If the claim or request for prior authorization had already been denied, TennCare will determine the reason for such denial and follow the applicable processes identified in rule 1200-13-14-.11(1)(d) 1. to 3.~~
 - (iii) ~~If a claim had not already been submitted to the MCC or TennCare, TennCare will determine whether such claim is eligible for reimbursement. If TennCare denies the claim, TennCare will determine the reason for such denial and follow the applicable processes identified in rule 1200-13-14-.11(1)(d)1. to 3.~~~~
- (e) ~~Notice of Rights. The Bureau of TennCare shall provide annual notice to TennCare enrollees of his/her notice and appeal rights established by this rule, including the enrollee's recourse when billed by a provider for TennCare covered services. Additionally, upon enrollment in an MCC, the MCC shall give the enrollee a plain language explanation of appeal rights.~~
- (f) ~~Proper use of the approved template notices designated by the Grier Revised Consent Decree shall be deemed to satisfy the notice requirements specified by this rule.~~
- (g) ~~Violation of Notice Requirements and Corrective Action.~~
1. ~~No adverse action affecting TennCare services shall be effective unless the notice requirements of the federal regulations (42 C.F.R. §§ 431.210 -- 214), as enhanced or otherwise modified herein, have been complied with. TennCare shall not withhold, or permit others acting on its behalf to withhold, any TennCare services in violation of this requirement.~~

(Rule 1200-13-14-.11, continued)

2. ~~Whenever it comes to the attention of the Bureau of TennCare or an MCC that a TennCare covered service will be or has been delayed, denied, reduced, suspended or terminated in violation of any of the notice requirements of this rule:

 - (i) ~~Prior to an appeal or in the early stages of an appeal (i.e., before issuance of a timely notice of hearing), TennCare or the MCC may cure any such deficiencies by providing one corrected notice to a TennCare beneficiary. If the beneficiary has not yet filed an appeal, the time limit permitted for the beneficiary's response will be restarted upon issuance of the corrected notice;~~
 - (ii) ~~In the later stages of an appeal (i.e., after issuance of a timely notice of hearing), TennCare or the MCC will immediately provide that service in the quantity and for the duration prescribed, subject to TennCare's or the MCC's right to reduce or terminate the service in accordance with the procedures required by this rule.~~~~
3. ~~In the event that the enrollee lacks a prescription for the covered TennCare service which has been delayed, denied, reduced, suspended or terminated in violation of notice requirements, the following shall occur:

 - (i) ~~The enrollee will be immediately afforded access, at the earliest time practicable, to a qualified provider to determine whether the service should be prescribed;~~
 - (ii) ~~The provider will be informed that the service will be authorized if prescribed and found to be medically necessary; and~~
 - (iii) ~~Entitlement to the service will not be controlled by the MCC's utilization review process.~~~~
4. ~~In the event that the notice violation has occurred with regard to a delay of access to a physician to secure the requested medical assistance, such access shall be provided as soon as practicable. The enrollee shall be entitled to continue to receive such service until such time as the MCC takes those actions required by federal regulations and this rule as a prerequisite to taking any adverse action affecting TennCare services.~~

(2) Appeal Rights of Enrollees. Enrollees have the following rights:

- (a) ~~To appeal adverse actions affecting TennCare services benefit determinations.~~
- (b) ~~An enrollee's request for appeal, including oral or written expressions by the enrollee, or on his behalf, of dissatisfaction or disagreement with adverse actions benefit determinations that have been taken made or are proposed to be taken made, may not be denied, including instances in which:

 1. ~~The enrollee lacks an order or prescription from a provider supporting the appeal, provided however, that the State may create an administrative grievance or other informal process to address appeals by enrollees without an order or prescription;~~
 2. ~~TennCare or an MCC has agreed to cover a prescribed service in an amount that is less than the amount or duration sought by the enrollee;~~
 3. ~~TennCare or an MCC has agreed to provide a covered service that is different from that sought by the enrollee;~~~~

(Rule 1200-13-14-.11, continued)

4. ~~An enrollee seeks to contest a delay or denial of care resulting from the MCC's failure or refusal to make a needed service available, due to the inadequacy of the MCC's provider network;~~
 5. ~~An enrollee seeks to contest a denial of his right under the TennCare waiver to choose his own primary care provider (PCP) from among a panel offered by the MCC, or seeks to contest a delay or denial of care resulting from the involuntary assignment of a PCP;~~
 6. ~~An enrollee seeks to contest denial of TennCare coverage for services already received, regardless of the cost or value of the services at issue; and~~
 7. ~~An enrollee seeks to contest a decision granting or withholding designation as severely and persistently mentally ill (SPMI) or severely emotionally disturbed (SED); and~~
 8. ~~An enrollee seeks to change health plans after the initial forty-five (45) days pursuant to 1200-13-14-.03(2)(b)2.~~
- (c) To have the appeal rights that are prescribed by 42 C.F.R. Part 431, Subpart E and Tennessee Code Annotated §§ 4-5-301, et seq.
- (d) To be allowed ~~thirty (30)~~ sixty (60) days from receipt of written notice or, if no notice is provided, from the time the enrollee becomes aware of an adverse action benefit determination, to appeal any adverse action ~~affecting TennCare services~~ benefit determination.
- (e) To appeal in person, by telephone, or in writing. Reasonable accommodations shall be made for any person with disabilities who requires assistance with his/her appeal, such as an appeal by TDD services or other communication device for people with disabilities. Written requests for appeals made at county TDHS offices shall be stamped and immediately forwarded to the TennCare Bureau for processing and entry in the central registry.
- (f) ~~To file an appeal through a toll-free phone number on a twenty-four (24) hours a day, seven (7) days a week basis. Resolution of appeals outside of regular business hours will be available only in cases of emergency medical condition.~~
- (g) For ongoing services, have the right to continuation or reinstatement of services, pursuant to 42 C.F.R. §§ 431.230 and 431.231 as modified by this rule, pending resolution of the appeal when the enrollee submits a timely appeal and timely request for COB such services. When an enrollee is so entitled to continuation or reinstatement of services, this right may not be denied for any reason, including:
1. An MCC's failure to inform an enrollee of the availability of such continued services;
 2. An MCC's failure to reimburse providers for delivering services pending appeal; or
 3. An MCC's failure to provide such services when timely requested.
- (h) To an ~~impartial~~ appeals process. But for initial reconsideration by an MCC as permitted by this rule, no person who is an employee, agent or representative of an MCC may participate in deciding the outcome of a ~~TennCare appeal~~ SFH. No state official who

(Rule 1200-13-14-.11, continued)

~~was directly involved in the initial determination of the action in question may participate in deciding the outcome of an enrollee's appeal who was directly involved in the initial determination of the action in question.~~

(3) Special Provisions Relating to Appeals.

