

G.O.C. STAFF RULE ABSTRACT

AGENCY: Board for Licensing Health Care Facilities

DIVISION:

SUBJECT: Facility Standards / Renewal Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-11-216

EFFECTIVE DATES: June 19, 2018 through June 30, 2019

FISCAL IMPACT: None

STAFF RULE ABSTRACT:

The amendment to Rule 1200-08-01-.02(4) increases annual renewal fees for hospitals, per bed.

The amendment to 1200-08-06-.02(4) increases annual renewal fees for nursing homes per bed.

The amendment to Rule 1200-08-10-.02(2)(b) increases annual renewal fees for ASTCs.

The amendment to 1200-08-11-.02(2)(b) increases annual renewal fees for Homes for the Aged, per bed.

The amendment to Rule 1200-08-26-.02(2)(b) increases annual renewal fees for Home Health Organizations Providing Home Health Services.

Public Hearing Comments

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

There were no comments received regarding this proposed rules, either written or oral.

Regulatory Flexibility Addendum

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

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

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

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

These rules amendments establish clarity, conciseness, and lack of ambiguity.

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

These rule amendments do not create any new compliance or reporting requirements.

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

These rule amendments do not create any new compliance or reporting requirements.

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

These rule amendments do not create any new compliance or reporting requirements.

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

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

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

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

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board for Licensing Health Care Facilities

Rulemaking hearing date: March 15, 2018

- 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 rules would directly affect hospitals, nursing homes, ambulatory surgical treatment centers, homes for the aged, and home health organizations providing home health services.

- 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 rules will increase administrative costs for the above-listed facilities as the renewal fees are being increased.

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

Hospitals, nursing homes, ambulatory surgical treatment centers, homes for the aged, and home health organizations providing home health services will have to pay an increased renewal fee.

- 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.

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

Federal: None.

State: None.

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

These rules do not provide for exemptions regarding small businesses.

Impact on Local Governments

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

The amendment to Rule 1200-08-01-.02(4) increases annual renewal fees for hospitals, per bed.

The amendment to 1200-08-06-.02(4) increases annual renewal fees for nursing homes per bed.

The amendment to Rule 1200-08-10-.02(2)(b) increases annual renewal fees for ASTCs.

The amendment to 1200-08-11-.02(2)(b) increases annual renewal fees for Homes for the Aged, per bed.

And, the amendment to Rule 1200-08-26-.02(2)(b) increases annual renewal fees for Home Health Organizations Providing Home Health Services.

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

T.C.A. § 68-11-216.

- (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;

Hospitals, nursing homes, ambulatory surgical treatment centers, homes for the aged, and home health organizations providing home health services are directly affected by these fees increases. Many facilities and associations connected with these facilities support these proposed fee increases.

- (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 affect state or local government revenues or expenditures.

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

Caroline Tippens, Assistant General Counsel, Department of Health.

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

Caroline Tippens, Assistant General Counsel, Department of Health.

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

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

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

None.

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Sequence Number: 03-21-18
Rule ID(s): 6726-6730
File Date: 3/21/18
Effective Date: 6/19/18

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: | Board for Licensing Health Care Facilities |
| Division: | |
| Contact Person: | Caroline Tippens, Assistant General Counsel |
| Address: | 665 Mainstream Drive, Nashville, Tennessee |
| Zip: | 37243 |
| Phone: | (615) 741-1611 |
| Email: | Caroline.Tippens@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 |
| 1200-08-01 | Standards for Hospitals |
| Rule Number | Rule Title |
| 1200-08-01-.02 | Licensing Procedures |

| | |
|-----------------------|-----------------------------|
| Chapter Number | Chapter Title |
| 1200-08-06 | Standards for Nursing Homes |
| Rule Number | Rule Title |
| 1200-08-06-.02 | Licensing Procedures |

| | |
|-----------------------|---|
| Chapter Number | Chapter Title |
| 1200-08-10 | Standards for Ambulatory Surgical Treatment Centers |
| Rule Number | Rule Title |
| 1200-08-10-.02 | Licensing Procedures |

| | |
|-----------------------|----------------------------------|
| Chapter Number | Chapter Title |
| 1200-08-11 | Standards for Homes for the Aged |
| Rule Number | Rule Title |
| | |

| | |
|----------------|----------------------|
| 1200-08-11-.02 | Licensing Procedures |
|----------------|----------------------|

| Chapter Number | Chapter Title |
|-----------------------|---|
| 1200-08-26 | Standards for Homecare Organizations Providing Home Health Services |
| Rule Number | Rule Title |
| 1200-08-26-.02 | Licensing Procedures |

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

- (b) Preparation of the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely; and
 - (c) Passing instruments, equipment or supplies to a surgeon, sponging or suctioning an operative site, preparing and cutting suture material, holding retractors, transferring but not administering fluids or drugs, assisting in counting sponges, needles, supplies, and instruments, and performing other similar tasks as directed during a surgical procedure.
- (88) Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.
- (89) Transfer. The movement of a patient between hospitals at the direction of a physician or other qualified medical personnel when a physician is not readily available but does not include such movement of a patient who leaves the facility against medical advice. The term does not apply to the commitment and movement of mentally ill and mentally retarded persons and does not apply to the discharge or release of a patient no longer in medical need of hospital care or to a hospital's refusal, after an appropriate medical screening, to render any medical care on the grounds that the person does not have a medical need for hospital care.
- (90) Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.
- (91) Treating Physician. The physician selected by or assigned to the patient and who has the primary responsibility for the treatment and care of the patient. Where more than one physician shares such responsibility, any such person may be deemed to be the "treating physician."
- (92) Voluntary Delivery. The action of a mother in leaving an unharmed infant aged seventy-two (72) hours or younger on the premises of a hospital with any hospital employee or member of the professional medical community without expressing any intention to return for such infant, and failing to visit or seek contact with such infant for a period of thirty (30) days thereafter.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-255, 68-11-1802, 68-57-101, 68-57-102, and 68-57-105.

Administrative History: Original rule certified June 7, 1974. Amendment filed April 3, 1974; effective May 3, 1974. Amendment filed November 30, 1984; effective December 30, 1984. Repeal and new rule filed May 22, 1986; effective June 21, 1986. Amendment filed April 26, 1996; effective July 8, 1996. Amendment filed November 30, 1999; effective February 6, 2000. Repeal, except for Paragraphs (1), (5), (8), (10), (11), (13), (16), (29) and (37) as promulgated February 6, 2000, and new rule filed March 18, 2000; effective May 30, 2000. Amendment filed April 17, 2000; effective July 1, 2000. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed August 27, 2004; effective November 10, 2004. Amendments filed September 6, 2005; effective November 20, 2005. Amendment filed February 23, 2006; effective May 9, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendments filed March 18, 2010; effective June 16, 2010. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.



1200-08-01-.02 LICENSING PROCEDURES.

- (1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any hospital without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for

(Rule 1200-08-01-.02, continued)

licensure. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the hospital.

- (2) In order to make application for a license:
- (a) The applicant shall submit an application on a form prepared by the department.
 - (b) Each applicant for a license shall pay an annual license fee based on the number of hospital beds. The fee must be submitted with the application and is not refundable.
 - (c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Patients shall not be admitted to the hospital until a license has been issued. Applicants shall not hold themselves out to the public as being a hospital until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules and regulations including submission of all information required by T.C.A. §68-11-206(1), or as later amended, and of all information required by the Commissioner.
 - (d) The applicant must prove the ability to meet the financial needs of the facility.
 - (e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.
 - (f) The applicant shall allow the hospital to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.
- (3) A proposed change of ownership, including a change in a controlling interest, must be reported to the department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the department before the license may be issued.
- (a) For the purposes of licensing, the licensee of a hospital has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of the hospital's operation is transferred.
 - (b) A change of ownership occurs whenever there is a change in the legal structure by which the hospital is owned and operated.
 - (c) Transactions constituting a change of ownership include, but are not limited to, the following:
 - 1. Transfer of the facility's legal title;
 - 2. Lease of the facility's operations;
 - 3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility;

(Rule 1200-08-01-.02, continued)

4. One partnership is replaced by another through the removal, addition or substitution of a partner;
 5. Removal of the general partner or general partners, if the facility is owned by a limited partnership;
 6. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are cancelled;
 7. The consolidation of a corporate facility owner with one or more corporations; or,
 8. Transfers between levels of government.
- (d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
1. Changes in the membership of a corporate board of directors or board of trustees;
 2. Two (2) or more corporations merge and the originally-licensed corporation survives;
 3. Changes in the membership of a non-profit corporation;
 4. Transfers between departments of the same level of government; or,
 5. Corporate stock transfers or sales, even when a controlling interest.
- (e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.
- (f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the lessee, who shall continue the operation, retains the exact same legal form as the former owner.
- ~~(4) Each hospital, except those operated by the U.S. Government or the State of Tennessee, making application for license under this chapter shall pay annually to the department a fee based on the number of hospital beds, as follows:~~
- | | | |
|---|------------------|------------------------|
| (a) Less than 25 beds | _____ | \$ 800.00 |
| (b) 25 to 49 beds, inclusive | _____ | \$ 1,000.00 |
| (c) 50 to 74 beds, inclusive | _____ | \$ 1,200.00 |
| (d) 75 to 99 beds, inclusive | _____ | \$ 1,400.00 |
| (e) 100 to 124 beds, inclusive | _____ | \$ 1,600.00 |
| (f) 125 to 149 beds, inclusive | _____ | \$ 1,800.00 |
| (g) 150 to 174 beds, inclusive | _____ | \$ 2,000.00 |

(Rule 1200-08-01-.02, continued)

(h) ~~175 to 199 beds, inclusive~~ \$ 2,200.00

~~For hospitals of two hundred (200) beds or more the fee shall be two thousand four hundred dollars (\$2,400.00) plus two hundred dollars (\$200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable.~~

(4) Each hospital, except those operated by the U.S. Government or the State of Tennessee, making application for license under this chapter shall pay annually to the department a fee based on the number of hospital beds, as follows:

(a) Less than 25 beds \$ 1,040.00(b) 25 to 49 beds, inclusive \$ 1,300.00(c) 50 to 74 beds, inclusive \$ 1,560.00(d) 75 to 99 beds, inclusive \$ 1,820.00(e) 100 to 124 beds, inclusive \$ 2,080.00(f) 125 to 149 beds, inclusive \$ 2,340.00(g) 150 to 174 beds, inclusive \$ 2,600.00(h) 175 to 199 beds, inclusive \$ 2,860.00

For hospitals of two hundred (200) beds or more the fee shall be two thousand eight hundred and sixty dollars (\$2,860.00) plus two hundred dollars (\$200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable.

