

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Cosmetology and Barber Examiners

DIVISION: Regulatory Boards

SUBJECT: Mobile Shops

STATUTORY AUTHORITY: 2016 Public Chapter 983 was enacted by the Tennessee legislature creating a new mobile shop license which would allow cosmetologists and barbers to provide mobile services. The Act provides the Board with the authority to promulgate rules in order to regulate such mobile shops and those persons engaging in activities within mobile shops. There are no known federal laws mandating promulgation of such rules.

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

FISCAL IMPACT: The estimated state fiscal impact is determined to be minimal. It is assumed that the state will see an increase in state revenues in an amount of \$9,050 per fiscal year based upon an estimate of 1% of currently licensed shop owners who will apply for a mobile shop license.

STAFF RULE ABSTRACT: These rulemaking hearing rules create regulations for mobile cosmetology and barber shops. These mobile shop licenses were created by the legislature in 2016 Public Chapter 983 and rulemaking authority within.

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 received at the public 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 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;

The proposed rules can potentially affect the approximately 8,550 cosmetology shops in the state of Tennessee, most of which are considered to be small businesses.

(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;

The proposed rules will create the following administrative costs: twenty-five dollars (\$25.00) for a new mobile shop license; twenty-five dollars (\$25.00) for renewal of a mobile shop license; twenty-five dollars (\$25.00) for mobile shop inspection. No additional professional skills are necessary for preparation of the report or record.

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

The effect on small businesses will be positive. The proposed rules and law will offer an additional location for barber, cosmetology, and dual shops to meet the demand of its consumers. The proposed rules also establish safety and sanitary guidelines that will protect consumers.

(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;

There are no less burdensome, less intrusive or less costly methods of achieving the purpose of these proposed rules.

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

There is no federal counterpart to the proposed rules. The proposed rules share similarities with multiple different states, including, but not limited to Florida, Texas, California and North Carolina, that have enacted rules for mobile shops.

(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 the requirements of proposed rule would be unfeasible for a business of any size. The proposed rules establish safety and sanitary guidelines designed to protect consumers.

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 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;

These rules create regulations for mobile cosmetology and barber shops. These mobile shop licenses were created by the legislature in 2016 Public Chapter 983 and rulemaking authority within.

- (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 983 was enacted by the Tennessee legislature creating a new mobile shop license which would allow cosmetologists and barbers to provide mobile services. This Act provides the Board with authority to promulgate rules in order to regulate such mobile shops and those persons engaging in activities within mobile shops. There are no known federal laws mandating promulgation of such rules.

- (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 licensees who currently own a shop or those persons who do not own a shop but would like to own a shop may be affected in that there is now a new opportunity to operate a mobile shop. It is unknown whether those persons urge adoption or rejection 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;

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the 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;

The estimated state fiscal impact is determined to be minimal. It is assumed that the state will see an increase in state revenues in an amount of \$9,050 per fiscal year based upon an estimate of 1% of currently licensed shop owners who will apply for a mobile shop license.

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

Cherrelle Hooper, Assistant General Counsel

Roxana Gumucio, Executive Director, State Board of Cosmetology and Barber Examiners

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

Cherrelle Hooper, Assistant General Counsel

Roxana Gumucio, Executive Director, State Board of Cosmetology and Barber Examiners

(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

Cherrelle Hooper
Assistant General Counsel
500 James Robertson Parkway
Nashville, TN 37243
615-741-3072
Cherrelle.Hooper@tn.gov

Roxana Gumucio
Executive Director, State Board of Cosmetology and Barber Examiners
500 James Robertson Parkway
Nashville, TN 37243
615-532-7081
Roxana.Gumucio@tn.gov

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

None Known.

**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: 08-16-17
Rule ID(s): 6590-6592
File Date: 8/29/17
Effective Date: 11/27/17

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:	The Board of Cosmetology and Barber Examiners
Division:	Regulatory Boards Division
Contact Person:	Cherrelle Hooper
Address:	500 James Robertson Parkway Nashville, TN
Zip:	37243
Phone:	615-741-3072
Email:	Cherrelle.hooper@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
0200-01	Rules of the Barber Board
Rule Number	Rule Title
0200-01-.19	Mobile Shops

Chapter Number	Chapter Title
0440-01	Licensing
Rule Number	Rule Title
0440-01-.13	Fees
0440-01-.19	Mobile Shops

Chapter Number	Chapter Title
0440-02	Sanitary Rules
Rule Number	Rule Title
0440-02-01	Definitions

Chapter 0200-01
Board of Barber Examiners
Amendments
Table of Contents

0200-01-.01 Requirements for School License	0200-01-.10 Original License Fee
0200-01-.02 Curriculum	0200-01-.11 Fees
0200-01-.03 Transcripts	0200-01-.12 Inspections
0200-01-.04 Applications for Examination	0200-01-.13 License Qualifications
0200-01-.05 Posting of Licenses	0200-01-.14 Teacher Training Programs
0200-01-.06 Expiration of Certificates of Registration	0200-01-.15 Student Kits
0200-01-.07 Equipment and Location Requirements for Barber Shops	0200-01-.16 Demonstrations
0200-01-.08 Educational Equivalent	0200-01-.17 Alcoholic Beverages
0200-01-.09 Examinations	0200-01-.18 Civil Penalties
	<u>0200-01-.19 Mobile Shops</u>

Chapter 0200-01
Board of Barber Examiners
New Rules

Chapter 0200-01 is amended by adding the following as new rule 0200-01-.19 [Mobile Shops]:

Mobile shops where barber services are performed shall meet the requirements in Rule 0440-01-.19 [Mobile Shops] and pay the fees set out in Rule 0440-01-.13 for mobile shops; provided, however, that the provision of barbering services in such shops shall be controlled by T.C.A. Title 62, Chapter 3 and these rules.

Authority: (2016) Public Chapter 983, T.C.A. §§ 62-3-128 and 62-4-125.

Chapter 0440-01
Board of Cosmetology
Amendments
Table of Contents

0440-01-.01 Requirements for School License	0440-01-.10 Original License Fee
0440-01-.02 Change of School Ownership and Relocation	0440-01-.11 Teacher Training Programs
0440-01-.03 Curriculum	0440-01-.12 Demonstrations
0440-01-.04 High School Equivalent	0440-01-.13 Fees
0440-01-.05 Requirements for Schools	0440-01-.14 Civil Penalties
0440-01-.06 Enrollment of Students	0440-01-.15 Practice by Instructor
0440-01-.07 Student Kits	0440-01-.16 Schools Providing Limited Instruction
0440-01-.08 Expiration of School Registration Renewal	0440-01-.17 Communication with the Board
0440-01-.09 Examination Passing Scores and Schools Attendance Ratio	0440-01-.18 Expedited Licensing for Certain Military Personnel and Spouses
	<u>0440-01-.19 Mobile Shops</u>

**Chapter 0440-01
Board of Cosmetology
Amendments**

Rule 0440-01- 13 [Fees] is amended by inserting the following as newly designated paragraph (6) and renumbering the subsequent paragraphs accordingly:

- (6) Mobile Shops
 - (a) New mobile shop license..... two hundred dollars (\$200.00)
 - (b) Renewal of a mobile shop license..... seventy five dollars (\$75.00)
 - (c) Mobile shop inspection..... fifty dollars (\$50.00)
 - (d) Change of ownership due to death of immediate family..... no charge, with a copy of the death certificate or obituary.

Authority: T.C.A. §§ 62-4-105(e), 62-4-110, 62-4-112, 62-4-115, 62-4-118, 62-4-120, 62-4-125, and 62-4-131, 62-4-138, and (2016) Public Chapter 983.

**Chapter 0440-01
Board of Cosmetology
New Rules**

Chapter 0440-01 is amended by adding the following language as new rule 0440-01- 19 [Mobile Shops]:

- (1) Definitions
 - (a) "Mobile shop" shall have the same definition as in T.C.A. § 62-4-102(a)(16);
 - (b) "Primary shop" means the currently-licensed cosmetology, barber, or dual shop with a fixed location under whose license or registration a mobile shop is operated pursuant to T.C.A. § 62-3-134 or 62-4-138.
- (2) Application for License
 - (a) An application to operate a mobile shop shall include:
 - 1. The name, address, and license number of the primary shop under the license of which the mobile shop will operate;
 - 2. The name under which the mobile shop will operate;
 - 3. The types of cosmetology or barbering services to be performed at the mobile shop;
 - 4. The new license fee for a mobile shop as set by Rule 0440-01- 13; and
 - 5. The name, address, phone number, and license information of the mobile shop's manager, as defined in T.C.A. § 62-3-109(c)(1)(B) or § 62-4-102(a)(10) as the case may be, which may be the same or different as the manager of the primary shop under whose license the mobile shop is operating.
 - (b) The mobile shop and the primary shop shall be owned by the same person, persons or entity.

1. If the owner has a partnership agreement with another entity wherein one person operates the primary shop and another operates the mobile shop, the partnership agreement shall be disclosed to the Board office on a form provided by the Board office, due at the time the mobile shop application is submitted.
 2. It shall be the responsibility of the primary shop owner to inform the Board office when a business partnership dissolves.
- (c) The initial issuance of a mobile shop license shall be set to expire on the same date as the primary shop, but the application and registration fee for the mobile shop shall not be prorated.
- (d) A mobile shop shall undergo an initial inspection and pay the fee for the initial inspection prior to receiving licensure as a mobile shop.
- (e) An application for renewal of a mobile shop license shall include:
1. Any update or change in information previously provided to the Board regarding the mobile shop in the most recent application or renewal of such mobile shop;
 2. The mobile shop renewal fee as set by Rule 0440-01-13;
 3. The submission of a date and location that the mobile shop will be located for the next two annual inspections; provided, however, that the Board shall not be required to accept such date or location.
- (3) The mobile shop shall receive all Board office correspondence through the permanent address of the mobile shop's primary shop.
- (4) The primary shop may be held liable for any acts by the mobile shop that would constitute grounds for discipline against the mobile shop.
- (5) Equipment Required
- (a) In lieu of any equipment required for a barber, cosmetology or dual shop, all mobile shops shall be required to have:
1. one (1) shampoo bowl with hot and cold running water in work area and chair;
 2. one (1) enclosed storage area for clean towels;
 3. one (1) covered and labeled container for soiled towels;
 4. one (1) covered and labeled trash container maintained in a sanitary condition;
 5. one (1) dry sterilizer, with fumigant, or sanitary compartment;
 6. one (1) wet sterilizer;
 7. one (1) work station (standard size) for each operator;
 8. one (1) ultra violet sanitizer; and
 9. one (1) blood spill kit.
- (b) In addition to the requirements of subparagraph (5)(a), a mobile shop offering skin care services shall also be required to have:
1. one (1) sink which provides hot and cold running water in the work area.

2. one (1) hands free magnifying lamp;
3. one (1) enclosed storage area for clean towels;
4. one (1) covered and labeled container for soiled towels;
5. one (1) covered and labeled trash container maintained in a sanitary condition;
6. one (1) reclining facial chair/table;
7. one (1) wet sterilizer for the equipment used;
8. one (1) ultra violet sanitizer;
9. one (1) blood spill kit;
10. one (1) sharps container for biohazard material removal;
11. one (1) electric hot towel cabin;
12. one (1) facial steamer; and
13. one (1) wax depilatory heater pot with manufacturer's intended commercial use statement.

(c) In addition to the requirements of subparagraph (5)(a), a mobile shop offering manicure services shall also be required to have:

1. one (1) manicure table with stool or chair, per manicurist;
2. one (1) wet sterilizer for equipment used;
3. one (1) finger bowl per table;
4. one (1) covered container per table for cotton balls and swabs;
5. one (1) foot bath if pedicures are offered; and
6. one (1) sign prominently posted stating that the customer has the right not to have drills used on his or her nails.

(d) The executive director to the Board may, in his/her discretion, waive one or more of the foregoing equipment requirements to accommodate mobile shops offering limited services. If services offered change, the mobile shop is required to complete a new application and receive a new inspection.

- (6) Every mobile shop shall contain sufficient equipment in working order to enable it to perform all services offered competently and efficiently.
- (7) The owner and/or manager of a mobile shop shall disclose the current location of a mobile shop upon the request of the Board or the Board's staff.
- (8) It is unlawful to operate a mobile shop unless it is, at all times, under the direction of a manager or designated manager. While on duty, the manager or designated manager shall be responsible for the shop's compliance with all laws and rules of the Board.
- (9) The manager and designated manager of a mobile shop may manage those who practice disciplines in cosmetology or barbering other than the discipline in which the manager or designated manager is licensed; however, the manager or designated manager shall only practice within the field that the person is licensed.

- (10) The manager, owner, and designated manager, when the designated manager is on duty, shall have the same responsibilities as described in T.C.A. § 62-3-111, if the shop is providing barbering services, and T.C.A. § 62-4-119, if the shop is providing cosmetology services.
- (11) If the owner of a mobile shop changes, then the new owner and primary shop shall apply for and receive a new mobile shop license, including paying all fees for such a new license, prior to operating the mobile shop.
- (12) The fee for changing the name of a mobile shop shall be the same as the fee for changing the name of a cosmetology or barber shop; provided, however, that a request to change the name of both a primary shop and a mobile shop at the same time shall be processed with a single such fee.
- (13) Each mobile shop shall be inspected at least annually and the owner of the mobile shop shall pay the fee for inspection as set by Rule 0440-01-.13.
- (14) An inspector may inspect a mobile shop anytime the mobile shop is open for business any number of times per year.
- (15) There shall not be a late fee for the late renewal of a mobile shop license, provided that no mobile shop shall be operated while not properly licensed.
- (16) The mobile shop shall prominently display at all times the most recent license issued by the Board showing the name of the mobile shop and the name of the primary shop. This display must be visible from the outside of the mobile shop. The mobile shop is also required to have external signs with the name of the mobile shop.
- (17) The mobile shop shall be legally parked in a fixed position and fully stationary (not in motion) while rendering services to customers.
- (18) The mobile shop is required to dispose of any waste water in a sanitary sewer system.
- (19) Customers shall not be exposed to any dangerous condition inside a mobile shop resulting from vehicle emissions or vehicle maintenance.

Authority: (2016) Public Chapter 983, T.C.A. §§ 62-3-109, 62-3-111, 62-3-134, 62-4-105(e), 62-4-119, 62-4-125, and 62-4-138.

**Chapter 0440-02
Board of Cosmetology
Amendments**

Rule 0440-02-.01(1)(e) is amended by deleting the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (e) "Shop" means a cosmetology shop, manicure shop, skin care shop, or natural hair styling shop and includes a mobile shop unless context otherwise requires.

Authority: T.C.A. §§ 62-4-102, 62-4-105(e), and 62-4-134, and (2016) Public Chapter 983.

* 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)
Ron R. Gillihan II	X				
Kelly Barger	X				
Nina Coppinger				X	
Judy McAllister				X	
Becky Russell	X				
Patricia J. Richmond	X				
Mona Sappenfield	X				
Frank Gambuzza	X				
Amy Tanksley	X				
Anita Charlton	X				
Yvette Granger	X				
Jimmy Boyd	X				
Brenda Graham				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Cosmetology and Barber Examiners (board/commission/ other authority) on 08/07/2017 (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: 05/04/2017

Rulemaking Hearing(s) Conducted on: (add more dates). 08/07/2017

Date: August 9, 2017

Signature: *Cherelle Hooper*

Name of Officer: Cherelle Hooper

Title of Officer: Assistant General Counsel



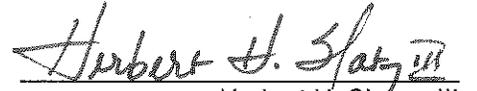
Subscribed and sworn to before me on: August 9, 2017

Notary Public Signature: *Vanessa Huntsman*

My commission expires on: November 21, 2017

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.

The Board of Cosmetology and Barber Examiners
0200-01-.19 Mobile Shops
0440-01-.13 Fees
0440-01-.19 Mobile Shops
0440-02-.01 Definitions



Herbert H. Slatery III
Attorney General and Reporter
8/18/2017

Date

Department of State Use Only

Filed with the Department of State on: 8/29/17

Effective on: 11/27/17



Tre Hargett
Secretary of State

RECEIVED
2017 AUG 29 PM 1:30
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Securities

SUBJECT: Securities Registration and Exemptions

STATUTORY AUTHORITY: This rule 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" and T.C.A. §§ 48-1-103(a)(7) and 48-1-103(a)(12), the corresponding statutory provisions for non-profit company exemptions and bank holding company exemptions, respectively.

EFFECTIVE DATES: November 12, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The amendments will add clarity and consistency for exemption filings. An added effective period and renewal instructions to each exemption will provide additional guidance to issuers claiming the exemption and provide consistency in application of internal policies for reviewing these exemptions in the Registration Section of the Securities Division. The amendments also clean up out-of-date references to an obsolete North American Securities Administrators Association's ("NASAA") Statement of Policy.

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.

Comment 1

0780-04-02-.15(1)(b)

It was commented that many holding companies have a letter from the Federal Reserve Board that is probably buried in a file from thirty years ago and not easily accessible as proof of registration of that specific type of proof.

Response to Comment 1

Although proof of registration in the form of the original letter from the Federal Reserve Board may be difficult for companies to produce, the rule is sufficiently worded broadly as "proof of registration" leaving room for the Tennessee Securities Division staff to be flexible with accepting acceptable proof that the company is registered with the Federal Reserve Board.

Comment 2

0780-04-02-.15(1)(c) and (3)

It was commented that the rule reads that a holding company must file a registration with the US Securities and Exchange Commission ("SEC") to qualify for this exemption when before holding companies could use an exemption from registration with the SEC while applying for this state exemption. The commenter suggested adding the words "if any" to end of subdivisions (1)(c) and (3) to clarify.

Response to Comment 2

The Department agrees with this comment. The words "if applicable" have been added to the end of subdivisions (1)(c) and (3) to clarify that a copy of the SEC registration statement must be filed only if it is applicable.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rulemaking 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). The proposed rules are not anticipated to have a significant impact on small businesses. Tenn. Code Ann. §§ 48-1-103(a)(7), 48-1-103(a)(12), and 48-1-116 authorize the Commissioner to promulgate rules to carry out the Tennessee Securities Act and specifically authorize the Commissioner to request additional information for the Non-Profit exemption and Bank holding Company exemption. The proposed amendments will add clarity and consistency for those exemption filings.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

(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.

The proposed rules will only apply to non-profit companies, bank holding companies or savings and loan companies who seek to claim an exemption from filing a registration statement to sell securities in Tennessee. While there may be some of those companies considered to be small business affected by these rules, it is estimated that this number is small.

(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.

The projected reporting, recordkeeping, and other administrative costs associated with compliance with this proposed rule are not anticipated to increase from that which exists under the current rules these proposed rules amend.

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

The effect on small businesses is minimal. The proposed amendment will provide more clarity and consistency for exemption filers.

(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.

There are no alternative methods to make the proposed rule less costly, less intrusive, or less burdensome.

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

A federal exemption for non-profit companies issuing securities can be found in Section 3(a)(4) of the Securities Act of 1933, codified at 15 U.S.C. § 77c(a)(4). Most states have similar exemptions that provide registration exemptions for non-profit companies and bank holding companies.

(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.

Only non-profit companies, bank holding companies, or savings and loan companies who seek to claim an exemption from filing a registration statement to sell securities in Tennessee will use this rule. Exempting any company from these proposed rules would place Tennessee residents at a risk of investing in unfair or unjust securities offerings issued within the State of Tennessee.

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 do not impact 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 amendments will add clarity and consistency for exemption filings. An added effective period and renewal instructions to each exemption will provide additional guidance to issuers claiming the exemption and provide consistency in application of internal policies for reviewing these exemptions in the Registration Section of the Securities Division. The amendments also clean up out-of-date references to an obsolete North American Securities Administrators Association's ("NASAA") Statement of 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;

This rule 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" and T.C.A. §§ 48-1-103(a)(7) and 48-1-103(a)(12), the corresponding statutory provisions for non-profit company exemptions and bank holding company exemptions, respectively.

- (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;

These rules will only apply to non-profit companies or bank holding companies who seek to claim an exemption from filing a registration statement to sell securities in Tennessee.

- (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 Department is not aware of any attorney general opinions or any judicial rulings directly related 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;

These rules 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, Direct 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;

Kaycee Wolf, Chief Counsel for Insurance, Securities, and TennCare Oversight

- (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, Legal Division, 8th Floor, Nashville, TN 37243; (615) 253-1821;
Kaycee.Wolf@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: 08-11-17
 Rule ID(s): 6586
 File Date: 8/14/17
 Effective Date: 11/12/17

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:	Securities
Contact Person:	Kaycee Wolf, Chief Counsel
Address:	The Davy Crockett Tower 500 James Robertson Parkway, 8 th Floor Nashville, TN
Zip:	37243
Phone:	615-253-1821
Email:	Kaycee.wolf@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
0780-04-02	Securities Registration and Exemptions
Rule Number	Rule Title
0780-04-02-.07	Non-Profit Exemption
0780-04-02-.15	Bank Holding Company Exemption

Chapter Number	Chapter Title
Rule Number	Rule Title

**RULES OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE DIVISION OF SECURITIES**

**CHAPTER 0780-04-02
SECURITIES REGISTRATION AND EXEMPTIONS**

TABLE OF CONTENTS

0780-04-02-.01	Registration by Coordination	0780-04-02-.10	NASDAQ/NMS Exemption
0780-04-02-.02	Registration by Qualification	0780-04-02-.11	Reserved
0780-04-02-.03	Securities Registration Generally	0780-04-02-.12	Notice Filings for Covered Securities
0780-04-02-.04	Advertising and Sales Literature	0780-04-02-.13	Notice Filings for Exempt Employee Plans
0780-04-02-.05	Renewals	0780-04-02-.14	Notice Filings for Securities Sold to Accredited Investors
0780-04-02-.06	Standards of Fairness and Reasonableness		
0780-04-02-.07	Non-Profit Exemption	0780-04-02-.15	Bank Holding Company Exemption
0780-04-02-.08	Uniform Limited Offering Exemption	0780-04-02-.16	Unsolicited Transaction Exemption
0780-04-02-.09	Successor Corporate Issuers	0780-04-02-.17	Invest Tennessee Exemption

Rule 0780-04-02-.07 Non-Profit Exemption is amended by deleting the Rule in its entirety and replacing it with the following language:

0780-04-02-.07 NON-PROFIT EXEMPTION.

- (1) All persons offering securities claimed to be exempt under T.C.A. § 48-1-103(a)(7) shall, at least ten (10) days prior to any sale of such securities, file a notice on Form U-1 (including all applicable exhibits thereto) accompanied by the following additional information:
- (a) The filing fee as set forth in T.C.A. § 48-1-103(a)(7);
 - ~~(a)~~(b) A statement of the basis for the issuer's qualification for the exemption under T.C.A. § 48-1-103(a)(7);
 - (c) A copy of the Charter and Bylaws of the issuer or the equivalent entity formation governance documents;
 - (d) Proof of consent to service of process as set forth in T.C.A. § 48-1-124;
 - (e) A description of the method by which full disclosure of material facts will be made to each offeree and a copy of the prospectus, pamphlet, offering circular, or similar literature should be provided;
 - (f) Copies of all advertising or other material to be distributed in connection with the offering;
 - (g) A copy of the subscription agreement or other similar agreement;
 - (h) A copy of any proposed agreement or proposed form of agreement with a securities broker-dealer or underwriter;
 - (i) A copy of the preliminary or definitive Trust Indenture and/or Trust Agreement, if any;
 - (j) An opinion of counsel attesting to the authority of the issuer to offer and sell the securities and stating that after the sale the securities will be valid, binding obligations of the issuer in accordance with the issuer's governing documents;
 - ~~(b)~~(k) An undertaking to notify the commissioner immediately upon the receipt of any stop order, denial, order to show cause, suspension, or revocation order, injunction or

restraining order, or similar order entered by or issued by any regulatory authority or by any court, concerning the securities covered by the notice or other securities of the issuer currently being offered to the public; and

~~(e)(l)~~ A statement of whether or not the issuer has ever been the subject of any order described in subparagraph (1)(b)(k) of this Rule, and if so a description of the order; and

~~(m)~~ Any additional information or documentation that the commissioner may require.

(2) ~~The issuer shall furnish at a minimum the following information to offerees: In order to be exempt under T.C.A. § 48-1-103(a)(7), a security must meet the following qualifications:~~

~~(a) Church Bonds~~

~~1. If the issuer is selling Church Bonds, a disclosure document prepared in accordance with the Statement of Policy Regarding Church Bonds adopted by NASAA, as reported at CCH NASAA Reports ¶1001, as it may be amended from time to time. For purposes of this Rule, the term "Church Bonds" shall mean certificates in the form of notes, bonds, or similar instruments issued by a congregation or church that represents an obligation to repay a specific principal amount at a stated rate of interest. If the issuer is selling Church Bonds, a disclosure document should be prepared in accordance with the Statement of Policy Regarding Church Bonds adopted by NASAA and any successor policy thereto.~~

~~2. If the issuer is selling General Obligation Financing Notes by Religious Denominations, a disclosure document prepared in accordance with the Guidelines for General Obligations Financing by Religious Denominations adopted by NASAA, as reported at CCH NASAA Reports ¶¶1951-1957, as may it be amended from time to time. For purposes of this Rule, the term "General Obligation Financing" shall mean notes, certificates, or similar debt instruments issued by religious denominations that represent an obligation to repay a specific principal amount at a stated rate of interest. For the purposes of this Rule, the term "Church Bonds" shall be consistent with the definition set forth in the Statement of Policy Regarding Church Bonds adopted by NASAA and any successor policy thereto.~~

~~(b) If the issuer is selling Health Care Facility Bonds, a disclosure document prepared in accordance with the Statement of Policy on Health Care Facility Offerings adopted by NASAA, as reported at CCH NASAA Reports ¶2001, as it may be amended from time to time. For purposes of this Rule, the term "Health Care Facility Bonds" shall mean certificates in the form of notes, bonds, or similar instruments issued by a non-profit health care facility that represent an obligation to repay a specific principal amount at a stated rate of interest. Church Extension Funds~~

~~1. If the issuer is selling notes issued by a Church Extension Fund, a disclosure document should be prepared in accordance with the Statement of Policy Regarding Church Extension Fund Securities adopted by NASAA and any successor policy thereto.~~

~~2. For the purposes of this rule, the term "Church Extension Fund" shall be consistent with the definition set forth in the Statement of Policy Regarding Church Extension Fund Securities adopted by NASAA and any successor policy thereto.~~

- (c) If the issuer is other than as described in subparagraph (1)(a-b) of this Rule For all other securities exempt under T.C.A. § 48-1-103(a)(7) that do not meet the qualifications of subsection (2)(a)-(b), the disclosure document must contain the following information:
1. Financial statements of the issuer prepared in accordance with generally accepted accounting principles including, but not limited to, the following:
 - (i) A balance sheet as of the end of the most recent fiscal year of the issuer; and
 - (ii) A statement of income for each of the issuer's three (3) most recent fiscal years.
 2. A statement from the issuer setting forth the issuer's plan for paying the principal and interest due on the securities to be sold, including, but not limited to, anticipated sources of revenue to be used in paying such principal and interest, and supporting financial information; ~~and~~
 3. A statement as to whether or not the issuer or any affiliate or predecessor has had any material default during the past ten (10) years in the payment of:
 - (i) Principal, interest, dividends, or sinking fund installments on any security or indebtedness for borrowed money; or
 - (ii) Rentals under material leases with terms of three (3) years or more; and
 4. Full disclosure of all material facts relevant to the offering.
- (d) Legend. For all securities exempt under T.C.A. § 48-1-103(a)(7), The offering document shall display on its cover substantially the following information, to the extent appropriate, in capital letters and, if printed, in boldface roman type at least as high as ten (10) point modern type:

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

- (3) Effective Period. Each offering shall be effective for a period of one (1) year from the date of effectiveness.
- (4) Amendments. During the effective period, the issuer undertakes to file supplements and amendments to the originally filed offering documents pursuant to paragraph (1)(e) with the commissioner prior to use in the offering.
- (5) Renewal. The offering may be renewed for an additional period of one (1) year by filing the notification requirements of T.C.A. § 48-1-103(a)(7) and this Rule, including the appropriate filing fee, no later than ten (10) days prior to the expiration of effectiveness.

Authority: T.C.A. §§ 48-1-103(a)(7), 48-1-113, 48-1-115, and 48-1-116, and 48-1-124.

Rule 0780-04-02-.15 Bank Holding Company Exemption is amended by deleting the Rule in its entirety and replacing it with the following language:

0780-04-02-.15 BANK HOLDING COMPANY EXEMPTION.

- (1) All issuers who wish to offer securities in or into this state in reliance on an exemption afforded to sales of securities by a bank holding company or a savings and loan holding company must file with the commissioner no later than ten (10) days prior to the first sale; persons offering securities claimed to be exempt under T.C.A. § 48-1-103(a)(12) shall, at least ten (10) days prior to any sale of such securities, file a notice on Form U-1 (including all applicable exhibits thereto) accompanied by the following additional information:
 - (a) One (1) copy of the Form U-1, Uniform Application to Register Securities The filing fee as set forth in T.C.A. § 48-1-103(a)(12);
 - (b) A Form U-2 Uniform Consent to Service of Process Proof of registration with the federal reserve board;
 - (c) If the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution A copy of the registration statement filed with the SEC, if applicable;
 - (d) A non-refundable filing fee in the amount of one hundred dollars (\$100.00); and Proof of consent to service of process as set forth in T.C.A. § 48-1-124;
 - (e) A copy of all sales or advertising literature used or proposed to be used. Copies of all advertising or other material to be distributed in connection with the offering; and
 - (f) Any additional information or documentation that the commissioner may require.
- (2) Effective Period. Each offering shall be effective for a period of one (1) year from the date of effectiveness.
- (3) Amendments. During the effective period, the issuer shall concurrently file with the commissioner any amendments filed with the SEC, if applicable.
- (4) Renewal. The offering may be renewed for an additional period of one (1) year by filing the notification requirements of T.C.A. § 48-1-103(a)(12) and this Rule, including the appropriate filing fee, no later than ten (10) days prior to the expiration of effectiveness.

Authority: T.C.A. §§ 48-1-103(b)(10)(a)(12), 48-1-113, 48-1-115, 48-1-116, and 48-1-124.

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

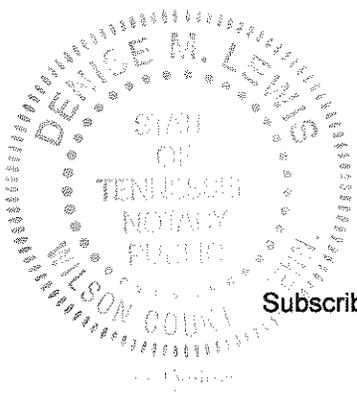
Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance (board/commission/ other authority) on 6/5/17 (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: December 13, 2016

Rulemaking Hearing(s) Conducted on: (add more dates). February 6, 2017



Date: 6/5/17

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of Commerce and Insurance

Subscribed and sworn to before me on: 6/5/17

Notary Public Signature: Denise M. Lewis

My commission expires on: 1/15/20

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
7/31/2017
 Date

Department of State Use Only

RECEIVED
 2017 AUG 14 PM 3:15
 SECRETARY OF STATE
 PUBLICATIONS

Filed with the Department of State on: 8/14/17

Effective on: 11/12/17

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Equalization

DIVISION:

SUBJECT: Multiple Use Subclassification

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 67-5-801(b), requires the State Board of Equalization to establish guidelines by rules as to how to apportion subclassifications and assessment percentages when a parcel of real property is used for more than one purpose.

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

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rulemaking hearing rules represent an attempt by the State Board of Equalization to comply with the language in Tennessee Code Annotated, Section § 67-5-801(b), which requires the State Board of Equalization to establish guidelines by rules as to how to apportion subclassifications and assessment percentages when a parcel of real property is used for more than one purpose. Because there are no rules currently in place, split use classifications are not always handled uniformly. These rules will help ensure that assessors across the state are handling these classifications fairly and uniformly and will provide both taxpayers and assessors with guidance. The proposed rules also provide multiple examples to help assessors and taxpayers.

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.

We did receive comments from several individuals at the Public Hearing on the first version of these proposed rules, on October 17, 2016. Don Collier (on behalf of the Tennessee Farm Winegrowers Alliance) testified about slim profit margins in the winery industry and the growth of that industry. Al Ganier, a farm owner, read written comments and urged consideration of the Right to Farm Act's definition of agriculture in the proposed rules. Jay Catignani, a tax representative, testified that the proposed rules would generate many appeals, that farm uses would be the most impacted, and that he was concerned about uniform implementation. Stephanie Hazeltine, a farm owner, testified that Tennessee needs more, not fewer, farmers. Amy Ladd, a farm owner and officer of the Tennessee Agritourism Association, read written comments in support of the agritourism industry and its supplementation of farm income. Dan Elrod, on behalf of the Tennessee Farm Bureau Federation, discussed the evolution of farming and encouraged revisions of the proposed rules to incorporate the definitions of agriculture from the Tennessee Code Annotated. Marshall Albritton, an attorney who represents a farm owner in an appeal, testified that he believed the proposed rules conflicted with statutes and would result in arbitrary implementation. Brandon Witt, a farm owner, testified that he already has a slim profit margin and he expected arbitrary implementation under the proposed rules. Cindy Delvin, a farm owner and officer in the Tennessee Organic Growers Association, testified regarding the growing popularity of farmers markets, the food movement bringing people back to the farm, and the legal expenses of property tax appeals. Will Denami, on behalf of the Tennessee Association of Assessing Officers, testified that his organization would submit written comments. Stan Butt, on behalf of the Tennessee Dairy Producers Association, testified that rural assessors would resist these proposed rules. Chas Pullen, a vineyard manager, testified that his vineyard is presently taxed at a commercial rate. (The SBOE looked into this statement and the vineyard in question is presently only partially classified commercial.)

Based on many of the comments received at the Rulemaking Hearing, we revised the proposed rules. At the SBOE meeting on June 22, 2017, Dan Elrod, on behalf of the Tennessee Farm Bureau Federation, spoke in support of the current version.

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.

(Insert statement here)

These rules could affect small businesses if those small businesses are part of a property used for multiple purposes. These rules are generally meant to codify existing practice, and so they should have only a minimal effect.

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)

(Insert statement here)

These rules could impact local governments in that the rules offer guidance to local assessors as to how to assess real properties with more than one use. Though these rules are meant to codify existing practice, it is possible that different counties across the state have been assessing multiple-use properties in somewhat different manners, and so there could be some changes in assessment classifications for certain properties and therefore some changes in tax amounts collected by counties.

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 proposed rules represent an attempt by the State Board of Equalization to comply with the language of Tenn. Code Ann. § 67-5-801(b) which requires the State Board of Equalization to establish guidelines by rules and regulations as to how to apportion subclassifications and assessment percentages when a parcel of real property is used for more than one purpose. Because there are no rules currently in place, split use classifications are not always handled uniformly. These rules will help ensure that assessors across the state are handling these classifications fairly and uniformly and will provide both taxpayers and assessors with guidance. The proposed rules also provide multiple examples to help assessors and taxpayers.

- (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;

Tenn. Code. Ann. § 67-5-801(b) requires the State Board of Equalization to establish guidelines by rules and regulations as to how to apportion subclassifications and assessment percentages when a parcel of real property is used for more than one purpose.

- (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;

Assessors; taxpayers who own real property used for more than one purpose; Comptroller of the Treasury, Division of Property Assessments. Those entities urge adoption of these rules as most recently amended.

- (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;

Minimal fiscal impact anticipated. These rules are meant to codify existing practice.

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

Stephanie Maxwell, General Counsel to the Comptroller

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

Stephanie Maxwell, General Counsel to the Comptroller

- (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

Stephanie Maxwell, General Counsel to the Comptroller, 505 Deaderick Street, Suite 1700, Nashville, TN 37243; (615) 401-7964; stephanie.maxwell@cot.tn.gov

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

Available upon request.

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: 08-14-17
 Rule ID(s): 6588
 File Date: 8/23/17
 Effective Date: 11/21/17

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:	State Board of Equalization
Division:	
Contact Person:	Betsy Knotts, Executive Secretary
Address:	312 Rosa L. Parks Avenue, Suite 900 Nashville, TN 37243-1402
Phone:	615-401-7954
Email:	Betsy.Knotts@cot.tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0600-12	Multiple-Use Subclassification
Rule Number	Rule Title
0600-12-.01	Purpose
0600-12-.02	Applicability
0600-12-.03	Definitions
0600-12-.04	Determining When Multiple-Use Subclassification is Appropriate
0600-12-.05	Apportioning Assessment Percentages Among Subclasses
0600-12-.06	Apportioning Value Among Multiple Subclasses
0600-12-.07	Examples of Apportioning Among Subclasses
0600-12-.08	Assessor's Records

Substance of proposed rules:

Chapter 0600-12
 Multiple-Use Subclassification

0600-12-.01 PURPOSE

The purpose of these rules is to implement the provision of T.C.A. § 67-5-801(b) concerning the establishment of guidelines for apportionment among subclasses where a parcel of real property is used for more than one (1) purpose, which would result in different subclassifications and different assessment percentages.

Authority: T.C.A. §§ 4-3-5103, 67-1-305 and 67-5-801(b).

0600-12-.02 APPLICABILITY

These rules apply to those situations where a parcel of real property is used for more than one purpose and it is necessary to assign different subclassifications and assessment percentages to each use.

Authority: T.C.A. §§ 4-3-5103, 67-1-305 and 67-5-801(b).