- (a) Individualized Decisions Required. Neither the TennCare program nor its MCCs may employ utilization control guidelines or other quantitative coverage limits, whether explicit or de facto, unless supported by an individualized determination of medical necessity based upon the needs of each TennCare enrollee and his or her medical history.
- (b) ~~Medical Decisions to be Supported by Substantial and Material Evidence. Throughout all stages of an appeal of an adverse action affecting TennCare services, decisions shall be based upon substantial and material evidence. In cases involving clinical judgments, this requirement means that:~~
- ~~1. Appeal decision must be supported by medical evidence, and it is the MCCs' and TennCare's responsibility to elicit from enrollees and his/her treating providers all pertinent medical records that support an appeal; and Appeal decisions must be based on an evaluation of pertinent medical evidence. TennCare and the MCCs shall elicit from enrollees and their treating providers all pertinent medical records that support an appeal; and~~
 2. Medical opinions shall be evaluated ~~in accordance with the Grier Revised Consent Decree and pursuant to TennCare Medical Necessity rule 1200-13-16. Reliance upon insurance industry guidelines or utilization control criteria of general application, without consideration of the individual enrollee's medical history, does not satisfy this requirement and cannot be relied upon to support an adverse benefit determination action affecting TennCare services.~~
- (c) Record on Review. When TennCare receives an appeal from an enrollee regarding an ~~adverse action affecting TennCare services~~ benefit determination, TennCare is responsible for obtaining from the MCC any and all records or documents pertaining to the MCC's decision to take the contested action. TennCare shall correct any violation of this rule that is evident from a review of those records.
- (d) Valid Factual Disputes. When TennCare receives an appeal from an enrollee, TennCare will dismiss this appeal unless the enrollee has established a valid factual dispute relating to an ~~adverse action affecting TennCare services~~ benefit determination.
1. Processing of Appeals. TennCare shall screen all appeals submitted by TennCare enrollees to determine if the enrollees have presented a valid factual dispute. If TennCare determines that an enrollee failed to present a valid factual dispute, TennCare will immediately provide the enrollee with a notice, informing him/her that the enrollee must provide additional information as identified in the notice. If the enrollee does not provide this information, the appeal shall be dismissed without the opportunity for a state fair hearing within ten (10) days of the date of the notice. If the enrollee adequately responds to this notice, TennCare shall inform the enrollee that the appeal will proceed to a hearing. If the enrollee responds but fails to provide adequate information, TennCare will provide a notice to the enrollee, informing him/her that the appeal is dismissed without the opportunity for a state fair hearing. If the enrollee does not respond, the appeal will be dismissed without the opportunity for a state fair hearing, without further notice to the enrollee.

(Rule 1200-13-14-.11, continued)

2. Information Required to Establish Valid Factual Disputes. In order to establish a valid factual dispute, TennCare enrollees must provide the following information: Enrollee's name; member SSN or TennCare ID#; address and phone; identification of the service or item that is the subject of the adverse ~~action~~ benefit determination; and the reason for the appeal, including any factual error the enrollee believes TennCare or the MCC has made. For reimbursement and billing appeals, enrollees must also provide the date the service was provided, the name of the provider, copies of receipts which prove that the enrollee paid for the services or copies of a bill for the services, whichever is applicable.
- (e) ~~Appeals When Enrollees Lack a Prescription. If~~ When a TennCare enrollee appeals an adverse action and TennCare determines that the basis of the appeal is that attempts to lodge an appeal for a benefit for which the enrollee lacks a prescription, TennCare may require the enrollee to exhaust the following administrative process before an appeal can proceed:
1. TennCare will provide appropriate notice to the enrollee informing him/her that he/she will be required to complete an administrative process. Such administrative process requires the enrollee to contact the MCC to make an appointment with a provider to evaluate the request for the service. The MCC shall be required to make such appointment for the enrollee within a 3-week period or forty-eight (48) hours for urgent care from the date the enrollee contacts the MCC. Appeal timeframes will be tolled during this administrative process.
 2. In order for this appeal to continue, the enrollee shall be required to contact TennCare after attending the appointment with a physician and demonstrate that he/she remains without a prescription for the service. If the enrollee fails to contact TennCare within sixty (60) days from the date of the notice described in subparagraph (e)1., TennCare will dismiss the appeal without providing an opportunity for a hearing for the enrollee.
- (f) ~~Appeals When No Adverse Action is Taken~~ Benefit Determination Has Been Made. Enrollees shall not possess the right to appeal when no adverse action has been taken related to TennCare services benefit determination has been made. If enrollees request a hearing when no adverse action has been taken in this circumstance, their request shall be denied by the TennCare Bureau without the opportunity for a hearing. Such circumstances include but are not limited to when enrollees appeal and no claim request for services had previously been denied.
- (4) Hearing Rights of Enrollees.
- (a) ~~TennCare shall inform enrollees of their that they have the right to an in-person hearing, a telephone hearing~~ state fair hearing rights or other hearing accommodation as may be required for enrollees with disabilities;
 - (b) Enrollees shall be entitled to a hearing before an ~~impartial~~ a hearing officer that affords each enrollee the right to:
 1. Representation at the hearing by anyone of his/her choice, including a lawyer;
 2. Review information and facts relied on for the decisions by the MCC and the TennCare Bureau before the hearing;
 3. Cross-examine adverse witnesses;

(Rule 1200-13-14-.11, continued)