(5) Renewal.

(a) In order to renew a license, each hospital shall submit to periodic inspections by Department surveyors for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action and shall remedy the deficiencies. In addition, each licensee shall submit a renewal form approved by the board and applicable renewal fee prior to the expiration date of the license.

(b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars (\$100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.

(c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:

1. a completed application for licensure;
2. the license fee provided in rule 1200-08-01-.02(4); and
3. any other information required by the Health Services and Development Agency.

(Rule 1200-08-01-.02, continued)

- (d) Upon reapplication, the licensee shall submit to an inspection of the hospital by Department of Health surveyors.

Authority: T.C.A. §§ 4-5-201, 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-209(a)(1), 68-11-210, 68-11-216 and Chapter 846 of the Public Acts of 2008, §1, T.C.A. §68-11-206(a)(5) [effective January 1, 2009]. **Administrative History:** Original rule certified June 7, 1974. Repeal and new rule filed May 22, 1986; effective June 21, 1986. Amendment filed January 16, 1992; effective March 2, 1992. Repeal and new rule filed March 18, 2000; effective May 30, 2000. Amendment filed December 2, 2003; effective February 15, 2004. Amendment filed January 19, 2007; effective April 4, 2007. Public necessity rules filed April 29, 2009; effective through October 11, 2009. Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendments filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014.

1200-08-01-.03 DISCIPLINARY PROCEDURES.

- (1) The board may suspend or revoke a license for:
- (a) Violation of federal or state statutes;
 - (b) Violation of the rules as set forth in this chapter;
 - (c) Permitting, aiding or abetting the commission of any illegal act in the hospital;
 - (d) Conduct or practice found by the board to be detrimental to the health, safety, or welfare of the patients of the hospital; and
 - (e) Failure to renew license.
- (2) The board may consider all factors which it deems relevant, including but not limited to the following when determining sanctions:
- (a) The degree of sanctions necessary to ensure immediate and continued compliance;
 - (b) The character and degree of impact of the violation on the health, safety and welfare of the patients in the facility;
 - (c) The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and
 - (d) Any prior violations by the facility of statutes, regulations or orders of the board.
- (3) Inappropriate transfers are prohibited and violation of the transfer provisions shall be deemed sufficient grounds to suspend or revoke a hospital's license.
- (4) When a hospital is found by the department to have committed a violation of this chapter, the department will issue to the facility a statement of deficiencies. Within ten (10) days of the receipt of the deficiencies, the hospital must return a plan of correction indicating the following:
- (a) How the deficiency will be corrected;
 - (b) The date upon which each deficiency will be corrected;
 - (c) What measures or systemic changes will be put in place to ensure that the deficient practice does not recur; and

(Rule 1200-08-06-.01, continued)

- (66) **State.** A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- (67) **Student.** A person currently enrolled in a course of study that is approved by the appropriate licensing board.
- (68) **Supervising Health Care Provider.** The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- (69) **Surrogate.** An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.
- (70) **Survey.** An on-site examination by the department to determine the quality of care and/or services provided.
- (71) **Transfer.** The movement of a resident between nursing homes at the direction of a physician or other qualified medical personnel when a physician is not readily available. The term does not include movement of a resident who leaves the facility against medical advice. The term does not apply to the commitment and movement of mentally ill and mentally retarded persons, the discharge or release of a resident no longer in need of nursing home care, or a nursing home's refusal, after an appropriate medical screening, to render any medical care on the grounds that the person does not have a medical need for nursing home care.
- (72) **Treating Health Care Provider.** A health care provider who at the time is directly or indirectly involved in providing health care to the resident.
- (73) **Treating Physician.** The physician selected by or assigned to the resident and who has the primary responsibility for the treatment and care of the resident. Where more than one physician shares such responsibility, any such physician may be deemed to be the "treating physician."

Authority: T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-234, 68-11-1802, and 71-6-121.
Administrative History: Original rule filed March 27, 1975; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 10, 2000; effective June 24, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed September 21, 2005; effective December 5, 2005. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendment filed September 15, 2015; effective December 14, 2015.



1200-08-06-.02 LICENSING PROCEDURES.

- (1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any nursing home without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Satellite facilities shall be prohibited. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the nursing home.
- (2) In order to make application for a license:

(Rule 1200-08-06-.02, continued)

- (a) The applicant shall submit an application on a form provided by the department along with a copy of the Certificate of Need (CON) issued by the Tennessee Health Services and Development Agency (HSDA). Any condition placed on the CON will also be placed on the license.
 - (b) Each applicant for a license shall pay an annual license fee based on the number of nursing home beds. The fee must be submitted with the application and is not refundable.
 - (c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Residents shall not be admitted to the nursing home until a license has been issued. Applicants shall not hold themselves out to the public as being a nursing home until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules, including submission of all information required by T.C.A. § 68-11-206(1) or as later amended, and all information required by the Commissioner.
 - (d) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.
 - (e) The applicant shall allow the nursing home to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.
- (3) A proposed change of ownership, including a change in a controlling interest, must be reported to the department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the department before the license may be issued.
- (a) For the purpose of licensing, the licensee of a nursing home has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of the nursing home's operation is transferred.
 - (b) A change of ownership occurs whenever there is a change in the legal structure by which the nursing home is owned and operated.
 - (c) Transactions constituting a change of ownership include, but are not limited to, the following:
 - 1. Transfer of the facility's legal title;
 - 2. Lease of the facility's operations;
 - 3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility.
 - 4. One partnership is replaced by another through the removal, addition or substitution of a partner;
 - 5. Removal of the general partner or general partners, if the facility is owned by a limited partnership;

(Rule 1200-08-06-.02, continued)

6. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;
 7. The consolidation of a corporate facility owner with one or more corporations; or,
 8. Transfers between levels of government.
- (d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
1. Changes in the membership of a corporate board of directors or board of trustees;
 2. Two (2) or more corporations merge and the originally-licensed corporation survives;
 3. Changes in the membership of a non-profit corporation;
 4. Transfers between departments of the same level of government; or,
 5. Corporate stock transfers or sales, even when a controlling interest.
- (e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.
- (f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the lessee, who shall continue the operation, retains the same legal form as the former owner.
- ~~(4) Each nursing home, except those operated by the U.S. Government or the State of Tennessee, making application for license under this chapter shall pay annually to the department a fee based on the number of nursing home beds, as follows:~~
- | | | |
|---|------------------|------------------------|
| (a) Less than 25 beds | _____ | \$ 800.00 |
| (b) 25 to 49 beds, inclusive | _____ | \$ 1,000.00 |
| (c) 50 to 74 beds, inclusive | _____ | \$ 1,200.00 |
| (d) 75 to 99 beds, inclusive | _____ | \$ 1,400.00 |
| (e) 100 to 124 beds, inclusive | _____ | \$ 1,600.00 |
| (f) 125 to 149 beds, inclusive | _____ | \$ 1,800.00 |
| (g) 150 to 174 beds, inclusive | _____ | \$ 2,000.00 |
| (h) 175 to 199 beds, inclusive | _____ | \$ 2,200.00 |

~~For nursing homes of two hundred (200) beds or more the fee shall be two thousand four hundred dollars (\$2,400.00) plus two hundred dollars (\$200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable. When additional beds are~~

(Rule 1200-08-06-.02, continued)

~~licensed, the licensing procedures for new facilities must be followed and the difference between the fee previously paid and the fee for the new bed capacity, if any, must be paid.~~

- (4) Each nursing home, except those operated by the U.S. Government or the State of Tennessee, making application for license under this chapter shall pay annually to the department a fee based on the number of nursing home beds, as follows:

| | |
|--------------------------------|-------------|
| (a) Less than 25 beds | \$ 1,040.00 |
| (b) 25 to 49 beds, inclusive | \$ 1,300.00 |
| (c) 50 to 74 beds, inclusive | \$ 1,560.00 |
| (d) 75 to 99 beds, inclusive | \$ 1,820.00 |
| (e) 100 to 124 beds, inclusive | \$ 2,080.00 |
| (f) 125 to 149 beds, inclusive | \$ 2,340.00 |
| (g) 150 to 174 beds, inclusive | \$ 2,600.00 |
| (h) 175 to 199 beds, inclusive | \$ 2,860.00 |

For nursing homes of two hundred (200) beds or more the fee shall be two thousand eight hundred and sixty dollars (\$2,860.00) plus two hundred dollars (\$200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable. When additional beds are licensed, the licensing procedures for new facilities must be followed and the difference between the fee previously paid and the fee for the new bed capacity, if any, must be paid.