0600-12-.03 DEFINITIONS

As used in these rules, unless the context otherwise requires:

- (1) "Assessment percentage" means the rate of assessment set forth in T.C.A. § 67-5-801(a) for 'public utility property,' 'industrial and commercial property,' 'residential property,' and 'farm property.'
- (2) "Farm property" is defined as in T.C.A. § 67-5-501(3).
- (3) "Industrial and commercial property" is defined as in T.C.A. § 67-5-501(4).
- (4) "Mobile home" is any movable structure and appurtenance that is attached to real property by virtue of being on a foundation, or being underpinned, or connected with any one (1) utility service, such as electricity, natural gas, water, or telephone.
- (5) "Multiple-use subclassification" means the apportionment of different assessment percentages among subclasses when a parcel of real property is used for more than one purpose which would result in different subclassifications.
- (6) "Public utility property" is defined as in T.C.A. § 67-5-501(8).
- (7) "Residential property" is defined as in T.C.A. § 67-5-501(10).
- (8) "Subclass" and "Subclassification" mean the classification of real property as public utility property, industrial and commercial property, residential property or farm property in accordance with T.C.A. §§ 67-5-501 and 67-5-801(a).

Authority: T.C.A. §§ 4-3-5103, 67-1-305 and 67-5-801(b).

0600-12-.04 DETERMINING WHEN MULTIPLE-USE SUBCLASSIFICATION IS APPROPRIATE

- (1) Many properties are used for more than one purpose simultaneously. Where the uses of a property fall into two (2) or more subclasses, the assessor shall determine the share of the market value of the property attributable to each subclass and assess the property according to the proportion each share constitutes of the total market value.
- (2) Multiple-use subclassification is appropriate only where each of the uses recognized for subclassification is distinct and ongoing. Where a parcel is used predominantly for one purpose and another use is sporadic and generates de minimis annual income, the parcel should be assessed in accordance with the predominant use. Where a parcel is used predominantly for one purpose and another use as described above is sporadic but generates regular annual income that is not de minimis, the parcel should be assessed using multiple-parcel subclassification.

- (3) Below are examples of when multiple-use subclassification is appropriate:
- (a) Home businesses run from a residential property to carry on a trade or business such as a beauty salon, small day care, or car repair service (portion used in business to be subclassified commercial);
 - (b) A building with a retail store on the first floor and an owner-occupied residence on the second floor (portion used in business to be subclassified commercial);
 - (c) A manufacturing facility with excess land used for farming (portion farmed to be subclassified farm);
 - (d) Mobile home parks with on-site privately owned mobile homes (portions rented to be subclassified commercial, owner-occupied mobile home to be subclassified residential);
 - (e) Properties used in the commercial production of farm products and nursery stock but which also have uses not within the definition of "agriculture" otherwise provided by law. As used in the rules, "commercial production of farm products and nursery stock" means the production is consistent with a farm operating for profit for federal income tax purposes. Examples requiring a split subclassification of agricultural property would include portions of a farm that generate regular annual income (as opposed to sporadic and de minimis income) from regular rental of space set aside for parking or camping, or portions of a horse farm devoted to uses such as a shop engaged in the retail sale of tack. Boarding of animals integral to breeding, raising and development of horses and other livestock at the property is not considered a commercial use for purposes of these rules;
 - (f) Portions of farms with commercial activities unrelated to production of farm products or livestock, except commercial activities constituting "agriculture" as defined by law. Improvements and structures on, and land that is part of, a farm engaged in the commercial production of farm products or nursery stock that are used for "agriculture" may be classified as farm property, provided the land improvement or structure in question is used for one or more of the following: (1) recreational or educational activities; (2) retail sales of products produced on the farm, but only if a majority of the products sold are produced on the farm; or (3) entertainment activities conducted in conjunction with, but secondary to, the commercial production of farm products or nursery stock. Commercial subclassification of those portions of a farm used for events unrelated to agriculture shall be limited to the actual land and structures dedicated to the unrelated uses.

The foregoing are only examples and do not represent all situations where multiple-use subclassification is appropriate.

Authority: T.C.A. §§ 4-3-5103, 67-1-305 and 67-5-801(b).

0600-12-.05 APPORTIONING ASSESSMENT PERCENTAGES AMONG SUBCLASSES

Where the uses of a property include two (2) or more subclasses, the assessor shall apply the appropriate assessment percentage to each subclass. In order to determine the appropriate assessment percentage for each subclass, the assessor shall first determine the share of the total market value attributable to each subclass.

Authority: T.C.A. §§ 4-3-5103, 67-1-305 and 67-5-801(b).

0600-12-.06 APPORTIONING VALUE AMONG MULTIPLE SUBCLASSES

- (1) Where the uses of a property include two (2) or more subclasses, the assessor shall determine the share of the market value of the property attributable to each subclass and value the property according to the proportion each share constitutes of the total market value.
- (2) In determining the market value of the property, the assessor shall determine the highest and best use of the property.
 - (a) In certain instances, the predominant use of the property constitutes the highest and best use and the assessor must apportion the total value of the property among the subclasses based upon the predominant use. An example of such a situation is a residence with a home business that does not increase the overall market value of the property, such as a small hair salon. In this example, the assessor should value the property as a single family residence and apportion the total value between the residential and commercial uses.
 - (b) In certain instances, the highest and best use of the property is for multiple purposes. An example of such a situation is a manufacturing facility with excess acreage utilized for farming. In this example, the highest and best use of the acreage is for two distinct purposes: farming and manufacturing. The assessor must value the acreage and buildings used for farming separately from the acreage and buildings utilized in conjunction with manufacturing. The two resulting values would then be added together to determine the total value of the property.
- (3) The assessor shall apportion the total market value of the property by assigning separate values to each subclass. The apportionment shall reflect the land and improvement values assigned to each subclass. In those instances where the land or improvements has insignificant value for one of the uses, the assessor may properly assign a separate value to only the component having a measurable value.
- (4) The assessor may utilize whatever appraisal methodology appears most appropriate in a particular situation so long as it is reasonably designed to arrive at the market value of the respective subclasses and/or total value of the parcel.

Authority: T.C.A. §§ 4-3-5103, 67-1-305 and 67-5-801(b).

0600-12-.07 EXAMPLES OF APPORTIONING AMONG SUBCLASSES

EXAMPLE A

The Taxpayer owns a 2,000-square-foot single residence situated on a one (1) acre lot with a total market value of \$110,000. The assessor has appraised the home at \$100,000 and the land at \$10,000. The Taxpayer utilizes 500 square feet of her home as a hair salon. Customers park in her gravel driveway. The market value of the Taxpayer's parcel is \$110,000 with or without the hair salon. The assessor should value the property at \$110,000 since the predominant use of the property as a residence constitutes the highest and best use and the hair salon does not increase the overall value of the property. The assessor should subclassify the 500 square feet used for the hair salon as "industrial and commercial property." The assessor would subclassify the remaining 1,500 square feet as "residential property." Since there is no dedicated parking area and the use of the driveway by customers is insignificant, there is no need to assess any of the land as "industrial and commercial property."

EXAMPLE B

Suppose the facts are the same as in Example A except that the Taxpayer has gone ahead and created a designated parking area by paving and setting aside a 0.1 acre portion of the driveway. In this example, the assessor would subclassify the 0.1 acre portion of the driveway designated for customer parking as "industrial and commercial property" because the predominant use of that portion of the driveway is for customer parking.

EXAMPLE C

A Corporation purchased a 100-acre parcel of land and constructed a manufacturing facility. Although the manufacturing operation only requires 25 acres of land, the corporation purchased 100 acres in the event it ever decides to expand. Presently, the corporation has no use for 75 acres and leases it to a farmer who raises soybeans. In this example, the assessor should subclassify 25 acres and the associated buildings and improvements as "industrial and commercial property." The remaining 75 acres is properly subclassified as "farm property."

EXAMPLE D

A farmer has been operating a 100-acre horse farm which the assessor has historically subclassified as "farm property." The farmer decides to open a tack shop and utilizes two (2) acres for a retail store and associated parking. In addition, the farmer accepted the local public utility's offer to lease five (5) acres for its operations. In this example, the assessor should subclassify the 93 acres and associated buildings and improvements used for the horse farm as "farm property." The two (2) acres and building used for the tack shop should be subclassified as "industrial and commercial property." The five (5) acres leased to the public utility should be subclassified as "public utility property."

EXAMPLE E

A mobile home park owner owns the land and multiple homes located on the land within the mobile home park, and he leases out the mobile homes to tenants. All of the property (land, improvements, and mobile homes) should be subclassified as "industrial and commercial property". On the other hand, if a mobile home park owner owns the land within the mobile home park but leases the land out to multiple tenants who own their own mobile homes situated on the land, then the land and any improvements rented with the land should be subclassified as "industrial and commercial property" but each mobile home that is used for residential purposes by the mobile home owner or owner's lessee should be subclassified as "residential property" unless it is part of multiple rental units under common ownership.

Authority: Tennessee Constitution, Article II, § 28; T.C.A. §§ 4-3-5103, 67-1-305, 67-5-502(a)(1), 67-5-501, 67-5-502(a)(1), 67-5-801(b), and 67-5-802(a)(1).

0600-12-.08 ASSESSOR'S RECORDS

The assessor shall note on the property record card all instances wherein multiple-use subclassification has been used. Although no particular format must be utilized due to the various assessment systems employed throughout Tennessee, two acceptable formats are the creation of special interest cards or listing the multiple subclasses on different pages of the property record cards. Regardless of the format used, the property record card shall reflect both the value and assessment percentage assigned to each subclass.

Authority: T.C.A. §§ 4-3-5103, 67-1-305, 67-5-801(b) and 67-5-804.

* 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)
Bennett	X				
Burchett				X	
Hargett	X				
Lillard	X				
Gerregano	X				
Tarwater	X				
Wilson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Equalization on 06/22/2017 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: 08/22/2016

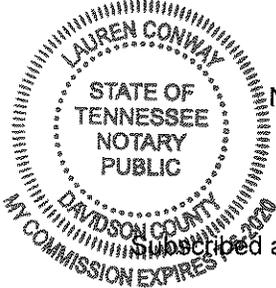
Rulemaking Hearing(s) Conducted on: (add more dates). 10/17/2016

Date: 8-2-2017

Signature: [Handwritten Signature]

Name of Officer: Betsy Knotts

Title of Officer: Executive Secretary, SBOE



Subscribed and sworn to before me on: 8-2-2017

Notary Public Signature: [Handwritten Signature: Lauren Conway]

My commission expires on: 7-6-2020

Agency/Board/Commission: State Board of Equalization

Chapter Number	Chapter Title
0600-12	Multiple-Use Subclassification
Rule Number	Rule Title
0600-12-.01	Purpose
0600-12-.02	Applicability
0600-12-.03	Definitions
0600-12-.04	Determining When Multiple-Use Subclassification is Appropriate
0600-12-.05	Apportioning Assessment Percentages Among Subclasses
0600-12-.06	Apportioning Value Among Multiple Subclasses
0600-12-.07	Examples of Apportioning Among Subclasses
0600-12-.08	Assessor's Records

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]
Herbert H. Slatery III
Attorney General and Reporter
8/16/2017
Date

RECEIVED (RECEIVED)
20- AUG 23 PM 12: 50
SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

[Handwritten Signature]

Filed with the Department of State on: 8/23/17

Effective on: 11/21/17



Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Alcoholic Beverage Commission

DIVISION:

SUBJECT: Sales of Wine at Retail Food Stores

STATUTORY AUTHORITY: Tennessee Code Annotated, Title 57, Chapter 3, Part 8 (i.e. sale of wine in retail food stores) and Part 9 (i.e. the unfair wine sales law).

EFFECTIVE DATES: November 15, 2017 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rulemaking hearing rules clarify several components of the "wine in grocery store legislation," including, but not limited to, the definition of wine, the calculation method for the 20% minimum markup, the definition of the closeout, and the definition of the case discount.

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

Responses to comments are attached to the end of the form.



MEMO

From: Clayton V. Byrd, Executive Director

Re: Responses to comments made at public rulemaking hearing

Date: June 7, 2017

On March 14, 2017, a rulemaking hearing was held in accordance with the law. In addition, written comments were accepted for a certain period following the hearing. The Tennessee Alcoholic Beverage Commission (TABC) received two comments relevant to the proposed amendments to Rule 0100-11. Below is a summary of the comments and the Tennessee TABC's responses to such comments:

WINE THAT MAY BE SOLD IN FOOD STORES – Rule 0100-11-.03(2) – A comment was made asking the TABC to revise the proposed rules such that products that are wine based imitation cocktails, spirits, or liquors could be sold as wine in licensed food stores. T.C.A. § 57-3-802 specifies that products that have been substantially changed due to the addition of flavorings and additives cannot be sold as wine in a retail food store. It is the legal opinion of the TABC that such products that are marketed or bottled to appear as imitation cocktails, spirits, or liquors have been substantially changed and thus cannot be sold as wine at retail food stores. In response to a separate comment, the TABC further clarified the definition of wine to be sold in food stores to conform with the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations related to suitable agricultural products.

Sincerely,

Clayton V. Byrd
Executive Director
Tennessee Alcoholic Beverage Commission

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.

(Insert statement here)

These rules will impact small businesses that are licensed as retail food stores, retail package stores, and wholesaler operations. An exact number of such small businesses affected is impossible to estimate at this time, but is expected to be substantial and significant. The rules clarify what type of wine may be sold in the Tennessee market after the passage of WIGS and the minimum price at which the wine may be sold. The rules also clarify when the 20% minimum markup does not apply to the sale of wine in these locations by defining several exceptions that are undefined in state law. The rules also establish prohibitions unique to the WIGs legislation on corporate advertising for retail food stores as a result of the unfair wine sales law. The rules require wholesalers to incorporate some administrative costs in ensuring that certain necessary information is included on all invoices, but such requirements are projected to have a minimal impact on small businesses and including such information on the invoices is already standard industry practice at the time of adoption of these rules. The impact of the rule is beneficial to both small businesses by increasing clarification and certainty on the impact of state law, especially with regards to specifying the acceptable exceptions to the 20% minimum markup requirement. The portion of the rule clarifying the type of wine that may be sold in food stores was taken in part from federal regulations dealing with the definition of wine, but otherwise, there are no state or federal counterparts for which this rule can be effectively compared to. The exemption of small businesses from this rule would be detrimental to the small businesses of this state and would be contrary to statute.

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)

(Insert statement here)

These rules will not impact 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 clarify several components of the "wine in grocery store legislation," including, but not limited to, the definition of wine, the calculation method for the 20% minimum markup, the definition of the closeout, and the definition of the case discount.

- (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;

Tenn. Code Ann. Title 57, Chapter 3, Part 8 (i.e. sale of wine in retail food stores) and Part 9 (i.e. the unfair wine sales law).

- (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;

These rules impact nearly every stakeholder in the alcoholic beverage industry: retailers, wholesalers, manufacturers. These rules will impact retail food stores and retail package stores and the items/products that a wholesaler may deliver to both retail types under the WIGs law. Moreover, these rule will clarify the price at which wine may be sold by both retail types under the unfair wine sales law.

- (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;

N/A

- (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;

Clay Byrd, Executive Director; Zack Blair, Assistant Director

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

Clay Byrd, Executive 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

Clay Byrd, Executive Director, 500 James Robertson Parkway, 3rd floor, Nashville, TN, 37243; Clay Byrd
Clay.Byrd@tn.gov; 615-741-7620

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

A vast majority of the statutory provisions governing the WIGs legislation took effect on July 1, 2016. This effective date prompted an industry meeting/public forum for stakeholder comment on

July 7th 2016, in which industry members expressed concerns over ambiguities imbedded within the comprehensive framework of the new law. Through communication and collaboration, the TABC published guidance to settle the industry's concerns, and these rules represent the product of that collaboration and hard work.

**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: 08-13-17
Rule ID(s): 0587
File Date: 08-17-17
Effective Date: 11-15-17

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 Alcoholic Beverage Commission
Division:	
Contact Person:	Clay Byrd, Executive Director
Address:	500 James Robertson Pkwy, 3 rd Floor, Nashville, TN
Zip:	37243
Phone:	615-741-7620
Email:	Clay.Byrd@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
0100-11	Rules for Sales of Wine at Retail Food Stores
Rule Number	Rule Title
0100-11-.02	Issuance of Initial Licenses
0100-11-.03	Conduct of Business

Chapter Number	Chapter Title
Rule Number	Rule Title

RULES OF THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 0100-11 RULES FOR SALES OF WINE AT RETAIL FOOD STORES

Rule 0100-11-.02 is amended by deleting the rule in its entirety and by substituting instead, the following language:

0100-11-.02 Issuance of Initial Licenses.

A retail food store wine applicant may not sell wine to patrons or customers for off-premise consumption, in sealed packages only, and not for consumption on the premises until it has been issued a retail food store wine license. Retail food store wine licenses shall not be issued prior to July 1, 2016.

Authority: T.C.A. §§ 57-3-104(c)(4) and 57-3-803.

Rule 0100-11-.03 is amended by deleting the rule in its entirety and by substituting instead, the following language:

0100-11-.03 Conduct of Business.

(1) Advertising

- (a) The provisions of rules, 0100-03-01, 0100-03-02, 0100-03-03, 0100-03-04, 0100-03-05, 0100-03-06, 0100-03-07, and 0100-03-08 apply to retail food store wine licensees in the same manner as they apply to off premises retailers licensed pursuant to T.C.A. § 57-3-204.
- (b) The minimum price at which a retail food store wine licensee may sell or advertise a particular wine is twenty percent (20%) more than the price per bottle of the particular wine on the retail food store wine licensee's most recent wholesaler invoice.
- (c) A retail food store wine licensee whose business is one of a chain of stores shall not advertise a price lower than the highest minimum price per bottle for all the chain's stores in the geographic area the advertisement may reach.
- (d) The advertised price per bottle shall not represent or assume a case discount unless the requirement of a case purchase is conspicuously stated in the advertisement.
- (e) A retail food store wine licensee's advertisement shall not use the words "exclusive" or "exclusively" in reference to wine.
- (f) A retail food store wine licensee's advertisement may use the phrase "select varieties" only when advertising a brand, but not a specific type of that brand. If the advertisement uses the phrase "select varieties," then each wine type from that brand shall be available at the advertised price. The phrase "select varieties" shall not be used if the advertisement identifies a particular brand and type.

(2) Wine that May Be Sold.

- (a) The commission will analyze particular products on a case-by-case basis to determine whether a product may be sold in a retail food store. In determining which products are included in the definition of "wine" at T.C.A. § 57-3-802(2), the following factors, among others, will be considered:

1. whether the product has had substantial changes due to the addition of flavorings and additives;
 2. whether the product had been sold in grocery, convenience, and similar stores before July 1, 2016;
 3. the specific nature of the product and the manufacturing process; and
 4. the manner in which the product is marketed and labeled.
- (b) The nature of the product and the manufacturing process are critical factors for determining whether a product is included in the definition of "wine" at T.C.A. § 57-3-802(2).
- (c) The labeling, suffix, or prefix of the product as descriptive of a fruit or other suitable agricultural product, and as descriptive of a wine, is another critical factor for determining whether a product is included in the definition of "wine" at T.C.A. § 57-3-802(2). "Suitable agricultural product" does not include grain, cereal, malt, or molasses.
- (d) Wine does not include any product that contains caffeine, mood enhancers, or other stimulants.
- (e) Wine does not include any product that is marketed to appear or bottled to appear as an imitation liquor or cocktail substitute, including any product that appears to contain vodka, whiskey, rum, gin, tequila, applejack, mescal, liqueur, or cordial.
- (f) Wine is not a product marketed or labeled as "cider," and nothing in this part shall affect the marketing of cider products distributed as beer by wholesalers permitted under § 57-5-103.

(2)(3) **Responsibility for Penalties and Violations.**

- (a) Licensees are at all times responsible for the conduct of their business and are at all times directly responsible for any act or conduct of any employee which is in violation of the laws of Tennessee, the rules and regulations of the Commission, whether the licensee be present at any such time or not. This section is defined to mean that any unlawful, unauthorized, or prohibited act on the part of an agent or employee shall be construed as the act of the licensee, and the licensee shall be proceeded against as though it were present and had an active part in such unlawful, unauthorized, or prohibited act, and as if having been at the licensee's direction and with its knowledge.
- (b) In disciplinary proceedings, it shall be no defense that an employee or agent of a licensee acted contrary to an order, or that a licensee did not personally participate in the unlawful, unauthorized, or prohibited action or actions. However, mitigating factors as permitted under the Responsible Wine Vendor program may be considered by the Commission.
- (c) In a disciplinary actions brought against a retail food store wine licensee, any suspension or revocation of a license shall suspend or revoke the ability of the retail food store to sell wine and accept deliveries of wine from wholesalers. A suspension or revocation of a license shall not affect the ability of the retail food

store to remain open or to sell other items not regulated by the TABC, including food items, non-food items, and beer.

(4) Pricing of Wine at Retail Food Stores.

(a) Pursuant to T.C.A. § 57-3-903, the minimum price at which a retail food store wine licensee may sell or advertise a particular wine is twenty percent (20%) more than the price per bottle of the particular wine on the retail food store wine licensee's most recent wholesaler invoice.

(b) A wholesaler's invoice for wine sold to a retail food store wine licensee shall state the cost per bottle of each wine, including all taxes, fees, and charges passed on from the wholesaler to the retail food store wine licensee. These taxes, fees, and charges include, but are not limited to:

1. gallonage taxes;
2. enforcement taxes;
3. municipal inspection fees;
4. transportation costs or surcharges;
5. split case fees; and
6. restocking charges.

(c) A retail food store wine licensee shall not apply discounts offered under customer discount cards to the price of wine.

(d) Exceptions to the Unfair Wine Sales Law:

A retail food store wine licensee may sell or advertise wine at a price that would otherwise be impermissible in the following circumstances:

1. during the final liquidation of a licensee's business;
2. under the direction of a court, such as a bankruptcy court;
3. when offering a closeout, which is a reduced price on a brand of wine that will no longer be sold by a particular retail food store; provided that:
 - (i) the retail food store wine licensee sold the brand offered at closeout for at least one hundred twenty (120) days before the beginning date of a closeout sale;
 - (ii) the closeout sale shall not last more than ninety (90) days; and
 - (iii) the retail food store wine licensee shall not sell the brand of wine sold at closeout for at least one (1) year after the closeout sale concludes.
4. when offering a discount on a case of wine, which may include various brands of wine chosen by the consumer and which must include at least:

- (i) twelve (12) bottles containing seven hundred fifty (750) milliliters of wine;
- (ii) six (6) bottles containing one and a half (1.5) liters of wine; or
- (iii) four (4) boxes containing three (3) liters of wine.

(e) A retail food store wine licensee may not sell or advertise wine at a price below the cost paid by the retailer to purchase the wine from the wholesaler.

~~(3)(5) Delivery of Wine. A wholesaler may deliver wine to a retail food store wine licensee at any time the retail food store location is open to the public and shall deliver only to the business address of the retail food store licensee at its customary loading dock. If a retail food store fails to sell all wine offered during a closeout, it may only:~~

~~(a) Donate the wine for use at a licensed special occasion event;~~

~~(b) Destroy the wine; or~~

~~(c) Store the wine for twelve months until the store can sell the product again.~~

~~(4)(6) All Licensees Must Keep Records Available Three Years. Each licensee shall keep, for at least three (3) years; all purchase orders, invoices and all other records of all purchases and sales of wine made by such licensee. All such orders, invoices, and all other books and records pertaining to the licensee's operation shall be open for inspection to any authorized representative of the Tennessee Alcoholic Beverage Commission or Department of Revenue and failure to make such available shall be deemed cause for revocation of its license. Such records may be maintained in electronic format, and will be deemed available and open for inspection if the Commission or the Department of Revenue can review such records at the licensed premises or, if such records are stored in a central office, can be supplied to the Commission or Department of Revenue within three (3) business days upon request.~~

~~(5)(7) Hours Licensee may Sell Wine. A Retail Food Store may sell wine only between the hours of 8:00 a.m. and 11:00 p.m. on Monday through Saturday. A Retail Food Store may not make any sale of wine on Sunday or on Christmas, Thanksgiving, Labor Day, New Year's Day, or the Fourth of July.~~

~~(6)(8) Mandatory Carding. Prior to making a sale of wine, a Retail Food Store certified clerk must inspect a valid unexpired government issued form of identification to ensure that the purchaser is over the age of 21. The inspection of the identification must take place in a face-to-face transaction. Any government-issued document that has expired shall not be deemed to be "valid" for purposes of T.C.A. § 57-3-808, and as such, a retail food store may not sell wine to a person who has not provided an unexpired government-issued document that meets the requirements of T.C.A. § 57-3-808.~~

~~(7)(9) Sales to Intoxicated Customers. A retail food store shall not make a sale of wine to a customer who is visibly intoxicated or accompanied by a person who is visibly intoxicated.~~

~~(8)(10) Customer assistance. An employee of a retail food store may assist customers with loading wine in their vehicles as long as the vehicle is parked in the parking area of the licensee and such parking area is identified in the application of the retail food store. A retail food store permitted clerk must check the identification of any person purchasing wine as part of the sale prior to assistance being given to that customer by an employee with loading of wine to a vehicle.~~

~~(9)~~(11) Managers.

- (a) Each retail food store wine licensee shall have at least one designated permitted manager, but may have two or more designated permitted managers. Only the retail food store wine licensee's designated permitted manager(s) may place orders for wine with wholesalers. A designated permitted manager may not be assigned to more than one retail food store wine licensee.
- (b) A designated permitted manager of a retail food store may transfer his or her permit to another retail food store wine licensee by notifying the Commission in writing of the effective date of the transfer. All transfer notifications must be made prior to the designated permitted manager(s) involvement in the placement of wine orders at the new retail food store wine licensee's location.

~~(10)~~(12) Free Access to Licensed Premises Without Warrant. Immediate access, without a warrant, to all parts of a retail food store shall at all times be accorded agents, officers or representatives of the Commission.

~~(11)~~(13) Refusal of Cooperation. Any licensee, his agent, or employee who refuses to open or disclose records to, or furnish information to, or who furnishes false and/or misleading information to an agent, officer or representative of the Commission upon any matter relating to or arising out of the conduct of the retail food store premises shall subject the license to revocation or suspension.

~~(12)~~(14) Licensee Responsible For Law and Order on Licensed Premises. Each licensee shall maintain his establishment in a decent, orderly and respectable manner in full compliance with all laws of Tennessee, Commission rules and regulations, federal statutes, and ordinances and laws of the municipality and/or county where the licensed premises are located at all times. The renting or leasing of the licensed premises for an event to a nonlicensed entity, person or corporation is specifically deemed not to be a defense for a violation of this rule and does not diminish licensee's responsibility to comply with this rule.

~~(13)~~(15) Restriction as to Age of Licensee's Employees. Nothing herein shall prohibit a licensee from hiring a person under the age of 18 years, however employees under the age of 18 shall not be permitted to sell wine, beer, malt beverages or hard cider in any establishment licensed under the provisions of T.C.A. § 57-3-803.

~~(14)~~(16) Purchases. Only the designated permitted manager(s) of a retail food store wine licensee may place orders for wine with wholesalers. No discounts for wine may take into account orders for wine at other locations owned by the licensee.

Authority: T.C.A. §§ ~~57-1-209~~, ~~57-3-104(c)(4)~~, and ~~(9)~~, ~~57-3-202~~, ~~57-3-207~~, ~~57-3-210~~, ~~57-3-404(f)~~, ~~57-3-406~~, ~~57-3-412~~, ~~57-3-802~~, ~~57-3-803~~, ~~57-3-806~~, ~~57-3-807~~, ~~57-3-808~~, ~~57-3-811~~, ~~57-3-812~~, and ~~57-3-815~~, ~~57-3-903~~ and ~~57-3-909~~.

* 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)
Bryan Kaegi	✓				<i>[Signature]</i>
Richard Skiles	✓				<i>[Signature]</i>
John A. Jones	✓				<i>John a Jones</i>

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Alcoholic Beverage Commission (board/commission/ other authority) on 05/23/2017 (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: 01/17/17

Rulemaking Hearing(s) Conducted on: (add more dates). 03/14/2017

Date: 5.23.17

Signature: *[Signature]*

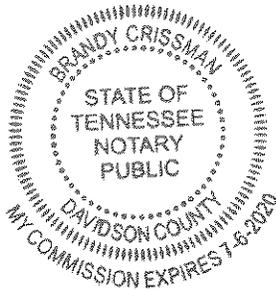
Name of Officer: Clay Byrd

Title of Officer: Executive Director, TABC

Subscribed and sworn to before me on: May 23 2017

Notary Public Signature: *[Signature]*

My commission expires on: 7-6-2020



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.

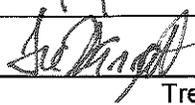
[Signature]
Herbert H. Slatery III
Attorney General and Reporter

8/9/2017
Date

Department of State Use Only

Filed with the Department of State on: 08-17-17

Effective on: 11-15-17



Tre Hargett
Secretary of State

RECEIVED
2017 AUG 17 PM 1:50
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Administration

SUBJECT: Access to Public Records

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 10-7-503(g).

EFFECTIVE DATES: November 23, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These rules are being repealed in accordance with Tennessee Code Annotated, Section 10-7-503(9), which requires each agency to adopt a public records policy. The Department of Finance and Administration has adopted the public records policy designed by the Office of Open Records Policy, in large part.

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 rule will not have any 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)

This rule will not have any 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 repealed in accordance with Tenn. Code Ann. § 10-7-503(g), which requires each agency to adopt a public records policy. The Department of Finance and Administration has adopted the public records policy designed by the Office of Open Records Policy, in large part. <http://comptroller.tn.gov/openrecords/>

- (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;

Tenn. Code Ann. §10-7-503(g)

- (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;

Citizens of Tennessee are afforded access to the public records of state government pursuant to the Public Records Act. Tenn. Code Ann. § 10-7-503(g) requires that each agency adopt a policy with regard to access for public records, and the Comptroller's Office of Open Records Counsel has prepared a model policy for adoption. This repeal will allow the Department of Finance and Administration to ensure that its public records rules are in line with the model policy adopted by the Comptroller's office and consistent with public records policies throughout the State. We are unaware of any opposition to repealing these 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;

None

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

Mark S. Cherpack
Deputy General Counsel
Tennessee Department of Finance and Administration
20th floor, 312 Rosa L. Parks Avenue
Nashville, Tennessee 37243
(615) 253-4706
Mark.Cherpack@tn.gov

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

Mark S. Cherpack
Deputy General Counsel
Tennessee Department of Finance and Administration
20th floor, 312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

Nashville, Tennessee 37243
(615) 253-4706
Mark.Cherpack@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

Mark S. Cherpak
Deputy General Counsel
Tennessee Department of Finance and Administration
20th floor, 312 Rosa L. Parks Avenue
Nashville, Tennessee 37243
(615) 253-4706
Mark.Cherpack@tn.gov

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

None

**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: 08-15-17
Rule ID(s): 6589
File Date: 8/25/17
Effective Date: 11/23/17

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 Finance and Administration
Division:	Administration
Contact Person:	Mark S. Cherpack, Deputy General Counsel
Address:	20 th floor, 312 Rosa L. Parks Avenue, Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-4706
Email:	Mark.Cherpack@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
0620-3-10	Access to Public Records Maintained by the Department of Finance and Administration
Rule Number	Rule Title
0620-3-10-.01	Purpose and Scope
0620-3-10-.02	Definitions
0620-3-10-.03	Requests for Access to Records
0620-3-10-.04	Requests for Reproduction of Records
0620-3-10-.05	Fees and Costs for Reproduction of Records
0620-3-10-.06	Payment for Records
0620-3-10-.07	Waiver of Fees

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

These rules are being repealed in accordance with Tenn. Code Ann § 10-7-503(g), which requires each agency to adopt a public records policy. The Department of Finance and Administration has adopted the public records policy designed by the Office of Open Records Policy, in large part. <http://comptroller.tn.gov/openrecords/>

* 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)

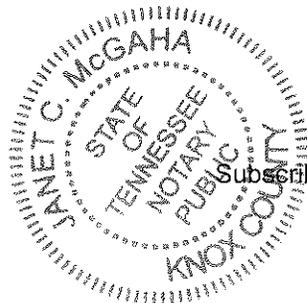
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of Finance and Administration on 7/26/2017, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition 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: 7.26.2017

Signature: Larry B. Martin

Name of Officer: Larry B. Martin

Title of Officer: Commissioner of Finance & Admin.



Subscribed and sworn to before me on: July 26, 2017

Notary Public Signature: Janet C. McGaha

My commission expires on: My Commission Expires May 5, 2019

Agency/Board/Commission: Department of Finance and Administration

Rule Chapter Number(s): 0620-3-10

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
8/18/2017
 Date

Department of State Use Only

RECEIVED
 2017 AUG 25 PM 3:00
 SECRETARY OF STATE
 PUBLICATIONS

Filed with the Department of State on: 8/25/17

Effective on: 11/23/17

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Children's Services

SUBJECT: Legal

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 37-2-415

EFFECTIVE DATES: November 6, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rulemaking hearing rule sets out procedures for the qualification, selection, and training of foster parent advocates; provides for a foster parent advocacy committee, and complaints and mediation of issues between the Department and its foster parents. The proposed amendments reflect recent legislation recognizing that there may be more than one foster parent association. Thus, a foster parent advocate may now be selected from the membership of any recognized statewide foster parent association, and the advocacy committee now may include members of any recognized statewide foster parent association. Other changes to the rule are minor, such as streamlining the mediation/grievance process.

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.

On September 12, 2016 the Department of Children's Services held a public hearing regarding Foster Parents' Bill of Rights 0250-7-15. We invited attendees to comment on each provision in the proposed rules. We did not receive any written comments.

We received no comments on proposed rules 0250-17-15.01 or 0250-07-15.02. In the following section we will address each comment in the order of the Rule it addresses.

Comments regarding 0250-7-15.03 (1)- Selection of Advocates

Commenting Person or Entity: Myra Cooper , Tennessee Foster Adoptive Care Association

Comment Summary: Ms. Cooper commented that Rule 0250-7-15.03 (1) should be clarified to determine if it means that there would be one advocate per recognized association that would be chosen or if there would be one association from which DCS would select any advocate. She expressed that there needs to be only one advocacy association recognized as the official association by the Department of Children's Services.

Department's Response: The rule provides the Department of Children's Service with the discretion to choose advocates from any recognized foster association.

Comments regarding 0250-7-15.03 (2)- Qualification of Advocates

Commenting Person or Entity: Myra Cooper, Tennessee Foster Adoptive Care Association

Comment Summary: Ms. Cooper noted that no time frame was listed in Rule 0250-7-15.03 (2) subparagraph (b) for the time the foster home could be closed and still be considered an advocate by the Department of Children Services

Department's Response: We incorporated into the rules a provision requiring that the home would have to be closed in good standing within the past two years in order for a foster parent to be eligible to be an advocate.

Commenting Person or Entity: Nancy Woodall, Tennessee Foster Adoptive Care Association

Commenting Summary: Ms. Woodall also had concerns regarding Rule 0250-7-15.03 (2) subparagraph (b) in reference to advocates being chosen from a closed foster home. She suggested language stating that the selected advocate, if from a home closed in good standing, should also be required to maintain ongoing training to remain aware of current standards

Department's Response: We incorporated into the rules a provision requiring an advocate to maintain training hours.

Comments regarding 0250-7-15.03(3)- Committee for the Advocacy Program

Commenting Person or Entity: Cheryl Gillenwater (TNCSA)

Commenting Summary: Ms. Gillenwater noted that in Rule 0250-7-15.03(3)(b) that the Regional Administrator was not specifically listed but are part of the board. She wanted to know if they would be attending the advocacy training.

Department's Response: The final rule will exempt departmental employees from the training.

Comments regarding 0250-7-15.03 (4)- Advocate's Training

Commenting Person or Entity: Myra Cooper , Tennessee Foster Adoptive Care Association

Comment Summary: Ms. Cooper wanted clarification added regarding Rule 0250-7-15.03 (4) about if there was only one recognized foster parent association from which to choose the representative

Department's Response: Consistently with statute, the Rule contemplates that there may be more than one recognized foster parent association.

Comments regarding 0250-7-15.03(5) – Complaints and Mediation

Commenting Person or Entity: Myra Cooper, Tennessee Foster Adoptive Care Association

Comment Summary: Ms. Cooper wanted clarification added regarding Rule 0250-7-15.03(5)(h) and (i) about the Regional Administrators' review being the final authority.. She wanted to know if there was any further recourse and if the Regional Administrators have someone they can seek advice from.

Department's Response: The Rule allows the final authority to rest with the Regional Administrator. Consistently with statute and policy, the rule will allow for consultations with Central Office.

Commenting Person or Entity: Nancy Woodall, Tennessee Foster Adoptive Care Association

Comment Summary: Nancy Woodall wanted the definition of the role of advocate to include partnership with the Department of Children's Services. This would clarify if advocates could be involved in a case at the request of the Department of Children's Services rather than at the request of the foster parent.

Department's Response: This issue is important but will be addressed outside of the rules.

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.

(If applicable, insert Regulatory Flexibility Addendum here)

This Rule is expected to have no 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)

This Rule has no projected 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 Rule sets out procedures for the qualification, selection and training of foster parent advocates; provides for a foster parent advocacy committee and complaints and mediation of issues between the Department and its foster parents. The proposed amendments reflect recent legislation recognizing that there may be more than one foster parent association. Thus, a foster parent advocate may now be selected from the membership of any recognized statewide foster parent association and the advocacy committee now may include members of any recognized statewide foster parent association. Other changes to the rule are minor, such as streamlining the mediation/grievance process.