4. Present evidence, including the right to compel attendance of witnesses at hearings;
 5. Review and present information from his/her medical records;
 6. Present evidence at the hearing challenging the adverse decision by his/her MCC;
 7. Ask for an independent medical opinion, at no expense to the enrollee;
 8. Continue or reinstate ongoing services pending a hearing decision, as specified in this rule;
 9. A written decision setting out the ~~impartial~~ hearing officer's rulings on findings of fact and conclusions of law; and
 10. Resolution, including a hearing ~~with an ALJ before a hearing officer if the case has not been previously resolved in favor of the enrollee, within ninety (90) days for standard appeals or thirty-one (31) days (or forty five (45)) days when additional time is required to obtain an enrollee's medical records) for expedited appeals, from the date of receipt of the appeal pursuant to 42 C.F.R. § 431.244.~~
- (c) TennCare shall not impair the ability of an enrollee to appeal an adverse hearing decision by requiring that the enrollee bear the expense of purchasing a hearing transcript when such purchase would be a financial hardship for the enrollee.
- (d) Parties to an Appeal. Under this rule, the parties to an administrative a state fair hearing are limited to the enrollee and TennCare, those permitted by federal regulations as modified by CMS letter dated June 5, 2017. The purpose of the hearing is to focus on the enrollee's medical needs. MCCs are not permitted to intervene or participate as parties in an enrollee's hearing. However, MCC employees may participate as witnesses in hearings. Further, nothing in this provision bars participation by an MCC in any informal resolution phase of the appeal process prior to a hearing before the impartial hearing officer.
- (e) Consistent with the Code of Judicial Conduct, impartial hearing officers shall assist pro se enrollees in developing the factual record and shall have authority to order second medical opinions at no expense to the enrollee.
- (f) Review of Hearing Decisions.
1. ~~Impartial hearing officers shall promptly issue an Order of their decision. Impartial hearing officers shall provide enrollees with copies of such Orders. Hearing officers shall promptly issue an Order of their decision. Any Order delivered orally from the bench in an expedited hearing by a hearing officer shall be effective immediately as to the provision or denial of benefits. In accordance with 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F, the hearing officer shall enter a written order as soon as practicable and shall provide the parties with copies of such Orders. The time for appealing any oral Order shall not begin to run until entry of the written Order.~~
 2. The TennCare Bureau shall have the opportunity to review all decisions of ~~impartial hearing officers, in accordance with T.C.A. §§ 4-5-314 and 4-5-315, to determine whether such decisions are contrary to applicable law, regulations or policy interpretations, which shall include but not be limited to decisions regarding the defined package of covered benefits, determinations of medical necessity~~

(Rule 1200-13-14-.11, continued)

and decisions based on the application of ~~the *Grier Revised Consent Decree* this chapter and 42 C.F.R. Part 431 Subpart E and 42 C.F.R. Part 438 Subpart F.~~

- ~~(i) TennCare shall attempt to complete such review within five (5) days of the issuance of the decision of the impartial hearing officer.~~
- ~~(ii) If TennCare is unable to take final agency action within five (5) days of the issuance of such decision, prompt corrective action by the fifth (5th) day is required, pursuant to rule 1200-13-14-.11(7)(f). However, the State shall not be prohibited from taking final agency action as expeditiously as possible and may immediately implement such final agency action to reduce, suspend, or terminate a service for which corrective action had been provided.~~
- (iii) If TennCare modifies or overturns the decision of the impartial hearing officer, TennCare shall issue a written decision that will be provided to the enrollee and the impartial hearing officer. TennCare's decision shall constitute final agency action.
- (iv) If TennCare does not modify or overturn the decision of the impartial hearing officer, the impartial hearing officer's decision shall constitute final agency action without additional notice to the enrollee.
- (v) Review of final agency action shall be available to enrollees pursuant to the Tennessee Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq T.C.A. § 4-5-322.
- (vi) An impartial A hearing officer's decision in an enrollee's appeal shall not be deemed precedent for future appeals.

(g) Continuation or Reinstatement of TennCare Services.

1. Except as As permitted under 42 C.F.R. §§ 431.213, 431.214 and 431.220, as modified by this rule, 431.230, 431.231 and 438.420, if required or if the enrollee requests, TennCare services shall continue or be reinstated until the earlier of dismissal of the appeal through the valid factual dispute process, enrollee's withdrawal of the appeal, or an initial hearing decision if the enrollee appeals and requests: adverse to the enrollee.
 - ~~(i) Continuation of services within two (2) business days of the receipt of MCC-initiated notice of action to terminate, suspend or reduce ongoing inpatient hospital treatment; or~~
 - ~~(ii) Continuation of services within two (2) business days of the receipt of provider-initiated notice of action to terminate, suspend or reduce any behavioral health service for a severely and persistently mentally ill (SPMI) adult enrollee or severely emotionally disturbed (SED) child, any inpatient psychiatric or residential service, any service being provided to treat a patient's chronic condition across a continuum of services when the next appropriate level of medical service is not immediately available, or home health services; or~~
 - ~~(iii) Continuation or reinstatement of services within ten (10) days of MCC-initiated notice of adverse benefit determination to terminate, suspend or reduce other ongoing services or prior to the date of action.~~

(Rule 1200-13-14-.11, continued)

- ~~2. In the case of a timely request for continuation or reinstatement of the TennCare services described in paragraph (4)(g)1.(ii) above, the enrollee shall be afforded access to a written second medical opinion from a qualified provider who participates in the MCC's network. If there has not already been a break in receipt of the services, the benefits shall continue until receipt of the written second medical opinion. Services shall continue or be reinstated thereafter pending appeal only if and to the extent prescribed by the second provider.~~
- 3. In the case of a timely request for continuation or reinstatement of the TennCare services described in paragraph (4)(g)1 above herein, the services shall continue or be reinstated pending appeal only if and to the extent prescribed by the enrollee's treating clinician.**
- ~~4. Services shall not continue, but may be immediately reduced, terminated, or suspended if the services are determined medically contraindicated in accordance with the provisions of paragraph (8) below.~~
- ~~5. Resolution, including a hearing with an ALJ if the case has not been previously resolved in favor of the enrollee, of expedited appeals shall be provided within thirty-one (31) days or forty five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received from the enrollee. TennCare is permitted to seek final agency review by the TennCare Commissioner or his designee in any appeal in which the enrollee prevails by a decision of an administrative law judge (ALJ) who is not an employee or official of the Department of Finance and Administration or Bureau of TennCare. Provided however, that if the enrollee prevails at any stage of the appeal process and TennCare seeks final agency review, the State may not await the conclusion of this review before providing prompt corrective action. If an enrollee makes a timely request for continuation or reinstatement of a disputed TennCare service pending appeal, receives the continued or reinstated service, and subsequently requests a continuance of the proceedings without presenting a compelling justification, the impartial hearing officer shall grant the request for continuance conditionally. The condition of such continuance is the enrollee's waiver of his right to continue receiving the disputed service pending a decision if:
 - ~~(i) The impartial hearing officer finds that such continuance is not necessitated by acts or omissions on the part of the State or MCC;~~
 - ~~(ii) The enrollee lacks a compelling justification for the requested delay; and~~
 - ~~(iii) The enrollee received at least three (3) weeks notice of the hearing, in the case of a standard appeal, or at least one (1) week's notice, in the case of an expedited appeal.~~~~
- 6. Notwithstanding the requirements of this part, TennCare enrollees are not entitled to continuation or reinstatement of services pending an appeal related to the following:
 - (i) When a service is denied because the enrollee has exceeded the benefit limit applicable to that service;**
 - (ii) When a request for prior authorization is denied for a prescription drug, with the exception of:****