- (5) Renewal.

- (a) In order to renew a license, each nursing home shall submit to periodic inspections by Department surveyors for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action and shall remedy the deficiencies. In addition, each licensee shall submit a renewal form approved by the board and applicable renewal fee prior to the expiration date of the license.
- (b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars (\$100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.
- (c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:
1. a completed application for licensure;
 2. the license fee provided in rule 1200-08-06-.02(4); and
 3. any other information required by the Health Services and Development Agency.

(Rule 1200-08-06-.02, continued)

- (d) Upon reapplication, the licensee shall submit to an inspection of the facility by Department of Health surveyors.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-209(a)(1), 68-11-210, 68-11-216, Chapter 846 of the Public Acts of 2008, §1, T.C.A. §68-11-206(a)(5) [effective January 1, 2009]. **Administrative History:** Original rules filed March 27, 1975; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed December 30, 1986; effective February 13, 1987. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed November 19, 2003; effective February 2, 2004. Amendment filed September 21, 2005; effective December 5, 2005. Amendment filed January 19, 2007; effective April 4, 2007. Public necessity rules filed April 29, 2009; effective through October 11, 2009. Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendments filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014.

1200-08-06-.03 DISCIPLINARY PROCEDURES.

- (1) The board may suspend or revoke a license for:
- (a) Violation of federal statutes or rules;
 - (b) Violation of state statutes or the rules as set forth in this chapter;
 - (c) Permitting, aiding or abetting the commission of any illegal act in the nursing home;
 - (d) Conduct or practice found by the board to be detrimental to the health, safety, or welfare of the residents of the nursing home; and,
 - (e) Failure to renew the license.
- (2) The board may consider all factors which it deems relevant, including but not limited to the following, when determining sanctions:
- (a) The degree of sanctions necessary to ensure immediate and continued compliance;
 - (b) The character and degree of impact of the violation on the health, safety and welfare of the residents in the facility;
 - (c) The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and,
 - (d) Any prior violations by the facility of statutes, rules or orders of the commissioner or the board.
- (3) The Board shall have the authority to place a facility on probation. To be considered for probation, a facility must have had at least two (2) separate substantiated complaint investigation surveys within six (6) months, where each survey had at least one deficiency cited at the level of substandard quality of care or immediate jeopardy, as those terms are defined at 42 CFR 488.301. None of the surveys can have been initiated by an unusual event or incident self reported by the facility.
- (a) If a facility meets the criteria for probation, the board may hold a hearing at its next regularly scheduled meeting to determine if the facility should be placed on probation. Prior to initiating such a hearing, the board shall provide notice to the facility detailing what specific non-compliance the board had identified that the facility must respond to at the probation hearing.

(Rule 1200-08-10-.01, continued)

- (a) Preparation of the operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments, and equipment using sterile technique;
 - (b) Preparation of the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely; and
 - (c) Passing instruments, equipment or supplies to a surgeon, sponging or suctioning an operative site, preparing and cutting suture material, holding retractors, transferring but not administering fluids or drugs, assisting in counting sponges, needles, supplies, and instruments, and performing other similar tasks as directed during a surgical procedure.
- (70) Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.
- (71) Transfer. The movement of a patient at the direction of a physician or other qualified medical personnel when a physician is not readily available but does not include such movement of a patient who leaves the facility against medical advice.
- (72) Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-211, 68-11-216, 68-11-224, 68-11-1802, 68-57-101, 68-57-102, and 68-57-105. **Administrative History:** Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed August 10, 1982; effective September 9, 1982. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Amendment filed March 12, 1993; effective April 26, 1993. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed June 16, 2003; effective August 30, 2003. Amendment filed May 20, 2004; effective August 3, 2004. Amendments filed September 9, 2005; effective November 23, 2005. Amendment filed February 23, 2006; effective May 9, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.



1200-08-10-.02 LICENSING PROCEDURES.

- (1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any ASTC without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the ASTC.
- (2) In order to make application for a license:
 - (a) The applicant shall submit an application on a form prepared by the department.
 - ~~(b) Each applicant for a license shall pay an annual license fee in the amount of one thousand eighty dollars (\$1,080.00). The fee must be submitted with the application and is not refundable.~~
 - (b) Each applicant for a license shall pay an annual license fee in the amount of one thousand four hundred and four dollars (\$1,404.00). The fee must be submitted with the application and is not refundable.

(Rule 1200-08-10-.02, continued)

- (c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Patients shall not be admitted to the ASTC until a license has been issued. Applicants shall not hold themselves out to the public as being an ASTC until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules and regulations including submission of all information required by Tennessee Code Annotated § 68-11-206(l), or as later amended, and all information required by the Commissioner.
 - (d) The applicant must prove the ability to meet the financial needs of the facility.
 - (e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.
 - (f) The applicant shall allow the ambulatory surgical treatment center to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.
- (3) Each ASTC, when issued a license, shall be classified according to the type of services rendered or category of patients served. The ASTC shall confine its services to those described in its license and shall advertise only the services which it is licensed to perform. The classification shall be listed on the license.
- (4) A proposed change of ownership must be reported to the department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the department before the license may be issued.
- (a) For purposes of licensing, the licensee of an ASTC has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of ASTC operations is transferred.
 - (b) A change of ownership occurs whenever there is a change in the legal structure by which the facility is owned and operated and any ownership interest of the preceding or succeeding entity changes.
 - (c) Transactions constituting a change of ownership include, but are not limited to, the following:
 - 1. Transfer of the facility's legal title;
 - 2. Lease of the facility's operation;
 - 3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility;
 - 4. One partnership is replaced by another through the removal, addition or substitution of a partner;

(Rule 1200-08-10-.02, continued)

5. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;
 6. The consolidation of a corporate facility owner with one or more corporations; or,
 7. Transfers between levels of government.
- (d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
1. Changes in the membership of a corporate board of directors or board of trustees;
 2. Two (2) or more corporations merge and the originally-licensed corporation survives;
 3. Changes in the membership of a non-profit corporation;
 4. Transfers between departments of the same level of government; or,
 5. Corporate stock transfers or sales, even when a controlling interest.
- (e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.
- (f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the lessee, who shall continue the operation, retains the same legal form as the former owner.
- (5) Renewal.
- (a) In order to renew a license, each ambulatory surgical treatment center shall submit to periodic inspections by Department surveyors for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action and shall remedy the deficiencies. In addition, each licensee shall submit a renewal form approved by the board and applicable renewal fee prior to the expiration date of the license.
 - (b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars (\$100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.
 - (c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:
 1. a completed application for licensure;
 2. the license fee provided in rule 1200-08-10-.02(2)(b); and
 3. any other information required by the Health Services and Development Agency.

(Rule 1200-08-10-.02, continued)

- (d) Upon reapplication, the licensee shall submit to an inspection of the facility by Department of Health surveyors.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206(a)(5), 68-11-206, 68-11-209, 68-11-209(a)(1), 68-11-210, 68-11-216, and Chapter 846 of the Public Acts of 2008, §1.
Administrative History: Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed February 26, 1985; effective March 28, 1985. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed June 16, 2003; effective August 30, 2003. Amendment filed January 19, 2007; effective April 4, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Public necessity rules filed April 29, 2009; effective through October 11, 2009. Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendments filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014.

1200-08-10-.03 DISCIPLINARY PROCEDURES.

- (1) The board may suspend or revoke a license for:
 - (a) Violation of federal or state statutes;
 - (b) Violation of the rules as set forth in this chapter;
 - (c) Permitting, aiding or abetting the commission of any illegal act in the ASTC;
 - (d) Conduct or practice found by the board to be detrimental to the health, safety, or welfare of the patients of the ASTC; and
 - (e) Failure to renew license.
- (2) The board may consider all factors which it deems relevant, including but not limited to the following when determining sanctions:
 - (a) The degree of sanctions necessary to ensure immediate and continued compliance;
 - (b) The character and degree of impact of the violation on the health, safety and welfare of the patients in the facility;
 - (c) The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and,
 - (d) Any prior violations by the facility of statutes, regulations or orders of the board.
- (3) When an ambulatory surgical treatment center is found by the department to have committed a violation of this chapter, the department will issue to the facility a statement of deficiencies. Within ten (10) days of the receipt of the statement of deficiencies the facility must return a policy of correction indicating the following:
 - (a) How the deficiency will be corrected;
 - (b) The date upon which each deficiency will be corrected;
 - (c) What measures or systemic changes will be put in place to ensure that the deficient practice does not recur; and

(Rule 1200-08-11-.01, continued)

- (49) **State.** A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- (50) **Supervising Health Care Provider.** The designated physician or, if there is no designated physician of the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- (51) **Surrogate.** An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.
- (52) **Treating Health Care Provider.** A health care provider who at the time is directly or indirectly involved in providing health care to the resident.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-216, 68-11-224, and 68-11-1802.

Administrative History: Original rule filed June 21, 1979; effective August 6, 1979. Amendment filed August 16, 1988; effective September 30, 1988. Amendment filed January 30, 1992; effective March 15, 1992. Amendment filed December 7, 1993; effective February 20, 1994. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed September 8, 2006; effective November 22, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.



1200-08-11-.02 LICENSING PROCEDURES.