- (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. §37-2-415 sets out foster parents' rights and authorizes DCS to promulgate rules to implement the purposes of the statute.

- (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;

Foster parents and foster parent associations

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

N/A

- (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;

No fiscal impact is expected.

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

Douglas Earl Dimond, General Counsel Department of Children's Services

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

Douglas Earl Dimond, General Counsel Department of Children's Services

- (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

TN Dept. Children's Services 7th Floor UBS Tower, 315 Deaderick Street, Nashville, TN 37243 Phone: 615-741-7236, Douglas.E.Dimond@Tn.Gov

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

None

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: 08-04-17
 Rule ID(s): 6582
 File Date: 8/8/17
 Effective Date: 11/6/17

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 Children's Services
Division:	Legal
Contact Person:	Douglas Earl Dimond
Address:	7 th Floor UBS Tower, 315 Deaderick Street, Nashville, TN
Zip:	37243
Phone:	615-741-7236
Email:	Douglas.E.Dimond@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
0250-07-15	Foster Parent Bill of Rights
Rule Number	Rule Title
0250-07-15-.01	Purpose of Chapter
0250-07-15-.02	Definitions for Purposes of this Chapter
0250-07-15-.03	Procedures for Foster Parents' Bill of Rights

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

**RULES
OF
TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES
PROGRAM SERVICES DIVISION**

**CHAPTER 0250-7-15
FOSTER PARENTS' BILL OF RIGHTS**

TABLE OF CONTENTS

0250-7-15-.01 Purpose of Chapter
Parents' Bill of Rights 0250-7-15-.02

0250-7-15-.03 Procedures for Foster
Definitions for Purposes of This Chapter

0250-7-15-.01 PURPOSE OF CHAPTER.

- (1) The purpose of this chapter is to provide, in compliance with Tennessee Code Annotated T.C.A. § 37-2-415, procedures for the selection, training, and implementation of Foster Parent Advocates in conjunction with the Foster Parents' Bill of Rights. It also provides procedures for foster parents, with the assistance of the Foster Parents' Advocates, to file grievances and appeals when necessary, and when the foster parents are not in agreement with actions taken by the Department of Children's Services.

Authority: T.C.A. §§ 37-5-105, 37-2-405, and 37-2-415. **Administrative History:** Original rule filed October 26, 2001; effective January 9, 2002.

0250-7-15-.02 DEFINITIONS FOR PURPOSES OF THIS CHAPTER.

- (1) Advocate – An advocate is a specially trained foster parent, appointed by the President and the Board of Directors of the Tennessee Foster Care Association, who is educated concerning procedures relevant to investigations of alleged abuse and neglect by the Department of Children's Services and the rights of the accused foster parent or parents, and assisting foster parents in following policy and filing grievances and appeals with the Department of Children's Services. Advocate – An advocate is a specially trained foster parent, who is educated concerning procedures relevant to allegations of abuse/neglect and investigations by the Department of Children's Services (DCS), including the rights of accused foster parents, and trained in assisting/supporting said parents in following policy or filing grievances/appeals with DCS. The advocate shall be permitted to be present at all portions of investigations where foster parents are present, and all communications received by the advocate therein are strictly confidential.
- (2) Foster Parent - A person who has been trained and approved by the department or licensed child-placing agency to provide full-time temporary out-of-home care in a private residence for children who, for various reasons, can no longer remain in their own homes, or the prospective adoptive parents who have received a child as a result of the surrender of parental rights, a parental consent, or as the result of a termination of parental rights.
- (3) Department - The Tennessee Department of Children's Services or any of its divisions or units.

Authority: T.C.A. §§ 36-1-102, 37-5-105 and 37-2-415. **Administrative History:** Original rule filed October 26, 2001; effective January 9, 2002.

0250-7-15-.03 PROCEDURES FOR FOSTER PARENTS' BILL OF RIGHTS.

- (1) Selection of Advocates in child abuse/neglect investigation involving the foster parent(s): (a)

(Rule 0250-7-15-.03, continued)

~~The Advocate(s) shall be appointed by the president of the Tennessee Foster Care Association, with the approval of the Board of Directors of the Tennessee Foster Care Association. Advocates will be selected and approved by a representative from the recognized statewide foster parent association, a DCS Central Office Program representative, and the Regional Administrator or designee from the region where the advocate will serve.~~

(2) **Qualifications of the Advocates:**

- (a) Each potential Advocate must complete an application form, and supply names of references.
- (b) The Advocate must be an ~~an~~ current approved foster parent or a previous foster parent who closed in good standing with the Tennessee Department of Children's Services within two years of appointment and who has maintained ongoing training to remain aware of current standards.
- (c) The Advocate must be a member in good standing of the ~~Tennessee Foster Care Association~~ a recognized statewide foster parent association.
- (d) The Advocate must have completed the official Department of Children's Services foster parent training or equivalent training as determined by the Department of Children's Services.
- (e) The Advocate must be able to communicate effectively with foster parents as evidenced through the interview process well ~~as the Department of Children's Services.~~

(3) **The Advocacy Board Committee for the Advocacy Program:**

- (a) ~~An advisory board to the advocates shall be appointed by the president of the Tennessee Foster Care Association, with the approval of the Board of Directors of the Tennessee Foster Care Association. A committee for the advocacy program shall be established with representation that consists of two representatives from recognized statewide foster parent associations, two Department of Children's Services Regional Administrators, one Central Office Program representative, and two existing Advocates. Committee members will serve one year terms and must either be re-appointed or replaced by their respective entities/agencies.~~
- (b) ~~The Advocacy Board shall consist of the state president of the Tennessee Foster Care Association, at least one ex-officio member from the Department of Children's Services Central Office Program staff, one representative from the certified official Department of Children's Services foster parent training or foster parent trainers, and at least two foster parents.~~
- (e)(b) All members of the Advocacy Board Committee who are not departmental employees shall receive the Advocate's training, as set out in Part part 4.

(4) **Advocates' Training:**

- (a) Each Advocate selected shall receive a minimum of fifteen (15) hours of pre-service training, consisting of, but not limited to: ~~Child Protective Services Office of Child Safety policy and procedures; Risk-Oriented Case Management risk-oriented case management information; the official Department of Children's Services foster parent training; Foster Care Board Payment (ChiPFInS) foster care board payment information, Case Manager's policy and procedures an overview of case management policies/procedures, Advocate protocols, communication techniques, and record-keeping.~~

(Rule 0250-7-15-.03, continued)

- (b) The training shall be conducted facilitated by the Advocacy Board a contract agency, in conjunction with the Department of Children's Services central office program staff and with oversight by a recognized statewide foster parent association representative.
- (c) Each Advocate will receive a minimum of twenty 42 hours in-service training per year, including program policy and procedure updates on both foster care and child protective services.

~~(5) Advocacy Program Intake:~~

- ~~(a) Each Advocate's name and telephone number will be available via the Fosterer, the newsletter of the Tennessee Foster Care Association, and will be disseminated by the Department of Children's Services to all foster parents.~~
- ~~(b) Upon receipt of a call or complaint, the Advocate must return the complainant's call within 72 hours, and obtain information on the nature of the complaint. It is anticipated that many questions regarding policy and procedures can be answered in one telephone call. However, if further investigation is warranted, the Advocate will arrange for the foster parent complainant to sign a release of information so that the Advocate can talk to the Department of Children's Services staff and other relevant parties and complete an assessment of the complaint.~~
- ~~(c) The Advocate may conduct personal interviews, may accompany the foster parents to scheduled meeting.~~

~~(6) Record Keeping:~~

- ~~(a) Each Advocate will be responsible for keeping a record of all contacts on behalf of a foster parent complainant.~~
- ~~(b) The Department of Children's Services shall be given access, upon request, to the complaint file.~~

~~(7)(5) Complaints and Mediation:~~

- (a) Any foster parents who determines believes that the Department of Children's Services is in violation of the Foster Parents' Bill of Rights, T.C.A. § 37-2-415, or otherwise has a complaint should first discuss their concerns with the Case Manager assigned to the foster home and attempt work out an agreement to resolve the issue. This step may involve showing the foster parent the written policy and procedures relative to approval of a foster home or any ongoing casework activities.
- (b) If the Case Manager and the foster parent cannot reach an understanding resolve the issue, then the foster parent shall notify the Team Leader and request assistance from the Team Leader in mediating the conflict between the Case Manager and the foster parent.

~~(8) Grievances:~~

- (a)(c) If the Case Manager and the Team Leader cannot make correction or adjustments, the foster parent shall notify the Team Coordinator in writing of their concerns, and request an appointment a meeting with the Team Coordinator.
- (b)(d) A scheduled meeting with the Team Coordinator and all parties must take place within 7 seven working days of the receipt of the foster parent complaint.

(Rule 0250-7-15-.03, continued)

~~(c)~~(e) The outcome of the meeting with the Team Coordinator shall be documented in writing within 2-two working days of the meeting; responsibility for the documentation is with the Case Manager with the supervisory approval and signature of the Team Leader.

~~(d)~~(f) The Team Coordinator must then make a recommendation in writing for a ~~corrective~~ any action ~~(or possibly no action.)~~ or decision resulting from the meeting. Copies of the Team Coordinator's decision recommendation must be forwarded to all participants.

~~(9)~~ Appeals:

~~(a)~~(g) Within 7-seven working days of the grievance hearing receiving the Team Coordinator's recommendation, the foster parents may elect to file an appeal seek review with by the Regional Administrator of the Department of Children's Services.

~~(b)~~(h) Upon receipt of an appeal letter the request for review, the Regional Administrator shall reviews all the information, and either accept the recommendation of the Team Coordinator, or, at their discretion, may shall schedule an additional interview with the foster parent(s), DCS staff, and/or other relevant parties.

(i). Copies of the Regional Administrator's approval or modification of the Team Coordinator's recommendation must be forwarded to all participants.

(j.) Within seven working days of the Regional Administrator's decision, the foster parent may seek review from DCS' Central Office.

Authority: T.C.A. §§ ~~37-2-405~~ 37-5-105 and 37-2-415. **Administrative History:** Original rule filed October 26, 2001; effective January 9, 2002.

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

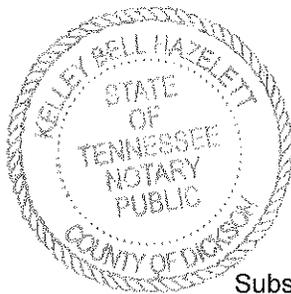
Board Member	Aye	No	Abstain	Absent	Signature (if required)
NA					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Children's Services (board/commission/ other authority) on 3-17-2017 (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: 07/19/16

Rulemaking Hearing(s) Conducted on: (add more dates). 09/12/16



Date: 06/09/2017

Signature: [Handwritten Signature]

Name of Officer: Douglas Earl Dimond

Title of Officer: General Counsel

Subscribed and sworn to before me on: June 9, 2017

Notary Public Signature: [Handwritten Signature]

My commission expires on: 8/21/17

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

7/31/2017
Date

RECEIVED
2017 AUG -8 AM 10:27
SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 8/8/17

Effective on: 11/6/17

[Handwritten Signature]
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Pain Management Clinics

SUBJECT: Pain Management Clinics

STATUTORY AUTHORITY: Public Chapter 1033, which was signed by the Governor on April 20, 2016.

EFFECTIVE DATES: November 26, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Rule Chapter 1200-34-01 [Pain Management Clinics] is being repealed and rewritten. (NOTE: No further information was provided on the rule.)

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.

Rulemaking Hearing Pain Management Clinics - July 24, 2017 Public Hearing Comments

Comments:

There was a general consensus that a great deal of work has been done over the last three to four years and strides have been made towards improving pain management and pain medicine in Tennessee, but that there is still a problem in the primary care realm with patients being initiated on opioids and referred to pain management clinics only after they have been receiving one hundred and twenty morphine milligram daily equivalents. The comments indicated that pain management physicians believe based upon IMS data that the current opioid problem in the state is a result of primary care, dentists, and orthopedic physicians more than pain management specialists.

Response:

The Department recognizes and appreciates all the work that has been done by the General Assembly and the pain management physicians in Tennessee to create an environment wherein healthy and appropriate treatment of pain management can occur. The Department has been given statutory authority to regulate pain management clinics and unlicensed pain management clinics, and though the individual health related boards continue to investigate and discipline inappropriate providers at any type of clinic, should the General Assembly see fit to further regulate other specialties, the Department looks forward to working towards effective, achievable regulation of other prescribing practices. The Department has seen enormous improvements across the state over the last few years, and though there is still much to be achieved, is heartened to know population-wide treatment is moving in the right direction.

Comment:

Terri A Lewis, Ph.D. commented that patient injury associated with pain clinics and outpatient ambulatory surgery centers is sometimes being overlooked by physicians who fail to recognize the inherent opportunities for profound injuries associated with infectious injuries in the form of both bacterial and fungal infections with the utilization of compounded drugs. She also expressed concern that the public comment at the rulemaking hearing did not include patient comment and a concern that the rules do not sufficiently address patient outcomes and clinical staff training.

Response:

The Department agrees that infectious injury is a potentiality that can occur in any clinical setting, but which must be minimized to every extent possible. The Department addresses this to some extent in the rules at 1200-34-01-.10, and expects that all practitioners in pain management clinics will also follow the requirements of their licensing boards, as well as all applicable state and federal requirements and guidelines for patient safety. The public rulemaking hearing time and location, as well as the text of the rules, were posted to the Secretary of State's website in compliance with the requirements for all rulemaking hearings. The public rulemaking hearing was open to the public, and though the Department is unaware of who all the unidentified members of the audience listening were that day, the Department agrees that no one who offered verbal or written comment identified themselves as a patient. The Department believes that the responsibilities and requirements placed upon a medical director in these rules will address patient outcomes and clinical staff training to the extent that the Department can practicably do so in these rules.

Comments specific to the rules:

Comments on Rule 1200-34-01-.01

Comment:

TMA objected to the definition of a pain agreement providing that prescriptions for controlled substances may only be filled at one pharmacy to be identified by the patient.

Response:

The definition of pain agreement outlines the minimum safeguards which ought to be explained to and agreed to by the patient. The Department firmly believes that filling prescriptions at only one pharmacy, identified by the patient, is a safeguard that every pain agreement ought to contain. Should a patient falter in maintaining compliance with pain agreement, the prescriber(s) and medical director should react appropriately, which will be a situation specific determination.

Comments on Rule 1200-34-01-.02

Comment:

Charles Key, Esq. from LifeLinc requested clarification be added to 1200-34-01-.02(1) that currently certified clinics may continue operating until the expiration of their certificate.

Response:

It was the intent of the Department in these rules to reflect that the statute allows currently certified pain management clinics to continue operating on that certificate, which shall be treated as a license under the new law, until the expiration of that certificate. The Department has added to the rule some statements to that effect as requested by Lifelinc in order to clarify any confusion in this area.

Comment:

Dr. David Arehart stated that obtaining two letters of good moral character from a fellow medical doctor, as required in 1200-34-01-.02(3)(b) is too high of a burden on pain management physicians attempting to open a clinic.

TMA felt that the requirement of two letters of moral character for initial licensure as a physician in the state should be sufficient and having another requirement of letters of moral character to open a pain management clinic is onerous.

Response:

The Department has agreed to remove the requirement of two letters of moral character from the pain management clinic license application.

Comment:

Charles Key, Esq. from LifeLinc requested clarification be added to 1200-34-01-.02(3)(f) and .03(5)(a) to allow for a mailing address separate from the clinic's physical address.

Response:

The Department is primarily concerned with obtaining the physical address of a clinic as, pursuant to the statutes, the license is issued to a specific location; however, it will look into adding an option for a separate mailing address into its application.

Comment:

With regard to the requirements found in 1200-34-01-.02(4), Dr. Damen Dozier agreed that while the goal is to have no bad players working in clinics, requiring the medical director to conduct checks of employees is overbearing.

Dr. William T. Williams stated that information technology managers and cleaning services and environmental services should not be included in required background checks.

Dr. James Choo states he contracts with similar companies who come in and do cleaning in the middle of the night, and he should not have to check what they are doing with their own time.

Alex Munderloh, Esq. of Comprehensive Pain Specialists (CPS) made written comment that this requirement is broad and burdensome.

The Tennessee Medical Association (TMA) shared concerns that independent contractors for things such as waste management might be included in the disclosure requirement.

Response:

The statute states in Tennessee Code Annotated § 63-1-316(d)(1)(E) and (g)(1) that the medical director shall report, and the Commissioner may deny, discipline, or restrict pain management clinic licenses based upon, certain criminal dispositions and licensure discipline for all employees and individuals with whom the clinic has contracted. The Department, based on feedback received during the Task Force formed to consult the Board of Medical Examiners, the Board of Osteopathic Examination, the Board of Nursing, and the Committee on Physician Assistants, determined that it would be most appropriate for the rule to require criminal background checks of all those who have a DEA registration who are providing services at the clinic. The Department further determined that it would only require the medical director to disclose certain criminal dispositions and licensure discipline for only those who have contact with patients, contact with on-site patient information, or have management responsibilities. Thus for those individuals, an appropriate inquiry, and disclosure of relevant findings, is required of the medical director, but not a full criminal background check on each employee or person with whom the clinic contracts. Because this provision seems to have caused confusion, in an effort to further clarify this more limited scope of disclosure, the Department has added additional terminology to ensure the medical directors applying for pain management clinic license understand which employees and independent contractors are part of the required disclosures, indicating that disclosure is only required for those with clinical contact with patients, contact with onsite patient information or specimens, or management responsibilities. Additionally the Department will promulgate on its website an affidavit form for use by medical directors in discussing with their employees and independent contractors whether they have had disciplinary or criminal action(s) taken against them. The Department believes that this form may help facilitate discussions with employees and independent contractors that the medical directors may otherwise find difficult.

Comments on Rule 1200-34-01-.03

Comment:

Alex Munderloh, Esq. of Comprehensive Pain Specialists objects to the 90 business day eligibility inspection timeframe and requests a requirement that the Department approve an application no less than five business days following its submission and schedule an inspection in a window of two weeks to create certainty in determining when the inspection will occur.

Additionally CPS and TMA, on behalf of Dr. John Schneider's clinic, raised concerns regarding the process when a clinic determines to move from one location to another. CPS specifically requested that clinics be permitted to move locations up to 25 miles away without being required to obtain a new license.

Dr. Williams expressed concerns about a license being issued to a medical director rather than the clinic as a facility.

Dr. Schneider expressed frustration and wondering why the clinic has to get relicensed if it moves to a new location.

Response:

Before July 1, 2017, under the certificate system, the owner, who had to be one of four licensure categories, was the certificate holder who held the property interest in the certificate. Under the current licensure system, the medical director holds the property interest in the license. The General Assembly saw fit to assign a medical director both of the authority and responsibilities that come with being the license holder and property interest owner. The Department does not have the legal authority to change the statute. The Department points out that while this statutory requirement that the medical director is issued the license means that certain responsibilities which had previously belonged to the certificate holder, when that person was different from the medical director, are now the medical director's, this also gives the medical director additional power and control over his clinic.

Under the certificate system the certificate was tied to a specific location and a new certificate had to be applied for in order for clinic to move. Under the current licensure system the license is tied to the location, and a new license must be applied for in order for a new location to be opened. These requirements for location specific certificates and licenses are and have always been contained in the statutes and cannot be changed by rule.

In response to concerns regarding the practicalities of moving clinic locations under the licensure system, the Department has adjusted the rules to account for a situation in which a clinic is moving locations and the need for an inspection in that process may lead to concerns regarding patient continuity of care. Based upon this adjustment if a clinic wishes to move locations it may arrange with the Department to have its current pain

management clinic inspected prior to moving, and should the pain clinic pass inspection and be otherwise qualified for licensure, the Department may issue a license to the new location, which will be inspected after the license is issued, allowing the clinic more freedom to determine when it's move will occur. The Department will charge a re-inspection fee for the inspection of the new clinic location.

Comments on Rule 1200-34-01-.04

Comment:

Charles Key, Esq. with LifeLinc inquired how early a renewal application could be submitted.

Response:

Currently the rules address that a clinic with a certificate that is expiring must submit a completed application for licensure at least 90 days prior to the expiration of that certificate. For those clinics who will become licensed and renew their license, the determination of how early a renewal can be submitted will partially depend upon the new departmental online application system. Such a timeframe does not need to be addressed by rule but will be addressed by the Department and announced on the pain management clinic website.

Comment:

Concerns were raised by TMA, Dr. Schneider, and others that the rules require physicians to get fingerprinted at every renewal.

Response:

The rules require a disclosure regarding: (1) criminal offenses involving controlled substances; (2) denial of licensure as a prescriber; and (3) disciplinary action for conduct involving controlled substances, at renewal, if any information regarding employees or independent contractors with clinical contact with patients, contact with onsite patient information or specimens, or management responsibilities, has changed since the initial application for licensure. These rules have never required a medical director to get fingerprinted multiple times. With regard to employees and independent contractors the renewal merely requires an attestation from the medical director that none of the concerning circumstances have occurred. Should the medical director inform the Department that there was an intervening conviction for an offense involving the sale, distribution, or dispensing of controlled substances, then the Department may request a criminal background check or other supporting documentation.

Comment:

Charles Key, Esq. with LifeLinc commented on the time crunch that the Department will be under to inspect those clinics who have certificate expiring and apply timely for a license.

Response:

The Department will not refuse to issue a license based solely on an inability on the part of the Department to inspect a pain management clinic where the clinic has timely applied under these rules.

Comments on Rule 1200-34-01-.05

Comment:

Dr. Williams commented that it is inappropriate that hospitals are excluded from the same oversight as licensed pain management clinics and that hospital-based intervention and medication-assisted facilities ought to fall under the same licensure rules required to be followed by pain management clinics.

Dr. Dozier also believes that hospital based pain management clinics should be under the same regulatory requirements that the pain management clinics are. He commented that they should have to follow the Tennessee Chronic Pain Guidelines, drug screen patients, and look at the Controlled Substance Monitoring Database.

Response:

Pain management clinics which are part of a hospital and regulated under title 68, are statutorily exempt from these licensure provision. That exception cannot be changed by the Department in a rule. The inspection of hospital pain management clinics is part of the hospital inspection process. Methadone clinics are regulated by the Tennessee Department of Mental Health and Substance Abuse. The requested changes cannot be accomplished by these rules.

Comment:

Dr. Browder expressed concerns that practices may try to keep their number of pain management patients at 48% to 49% of their patient population in order to avoid having to become licensed as a pain management clinic.

Response:

The Department has been given the authority with the laws that were enacted July 1, 2017, to further investigate potentially unlicensed pain clinics, those who were at or above the 50% pain management patient population limit, and take action against them.

Comments on Rule 1200-34-01-.06.

Comment:

CPS comments that they believe the fee for the combined licensure and inspection is excessive. They request that fees remain where they were under the certificate system.

Response:

The regulatory shift from certification to licensure, which will cause pain management clinics to be treated more similarly to licensed healthcare facilities than they were previously, is attended by additional regulatory costs. The fees have been established based upon an accounting of the anticipated costs of regulation. Additionally, the inspection fees are new due to the requirement for an initial and a minimum of every renewal cycle inspection.

There were no comments on Rule 1200-34-01-.07.

Comments on Rule 1200-34-01-.08

Comments:

Dr. Schneider stated satellite clinics should be allowed to keep their records in a centralized location rather than on-site.

TMA requested a period of no less than 60, but preferably 90, days for physicians to access their health records and give them to the Department where requested pursuant to an inspection or investigation. TMA also requested that the Department formalize in rule exactly what a physician should expect from an inspector upon inspection.

Response:

The Department will alter these rules where appropriate to reflect the requested change regarding keeping records onsite as opposed to a centralized location. Patient records should always be available onsite to practitioners who are treating patients; however, the Department recognizes that in the present era of electronic health records, the practitioner may have access the record onsite, though that information is stored in a centralized location.

Additionally T.C.A. § 63-2-101 & 102 requires medical records to be produced, and certified if requested, within 10 business days, and T.C.A. § 63-1-117 allows a Department inspector or investigator to provide a required date of production for records. In the present era of electronic health records which should be accessible onsite, and particularly in light of other requests herein that the Department inspection speed is increased, and absent any articulated need on the part of the public, the Department does not deem it necessary to allow a practitioner two to three months to give records to the Department in response to an inspection. Lastly, it is a long standing tenet of the inspection process for any facility inspected by the Department, that inspections are conducted on a surprise basis. Allowing a practice to prepare ahead of time exactly that which is needed to pass a scheduled inspection defeats the purpose of an inspection process.

Comments on Rule 1200-34-01-.09

Comment:

Robin Hoyle, Esq. with the Tennessee Pain Society expressed that allowing only 30 days for a clinic to find a new medical director would cause a scramble and requested a 90 day process. She also suggested a trustee system similar to the appointments made in bankruptcy court be instituted, wherein the interim medical director may be appointed by the Department and provided immunity to serve in a particular clinic. She acknowledged the position of interim director is already addressed in the rules but asked for that person to be provided to the clinic, in order to keep it open, from a pool of individuals that the Department would require to be responsible based upon having been pre-proven to hold the required pain management specialist credentials.

Brett Snodgrass, APRN with LifeLinc commented that the focus needs to be returned to the community and the patients that are being protected, that the focus should be directed to those other providers who are addicting patients, not the pain practitioners. She commented that patients are being displaced, which can increase primary care visits and illegal use of medication. She commented that more rules will not create better practices in the state. She requested 90 days or longer to transition patients.

Charles Key, Edq. of LifeLinc requested 90 days or longer, potentially 180 or more. He acknowledged that a pain management specialist would have to serve in the medical director's position during this transition time.

Dr. David Arehart clarified that patient should only be transferred to other pain management specialists rather than primary care providers and that it would be inappropriate for them to go to a non-pain management specialist. He commented that an emergency medical director might be contemplated in lieu of an interim medical director.

Ben Simpson, Esq. with TMA requested the introduction of a co-medical director to serve from a remote facility for some period of the time, commenting that 90 days is preferable to 30, but still too short of a time to replace a medical director. TMA acknowledged that during the Task Force's review of the Department's proposed rules, that the TMA and Tennessee Pain Society made public comment that the previously effective rule's requirement for an alternate medical director position be eliminated from the new rules, which occurred prior to this rulemaking hearing, clarifying that they agree a serviceable medical director must be in place during a transition period, but the manner in which the alternate medical director was required under the original rules was indigestible.

Dr. Dozier commented that patient access is an issue but patients also have trouble with the provider down the road not taking their insurance.

Dr. Choo stated there are so few qualified pain management specialists that finding one in 30 days would be an impossibility. However, he did not think that finding an interim medical director would be a problem.

Dr. Browder commented that an interim director would make a lot of sense.

Dr. Schneider commented that there is often no place for patients to go when a clinic closes, explaining that patients burn bridges at pain clinics in their area and have to drive longer and longer distances to find another pain clinic. He believes this is going to make it more and more difficult to re-assign patients to new clinics.

Response:

Despite T.C.A. § 63-1-316(f) addressing that a license is neither assignable nor transferable, in the interest of patient safety, the Department has created by rule a structure that gives the clinic the ability to operate for a grace period of between 30 and 90 days by waiver, by bridging the gap with an interim medical director until the clinic is able to find a more permanent medical director. Based upon commentary that there is a need for the interim medical director to maintain such status longer, and in the interest of maintaining a qualified pain management specialist as medical director at a licensed pain management clinic, the Department will allow the interim medical director to apply for a truncated, six-month license at the conclusion of the grace period, in order to operate in an interim status for a longer period of time, while maintaining all of the responsibilities that go along with being a qualified pain management specialist in a medical director position. The Department agrees that a pain management specialist should be in charge of and available to the pain management clinic at all times. It believes that the rules as amended will allow as much flexibility as possible for an interim director to cover the clinic while attempting to find a more permanent pain management specialist to act as medical director. The Department does not believe that it would be appropriate for it to assign qualified pain management specialists to attend to an interim medical director's responsibilities at clinics where a medical director is no longer able to serve, nor does it believe there is a process to grant such an individual immunity in the position of pain management clinic interim director.

Comment:

Charles Key, Esq. of LifeLinc comments that the current medical director remaining responsible for anything within the clinic after he has left presents a problem and requested a narrowing or clarifying of the language. He also requested that .09(1)(f) be amended to include that all of the patients must be notified in the event the medical director leaves and closes the clinic, not just those seen by the medical director.

Dr. Williams commented with regard to .09(1)(f) that if his clinic were to close it would be impossible for him to arrange continuity of care.

Response:

The Department will amend the language in .09(1)(b) to state that the current medical director's pain management clinic license itself, rather than the departed medical director's Board of Medical Examiner's issued license, shall remain responsible for actions or inactions occurring at or caused by the pain management clinic after his or her departure. This does not preclude the medical director's medical license from being disciplined for any actions or inactions occurring at or caused by the pain management clinic during his or her tenure there, nor for inappropriately leaving the pain management clinic in the position of having to retain a new and/or interim medical director.

The Department recognizes the fact that it is difficult to recruit a pain management specialist to be a medical director; however, the Department also recognizes that the medical director is the license holder under the law. Despite creating a method for a pain clinic to continue operating on a medical director's license after his or her departure, the Department recognizes that a medical director may begin working at a clinic and discover it is not being run appropriately. Rule 1200-34-01-.09(1)(f) allows a medical director who wants or needs to close a clinic, without allowing it to continue operating on a grace period, the ability to do so appropriately by inactivating the license. The Department agrees that in such an event all patients at the clinic should be notified. The Department will so amend that rule.

Comment:

Dr. Browder asked for clarification regarding certificate holders who renewed their certificate before July 1, 2017.

Response:

A certificate holder whose certificate was renewed before July 1, 2017 can continue to operate on that certificate until its expiration, and it will be deemed and treated as a license until that time. The rules require that such a certified pain management clinic have a completed application turned in to the Department no less than 90 days before the expiration of the certificate in order for the Department to have time to inspect the clinic before issuing a license. Should the medical director fail to turn in a complete application 90 days prior to the expiration of the certificate, and the Department have insufficient time to inspect the clinic, the clinic must cease operations on the day that its certificate expires. The Department will not refuse to issue a license where the medical director timely submitted a complete application and a failure to inspect the clinic is based upon the Department and no shortcoming of the clinic.

Comment:

Dr. Williams commented that the requirement to report the number of patients seen by the clinic each month in the preceding year is not difficult however the two requirements listed in (d) and (f) seem to be a redundancy. He voiced concern that a requirement to report all drug samples dispensed is an opportunity for honest errors which the state could make much of. Additionally he expressed that the advertising reporting requirement could be clarified since so many physicians give educational presentations at conferences.

Dr. Dozier commented it is overly burdensome to have to report dispensing samples of things such as ibuprofen or Zantac.

Dr. Arehart commented that requiring the medical director to notify the clinic within 30 days of certain occurrences presents a problem when the medical director does not know something because it is impossible to know or disguised or hidden. He also commented that reporting patients seen and patients being treated for non-malignant pain would be difficult.

Response:

The requirement to report the number of patients seen by the clinic and the number of patients seen who are receiving controlled substances for chronic nonmalignant pain are both statutory requirements simply repeated in the rule. The Department has agreed to remove non-controlled drug samples from the reporting requirement. The Department also clarified in rule what is considered advertising for purposes of the annual report to the Department. To the extent that a medical director does not report certain occurrences due to them being hidden or disguised, medical directors should exercise appropriate thoroughness and caution in carrying out their responsibilities, and may certainly make an explanation to be considered by the Department where any report is untimely due to deceit by an employee.

Comments on Rule 1200-34-01-.10

Comment:

Dr. Arehart commented that he is disturbed by the number of requirements being placed on medical directors which would not otherwise be their job. He believed that things are being required of the medical director in .10(1)(a)(3-5) and .10(2)(b) that are outside their control.

Dr. Browder believes the language stating that the medical director shall "ensure" various things creates a difficult situation.

TMA commented they believe the use of the term ensure creates strict liability for the medical director for things that may be outside of his or her control. TMA further suggests that the Department place liability on the individuals who are violating the rules and have control over their own conduct, rather than with the medical director. TMA made a number of suggestions regarding language deletions and requirements the medical director create policies and procedures to educate and randomly audit samplings rather than "ensure" that such policies and procedures were effectuated. TMA suggests deletion of the requirements surrounding establishment of an infection control program. TMA suggests that rather than ensuring each health care provider employed by a pain management clinic maintain complete and accurate records, that the medical director periodically audit or have a supervising physician audit a sample of medical records. TMA suggests that the medical director shall have policies and procedures in place to periodically audit a sampling of billing records by a qualified outside auditor.

Robin Hoyle, Esq. from the Tennessee Pain Society commented that she agreed with TMA's concerns about the use of the term "ensure".

Charles Key, Esq. with LifeLinc requests clarification regarding the requirement that the medical director be on-site at least 20% of the clinic's weekly total number of operating hours with the addition of coverage language.

Response:

The majority of the requirements placed on the medical director in these rules are requirements that have been in place for the medical director since the promulgation of these rules in 2011. Other requirements that were previously placed on the certificate holder have been migrated to the medical director, since that individual is now the license holder. Many of these rules require the medical director to ensure the appropriate policies and procedures are in place.

TMA did not provide any examples of lawsuits where a medical director of a pain management clinic was held to a standard of strict liability based upon the word ensure, which has existed in the rules for medical director responsibilities since 2011. The case cited by TMA in their written comment, the unpublished decision in an appeal from the United States District Court for the Eastern District of Kentucky, *Lee v City of Newport*, 947 F. 2d 945, 1991 WL, can be differentiated from the imagined litigation TMA is concerned about in a number of ways, notably the court's analysis did not entertain the idea that a licensee could be held to a standard of strict liability in a malpractice or other lawsuit unrelated to the administrative revocation of her license. In this case the court found that absent a showing that the business owner's fitness to operate her adult entertainment club was affected by the conviction of her employees for acts of prostitution, a showing such as her knowledge of the conduct, and without allowing her the opportunity to present evidence in her defense, her occupational license could not be revoked. The ordinance in question stated that a license may be revoked or suspended where a criminal conviction occurred on the premises, stating that the criminal judgement served as conclusive evidence of a violation. In determining the call of the question, the court conflated conclusive evidence, irrebuttable presumption, and the elimination of any knowledge requirement or the licensee's ability to present a defense on the subject. The court found that the use of convictions unrelated to the government's legitimate purpose in regulation deprive a person of their right to engage in an occupation. Governmental requirements must bear a rational relation to the person's fitness to engage in the particular occupation or business, and the court found an insufficient nexus in the fact pattern presented. This case can be distinguished by *King's Health Spa, Inc. v. Vill. Of Downers Grove*, 2014 IL App (2d) 130825, 11N.E. 3d 489, which found that an ordinance allowing for the revocation of a massage establishment's license if any massage therapists practicing at the licensed premises committed specific criminal acts such as prostitution, did not violate the licensee's due process rights, as the ordinance was reasonably related to governmental interest in preventing prostitution at massage establishments. The rules in question directly relate to the medical director's responsibilities to the patients at a pain management clinic, the responsibilities of a highly trained professional to a vulnerable patient population. The Department does not agree that it is unreasonable for a medical director who is fit to and desirous of running a pain management clinic, to confirm, guarantee, and safeguard to his patients that supervising physicians are following their supervision requirements, that health care providers are complying with state and federal laws relative to the

prescribing of controlled substances, that protocols are established between supervising physicians and their supervisees, and that records are appropriately maintained.

With regard to TMA's request that liability be placed on those individuals who are violating the rules, the Department responds that these rules in no way alleviate the responsibilities of the individual providers. T.C.A. § 63-1-311(a) states that a violation of the pain management clinic act or these rules is grounds for disciplinary action against the practitioner by the board that licensed that practitioner. Rule 1200-34-01-.10 states in rule the responsibilities of the medical director, but does not replace or annul the responsibilities of the individual practitioners working in the clinic.

With regard to TMA's request to delete the requirements for establishment of an infection control program to provide a sanitary environment, the Department believes that these requirements are important in any setting in which patient care is effectuated, and though the Department has deleted some of the requirements which were previously in the rules, the Department is of the opinion that it is appropriate for the Department to inspect such policies and procedures in any clinic which it regulates through licensure and inspections.

With regard to TMA's suggestion that the medical director periodically audit or have a supervising physician audit a sample of medical records, the rules regarding supervising physicians' responsibilities already require a 100% review of, and physician signature on, charts in which a controlled substance is prescribed. With regard to TMA's suggestion that the rules require the medical director to have policies and procedures in place to periodically audit a sampling of billing records by a qualified outside auditor, the Department believes the specifics of how to effectuate compliance with this rule should be left to the individual clinics.

In response to these comments, the Department has amended Rule 1200-34-01-.10(2)(b) to state that the medical director must have a system in place to ensure adequate medical documentation rather than the language requiring actually ensuring such documentation, and the Department has amended Rule 1200-34-01-.10(3) to require the medical director to take appropriate steps, including having a system in place to ensure adequate billing records, rather than the language requiring actually ensuring adequate billing records are maintained. In response to previous comments made regarding the difficulty some clinics have with maintaining billing records onsite, such onsite billing requirements have been removed from this rule.

In response to the concern about coverage language in Rule 1200-34-01-.10(1)(a)2., the Department believes that Rule 1200-34-01-.10(1)(a)6 sufficiently explains that where a medical director is unable to fulfill his duties on a temporary basis, temporary, short-term coverage may be provided by another pain management specialist. The rule states that the covering physician shall share responsibility for those times during which he or she is providing coverage, which responsibilities would include being on-site 20% of the clinic's weekly operating hours. Having identified such coverage, does not alleviate the licensed Medical Director's responsibilities, nor his or her requirements to be on-site other than for a temporary, short-term basis and is not intended to avoid his or her requirements under T.C.A. § 63-1-309(d).