(Rule 1200-13-14-.11, continued)

- (I) Pharmacists shall provide a single 72-hour interim supply in emergency situations for the non-authorized drug unless such supply would exceed applicable pharmacy benefit limits; or
 - (II) When the drug has been prescribed on an ongoing basis or with unlimited refills and becomes subject to prior authorization requirements.
 - (iii) When coverage of a prescription drug or service is denied because the requested drug or service is not a category or class of drugs or services covered by TennCare;
 - (iv) When coverage for a prescription drug is denied because the enrollee has been locked into one pharmacy and the enrollee seeks to fill a prescription at another pharmacy;
 - (v) When a request for reimbursement is denied and the enrollee appeals this denial;
 - (vi) When a physician has failed to prescribe or order the service or level of service for which continuation or reinstatement is requested; or
 - (vii) If TennCare had not paid for the type and amount of service for which continuation or reinstatement is requested prior to the appeal.
- (h) ~~Expedited appeals. Reserved.~~
1. ~~Expedited appeals of any action involving time-sensitive care must be resolved within thirty-one (31) days, or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received the time constraints set out at 42 C.F.R. § 431.244. An enrollee may request an expedited appeal, and the MGC shall grant the request, if he/she meets the criteria for expedited resolution as set forth in 42 C.F.R. §§ 431.244 and 438.410.~~
 2. ~~An enrollee may request an expedited appeal, applying a prudent layperson's understanding regarding whether the care at issue is time sensitive, i.e., whether such care constitutes an "emergency." In this context, an emergency is a situation in which a covered benefit has been delayed, denied, terminated or suspended and in the judgment of the enrollee's treating physician or a prudent layperson, waiting 90 days to receive such service will result in:~~
 - (i) ~~Serious health problems or death;~~
 - (ii) ~~Serious dysfunction of a bodily organ or part; or~~
 - (iii) ~~Hospitalization.~~
 3. ~~The enrollee may (but is not required to) submit with his/her request for an expedited appeal, certification by his/her treating physician that such appeal is an emergency.~~
 4. ~~An enrollee's request for an expedited appeal may be overcome only if:~~
 - (i) ~~The item or service at issue is not a covered benefit;~~

(Rule 1200-13-14-.11, continued)

- ~~(ii) The enrollee's treating provider certifies in writing that the appeal is not an emergency; or~~
 - ~~(iii) The service is one which, by its nature, never constitutes an emergency, and is specified on a list of non-emergency items or services by the Bureau of TennCare and made available upon request to providers, enrollees, and the public.~~
- (5) Special Provisions Pertaining to Pharmacy. Reserved.
 - ~~(a) When a provider with prescribing authority prescribes a medication for an enrollee, and the prescription is presented at a pharmacy that participates in the enrollee's MCC, the enrollee is entitled to:
 - ~~1. The drug as prescribed, if the drug is on the MCC's formulary and does not require prior authorization.~~
 - ~~2. The drug as prescribed, if the prescribing provider has obtained prior authorization.~~
 - ~~3. An alternative medication, if the pharmacist consults the prescribing provider when the enrollee presents the prescription to be filled, and the provider prescribes a substituted drug; or~~
 - ~~4. Subject to the provisions of rule 1200-13-14-.11(1)(d), if the pharmacist is unable to obtain the prescribing physician's approval to substitute a drug or authorization for the original prescription, the pharmacist will dispense a seventy-two (72) hour interim supply of the medication in an emergency situation and shall not impose any cost sharing obligations upon the enrollee for this supply. Such supply shall count towards the enrollee's applicable pharmacy benefit limit and the pharmacist shall not dispense this supply if the supply would otherwise exceed these limits. In the event that a prescribing physician obtains prior authorization or changes the drug to an alternative that does not require prior authorization, the remainder of the drug shall not count towards the enrollee's applicable pharmacy benefit limit if the enrollee receives the prescription drug within fourteen (14) days of dispensing the 72-hour interim supply.~~~~
 - ~~(b) A pharmacist shall dispense a seventy-two (72) hour interim supply of the prescribed drug, as mandated by the preceding paragraph, provided that:
 - ~~1. The medication is not classified by the FDA as Less Than Effective (LTE) and DESI drugs or any drugs considered to be Identical, Related and Similar (IRS) to DESI or LTE drugs or any medication for which no federal financial participation (FFP) is available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age; or~~
 - ~~2. The medication is not a drug in one of the non-covered TennCare therapeutic categories that include:
 - ~~(i) agents for weight loss or weight gain;~~
 - ~~(ii) agents to promote fertility or to treat impotence;~~
 - ~~(iii) agents for cosmetic purposes or hair growth;~~
 - ~~(iv) agents for the symptomatic relief of coughs and colds;~~~~~~

(Rule 1200-13-14-.11, continued)

- ~~(v) prescription vitamins and mineral products except prenatal vitamins and fluoride preparations;~~
 - ~~(vi) nonprescription drugs; or~~
 - ~~(vii) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.~~
- ~~3. Use of the medication has not been determined to be medically contraindicated because of the patient's medical condition or possible adverse drug interaction; or~~
 - ~~4. If the prescription is for a total quantity less than a seventy-two (72) hour supply, the pharmacist must provide a supply up to the amount prescribed.~~
 - ~~5. In some circumstances, it is not feasible for the pharmacist to dispense a seventy-two (72) hour supply because the drug is packaged by the manufacturer to be sold as the original unit or because the usual and customary pharmacy practice would be to dispense the drug in the original packaging. Examples would include, but not be limited to, inhalers, eye drops, ear drops, injections, topicals (creams, ointments, sprays), drugs packaged in special dispensers (birth control pills, steroid dose packs), and drugs that require reconstitution before dispensing (antibiotic powder for oral suspension). When coverage of a seventy-two (72) hour supply of a prescription would otherwise be required and when, as described above, it is not feasible for the pharmacist to dispense a seventy-two (72) hour supply, it is the responsibility of the MCC to provide coverage for either the seventy-two (72) hour supply or the usual dispensing amount, whichever is greater.~~
 - ~~6. The Bureau of TennCare shall establish a tolerance level for early refills of prescriptions. Such established tolerance level may be more stringent for narcotic substances. Notwithstanding the requirements of this part, if an enrollee requests a refill of a prescription prior to the tolerance level for early refills established by the Bureau, the pharmacy will deny this request as a service which is non-covered until the applicable tolerance period has lapsed, and will not provide a seventy-two (72) hour supply of the prescribed drug.~~

(6) Release of Enrollee's Medical Records.