- (1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any home for the aged without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the home for the aged.
- (2) In order to make application for a license:
- (a) The applicant shall submit an application on a form prepared by the department.
- (b) ~~Each applicant for a license shall pay an annual license fee based on the number of beds as follows:~~
- | | |
|-------------------------------|-------------|
| 1. Less than 6 beds | \$ 300.00 |
| 2. 6 to 24 beds, inclusive | \$ 800.00 |
| 3. 25 to 49 beds, inclusive | \$ 1,000.00 |
| 4. 50 to 74 beds, inclusive | \$ 1,200.00 |
| 5. 75 to 99 beds, inclusive | \$ 1,400.00 |
| 6. 100 to 124 beds, inclusive | \$ 1,600.00 |
| 7. 125 to 149 beds, inclusive | \$ 1,800.00 |
| 8. 150 to 174 beds, inclusive | \$ 2,000.00 |

(Rule 1200-08-11-.02, continued)

9. ~~175 to 199 beds, inclusive~~ ~~\$ 2,200.00~~

~~For homes for the aged of two hundred (200) beds or more the fee shall be two thousand four hundred dollars (\$2,400.00) plus two hundred dollars (\$200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable.~~

(b) Each applicant for a license shall pay an annual license fee based on the number of beds as follows:

1. Less than 6 beds \$ 390.00

2. 6 to 24 beds, inclusive \$ 1,040.00

3. 25 to 49 beds, inclusive \$ 1,300.00

4. 50 to 74 beds, inclusive \$ 1,560.00

5. 75 to 99 beds, inclusive \$ 1,820.00

6. 100 to 124 beds, inclusive \$ 2,080.00

7. 125 to 149 beds, inclusive \$ 2,340.00

8. 150 to 174 beds, inclusive \$ 2,600.00

9. 175 to 199 beds, inclusive \$ 2,860.00

For homes for the aged of two hundred (200) beds or more the fee shall be two thousand eight hundred and sixty dollars (\$2,860.00) plus two hundred dollars (\$200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable.

- (c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Residents shall not be admitted to the home until a license has been issued. Applicants shall not hold themselves out to the public as being a home for the aged until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules.
- (d) The applicant must prove the ability to meet the financial needs of the facility.
- (e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.
- (f) The applicant shall allow the residential home for the aged to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

(Rule 1200-08-11-.02, continued)

- (3) A proposed change of ownership, including a change in a controlling interest, must be reported to the department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the department before the license may be issued.
- (a) For the purpose of licensing, the licensee of a home for the aged has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of the home's operation is transferred.
 - (b) A change of ownership occurs whenever there is a change in the legal structure by which the home is owned and operated.
 - (c) Transactions constituting a change of ownership include, but are not limited to, the following:
 - 1. Transfer of the facility's legal title;
 - 2. Lease of the facility's operations;
 - 3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility;
 - 4. One partnership is replaced by another through the removal, addition or substitution of a partner;
 - 5. Removal of the general partner or general partners, if the facility is owned by a limited partnership;
 - 6. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;
 - 7. The consolidation of a corporate facility owner with one or more corporations; or
 - 8. Transfers between levels of government.
 - (d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
 - 1. Changes in the membership of a corporate board of directors or board of trustees;
 - 2. Two (2) or more corporations merge and the originally-licensed corporation survives;
 - 3. Changes in the membership of a non-profit corporation;
 - 4. Transfers between departments of the same level of government; or
 - 5. Corporate stock transfers or sales, even when a controlling interest.
 - (e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.

(Rule 1200-08-11-.02, continued)

- (f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the leasee, who shall continue the operation, retains the exact same legal form as the former owner.
- (4) Renewal.
- (a) In order to renew a license, each residential home for the aged shall submit to periodic inspections by Department surveyors for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action and shall remedy the deficiencies. In addition, each licensee shall submit a renewal form approved by the board and applicable renewal fee prior to the expiration date of the license.
 - (b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars (\$100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.
 - (c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:
 - 1. a completed application for licensure; and
 - 2. the license fee provided in rule 1200-08-11-.02(2)(b).
 - (d) Upon reapplication, the licensee shall submit to an inspection of the facility by Department of Health surveyors.
- (5) A license shall be issued only for the location designated and the licensee named in the application. If a home moves to a new location, a new license will be required before residents are admitted. A licensee who plans to relocate must contact the department to inspect the new building prior to relocation.
- (6) Any admission in excess of the licensed bed capacity is prohibited.
- (7) A separate license shall be required for each home for the aged when more than one home is operated under the same management or ownership.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-209(a)(1), 68-11-210, 68-11-216, Chapter 846 of the Public Acts of 2008, §1, T.C.A. §68-11-206(a)(5) [effective January 1, 2009]. **Administrative History:** Original rule filed June 21, 1979; effective August 6, 1997. Amendment filed August 16, 1988; effective September 30, 1988. Amendment filed January 30, 1992; effective March 15, 1992. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed November 19, 2003; effective February 2, 2004. Amendment filed September 8, 2006; effective November 22, 2006. Amendment filed January 19, 2007; effective April 4, 2007. Public necessity rules filed April 29, 2009; effective through October 11, 2009. Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendments filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014.

1200-08-11-.03 DISCIPLINARY PROCEDURES.

- (1) The board may suspend or revoke a license for:

(Rule 1200-08-26-.01, continued)

- (66) Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these rules.
- (67) Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.
- (68) Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802. **Administrative History:** Original rule filed May 31, 2000; effective August 14, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed May 27, 2004; effective August 10, 2004. Amendments filed December 2, 2005; effective February 15, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendment filed September 15, 2015; effective December 14, 2015.



1200-08-26-.02 LICENSING PROCEDURES.

- (1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any home care organization providing home health services without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure and for the geographic areas specified by the certificate of need or at the time of the original licensing. The name of the home care organization providing home health services shall not be changed without first notifying the department in writing. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the home care organization providing home health services.
- (2) In order to make application for a license:
 - (a) The applicant shall submit an application on a form prepared by the Department.
 - ~~(b) Each applicant for a license shall pay an annual license fee in the amount of one thousand eighty dollars (\$1,080.00). The fee must be submitted with the application and is not refundable.~~
 - (b) Each applicant for a license shall pay an annual license fee in the amount of one thousand four hundred and four dollars (\$1,404.00). The fee must be submitted with the application and is not refundable.
 - (c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department. Patients shall not be admitted to the agency until a license has been issued. Applicants shall not hold themselves out to the public as being an agency until the license has been issued. A license shall not be issued until the agency is in substantial

(Rule 1200-08-26-.02, continued)

compliance with these rules, including submission of all information required by T.C.A. §68-11-206(1) or as later amended, and all information required by the Commissioner.

- (d) The applicant must prove the ability to meet the financial needs of the agency.
 - (e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.
 - (f) The applicant shall allow the home care agency providing home health services to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.
- (3) A proposed change of ownership, including a change in a controlling interest, must be reported to the Department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the Department before the license may be issued.
- (a) For the purposes of licensing, the licensee of an agency has the ultimate responsibility for the operation of the agency, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of the agency's operation is transferred.
 - (b) A change of ownership occurs whenever there is a change in the legal structure by which the agency is owned and operated.
 - (c) Transactions constituting a change of ownership include, but are not limited to the following:
 - 1. Transfer of the agency's legal title;
 - 2. Lease of the agency's operations;
 - 3. Dissolution of any partnership that owns, or owns a controlling interest in, the agency;
 - 4. One partnership is replaced by another through the removal, addition or substitution of a partner;
 - 5. Removal of the general partner or general partners, if the agency is owned by a limited partnership;
 - 6. Merger of an agency owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;
 - 7. The consolidation of a corporate agency owner with one or more corporations; or
 - 8. Transfers between levels of government.
 - (d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:

(Rule 1200-08-26-.02, continued)

1. Changes in the membership of a corporate board of directors or board of trustees;
 2. Two (2) or more corporations merge and the originally-licensed corporation survives;
 3. Changes in the membership of a non-profit corporation;
 4. Transfers between departments of the same level of government; or
 5. Corporate stock transfers or sales, even when a controlling interest.
- (e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the agency. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.
- (f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the agency's entire real and personal property and if the identity of the lessee, who shall continue the operation, retains the exact same legal form as the former owner.
- (4) Renewal.
- (a) In order to renew a license, each home care agency providing home health services shall submit to periodic inspections by Department surveyors for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action and shall remedy the deficiencies. In addition, each licensee shall submit a renewal form approved by the board and applicable renewal fee prior to the expiration date of the license.
 - (b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars (\$100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.
 - (c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:
 1. a completed application for licensure;
 2. the license fee provided in rule 1200-08-26-.02(2)(b); and
 3. any other information required by the Health Services and Development Agency.
 - (d) Upon reapplication, the licensee shall submit to an inspection of the facility by Department of Health surveyors.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-209(a)(1), 68-11-210, 68-11-216, Chapter 846 of the Public Acts of 2008, §1, T.C.A. §68-11-206(a)(5) [effective January 1, 2009]. **Administrative History:** Original rule filed May 31, 2000; effective August 14, 2000. Amendment filed November 19, 2003; effective February 2, 2004. Amendment filed January 19, 2007; effective April 4, 2007. Public necessity rules filed April 29, 2009; effective through October 11,

(Rule 1200-08-26-.02, continued)

2009. *Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014.*

1200-08-26-.03 DISCIPLINARY PROCEDURES.