There were no comments on Rule 1200-34-01-.11.

Comments on Rule 1200-34-01-.12

Comment:

TMA thanked the Department for the clarifying language added since the Task Force version of the rules, clarifying that the disciplinary parameters listed in .12 would be discipline placed on the medical director's pain management clinic license, noting that the medical license of the medical director would still be under the jurisdiction and purview of the Board of Medical Examiners. TMA stated that licensure suspension, under Rule 1200-34-01-.12(1)(d)2, which requires a clinic to be completely closed during any period of suspension, severely limits a medical director's options to give his patients access to their records.

Response:

The Department recognizes that requiring a clinic to be completely closed during a period of suspension means that the Medical Director's policies and procedures to ensure patients have access to their medical records must account for such a situation. The Department must afford due process requirements in order to suspend a pain management clinic license, thus a medical director will have ample warning that a suspension will or is likely to occur, and should take necessary actions to assure continuity of care for his or her patients. The Department would be unable to ensure that patients are coming to a clinic purely for the purpose of picking up medical records rather than prescriptions, and as the Department is aware such situations have occurred, in the event that violations are sufficient to warrant suspension of a pain management clinic license, the clinic must remain closed.

Comment:

Dr. Choo expressed that he believed a peer review panel should be part of the process to guide the Department's decision making. He requested a process by which ABMS board-certified physicians chosen by TNSIP, TPS, TMA, and the Department review records in question and give a gold-standard peer review. He believed that this would create continuity through the administration change and protect potentially some of the decisions by others in the future.

Dr. Dozier agreed it would place his faith back into the process to be looked at by peers who are American medical subspecialty trained pain doctors who are fellowship trained.

Dr. Schneider, as president-elect of the Tennessee Pain Society, concurred with the voiced peer review panel idea.

Dr. Arehart stated that it should not only be a matter of protecting themselves but helping direct Department investigations.

Dr. Browder added that the panel ought to have individuals who are not only proceduralists who do not use opiates.

Brett Snodgrass, APRN, added that if such panel is developed that APRN's have appropriate representation.

TMA supported the peer-review process in the disciplinary review to ensure due process is afforded.

Response:

The Department recognizes that the statute refers to ABMS, AOA, ABIPP, and ABPM statuses in defining pain management specialists. In the current process the Department employs to review investigations and inspections there is already a process of peer review that takes place. As complaints come in they are reviewed by an attorney and a practitioner of the same license as the individual named in the complaint. The department has physicians and advanced practice registered nurses who are reviewing complaints with attorneys and has recently retained an ABMS certified pain management specialist to review pain management clinic inspections and pain management specialist related complaints. Additionally the Department has employed the use of experts in pain management and pain medicine to serve in both a reviewing and testifying capacity from time to time for assessing disciplinary actions. The Department is cognizant of the ruling in the case of the North Carolina Board of Dental Examiners versus the Federal Trade Commission and will not allow self-protectionism from pain management specialists. However, the Department recognizes the request from pain management specialists that their records particularly be peer reviewed. The Department may determine to utilize some form of panel or consultation with pain management specialists as needed upon the commissioner's request. The Department has added such a provision at 1200-34-01-.12(1)(j).

Comments on Rule 1200-34-01-.13.

Comment:

CPS commented that they believe the inclusion of a gross deviation or pattern of deviations from the Chronic Pain Guidelines in the non-exhaustive list of conditions that are likely to be detrimental to the health, safety, or welfare of a patient skirts the rulemaking process.

Response:

The Department was required by the Tennessee General Assembly to create the Chronic Pain Guidelines. They were created in consultation with stakeholders from across the state and over the course of multiple public meetings, and have been readdressed with care and public input. Since their creation, they have been frequently discussed at board meetings and adopted as policy by all the prescribing boards. It is the Department's position that a gross deviation or pattern of deviation from these guidelines can constitute conditions that are or are likely to be detrimental to the health, safety, or welfare of a patient. Listing this among the conditions for which the Commissioner may exercise his statutorily-granted ability to suspend new or existing patient treatment for purposes of patient safety does not skirt a rulemaking process but in fact puts practitioners on notice, through this rulemaking process, of the importance with which the Department takes compliance with the peer-developed guidance contained therein.

Comments on Rule 1200-34-01-.14

Comment:

TMA wanted to know if the Department could retroactively apply these rules to a non-licensed pain management clinic upon determination that they are operating unlicensed.

Response:

The Department does not believe it can impose the specifics required of a licensed pain management clinic contained in the licensure rules to an unlicensed facility as there would be no license to discipline at an unlicensed facility; however, pursuant to T.C.A. § 63-1-311 a practitioner's licensing board may assess a civil penalty of between \$1,000 and \$5000 per day against any individual working in an unlicensed pain clinic. Additionally, pursuant to T.C.A. § 63-1-315, the statutes now permit the Department to take action against a clinic suspected of operating as an unlicensed pain management clinic, including suspending new admissions. Furthermore pursuant to T.C.A. § 63-1-317, operation of an unlicensed pain management clinic is a Class A misdemeanor, and the Department, through the Office of the Attorney General, may apply for injunctive relief in any court of competent jurisdiction. A person who aids or requires another to violate the statutes or rules, or a person who allows a pain management clinic license to be used by anyone other than the licensee, is subject to a civil penalty of up to \$5,000 per day of continued violation.

Comments on Rule 1200-34-01-.15

Comment:

Comprehensive Pain Specialists commented that use of operating expenses as a basis for the amount statutorily mandated financial requirement seemed nonsensical.

Dr. Williams expressed that did not understand the purpose. He believes medical doctors are already compelled to keep medical records available for 10 years, so a financial requirement would not benefit patients in retrieving their medical records.

TMA commented that it did not believe the financial requirement was purposefully included in the public chapter, and vehemently requested that the option for a bond rather than liability insurance be removed from the rule.

Dr. Dozier commented that this requirement is too much.

Response:

The Department is required by statute to promulgate rules regarding financial requirements in the form of a bond or liability insurance. The Department cannot speak directly to the legislative intent in requiring the Department promulgate such rules, but the Department believes that this is intended to protect patients in the event the clinic closes or other unforeseen issues occur such as the disciplinary suspension of a clinic or a medical director's untimely death, ensuring that there are sufficient funds for the patients to have continuity of access to care and availability to access their medical records. The Department believes that by keeping a requirement in the rule to have either bonds or liability insurance, it is providing practitioners with options. To strike the option for a bond as requested by TMA, would limit the options available to medical directors in determining how to meet their financial requirements.

Despite the Department eliciting suggestions regarding the amount or type of bond or liability insurance that pain clinics should be required to pay, both from individuals and organizations who commented negatively regarding this rule, and requests made during the public rulemaking hearing, the Department has received zero suggestions. The Department, however, will lower the amount of the required bond or liability insurance to one year of operating expenses.

Comments on Rule 1200-34-01-.16

Comment:

Dr. Browder asked for clarification regarding what is an advertisement.

Alex Munderloh, Esq. on behalf of CPS asked for clarification regarding what advertisements must be disclosed for a clinic with multiple locations.

Response:

Such clarifications were added to the rule regarding reporting requirements.

There were no comments on Rule 1200-34-01-.17.

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 rule 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, or local governmental rules.

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

These rules exhibit clarity, conciseness, and lack of ambiguity.

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

The reporting requirements included in these rules are uniform for each licensed clinic upon licensure application and renewal and in an annual report.

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

The reporting requirements are uniform for each licensed clinic. These rules allow for a 30 day grace period and potentially an additional 60 day grace period with waiver for those clinics whose medical director has departed and are struggling to find a new medical director.

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

The rules require reporting upon licensure and renewal and annually during licensure cycles.

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

These rules require each medical director to create his or her own performance, standards for his or her own clinic.

- (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 stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Pain Management Clinics

Rulemaking hearing date: July 24, 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:**

These proposed rule amendments will have an impact on all pain management clinic owners and medical directors, in keeping with last year's statutory changes. While the medical directors and owners will be subject to some additional requirements such as greater reporting to the Department of Health, more frequent inspections, and higher licensing fees, these new rules will follow the statutory changes from last session to ensure a safer environment in pain management clinics, serving the public with another step towards lessening the addiction rate in Tennessee.

- 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:**

These proposed rule amendments will require additional annual reporting requirements by the medical director, but these new reporting requirements should have a minimal financial impact on the clinics.

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

These proposed rule amendments, following the statutory changes from last session, vest more responsibility and control in the medical director of pain management clinics, and while some of the rules create additional burdens, the new rules should have a positive impact on pain management clinics by creating more specific requirements. Additionally, these new rules will ensure better service to the public and will serve as another step towards lessening the addiction rate in Tennessee.

- 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 rule amendments. These rules are required by Public Chapter 1033, which was signed by the Governor on April 20, 2016.

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

Federal: There are no federal regulations for pain management clinics.

State: Most doctor's offices are not regulated in this manner, but compared to licensed healthcare facilities, these requirements are less burdensome.

- 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.**

The proposed rule amendments do not provide for any 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 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;

Rule Chapter 1200-34-01 [Pain Management Clinics] is being repealed and rewritten.

- (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 1033, which was signed by the Governor on April 20, 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;

These proposed rule amendments will have an impact on all pain management clinic owners and medical directors, in keeping with last year's statutory changes.

- (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;

Mary Katherine Bratton, 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;

Mary Katherine Bratton, 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

Department of Health, Office of General Counsel, 665 Mainstream Drive, Nashville, Tennessee 37205, (615) 741-1611, Mary.Bratton@tn.gov.

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

None.

**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: 08-17-17
Rule ID(s): 6593
File Date: 8/28/17
Effective Date: 11/26/17

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 Health
Division: Pain Management Clinics
Contact Person: Mary Katherine Bratton, Deputy General Counsel
Address: 665 Mainstream Drive, Nashville, Tennessee
Zip: 37243
Phone: (615) 741-1611
Email: Mary.Bratton@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
1200-34-01	Pain Management Clinics
Rule Number	Rule Title
1200-34-01-.01	Purpose
1200-34-01-.02	Definitions
1200-34-01-.03	Certification, Renewal, and Reapplication
1200-34-01-.04	Fees
1200-34-01-.05	Inspections and Investigations
1200-34-01-.06	Notifications
1200-34-01-.07	Medical Director Responsibilities
1200-34-01-.08	Certificate Holder Responsibilities
1200-34-01-.09	Training Requirements
1200-34-01-.10	Civil Penalties

Chapter Number	Chapter Title
1200-34-01	Pain Management Clinics
Rule Number	Rule Title
1200-34-01-.01	Definitions

1200-34-01-.02	Licensure Process
1200-34-01-.03	Application Review, Approval, and Denial
1200-34-01-.04	Licensure Renewal
1200-34-01-.05	Exemptions
1200-34-01-.06	Fees
1200-34-01-.07	Licensure Inactivation
1200-34-01-.08	Inspections and Investigations
1200-34-01-.09	Notifications and Reporting
1200-34-01-.10	Medical Director Responsibilities
1200-34-01-.11	Training Requirements
1200-34-01-.12	Licensure Discipline and Civil Penalties
1200-34-01-.13	Commissioner Suspensions of Treatment of New or Existing Patients
1200-34-01-.14	Unlicensed Pain Management Clinics
1200-34-01-.15	Financial Requirement
1200-34-01-.16	Advertising
1200-34-01-.17	Infectious Disease and Building Standards

**RULES
OF
DEPARTMENT OF HEALTH
DIVISION OF PAIN MANAGEMENT CLINICS**

**CHAPTER 1200-34-01
PAIN MANAGEMENT CLINICS**

TABLE OF CONTENTS

1200-34-01-.01 Purpose	1200-34-01-.06 Notifications
1200-34-01-.02 Definitions	1200-34-01-.07 Medical Director Responsibilities
1200-34-01-.03 Certification, Renewal, and Reapplication	1200-34-01-.08 Certificate Holder Responsibilities
1200-34-01-.04 Fees	1200-34-01-.09 Training Requirements
1200-34-01-.05 Inspections and Investigations	1200-34-01-.10 Civil Penalties
1200-34-01-.01 Definitions	1200-34-01-.10 Medical Director Responsibilities
1200-34-01-.02 Licensure Process	1200-34-01-.11 Training Requirements
1200-34-01-.03 Application Review, Approval, and Denial	1200-34-01-.12 Licensure Discipline and Civil Penalties
1200-34-01-.04 Licensure Renewal	1200-34-01-.13 Commissioner Suspensions of Treatment of New or Existing Patients
1200-34-01-.05 Exemptions	1200-34-01-.14 Unlicensed Pain Management Clinics
1200-34-01-.06 Fees	1200-34-01-.15 Financial Requirement
1200-34-01-.07 Licensure Inactivation	1200-34-01-.16 Advertising
1200-34-01-.08 Inspections and Investigations	1200-34-01-.17 Infectious Disease and Building Standards
1200-34-01-.09 Notifications and Reporting	

1200-34-01-.01 PURPOSE.

The rules in this chapter implement the law relative to the certification and regulation of pain management clinics pursuant to T.C.A. § 63-1-301, et seq.

Authority: T.C.A. §§ 63-1-301 through 63-1-311. Administrative History: Emergency rule filed September 30, 2011; effective March 28, 2012. Emergency rule filed September 30, 2011 and effective through March 26, 2012; on March 29, 2012 the emergency rule expired and reverted to its previous status. Permanent rules 1200-34-.01 through .10 filed December 27, 2011; to have been effective March 26, 2012. The Government Operations Committee filed a seven-day stay of effective date of the rules; new effective date April 2, 2012. On March 26, 2012, the Government Operations Committee withdrew its stay; new effective date March 26, 2012.

1200-34-01-.02 DEFINITIONS.

In addition to the definitions contained in T.C.A. § 63-1-301, the following definitions are applicable to this chapter:

- (1) "Applicant" means a person who has submitted or is in the process of submitting an application to operate a pain management clinic.
- (2) "Department" means Department of Health.
- (3) "Commissioner" means Commissioner of Health.
- (4) "Certificate Holder" means the person who holds a certificate as a pain management clinic and is the owner or one of the owners of the clinic.

(Rule 1200-34-01-.02, continued)

- (5) ~~“Controlled Substance” means a drug, substance, or immediate precursor identified, defined or listed in title 39, chapter 17, part 4 and title 53, chapter 41.~~
- (6) ~~“Health Care Provider” means a medical doctor licensed under Title 63, Chapter 6; osteopathic physician licensed under Title 63, Chapter 9; advanced practice nurse licensed under Title 63, Chapter 7, who meets the requirements contained in T.C.A. §63-7-126; or a physician assistant licensed under Title 63, Chapter 19.~~
- (7) ~~“Medical Director” means an individual licensed as a physician under Title 63, Chapter 6 or Chapter 9 who practices in this State with an unrestricted, unencumbered license and who provides oversight relative to the operations of the pain management clinic.~~
- (8) ~~“Medical Record” shall have the same meaning as set forth in T.C.A. § 63-1-117.~~
- (9) ~~“Pain Management Clinic” or “Clinic” shall have the same meaning as set forth in T.C.A. § 63-1-304(5).~~
- (10) ~~“Pain Management Services” means evaluation, diagnosis, or treatment for the prevention, reduction, or cessation of the symptom of pain through pharmacological, non pharmacological and other approaches.~~
- (11) ~~“Patient Agreement” means a written document signed by the patient which, at a minimum, addresses patient responsibility for proper use and safeguarding of medications, describes the clinic’s drug screening policy, provides for prescriptions to be filled at only one pharmacy to be identified by the patient and addresses the use of controlled substances prescribed by other providers.~~
- (12) ~~“Person” means any individual licensed under Title 63 who may own or form an entity providing pain management services, including but not limited to a professional corporation or professional limited liability company pursuant to applicable Tennessee laws and rules.~~
- (13) ~~“Substance Abuse Risk Assessment” means the assessment of an individual’s unique risk for addiction, abuse, misuse, diversion or another adverse consequence resulting from prescription medication intended to treat pain. Substance abuse risk assessment may be accomplished through a standardized written or orally delivered questionnaire or through a clinical interview.~~
- (14) ~~“Unencumbered” means an active license that is not suspended or on probation at the time the clinic owner(s) submit a pain management clinic application and that does not have any conditions, restrictions, or limitations.~~
- (15) ~~“Urine Drug Screen” means urinalysis performed using a commercial test kit in a pain management or other clinic or at a reference laboratory that tests for the presence of at least the controlled substance(s) being prescribed as well as marijuana, one or more of the opioids, benzodiazepines, cocaine and methamphetamines and may include any additional controlled substances at the discretion of the clinic.~~

Authority: T.C.A. §§ 63-1-301, 63-1-303, and 63-1-306. *Administrative History:* Emergency rule filed September 30, 2011; effective through March 28, 2012. Emergency rule filed September 30, 2011 and effective through March 28, 2012; on March 29, 2012 the emergency rule expired and reverted to its previous status. Permanent rules 1200-34-.01 through .10 filed December 27, 2011; to have been effective March 26, 2012. The Government Operations Committee filed a seven-day stay of effective date of the rules; new effective date April 2, 2012. On March 26, 2012, the Government Operations Committee withdrew its stay; new effective date March 26, 2012.

1200-34-01-.03 CERTIFICATION, RENEWAL, AND REAPPLICATION.

~~(1) Certification.~~

~~(a) Beginning January 1, 2012, in order to obtain a certificate as a pain management clinic, an applicant shall submit the following to the Department:~~

- ~~1. a completed application on a form prescribed by the Department;~~
- ~~2. a completed form prescribed by the Department showing proof of having a medical director who is a physician who practices in Tennessee under an unrestricted and unencumbered license issued pursuant to T.C.A. § 63-6-201 or 63-9-104;~~
- ~~3. proof of having obtained a Drug Enforcement Administration registration for the clinic, if required pursuant to federal laws and rules;~~
- ~~4. proof of Drug Enforcement Administration registrations for the individual health care providers who provide pain management services at the clinic, if required pursuant to federal laws and rules;~~
- ~~5. the results of a criminal background check or criminal background checks for all of the pain management clinic owners (whole or partial owners) to be sent directly from the vendor to the Department;~~
- ~~6. a list of individuals who own, co-own, operate or otherwise provide pain management services in the clinic as an employee or a person with whom the clinic contracts for services;~~
- ~~7. a disclosure of any license denial, restriction, or discipline imposed on an owner, co-owner, operator, individual who provides services at the clinic, employee of the clinic, or person with whom the clinic contracts for services pursuant to T.C.A. § 63-1-309;~~
- ~~8. payment of the application fee and initial certification fee; and~~
- ~~9. any other information requested by the Department.~~

~~(b) An applicant shall submit a separate application for certification for each clinic location regardless of whether the clinic is operated under the same business name, ownership, or management as another clinic.~~

~~(c) If an applicant does not complete the application process within sixty (60) days after the Department receives the application because the application lacks the required information or fails to meet the prerequisites for certification, then the application will be closed, the application fee will not be refunded, and the applicant shall reapply for certification.~~

~~(d) Any application that is submitted to the Department may be withdrawn at any time prior to the grant or denial of certification; provided, however, that the application fee will not be refunded.~~

~~(2) Renewal.~~

~~(a) A pain management clinic certificate shall expire two (2) years from the date of issuance. All certificates shall be renewed on or before the last day of the two (2)-year certificate cycle.~~

(Rule 1200-34-01-.03, continued)

- (b) A certificate holder may renew a current, valid certificate prior to its expiration date by submitting the following to the Department:
 - 1. a renewal application form prescribed by the Department;
 - 2. the required renewal fee;
 - 3. proof of having a medical director who meets the requirements contained in these rules;
 - 4. an attestation that the clinic is not owned wholly or partly by a person who has been convicted of, pleaded nolo contendere to, or received deferred adjudication for:
 - (i) an offense that constitutes a felony; or
 - (ii) an offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance as defined in §39-17-402; and
 - 5. any other information requested by the Department.

(3) Late Renewal and Reapplication.

- (a) The pain management clinic may renew its certificate within ninety (90) days after the certificate expiration date with payment of the renewal fee and late renewal penalty fee, and after having completed all of the other requirements for renewal. After the ninety (90) day grace period, the certificate holder may reapply for a new certificate.

Authority: T.C.A. §§ 63-1-303, 63-1-306, 63-1-307, and 63-1-308. Administrative History: Emergency rule filed September 30, 2011; effective through March 28, 2012. Emergency rule filed September 30, 2011 and effective through March 28, 2012; on March 29, 2012 the emergency rule expired and reverted to its previous status. Permanent rules 1200-34-.01 through .10 filed December 27, 2011; to have been effective March 26, 2012. The Government Operations Committee filed a seven day stay of effective date of the rules; new effective date April 2, 2012. On March 26, 2012, the Government Operations Committee withdrew its stay; new effective date March 26, 2012.

1200-34-01-.04 FEES.

- (1) Initial certificate fee \$405.00
- (2) Renewal fee \$405.00
- (3) Regulatory fee \$10.00
- (4) The late renewal penalty fee is one hundred dollars (\$100.00) per month for each month or fraction of a month that renewal is late.

Authority: T.C.A. §§ 63-1-303, 63-1-306, and 63-1-308. Administrative History: Emergency rule filed September 30, 2011; effective through March 28, 2012. Emergency rule filed September 30, 2011 and effective through March 28, 2012; on March 29, 2012 the emergency rule expired and reverted to its previous status. Permanent rules 1200-34-.01 through .10 filed December 27, 2011; to have been effective March 26, 2012. The Government Operations Committee filed a seven day stay of effective date of the rules; new effective date April 2, 2012. On March 26, 2012, the Government Operations Committee withdrew its stay; new effective date March 26, 2012.

(Rule 1200-34-01-.03, continued)

~~1200-34-01-.05 – INSPECTIONS AND INVESTIGATIONS.~~

- ~~(1) Upon the inspection of a pain management clinic by the boards regulating the health care providers working for or at the clinic, the owners, officers, employees, or authorized representatives of the pain management clinic shall allow board representatives access to the pain management clinic and the records contained therein, including, but not limited to medical records.~~
- ~~(2) The owners, officers, employees or authorized representatives of the pain management clinic or independent contractors working at the pain management clinic shall provide copies of all documentation, including but not limited to medical records, requested by the board regulating the health care providers working for or at the clinic, in connection with an inspection or investigation of the pain management clinic in accordance with T.C.A. § 63-1-117.~~

~~Authority: T.C.A. §§ 63-1-303, 63-1-304, 63-1-305, and 63-1-306. Administrative History: Emergency rule filed September 30, 2011; effective through March 28, 2012. Emergency rule filed September 30, 2011 and effective through March 28, 2012; on March 29, 2012 the emergency rule expired and reverted to its previous status. Permanent rules 1200-34-.01 through .10 filed December 27, 2011; to have been effective March 26, 2012. The Government Operations Committee filed a seven-day stay of effective date of the rules; new effective date April 2, 2012. On March 26, 2012, the Government Operations Committee withdrew its stay; new effective date March 26, 2012.~~

~~1200-34-01-.06 – NOTIFICATIONS.~~

- ~~(1) In the event that there is a change in the majority ownership of the clinic, the certificate holder shall notify the Department within ten (10) business days after the change in majority ownership.~~
- ~~(2) Within ten (10) business days after notification of the change in majority ownership, the certificate holder shall submit a new application for a certificate to the Department.~~
- ~~(3) In the event that the clinic no longer has a medical director or the medical director no longer meets the requirements contained in the T.C.A. §§63-1-301 et seq. and these rules, the certificate holder shall notify the Department within ten (10) business days of the identity of another physician who will serve as the medical director for the clinic on a form prescribed by the Department. Failure to obtain a new medical director within ten (10) days may result in disciplinary action, including revocation of certificate.~~
- ~~(4) A certificate holder shall notify the Department within ten (10) business days of the occurrence if any person who owns, co-owns, operates, provides pain management services in the clinic, is an employee of the clinic, or contracts with the clinic to provide services has been denied, held a restricted certificate, or been subject to disciplinary action relative to prescribing, dispensing, administering, supplying or selling a controlled substance.~~
- ~~(5) In the event that the name of the clinic changes, the certificate holder shall notify the Department of the name change within ten (10) business days after the name change occurs.~~

~~Authority: T.C.A. §§ 63-1-303, 63-1-306, and 63-1-309. Administrative History: Emergency rule filed September 30, 2011; effective through March 28, 2012. Emergency rule filed September 30, 2011 and effective through March 28, 2012; on March 29, 2012 the emergency rule expired and reverted to its previous status. Permanent rules 1200-34-.01 through .10 filed December 27, 2011; to have been effective March 26, 2012. The Government Operations Committee filed a seven-day stay of effective date of the rules; new effective date April 2, 2012. On March 26, 2012, the Government Operations Committee withdrew its stay; new effective date March 26, 2012.~~

(Rule 1200-34-01-.06, continued)

~~1200-34-01-.07 MEDICAL DIRECTOR RESPONSIBILITIES.~~~~(f) Clinic Operation and Personnel.~~~~(a) The medical director of a pain management clinic shall:~~

- ~~1. oversee all of the pain management services provided at the clinic;~~
- ~~2. be on site at the clinic at least twenty percent (20%) of the clinic's weekly total number of operating hours;~~
- ~~3. ensure that each supervising physician for each of the health care providers working at the clinic complies with the supervision requirements contained in Tenn. Comp. Rules and Regulations Chapter 0880-03 and Chapter 0880-06, or Rule 1050-02-15, as applicable. Should the medical director of the clinic serve as a health care provider's supervising physician, the medical director must ensure that he or she complies with Chapter 0880-03 and Chapter 0880-06 or Rule 1050-02-15, as applicable;~~
- ~~4. ensure that all health care providers employed by or working at the pain management clinic comply with applicable state and federal laws and rules relative to the prescribing of controlled substances in the pain management clinic;~~
- ~~5. ensure the establishment of protocols for the health care providers employed by or working at the pain management clinic as provided in Tenn. Comp. Rules and Regulations Chapter 0880-03 and Chapter 0880-06 and ensure that providers comply with such protocols, as well as any other established policies and procedures;~~
- ~~6. ensure that, in the event that the medical director for the clinic is unable to fulfill his or her duties on a temporary basis because of illness, vacation, or unavailability, there is an alternate or substitute medical director meeting the same qualifications as a medical director under 1200-34-01-.09;~~
- ~~7. establish quality assurance policies and procedures, which, at a minimum, include, but are not limited to:
 - ~~(i) documentation of the background, training, licensure, and certifications for all pain management clinic staff providing patient care;~~
 - ~~(ii) a written drug screening policy and compliance plan for patients to include random urine drug screening as clinically indicated, but at a minimum, upon each new admission and once every six (6) months thereafter;~~
 - ~~(iii) use of substance abuse risk assessment tools upon new patient admission and periodic review or re-assessment;~~
 - ~~(iv) evaluating and monitoring the quality and appropriateness of patient care, the methods of improving patient care as well as identifying and correcting deficiencies, and the opportunities to improve the clinic's performance and quality of care;~~
 - ~~(v) medication counts for any controlled substances prescribed by the clinic to the clinic's patients;~~~~

(Rule 1200-34-01-.07, continued)

- (vi) ~~use of patient agreements and periodic review of such agreements;~~
 - (vii) ~~health care provider access to and review of patient information contained in the controlled substance monitoring database in accordance with T.C.A. §§ 53-10-301—53-10-309, as clinically indicated, but at a minimum upon each new admission and once every six (6) months thereafter;~~
 - (viii) ~~documentation of requests for records from other health care providers;~~
 - 8. ~~establish an infection control program to provide a sanitary environment for the prevention, control, and investigation of infections and communicable diseases, including, but not limited to:

 - (i) ~~written infection control policies and procedures;~~
 - (ii) ~~techniques and systems for identifying, reporting, investigating and controlling infections at the clinic;~~
 - (iii) ~~written policies and procedures relative to the use of aseptic techniques;~~
 - (iv) ~~training for clinic staff providing direct patient care relative to infection control and aseptic techniques; and~~
 - (v) ~~a log of incidents related to infectious and communicable diseases and the corrective action taken;~~~~
 - 9. ~~establish written policies and procedures for health and safety requirements at the clinic;~~
 - 10. ~~ensure compliance with the patient safety standards established by the licensing boards for each health care provider;~~
 - 11. ~~establish written policies and procedures to assure patient access to their medical records and continuity of care should the pain management clinic close.~~
- (2) ~~Records, Reporting Requirements, and Patient Billing Procedures.~~
- (a) ~~The medical director shall ensure that each health care provider employed by or working at a certified pain management clinic shall maintain complete and accurate medical records of patient consultation, examination, diagnosis, and treatment, which shall include, but not be limited to the following:

 - 1. ~~patient medical history;~~
 - 2. ~~physical examination;~~
 - 3. ~~diagnostic, therapeutic, and laboratory results;~~
 - 4. ~~evaluations and consultations;~~
 - 5. ~~treatment objectives;~~
 - 6. ~~documentation of informed consent and discussion of risks and benefits of treatment provided;~~~~

(Rule 1200-34-01-.07, continued)

- ~~7. treatments and treatment options;~~
- ~~8. medications prescribed (including date, type, dosage and quantity prescribed);~~
- ~~9. instructions and agreements;~~
- ~~10. periodic reviews;~~
- ~~11. reason for prescribing or dispensing more than a seventy-two (72) hour dose of controlled substances for the treatment of chronic nonmalignant pain;~~
- ~~12. a notation indicating whether the controlled substance monitoring database had been accessed for a particular patient;~~
- ~~13. copies of records, reports, or other documentation obtained from other health care providers;~~
- ~~14. results of urine drug screens to be performed as clinically indicated, but at a minimum upon each new admission and once every six (6) months thereafter.~~

Authority: T.C.A. §§ 63-1-303, 63-1-306, and 63-1-309. Administrative History: Emergency rule filed September 30, 2011; effective through March 28, 2012. Permanent rules 1200-34-01 through 10 filed December 27, 2011; to have been effective March 26, 2012. The Government Operations Committee filed a seven-day stay of effective date of the rules; new effective date April 2, 2012. On March 26, 2012, the Government Operations Committee withdrew its stay; new effective date March 26, 2012.

1200-34-01-.08 — CERTIFICATE HOLDER RESPONSIBILITIES.

- (1) ~~The certificate holder shall ensure that adequate billing records are maintained onsite at the pain management clinic and shall ensure that adequate billing records are maintained for all patients and for all patient visits. Billing records shall be made for all methods of payment. Billing records shall be made available to the Department upon request.~~
 - ~~— Billing records shall include, but not be limited to the following:~~
 - ~~(a) the amount paid for the co-pay and/or remainder of services;~~
 - ~~(b) method of payment;~~
 - ~~(c) date of the delivery of services;~~
 - ~~(d) date of payment; and~~
 - ~~(e) description of services.~~
- (2) ~~The certificate holder shall ensure that patient billing records and patient medical records shall be maintained for seven (7) years from the date of the patient's last treatment at the clinic.~~
- (3) ~~The certificate holder shall ensure that all health care providers employed by or working at the pain management clinic are properly licensed and certified at all times.~~
- (4) ~~The certificate holder shall ensure the delivery of quality care and quality services at the clinic.~~

(Rule 1200-34-01-.08, continued)

- (5) ~~The certificate holder shall ensure that there is a medical director at each clinic who meets the requirements contained in laws and rules.~~
- (6) ~~The certificate holder shall ensure that all monetary transactions at the pain management clinic shall be in accordance with T.C.A. § 63-1-310 which provides that a pain management clinic may accept only a check, credit card or money order in payment for services provided at the clinic; except that payment may be made in cash for a co-pay, coinsurance or deductible when the remainder of the charge for the services will be submitted to the patient's insurance plan for reimbursement.~~
- (7) ~~The certificate holder shall ensure that patients have access to their medical records in the event that the clinic closes.~~

Authority: ~~T.C.A. §§ 63-1-303, 63-1-306, and 63-1-310. **Administrative History:** Emergency rule filed September 30, 2011; effective through March 28, 2012. Emergency rule filed September 30, 2011 and effective through March 28, 2012; on March 29, 2012 the emergency rule expired and reverted to its previous status. Permanent rules 1200-34-01 through 10 filed December 27, 2011; to have been effective March 26, 2012. The Government Operations Committee filed a seven-day stay of effective date of the rules; new effective date April 2, 2012. On March 26, 2012, the Government Operations Committee withdrew its stay; new effective date March 26, 2012.~~

1200-34-01-.09 TRAINING REQUIREMENTS.

- (1) ~~Each physician serving as the medical director at a clinic shall meet at least one (1) of the following requirements:~~
- ~~-----~~
- (a) ~~Successful completion of a residency program in physical medicine and rehabilitation, anesthesiology, addiction medicine, neurology, neurosurgery, family practice, preventive medicine, internal medicine, surgery, orthopedics or psychiatry approved by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS);~~
- (b) ~~Board certification in physical medicine and rehabilitation, anesthesiology, addiction medicine, neurology, neurosurgery, family practice, preventive medicine, internal medicine, surgery, orthopedics or psychiatry approved by the ACGME or AOABOS;~~
- (c) ~~Subspecialty certification in pain management, hospice and palliative medicine, geriatric medicine, rheumatology, hematology, medical oncology, gynecologic oncology, infectious disease, pediatric hematology oncology, or pediatric rheumatology recognized by the ABMS or AOABOS with a certificate of added qualification from the Bureau of Osteopathic Specialists;~~
- (d) ~~Board certification by the American Board of Pain Medicine;~~
- (e) ~~Board certification by the American Board of Interventional Pain Physicians; or~~
- (f) ~~Completion of forty (40) hours of in-person, live-participatory AMA Category I or AOABOS Category I CME coursework in pain management completed within three (3) years prior to implementation of this rule or prior to serving as medical director for the clinic, whichever event is most recent. The coursework shall address the following areas:~~
- ~~1. the goals of treating both short term and ongoing pain treatment;~~
 - ~~2. controlled substance prescribing rules, including controlled substance agreements;~~

(Rule 1200-34-01-.09, continued)

3. ~~drug screening or testing, including usefulness and limitations;~~
 4. ~~the use of controlled substances in treating short-term and ongoing pain syndromes, including usefulness and limitations;~~
 5. ~~evidence based non-controlled pharmacological pain treatments;~~
 6. ~~evidence based non-pharmacological pain treatments;~~
 7. ~~a complete pain medicine history and physical examination;~~
 8. ~~appropriate progress note keeping;~~
 9. ~~comorbidities with pain disorders, including psychiatric and addictive disorders;~~
 10. ~~substance abuse and misuse including alcohol and diversion, and prevention of same;~~
 11. ~~risk management;~~
 12. ~~medical ethics.~~
- (2) ~~Each health care provider providing pain management services at a clinic shall complete ten (10) hours in continuing education courses during each health care provider's licensure renewal cycle which shall be a part of the continuing education requirements established by each of the health care provider's respective boards. The ten (10) continuing education hours shall address at least one or more of the following topics related to pain management:~~
- (a) ~~prescribing controlled substances;~~
 - (b) ~~drug screening or testing;~~
 - (c) ~~pharmacological and non-pharmacological pain management;~~
 - (d) ~~completing a pain management focused history and physical examination and maintaining appropriate progress notes;~~
 - (e) ~~comorbidities with pain syndromes; and~~
 - (f) ~~substance abuse and misuse including diversion, prevention of same, and risk assessment for abuse.~~

Authority: T.C.A. § 63-1-303 and 63-1-306. *Administrative History:* Emergency rule filed September 30, 2011; effective through March 28, 2012. Emergency rule filed September 30, 2011 and effective through March 28, 2012; on March 29, 2012 the emergency rule expired and reverted to its previous status. Permanent rules 1200-34-.01 through .10 filed December 27, 2011; to have been effective March 26, 2012. The Government Operations Committee filed a seven-day stay of effective date of the rules; new effective date April 2, 2012. On March 26, 2012, the Government Operations Committee withdrew its stay; new effective date March 26, 2012.

1200-34-01-.10 CIVIL PENALTIES.

- (1) With respect to any certified pain management clinic, the Department may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule or Commissioner order in accordance with the following schedule:

Formatted

PAIN MANAGEMENT CLINICS

CHAPTER 1200-34-01

(Rule 1200-34-01-.10, continued)

Violation	Penalty
T.C.A. § 63-1-134	\$0-\$1,000
T.C.A. § 63-1-306	\$0-\$1,000
T.C.A. § 63-1-309	\$0-\$1,000
T.C.A. § 63-1-310	\$0-\$1,000
Rule 1200-34-01-.06	\$0-\$1,000
Rule 1200-34-01-.08	\$0-\$1,000

(2) Each day of continued violation may constitute a separate violation.

(3) In determining the amount of any penalty to be assessed pursuant to this rule, the Department may consider such factors as the following:

- (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 noncompliance;
- (e) The interest of the public; and
- (f) The willfulness of the violation.

Authority: T.C.A. §§ 63-1-303 and 63-1-306. Administrative History: Emergency rule filed September 30, 2011; effective through March 28, 2012. Emergency rule filed September 30, 2011 and effective through March 28, 2012; on March 29, 2012 the emergency rule expired and reverted to its previous status. Permanent rules 1200-34-01 through .10 filed December 27, 2011; to have been effective March 26, 2012. The Government Operations Committee filed a seven-day stay of effective date of the rules; new effective date April 2, 2012. On March 26, 2012, the Government Operations Committee withdrew its stay; new effective date March 26, 2012.