- (a) When a request is made, by or on behalf of a TennCare enrollee, for approval of a TennCare service or for an appeal of an adverse action affecting TennCare services benefit determination, the enrollee is deemed to have consented to release of his/her relevant medical records to his/her MCC and the TennCare Bureau for the purposes of acting upon the enrollee's request.
- (b) Providers shall promptly provide copies of an enrollee's medical records to the enrollee's MCC(s) and to the TennCare Bureau upon being informed by the MCC(s) or TennCare Bureau that the records have been requested for the purpose of acting upon an enrollee's request for approval of a TennCare service or an enrollee's appeal of an adverse action affecting TennCare services benefit determination.
- (c) An enrollee's consent to release of his/her medical records may be evidenced by his signature (or his provider's or authorized representative's signature) upon the enrollee's initial application for TennCare, upon his TennCare appeal form or other written request

(Rule 1200-13-14-.11, continued)

for authorization or appeal, or, in the event of an appeal by telephone, by a TennCare Bureau employee's signing of an appeal form on behalf of an enrollee with documentation of consent to do so.

- (d) The medical records obtained by MCCs and the TennCare Bureau under this rule remain confidential. MCCs and the TennCare Bureau may use and disclose the records only as necessary in their consideration of the enrollee's request for approval of a TennCare service or the enrollee's appeal of an adverse action affecting TennCare services benefit determination.

(7) ~~Time Requirements and Corrective Action.~~

- (a) ~~MCCs must act upon a request for prior authorization within fourteen (14) days as provided in rule 1200-13-14-.11(1)(b)2. or as expeditiously as the enrollee's health condition requires. Failure by the MCCs to act upon a request for prior authorization within twenty-one (21) days shall result in an automatic authorization of the requested service, subject to the provision of (7)(e) below, and to provisions relating to medical contraindication at rule 1200-13-14-.11(8) 42 C.F.R. § 438.210.~~
- (b) ~~MCCs must complete reconsideration of non-expedited standard appeals within fourteen (14) calendar days of the request from TennCare. MCCs must complete reconsideration of expedited appeals involving time sensitive care within seventy-two (72) hours of the request for SFH, five (5) days, which shall be extended to fourteen (14) days if additional time is required to obtain an enrollee's medical records. Failure by the MCCs to meet these deadlines shall not result in an immediate resolution of the appeal in favor of the enrollee provided that the missed deadline may be remedied early in the appeals process such that the appeal is resolved within the 31, 45 or 90-day deadline, whichever is appropriate.~~
- (c) ~~All standard and expedited appeals, including, if not previously resolved in favor of the enrollee during reconsideration, shall be set for a hearing before an impartial hearing officer, and shall be resolved within ninety (90) days of receipt of the enrollee's request for an appeal. All expedited appeals involving time sensitive care shall be resolved within thirty-one (31) days of receipt of the request for appeal, unless extended to forty-five days when additional time is required to obtain an enrollee's medical records. Calculation of the ninety (90) day, thirty-one (31) day or forty-five (45) day deadline may be adjusted so that pursuant to the timeframes set forth in 42 C.F.R. § 431.244. In accordance with 42 C.F.R. § 438.410(a) and 42 C.F.R. § 431.244(f)(2), SFH requests which are approved for expedited resolution and which are not resolved in the enrollee's favor during MCC's reconsideration, shall be resolved by TennCare within three (3) working days from the date of the MCC's reconsideration determination. TennCare is not charged with any delays attributable to the enrollee. However, no delay may be attributed to an enrollee's request for a continuance of the hearing, if s/he received less than three (3) weeks' notice of the hearing, in the case of a standard appeal, or less than one (1) week's notice, in the case of an expedited appeal involving time sensitive care. An enrollee may only be charged with the amount of delay occasioned by his/her acts or omissions, and any other delays shall be deemed to be the responsibility of TennCare.~~
- (d) ~~Failure to meet the ninety (90) day or thirty-one (31) day (extended to forty-five (45) calendar days when necessary to allow sufficient time to obtain the enrollee's medical records) deadline, as applicable, shall result in automatic TennCare coverage of the services at issue pending a decision by the impartial hearing officer, subject to the provisions of subparagraphs (7)(e) and (f) below, and to provisions relating to medical contraindication at rule 1200-13-14-.11(8). This conditional authorization will neither moot the pending appeal nor be evidence of the enrollee's satisfaction of the criteria for~~

(Rule 1200-13-14-.11, continued)

~~disposing of the case, but is simply a compliance mechanism for disposing of appeals within the required time frames. In the event that the appeal is ultimately decided against the enrollee, s/he shall not be liable for the cost of services provided during the period required to resolve the appeal. Notwithstanding, upon resolving an appeal against an enrollee, TennCare may immediately implement such decision, thereby reducing, suspending, or terminating the provision or payment of the service.~~

~~(e) When, under the provisions of rule 1200-13-14-.11(7)(a) or (d), a failure to comply with the time frames would require the immediate provision of a disputed service, TennCare may decline to provide the service pending a contrary order on appeal, based upon a determination that the disputed service is not a TennCare covered service. A determination that a disputed service is not a TennCare covered service may not be based upon a finding that the service is not medically necessary. Rather, it may only be made with regard to a service that:~~

~~1. Is subject to an exclusion that has been reviewed and approved by the federal Center for Medicare and Medicaid Services (CMS) and incorporated into a properly promulgated state regulation, or~~

~~2. Which, under Title XIX of the Social Security Act, is never federally reimbursable in any Medicaid program.~~

~~(f) Except upon a showing by an MCC of good cause requiring a longer period of time, within five (5) days of a decision in favor of an enrollee at any stage of the appeal process, the MCC shall take corrective action to implement the decision. For purposes of meeting the five (5) day time limit for corrective action, the State and/or its MCCs shall ensure, whenever an appeal is resolved in favor of the beneficiary:~~

~~1. The enrollee's receipt of the services at issue, or acceptance and receipt of alternative services; or~~

~~2. Reimbursement for the enrollee's cost of services, if the enrollee has already received the services at his/her own expense; or~~

~~3. If the enrollee has already received the service, but has not paid the provider, that the enrollee is not billed for the service and that the enrollee's care is not jeopardized by non-payment.~~

~~In the event that a decision in favor of an enrollee is modified or overturned, TennCare shall possess the authority to immediately implement such decision, thereby reducing, suspending, or terminating the provision or payment of the service in dispute.~~

~~(g) In no circumstance will a directive be issued by the TennCare Solutions Unit Bureau or an impartial a hearing officer to provide a service to an enrollee if, when the appeal is resolved, the service is no longer covered by TennCare for the enrollee. A directive also will not be issued by the TennCare Solutions Unit Bureau if the service cannot reasonably be provided to the enrollee before the date when the service is no longer covered by TennCare for the enrollee and such appeal will proceed to a hearing.~~

(8) Medical Contraindication: Reserved.