- (1) The Board may suspend or revoke a license for:
 - (a) Violation of federal or state statutes;
 - (b) Violation of the rules as set forth in this chapter;
 - (c) Permitting, aiding or abetting the commission of any illegal act in the agency or the patient's home;
 - (d) Conduct or practice found by the Board to be detrimental to the health, safety, or welfare of the patients of the agency; or
 - (e) Failure to renew the license.
- (2) The Board may consider all factors which it deems relevant, including but not limited to the following when determining sanctions:
 - (a) The degree of sanctions necessary to ensure immediate and continued compliance;
 - (b) The character and degree of impact of the violation on the health, safety and welfare of the patient of the agency;
 - (c) The conduct of the agency in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and
 - (d) Any prior violations by the agency of statutes, rules or orders of the Board.
- (3) Inappropriate transfers are prohibited and violation of the transfer provisions shall be deemed sufficient grounds to suspend or revoke an agency's license.
- (4) When an agency is found by the Department to have committed a violation of this chapter, the Department will issue to the agency a statement of deficiencies. Within ten (10) days of receipt of the statement of deficiencies the agency must return a plan of correction indicating the following:
 - (a) How the deficiency will be corrected;
 - (b) The date upon which each deficiency will be corrected;
 - (c) What measures or systemic changes will be put in place to ensure that the deficient practice does not recur; and
 - (d) How the corrective action will be monitored to ensure that the deficient practice does not recur.
- (5) Either failure to submit a plan of correction in a timely manner or a finding by the Department that the plan of correction is unacceptable shall subject the agency's license to possible disciplinary action.

* 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) |
|-------------------------|-----|----|---------|--------|-------------------------|
| Paul Boyd | | | | X | |
| Robert Breeden | X | | | | |
| Evelyn Brock | | | | X | |
| Joshua Crisp | X | | | | |
| Thomas Gee | X | | | | |
| Jennifer Gordon-Maloney | | | | X | |
| Chuck Griffin | | | | X | |
| Patricia Ketterman | X | | | | |
| Carissa Lynch | X | | | | |
| Annette Marlair | | | | X | |
| Roger Mynatt | X | | | | |
| Lisa Piercey | X | | | | |
| Sherry Robbins | X | | | | |
| Kenneth Robertson | X | | | | |
| Rene Saunders | | | | X | |
| Jim Shulman | X | | | | |
| Gina Thorneberry | X | | | | |
| Janet Williford | X | | | | |
| Bobby Wood | X | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Licensing Health Care Facilities (board/commission/ other authority) on 03/15/2018 (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: 01/18/18 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 03/15/18 (mm/dd/yy)

Date: MARCH 15, 2018

Signature: Caroline R. Tippens

Name of Officer: Caroline Tippens

Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 3-15-18

Notary Public Signature: Suzanne Mechkowski

My commission expires on: January 26, 2021



Agency/Board/Commission: Board for Licensing Health Care Facilities

Rule Chapter Number(s): 1200-08-01, 1200-08-06, 1200-08-10, 1200-08-11, 1200-08-26

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
3/19/2018
Date

Department of State Use Only

Filed with the Department of State on: 3/21/18

Effective on: 6/19/18

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Minimum Requirements for the Approval of Public Schools

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

EFFECTIVE DATES: June 18, 2018 through June 30, 2019

FISCAL IMPACT: This item will not have a fiscal impact on a state or local government revenues and expenditures.

STAFF RULE ABSTRACT: Rule 0520-01-03- Minimum Requirements for the Approval of Public Schools describes the minimum rules and regulations that local education agencies must adhere to operate public schools. On June 30, 2017, the Department of Education convened an internal working group to review postsecondary readiness for students with disabilities. The working group identified language in the High School Policy that states "students with disabilities who fail to earn a yearly grade of seventy percent (70%) in a course that has an End of Course (EOC) examination may use the alternative performance based assessment (APBA) to add to their EOC score" as an item that should be removed from the rule because it is out of alignment with current law and State Board rule and because the standards on the APBA rubric are not aligned to current academic standards. Removing this provision will align the rule with the requirements in state law and State Board rule that TCAP scores be incorporated into a student's final grade as follows: fifteen percent (15%) in the 2017-2018 school year; and between fifteen percent (15%) and twenty-five percent (25%) based on local board policy in the 2018-19 school year and thereafter.

Additional changes to the rule include updating the language on reporting of waivers to align with legislation requiring the Department of Education to post all waiver requests granted by the Commissioner to the Department's website, removing language on student absence in

observance of religious holidays as this has been incorporated to the State Board's School Attendance Policy, removing the graduation with honors and distinction section as this has been incorporated to the state board's High School Policy, removing the APBA substitution, adding the alternate academic diploma option in alignment with revisions to the High School Policy, and removing the graduation with honors and distinction section as this has been incorporated to the State Board's High School Policy.

Regulatory Flexibility Addendum

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

This rule does not affect small businesses

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule does not have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

Rule 0520-01-03- Minimum Requirements for the Approval of Public Schools describes the minimum rules and regulations that local education agencies must adhere to operate public schools. On June 30, 2017, the Department of Education convened an internal working group to review postsecondary readiness for students with disabilities. The working group identified language in the High School Policy that states "students with disabilities who fail to earn a yearly grade of seventy percent (70%) in a course that has an End of Course (EOC) examination may use the alternative performance based assessment (APBA) to add to their EOC score" as an item that should be removed from the rule because it is out of alignment with current law and State Board rule and because the standards on the APBA rubric are not aligned to current academic standards. Removing this provision will align the rule with the requirements in state law and State Board rule that TCAP scores be incorporated into a student's final grade as follows: fifteen percent (15%) in the 2017- 2018 school year; and between fifteen percent (15%) and twenty-five percent (25%) based on local board policy in the 2018-19 school year and thereafter.

Additional changes to the rule include updating the language on reporting of waivers to align with legislation requiring the Department of Education to post all waiver requests granted by the Commissioner to the Department's website, removing language on student absence in observance of religious holidays as this has been incorporated to the State Board's School Attendance Policy, removing the graduation with honors and distinction section as this has been incorporated to the state board's High School Policy , removing the APBA substitution, adding the alternate academic diploma option in alignment with revisions to the High School Policy, and removing the graduation with honors and distinction section as this has been incorporated to the State Board's High School 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;

Pursuant to T.C.A. § 49-1-302, it is the duty of the State Board, and it has the power to develop and adopt policies for graduation requirements in kindergarten through grade twelve (K-12); review, approval or disapproval and classification of all public schools, kindergarten through grade twelve (K-12), or any combination of these grades.

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

This rule most directly affects local boards of education and educators who have neither urged adoption nor rejection of this rule. The State Board of Education and the Department of Education urge adoption of this rule.

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

This item will not have a fiscal impact on a state or local government revenues and 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
Elizabeth.Taylor@tn.gov
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-253-5707

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Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov
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 Ave., 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: 03-17-18
Rule ID(s): 6722
File Date: 3/20/18
Effective Date: 6/18/18

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: | State Board of Education |
| Division: | |
| Contact Person: | Elizabeth Taylor |
| Address: | Andrew Johnson Tower, 1 st Floor 710 James Robertson Pkwy Nashville, TN |
| Zip: | 37243 |
| Phone: | 615-253-5707 |
| Email: | Elizabeth.Taylor@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 |
|----------------|---|
| 0520-01-03 | Minimum Requirements for the Approval of Public Schools |
| Rule Number | Rule Title |
| 0520-01-03.01 | Approval of Schools |
| 0520-01-03-.02 | Organization of Schools |
| 0520-01-03-.03 | Administration of Schools |
| 0520-01-03-.05 | State Academic Standards, Requirement C |
| 0520-01-03-.06 | Graduation, Requirement D |
| 0520-01-03-.07 | Library Information Center, Requirement E |
| 0520-01-03-.08 | Pupil Personnel Services, Requirement F |
| 0520-01-03-.09 | Special Education Programs and Services, Requirement G |
| 0520-01-03-.10 | Waivers |

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-03
MINIMUM REQUIREMENTS FOR THE APPROVAL
OF PUBLIC SCHOOLS**

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| 0520-01-03-.03 | Administration of Schools, Requirement-B | 0520-01-03-.10 | Waivers |
| 0520-01-03-.04 | Repealed | 0520-01-03-.11 | Repealed |
| 0520-01-03-.05 | State Academic Standards, Requirement-C | 0520-01-03-.12 | Repealed |
| 0520-01-03-.06 | Graduation, Requirement-D | 0520-01-03-.13 | Repealed |
| 0520-01-03-.07 | Library Information Center, Requirement-E | | |

0520-01-03-.01 APPROVAL OF SCHOOLS.

(1) Inspections of Schools.

The Department of Education shall make periodic inspections of the schools under its control. These inspections shall be made to determine the extent to which local school systems operate in compliance with State Board of Education rules and regulations and to verify the information received on reports from local school officials.

(2) Approval Classifications for School Systems.

Each school system shall be classified as approved or non-approved. School systems classified as non-approved by the Commissioner of Education shall receive a written explanation of the reasons for such classification and shall be afforded the opportunity to respond. The ~~Commissioner's~~ commissioner's notification shall include a time by which corrective action shall be completed by the school system. If such corrective action is not taken within the time specified, the ~~Commissioner~~ commissioner shall impose sanctions on the school system which may include withholding part or all of state school funding to the non-approved system.

(3) Reports on School System Compliance with the Rules and Regulations.

The Department of Education shall make an annual report to the State Board of Education regarding each school system's compliance with the rules and regulations. The report shall include the approval status of each local school system, deficiencies identified by school in the approval process, an assessment of action needed to attain approval, local school system response, and sanctions imposed upon systems which do not comply.

(4) Reports on Waivers Granted by the Commissioner of Education.