Rule Chapter 1200-34-01 Pain Management Clinics is being repealed and rewritten, including the Table of Contents but not the Chapter Title, and shall now read:

- 1200-34-01-.01 Definitions
- 1200-34-01-.02 Licensure Process
- 1200-34-01-.03 Application Review, Approval, and Denial
- 1200-34-01-.04 Licensure Renewal
- 1200-34-01-.05 Exemptions
- 1200-34-01-.06 Fees
- 1200-34-01-.07 Licensure Inactivation
- 1200-34-01-.08 Inspections and Investigations
- 1200-34-01-.09 Notifications and Reporting
- 1200-34-01-.10 Medical Director Responsibilities
- 1200-34-01-.11 Training Requirements
- 1200-34-01-.12 Licensure Discipline and Civil Penalties

(Rule 1200-34-01-.10, continued)

1200-34-01-.13	Commissioner Suspensions of Treatment of New or Existing Patients
1200-34-01-.14	Unlicensed Pain Management Clinics
1200-34-01-.15	Financial Requirement
1200-34-01-.16	Advertising
1200-34-01-.17	Infectious Disease and Building Standards

1200-34-01-.01 Definitions

In addition to the definitions contained in T.C.A. § 63-1-301, the following definitions are applicable to this chapter:

- (1) "Administrative Office" means the Tennessee Department of Health, Division of Health Related Boards, at which the Pain Management Clinic registry office for administrative support of daily functions is located at 665 Mainstream Drive, Nashville, TN 37243.
- (2) "Adjacent" means within 1,000 feet.
- (3) "Advisory Panel" means a panel selected by the Commissioner and convened at his or her discretion for advisory purposes and to issue recommendations to the Commissioner.
- (4) "Applicant" means a medical doctor licensed under Title 63, Chapter 6 or an osteopathic physician licensed under Title 63, Chapter 9, who has submitted or is in the process of submitting an application for a license to operate a pain management clinic.
- (5) "Certificate Holder" means a medical doctor licensed under Title 63, Chapter 6; osteopathic physician licensed under Title 63, Chapter 9; advanced practice registered nurse licensed under Title 63, Chapter 7, who meets the requirements contained in T.C.A. § 63-7-126; or a physician assistant licensed under Title 63, Chapter 19, who practices in this state with an unrestricted, unencumbered license, who was issued a pain management clinic certificate prior to July 1, 2017, and who may continue to operate that certificate as a license under Title 63, Chapter 1 until its expiration.
- (6) "Commissioner" means the Commissioner of Health or his designee.
- (7) "Controlled Substance" means a drug, substance, or immediate precursor identified, defined or listed in title 39, chapter 17, part 4 and title 53, chapter 11.
- (8) "Department" means the Tennessee Department of Health.
- (9) "Licensee" means any person licensed under Title 63 by one of the Tennessee Department of Health, Division of Health Related Boards.
- (10) "Medical Director" means an individual who meets the definitions of Title 63, Chapter 1, Section 301(5) and 301(9), and holds a license to operate a pain management clinic issued by the Department.
- (11) "Medical Record" shall have the same meaning as set forth in T.C.A. § 63-2-101.
- (12) "Owner" means a medical doctor licensed under Title 63, Chapter 6; osteopathic physician licensed under Title 63, Chapter 9; advanced practice registered nurse licensed under Title 63, Chapter 7, who meets the requirements contained in T.C.A. 63-7-126; or a physician assistant licensed under Title 63, Chapter 19.
- (13) "Pain Agreement" means a written document signed by the patient which, at a minimum, addresses patient responsibility for proper use and safeguarding of medications, describes the clinic's drug screening policy, provides that prescriptions for controlled substances may only be

(Rule 1200-34-01-.10, continued)

filled at one pharmacy to be identified by the patient, and addresses the use of controlled substances prescribed by other providers.

- (14) "Pain Management Clinic" means a privately-owned clinic, facility, or office in which the majority of patients are prescribed or dispensed opioids, benzodiazepines, barbiturates, or carisoprodol for ninety (90) days or more in a twelve-month period for pain unrelated to cancer or palliative care. For purposes of determining if a clinic, facility, or office qualifies as a pain management clinic, the entire clinic, facility, or office caseload of patients who received medical care services from all medical doctors, osteopathic physicians, advance practice registered nurses, and physician assistants who serve in the clinic, facility, or office shall be counted. Pain Management clinic also means a privately-owned clinic, facility, or office which advertises in any medium for pain management services of any type.
- (15) "Substance Use Disorder Risk Assessment" means the assessment of an individual's unique risk for addiction, abuse, misuse, diversion or another adverse consequence resulting from prescription medication intended to treat pain. Substance use disorder risk assessment may be accomplished through a standardized written or orally-delivered questionnaire or through a clinical interview.
- (16) "Unencumbered" means an active license that is not suspended or on probation and that does not have any conditions, restrictions, or limitations.
- (17) "Urine Drug Screen" means urinalysis performed using a commercial test kit in a pain management or other clinic or at a reference laboratory that tests for the presence of at least the controlled substance(s) being prescribed as well as marijuana, one or more of the opioids, benzodiazepines, cocaine and methamphetamines and may include any additional controlled substances at the discretion of the clinic.

Authority: T.C.A. §§ 63-1-301, 63-1-303, 63-1-306, 63-1-316, and 63-1-318.

1200-34-01-.02 Licensure Process

- (1) Before operating or practicing in a pain management clinic as defined in T.C.A. § 63-1-301(8) on or after July 1, 2017, the Medical Director of that clinic shall first obtain a Pain Management Clinic License from the Department, except as provided in Rule 1200-34-01-.04(2).
- (2) An applicant shall obtain an application from the Administrative Office, respond truthfully and completely to every question or request for information contained in the application, and submit it along with all documentation and fees required by the application and rules to the Administrative Office. When available, this may be accomplished through an online application.
- (3) An applicant shall submit all of the following as part of their application:
- (a) The initial licensure fee, state regulatory fee, and inspection fee provided in Rule 1200-34-01-.06;
 - (b) Proof that the Medical Director meets the statutory requirements defined in T.C.A. § 63-1-301(9) to be a pain management specialist;
 - (c) The names, and if licensed by the Department, the licensure numbers, of every person with any ownership interest in the pain management clinic for which the applicant seeks licensure and each person's percentage of ownership;
 - (d) Information regarding the form of business entity the clinic will be established as and whether there is already an existing medical practice at the clinic's proposed location;

(Rule 1200-34-01-.10, continued)

- (e) The physical mailing address of the clinic for which the applicant seeks licensure;
 - (f) Identification of any other licenses or applications, including pending or denied applications, for pain management clinics associated with the applicant including as an owner, employee or contractor;
 - (g) The names, and if licensed by the Department, the licensure numbers, of every employee of the clinic;
 - (h) The names, and if licensed by the Department, the license numbers of every person with whom the clinic has contracted for services, including persons involved in daily operation of the clinic;
 - (i) The Drug Enforcement Administration ("DEA") Registration numbers for each individual employed by the clinic or with whom the clinic has contracted who holds a DEA registration;
 - (j) The result of a criminal background check, submitted to the Administrative Office, directly from the vendor identified in the application, for the following personnel:
 1. The Medical Director;
 2. Each person with any ownership interest;
 3. Each person who holds a DEA registration who will be providing services at that clinic; and
 4. Where any disclosure required in 1200-34-01-.02(4)(a)-(d) has yielded an affirmative answer, that employee or individual or company with whom the clinic has contracted who has clinical contact with patients, contact with onsite patient information or specimens, and/or has management responsibilities;
 - (k) The name, license number, and address, of every pharmacy in which either the Medical Director or any owner of the clinic has any ownership interest that is greater than one percent (1%), and the percentage of that ownership interest;
 - (l) Proof that all supervising physicians who are supervising any of the advanced practice registered nurses or physician assistants providing services at the pain management clinic are pain management specialists;
 - (m) A statement of verification that the Medical Director has read and understood the statutes and rules governing pain management clinics, as well as the Tennessee Chronic Pain Guidelines (<http://www.tn.gov/assets/entities/health/attachments/ChronicPainGuidelines.pdf>), and the Tennessee Pain Clinic Guidelines (http://www.tn.gov/assets/entities/health/attachments/Pain_Clinic_Guidelines.pdf); and
 - (n) Any other information requested by the Department.
- (4) An applicant shall disclose the circumstances and produce any documentation requested by the Department surrounding any of the following:
- (a) Whether any owner has ever been convicted of, pled nolo contendere to, or received deferred adjudication for an offense that constitutes a felony;
 - (b) Whether any employee, or person with whom the clinic contracts who has clinical contact

Formatted: Indent: Left: 0.5", Hanging: 0.5"

(Rule 1200-34-01-.10, continued)

with patients, contact with onsite patient information or specimens, and/or has management responsibilities has ever been convicted of any felony;

- (c) Whether any owner, employee, or person with whom the clinic contracts who has clinical contact with patients, contact with onsite patient information or specimens, and/or has management responsibilities is under indictment for any offense involving the sale, diversion, or dispensing of controlled substances under any state or federal law;
- (d) Whether any owner, employee, or person with whom the clinic contracts who has clinical contact with patients, contact with onsite patient information or specimens, and/or has management responsibilities has ever been convicted of any offense involving the sale, diversion, or dispensing of controlled substances under any state or federal law;
- (e) Whether any owner, employee, or person with whom the clinic contracts who has clinical contact with patients, contact with onsite patient information or specimens, and/or has management responsibilities has ever applied for or held any license issued by any jurisdiction, under which that license holder may prescribe, dispense, administer, supply, or sell a controlled substance, which has been restricted, disciplined, or denied;
- (f) Whether any owner, employee, or person with whom the clinic contracts who has clinical contact with patients, contact with onsite patient information or specimens, and/or has management responsibilities has ever been subject to disciplinary action by any licensing entity for conduct that was the result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance;
- (g) Loss or restriction of privileges at any hospital or health care facility on the part of the Medical Director;
- (h) Whether any owner, medical director, employee or person with whom the clinic contracts who has clinical contact with patients, contact with onsite patient information or specimens, and/or has management responsibilities is under any board order requiring advocacy from a professional assistance program that monitors for substance abuse;
- (i) Whether any owner, employee, or person with whom the clinic contracts who has clinical contact with patients, contact with onsite patient information or specimens, and/or has management responsibilities has ever had a DEA registration that was surrendered for cause or disciplined.

(5) Where appropriate, the applicant shall cause to be submitted from the DEA, documentation regarding any surrender for cause, revocation, or other discipline of a DEA registration certificate.

Formatted: Indent: Left: 0", Hanging: 0.5"

(6) An applicant shall submit a separate application for licensure for each clinic location regardless of whether the clinic is operated under the same business name, ownership, or management as another clinic. Each clinic location shall be licensed separately.

Authority: T.C.A. §§ 63-1-301, 63-1-303, 63-1-306, 63-1-309, 63-1-316, and 63-1-401.

1200-34-01-.03 Application Review, Approval, and Denial

- (1) Administrative staff shall determine when an application file is complete.
- (2) If an applicant does not complete the application process within ninety (90) days after the Department receives the application because the application lacks the required information or fails to meet the prerequisites for licensure, then the application will be closed, the licensure fee will not be refunded, and the applicant shall be required to reapply in order to pursue licensure.

(Rule 1200-34-01-.10, continued)

- (3) Any applicant who has successfully complied with all requirements governing the licensure process shall then be subject to an inspection of the clinic. The applicant must successfully pass the inspection prior to being eligible for licensure. Upon inspection, if evidence is found that any practice act or any requirement of these rules has been violated, the application may be denied, and the Department may use the evidence in a separate disciplinary matter against any of the licensees involved. Representations in the application which are deemed by the Department to be untrue or incompletely disclosed may also subject the applicant to disciplinary action before his or her licensing board, and may subject the pain management clinic application to denial, and a previously issued pain management clinic license or certificate to revocation or other disciplinary action.
- (4) The Department will conduct its eligibility inspection within 90 business days from the date the application is deemed complete by administrative staff. If the applicant does not initially pass the inspection, the Department, at its discretion, may re-inspect the clinic subject to a payment of a re-inspection fee. Such re-inspection may take place beyond the 90 business days from the application completion date. If the applicant maintains a current practice at a certified or licensed pain management clinic and the application is for a new location, the Department may inspect the current practice and approve the license at the new location, subject to a re-inspection and re-inspection fee at the new location after the practice has moved to the new location.
- (5) If the application is denied, or the license is issued with conditions or restrictions, the following shall occur:
- (a) A notification of the denial shall be sent from the Administrative Office by certified mail, return receipt requested, which shall contain reasons for the denial, condition, or restriction, as well as the statutory or rule authority for the denial, condition, or restriction.
- (b) The notification, when appropriate, shall also contain a statement of the applicant's right to a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-101 et. seq.) to contest the denial, condition, or restriction. An applicant has a right to a contested case hearing only if the denial, condition, or restriction was based upon subjective or discretionary criteria, and only if the request for the contested case hearing is made in writing and received by the Department's Office of General Counsel on or before the thirtieth (30th) day after receipt of the notice by the applicant.
- (6) If the Department finds that it has erred in the issuance of a license, the Administrative Office will give written notice by certified mail of its intent to revoke the license. The notice will allow the Medical Director the opportunity to meet the requirements for licensure within thirty (30) days from the date of receipt of the notification. If the Medical Director does not concur with the stated reason and the intent to revoke the license, the Medical Director shall have the right to proceed according to T.C.A. § 63-1-316(j).

Authority: T.C.A. §§ 63-1-303, 63-1-304, and 63-1-316.

1200-34-01-.04 Licensure Renewal

- (1) Renewal.
- (a) A pain management clinic license, unless another time is given at the time of licensure, shall expire two (2) years from the date of issuance. All licenses must be renewed on or before the last day of the two (2) year licensure cycle.
- (b) A Medical Director may renew a current, valid license prior to its expiration date by submitting the following to the Department:
1. a renewal application form prescribed by the Department;

(Rule 1200-34-01-.10, continued)

- 2. the required renewal fee;
- 3. proof of having a medical director who meets the requirements contained in these rules and is a pain management specialist;
- 4. an attestation that the clinic is not owned wholly or partly by a person who has been convicted of, pleaded nolo contendere to, or received deferred adjudication for:
 - (i) an offense that constitutes a felony; or
 - (ii) an offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance as defined in § 39-17-402;
- 5. an attestation that no owner, employee or person with whom the clinic contracts who has clinical contact with patients, contact with onsite patient information or specimens, and/or has management responsibilities:
 - (i) has been convicted of an offense involving the sale, distribution, or dispensing of controlled substances under state or federal law;
 - (ii) has been denied, by any jurisdiction, a license under which that person may prescribe, dispense, administer, supply, or sell a controlled substance;
 - (iii) has been subject to disciplinary action by any licensing entity for conduct that was the result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance;
- 6. proof the Medical Director has maintained the status of pain management specialist;
- 7. any other information requested by the Department.

Formatted: Indent: Left: 1", Hanging: 0.5"

(2) A clinic whose certificate was renewed before July 1, 2017, and continued operation on that certificate as a license until its expiration, shall have its Medical Director apply as a new applicant for licensure under this part, and must meet all requirements for licensure in order to continue operation beyond the expiration date of the certificate. In order for the Department to timely process the application and inspect the clinic, the Medical Director must have submitted a complete application as a new applicant a minimum of ninety (90) days before the expiration of the clinic's certificate. For purposes of an expired certificate, there shall be no grace period for operation between expiration of the certificate and the initial licensure date.

(3) Late Renewal and Reapplication.

The pain management clinic may renew its license within sixty (60) days after the license expiration date with payment of the renewal fee and late renewal penalty fee, and after having completed all of the other requirements for renewal. After the sixty (60) day grace period, the Medical Director may reapply for a new license, but must cease operations until such time as a new license is granted.

Authority: T.C.A. §§ 63-1-303, 63-1-306, 63-1-307, 63-1-308, 63-1-309, and 63-1-316.

1200-34-01-.05 Exemptions

(Rule 1200-34-01-.10, continued)

- (1) A pain management clinic is not a clinic, facility, or office which provides interventional pain management as defined in § 63-6-244 and whose clinic, facility, or office does not provide chronic non-malignant pain treatment to a majority of the patients of a clinic, facility, or office for ninety (90) days or more in a twelve-month period.
- (2) A pain management clinic is not a medical or dental school, an osteopathic medical school, a nursing school, a physician assistant program, or an outpatient clinic associated with any of the foregoing schools or programs, including, but not limited to, clinics that have an agreement to train residents by members of that clinic who are appointed as adjunct faculty of the school or program.
- (3) A pain management clinic is not a hospital as defined in § 68-11-201, including any outpatient facility or clinic of a hospital if such outpatient facility or clinic is regulated under title 68.
- (4) A pain management clinic is not hospice services as defined in § 68-11-201.
- (5) A pain management clinic is not a nursing home as defined in § 68-11-201.
- (6) A pain management clinic is not a facility maintained or operated by this state.
- (7) A pain management clinic is not a hospital or clinic maintained or operated by the federal government.

Formatted: Indent: Left: 0", Hanging: 0.5"

Formatted: Indent: Left: 0", Hanging: 0.5"

Authority: T.C.A. §§ 63-1-301 and 63-1-302.

1200-34-01-.06 Fees

- (1) Initial licensure fee.....\$1,500.00
- (2) Renewal fee.....\$1,500.00
- (3) State Regulatory fee.....\$ 10.00
- (4) Inspection fee.....\$1,500.00
- (5) Re-inspection fee.....\$1,000.00
- (6) The late renewal penalty fee is five hundred dollars (\$500.00) per month for each month or fraction of a month that renewal is late.
- (7) The Inspection fee is to be paid with the initial licensure fee upon application, and again biennially within thirty (30) days following the random biennial inspection.
- (8) A re-inspection fee shall be assessed and shall be paid by the Medical Director any time an investigator is forced to return to the clinic to complete his or her inspection due to actions or omissions on the part of the Medical Director or anyone working in the pain management clinic. A re-inspection fee shall also be assessed and shall be paid by the Medical Director any time the Department re-inspects a clinic which did not pass an inspection. Payment of the re-inspection fee must be remitted to the Department within thirty (30) days of the re-inspection date.

Authority: T.C.A. §§ 63-1-303, 63-1-306, 63-1-308, and 63-1-316.

1200-34-01-.07 Licensure Inactivation

- (1) If the Medical Director and/or owners of a pain management clinic determine that the site will

(Rule 1200-34-01-.10, continued)

close and cease operation, or that the site will no longer provide services that meet the statutory definition of a pain management clinic, the Medical Director must notify the Department. If the Department has not been notified of a closure and appears at the clinic for an inspection or investigation, the Medical Director may be held responsible for the inspection fee or the actual cost of the investigation.

- (2) The Medical Director shall notify the Department and inactivate the pain management clinic license as follows:
- (a) Obtain from the Administrative Office an official inactivation form;
 - (b) Complete and submit that form, along with any supporting documentation that may be required by the Administrative Office.
- (3) Upon successful completion and submission of the required forms to the administrative office, the Department shall register the pain management clinic license as inactivated. A clinic that has inactivated its license shall not operate as a pain management clinic, and doing so shall subject the practitioners in that clinic to penalties from the Department.

Formatted: Indent: Left: 0", Hanging: 0.5"

Authority: T.C.A. §§ 63-1-303, 63-1-304, 63-1-305, and 63-1-316.

1200-34-01-.08 Inspections and Investigations

- (1) Upon application for licensure as a pain management clinic, the Medical Director shall pay the inspection fee and permit the Department to conduct an inspection of the clinic which may include, in addition to inspection of the physical site, review of medical records, business records, and any other documents the Department may require.
- (2) The Medical Director, owners, officers, employees, authorized representatives of the pain management clinic, and independent contractors working at the pain management clinic shall allow Department representatives access to the pain management clinic and shall provide copies of all documentation, including but not limited to medical records and business records, requested by the Department, in connection with an inspection or investigation of the pain management clinic. The Medical Director shall be responsible for the pain management clinic remitting payment of the biennial inspection fee to the Department within thirty (30) days of the inspection.
- (3) If a clinic does not pass an inspection, at its discretion, the Department may re-inspect the clinic and assess a re-inspection fee. The Department may require submission of a corrective action plan prior to the re-inspection.
- (4) Failure or refusal of the Medical Director to grant the Department access to the pain management clinic to perform an audit, inspection, or investigation shall constitute grounds for immediate suspension of the pain management clinic's license as contemplated in T.C.A. § 4-5-320(c).

Authority: T.C.A. §§ 63-1-303, 63-1-304, 63-1-305, and 36-1-316.

1200-34-01-.09 Notifications and Reporting

- (1) A pain management clinic license shall not be assignable or transferable. However, the Department recognizes that some circumstances may cause a Medical Director to depart from a clinic. While best practice would be for the new Medical Director to seek licensure from the Department while the current Medical Director is still actively serving at his clinic's licensed location, in the event that the current Medical Director no longer meets the requirements contained in T.C.A. §§ 63-1-301 et seq. and these rules to be a Medical Director, or departs from a clinic, the Department will allow a grace period during which a clinic may continue to operate provided the following occurs:

(Rule 1200-34-01-.10, continued)

- (a) The clinic may continue to operate on the current Medical Director's license for a grace period of up to thirty (30) calendar days from the date that the current Medical Director no longer met the requirements contained in T.C.A. §§ 63-1-301 et seq. and these rules to be a Medical Director, or the date the current Medical Director departs the clinic, provided the clinic notifies the Department, on a form prescribed by the Department, within ten (10) business days of the identity of another pain management specialist who will serve as the interim Medical Director for the clinic;
 - (b) During this grace period after which the current Medical Director no longer meets the requirements of this part or has departed from the clinic, which shall total no more than thirty (30) calendar days, both the pain management clinic license and the interim Medical Director, are liable for any actions or inactions occurring at or caused by the pain management clinic;
 - (c) The new Medical Director shall submit a completed pain management clinic application immediately upon agreement to assume the duties of medical director at the clinic;
 - (d) Should the clinic have difficulty obtaining a new medical director, it may apply for a waiver of up to an additional sixty (60) calendar days in which to operate with the interim Medical Director. The waiver form shall be promulgated by the Department. The waiver will only be granted upon good cause shown, demonstrated reasonable efforts to locate and retain a new medical director, and a reasonable belief by the Department that public health will be harmed by not granting the waiver. Both the pain management clinic license and the interim Medical Director are liable for any actions or inactions occurring at or caused by the pain management clinic during any granted grace period;
 - (e) Upon expiration of thirty (30) calendar days, or upon the expiration of ninety (90) calendar days if a waiver was applied for and granted, if a new pain management clinic license has not been issued by the Department, the clinic must cease operation. Each day of continued operation would constitute a separate violation for any licensee who continues to work in the clinic;
 - (f) Notwithstanding these provisions, if the current Medical Director of a clinic chooses to inactivate the license, the clinic must cease operating as a pain management clinic immediately upon inactivation. Prior to inactivating the license, the Medical Director shall have the responsibility to notify all patients receiving care at the clinic and arrange for continuity of care; and
 - (g) In the event the clinic is unable to find a permanent new Medical Director during the grace period, the individual serving as interim Medical Director may apply for a pain management clinic license to be issued for a term of six (6) months. At its discretion, and upon such request by the interim Medical Director applicant, the Department may issue a pain management clinic license for a term of six months. The fee for such a license shall be proportional to the annual fee, but other than the term, the license shall be modified in no other manner; upon issuance of the truncated license, the interim Medical Director applicant shall become the licensee.
- (2) The Medical Director shall notify the Department within thirty (30) days of the occurrence if any of the following occur to any person who owns, is an employee of, or is a person with whom the clinic contracts who has clinical contact with patients, contact with onsite patient information or specimens, and/or has management responsibilities:
- (a) that person has applied for any state or federal license, registration, or certificate that has been denied;

(Rule 1200-34-01-.10, continued)

- (b) that person has held any state or federal license, registration, or certificate that has been restricted or subject to disciplinary action relative to prescribing, dispensing, administering, supplying or selling a controlled substance; or
 - (c) that person has been convicted of a felony or any offense involving the sale, diversion, or dispensing of controlled substances under state or federal law related to operation of or work in the clinic.
- (3) In the event that the name of the clinic changes, the Medical Director shall notify the Department of the name change within ten (10) business days after the name change occurs.
- (4) In addition to the reporting requirements above, the Medical Director shall make an annual report to the Department on a form promulgated for such reporting. The report shall be due to the Department sixty (60) days prior to the pain management clinic's certificate or license anniversary date and shall cover the previous twelve (12) months. The report shall include the following:
- (a) Whether the pain management clinic is associated with a hospital;
 - (b) Whether the pain management clinic is adjacent to a pharmacy;
 - (c) The names of each physician, physician assistant, and advanced practice registered nurse who worked in the clinic each month during the preceding year along with their license numbers;
 - (d) The number of patients seen by the clinic for each month in the preceding year;
 - (e) The number of patients seen in each month who received controlled substances for chronic nonmalignant pain from a practitioner at the clinic;
 - (f) A list of all controlled drug samples which were dispensed in the preceding year or a copy of the clinic's log pursuant to Title 21 C.F.R. § 1304.11, with regard to those samples;
 - (g) A list of all owners of the clinic and their percentage of interest in the clinic for each month in the preceding year;
 - (h) The names of any employees hired or separated within the preceding year as well as the license number of that employee if any are or were licensees; and
 - (i) A summary of each advertisement for that clinic location and, where more than one location exists, each advertisement for the larger organization as a whole. For purposes of this rule, an advertisement is any material or spoken word, which is: (1) paid for in consideration of any kind; (2) intended to promote a clinic's services; or (3) created or given in any manner not in association with a bona fide, unpaid—other than customary coverage of expenses—media encounter, interview, or professional continuing medical education event.

Authority: T.C.A. §§ 63-1-303, 63-1-306, 63-1-309, 63-1-316, 63-1-317, and 63-1-319.

1200-34-01-.10 Medical Director Responsibilities

- (1) Clinic Operation and Personnel.
- (a) The Medical Director of a pain management clinic shall:
 - 1. oversee all of the pain management services provided at the clinic;

(Rule 1200-34-01-.10, continued)

2. be on-site at the clinic at least twenty percent (20%) of the clinic's weekly total number of operating hours;
3. ensure that each supervising physician for each of the health care providers working at the clinic complies with the supervision requirements contained in Tenn. Comp. Rules and Regulations Chapter 0880-03 and Chapter 0880-06, or Rule 1050-02-15, as applicable, and is a pain management specialist;
4. ensure that all health care providers employed by or working at the pain management clinic comply with applicable state and federal laws and rules relative to the prescribing of controlled substances in the pain management clinic;
5. ensure the establishment of protocols for the health care providers employed by or working at the pain management clinic as provided in Tenn. Comp. Rules and Regulations Chapter 0880-03 and Chapter 0880-06 and ensure that providers comply with such protocols, as well as any other established policies and procedures;
6. identify a pain management specialist who has agreed to provide coverage in the event that the Medical Director is unable to fulfill his or her duties on a temporary basis because of illness, vacation, or unavailability. Such coverage may be provided on a temporary, short-term basis and serving in this capacity will not be considered to count against the limit of four (4) pain management clinics at which a pain management specialist may serve as medical director. The Medical Director maintains all responsibility during any period where coverage is provided, but the covering physician shall only share responsibility for those times during which he or she is providing coverage;
7. establish quality assurance policies and procedures, which, at a minimum, include, but are not limited to:
 - (i) documentation of the background, training, licensure, and certifications for all pain management clinic staff providing patient care;
 - (ii) a written drug screening policy and compliance plan for patients to include random urine drug screening as clinically indicated, but at a minimum, upon each new admission and once every six (6) months thereafter;
 - (iii) use of substance use disorder risk assessment tools upon new patient admission and periodic review or re-assessment;
 - (iv) evaluating and monitoring the quality and appropriateness of patient care, the methods of improving patient care as well as identifying and correcting deficiencies, and the opportunities to improve the clinic's performance and quality of care;
 - (v) medication counts for any controlled substances prescribed by the clinic to the clinic's patients;
 - (vi) use of pain agreements and periodic review of such agreements;
 - (vii) health care provider access to and review of patient information contained in the controlled substance monitoring database in accordance with T.C.A. §§ 53-10-301 - 53-10-309, as clinically indicated, but at a

(Rule 1200-34-01-.10, continued)

- minimum upon each new admission and once every six (6) months thereafter;
- (viii) documentation of requests for records from other health care providers;
- (ix) creation of a written process for clinical practice evaluation and evidence of regular appropriate supervisory action based on results of the clinical practice evaluation;
- 8. establish an infection control program to provide a sanitary environment for the prevention, control, and investigation of infections and communicable diseases, including, but not limited to:
 - (i) written infection control policies and procedures;
 - (ii) creation of written policies that are consistent with the Centers for Disease Control and Prevention's guidelines for minimum prevention for outpatient settings; and
 - (iii) a log of incidents related to infectious and communicable diseases and the corrective action taken;
- 9. establish written policies and procedures to assure patient access to their medical records and continuity of care should the pain management clinic close.

(2) Records, Reporting Requirements, and Patient Billing Procedures.

- (a) The Medical Director shall ensure that each health care provider employed by or working at a certified or licensed pain management clinic shall maintain complete and accurate medical records of patient consultation, examination, diagnosis, and treatment, which shall include, but not be limited to the following:
 - 1. patient medical history and physical examination;
 - 2. diagnostic, therapeutic, and laboratory results, evaluations and consultations, and records from other health care providers, as available, or attempts to obtain such;
 - 3. documentation of informed consent and discussion of risks and benefits of treatment provided;
 - 4. treatments, treatment options, and treatment objectives;
 - 5. medications prescribed (including date, type, dosage and quantity prescribed);
 - 6. instructions and agreements;
 - 7. periodic reviews;
 - 8. a notation indicating whether the controlled substance monitoring database had been accessed for a particular patient;
 - 9. results of urine drug screens to be performed as clinically indicated, but at a minimum upon each new admission and once every six (6) months thereafter.
- (b) The Medical Director's responsibilities shall include having a system in place to ensure

(Rule 1200-34-01-.10, continued)

adequate medical documentation and responsibility for addressing inadequate documentation. Medical records must at all times be available to clinicians to review onsite, but may be maintained at a separate location.

- (3) The Medical Director shall take appropriate steps, including having a system in place, to ensure that adequate billing records are maintained for the pain management clinic and shall ensure that adequate billing records are maintained for all patients and for all patient visits. Billing records shall be made for all methods of payment. Billing records shall be made available to the Department upon request.

Billing records shall include, but not be limited to the following:

- (a) the amount paid for the co-pay and/or remainder of services;
 - (b) method of payment;
 - (c) date of the delivery of services;
 - (d) date of payment; and
 - (e) description of services.
- (4) The Medical Director shall ensure that patient medical records shall be maintained for ten (10) years from the date of the patient's last treatment at the clinic.
- (5) The Medical Director shall ensure that patient billing records shall be maintained for seven (7) years from the date of the patient's last treatment at the clinic.
- (6) The Medical Director shall ensure that all health care providers employed by or working at the pain management clinic are properly licensed and certified at all times.
- (7) The Medical Director shall ensure the delivery of quality care and quality services at the clinic.
- (8) The Medical Director shall ensure that all monetary transactions at the pain management clinic shall be in accordance with T.C.A. § 63-1-310 which provides that a pain management clinic may accept only a check or credit card in payment for services provided at the clinic; except that payment may be made in cash or money order for a co-pay, coinsurance, or deductible when the remainder of the charge for the services will be submitted to the patient's insurance plan for reimbursement.
- (9) The Medical Director shall ensure that patients have access to their medical records at any time upon request of the patient in keeping with T.C.A. §§ 63-2-101 et seq. and especially in the event that the clinic closes. The Medical Director shall also ensure that the Department has access to the records upon request.

Authority: T.C.A. §§ 63-1-303, 63-1-306, 63-1-309, and 63-1-310.

1200-34-01-.11 Training Requirements

- (1) Each physician serving as the Medical Director or a supervising physician to an advanced practice registered nurse or physician assistant at the clinic shall meet the statutory requirements to be a pain management specialist, and shall complete the requisite continuing education to maintain that status.
- (2) Each health care provider providing pain management services at a clinic shall complete ten (10) hours in continuing education courses during each health care provider's licensure renewal cycle

(Rule 1200-34-01-.10, continued)

which shall be a part of the continuing education requirements established by each of the health care provider's respective boards. The ten (10) continuing education hours shall address at least one or more of the following topics related to pain medicine:

- (a) prescribing controlled substances;
 - (b) drug screening or testing;
 - (c) pharmacological and non-pharmacological pain management;
 - (d) completing a pain management focused history and physical examination and maintaining appropriate progress notes;
 - (e) comorbidities with pain syndromes; and
 - (f) substance abuse and misuse including diversion, prevention of same, and risk assessment for abuse.
- (3) Each health care provider providing pain management services at a clinic shall, in addition to the ten (10) hours of continuing education outlined above, thoroughly read the Tennessee Chronic Pain Guidelines and the Tennessee Pain Clinic Guidelines promulgated by the Department.

Authority: T.C.A. § 63-1-303 and 63-1-306.

1200-34-01-.12 Licensure Discipline and Civil Penalties

- (1) Upon a finding that a pain management clinic is in violation of any provision of the Tennessee Pain Management Clinic Act (T.C.A. §§ 63-1-301 et seq.) or the rules promulgated pursuant thereto, the Commissioner may impose any of the following actions separately or in any combination which is deemed appropriate to the offense:
- (a) Private Censure - This is a written action issued to the Medical Director for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (b) Reprimand - This is a written action issued on a Medical Director's pain management clinic license for one time and less severe violations. It is a formal, public disciplinary action.
 - (c) Probation - This is a formal disciplinary action which places a Medical Director's pain management clinic license on close scrutiny for a period of time.
 - 1. This action may be combined with any other formal disciplinary action and include conditions and requirements which must be met before probation can be lifted and/or which restrict or condition the clinic's activities during the probationary period.
 - 2. Once ordered, probation may not be lifted unless and until the Medical Director petitions, pursuant to paragraph (2) of this rule, after the period of initial probation has run and all conditions placed on the probation have been met and the Commissioner is satisfied that a further probationary period is not warranted such that the probation may be lifted.
 - (d) Licensure Suspension - This is a formal disciplinary action which suspends the right of the Medical Director and his staff to operate the pain management clinic for a fixed period of time. It contemplates the reopening of the practice under the license previously issued

(Rule 1200-34-01-.10, continued)

at that location.

1. Once ordered, a suspension may not be lifted unless and until the Medical Director petitions, pursuant to paragraph (2) of this rule, after the period of initial suspension has run and:

(i) All conditions placed on the suspension have been met; and

(ii) The Commissioner is satisfied that the Medical Director and his staff are competent to return to practice and that no further period of suspension is warranted such that the suspension should be lifted.

2. The clinic must be completely closed during the period of licensure suspension. If any licensee admits or sees any new or existing patients during the suspension, that shall be considered a violation of the suspension, and the length of suspension shall toll for any time during which the practice was open in violation of the suspension.

(e) Revocation- This is a formal disciplinary action which closes a clinic and terminates the license previously issued to operate that location as a pain management clinic.

(f) Conditions - Any action deemed appropriate by the Commissioner to be required of a disciplined Medical Director and/or clinic in any of the following circumstances:

1. During any period of probation or suspension; or

2. As a prerequisite to the lifting of probation or suspension; or

3. As a stand-alone requirement(s) in any disciplinary order.

(g) Civil penalty - A monetary disciplinary action assessed by the Commissioner pursuant to paragraph (4) of this rule.

(h) Summary Suspension - This is a formal disciplinary action which immediately and entirely suspends the rights of the Medical Director and his staff to operate the pain management clinic until it is lifted or until a final disposition of the matter after a full hearing. This type of suspension may be ordered ex-parte, pursuant to the notice procedures contained in T.C.A. § 4-5-320 upon a finding that the public health, safety or welfare imperatively requires emergency action.

(i) Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. § 63-1-144.

(j) The Commissioner, at his discretion, may convene an advisory panel of one or more to make a recommendation to the Commissioner prior to the Commissioner's determination. The Commissioner shall not be bound by the recommendation of the advisory panel.

(2) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order and wishes or is required to obtain an order reflecting that compliance.

(a) The Commissioner will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance

Formatted: Indent: Left: 0.5", Hanging: 0.5"

(Rule 1200-34-01-.10, continued)

or is seeking to have a suspension or probation lifted.

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Administrative Office that shall contain all of the following:

- (i) A copy of the previously issued order; and
- (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
- (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed, sworn to, and notarized statements from each individual the petitioner intends to rely upon attesting, under oath, to the petitioner's compliance. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.

2. The administrative staff may make an initial determination on the petition before it is heard by the Commissioner and take one of the following actions:

- (i) Certify compliance and have the matter scheduled for presentation to the Commissioner as an uncontested matter; or
- (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.

3. If the petition is presented to the Commissioner, the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.

4. If the Commissioner finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.

5. If the petition is denied either initially by staff or after presentation to the Commissioner and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223.

(c) Form Petition

Petition for Order of Compliance
Pain Management Clinic

Petitioner's Name: _____

Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____

Telephone Number: _____

(Rule 1200-34-01-.10, continued)

Attorney for Petitioner: _____
 Attorney's Mailing Address: _____

 Attorney's E-Mail Address: _____
 Telephone Number: _____

The petitioner respectfully represents, as substantiated by the attached documentation that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation.

Note - You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Committee's consultant, the Disciplinary Coordinator, and legal staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

Petitioner's Signature

(3) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Commissioner Orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted or been issued a reprimand.

(a) The Commissioner will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.