~~(a) Whenever the terms of this rule require the provision of TennCare benefits or services to an enrollee, such obligation shall be relieved upon the written certification of a provider who is familiar with the beneficiary's medical condition that the TennCare benefit or service in question is medically contraindicated. The provider must either be employed by the state or, if a licensed pharmacist determining contraindication with~~

(Rule 1200-13-14-.11, continued)

regard to a prescribed drug, must be making such determination consistent with pre-established standards and procedures approved by the state.

- (b) ~~If a TennCare service is determined to be medically contraindicated as set out above, written notice must be immediately provided to the enrollee, and the notice must be accompanied by the provider's certification that the service must be withheld in order to protect the enrollee's health or safety. A copy of the notice and provider certification must be forwarded to the Tennessee Justice Center.~~

(9) Special Provisions Relating to Children in State Custody.

~~In addition to Children in the custody of the State have the rights and protections established by 42 C.F.R. Part 431, Subpart E and the terms of this rule, children in state custody shall also receive the following enhanced notice and appeal rights: regarding TennCare services and benefits.~~

- (a) ~~The Tennessee Department of Children's Services (DCS) must provide notice of any delay in providing a TennCare service that is administered by DCS. Such delay is immediately appealable on that child's behalf and cannot be required to last a particular length of time before issuance of the notice or processing of an appeal.~~
- (b) ~~Whenever there is an adverse action affecting TennCare services (regardless of which contractor or government agency is administering such services), timely notices required by this rule must be sent to the individuals specified in the DCS implementation plan which was approved by the Court in the Grier Revised Consent Decree. In the case of services administered by MCCs other than DCS, the responsible MCC shall provide notice to DCS, which shall ensure that timely notice is provided to the required individuals. Delivery of notice triggering the right to appeal is not complete until notice is received by those individuals.~~
- (c) ~~An appeal from any individual specified in the paragraph above must be accepted as an appeal on behalf of the child.~~

1200-13-14-.12 OTHER APPEALS BY TENNCARE APPLICANTS AND ENROLLEES. Notwithstanding Rule 1200-13-19-.01 or any rule to the contrary, appeals by applicants and enrollees of all non-medical eligibility matters are removed to Rule Chapter 1200-13-19, effective upon expiration of the TDHS contract to determine eligibility matters.

(1) ~~Appeal Rights of TennCare Standard Applicants or Enrollees.~~(a) ~~Appeal Time, Continuation of Services.~~1. ~~TennCare Standard Appeals.~~

- (i) ~~TennCare Standard applicants or enrollees will be given the opportunity to have an administrative hearing before a Hearing Officer or an Administrative Judge, as determined by the Department of Human Services, regarding valid factual disputes concerning denial of his/her application, cost sharing disputes, limitation, reduction, suspension or termination of eligibility, failure to act upon a request or application within required timeframes, and disputes regarding disenrollment from TennCare Standard. A valid factual dispute is a dispute that, if resolved in favor of the appellant, would prevent the state from taking the action that is the subject of the appeal. The TennCare Bureau designates TDHS to review each request for a hearing to determine if it is based on a valid factual dispute. If TDHS determines that an appeal does not present a valid factual dispute,~~

~~then TDHS will send the appellant a letter asking him or her to submit additional clarification regarding the appeal within ten (10) days (inclusive of mail time). Unless such clarification is timely received and is determined by TDHS to establish a valid factual dispute, TDHS will dismiss the appeal. TDHS' decisions with respect to determination of whether an appeal raises a valid factual dispute shall not be appealable.~~

- ~~(ii) Requests for appeals must be made within forty (40) calendar days (inclusive of mail time) of the date of the notice to the applicant/enrollee regarding the intended action or prior to the date of action specified in the notice, whichever is later, notwithstanding anything else in these rules or in the Department of Human Services' administrative procedures rules to the contrary.~~
 - ~~(iii) Enrollees who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of the notice or prior to the date of action specified in the notice, whichever is later, shall retain their eligibility (subject to any changes in covered services generally applicable to enrollees in their TennCare category) pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first. If the appeal results in the State's action being sustained, the State reserves its right to recover from the enrollee the cost of services provided to the enrollee during the pendency of the appeal.~~
 - ~~(iv) Enrollees disputing the applicability of changes in coverage to their current TennCare category who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of the notice or prior to the date of action specified in the notice, whichever is later, shall, notwithstanding subsection (1)(a)1.(iii), continue to receive benefits at the level for the eligibility category alleged by the enrollee to be currently applicable, pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first. If the enrollee does not clearly allege the applicability of a particular eligibility category, benefits will be continued at the level for Non-Institutionalized Medicaid Adults pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first. If TDHS subsequently determines that the enrollee is alleging that a particular eligibility category is currently applicable, benefits will be prospectively continued at the level for such eligibility category pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.~~
- ~~(b) To the extent not otherwise modified by this rule, such appeals will be conducted by the Department of Human Services for TennCare Standard applicants/enrollees under the Department of Human Services' administrative procedures rules, and in accordance with any other applicable rules, laws or court orders governing those programs, provided that the finality of initial orders shall be governed by the provisions of Tennessee Code Annotated Section §4-5-314(b).~~
- ~~(c) Appeal Rights for Disenrollment Related to TennCare Standard Eligibility Reforms:~~
- ~~1. TennCare Standard enrollees, who have not been determined eligible for open Medicaid categories pursuant to the Ex Parte Review or Request for Information processes described in 1200-13-14-.02, will have the right to request a hearing for 40 days (inclusive of mail time) from the date of the Termination Notice,~~

~~notwithstanding anything else in these rules or in the Department of Human Services' administrative procedures rules to the contrary.~~