The Department of Education shall post to its website any waiver of rules, regulations or policies granted by the department within five (5) business days of the Commissioner's approval. The waivers shall include the name of the system requesting the waiver and an explanation of the waiver requested. ~~make an annual report to the State Board of Education identifying waivers granted by the Commissioner of Education to local school systems. The report shall include, but shall not be limited to, the name of the system, the party requesting the waiver, the specific rule to which the waiver applies, the rationale for the waiver as~~

(Rule 0520-01-03-.01, continued)

~~presented in the waiver request, the date the waiver was approved, and the number of times the system has received a waiver for the same rule.~~

(5) Internal Audit.

The Department of Education shall maintain an internal audit function which shall assist the Department in the inspection of schools. Internal audit reports shall be presented to the Commissioner of Education and the State Board of Education.

Authority: T.C.A. § 49-1-302. **Administrative History:** Original rule certified June 10, 1974. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed October 1, 1985; effective October 31, 1985. Amendment filed May 28, 1986; effective June 27, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992.

0520-01-03-.02 ORGANIZATION OF SCHOOLS, REQUIREMENT A.

(1) Length of School Day for Students.

(a) The minimum length of the school day for students shall be six and one-half (6½) hours.

(b) School systems may provide for professional development during the school day under one of the following options:

1. School systems. School systems which elect to extend the school day to at least seven (7) hours for the purpose of meeting instructional time requirements missed due to dangerous or extreme weather conditions, may allocate a portion of that extension for the purpose of faculty professional development, M-team meetings, S-team meetings, parent/teacher conferences, or other similar meetings, as permitted in T.C.A. § 49-6-3004(e)(1), under the following conditions:

- (i) Prior to the beginning of the school year, the school system shall designate how many days shall be allocated for dangerous or extreme weather conditions and how many shall be allocated for student dismissals for faculty professional development, M-team meetings, S-team meetings, parent/teacher conferences, or other similar meetings. The total number of days shall not exceed thirteen (13).
- (ii) Faculty professional development shall be consistent with standards and guidelines established by the State Board of Education.
- (iii) School systems shall submit their plans for the allocation of excess time to the Commissioner of Education for approval.

2. Schools. School systems may adopt policies providing for individual schools to have school days of at least seven (7) hours in order to accumulate instructional time to be used for periodic early student dismissals for the purpose of faculty professional development. The following conditions shall apply to school systems exercising this option:

- (i) Early dismissals shall not exceed the equivalent of thirteen (13) days and shall not exceed three and one-half (3½) hours in any week.
- (ii) Students shall attend school one-hundred eighty (180) days.

(Rule 0520-01-03-.02, continued)

(iii) Faculty professional development shall be consistent with standards and guidelines established by the State Board of Education.

(c) -The length of the kindergarten day shall not be less than four (4) hours. Double sessions in any kindergarten program may be permitted so long as both sessions meet all legal requirements for kindergarten programs.

Authority: T.C.A. §§ 49-1-302 and 49-6-3004. **Administrative History:** Original rule certified June 10, 1974. 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 April 14, 1980; effective May 28, 1980. Amendment filed November 13, 1981; effective March 16, 1982. Amendment filed April 13, 1982; effective May 28, 1982. Repeal and new rule filed April 18, 1983; effective May 18, 1983. Amendment filed January 6, 1984; effective April 15, 1984. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed March 25, 1986; effective June 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Amendment filed October 29, 1986; effective December 13, 1986. Amendment filed July 22, 1987; effective October 28, 1987. Amendment filed November 18, 1987; effective February 28, 1988. Amendment filed July 21, 1988; effective October 29, 1988. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed November 3, 1993; effective March 30, 1994. Amendment filed March 14, 1995; effective July 28, 1995. Amendment filed April 29, 1996; effective August 28, 1996.

0520-01-03-.03 ADMINISTRATION OF SCHOOLS, REQUIREMENT B.

(1) Teacher Assignment. Teachers shall be on duty at least seven (7) hours per day and such additional time as the administrative organization requires.

(2) Salaries and Licensure for all Licensed Personnel.

(a) The employment standards and licensure requirements established by the State Board of Education shall be applicable to all licensed personnel employed by a local board of education without regard to the source of financial support.

(b) A salary schedule applicable to all licensed personnel shall be approved by the local board of education.

(3) Class Size for Grades Kindergarten (K) through Twelve (12).

(a) Local boards of education shall have policies providing for class sizes in grades kindergarten (K) through twelve (12) in accordance with the following:

| Grade Level | Average Class Size | Maximum Class Size |
|--------------------------------|--------------------|--------------------|
| K-3 | 20 | 25 |
| 4-6 | 25 | 30 |
| 7-12 | 30 | 35 |
| Career and Technical Education | 20 | 25 |

(b) The average class size for a grade level unit (such as the unit K-3) shall not exceed the stated average, although individual classes within that grade level unit may exceed the average.

(c) No class shall exceed the prescribed maximum size.

(Rule 0520-01-03-.03, continued)

- (d) The average class size and the maximum class size shall be based on regular classroom teaching positions, exclusive of principal, assistant principal, counselor, elementary art, elementary music, elementary physical education, librarian, special education, or other specialized positions.
 - (e) Class size limits may be exceeded in such areas as typewriting and instrumental and vocal music classes, provided that the effectiveness of the instructional program in these areas is not impaired.
 - (f) Local school systems shall not establish split-grade classes for the purpose of complying with the provisions of the class size averages and maximums. However, these provisions do not prevent school systems from using multi-aged classes.
 - (g) Local boards of education must approve the establishment of any split-grade classes for any purpose.
 - (h) The average class size specified for the grade levels involved in split-grade classes will be the maximum size allowed in such classes.
- (4) Planning Time.
- (a) Local boards of education shall provide full-time classroom teachers in grades kindergarten (K) through twelve (12) with individual duty-free planning periods during the established instructional day.
 - (b) Individual planning time shall consist of two and one-half (2½) hours each week during which teachers have no other assigned duties or responsibilities other than planning for instruction. The two and one-half (2½) hours may be divided on a daily or other basis.
 - (c) Individual duty-free planning time shall not occur during any period that teachers are entitled to duty-free lunch.
 - (d) Any school system which is providing an individual duty-free planning period by extending the school day by thirty (30) minutes as of the beginning of the 2000-01 school year may continue such practice and satisfy the planning time requirements.
 - (e) The director of schools shall report annually to the department Department of education Education regarding compliance with the individual duty-free planning time requirement.
- (5) Duty Free Lunch Period. In schools providing a lunch period for students, all teachers shall be provided each day with a lunch period during which they shall not have assigned duties. The lunch period for each teacher shall be at least the same amount of time as that allowed for students.
- ~~(6) Pupil Course Work Load. All full-time students in grades nine through twelve (9-12) shall be enrolled each semester in subjects that produce a minimum of five (5) units of credit for graduation per year. Students with hardships and gifted students may appeal this requirement to the local school superintendent and then to the local board of education.~~
- (76) Summer Schools.
- (a) Summer schools shall be under the control and management of the local board of education having jurisdiction.
 - (b) The following shall be required for grades nine (9) through twelve (9-12):

(Rule 0520-01-03-.03, continued)

1. State academic standards shall be used for all courses.
2. Summer school teachers shall be licensed and hold endorsements in the subject areas in which they are teaching.
3. ___Any course work successfully completed in an approved summer school is fully transferable to any other approved school.

(87) Student Evaluation in Grades Kindergarten (K) through grade eight (8).

(a) The student evaluation program for grades kindergarten (K) through grade eight (8) shall consist of the following:

1. A criterion-referenced test will be administered in subjects and grade levels in accordance with policy of the State Board of Education.
2. Based on achievement data from the benchmark years three (3), five (5), and eight (8), there shall be a research-based intervention initiated by the local education agency for students scoring below proficient in reading, language, and mathematics on the criterion referenced portion of the state achievement test. The intervention shall occur during the year following the benchmark assessment data. The Department of Education shall assist systems in the identification of effective intervention programs. Evidence of compliance with this requirement shall become a component of the school improvement plan.
3. An assessment of writing in grades five (5) and eight (8).

(b) State mandated student testing programs shall be undertaken in accordance with procedures published by the Department of Education. Local school systems shall develop local policies regarding security of test administration, consistent with Department of Education guidelines.

(c) ~~To assist the decision-making process and to better inform policy, the State Department of Education shall annually report to the State Board of Education the number and percentage of students scoring in the Below Basic below achievement level, but have been promoted to the next grade level by school system.~~ ___This data shall be disaggregated by subgroups similar to those required for federal reporting.

(d) LEAs shall use the Response to Instruction and Intervention (RTI²). RTI² shall include high-quality instruction and interventions tailored to student need where core instructional and intervention decisions are guided by student outcome data. Tiered interventions in the areas of reading, mathematics, and/or writing shall occur in general education depending on the needs of the student. If a student fails to respond to intensive interventions and is suspected of having a Specific Learning Disability, then the student may require special education interventions.

(98) Admission and Enrollment of Students.

(a) Children entering kindergarten shall be five (5) years of age on or before August 15. However, a child does not have to enroll in school at five (5) years of age, but enrollment must occur no later than the beginning of the academic year following the child's sixth (6th) birthday.

(Rule 0520-01-03-.03, continued)

- (b) Any transfer student applying for admission who was legally enrolled in an approved kindergarten in another state and who will be five (5) years of age no later than December 31 of the current school year, shall be enrolled.
- (c) A child must attend school until his/her eighteenth (18th) birthday, unless:
 - 1. He or she has received a diploma or other certificate of completion of high school;
 - 2. He or she is enrolled and making satisfactory progress in a course of instruction leading to a High School Equivalency Diploma; or
 - 3. He or she is enrolled in a home school and has reached their seventeenth (17th) birthday.