(b) Procedures

1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Administrative Office that shall contain all of the following:

- (i) A copy of the previously issued order; and

(Rule 1200-34-01-.10, continued)

- (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
 - (iii) A copy of all documents that prove that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed, sworn to, and notarized statements from each individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
2. The administrative staff may make an initial determination on the petition before the Commissioner hears it and take one of the following actions:
 - (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for review and presentation to the Commissioner; or
 - (ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
 3. If the petition is presented to the Commissioner, the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
 4. If the petition is granted, the Commissioner may issue a new order reflecting the authorized modifications that he deems appropriate and necessary in relation to the violations found in the previous order.
 5. If the petition is denied either initially by staff or after presentation to the Commissioner and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223.

(c) Form Petition

Petition for Order Modification
Pain Management Clinic

Petitioner's Name: _____
Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____
Telephone Number: _____

(Rule 1200-34-01-.10, continued)

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

Note - You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the ___ day of _____, 20__

Petitioner's Signature

(4) Civil Penalties

(a) Purpose - The purpose of this paragraph is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. §§ 63-1-134 and 63-1-316.

(b) Schedule of Civil Penalties

- 1. A Type A civil penalty may be imposed whenever the Commissioner finds the medical director, an owner, or clinic staff guilty of a willful and knowing violation of Tenn. Code Ann. §§ 63-1-301 et seq., or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be an imminent, substantial threat to the health, safety and welfare of an individual client or the public or in such a manner as to impact directly on the care of patients or the public.
2. A Type B civil penalty may be imposed whenever the Commissioner finds medical director, an owner, or clinic staff is guilty of a violation of Tenn. Code Ann. §§ 63-1-301 et seq., or regulations promulgated pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care.

(c) Amount of Civil Penalties

- 1. Type A Civil Penalties shall be assessed in the amount of not less than \$500 or more than \$1,000.
2. Type B Civil Penalties may be assessed in the amount of not less than \$100 and not more than \$500.

(d) Procedures for Assessing Civil Penalties

(Rule 1200-34-01-.10, continued)

1. The Department may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Department shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Department may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
2. Civil Penalties may also be initiated and assessed by the Commissioner or his designee during consideration of any Notice of Charges. In addition, the Commissioner or his designee may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Department.
3. In assessing the civil penalties pursuant to these rules the Commissioner or his designee may consider the following factors:
 - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public;
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and,
 - (v) The interest of the public.
4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of Title 4, Chapter 5, Tennessee Code Annotated.
- (5) At the conclusion of a hearing, should the Commissioner determine to hold the case under advisement and make a recommendation as to requirements to be met by the pain management clinic in order to avoid suspension, revocation, or other discipline of a license or suspension of admissions, such recommendations shall be a public record and shall be considered formal discipline.
 - (a) Should the Commissioner make such a recommendation, the clinic must present proof of having met those requirements to the Commissioner for a determination regarding whether they have been satisfactorily met.
 - (b) Should the Commissioner determine that the recommended requirements have not been met, the Commissioner shall make a finding and record of this determination, and shall impose appropriate formal discipline.
 - (c) Should the clinic comply with the recommendations, the Commissioner has the authority to impose a lesser sanction as outlined in his recommendation, or no sanction at all, provided however, that both the initial recommendations and final order shall be a public record and shall be considered formal discipline.

Formatted: Indent: Left: 1.5", Hanging: 0.5"

Authority: T.C.A. §§ 63-1-303, 63-1-306, and 63-1-316.

1200-34-01-.13 Commissioner Suspensions of Treatment of New or Existing Patients

- (1) In cases where the Commissioner determines that the conditions of any pain management clinic are, or are likely to be, detrimental to the health, safety, or welfare of any patient, the

(Rule 1200-34-01-.10, continued)

Commissioner may suspend treatment of any new or existing patients in whole or part at the Commissioner's sole discretion, pending a prompt hearing and in accordance with the requirements and provisions set out at T.C.A. § 63-1-318. The Commissioner may also convene an advisory panel, at his discretion, to make recommendations regarding the conditions of any clinic.

- (2) The following is a non-exhaustive list of conditions which are, or are likely to be, detrimental to the health, safety, or welfare of a patient:
- (a) Where there is gross deviation or a pattern of deviation from the Chronic Pain Guidelines or Pain Clinic Guidelines promulgated by the Department;
 - (b) Where there is a pattern of negligence or a pattern of noncompliance with normal standards of care;
 - (c) Where there is dispensing of schedule II or schedule III drugs in violation of T.C.A. § 63-1-313;
 - (d) Where a provider in the clinic demonstrates active, untreated impairment or substance use disorder.

Formatted: Indent: Left: 0.5", Hanging: 0.5"

Authority: T.C.A. §§ 63-1-303 and 63-1-318.

1200-34-01-.14 Unlicensed Pain Management Clinics

- (1) When the Department has reason to believe that a health care provider's office is operating as an unlicensed pain management clinic, such health care provider shall produce satisfactory evidence to the Department that the majority of its patient population is not receiving chronic nonmalignant pain treatment to avoid establishment of a rebuttable presumption that the clinic is operating as an unlicensed pain management clinic. For purposes of this determination, patients seen within the preceding twelve (12) months will be considered in determining the percentage of patients receiving chronic non-malignant pain treatment.
- (2) Upon request from the Department the health care provider's office shall produce medical records, business records, and any information responsive to the list below, within ten (10) business days. After initial review, the Department may ask for any necessary additional information to be produced within another ten (10) business days from the Department's request for additional information. Evidence which will be required by the Department during this process may, at the discretion of the Department, include:
- (a) A complete list of every patient seen at the clinic to include a listing of all dates during the preceding twelve (12) months when that patient was seen or treated;
 - (b) A complete list of every patient seen at the clinic within the preceding twelve (12) months which delineates each patient's diagnosis as well as what was prescribed to that patient, the drug name, drug strength, number of pills to be dispensed, and number of days of intended use;
 - (c) A complete list of all the billing codes which were submitted for each patient seen by the clinic as well as copies of the bills with remittances during the preceding twelve (12) months; and
 - (d) A complete list of every clinic patient seen by the clinic during the preceding twelve (12) months who did not receive chronic non-malignant pain treatment with a description of the type of services that patient did receive.

(Rule 1200-34-01-.10, continued)

- (3) After being provided any of the patient lists above, should the Department need to review charts of any of the clinic's patients to assist in making its determination, the clinic will be notified of the names and given ten (10) business days to produce those patients' charts.
- (4) Should the health care provider's office be unable to provide satisfactory evidence, the Department shall notify the clinic of such determination in writing. The clinic shall be prohibited from admitting any new patients to the practice, and all owners and practitioners who worked at the clinic shall be subject to revocation of their licenses.
- (5) The Commissioner may issue a determination, or at the Commissioner's discretion, may convene an advisory panel to meet regarding whether the clinic was operating as an unlicensed pain management clinic and to make a recommendation to the Commissioner prior to the Commissioner's determination. The Commissioner shall not be bound by the recommendation of the advisory panel.
- (6) The Department has discretion to await the Commissioner's determination and the recommendations of the Advisory Panel before proceeding against the health care practitioners at the clinic for providing services in an unlicensed pain management clinic.

Authority: T.C.A. §§ 63-1-311, 63-1-315, and 63-1-317.

1200-34-01-.15 Financial Requirement

- (1) Licensed pain management clinics shall be required to hold as surety either bonds or liability insurance in an amount at least equal to one year's operating expense.
- (2) The bond or insurance must remain in force as long as the Medical Director's pain management clinic license is active. Upon notice of cancellation for any reason, the Medical Director shall cease operating, and shall cause all the staff to cease operating, the clinic.
- (3) Proof of such surety shall be produced to the Department upon request.

Authority: T.C.A. § 63-1-316.

1200-34-01-.16 Advertising

- (1) The vulnerability on the part of some patients concerning pain management services, and the foreseeable consequences of unrestricted advertising by pain clinics, requires that special care be taken in advertising for pain management services.
- (2) The following statements, acts, or omissions in the context of advertisements by or for any clinic shall not be permitted:
 - (a) Any communication, including the use of personal testimonials, attesting to the quality of a service or treatment offered at the clinic, or the competency of those at the clinic rendering the service or treatment, with regard to potential results of any service or treatment that is not reasonably verifiable, if that communication is in exchange for consideration of any form.
 - (b) Any communication which creates an unjustified expectation concerning the potential results of that treatment.
 - (c) Failure of the pain management clinic to include all the following in the advertisement:
 1. The licensure or certification number of the clinic as well as the official name in which the clinic is licensed;

(Rule 1200-34-01-.10, continued)

2. The name of the medical director.

- (d) Use of the name of any licensee formerly practicing at or associated with any pain management clinic after thirty (30) days from that licensee's departure, including use of the name on any signage for the office or building.
- (e) Stating or implying that a certain licensee provides, or will be providing, all services when any such services are regularly, or will be, performed by another licensee.
- (f) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.

(3) A copy of every advertisement, whether communicated through electronic or printed media, must be kept in as close to the original communication method as possible for at least two (2) years from the last date of communication and shall be submitted to the Department for review upon request.

(4) The Medical Director is responsible for all advertising content which must also be in compliance with the rules of the Tennessee Board of Medical Examiners.

Authority: T.C.A. §§ 63-1-311 and 63-1-317.

1200-34-01-.17 Infectious Disease and Building Standards

Each pain management clinic shall meet all health and safety standards necessary to protect the health and welfare of patients seeking medical assistance from the clinic.

Authority: T.C.A. §§ 63-1-311 and 63-1-317.

* 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 of the Tennessee Department of Health (board/commission/ other authority) on 08/16/2017 (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: 05/26/17 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 07/24/17 (mm/dd/yy)

Date: 8/22/17

Signature: *Mary Katherine Bratton*

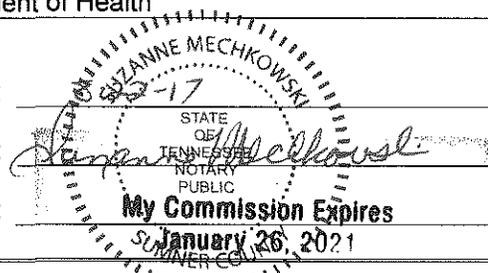
Name of Officer: Mary Katherine Bratton
Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: _____

Notary Public Signature: *Jeanne McElhouse*

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

8/25/2017
Date

Department of State Use Only

RECEIVED
 2017 AUG 28 PM 2:10
 SECRETARY OF STATE
 PUBLICATIONS

Filed with the Department of State on: 8/28/17

Effective on: 11/26/17
Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Non-Public School Approval Process

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-1-302(1)(2)(A) mandates that the State Board promulgate rules to establish standards for programs operated by private schools. Section 49-50-801(e) authorizes the State Board to approve church-related schools that voluntarily seek approval from the State Board.

EFFECTIVE DATES: November 9, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: State Board of Education rule 0520-07-02 currently establishes the requirements for six categories of non-public schools in Tennessee. In an effort to provide greater clarity and remove outdated language within the non-public school approval process rules, the Department recommends this updated language to provide clearer requirements for each nonpublic school category.

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)

These rules 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;

State Board of Education rule 0520-07-02 currently establishes the requirements for six categories of non-public schools in Tennessee. In an effort to provide greater clarity and remove outdated language within the non-public school approval process rules, the Department recommends updated language to provide clearer requirements for each nonpublic school category.

- (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. § 49-1-302(l)(2)(A) mandates that the State Board shall promulgate regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, to establish standards for programs operated by private schools.
T.C.A. § 49-50-801(e) Authorizes the State Board to approve church-related schools that voluntarily seek approval from the State Board.

- (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;

Non-Public Schools and the Non-Public School counsel. All proposed rule changes have been reviewed and approved by the Tennessee Non-Public Advisory Council.

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

Please see Tenn. Op. Atty. Gen. No. 15-58 (Tenn. A.G.), 2015 WL 4502245 attached to this filing.

- (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 impact state and local government revenues or expenditures.

- (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
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-532-3528

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

N/A

Tenn. Op. Atty. Gen. No. 15-58 (Tenn.A.G.), 2015 WL 4502245

Office of the Attorney General

State of Tennessee
Opinion No. 15-58
July 14, 2015

Uniform Grading Policy and HOPE Scholarship Eligibility

*1 The Honorable Russ Deaton
Interim Executive Director
Tennessee Student Assistance Corporation
Suite 1510, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243-0820

Question

Are private secondary schools as defined in Tennessee Code Annotated § 49-4-902(10)(B) required to use the state Uniform Grading Policy as set forth in Tenn. Code Ann. § 49-4-902(41) for purposes of establishing student eligibility for the HOPE scholarship?

Opinion

No. It appears that the Legislature intended that HOPE scholarship eligibility may be determined either through the use of the State uniform grading scale or another grading method that permits a determination of the mathematical equivalence to grades on the uniform scale.

ANALYSIS

This question arises from an apparent inconsistency between the language of Tenn. Code Ann. § 49-4-902(10)(B) and Tenn. Code Ann. § 49-4-902(41) regarding the use of grades on a 4.0 scale to determine eligibility for HOPE scholarships.

Tennessee Code Annotated § 49-4-907 addresses general eligibility requirements for HOPE scholarships as follows: To be eligible for a Tennessee HOPE scholarship as an entering freshman, a student who graduated from an *eligible high school* after December 1, 2003, upon having completed curriculum requirements of the high school for graduation, shall:

- (1) Meet the requirements of §§ 49-4-904 and 49-4-905;
- (2) Be admitted to and enroll in an eligible postsecondary institution no later than sixteen (16) months after graduation from high school; and
- (3)(A) *Achieve a final overall weighted high school grade point average of at least 3.0; or*
(B) Attain a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date.

(Emphasis added.)

Tennessee Code Annotated § 49-4-902(10) defines “eligible high school” to mean:

(A) Tennessee public secondary school,

(B) *A private secondary school that is located in this state and is approved by the state board of education as a Category 1, 2 or 3 secondary school in accordance with the applicable rules and regulations,*

(C) A secondary school operated by the United States department of defense on a military base that is located in whole or in part in this state,

(D) An out-of-state boarding school attended by a bona fide Tennessee resident that is accredited by:

(i) A regional accrediting association; or

(ii) member of the National Association of Independent Schools Commission on Accreditation; ...

(Emphasis added.)

Tenn. Code Ann. § 49-4-902(41) defines “weighted grade point average” to mean a

... grade point average on a 4.0 scale calculated with additional points awarded for advanced placement, honors or other similar courses, according to the uniform system of weighting of courses adopted by the state board of education, under § 49-1-302(a)(17); ...

*2 (Emphasis added.)

While private secondary schools are “eligible high schools” for purposes of HOPE scholarship eligibility, many private secondary schools employ a grading scale other than a 4.0 grading scale. In light of the statutory language quoted above, this leads to the question of whether graduates of private high schools that employ a different grading scale than a 4.0 scale are eligible for HOPE scholarships.

Chapter 0520-07-02 of the Rules of the State Board of Education govern the ““Non-Public School Approval Process.” These rules set forth numerous requirements and conditions that must be met by the various types of private schools¹ before they gain State approval to operate, but there is no requirement under current Tennessee statutes, rules, or regulations that private schools employ a 4.0 grading scale, or any particular grading scale.² Nevertheless, the statutes that govern eligibility for HOPE scholarships broadly encompass graduates from non-public high schools as well as home-schooled students, graduates of Tennessee high schools that are not ““eligible high schools,” and students who have obtained a GED,³ students who graduate from out-of-state schools while their parents are serving in the military,⁴ students who graduate from high school in a foreign nation while their parents are serving as religious workers,⁵ and other “non-traditional” students.⁶

Additionally, the General Assembly has established that gifted students in public or private high schools are eligible to enroll in college credit courses and receive college credit if they have “a grade point average equivalent to three point two (3.2) on a four point zero (4.0) maximum basis[.]” Tenn. Code Ann. § 49-6-3111(a) (emphasis added). This language recognizes that (1) there may be differences in grading systems employed by public and private high schools, and (2) grades can be mathematically converted to their equivalents on a 4.0 scale.

When interpreting statutes, the role of the interpreting court is “to ascertain and give effect to the legislative intent.” *Sharp v. Richardson*, 937 S.W.2d 846, 850 (Tenn. 1996). In construing statutes relating to the same subject matter, a court has a duty to avoid a construction that will place statutes in conflict and to resolve such conflicts, whenever possible, so as to provide a harmonious interpretation of the laws. *Id.* In the absence of ambiguity, legislative intent is derived from the face of a statute, and the interpreting court should not depart from the “natural and ordinary” meaning of the statute’s language. *Hawkins v. Case Management Incorporated*, 165 S.W.3d 296, 300 (Tenn. 2004). Statutes relating to the same subject should be interpreted *in pari materia*, i.e., construed together and in such a way that they are in harmony rather than in conflict. See *Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995); *Wilson v. Johnson Cnty.*, 879 S.W.2d 807, 809 (Tenn. 1994).

*3 Applying these principles of statutory construction, it appears that the General Assembly, in defining such a broad spectrum of students eligible for HOPE scholarships, did not intend that Tennessee private school students be rendered ineligible based upon their schools’ use of grading scales other than the 4.0 scale. For example, in extending eligibility to students who are Tennessee citizens but are not graduates from “eligible high schools,” the General Assembly did not base the criteria on the school’s use of a uniform grading scale but rather on its operation by the United States government or its accreditation by a recognized accrediting association, both regional and foreign.⁷ The approved regional accrediting associations do not include use of a uniform 4.0 grading scale as a criterion in their standards of accreditation.⁸ By extending eligibility to schools recognized by accrediting associations, uniformity in academic standards can be obtained without rendering students ineligible simply because the institution they attend uses a system of grading other than a 4.0 scale.

Of the four types of eligible high schools, only Tennessee public secondary schools are certain to employ the uniform grading system as set forth in Tenn. Code Ann. §§ 49-1-302(a)(17) and 49-6-407. But HOPE scholarships are available to students from a wide variety of non-eligible high schools, and there is no requirement that Tennessee private schools use the uniform grading system in order for their students to be eligible for HOPE scholarships. Moreover, weighted grade point averages under Tenn. Code Ann. § 49-4-902(41) may be obtained by determining the mathematical equivalence of grades from another system to those on the uniform scale. Thus, it appears that the General Assembly did not intend for Tennessee private school students to be rendered ineligible for HOPE scholarships based upon their schools’ use of grading scales other than the 4.0 scale; rather the General Assembly intended that HOPE scholarship eligibility may be determined either through the use of the State uniform grading scale or another grading method that permits a determination of the mathematical equivalence to grades on the uniform scale.

Herbert H. Slatery III
Attorney General and Reporter
Andrée Sophia Blumstein
Solicitor General
Kevin Steiling
Deputy Attorney General

Footnotes

1 The six categories of non-public schools are: I - schools approved individually by the State Department of Education; II - schools that belong to an agency whose accreditation process is approved by the State Board of Education; III - schools which are regionally accredited; IV - schools which are “church related” and exempt from regulations according to Tenn. Code Ann. § 49-50-801; V - all other schools, except home schools; and VI - international schools affiliated with a Tennessee public university acting as an agency whose accreditation process is approved by the State Board of Education. Tenn. Comp. R & Regs. 0520-07-02-.01

- 2 Tenn. Code Ann. § 49-1-302(a)(17) provides that a uniform grading system should be adopted and implemented by all
Tennessee public schools. There is no such requirement applicable to private schools, however.
- 3 Tenn. Code Ann. §§ 49-4-905(b), 908.
- 4 Tenn. Code Ann. §§ 49-4-926, 928.
- 5 Tenn. Code Ann. § 49-4-934.
- 6 Tenn. Code Ann. § 49-4-931. *See also* Tenn. Code Ann. §§ 49-4-935; 942.
- 7 Tenn. Code Ann. §§ 49-4-926, 934; *see also* Tenn. Comp. R. & Reg. 1640-01-19-.05(5)-(6) (2010).
- 8 Tenn. Code Ann. § 49-4-902(29). *See, e.g.*, New England Assoc. of Schools and Colleges, Standards & Indicators (Feb. 2014),
<https://cis.neasc.org/standards-policies/standards-indicators>; Middle States Assoc. of Colleges and Schools, Standards of
Accreditation (2014), [http://www.msa-cess.org/Customized/Uploads/ByDate/2015/April_2015/April_23rd_2015/Standards
%20for%20Accreditation%20for%20Schools%20\(#2014\)69218.pdf](http://www.msa-cess.org/Customized/Uploads/ByDate/2015/April_2015/April_23rd_2015/Standards%20for%20Accreditation%20for%20Schools%20(#2014)69218.pdf).

Tenn. Op. Atty. Gen. No. 15-58 (Tenn.A.G.), 2015 WL 4502245

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 08-09-17
Rule ID(s): 6584
File Date: 8/11/17
Effective Date: 11/9/17

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 1 st floor
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

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
0520-07-02	Non-Public School Approval Process
Rule Number	Rule Title
0520-07-02-.01	Categories
0520-07-02-.02	Category I: Department of Education Approval
0520-07-02-.03	Category II: Agency Accreditation
0520-07-02-.04	Category III: Regional Accreditation
0520-07-02-.05	Category IV: Exempted Schools
0520-07-02-.06	Category V: Acknowledged for Operation

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-07-02
NON-PUBLIC SCHOOL APPROVAL PROCESS

TABLE OF CONTENTS

0520-07-02-.01	Categories	0520-07-02-.05 Category IV: Exempted Schools	0520-07-02-.04 Category III: Regional Accreditation
0520-07-02-.02	Category I: State Department of Education Approval	0520-07-02-.06 Category V: Acknowledged for Operation	0520-07-02-.05 Category IV: Exempted Schools
0520-07-02-.03	Category II: Agency Approval	0520-07-02-.07 Repealed	0520-07-02-.06 Category V: Acknowledged for Operation
0520-07-02-.04	Category III: Regional Accreditation	0520-07-02-.08 Repealed	0520-07-02-.08 Repealed

Formatted Table

Formatted: Font: 8 pt

Formatted: Font: 8 pt

Formatted: Indent Left: 0", First line: 0"

0520-07-02-.01 CATEGORIES.

- (1) There shall be five (5) categories of non-public schools in Tennessee.
 - (a) Category I schools are those approved individually by the State Department of Education. Special purpose classes ~~programs~~ which address a student's education while receiving short term medical or transient care may also be approved as Category I schools.
 - (b) Category II schools are those which belong ~~to are~~ accredited by an agency whose accreditation process is approved by the State Board of Education.
 - (c) Category III schools are those which are regionally accredited.
 - (d) Category IV schools are those schools which are "church related" and exempt from regulations according to T.C.A. § 49-50-801.
 - (e) Category V schools ~~include all other schools, except home schools, as defined in T.C.A. § 49-6-3050~~ are acknowledged for operation by the Tennessee Department of Education.

Authority: T.C.A. §§ 49-1-201 and 49-1-302. **Administrative History:** (For history prior to June 1987, see pages ii-iii). New rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed December 19, 2002; to be effective April 30, 2003; however, on April 29, 2003, the State Board of Education stayed amendment to 0520-07-02-.01(1)(f) until June 28, 2003. Amendment to become effective June 28, 2003. Repeal and new rule filed December 28, 2005; effective April 28, 2006. Amendment filed February 20, 2008; effective June 27, 2008. Repeal and new rule filed July 29, 2011; effective December 29, 2011.

0520-07-02-.02 CATEGORY I: STATE-DEPARTMENT OF EDUCATION APPROVAL.

- (1) A school seeking Category I status may receive State approval by direct application to the State Department of Education. The criteria and procedures used in the evaluation of such schools are the same as for the public schools, and include the following:
 - (a) Each school shall comply with the requirements of T.C.A. § 49-6-3007 regarding the reporting of the names, ages, and addresses of all pupils in attendance to the ~~superintendent-director of schools, or~~ the public school system in which the student resides.

(Rule 0520-07-02-.02, continued)

- (b) ~~Each school shall comply with all rules, regulations and codes of the city, county, and state regarding planning, construction, maintenance, and operation of the school. Each school shall comply with all laws, rules and regulations, and codes of the city, county, and state regarding planning of new buildings, alterations and health and safety.~~
- (c) Each school shall observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal's Office.
- (d) ~~Each school shall comply ensure students entering kindergarten have reached five (5) years of age on or before August 15 pursuant to T.C.A. § 49-6-201(b)(3), with the requirements of T.C.A. §§ 49-6-104(a) and 49-6-201(b)(3) regarding the age requirements for students entering kindergarten and pre-kindergarten.~~
- (2) ~~Classes Programs~~ which address a student's education while receiving short term medical or transient care may be approved as ~~Special Purpose~~ Category I Special Purpose schools. The criteria and procedures used in the evaluation of such classes are the same as for the public schools and other schools recognized as Category I schools including, but not limited to:
 - (a) Teaching experience shall count towards years of experience on the Personnel Information Reporting System.
 - (b) ~~Teachers~~ shall be evaluated. Each school shall develop procedures for evaluation of all teaching personnel.
 - (c) All teachers ~~must~~ shall be licensed by the Tennessee Department of Education. At least ~~one~~ one (1) teacher shall have an endorsement licensed in special education and shall ~~must~~ be made available to provide services for eligible students.
 - (d) Schools shall report attendance to the school where the student is officially enrolled where applicable.
 - (e) Schools shall order and administer state achievement and End-of-Course assessments to current students to help them stay on track for graduation.
 - (f) ~~Special Purpose~~ Category I Special Purpose schools shall be deemed appropriate training schools for those seeking specialized student teaching placements.
- (3) Category I schools seeking approval of a pre-k program shall satisfy the standards for infant/toddler, preschool and school-age extended care programs outlined in Rule 0520-12-01.

Authority: T.C.A. §§ 49-1-201, 49-1-302, 49-6-101, 49-6-3001 and 49-50-801. **Administrative History:** (For history prior to June 1987, see pages ii-iii).-- New rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992.-- Amendment filed October 29, 2008; effective February 28, 2009.-- Repeal and new rule filed July 29, 2011; effective December 29, 2011. Amendment filed March 24, 2014; effective August 29, 2014.

0520-07-02-.03 CATEGORY II: AGENCY APPROVAL ACCREDITATION.

- (1) The State Board of Education may approve the school approval accreditation procedures of non-public school accrediting agencies.
- (2) Schools holding full accreditation status with an approved agency are approved by the State Department of Education.

(Rule 0520-07-02-.03, continued)

- (3) Home schools which may affiliate with an approved agency are not approvable under this category.
- (4) Procedures for Application as an Approved Non-Public School Accrediting Agency.
 - (a) An agency seeking approval shall apply to the State Department of Education and shall supply relevant information needed by the Department.
 - (b) The State Department of Education shall review the application of the agency with respect to the criteria for approval and recommend to the State Board of Education that the application be approved or denied. The applicant agency may address the State Board of Education at the time its application is being considered.
- (5) Period of Approval.
 - (a) The period of approval for a recognized agency shall be five (5) years.
 - (b) An agency which fails to meet the minimum standards for agency approval will have its approval revoked.
- (6) Criteria for Approval of a Non-Public School Accrediting Agency.
 - (a) Scope of Operation of Agency. The agency shall:
 1. Have a clearly written statement of its objectives;
 2. Delineate the process by which it approves accredits schools; and
 3. Have at least five (5) member schools, each with at least ten (10) full-time students.
 - (b) Organization of Agency. The agency shall:
 1. Specify qualifications for professional personnel for the agency; and
 2. Employ at least one (1) full time director of schools or superintendent; and
 3. ~~Be permitted to regulate schools which are not fully approved.~~
 - (c) Agency responsibilities. The agency shall:
 1. Maintain written descriptions of the requirements for school accreditation, and of the levels or types of membership granted;
 2. Re-evaluate approved schools annually;
 3. Give advance publication of proposed changes in approval-accreditation standards to schools. These changes must be approved in advance by the State Department of Education;
 4. Advise schools or directly provide them with technical assistance to address deficiencies;
 5. Publish approval-accreditation policies and lists of approved-accredited schools;

(Rule 0520-07-02-.03, continued)

6. Require schools to report on deficiencies which could affect approval ~~accredited~~ status;
7. Have procedures for revocation of approval ~~accreditation~~;
8. Provide a list of all courses taught and the grade levels at which they are taught at each school;
9. Publish and follow minimum standards using the following criteria (or, the agency may use the standards as set forth in the ~~Rules, Regulations and Minimum Standards for the Governance of Public Schools in the State of Tennessee State Board's Minimum Requirements for the Approval of Public Schools Rule~~):
 - (i) Curriculum and Graduation.
 - (I) ~~The program~~The program shall include, ~~(but not be limited to),~~ the areas of reading, composition, ~~speech~~language arts, mathematics, social studies, science, art, music, health and physical education.
 - (II) Each school shall use print and non-print materials, including textbooks, which are adequate to meet the needs of the instructional program. ~~See Chapter 0520-01-03.~~
 - (III) Each student shall meet the same ~~minimum requirements for graduation set by the State Board of Education in as students in public schools. The specific requirements are listed in Chapter 0520-01-03.~~
 - (ii) In-service.

Each school shall have a minimum of five (5) days for in-service education per school year.
 - (iii) Teacher Licensure and Evaluation.
 - (I) Each agency shall submit its procedures for licensing teachers. If the agency does not use the Tennessee State Department of Education licensure system, it must use a comparable system based upon educational training.
 - (II) Each teacher or principal shall hold a valid teacher license or permit as defined by the agency covering the work assignment.
 - (III) Each agency shall develop procedures for evaluation of all professional school personnel.
 - (iv) Facilities.
 - (I) ~~Each school shall comply with rules, regulations, and codes of the city, county, and state regarding planning of new buildings, alterations, and safety. Each school shall comply with all laws, rules and regulations, and codes of the city, county, and state regarding planning of new buildings, alterations, and health and safety.~~

(Rule 0520-07-02-.03, continued)

- (II) Each school shall observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal's Office.
- (III) Each school shall have classrooms, laboratories, and libraries which are sufficient in number, adequate in space, and so constructed and arranged as to be conducive to carrying on the assigned activities. Playgrounds and physical education facilities shall be well maintained, free from hazards, and large enough to permit an adequate program of physical education.
- (v) Administrative Rules.
 - (I) Each school shall maintain an operating schedule that includes the minimum number of instructional days and hours required of public schools. See Chapter 0520-01-03.
 - (II) Each school which ~~that~~ provides services to students ~~certified as eligible students with disabilities~~ shall meet all standards of the State Board of Education, Special Education Programs and Services (Rule 0520-01-03-.09).
 - (III) Each school shall develop and implement a written policy on promotion and retention. The written policy shall be communicated to students and parents.
 - (IV) The maximum enrollments for an individual class shall be specified, shall not be subject to waiver, and shall not exceed the following:
 - I. Kindergarten through grade ~~three (3)~~: twenty-five (25) students
 - II. Grade ~~four (4)~~: twenty-eight (28) students
 - III. Grades ~~five (5)~~ through ~~six (6)~~: thirty (30) students
 - IV. Grades ~~seven (7)~~ through ~~twelve (12)~~: thirty-five (35) students
 - V. Vocational education, grades ~~seven (7)~~ through ~~twelve (12)~~: twenty-eight (28) students; the average daily membership for any full-time vocational teacher shall not exceed twenty-three (23) students.
 - (V) Each school shall maintain complete and accurate permanent records: A cumulative record for each student for all work through high school is required.
 - (VI) Each school shall evaluate records and report the needs and progress of its pupils.
 - (VII) Each school shall provide a sufficient number of appropriately qualified administrators, librarians, and guidance counselors for the student body served.
 - (VIII) Each principal or headmaster shall comply with the requirement of T.C.A. § 49-6-5001 that each child enrolled in school be vaccinated against disease.

Formatted: Not Highlight

Formatted: Not Highlight

(Rule 0520-07-02-.03, continued)

(IX) Each principal or headmaster shall comply with the requirements of T.C.A. § 49-6-3007 regarding reporting the names, ages, and addresses of all pupils in attendance to the superintendent director of schools of the public school system in which the student resides.

(X) ~~Each school shall ensure students entering kindergarten have reached five (5) years of age on or before August 15 pursuant to T.C.A. § 49-6-201(b)(3). Each school shall comply with the requirements of T.C.A. §§ 49-6-104(a) and 49-6-201(b)(3) regarding the age requirements for students entering kindergarten and pre-kindergarten.~~

(vi) Testing Program.

(i) ~~At least once every school year, each school shall give a nationally standardized achievement test covering the areas of reading, language arts, spelling, math, science, and social science studies to each pupil in third (3rd) through twelfth (12th) grade; the results must be communicated to teachers and parents and kept on file at the school for one (1) calendar year.~~

Formatted: Indent: Left: 1.5", Hanging: 0.75"

Authority: T.C.A. §§ 49-1-201, 49-1-302 and 49-50-801. **Administrative History:** (For history prior to June 1987, see pages ii-iii). New rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed October 29, 2008; effective February 28, 2009. Amendment filed March 24, 2014; effective August 29, 2014.

0520-07-02-.04 CATEGORY III: REGIONAL ACCREDITATION.

(1) Schools in this category are 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), any accrediting association recognized by the National Association of Independent Schools (NAIS) Commission on Accreditation (e.g., the Southern Association of Independent Schools (SAIS)) or the National Council for Private School Accreditation (NCPSA) according to the procedures and criteria established by the association.

(2) Each Category III school shall:

(a) Comply with the requirement of T.C.A. § 49-6-3007 that the names, ages, and addresses of all pupils in attendance be reported to the superintendent director of the public school system in which the student resides; and

(b) ~~Ensure students entering kindergarten have reached five (5) years of age on or before August 15 pursuant to T.C.A. § 49-6-201(b)(3). Comply with the requirements of T.C.A. §§ 49-6-104(a) and 49-6-201(b)(3) regarding the age requirements for students entering kindergarten and pre-kindergarten.~~

Formatted: Font color: Auto

Authority: T.C.A. §§ 49-1-201, 49-1-302 and 49-50-801. **Administrative History:** (For history prior to June 1987, see pages ii-iii). New rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Repeal and new rule filed February 20, 2008; effective

Formatted: Font color: Auto

(Rule 0520-07-02-.03, continued)

June 27, 2008.- Amendment filed March 25, 2010; effective August 29, 2010.- Amendment filed October 23, 2013; effective March 31, 2014.

0520-07-02-.05 CATEGORY IV: EXEMPTED SCHOOLS.

Formatted: Heading 2,Rule Title

- (1) Schools in this category are exempt from regulations regarding faculty, textbooks, and curriculum. T.C.A. § 49-50-801 defines a church related school as "a school operated by denominational, parochial or other bona fide church organizations, which are required to meet the standards of accreditation or membership of the Tennessee Association of Christian Schools, the Association of Christian Schools International, the Tennessee Association of Independent Schools, the Southern Association of Colleges and Schools, the Tennessee Association of Non-Public Academic Schools, the Tennessee Association of Church Related Schools, Tennessee Alliance of Church Related Schools or a school affiliated with Accelerated Christian Education, Inc."
- (2) Each school shall:
 - (a) Comply with all laws, rules and regulations, and codes of the city, county, and state regarding planning of new buildings, alterations, and health and safety.
 - (b) ~~Comply with all rules and regulations of the Tennessee Department of Health and Environment regarding construction, maintenance, and operation of the school plant.~~
 - (be) Observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal's Office.
 - (cd) Comply with the requirements of T.C.A. § 49-6-5001 that each child enrolled in school be vaccinated against disease.
 - (de) Comply with the requirement of T.C.A. § 49-6-3007 that the names, ages, and addresses of all pupils in attendance be reported to the superintendent-director of the public school system in which the student resides.
 - (ef) Ensure students entering kindergarten have reached five (5) years of age on or before August 15 pursuant to T.C.A. § 49-6-201(b)(3). Comply with the requirements of T.C.A. §§ 49-6-104(a) and 49-6-201(b)(3) regarding the age requirements for students entering kindergarten and pre-kindergarten.

Formatted: Font color: Auto

Authority: T.C.A. §§ 49-1-201, 49-1-302 and 49-50-801.- **Administrative History:** (For history prior to June 1987, see pages ii-iii).- New rule filed April 24, 1987; effective June 8, 1987.- Repealed and new rule filed March 16, 1992; effective June 29, 1992.- Amendment filed February 20, 2008; effective June 27, 2008.- Amendment filed October 29, 2008; effective February 28, 2009.- Amendment filed March 25, 2010; effective August 29, 2010.- Amendment filed March 24, 2014; effective August 29, 2014.

0520-07-02-.06 CATEGORY V: ACKNOWLEDGED FOR OPERATION.