- ~~2. To the extent not otherwise modified by this rule, such appeals will be conducted by the Department of Human Services for TennCare Standard applicants/enrollees under the Department of Human Services' administrative procedures rules, and in accordance with any other applicable rules, laws or court orders governing those programs, provided that the finality of initial orders shall be governed by the provisions of Tennessee Code Annotated Section 4-5-314(b).~~
- ~~3. Enrollees will not have the opportunity to request an extension for good cause of the forty (40) day timeframe in which to request a hearing.~~
- ~~4. Enrollees who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of notice or prior to the date of termination specified in the Termination Notice, whichever is later, shall retain their eligibility (subject to any changes in covered services generally applicable to enrollees in their TennCare category) pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.~~
- ~~5. The TennCare Bureau designates TDHS to review each request for hearing to determine if it is based on a valid factual dispute. Enrollees will be given the opportunity to have an administrative hearing before a Hearing Officer or an Administrative Judge, as determined by TDHS, regarding valid factual disputes related to termination. If TDHS makes an initial determination that the request for a hearing is not based on a valid factual dispute, the appellant will receive a notice which provides 10 days (inclusive of mail time) to provide additional clarification of any factual dispute on which his/her appeal is based. Unless such clarification is timely received and is determined by TDHS to establish a valid factual dispute, a fair hearing will not be granted.~~
- ~~6. TDHS will grant hearings only for those enrollees raising valid factual disputes related to the action of disenrollment. A valid factual dispute is a dispute that, if resolved in favor of the appellant, would prevent the state from taking the action that is the subject of the appeal. Appeals that do not raise a valid factual dispute will not proceed to a hearing. Valid factual disputes include, but are not limited to:
 - ~~(i) Enrollee received the Termination Notice in error (e.g., they are currently enrolled in a TennCare Medicaid or TennCare Standard category that is not ending);~~
 - ~~(ii) TDHS failed to timely process information submitted by the enrollee during the requisite time period following the Request for Information or Verification Request;~~
 - ~~(iii) TDHS granted a "good cause" extension of time to reply to the Request for Information Notice but failed to extend the time (this is the only circumstance surrounding good cause which can be appealed);~~
 - ~~(iv) Enrollees requested assistance because of a health, mental health, learning problem or disability but did not receive this assistance; or~~
 - ~~(v) The TennCare Bureau sent the Request for Information or Termination Notice to the wrong address as defined under state law.~~~~

7. ~~If the enrollee does not appeal prior to the date of termination as identified in the Termination Notice, the enrollee will be terminated from TennCare.~~
8. ~~If the enrollee is granted a hearing and the hearing decision sustains the State's action, the State reserves its right to recover from the enrollee the cost of services provided during the hearing process.~~
- (d) ~~Notice requirements. Whenever the Bureau of TennCare denies an application for TennCare Standard enrollment in TennCare Standard or determines an enrollee will be terminated from the program, it will send the TennCare Standard applicant written notice of the right to request an appeal to the Commissioner, as provided by these rules. The notice must contain:~~
1. ~~An individual's right to a hearing.~~
 2. ~~The method by which s/he may obtain a hearing.~~
 3. ~~That s/he may represent him/herself or use legal counsel, a relative, a friend, or other spokesperson.~~
 4. ~~A statement of the action intended to be taken by the Bureau of TennCare.~~
 5. ~~The reasons for the action.~~
 6. ~~The specific laws/regulations which support, or the change in such, that support the action.~~
 7. ~~That the individual may request an evidentiary hearing, and an explanation of the circumstances under which coverage can be continued when a hearing is requested.~~
- (e) ~~TennCare Standard enrollees must complete the entire renewal process prior to the expiration date of his/her coverage. A failure to do so will result in coverage lapsing as of the expiration date. Enrollees will not be permitted to appeal the expiration of his/her coverage in this situation. However, s/he may appeal on the grounds that:~~
1. ~~S/he did, in fact, complete the renewal process but an administrative error on the part of the State resulted in his/her coverage expiring, or~~
 2. ~~S/he was prevented from completing the renewal process by specific acts or omissions of state employees. This ground for appeal does not include challenges to relevant TennCare rules, policies, or timeframes.~~
- ~~An enrollee will receive a notice of the expiration of his/her coverage and the right to appeal as set out above, within 10 days. There will be no continuation or reinstatement of coverage pending appeal.~~
- (2) ~~Other Appeals. Enrollees applying for Seriously and Persistently Mentally Ill (SPMI) or Seriously Emotionally Disturbed (SED) determination shall apply for each determination to the Department of Mental Health and Developmental Disabilities unless otherwise directed by the Commissioner. SPMI and SED determinations for the state only category shall be appealed in accordance with the provisions of state and federal law.~~

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance & Administration (board/commission/ other authority) on 07/26/2017 (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: 01/04/17

Rulemaking Hearing(s) Conducted on: (add more dates). 02/28/17

Date: 7/26/17

Signature: [Handwritten Signature]

Name of Officer: John G. Roberts

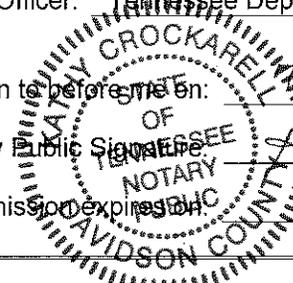
Deputy Director

Title of Officer: Tennessee Department of Finance & Administration

Subscribed and sworn to before me on: 7/26/17

Notary Public Signature: [Handwritten Signature]

My commission expires on: 1/8/2019



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.

[Handwritten Signature]
Herbert H. Slatery III
Attorney General and Reporter

9/26/2017
Date

Department of State Use Only

Filed with the Department of State on: 9/25/17

Effective on: 12/24/17

[Handwritten Signature]
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: TennCare

SUBJECT: TennCare Standard Enrollment, Reassignment, and Disenrollment with MCCs

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109

EFFECTIVE DATES: December 24, 2017 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCs) rule is being promulgated to point out the circumstances in which members enrolled in a managed long-term services and supports (MLTSS) program will be allowed to change MCOs. The exclusions rule is being amended to correct citations.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments on these rules.

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 rules are not anticipated to have an effect on 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://state.tn.us/sos/acts/106/pub/pc1070.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;

The Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCs) rule is being promulgated to point out the circumstances in which members enrolled in a managed long-term services and supports (MLTSS) program will be allowed to change MCOs. The exclusions rule is being amended to correct citations.

- (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 Division of TennCare in accordance with T.C.A. §§ 4-5-202, 71-5-105 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 managed care contractors. The governmental entity most directly affected by these Rules is the Division of TennCare, Tennessee Department of Finance & 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 promulgation of these rules is anticipated to produce a minimal fiscal impact on state revenues and expenditures.

- (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.

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For Department of State Use Only

Sequence Number: 09-24-17
 Rule ID(s): 6606
 File Date: 9/25/17
 Effective Date: 12/24/17

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 & Administration
Division:	TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):

- Amendments
 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)

Chapter Number	Chapter Title
1200-13-14	TennCare Standard
Rule Number	Rule Title
1200-13-14-.03	Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCs)
1200-13-14-.10	Exclusions

RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-14
TENNCARE STANDARD

1200-13-14-.03 ENROLLMENT, REASSIGNMENT, AND DISENROLLMENT WITH MANAGED CARE CONTRACTORS (MCCS).