(409) Students Transferring From One School to Another.

- (a) Students may transfer among public schools or among Category I, II, or III private schools (see Chapter 0520-07-02), without loss of credit for completed work. The school which the student leaves must supply a properly certified transcript showing the student's record of attendance, achievement, and the units of credit earned.
- (b) Principals shall allow credit for work transferred from other schools only when substantiated by official transcripts. Students transferring from schools that are not approved by the Tennessee State Board of Education or by comparable agencies shall be allowed credit only when they have passed comprehensive written examinations approved, administered, and graded by the principal. Student scores from a recognized standardized test may substitute for the required comprehensive written examinations.
- (c) The examination administered to students in grades one (1) through eight (1-8) shall cover only the last grade completed.
- (d) The examinations administered to students in grades nine (9) through twelve (9-12) shall cover the individual subjects appearing on the official transcripts. The examination for subjects of more than one (1) unit need cover only the last unit completed. A student transferring from one school to another may count for graduation one-half ($\frac{1}{2}$) unit of credit in courses for which a minimum of one (1) unit is required only if the course is not offered in the school to which he or she is transferring.
- (e) The principal is authorized to transmit transcripts of a student to any school to which the student transfers or applies for admission when the records are requested by the receiving school or institution. The parent or guardian of the student will be notified that the transcript is being sent.
- (f) Local boards of education may admit pupils from outside their respective local school systems at any time.
- (g) Local boards of education may arrange for the transfer of students residing within their systems to other school systems by establishing agreements with other local boards of education for the admission or transfer of students from one school system to another.
- (h) The receiving board of education may set a time before or during the school year after which it will not accept transfer students. The receiving board of education may charge the non-resident student tuition to attend.
- (i) If a local board of education otherwise permits non-resident students to transfer into its schools, it may not discriminate against any students solely on the grounds of their

(Rule 0520-01-03-.03, continued)

race, sex, national origin or disability, nor may it charge such students a tuition over and above the usual tuition for non-disabled persons.

(11-10) Public Virtual Schools.

(a) Public virtual schools must comply with all applicable Tennessee State Board of Education policies and rules and regulations.

(b) Public virtual schools shall:

1. Be approved by the local board of education;
2. Use technology to deliver a significant portion of instruction to its students via the Internet in a virtual or remote setting;
3. Review and provide access to a sequential curriculum that meets or exceeds the curriculum standards adopted by the Tennessee State Board of Education;
4. Meet the equivalent of the 180 days of instruction and six and one-half (6½) hours per day per academic year pursuant to T.C.A. § 49-6-3004;
5. Monitor participation and progress to ensure students meet participation requirements and make progress toward successful completion of courses;
6. Administer all state tests required of public school students to students enrolled in a virtual school in a proctored environment consistent with state test administration guidelines;
7. Be evaluated annually and report the extent to which the school demonstrates increases in student achievement, along with academic, fiscal, and operational performance;
8. Ensure that students with special needs, including students with disabilities and limited English proficiency are not excluded from enrolling and participating, further, the public virtual school is responsible for providing the services in the student's Individualized Education Program (IEP);
9. Ensure that all teachers employed to provide services to the students are endorsed in their grade or course and qualified to teach in Tennessee;
10. Ensure access to instructional materials, access to technology such as a computer and printer that may be necessary for participation in the program, and access to an Internet connection used for school work; and
11. Meet class size standards established by T.C.A. § 49-1-104. An individual virtual school may increase the enrollment in virtual classes by up to twenty-five percent (25%) over the class size standards established by T.C.A. § 49-1-104 if the school demonstrates student achievement growth at a level of "at expectations" or greater, as represented by the Tennessee Value-Added Assessment System (TVAAS) in the prior year.

(dc) Public virtual schools must comply with all compulsory attendance requirements including monitoring and reporting as required in T.C.A. § 49-6-3007.

(Rule 0520-01-03-.03, continued)

1. The district establishing the public virtual school is required to report truancy to the juvenile court having jurisdiction over that student.
2. On or before August 1 of each year, the public virtual school shall notify all LEAs of the enrollment of students residing within the LEA's jurisdiction. LEAs shall be notified within two (2) weeks when changes occur relative to students residing within the LEA's jurisdiction.
3. Once a non-resident student has been accepted and enrolled in a public virtual school, it shall be the responsibility of the LEA that has established the public virtual school to maintain enrollment of that student until such a time as the student is withdrawn by the parent or guardian. If the student is withdrawn by the parent or guardian, the public virtual school shall send transcripts and other student records to the receiving school in a timely manner.

(1211) Records and Reports.

- (a) A cumulative record provided to teachers by local school systems shall be kept up to date for each student, kindergarten (K) through grade twelve (12), and shall remain as local school property.
- (b) Each school shall provide for the storage and safekeeping of all records and reports.
- (c) The maintenance, use, dissemination and confidentiality of information in school records and reports shall be governed by written policies of the local board of education.

(1312) School Fees.

- (a) No fees or tuitions shall be required of any student as a condition of attending public schools or using its equipment while receiving educational training. All school fees must be authorized by the local board of education. Local board policy will determine activities during the school day and supplies that are required for participation in courses offered for credit or grade for which the board authorizes the requesting of fees.
- (b) The following school fees may be requested from but not required of any student, regardless of financial status (including eligibility for free or reduced price lunch):
 1. Fees for activities that occur during regular school hours (the required 180 instructional days), including field trips, any portion of which fall within the school day; or for activities outside regular school hours if required for credit or grade;
 2. Fees for activities and supplies required to participate in all courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies; and
 3. Refundable security deposits collected by a school for use of school property for courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies.
- (c) LEAs shall establish a process by which to waive the following school fees for students eligible for free or reduced price school lunches:
 1. Fees or tuition applicable to courses taken for credit or grade during the summer by a student; except that non-resident students regularly enrolled in another school system may be required to pay fees or tuition for such summer courses; and

(Rule 0520-01-03-.03, continued)

2. Fees required for graduation ceremonies.

(d) Fee waiver process for students eligible for free or reduced price lunch. At the beginning of the school year, at the time of enrollment, and/or at the time of requesting school fees, all students and their parents or legal guardians shall be given clear and prominent written notice of authorized fees that may be requested, and notice of the fee waiver process.

1. The parent or legal guardian of a student shall be given the opportunity to pay all or any portion of the school fee if they desire. However, if the parent chooses not

to pay a fee, the child may not be prevented from participating in the activity or course for which the fee is being requested.

2. Local education agencies shall provide written notice to parents or legal guardians of approval or denial of requests for fee waivers. Any denial shall contain the specific grounds for denial and shall afford the parent or legal guardian the opportunity for a personal meeting with the appropriate school personnel to discuss the validity of the denial.

3. Local education agencies shall keep copies of any forms, notices and/or instructions used by schools in the waiver of fees and shall keep records of any denials, appeals of denials, and resolution of such appeals.

(e) LEAs are authorized to require payment of the following fees by all affected students:

1. Fines imposed on all students for late-returned library books; parking or other traffic fines imposed for abuse of parking privileges on school property; or reasonable charges for lost or destroyed textbooks, library books, workbooks or any other property of the school;

2. Debts incurred pursuant to section paragraph Rule 0520-01-03-.03(1413) of this rule, Withholding of Student Grades for Debts Owed to the School;

3. Refundable security deposits collected by a school for use of school property for participation in extracurricular activities;

4. Costs for extracurricular activities occurring outside the regular school day including sports, optional trips, clubs or social events; and

5. Non-resident tuition charged of all students attending a school system other than the one serving their place of residence.

(1413) Withholding of Student Grades for Debts Owed to the School.

(a) Local education agencies are authorized to withhold all grade cards, diplomas, certificates of progress or transcripts of a student who has taken property that belongs to a local education agency, or has incurred a debt to a school, until such student makes restitution in full. Unpaid school fees, as defined above, may not be considered debts owed to the school.

(b) No student shall be sanctioned under the provisions of this rule when the student is deemed to be without fault for the debt owed to the local education agency or the school.

(Rule 0520-01-03-.03, continued)

- (c) Nothing in this subparagraph authorizes any local education agency to limit the rights of parents to have access to their children's educational records pursuant to the Family Educational Rights and Privacy Act.
- (d) Local education agencies shall afford the student and/or the student's parent the opportunity to appear and be heard if such student and/or the parent disputes the debt, the amount of the debt, or the application of sanctions.

~~(15) Student Absence in Observance of Religious Holidays.~~

~~Any student who misses a class or day of school because of the observance of a day set aside as sacred by a recognized religious denomination of which the student is a member or adherent, where such religion calls for special observances of such day, shall have the absence from that school day or class excused and shall be entitled to make up any school work missed without the imposition of any penalty because of the absence.~~

~~(1614)~~ School Board, District School Improvement Planning.

- (a) School Board Improvement Plan. Each local board of education shall develop, maintain, and implement a long-range strategic plan that addresses at least a five (5)-year period of time. The plan shall be updated every two (2) years and include a mission statement, goals, objectives and strategies, and address the State Board of Education master plan.
- (b) District and School Improvement Plan. Each local board of education shall have each school under its jurisdiction develop, maintain, and implement a school improvement plan. The plan shall be updated every two (2) years and include areas such as curriculum, instruction, professional development, and community partnerships, and address the long-range strategic plan of the local board of education.