- (1) Schools in this category are acknowledged for operation. Schools in this category shall not include home schools.
- (2) Each school seeking acknowledgement for operation shall furnish to the State-Department of Education the following information by October 1st of each year:
 - (a) Name, mailing address, and telephone number of the school;
 - (b) Name and academic credentials of the principal or headmaster of the school;

(Rule 0520-07-02-.07, continued)

- (c) Number of students in each grade level as of October 1 of current school year;
 - (d) Name and academic credentials of each teacher and the subjects taught by that teacher; and
 - (e) Certification that the school year provides an operating schedule that includes the minimum number of instructional days and hours as required of public schools. See ~~Chapter 0520-01-03.~~
- (3) Each school shall keep on file the curriculum offered and shall make copies available for inspection by the State Department of Education and the public upon request.
 - (4) Each school shall have facilities and fixed equipment which conform to the safety and health requirements of city, county, or state agencies.
 - (5) Each school shall comply with all of the laws, rules and regulations, and codes of the city, county, and state regarding planning of new buildings, alterations, and health and safety.
 - ~~(6) Each school shall comply with all rules and regulations of the Tennessee Department of Health regarding construction, maintenance and operation of the school plant.~~
 - (67) Each school shall observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal's Office.
 - (78) Each school shall comply with the requirement of T.C.A. § 49-6-5001 that each child in school be vaccinated against disease.
 - (89) Each school shall comply with the requirement of T.C.A. § 49-6-3007 that the names, ages, and addresses of all pupils in attendance be reported to the director of schools for the public school system in which the student resides.
 - (910) Each teacher shall possess at least a baccalaureate degree.
 - (101) ~~Each school shall administer a nationally standardized achievement test covering the basic academic areas to each pupil in third (3rd) through twelfth (12th) grade. Results of the test shall be used to improve the instruction of the students.~~
 - (112) ~~Each school shall ensure students entering kindergarten have reached five (5) years of age on or before August 15 pursuant to T.C.A. § 49-6-201(b)(3). Each school shall comply with the requirements of T.C.A. §§ 49-6-104(a) and 49-6-201(b)(3) regarding the age requirements for students entering kindergarten and pre-kindergarten.~~

Authority: T.C.A. §§ 49-1-201, 49-1-302 and 49-50-801.- **Administrative History:** (For history prior to June 1987, see pages ii-iii). New rule filed April 24, 1987; effective June 8, 1987.- Repealed and new rule filed March 16, 1992; effective June 29, 1992.- Amendment filed October 29, 2008; effective February 28, 2009.- Amendment filed March 24, 2014; effective August 29, 2014.

0520-07-02-.07 REPEALED.

Authority: T.C.A. §§ 49-1-302 and 49-6-3001.- **Administrative History:** Original rule filed December 19, 2002; to be effective April 30, 2003; however, on April 29, 2003, the State Board of Education stayed rule 0520-07-02-.07 until June 28, 2003.- Original rule to become effective June 28, 2003.

0520-07-02-.08 REPEALED.

Authority: T.C.A. §§ 49-1-201, 49-1-302, 49-6-101, 49-6-3001 and 49-50-801.- **Administrative History:** Original rule filed December 28, 2005; effective April 28, 2006.- Amendment filed October 29, 2008; effective February 28, 2009.- Repeal filed July 29, 2011; effective December 29, 2011.

* 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				
Johnson	X				
Kim	X				
Rolston	X				
Tucker	X				
Troutt	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 (board/commission/other authority) on 01/27/2017 (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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: July 19, 2017

Signature: [Handwritten Signature]

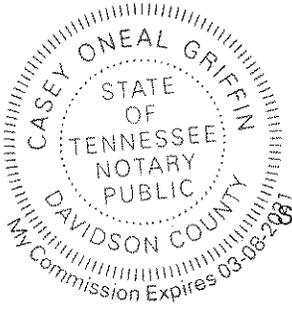
Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 7/19/17

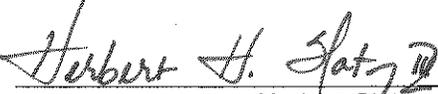
Notary Public Signature: [Handwritten Signature]

My commission expires on: 3-8-21



State Board of Education Rules
Chapter 0520-07-02 – Non-Public School Approval Process
Rules 0520-07-02-.01 through .06

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 Slatery, III
Attorney General and Reporter
8/9/2017

Date

Department of State Use Only

Filed with the Department of State on: 8/11/17

Effective on: 11/9/17

See Attached

Tre Hargett
Secretary of State

RECEIVED
2017 AUG 11 AM 11:10
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Special Education Program and Services

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-10-101

EFFECTIVE DATES: November 9, 2017 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The last overall review of disability category definitions, guidelines, and standards was conducted in 2008. A current review was requested by the Tennessee Department of Education Special Populations Division to address updates related to disability disorders and assessment practices that have occurred in the past eight years. Pursuant to Tennessee Rules & Regulations, Chapter 0520-01 -09-.11, Rules for Special Education Programs and Services, a task force was developed to address disability categories. The multidisciplinary state-wide task force consisted of special education supervisors, school psychologists, and speech and language pathologists as well as representatives of parents/advocates, vision specialists, hearing specialists, preschool specialists, gifted specialists, and the Tennessee Department of Education. The task force met and reviewed comments, identified themes from the comments, discussed concerns, and made additional revisions. Proposed changes were reviewed with the Students with Disability Advisory Council, and they approved moving forward with revisions.

The following list is a summary of the changes made:

- Autism: Evaluation procedural changes related to communication assessments, sensory, and adaptive behaviors for clarity of needed components. Evaluation participant changes were made to adjust who is required and who are additional participants as needed. Speech

Language Teachers were removed as they are not licensed to evaluate.

- Developmental Delay: Evaluation participant changes to generalize needed educational professionals rather than separate out early childhood specialists based on age bands.

- Emotional Disturbance: Rewording of language to mirror federal regulations (Change from January 2017 final read item).

- Intellectually Gifted: Evaluation procedure changes related to the cognitive assessment including additional considerations when assessing underrepresented youth and consideration of the standard error of measurement at the 90th percent confidence interval. Revisions to the assessment matrix (referenced in the standards) to include standard changes and updated testing materials.

- Orthopedic Impairment: Evaluation procedure revisions made to the example lists of adaptive behaviors measured.

- Other Health Impairment: Evaluation procedure revisions move an assessment area (social emotional development) into the list of informal/formal assessments for clarity.

- Specific Learning Disability: Evaluation procedure reworded for clarity only in regards to observational data to reduce chances of misinterpretation.

- Speech or Language Impairment: Evaluation procedure revisions to include clarification of language evaluation components and articulation evaluation components. Evaluation participants revised to remove Speech Language Teachers as they are not licensed to evaluate.

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.

Please see attached document



TENNESSEE
STATE BOARD OF EDUCATION

RESPONSES TO COMMENTS AT RULEMAKING HEARING

The Tennessee State Board of Education held a public rulemaking hearing on Rule 0520-01-09 of the Tennessee State Board of Education, Special Education Programs and Services. The hearing was held on September 23, 2016, at 10 a.m. CDT at the Andrew Johnson Tower – 1st Floor Multipurpose Room, 710 James Robertson Parkway, Nashville, Tennessee 37243. The changes to the rule were proposed by the staff of the Special Populations division of the Tennessee Department of Education (TDOE).

Public comment on the materials approved through first reading were obtained through the public hearing in addition to received written comments. The comments regarding the rule centered on the definition of emotionally disturbed.¹ This concern primarily centered on the effect the changes would have on disadvantaged, minority, and/or underserved students.

In response to the comments, which urged the State Board to replicate the definition of emotionally disturbed contained in the federal regulations under the Individual with Disabilities in Education, representatives from the TDOE responded that the comments and suggestions would be presented to the task force for consideration.

The task force considered the recommendations, met and reviewed comments, identified themes from the comments, discussed concerns, and made additional revisions. In addition, staff of the TDOE and State Board met to discuss further changes and clarifications. Proposed changes were reviewed with the Students with Disability Advisory Council and they approved moving forward with revisions. The final version of the rule incorporates the mirrors that definition of emotionally disturbed from the federal regulations.

¹ There was also a lot of concern expressed regarding raising the eligibility of gifted students to receive services under an Individualized Education Plan (IEP) due to the effect the changes would have on disadvantaged, minority, and/or underserved students. However, this is covered in the standards and is not a part of this rule filling.

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)

Not applicable

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 last overall review of disability category definitions, guidelines, and standards was conducted in 2008. A current review was requested by the TN Department of Education Special Populations Division to address updates related to disability disorders and assessment practices that have occurred in the past eight years. Pursuant to Tennessee Rules & Regulations, Chapter 0520-01-09-.11, Rules for Special Education Programs and Services, a task force was developed to address disability categories.

The multidisciplinary state-wide task force consisted of special education supervisors, school psychologists, and speech and language pathologists as well as representatives of parents/advocates, vision specialists, hearing specialists, preschool specialists, gifted specialists, and the Tennessee Department of Education. The task force met and reviewed comments, identified themes from the comments, discussed concerns, and made additional revisions. Proposed changes were reviewed with the Students with Disability Advisory Council, and they approved moving forward with revisions.

The following list is a summary of the changes made :

- **Autism:** Evaluation procedural changes related to communication assessments, sensory, and adaptive behaviors for clarity of needed components. Evaluation participant changes were made to adjust who is required and who are additional participants as needed. Speech Language Teachers were removed as they are not licensed to evaluate.
- **Developmental Delay:** Evaluation participant changes to generalize needed educational professionals rather than separate out early childhood specialists based on age bands.
- **Emotional Disturbance:** Rewording of language to mirror federal regulations (Change from January 2017 final read item).
- **Intellectually Gifted:** Evaluation procedure changes related to the cognitive assessment including additional considerations when assessing underrepresented youth and consideration of the standard error of measurement at the 90th percent confidence interval. Revisions to the assessment matrix (referenced in the standards) to include standard changes and updated testing materials.
- **Orthopedic Impairment:** Evaluation procedure revisions made to the example lists of adaptive behaviors measured.
- **Other Health Impairment:** Evaluation procedure revisions move an assessment area (social emotional development) into the list of informal/formal assessments for clarity.
- **Specific Learning Disability:** Evaluation procedure reworded for clarity only in regards to observational data to reduce chances of misinterpretation.
- **Speech or Language Impairment:** Evaluation procedure revisions to include clarification of language evaluation components and articulation evaluation components. Evaluation participants revised to remove Speech Language Teacher as they are not licensed to evaluate.

- (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. § 49-10-101 provides that the state board shall adopt rules and regulations to implement the state's special education program.

- (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;

Disabled students, their parents, and their educators are most directly affected by this rule. They were able to voice their concerns via oral and written comments urging adoption of the rule according to their comments. (See response to comments document attached hereto)
Students with Disability Advisory Council reviewed the changes and urges adoption.
The Tennessee Department of Education urges adoption of this rule.
The Tennessee State Board of Education urges 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;

N/A

- (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 impact state and local government revenues or expenditures.

- (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

1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-532-3528

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

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

N/A

**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: 08-08-17
Rule ID(s): 6583
File Date: 8/11/17
Effective Date: 11/9/17

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 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
0520-01-09	Special Education Program and Services
Rule Number	Rule Title
0520-01-09-.01	General Regulation. Adoption by Reference
0520-01-09-.02	Definitions
0520-01-09-.03	Consent
0520-01-09-.05	Free appropriate public education
0520-01-09-.06	Child find.
0520-01-09-.09	Local Education Agency Eligibility
0520-01-09-.12	Definition of IEP
0520-01-09-.15	Parent participation
0520-01-09-.16	Prior notice by local education agency

0520-01-09-.18	Impartial due process hearing
0520-01-09-.20	Surrogate parents
0520-01-09-.22	Amendment of records at parent's request
0520-01-09-.23	Isolation and Restraint for Students Receiving Special Education Services

AMENDMENT

Chapter 0520-01-09, Special Education Programs and Services, is amended by changing the language in section .01 to reflect the proper website, updating and clarifying the disability definitions in section .02, abbreviating "Local Education Agency" in sections .03, .05, .06, .09, .15, .16, .18, .20, .22 and .23, clarifying the eligibility requirements in .09, clarifying eligible student in .12, adding guardian notification and clarifying change in educational placement in .20, and adding guardian and surrogate parent to notice provision, clarifying isolation and reporting requirements in .23, so that, as amended, it shall read:

RULES OF STATE BOARD OF EDUCATION

CHAPTER 0520-01-09 SPECIAL EDUCATION PROGRAMS AND SERVICES

TABLE OF CONTENTS

0520-01-09-.01	General Regulations. Adoption by reference	0520-01-09-.13	When IEPs must be in effect.
0520-01-09-.02	Definitions.	0520-01-09-.14	Review and revision of the IEP
0520-01-09-.03	Consent.	0520-01-09-.15	Parent participation.
0520-01-09-.04	Parent.	0520-01-09-.16	Prior notice by local education agency.
0520-01-09-.05	Free appropriate public education.	0520-01-09-.17	Mediation.
0520-01-09-.06	Child find.	0520-01-09-.18	Impartial due process hearing.
0520-01-09-.07	Placements.	0520-01-09-.19	Civil action.
0520-01-09-.08	State advisory panel.	0520-01-09-.20	Surrogate parents.
0520-01-09-.09	Local education agency eligibility.	0520-01-09-.21	Transfer of parental rights at age of majority
0520-01-09-.10	Repealed.	0520-01-09-.22	Amendment of records at parent's request
0520-01-09-.11	Evaluation procedures.	0520-01-09-.23	Isolation and Restraint for Students Receiving Special Education Services
0520-01-09-.12	Definition of IEP.		

0520-01-09-.01 GENERAL REGULATIONS. ADOPTION BY REFERENCE.

The State Board of Education adopts by reference the Compilation of Federal Regulations at 34 C.F.R. Parts 300 and 301 in their entirety unless otherwise provided herein as the policies and procedures for administration of special education programs and services in the State. The regulations, evaluation procedures, and eligibility criteria are available from the Division of Special Education, Tennessee Department of Education, 710 James Robertson Parkway, Nashville, TN 37243, or on the internet by accessing the State Department of Education's website at <http://www.tn.gov/education/topic/special-education>.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 10, 1974. Amendment filed October 3, 1974; effective November 2, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 15, 1976; effective April 15, 1976. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30,

**RULES OF
STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-09
SPECIAL EDUCATION PROGRAMS AND
SERVICES**

TABLE OF CONTENTS

0520-01-09-.01	General Regulations. Adoption by reference	0520-01-09-.13	When IEPs must be in effect.
0520-01-09-.02	Definitions.	0520-01-09-.14	Review and revision of the IEP
0520-01-09-.03	Consent.	0520-01-09-.15	Parent participation.
0520-01-09-.04	Parent.	0520-01-09-.16	Prior notice by local education agency.
0520-01-09-.05	Free appropriate public education.	0520-01-09-.17	Mediation.
0520-01-09-.06	Child find.	0520-01-09-.18	Impartial due process hearing.
0520-01-09-.07	Placements.	0520-01-09-.19	Civil action.
0520-01-09-.08	State advisory panel.	0520-01-09-.20	Surrogate parents.
0520-01-09-.09	Local education agency eligibility.	0520-01-09-.21	Transfer of parental rights at age of majority
0520-01-09-.10	Repealed.	0520-01-09-.22	Amendment of records at parent's request
0520-01-09-.11	Evaluation procedures.	0520-01-09-.23	Isolation and Restraint for Students
0520-01-09-.12	Definition of IEP.		Receiving Special Education Services

0520-01-09-.01 GENERAL REGULATIONS. ADOPTION BY REFERENCE.

The State Board of Education adopts by reference the Compilation of Federal Regulations at 34 C.F.R. Parts 300 and 301 in their entirety unless otherwise provided herein as the policies and procedures for administration of special education programs and services in the state State.—The regulations, evaluation procedures, and eligibility criteria are available from the Division of Special Education, Tennessee Department of Education, 710 James Robertson Parkway, Nashville, TN 37243, or on the internet by accessing the state State department Department of education's Education's website at <http://www.tn.gov/education/topic/special-education> www.state.tn.us/education/speced/.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 10, 1974. Amendment filed October 3, 1974; effective November 2, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 15, 1976; effective April 15, 1976. Amendment filed July 15, 1976; effective August 16, 1976. —Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. —Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed May 12, 1985; effective August 13, 1985. —Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repealed and new rule filed August 18, 1993; effective December 29, 1993. Amendment filed June 21, 1995; effective October 27, 1995. Amendment filed August 7, 1995; effective December 29, 1995. Rule 0520-01-03-.09 removed and new Chapter 0520-01-09 filed per Tennessee State Board of Education letter dated and effective April 29, 1999. Amendment filed June 19, 2001; effective September 2, 2001. Amendment filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.02 DEFINITIONS.

(1) "Charter school" means a public charter school as defined at Tenn. Code Ann. T.C.A. § 49-13-104(6).

(2) "Child with a Disability" means,

(a) ~~children~~ Children with disabilities and youth between three (3) and twenty-one (21) years of age, inclusive who have been evaluated in accordance with 34 C.F.R §§300.304 through 300.311, TCA § 49-10-102 and regulations of the sState bBoard of eEducation, and found to have intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, multiple disabilities, deaf blindness, developmental delay, functional delay or intellectually gifted and who, by reason thereof, needs special education and related services. Any child with a disability who attains twenty-two (22) years of age subsequent to the commencement of a school year continues to be a child with a disability for the remainder of that school year.

(b) A child with intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, multiple disabilities, deaf blindness, developmental delay, functional delay, and intellectually gifted and who, by reason thereof, needs special education and related services.

~~(2) "Child with a disability" means, children with disabilities and youth between three (3) and twenty-one (21) years of age, inclusive who have been evaluated in accordance with~~

~~(3) 34 C.F.R §§300.304 through 300.311, TCA § 49-10-102 and regulations of the state board of education. Any child with a disability who attains twenty-two (22) years of age subsequent to~~

(Rule 0520-01-09-.02, continued)

~~the commencement of a school year continues to be a child with a disability for the remainder of that school year.~~

~~(4) "Child with a disability" means a child with intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, multiple disabilities, deaf blindness, developmental delay, functional delay and intellectually gifted and who, by reason thereof, needs special education and related services.~~

(5)(3) "Autism" means a developmental disability, which significantly affects verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experience. The term does not apply if a child's educational performance is adversely affected primarily because the child has an Emotional Disturbance, as defined in this section.

The term of Autism also includes students who have been diagnosed with an Autism Spectrum Disorder such as Autism, a Pervasive Developmental Disorder—Not—Otherwise—Specified (PDD-NOS), or Asperger's Syndrome when the child's educational performance is adversely affected. Additionally, it may also include a diagnosis of a Pervasive Developmental Disorder

such as Rett's or Childhood Disintegrative Disorder. Autism may exist concurrently with other areas of disability.

After age three (3), a child could be diagnosed found eligible as having Autism found to be Autistic if the child manifests these above the following these characteristics in early childhood (as social demands increase). Children with Autism demonstrate both of the following characteristics (i.e., (a) and (b) below): Children with Autism demonstrate the following characteristics prior to age 3:

(a) Difficulty relating to others or interacting in a socially appropriate manner. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by all of the following:

1. Deficits in social-emotional reciprocity (e.g., abnormal social approach, failure of normal back and forth conversation, reduced sharing of interests, reduced sharing of emotions/affect, lack of initiation of social interaction, and poor social imitation);
2. Deficits in nonverbal communicative behaviors used for social interaction (e.g., impairments in social use of eye contact, use and understanding of body postures, use and understanding of gestures; abnormal volume, pitch, intonation, rate, rhythm, stress, prosody, and/or volume of speech; abnormal use and understanding affect, lack of coordinated verbal and nonverbal communication, and lack of coordination nonverbal communication); and
- 4-3. Deficits in developing and maintaining relationships appropriate to developmental level; ranging from difficulties adjusting behavior to social contexts, through difficulties in sharing imaginative play, to an apparent absence of interest in people.

And

(b) Absence, disorder, or delay in verbal and/or nonverbal communication; and Restricted, repetitive patterns of behavior, interests, or activities as manifested by at least two of the following:

1. Stereotyped or repetitive speech, motor movements, or use of objects (e.g., echolalia, repetitive use of objects, idiosyncratic language, simple motor stereotypies);
2. Excessive adherence to routines, ritualized patterns of verbal or nonverbal behavior, or excessive resistance to change (e.g., motor rituals, insistence on same route or food, repetitive questioning, or extreme distress at small changes);
3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests); or
4. Hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of environment (e.g., apparent indifference to pain/heat/cold, adverse response to sounds or textures, excessive smelling or touching of objects, fascination with lights or spinning objects).

(b) One or more of the following:

1. Insistence on sameness as evidenced by restricted play patterns, repetitive body movements, persistent or unusual preoccupations, and/or resistance to change;

2. Unusual or inconsistent responses to sensory stimuli.

(6)(4) "Deaf-Blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs by addressing any one of the impairments. A child with deaf-blindness shall be:

- (a) A child who meets criteria for Deafness/ or Hearing Impairment and Visual Impairment; and
- (b) A child who is diagnosed with a degenerative condition or syndrome which will lead to Deaf-Blindness, and whose present level of functioning is adversely affected by both hearing and vision deficits; or
- (c) A child with severe multiple disabilities due to generalized central nervous system dysfunction, and who exhibits auditory and visual impairments or deficits which are not perceptual in nature.

(7)(5) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance. The child has:

- (a) An inability to communicate effectively due to Deafness; and/or
- (b) An inability to perform academically on a level commensurate with the expected level because of Deafness; and/or
- (c) Delayed speech and/or language development due to Deafness.

(8)(6) "Developmental Delay" refers to children aged three (3) years, zero months (3:0) through nine years, eleven months (9:11) who are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas: physical (gross motor and/or fine motor), cognitive, communication, social or emotional, or adaptive development that adversely affects a child's educational performance. Other disability categories shall be used if they are more descriptive of a young child's strengths and needs. Local school systems have the option of using Developmental Delay as a disability category. Initial eligibility as Developmental Delay shall be determined before the child's child's seventh birthday. The use of Developmental Delay as a disability category is option for local school systems.

(7) "Emotional Disturbance" Emotional disturbance means a condition exhibiting one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (a) Inability to learn which cannot be explained by intellectual, sensory, or health factors;
- (b) Inability to build or maintain satisfactory interpersonal relationships with peers and school personnel;
- (c) Inappropriate types of behavior or feelings under normal circumstances;
- (d) General pervasive mood of unhappiness or depression;
- (e) Tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional Disturbance includes schizophrenia. The term does not apply to children who are

socially maladjusted, unless it is determined that they have an emotional disturbance.

~~(9) "Emotional Disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree that adversely affects a child's educational performance over an extended period of time (during which time documentation of informal assessments and interventions are occurring):~~

- ~~(a) Inability to learn which cannot be explained by limited school experience, cultural differences, or intellectual, sensory, or health factors;~~
- ~~(b) Inability to build or maintain satisfactory interpersonal relationships with peers and school personnel;~~
- ~~(c) Inappropriate types of behavior or feelings when no major or unusual stressors are evident;~~
- ~~(d) General pervasive mood of unhappiness or depression;~~
- ~~(e) Tendency to develop physical symptoms or fears associated with personal or school problems.~~

~~The term may include other mental health diagnoses. The term does not apply to children who are socially maladjusted, unless it is determined that they have an Emotional Disturbance when social maladjustment is the primary cause of the atypical behaviors associated with an emotional disturbance. Social maladjustment includes, but is not limited to, substance abuse related behaviors, gang-related behaviors, oppositional defiant behaviors, and/or conduct behavior problems.~~

~~(10)(8) "Functional Delay" means a continuing significant disability in intellectual functioning and achievement which that adversely affects the student's ability to progress in the general school education program, but the student's adaptive behavior in the home or community is not significantly impaired and is at or near a level appropriate to the student's chronological age. Such disabilities include one or more of the following: including:~~

- ~~(a) Significantly impaired intellectual functioning which is two (2) or more standard deviations below the mean, and difficulties in these the following areas cannot be the primary reason for significantly impaired scores on measures of intellectual functioning;~~
 - ~~(b)i. Limited English proficiency;~~
 - ~~(c)ii. Cultural factors;~~
 - ~~(d)iii. Medical conditions that impact school performance;~~
 - ~~(e)iv. Environmental factors;~~
 - ~~(f)v. Communication, sensory or motor disabilities;~~

~~(g)(b) Deficient academic achievement which is at or below the fourth percentile in two (2) or more total or composite scores in the following areas:~~

- ~~1. Basic reading skills;~~
- ~~2. Reading fluency skills;~~
- ~~3. Reading comprehension;~~

4. Mathematics calculation;
5. Mathematics problem solving;
5. _____

Written expression; or

6. _____
8. _____

(c) Home or school adaptive behavior scores that fall above the level required for meeting Intellectual disability eligibility standards.

9. Other disability categories shall be used if they are more descriptive of student strengths and needs. The team must determine that underachievement is not primarily the result of Visual, Motor, or hearing Disability, Intellectual Disability, Speech or Language Impairment, or a Specific Learning Disability.

(14)(9) "Hearing Impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but does not include Deafness.

A hearing impaired child shall have one (1) or more of the following characteristics:

(h)(a) Inability to communicate effectively due to a Hearing Impairment;

(i)(b) Inability to perform academically on a level commensurate with the expected level because of a Hearing Impairment; or

(j)(c) Delayed speech and/or language development due to a Hearing Impairment.

(12)(10) "Intellectually Gifted" means a child whose intellectual abilities, creativity, and potential for achievement are so outstanding that the child's educational performance is adversely affected. "Adverse affect" means the general curriculum alone is inadequate to appropriately meet the student's educational needs needs exceed differentiated general education programing, adversely affect educational performance and requires thus requiring specifically designed instruction or support services. Children from all populations (e.g., all cultural, racial, and ethnic groups, English Learners, all economic strata, twice-exceptional, etc.) can be found to possess these abilities. Children identified as intellectually gifted are exempted from the discipline procedures at 34 C.F.R. §300.530-537. Children with a dual diagnosis that includes intellectually gifted must be considered as children with a disability and may not be exempted from the discipline procedures at 34 C.F.R. §300.530-537.

(13)(11) "Intellectual disability" is characterized by significantly impaired intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(14)(12) "Multiple Disabilities" means concomitant impairments (such as Intellectual disability- Deafness, Intellectual disability-Orthopedic Impairment), the combination of which causes such severe educational needs that they cannot be accommodated by addressing only one (1) of the impairments. The term does not include Deaf-Blindness.

(15)(13) "Orthopedic Impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes, but is not limited to, impairments caused by congenital anomaly (e.g. club foot, absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments

from other causes (e.g. cerebral palsy, amputations, and fractures or burns that cause contractures).

(16)(14) "Other Health Impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, Attention Deficit Hyperactivity Disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Syndrome that adversely affects a child's educational performance.

A child is "Other Health Impaired" who has chronic or acute health problems that require specially designed instruction due to:

- (k)(d) Impaired organizational or work skills;
- (l)(e) Inability to manage or complete tasks;
- (m)(f) Excessive health related absenteeism; or
- (n)(g) Medications that affect cognitive functioning.

(17)(15) "Specific Learning Disability" means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, and that adversely affect a child's educational performance. Such term includes conditions such as visual processing (perceptual) disabilities, brain injury that is that is not caused by an external physical force, dyslexia, and developmental aphasia. Specific Learning Disability does not include a learning problem that is primarily the result of Visual Impairment, Hearing Impairment, Orthopedic Impairment, Intellectual disability, Emotional Disturbance, limited English proficiency, or environmental or cultural disadvantage.

"Speech or Language Impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or voice impairment that adversely affects a child's educational performance.

(16)

Speech or Language Impairment includes demonstration of impairments in one (1) or more of the following areas of language, articulation, voice, or fluency:-

(a) **Language Impairment** – A significant deficiency ~~not consistent with the student's chronological age in one or more of the following areas: in comprehension and/or use of spoken language that may also impair written and/or other symbol systems and is negatively impacting the child's ability to participate in the classroom environment. The impairment may involve any or a combination of the following: the form of language (phonology, morphology, and syntax), the content of language (semantics) and/or the use of language in communication (pragmatics) that is adversely affecting the child's educational performance;~~

1. — A deficiency in receptive language skills to gain information;
2. — A deficiency in expressive language skills to communicate information;
3. — A deficiency in processing (auditory perception) skills to organize information.

- (b) **Articulation (Speech Sound Production) Impairment** – A significant deficiency in ability to produce sounds in conversational speech not consistent with chronological age. This includes a significant atypical production of speech sounds characterized by substitutions, omissions, additions, or distortions that interfere with intelligibility in conversational speech and obstructs learning and successful verbal communication in the educational setting. Speech sound errors may be a result of impaired phonology, motor or other issues;
- (c) **Voice Impairment** – An excess or significant deficiency in pitch, intensity, resonance, or quality resulting from pathological conditions or inappropriate use of the vocal mechanism; or
- (d) **Fluency Impairment** – Abnormal interruption in the flow of speech characterized by an atypical rate or rhythm, and/or repetitions or prolongations of a in sounds, syllables, words, and phrases that significantly reduces the speaker's ability to participate within the learning environment or by avoidance and struggle behaviors.

Speech or Language deficiencies identified cannot be attributed to characteristics of second language acquisition, cognitive referencing, and/or dialectic differences.

(18)(17) "Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

Traumatic Brain Disorder-Injury may include all of the following:

(e)(a) An insult to the brain caused by an external force that may produce a diminished or altered state of consciousness; and

(p)(b) The insult to the brain induces a partial or total functional disability and results in one (1) or more of the following:

1. Physical impairments such as, but not limited to:
 - (i) Speech, vision, hearing, and other sensory impairments,
 - (ii) Headaches,
 - (iii) Fatigue,
 - (iv) Lack of coordination,
 - (v) Spasticity of muscles,
 - (vi) Paralysis of one or both sides,
 - (vii) Seizure disorder.
2. Cognitive impairments such as, but not limited to:
 - (i) Attention or concentration,

- (ii) Ability to initiate, organize, or complete tasks,
 - (iii) Ability to sequence, generalize, or plan,
 - (iv) Flexibility in thinking, reasoning or problem solving,
 - (v) Abstract thinking,
 - (vi) Judgment or perception,
 - (vii) Long-term or short term memory, including confabulation,
 - (viii) Ability to acquire or retain new information,
 - (ix) Ability to process information/processing speed.
3. Psychosocial impairments such as, but not limited to:
- (i) Impaired ability to perceive, evaluate, or use social cues or context appropriately that affect peer or adult relationships,
 - (ii) Impaired ability to cope with over-stimulation environments and low frustration tolerance,
 - (iii) Mood swings or emotional lability,
 - (iv) Impaired ability to establish or maintain self-esteem,
 - (v) Lack of awareness of deficits affecting performance,
 - (vi) Difficulties with emotional adjustment to injury (anxiety, depression, anger, withdrawal, egocentricity, or dependence),
 - (vii) Impaired ability to demonstrate age-appropriate behavior,
 - (viii) Difficulty in relating to others,
 - (ix) Impaired self-control (verbal or physical aggression, impulsivity),
 - (x) Inappropriate sexual behavior or disinhibition,
 - (xi) Restlessness, limited motivation and initiation,
 - (xii) Intensification of pre-existing maladaptive behaviors or disabilities.

~~The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.~~

(19)(18) "Visual Impairment," including blindness, means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Visual Impairment includes at least one (1) of the following:

(c) Visual acuity in the better eye or both eyes with best possible correction:

1. Legal blindness – 20/200 or less at distance and/or near;

2. Low vision – 20/50-70 or less at distance and/or near.

(r)(d) Visual field restriction with both eyes:

1. Legal blindness – remaining visual field of 20 degrees or less;
2. Low vision – remaining visual field of 60 degrees or less;
3. Medical and educational documentation of progressive loss of vision, which may in the future affect the student's ability to learn visually.

(s)(e) Other Visual Impairment, not perceptual in nature, resulting from a medically documented condition (i.e., cortical visual impairment).

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed August 13, 2010; effective January 29, 2011.

0520-01-09-.03 CONSENT.

If a parent revokes consent, the revocation must be in writing and the revocation is not effective until it is received by the local education agency LEA to which consent was granted.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.04 PARENT.

- (1) A foster parent may act as a parent if the biological or adoptive parent's authority to make educational decisions on the child's behalf has been terminated under Tennessee law; and
- (2) The foster parent:
 - (a) Has an ongoing relationship with the child for more than one (1) year in duration;
 - (b) Is willing to make the educational decisions required of parents under the law; and
 - (c) Has no interest that would conflict with the interest of the child.

Authority: T.C.A. §§ 49-10-101, 49-10-701, and 49-10-102-49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.05 FREE APPROPRIATE PUBLIC EDUCATION.

- (1) A free appropriate public education (FAPE) shall be available to all children with disabilities, ages three (3) through the school year the student turns twenty-two (22), including those children who have been suspended or expelled from school for more than ten (10) school days in a school year. To meet this obligation each local education agency LEA shall:
 - (a) Identify, locate, and evaluate all children with disabilities;

- (b) Develop and implement child find activities to ensure that all children – including highly mobile children (migrant and homeless children) and those children who are suspected of being a child with a disability, even though they are advancing from grade to grade – are identified, located and evaluated; and
 - (c) Provide services that address all of a child's identified special education and related services needs, based on the child's unique needs and not on the child's disability.
- (2) Facilities.
- (a) Facilities that serve children with disabilities must be comparable to facilities that serve children without disabilities.
 - (b) Educational programs and facilities must be accessible where children with physical disabilities and children without disabilities are both in attendance.
 - (c) Entrance to and from the facility must be accessible. If access is not visible at the front of the facility, signs must be present to indicate where parking and access to the facility for children and other individuals with disabilities are available.
- (3) Transportation. Local education agencies shall provide children with disabilities with special transportation, where necessary.
- (a) Children with disabilities shall, whenever appropriate, be provided transportation along with children who are not disabled. Adaptations shall be made to meet the needs of children with disabilities rather than separate transportation whenever appropriate.
 - (b) Travel time for children with disabilities shall not exceed the travel time for other children, provided that exceptions may be made on the recommendation of an IEP team.
 - (c) Vehicles used to provide special transportation must meet the requirements established by the state board of education.
 - (d) Operators and attendants of vehicles providing special transportation requirements established by the state board of education shall be given special training regarding the needs and special requirements of children with disabilities, except when parents are transporting children with disabilities. Special attendants shall be provided when an IEP team determines that such services are necessary.
 - (e) It is permissible to contract for special transportation provided that the operators, attendants, and vehicles used by a contractor meet the requirements established by the state board of education, except when parents are transporting children with disabilities.
- (4) FAPE requirements for children with disabilities in adult prisons.
- (a) The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:
 1. The requirements relating to participation of children with disabilities in general assessments, and
 2. The requirements relating to transition planning and transition services with respect to the students whose eligibility under IDEA Part B will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
 - (b) Modifications of IEP or placement.

1. If a child with disabilities is convicted as an adult under Tennessee law and incarcerated in an adult prison, the IEP team may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
2. The requirements of 34 C.F.R. § 300.320 relating to the definition of an IEP and the general requirements of 34 C.F.R. § 300.114 relating to least restrictive environment do not apply with respect to these modifications.

(5) Charter schools. Charter schools must ensure compliance with the IDEA.

Authority: T.C.A. §§ 49-10-101, 49-10-701, 49-13-105, and 49-13-126. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Amendment filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.06- CHILD FIND.

- (1) Each ~~local~~ Local education-Education agency-Agency shall develop and implement procedures for creating public awareness of special education programs and services. This includes a comprehensive system of child find activities for all children suspected of having a disability in public and private schools and facilities and who are homeless. Any child find activities shall be comparable for children in private schools and facilities.
- (2) A notice must be published or announced in newspapers, other media, or both, with circulation adequate to notify parents of the activities conducted by the ~~local education agency~~ LEA.
- (3) Any child suspected of having a disability may be referred to the ~~local education agency~~ LEA. All referrals shall be in writing to the school principal or director of special education. The ~~local education agency~~ LEA shall establish written procedures for accepting, processing and documenting receipt of each referral. The procedures shall be approved by the state department of education.

Authority: T.C.A. §§ 49-10-101, and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.07 PLACEMENTS.

- (1) A homebound placement is instruction provided at home, hospital or related site to children with disabilities who are eligible pursuant to IDEA and state regulations. Instruction provided to children with disabilities in homebound placements shall be provided by qualified personnel, pursuant to IDEA and state regulations.
- (2) Eligibility for Homebound Placements.
 - (a) Eligibility for instruction as a child with a disability pursuant to IDEA and state regulations shall be established prior to implementation of homebound services. Children with medical conditions of a short duration or temporary nature, and not previously certified as eligible pursuant to IDEA and state regulations, shall not be eligible for homebound placements pursuant to this regulation, and special education funds shall not be used to fund homebound placements for such children.
 - (b) The IEP team shall consider a medical homebound placement only upon certification by a licensed doctor of medicine or osteopathy that a child with a disability needs a homebound placement, is expected to be absent from school due to a physical or

mental condition for at least (10) consecutive school days and that the child can receive instruction in a homebound placement without endangering the health of personnel providing it.

(3) Use of Homebound Placement.

- (a) All homebound placements shall be temporary. Homebound placements shall not exceed thirty (30) school days duration. The IEP shall contain a goal of returning the child to a less restrictive environment within the school year, unless there is a medical necessity that requires extended homebound instruction, in which case additional homebound placements of thirty (30) school days or less may be instituted.
- (b) An IEP containing a homebound placement shall be reviewed at intervals of thirty (30) school days by the child's IEP team to ensure appropriateness of the provision of instruction and appropriateness of continuing the homebound placement.
- (c) Where behavioral and/or disciplinary issues cannot be safely addressed in any other educational setting, the IEP team may consider a homebound placement. Such changes in placement may be instituted strictly on an emergency basis and for a temporary period of time not to exceed thirty (30) school days to determine how to best address the child's needs. The IEP team must document that a homebound placement is necessary, temporary and consistent with requirements for the provision of a free appropriate public education.
- (d) The frequency and duration of instruction necessary to provide a free appropriate public education (FAPE) during a homebound placement will be determined by the IEP team.
- (e) IDEA Part B funds may be expended only for instruction in homebound placements of children with disabilities who are eligible for special education pursuant to IDEA and state regulations.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.08- STATE ADVISORY PANEL.

The state has established an advisory council on the education of children with disabilities for special education as provided by Tenn. Code Ann. § 49-10-105. The Governor appoints advisory council members.

Authority: T.C.A. §§ 49-10-105. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Amendment- filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed November 30, 2007;- effective February 13, 2008.

0520-01-09-.09- LOCAL EDUCATION AGENCY/LEA ELIGIBILITY.