(2) Reassignment.

(c) Members receiving long-term services and supports.

1. In the event that a CHOICES member is determined, based on an assessment of needs, to require a long-term care service that is not currently available under the MCO in which he is currently enrolled, but that is available through another MCO, the Bureau shall work with the current MCO to arrange for provision of the required service, which may involve providing such service out-of-network. It shall be considered to be a hardship reason to change MCO assignment only if the current MCO, after working with the Bureau, is unable to provide the required service. In such cases, the MCO that is unable to provide the required service after working with the Bureau may be subject to sanctions.
2. A CHOICES or ECF CHOICES member may request and shall have cause to change MCO assignment if all of the following are met:
 - (i) The member receives institutional, residential, or employment support services in the MLTSS program in which he is enrolled;
 - (ii) The member's institutional, residential, or employment support services provider has stopped participating in the member's MCO network and has refused continuation of care to the member in his current MCO assignment;
 - (iii) The member's current MCO has been unable to negotiate continued services for the member with the current provider;
 - (iv) The member would have to change his residential, institutional, or employment supports provider based on that provider's change in status from an in-network to an out-of-network provider with the MCO;
 - (v) As a result, the member would experience a disruption in his residence or employment;
 - (vi) The current institutional, residential, or employment support services provider is in the network of one or more alternative MCOs; and
 - (vii) The alternative MCO the member has selected is available to enroll members (i.e., has not given notice of withdrawal from the TennCare Program, is not in receivership, and is not at member capacity for the member's region).

1200-13-14-.10 EXCLUSIONS.

- (3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES or ECF CHOICES programs or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.
- (b) Services, products, and supplies that are specifically excluded from coverage under the TennCare program.
29. Food and food products (distinct from food supplements or substitutes, as defined in Rule 1200-13-14-.10(3)(a)12-10), including but not limited to specialty food items for use in diets such as:
- (i) Low-phenylalanine or phenylalanine-free
 - (ii) Gluten-free
 - (iii) Casein-free
 - (iv) Ketogenic
52. Organ and tissue donor services provided in connection with organ or tissue transplants covered pursuant to Rule 1200-13-14-.04(1)(b)23-22, including, but not limited to:
- (i) Transplants from a donor who is a living TennCare enrollee and the transplant is to a non-TennCare enrollee
 - (ii) Donor services other than the direct services related to organ procurement (such as, hospitalization, physician services, anesthesia)
 - (iii) Hotels, meals, or similar items provided outside the hospital setting for the donor
 - (iv) Any costs incurred by the next of kin of the donor
 - (v) Any services provided outside of any “bundled rates” after the donor is discharged from the hospital

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance & Administration (board/commission/ other authority) on 08/17/2017 (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: 06/13/17

Rulemaking Hearing(s) Conducted on: (add more dates). 08/04/17

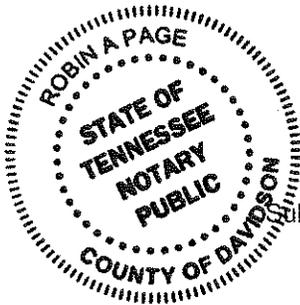
Date: 8/17/17

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D., M.P.H.

Director, Division of TennCare

Title of Officer: Tennessee Department of Finance & Administration



Subscribed and sworn to before me on: 8/17/17

Notary Public Signature: Robin A. Page

My commission expires on: 11/3/2020

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

Herbert H. Slatery III
Attorney General and Reporter

9/20/2017

Date

Department of State Use Only

Filed with the Department of State on: 9/25/17

Effective on: 12/24/17

Tre Hargett

Tre Hargett
Secretary of State

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COMMUNICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: TennCare

SUBJECT: TennCare Medicaid Enrollment, Reassignment, and Disenrollment with MCCs

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 4-5-202, 71-5-105, and 71-5-109

EFFECTIVE DATES: December 24, 2017 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCs) rule is being promulgated to point out the circumstances in which members enrolled in a managed long-term services and supports (MLTSS) program will be allowed to change MCOs. The exclusions rule is being amended to correct citations.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments on these rules.

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 rules are not anticipated to have an effect on 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://state.tn.us/sos/acts/106/pub/pc1070.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;

The Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCs) rule is being promulgated to point out the circumstances in which members enrolled in a managed long-term services and supports (MLTSS) program will be allowed to change MCOs. The exclusions rule is being amended to correct citations.

- (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 Division of TennCare in accordance with T.C.A. §§ 4-5-202, 71-5-105 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 managed care contractors. The governmental entity most directly affected by these Rules is the Division of TennCare, Tennessee Department of Finance & 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 promulgation of these rules is anticipated to produce a minimal fiscal impact on state revenues and expenditures.

- (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.

GW10217199

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 Nashville, TN 37243
 Phone: 615-741-2650
 Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 09-25-17
 Rule ID(s): 6607
 File Date: 9/25/17
 Effective Date: 12/24/17

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).

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Agency/Board/Commission:	Tennessee Department of Finance & Administration
Division:	TennCare
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1200-13-13	TennCare Medicaid
Rule Number	Rule Title
1200-13-13-.03	Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS)
1200-13-13-.10	Exclusions

RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-13
TENNCARE MEDICAID

1200-13-13-.03 ENROLLMENT, REASSIGNMENT, AND DISENROLLMENT WITH MANAGED CARE CONTRACTORS (MCCS).

(2) Reassignment.

(c) Members receiving long-term services and supports.

1. In the event that a CHOICES member is determined, based on an assessment of needs, to require a long-term care service that is not currently available under the MCO in which he is currently enrolled, but that is available through another MCO, the Bureau shall work with the current MCO to arrange for provision of the required service, which may involve providing such service out-of-network. It shall be considered to be a hardship reason to change MCO assignment only if the current MCO, after working with the Bureau, is unable to provide the required service. In such cases, the MCO that is unable to provide the required service after working with the Bureau may be subject to sanctions.
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Rulemaking Hearing(s) Conducted on: (add more dates). 08/04/17

Date: 8/17/17

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D., M.P.H.

Director, Division of TennCare

Title of Officer: Tennessee Department of Finance & Administration



Subscribed and sworn to before me on: 8/17/17

Notary Public Signature: Robin A. Page

My commission expires on: 11/3/2020

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Herbert H. Slattery III
Herbert H. Slattery III
Attorney General and Reporter

9/20/2017
Date

Department of State Use Only

Filed with the Department of State on: 9/25/17

Effective on: 12/24/17

Tre Hargett

Tre Hargett
Secretary of State

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