- (1) Each ~~local~~ Local ~~Education agency~~ Agency (LEA) shall demonstrate to the satisfaction of the ~~state~~ State ~~department~~ Department of ~~education~~ Education that it does the following:
 - (a) Identifies, locates, and evaluates all children who are suspected of having disabilities, including children attending non-public schools, regardless of the severity of their disabilities, and who may be in need of special education and related services. These services may be provided to children with disabilities under early transition agreements who are not yet three (3) years of age. If the child's birthday falls during the summer months, the IEP team will determine when special education services begin but no later than the beginning of the next school year.

- (b) Makes available a free appropriate public education to all children with disabilities, ages three (3) through the school year in which they reach age twenty-two (22), including children with disabilities who have been suspended or expelled for more than ten (10) school days in a school year.
- (c) Includes children with disabilities in state and district-wide assessments, with appropriate accommodations and modifications where necessary, or in alternate assessments. The type of assessment must be determined by the IEP team consistent with the state guidelines for participation of students with disabilities in state/district wide assessments.
- (d) Ensures that children with disabilities participating in early intervention programs shall experience a smooth and effective transition to preschool programs and, that by the third (3rd) birthday, an IEP has been developed and implemented for the child. The ~~local education agency~~LEA shall participate in the transition planning meeting not less than ninety (90) days prior to the third (3rd) birthday of a child who may be a child with a disability.
- (e) Ensures that children with disabilities who are enrolled in private schools or facilities by the ~~local education agency~~LEA are provided special education and related services, in accordance with the IEP, at no cost to them or to their parents.
- (f) Ensures that children with disabilities who are enrolled in private schools by their parents have an opportunity for special education services and that the amount spent to provide those services is a proportionate amount of the federal funds made available to the district. No unilaterally placed private school child with a disability has an individual entitlement to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
- (g) Establishes and has in effect policies, procedures, and programs that are consistent with 0520-01-09 for implementing the provision of special education and related services. Ensures compliance with applicable state and federal regulations including, but not limited to:
 - 1. Free appropriate public education;
 - 2. Child Find procedures;
 - 3. Evaluation/reevaluation and determination of eligibility procedures;
 - 4. IEP/IFSP procedures;
 - 5. Confidentiality procedures;
 - 6. Private school services procedures;
 - 7. Goals for performance of children with disabilities through school improvement planning;
 - 8. Inclusion of children with disabilities in state and district-wide assessment programs with appropriate accommodations and modifications and the reporting of assessment data;
 - 9. Interagency agreements to ensure FAPE for all children;
 - 10. Maintenance of effort.

- (h) Supplements the provision of special education funds but does not commingle or supplant the provision of special education funding.
- (i) ~~Annually publicizes~~Publicizes annual information regarding its special education programs and services and child find activities.
- (j) Ensures that special education professionals and paraprofessionals are provided professional development collaboratively with general education personnel.
- (k) Ensures that school administrators have professional development, training and the resources to establish challenging expectations and provide access to the general education curriculum in the regular classroom to the maximum extent possible for all children including those eligible for special education.
- (l) Submits to the State Department of Education ~~state department of education~~ a comprehensive application annually on or before July 1 with program narratives and assurances for the provision of special education and related services including, but not limited to, the following:
 1. A census of children with disabilities showing the total number and distribution of children within its jurisdiction who are provided special transportation;
 2. An inventory of the personnel who provide instruction and other services to children with disabilities and a listing of facilities;
 3. A description of the extent to which state department of education standards governing special education services will be met including a goal of providing full educational opportunity to all children with disabilities;
 4. An assurance that IDEA funds will be used to supplement and not to supplant state and local funds and will be expended only for the excess cost of providing special education and related services to children with disabilities;
 5. An assurance that to the maximum extent appropriate, children with disabilities, including children in public and private facilities, are educated with children without disabilities. Special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in the general education classes with the use of supplementary aids and services cannot be achieved satisfactorily;
 6. An assurance that a continuum of alternative placements and related services are available to meet the needs of children with disabilities;
 7. A detailed budget and end of the year report of expenditures of all funds available to provide special education and related services is provided; and
 8. An assurance that a free appropriate public education is available to all children with disabilities from age three (3) through the school year in which the student reaches twenty-two (22) years of age, including children who have been suspended or expelled for more than ten (10) school days in a school year.

(2) Specific funding requirements:

- (a) For the purpose of entitlement to academic program funds from the Basic Education Program (BEP), children with disabilities shall be counted in the same manner as children without disabilities. To supplement the academic program funds earned and

paid from the BEP, special education funds from the BEP shall be paid to local education agencies for the purpose of providing special education and related services to children with disabilities.

- (b) Special education funds from the BEP shall be allocated to each local education agency LEA in an amount to be determined by applying the prescribed formula to the number of children with disabilities identified and served during the preceding school year.
- (c) The local education agency LEA complies with maintenance of effort if it budgets at least the same total or per-capita amount from the combination of state and local funds as the local education agency LEA spent for that purpose from the prior year. The local education agency LEA may reduce the level of expenditures below the level for the preceding year if the reduction is attributable to the following:
 - 1. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower salaried staff;
 - 2. A decrease in the enrollment of children with disabilities;
 - 3. The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the state department of education, because the child:
 - (i) Has left the jurisdiction of the agency Agency;
 - (ii) Has reached the age at which the obligation of the agency Agency to provide FAPE to the child has terminated; or
 - (iii) No longer needs the program of special education.
 - 4. The termination of costly expenditures for long-term high cost purchases.
- (d) Each local education agency LEA shall establish appropriate policies and procedures for the administration of IDEA and preschool funds and shall maintain appropriate records and reports to be used in planning and evaluating special education programs and services. The State Department of Education division shall notify each local education agency LEA of its allocation of federal funds annually.
- (e) Two (2) or more local education agencies may submit a consolidated annual comprehensive plan, with the approval of the State Department of Education division, under the conditions of federal law:
 - 1. Those participating in a consolidated plan will be jointly responsible for implementing a free appropriate public education program in the participating local education agency LEA; and
 - 2. The consolidated plan must designate one (1) of the local education agencies as the fiscal agent for the plan.
- (f) Local education agencies shall use IDEA funds for the excess costs of providing special education and related services to children with disabilities. IDEA funds received by the local education agency LEA must not be commingled with state funds.
- (g) Local education agencies must maintain records that demonstrate compliance with the

excess cost, non-supplanting, and comparability requirements for at least three (3) years after completion of the project described in the application.

- (h) For children with disabilities unilaterally placed in private schools, the same proportionate amount that is spent on public school children with disabilities from IDEA and preschool grants is allocated for the number of private school children with disabilities within the ~~local education agency~~LEA's jurisdiction. The preceding December 1 census count is used in calculating private and public school ratios to determine the proportionate amount.
- (3) The curriculum adopted by the ~~state~~ State board ~~Board~~ of ~~education~~ Education shall serve as the basis for developing educational programs. Each ~~local education agency~~LEA must provide a variety of services, interventions and programs to meet the educational needs of all students including the needs of children with disabilities.
- (a) Alternative programs must be provided when appropriate educational goals cannot be met in the general education program.
 - (b) School improvement plans must include a continuum of educational services, programs and interventions to address the educational needs of all students, including the needs of children with disabilities.
 - (c) As a component of child find activities, general education programs within each ~~local education agency~~LEA have specific responsibilities that include the following:
 - 1. Systematic screening of all children in specific grade levels residing within its jurisdiction;
 - 2. Reviewing the educational performance of children who are high risk;
 - 3. Providing interventions and documentation prior to referral for special education evaluation. These intervention strategies should be implemented in the general education program.
 - (d) The ~~State Department of Education~~ state department of education shall make available to the public reports on assessments of all children with the same frequency and in the same detail as it reports on the assessment of children without disabilities to include:
 - 1. The number of children with disabilities participating in:
 - (i) Regular assessments; and
 - (ii) Alternate assessments.
 - 2. Reports to the public must include:
 - (i) The performance results of children with disabilities if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children;
 - (ii) Aggregated data that include the performance of children with disabilities together with all other children; and
 - (iii) Disaggregated data on the performance of children with disabilities.
- (4) Each ~~local education agency~~LEA shall maintain an accurate record of all children with disabilities ages three (3) through the school year a student turns twenty-two (22) years of age

who are residing within its jurisdiction. The census shall be taken on December 1 of each year and at other times as required.

- (5) Local education agencies shall evaluate their special education programs and related services according to evaluative criteria issued by federal and state authorities.
- (6) Monitoring:
 - (a) Local education agencies, state agencies and private schools shall be monitored on a periodic basis by the State Department of Education division to determine the extent to which special education and related services are being implemented in the least restrictive environment and to assure compliance with applicable laws and regulations.
 - (b) The state department of education shall provide technical assistance in self-evaluation, program planning and implementation of any necessary corrective action plans.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.10- REPEALED.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed August 13, 2010 to be effective January 29, 2011; rule was withdrawn by the State Board of Education on October 15, 2010. Repeal filed August 29, 2013; effective January 29, 2014.

0520-01-09-.11- EVALUATION PROCEDURES.

Guidelines and standards will be established for determining program eligibility criteria, evaluation procedures, and evaluation participants. Revisions to the eligibility criteria must be recommended by a task force within the disability category. Upon recommendations from the Advisory Council for the Education of Students with Disabilities, the assistant commissioner for special education will submit the standards to the State Board of Education for final review and approval.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.12- DEFINITION OF INDIVIDUALIZED EDUCATION PROGRAM (IEP).

Prior to the ninth (9th) grade or age fourteen (14) (or younger, if determined appropriate by the IEP team), all eligible students with a disability will develop an initial four (4)-year plan of focused and purposeful high school study. The plan will be reviewed annually and amended as necessary and will connect the student's goals for high school including, the courses and/or training and/or skills necessary to meet their potential after high school. This required plan will include identifying possible transition service needs of the student under the applicable components of the student's IEP. This plan may be developed through a process in general education but a copy must be in the ~~students~~student's IEP after approval by the IEP team.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed October 23, 2013; effective March 31, 2014.

0520-01-09-.13- WHEN IEPs MUST BE IN EFFECT.

The IEP must be implemented as soon as possible after completion. If agreement was not reached, no change in the child's IEP or eligibility status will be made for fourteen (14) days, in order to afford a parent time to request a due process hearing.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.14- REVIEW AND REVISION OF THE IEP.

Upon written request of any member, the IEP team shall be convened within ten (10) school days to review or revise the IEP or consider the child's placement.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.15- PARENT PARTICIPATION.

The local education agency LEA must notify the parents of a child with a disability at least ten (10) days before an IEP meeting to ensure that a parent will have an opportunity to attend. A meeting conducted pursuant to 34 C.F.R. §300.530(e) may be conducted on at least twenty-four (24) ~~hours notice~~ hours' notice to the parents.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. —Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.16- PRIOR NOTICE BY LOCAL EDUCATION AGENCY LEA.

Written notice must be given to the parents of a child suspected to have a disability or a child with a disability at least ten (10) school days prior to a local education agency LEA either proposing or refusing to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.17- MEDIATION.

All special education mediations shall be conducted by mediators listed by the Alternative Dispute Resolution Commission as general civil or family mediators pursuant to Tennessee Supreme Court Rule 31 and employed by or contracted by the secretary of state. The administrative office of the courts shall provide legal training in special education law to the mediators who conduct special education mediations. All parties shall participate in mediation in good faith.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.18- IMPARTIAL DUE PROCESS HEARING.

- (1) Special education due process cases shall be heard by administrative law judges employed

by the secretary of state. Administrative law judges shall have jurisdiction to hear complaints arising under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, et seq., as from time to time amended, and Rules of the State Board of Education. The administrative office of the courts shall provide legal training in special education law to the administrative law judges assigned to hear special education due process cases sufficient to comport with the requirements of 20 U.S.C. § 1415, as from time to time amended.

- (2) When a hearing is requested, the director of schools shall immediately contact the Division of Special Education.
- (3) The ~~local education agency~~ LEA shall be responsible for providing an appropriate meeting place, a stenographic record of the hearing and a typed transcript of the hearing proceedings, and shall bear the administrative costs of the hearing, with the exception of the services of the hearing officer.
- (4) Expenses for the services of a court reporter, the original copy of the transcript for the hearing officer and one copy for the parents will be reimbursed upon submission of appropriate documentation to the Division of Special Education.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.19- CIVIL ACTION.

Any party aggrieved by the findings and decision of an impartial due process hearing has the right to bring a civil action with respect to the complaint presented. The action may be brought in any state court of competent jurisdiction in accordance with Tenn. Code Ann. § 4-5-322 and Tenn. Code Ann. § 49-10-601 or in a district court of the United States without regard to the amount in controversy.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.20- SURROGATE PARENTS.

- (1) Each ~~local education agency~~ LEA shall have written policies and procedures for the recruitment, training and appointment of surrogate parents.
- (2) Each ~~local education agency~~ LEA shall appoint a surrogate parent to represent the child in all matters relating to the identification, assessment, educational placement, and the provision of a free appropriate public education, including meetings concerning the individualized education program, and any mediation and due process hearings pertaining to the child when it determines that:
 - (a) No parent can be identified;
 - (b) It is unable to locate a biological parent or legal guardian by calls, visits and by sending a letter by certified mail (return receipt requested) to the last known address of the biological parent or the guardian and allowing thirty (30) days for a response of the intention to appoint a surrogate parent;
 - (c) If the child is a ward of the State (including a ward of the court or a state agency); or
 - (d) The educational rights of the parents or guardians regarding participation in the student's education have been terminated or transferred.
- (3) If the health or safety of the child or other persons would be endangered by delaying the change in placement, due to the unavailability of a surrogate, the change in the

educational placement may be made sooner, but without prejudice to any rights that the child and parent may have.

- (4) The surrogate parent shall continue to represent the child until one (1) of the following occurs:
 - (a) The child is determined by the IEP team no longer to be eligible for, or in need of special education or related services, except when termination from such programs is being contested;
 - (b) The ~~parent~~ parent or guardian, who was previously unknown, or whose whereabouts were previously unknown, becomes known;
 - (c) The legal guardianship of the child is transferred to a person who is able to fulfill the role of the parent;
 - (d) The ~~local education agency~~ LEA determines that the appointed surrogate parent no longer adequately represents the child;
 - (e) The child attains eighteen (18) years of age.
- (5) Criteria for selection of surrogate parents.
 - (a) A person selected as a surrogate parent may not be an employee of the state education agency, the ~~local education agency~~ LEA, or any other agency that is involved in the education or care of the child.
 1. A person is not considered to be an employee of the ~~local education agency~~ LEA solely because he or she is paid by the ~~local education agency~~ LEA to serve as a surrogate parent.
 2. A person is not considered to be an employee of the State solely because he or she is paid by the State to serve as a foster parent.
 - (b) A public agency may select a surrogate parent to represent the child for educational purposes. The selected person may be an employee of a nonpublic agency that only provides non-educational care for the child provided they are able to ~~meet them~~ meet the standards and perform the responsibilities of a surrogate parent.
 - (c) Foster parents, selected by a state agency as the custodian for a child, who have had a foster child or children with disabilities for less than one (1) calendar year, may be appointed by a ~~local education agency~~ LEA to serve as surrogate parents for their foster child or children and may represent the child for educational purposes, provided that they perform the responsibilities of a surrogate parent. Foster parents selected by a state agency as the custodian for a child, who have had a foster child or children with disabilities for one (1) calendar year or more may act as a parent for their foster child if they meet the definition of a parent.
- (6) Responsibilities of a surrogate parent.
 - (a) A surrogate parent must have no interest that would conflict with the interests of the child to be represented;
 - (b) A surrogate parent must have knowledge and skills that ensure adequate representation of the child, including a functional understanding of the educational rights of children with disabilities;
 - (c) A surrogate parent must participate in whatever training program might be offered to

ensure that they will have knowledge and skills to provide adequate representation of the child;

- (d) A surrogate parent must represent the child throughout the special education decision making process of identification, evaluation, program development, initial placement, review of placement, and reevaluation, as appropriate;
- (e) A surrogate parent must be acquainted with the child and his or her educational needs;
- (f) A surrogate parent must attempt to ascertain the child's educational needs and concerns;
- (g) A surrogate parent must respect the confidentiality of all records and information;
- (h) A surrogate parent must become familiar with the assistance provided by other human service agencies in the community that affects the child or that might be helpful resources; and
- (i) A surrogate parent must monitor the child's educational program and placement.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.21- TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.

The procedure for determining whether a child with a disability who has attained eighteen (18) years of age is competent to make educational decisions is provided at Tenn. Code Ann. §34-1-101 et seq. and §34-3-101 et seq. Unless the child has been adjudicated incompetent, all rights vest in the child when the child attains eighteen (18) years of age.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.22- AMENDMENT OF RECORDS AT PARENT'S REQUEST.

The local education agency LEA, upon receiving a request from a parent pursuant to 34 C.F.R. §300.618, shall decide, within ten (10) school days of its receipt of the request, whether to amend the information as requested.

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.23 ISOLATION AND RESTRAINT FOR STUDENTS RECEIVING SPECIAL EDUCATION SERVICES.

(1) Definitions:

- (a) "Extended isolation" means isolation which lasts longer than one (1) minute per year of the student's age or isolation which lasts longer than the time provided in the child's individualized education program (IEP).
- (b) "Extended restraint" means a physical holding restraint lasting longer than five (5) minutes or a physical holding restraint which lasts longer than the time provided in the child's IEP.
- (c) "Noxious substance" means a substance released in proximity to the student's face or sensitive area of the body for the purpose of limiting a student's freedom of movement or action, including but not limited to Mace and other defense sprays.

- (2) Local education agencies are authorized to develop and implement training programs that include:
- (a) Use of positive behavioral interventions and supports;
 - (b) Nonviolent crisis prevention and de-escalation;
 - (c) Safe administration of isolation and restraint; and
 - (d) Documentation and reporting requirements.
- (3) Local education agencies are authorized to determine an appropriate level of training commensurate with the job descriptions and responsibilities of school personnel.
- (4) Local education agencies shall develop policies and procedures governing:
- (a) Personnel authorized to use isolation and restraint;
 - (b) Training requirements; and
 - (c) Incident reporting procedures.
- (5) Only the principal, or the principal's designee, may authorize the use of isolation or restraint.
- (6) When the use of restraint or isolation is proposed at an IEP meeting, parents/guardians shall be advised of the provisions of T.C.A. § 49-10-1301, et seq., this rule and the IDEA procedural safeguards.
- (7) An IEP meeting convened pursuant to T.C.A. § 49-10-1304 may be conducted on at least ~~twenty-four (24) hours notice~~ hours' notice to the parents/guardian/surrogate parent.
- (8) State agencies providing educational services within a residential therapeutic setting to children in their legal and physical custody shall develop and adhere to isolation and restraint policies in such educational settings which conform to the TDMHDD (Tennessee Department of Mental Health and Developmental Disabilities) state standards as applicable and at least one (1) of the following national standards: ACA (American Correctional Association), COA (Council on Accreditation), CMS (Centers for Medicare & Medicaid Services), JCAHO (Joint Commission for Accreditation of Healthcare Organizations), CARF (Commission on Accreditation of Rehabilitation Facilities), as they apply in the educational environment. Development of, and adherence to, such policies shall be overseen by a licensed qualified physician or licensed doctoral level psychologist.
- (9) Reports.
- School personnel who must isolate or restrain a student shall report the incident to the school principal or the principal's designee. The Department of Education shall develop a report form, which shall be used by school personnel when reporting isolation or restraint to the school principal or the principal's designee.
- (a) The report form must include the following information:
 - 1. Student's name, age and disability;
 - 2. Student's school and grade level;

2. _____
3. Date, time and location of the isolation or restraint;
 4. Length of time student was isolated or restrained;
 5. Names, job titles and signatures of the personnel who administered the isolation or restraint;
 6. Whether the personnel who administered the isolation or restraint were certified for completing a behavior intervention training program;
 7. Names and job titles of other personnel who observed or witnessed the isolation or restraint;
 8. Name of the principal or designee who was notified following the isolation or restraint and time of notification;
 9. Description of the antecedents that immediately preceded the use of isolation or restraint and the specific behavior being addressed;
 10. A certification that any space used for isolation is at least forty (40) square feet;
 11. A certification that school personnel are in continuous direct visual contact at all times with a student who is isolated;
 12. How the isolation or restraint ended, including the student's demeanor at the cessation of the isolation or restraint;
 13. Physical injury or death to the student, school personnel or both during the isolation or restraint;
 14. Medical care provided to the student, school personnel or both during the isolation or restraint;
 15. Description of property damage, if relevant; and
 16. Date, time and method of parent notification.

- (b) A copy of the report form must be provided to the local education agency LEA's director of special education who shall determine whether an Individualized Education Program (IEP) Team meeting must be convened pursuant to T.C.A. § 49-10-1304.

Authority: T.C.A. §§ 49-10-1306. **Administrative History:** Original rule filed October 20, 2009; effective January 18, 2010. Amendments 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				
Chancey	X				
Cook	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee State Board of Education (board/commission/ other authority) on 05/24/2017 (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: 08/09/2016

Rulemaking Hearing(s) Conducted on: (add more dates). 09/23/2016



Date: 07/31/2017

Signature: [Handwritten Signature]

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 7/31/17

Notary Public Signature: [Handwritten Signature]

My commission expires on: 3-8-21

State Board of Education Rules
Chapter 0520-01-09 – Special education Program and Services
Rules 0520-01-09-.01, .02, .03, .05, .06, .09, .12, .15, .16, .18, .20, .22, .23

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
Attorney General and Reporter
8/9/2017 _____
Date

Department of State Use Only

Filed with the Department of State on: 8/11/17

Effective on: 1/19/17



Tre Hargett
Secretary of State

RECEIVED
2017 AUG 11 AM 11:09
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Leave for Teachers / Fiscal Accountability Standards / Approval of Textbooks

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-5-108 provides "the state board of education is authorized, empowered and directed to set up rules and regulations governing the issuance of licenses for supervisors, principals and public school teachers."

Tennessee Code Annotated, Section 49-1-210 provides "[t]he commissioner shall recommend standards of fiscal accountability and soundness for local school systems to the state board of education, and the state board shall promulgate rules based on these standards to be used in evaluating the fiscal operations of local school systems."

EFFECTIVE DATES: November 9, 2017 through June 30, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The revisions to 0520-01-02-.04 remove the current reference to career ladder evaluator professional leave in the Leave for Teachers Rule. Tennessee repealed the Career Ladder program in 2013 and career ladder evaluators referenced in the rule are no longer utilized. As such, this reference is obsolete and recommended for repeal. Repeal of this portion of the rule will help ensure State Board rules and regulations are current and relevant for LEAs.

The revisions to 0520-01-02-.13 remove an outdated provision on the Tennessee Education Network (TEN) in the Fiscal Accountability

Standards rule. The department no longer utilizes TEN but instead manages student information using Education Information System (EIS). EIS manages enrollment, membership, and attendance but does not have a financial management application as outlined in the Fiscal Accountability Standards rule. As such, the specific provisions related to TEN are obsolete and recommended for repeal. Repeal of this portion of the rule will help ensure State Board rules and regulations are current and relevant for LEAs.

0520-01-02-.15 is repealed as this rule is now covered by State Board rule 0520-05-01, Policies of the Tennessee State Textbook Commission.

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)

These rules 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;

The revisions to 0520-01-02-.04 remove the current reference to career ladder evaluator professional leave in the Leave for Teachers Rule. Tennessee repealed the Career Ladder program in 2013 and career ladder evaluators referenced in the rule are no longer utilized. As such, this reference is obsolete and recommended for repeal. Repeal of this portion of the rule will help ensure State Board rules and regulations are current and relevant for LEAs.

The revisions to 0520-01-02-.13 removes an outdated provision on the Tennessee Education Network (TEN) in the Fiscal Accountability Standards rule. The department no longer utilizes TEN but instead manages student information using Education Information System (EIS). EIS manages enrollment, membership, and attendance but does not have a financial management application as outlined in the Fiscal Accountability Standards rule. As such, the specific provisions related to TEN are obsolete and recommended for repeal. Repeal of this portion of the will help ensure State Board rules and regulations are current and relevant for LEAs.

0520-01-02-.15 is repealed as this rule is now covered by State Board rule 0520-05-01, Policies of the Tennessee State Textbook Commission.

- (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. § 49-5-108 provides "the state board of education is authorized, empowered and directed to set up rules and regulations governing the issuance of licenses for supervisors, principals and public school teachers."

T.C.A. § 49-1-210 provies "[t]he commissioner shall recommend standards of fiscal accountability and soundness for local school systems to the state board of education, and the state board shall promulgate rules based on these standards to be used in evaluating the fiscal operations of local school systems."

- (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 is likely to affect educators and LEAs who have neither urged acceptance or rejection of this rule. The State Board urges acceptance of this rule.

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

N/A

- (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 impact state and local government revenues or expenditures.

- (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
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-532-3528

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

N/A

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 08-10-17
Rule ID(s): 6585
File Date: 8/11/17
Effective Date: 11/9/17

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 1st floor
Zip:	37243
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

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
0520-01-02	Administrative Rules and Regulations
Rule Number	Rule Title
0520-01-02-.04	Leave for Teachers
0520-01-02-.13	Fiscal Accountability Standards
0520-01-02-.15	Approval of Textbooks

RULES
OF
THE TENNESSEE DEPARTMENT OF
EDUCATION
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-02
ADMINISTRATIVE RULES AND REGULATIONS

0520-01-02-.04 LEAVE FOR TEACHERS.

- (1) The term "teacher" shall mean any person employed by a local board of education in a position which requires a license issued by the State Department of Education. The term "teacher" shall not apply to a substitute teacher.
- (2) Sick Leave. "Sick leave" shall mean leave of absence because of illness of a teacher from natural causes or accident, quarantine, or illness or death of a member of the immediate family of a teacher, including the teacher's wife or husband, parents, grandparents, children, grandchildren, brothers, sisters, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, ~~law~~, and sister-in-law, ~~law~~. Upon written request of the teacher accompanied by a statement from her physician verifying pregnancy, any teacher who goes on maternity leave shall be allowed to use all or a portion of her accumulated sick leave for maternity leave purposes during the period of her physical disability only, as determined by a physician.
- (3) Personal and Professional Leave. A teacher may take two (2) days of personal and professional leave per school year in accordance with policies of the local board of education.
- ~~(4) Career Ladder-Evaluator-Professional Leave.~~
 - ~~(a) Leave may be granted by a local school system to certificated employees to conduct evaluations in the Career Ladder certification process, pursuant to law.~~
 - ~~(b) Such leave shall not be construed to forfeit any rights, benefits or credits earned under the local board of education.~~
 - ~~(c) Career Ladder evaluators shall be under the supervision of the Career Ladder Division, State Department of Education. Nothing in this rule shall be construed to require the State Department of Education to compensate local boards of education for teachers employed as substitutes for teachers on such Career Ladder evaluator professional leave.~~
- ~~(5)~~(4) Personal Injury Leave.
 - (a) When a school system determines that a teacher's absence from assigned duties was required as a result of personal physical injuries caused by a physical assault or other violent criminal act committed against the teacher while on duty, the school system shall grant personal injury leave for those days of absence.
 - (b) Each local school system shall develop policies and procedures for determining eligibility for and implementing personal injury leave consistent with these rules. The policies and procedures may include provisions such as timely notification of the incident and injuries sustained, a requirement that medical attention be sought immediately, submission of a doctor's statement verifying the nature, extent and duration of the disability, option by the school system of a third party opinion, and guidelines for a process to make periodic redeterminations of eligibility if the absence exceeds a given time frame.

(Rule 0520-01-02-.03, continued)

- (c) Nothing in Rule 0520-01-02-.04(~~45~~) shall preclude a teacher at his or her option from directing that an absence which would otherwise qualify for personal injury leave under paragraph five-four (~~54~~) be charged to accumulated sick leave or personal leave instead of personal injury leave.
- (~~6~~)(5) Substitute teachers are those persons employed to replace teachers on sick, professional, or personal leave or to fill temporary vacancies (this exists until a licensed teacher is available and employed). Substitutes are employed and paid in the following manner:
- (a) A person without a teacher's license or permit may serve as a substitute for the first 20 consecutive days of absence of a regular teacher on approved leave.
 - (b) After 20 consecutive days of approved leave, a person serving as the substitute must be licensed and hold the appropriate endorsement for the assignment or must be a retired teacher and have held the appropriate endorsement.
 - (c) After the regular teacher's accumulated leave is exhausted, the replacement teacher must be licensed and hold the appropriate endorsement for the assignment or be a retired teacher and have held the appropriate endorsement and must be paid based on the replacement teacher's training and experience record in accordance with the state and local salary schedules.
- (~~7~~)(6) The total accumulated sick leave shall mean the total number of sick leave days which have been earned but not yet used. A teacher in need of sick leave shall be allowed to use unearned sick leave up to the amount of days which such teacher may accumulate during the remainder of the current school year.
- (~~8~~)(7) Each local board of education shall participate in the state leave program. Local boards of education shall provide the required local contribution from public school funds for payment of substitute teachers. Teachers shall not pay any part of the state required local contribution.

Authority: T.C.A. §§ 49-1-302; 49-3-312 and 49-5-701 et seq; Section 27 of Chapter 535 of the Public Acts of 1992. **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 10, 1974; effective July 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment and new rule filed October 15, 1979; effective January 8, 1980. Amendment filed November 13, 1981; effective March 16, 1982. Amendment filed June 4, 1982; effective September 30, 1982. Amendment filed August 17, 1983; effective November 14, 1983. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed

RULES
OF
THE TENNESSEE DEPARTMENT OF EDUCATION
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-02 ADMINISTRATIVE RULES AND REGULATIONS

0520-01-02-.13 FISCAL ACCOUNTABILITY STANDARDS.

(1) Data Collection

- (a) The Commissioner of Education shall prescribe a system of school fiscal accounting for all school systems which ensures that the expenditure of funds is properly accounted for and safeguarded in accordance with current law and State Board of Education rules, regulations, and minimum standards. The Commissioner shall require such reports from school systems as are required by federal or state law, State Board of Education rules, or as are otherwise necessary for ensuring fiscal accountability standards.
- (b) To ensure proper financial reporting of revenue and expenditures for all public school purposes, the system of school fiscal accounting shall include a standard chart of accounts and audit procedures. The standard chart of accounts shall be the basis for the Annual Public School Budget Document, which shall contain the account codes necessary to ensure the capability for meaningful comparisons of school systems.- At a minimum, the Budget Document shall include separate account codes for all classroom and non-classroom components of the Basic Education Program (BEP), or for accounts which may be compiled into BEP components, and sufficient revenue account codes to differentiate between federal, state and local revenue.
- (c) The report of actual expenditures shall be the Annual Public School Financial Report and shall include sufficient information to allow a system by system comparison of budgeted and actual expenditures for BEP funding within the classroom and non-classroom areas. The Financial Report shall, at a minimum, contain account codes identifiable as BEP program components, or accounts which may be compiled into BEP components, and shall differentiate between federal, state and local revenue when reporting actual revenue for the prior year and estimated revenue for budget purposes.
- ~~(d) When implemented, the student management information system application of the Tennessee Education Network (TEN) shall provide consistent and accurate student information required for the distribution of funds and for evaluating the effectiveness of the BEP and other program objectives. Among other items, the TEN student management system shall provide net enrollment, membership, and attendance by grade and program. The TEN shall also report the grade and program of each student in state custody and the duration of such custody.~~
- ~~(e) The financial management application of the TEN shall provide consistent and accurate financial information maintained in accordance with the chart of accounts developed by the Department of Education. The TEN shall also provide the financial information required for the State Board of Education to set policies for the fair and equitable distribution and use of public funds and to monitor the distribution and expenditure of those funds.~~
- ~~(f) The TEN shall provide sufficient financial data to ascertain that all expenditures of education funds are properly accounted for in accordance with current law and State Board of Education rules, regulations, and minimum standards, and to make comparisons on a school and system basis.~~
- (gd) The Department of Education shall establish procedures for collecting and verifying average daily memberships for use in determining BEP allocations entitlements.-These

(Rule 0520-01-02-.03, continued)

~~procedures will provide for collecting and verifying the first three months' average daily memberships for purposes of development of the State Board of Education Annual Funding Needs Report and budget information for the Department of Finance and Administration, the General Assembly, and school systems.~~

(2) Reports & Documents

- (a) Within thirty (30) days of the beginning of each school year, each school system shall submit to the Commissioner of Education, on a form provided by the Department of Education, a complete and certified copy of its entire school budget for the current year.
- (b) On or before August 1 of each year, each school system shall submit to the Commissioner a correct and accurate financial report of public school revenues and expenditures for the school year ending on June 30. The Commissioner of Education shall require such reports and maintain such documents as will allow a comparison of BEP allocations with actual expenditures for each school system.
- (c) The Commissioner shall provide to the State Board of Education on or before October 1 of each year a report of ADM for each school system for the previous school year.
- (d) The Department of Education shall prepare and the State Board of Education shall approve estimated BEP allocations for each school system no less than 90 days prior to the beginning of the fiscal year.
- (e) Modifications, revisions, or corrections to estimated BEP payments to LEAs will be made by the Department of Education and approved by the State Board of Education.

(3) Review and Verification

- (a) The budget submitted by each school system will be reviewed by the Department of Education to ensure that state funds are not being used to supplant local funds and that each school system has appropriated funds sufficient to fund its local share of the BEP.
- (b) Revenue derived from local sources must equal or exceed prior year actual revenues - excluding capital outlay and debt service, and adjusted for decline in average daily membership (ADM).
- (c) The Department of Education shall verify that BEP funds are being budgeted for eligible expenses and that BEP funds earned in the classroom components, as defined by the State Board of Education, are budgeted for use in the classroom. The Commissioner shall advise the State Board of Education of all systems which fail to meet these minimum standards.
- (d) Each school system shall provide to the Commissioner of Education or a designated representative copies of all school system related audit reports, including those made by governmental or independent public accountants.
- (e) The Department of Education shall conduct review and follow-up procedures to ensure that audit exceptions are evaluated and appropriate actions are taken. The Commissioner shall notify the State Board of Education of any material and significant findings which reflect on the ability of the LEA to provide a quality education or which indicate that progress toward satisfactory resolution is not being made.

(4) Audit

- (a) An Internal Audit Section will be maintained in the Department of Education for the purpose of testing and evaluating school system administrative and accounting controls,

(Rule 0520-01-02-.03, continued)

compliance, and financial and program accountability for state and federally funded programs, and for compliance with State Board of Education rules, regulations, and minimum standards.-- The Internal Audit Section shall make such full and limited scope audits as it deems necessary under the circumstances, and special audits as requested by responsible government officials.* The audits will be performed in accordance with standards for the professional practice of internal auditing and with generally accepted governmental auditing standards.

- (b) To provide reasonable assurance that attendance and financial reports are reliable and accurate, the Internal Audit Section shall conduct audit procedures for the review and testing of the attendance accounting system.-- The Internal Audit Section shall review such programs as necessary to provide reasonable assurance that funds are properly accounted for and safeguarded in accordance with current law, applicable federal standards, and State Board of Education rules, regulations, and minimum standards.-- Audits shall include evaluating program objectives, grant performance and accountability to determine that each LEA has a system in place to ensure compliance with program regulations and guidelines.
- (c) The Commissioner of Education shall be advised of all audits, including a summary of the scope of the audit, the findings, recommendations, management comments, and conclusions including a determination as to the adequacy of corrective action planned or implemented. The State Board of Education, Superintendent, and representatives of the Comptroller's Office shall be provided copies of all audits conducted.

Authority: T.C.A. §§ 49-1-201; 49-1-210 and 49-1-302. **Administrative History:** Original rule filed November 3, 1993; effective March 30, 1994. Amendment filed June 30, 1995; effective October 27, 1995.

RULES
OF
THE TENNESSEE DEPARTMENT OF
EDUCATION THE STATE BOARD OF
EDUCATION

CHAPTER 0520-01-02
ADMINISTRATIVE RULES AND REGULATIONS

~~0520-01-02-.15 APPROVAL OF TEXTBOOKS.~~

~~After January 1, 1996, no newly adopted bound print textbook shall be approved by the State Board of Education unless the publisher has committed in writing to furnish to the State Department of Education, the American Printing House for the Blind, or a national repository, within 60 days of receipt of a request, electronic computer text files from which applicable Braille versions of the textbook may be produced.~~

~~*Authority:* T.C.A. §§ 49-1-302(a) and 49-6-2202(c). *Administrative History:* Original rule filed January 31, 1995; effective May 31, 1995. Amendment filed August 7, 1995; effective December 29, 1995.~~

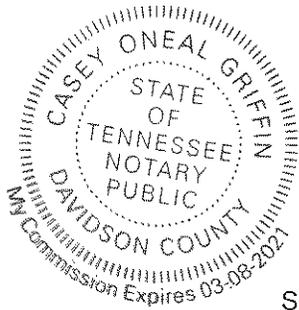
Formatted: Justified

Formatted: Justified

* 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				
Johnson	X				
Kim	X				
Rolston	X				
Tucker	X				
Troutt	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 (board/commission/other authority) on 01/27/2017 (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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: July 19, 2017

Signature: [Handwritten Signature]

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 7-19-17

Notary Public Signature: [Handwritten Signature]

My commission expires on: 3-8-21

State Board of Education Rules
Chapter 0520-01-02 – Administrative Rules and Regulation
Rules 0520-01-02-.04, .13, .15

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 Slatery, III
Attorney General and Reporter
8/9/2017
Date

Department of State Use Only

Filed with the Department of State on: 8/11/17

Effective on: 11/9/17

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2017 AUG 11 AM 11:13
SECRETARY OF STATE
PARTICIPATIONS