~~(1715)~~ Multi-Hazard Emergency Operations Plans.

- (a) Each local school system shall have a multi-hazard emergency operations plan to include, but not be limited to, fire, tornado, earthquake, flood, bomb threat, and armed intrusion.
- (b) Each school shall practice emergency safety procedures.
- (c) Each local education agency having jurisdiction that lies entirely or partially within one hundred (100) miles of the New Madrid Fault Line shall implement earthquake preparedness drills in each of the schools administered by such local education agency. The Guidebook for Developing A School Earthquake Safety Program published by the Federal Emergency Management Agency shall serve as the model plan for local education agencies to consider when adopting plans for earthquake preparedness drills. Affected local education agencies shall review and consider the entire guidebook to assure that their schools provide the optimal safety conditions for their students.
- (d) Each school administered by a local education agency having jurisdiction that lies entirely or partially within one hundred (100) miles of the New Madrid Fault Line shall conduct at least two (2) earthquake preparedness drills every school year. A record of the earthquake preparedness drills, including the time and date, shall be kept in the

(Rule 0520-01-03-.03, continued)

respective schools and shall be made available upon request by the Department of Education.

- (e) Each school that utilizes a two (2)-way communication system shall ensure teachers and other personnel are properly and adequately trained on the use of the system.
- (f) ~~Alternate-Alternative~~ schools must maintain a two (2)-way communication system.

Authority: T.C.A. §§ 49-1-302, 49-1-302(a)(2) and (13), 49-2-110, 49-2-114, 49-6-101, 49-6-201, 49-6-3001(c) and (c)(1), 49-6-3003, 49-6-3005(a) and (a)(4), 49-6-3104, 49-6-3105, 49-6-6201, and Sections 30, 78 through 80, and 88 of Chapter 535 of the Public Acts of 1992. **Administrative History:** Original rule certified June 10, 1974. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed July 19, 1982; effective October 13, 1982. Repeal and new rule filed April 18, 1983; effective May 18, 1983. Amendment filed June 10, 1983; effective September 14, 1983. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed May 28, 1986; effective June 27, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed July 21, 1992; effective October 28, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed May 31, 1996; effective September 27, 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed March 1, 2005; effective July 29, 2005. Amendment filed September 6, 2007; effective January 28, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed October 20, 2009; effective March 31, 2010. Amendment filed March 25, 2010; effective August 29, 2010. Amendment filed December 19, 2012; effective May 30, 2012. Amendments filed March 21, 2012; effective August 29, 2012. Amendment filed February 6, 2013; effective July 29, 2013. Amendment to rule 0520-01-03-.03 (4) filed May 22, 2015; effective August 20, 2015.

0520-01-03-.04 REPEALED.

Authority: T.C.A. §§ 49-1-302, 49-5-5103, and 49-5-5202. **Administrative History:** Original rule certified June 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 filed October 15, 1979; effective January 9, 1980. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed November 13, 1981; effective December 28, 1981. Amendment filed June 24, 1984; effective July 27, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed June 28, 1984; effective September 11, 1984. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed January 31, 1985; effective April 16, 1985. Amendment filed June 24, 1985; effective September 13, 1985. Amendment filed September 30, 1985; effective December 14, 1985. Amendment filed December 31, 1985; effective March 17, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Amendment filed October 29, 1986; effective December 13, 1986. Amendment filed October, 15, 1986; effective January 27, 1987. Amendment filed April 24, 1987; effective June 8, 1987. Amendment filed April 18, 1988; effective July 27, 1988. Amendment filed May 13, 1988; effective August 29, 1988. Amendment filed November 22, 1988; effective February 28, 1989. Amendment filed October 31, 1989; effective January 29, 1990. Amendment filed October 12, 1990; effective January 29, 1991. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repealed October 14, 2016.

0520-01-03-.05 STATE ACADEMIC STANDARDS, REQUIREMENT C.,

(Rule 0520-01-03-.05, continued)

(1) Academic Standards.

(a) The State Board of Education shall adopt academic standards for each subject area, grades kindergarten (K) through twelve (12). The standards shall specify learning expectations and include performance indicators. The approved standards shall be the basis for planning instructional programs in each local school system.

(b) Adopted textbooks shall be aligned with state academic standards.

(c) Instruction in grades kindergarten (K) through twelve (12) in issues of current concern such as character education, environmental education, economic education, career education, family life education, substance use and abuse, AIDS education, sexual abuse prevention, cardiopulmonary resuscitation, and safety shall be incorporated in appropriate subject areas and grade levels.

(2) Experimental Projects and Special Courses.

(a) Local school systems may offer special courses not listed in 0520-01-03-.06 that have been approved by the Department of Education. Each course must be approved in advance each year by the Department of Education. Each special course approved by the Department shall be recommended to that state board for an approval period of three (3) or six (6) years.

(3) Grading and Promotion.

(a) Each school shall evaluate and report in writing to the parent(s) or legal guardian(s) each student's progress in each subject, at least every nine (9) weeks, in accordance with the school system's evaluation plan. A parent or legal guardian will sign or otherwise acknowledge the report and return it to the teacher. Local school systems may choose not to require parental acknowledgement of the grade report for students in grades seven (7) through twelve (7-12). If parental acknowledgement is not required, schools must publish annually the dates and method of reporting student progress and must provide ample opportunities for parents to notify the school of any concerns.

(b) Local school systems shall develop and implement grading, promotion, and retention policies for grades kindergarten (K) through eight (K-8). The policies shall be communicated annually to students and parents.

(c) Local school systems shall use the state board adopted uniform grading system for students enrolled in grades nine (9) through twelve (9-12) for reporting student grades for the determination of eligibility for HOPE scholarships.

(4) Reserved.

Authority: T.C.A. §§ 37-1-603, 49-1-204, 49-1-302, 49-1-304, 49-1-404, 49-6-101, 49-6-209(d), 49-6-407, 49-6-1003, 49-6-1005, 49-6-1006, 49-6-1007, 49-6-1008, 49-6-1202, 49-6-1203, 49-6-1204, 49-6-1205, 49-6-1302, 49-6-2202, 49-6-2203, and 49-6-3001(c)(3)(A). **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed January 17, 1986; effective April 15, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed August 26, 1986; effective November 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed April 28, 1992; effective July 29, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed January 14, 1997; effective May 30, 1997. Amendment filed April 27, 1998; effective August 28, 1998.

(Rule 0520-01-03-.05, continued)

Amendment filed July 13, 1998; effective November 27, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed March 31, 2003; effective July 29, 2003. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed June 30, 2005; effective October 28, 2005. Amendments filed December 28, 2005; effective April 28, 2006. Amendments filed September 6, 2013; effective February 28, 2014. Amendment filed April 6, 2015; effective July 5, 2015.

| (Rule 0520-01-03-.06, ~~continued~~, continued)

| **0520-01-03-.06 GRADUATION, REQUIREMENT D.**

(Rule 0520-01-03-.06, continued)

- (1) Graduation Requirements - All students will have access to a rigorous education that will prepare them for success in postsecondary and the workforce. All coursework should be aligned to the Tennessee Academic Standards for that subject and course.

(a) High School Diploma.

1. The following twenty-two (22) credits shall be required for graduation:

| | |
|----------------------------------|-------------|
| English language arts | 4 credits |
| Mathematics | 4 credits |
| Science | 3 credits |
| Social Studies | 3 credits |
| -Physical Education and Wellness | 1.5 credits |
| -Personal Finance | 0.5 credit |
| -Elective Focus | 3 credits |
| -Foreign Language | 2 credits |
| -Fine Arts | 1 credit |

2. To earn a regular high school diploma, students must (1) earn the prescribed twenty-two (22)-credit minimum, (2) complete the ACT, SAT, or other eleventh (11th) grade assessment as determined by the commissioner of education, and (3) have a satisfactory record of attendance and discipline.
3. Students with disabilities will be included in regular classes to the degree possible and with appropriate support and accommodations. To earn a regular high school diploma, students with disabilities must earn the prescribed twenty-two (22)-credit minimum. ~~Students failing to earn a yearly grade of seventy percent (70%) in a course that has an End of Course examination and whose disability adversely affects performance in that test will be allowed, through an approved process, to add to their End of Course examination scores by demonstrating the state identified knowledge and skills contained within that course through an alternative performance-based assessment. The necessity for an alternative performance-based assessment must be determined through the student's Individualized Education Plan (IEP). The alternative performance-based assessment will be evaluated using a state-approved rubric.~~
4. A special education diploma may be awarded at the end of their fourth (4th) year of high school to students with disabilities who have (1) not met the requirements for a regular high school diploma, (2) have satisfactorily completed an IEP, and (3) have satisfactory records of attendance and conduct. Students who obtain the special education diploma may continue to work toward a regular high school diploma through the end of the school year in which they turn twenty-two (22) years old.
4. ~~5.~~ An occupational diploma may be awarded at the end of their fourth (4th) year of high school to students with disabilities who (1) have not met the requirements for a regular high school diploma, (2) have satisfactorily completed an IEP, (3) have satisfactory records of attendance and conduct, (4) have completed the occupational diploma Skills, Knowledge, and Experience Mastery Assessment (SKEMA) created by the Department of Education, and (5) have completed two (2) years of paid or non-paid work experience. The determination that an occupational diploma is the goal for a student with a disability will be made at the conclusion of the student's tenth (10th) grade year or two (2) academic years prior to the

(Rule 0520-01-03-.06, ~~continued~~, continued)

expected graduation date. Students who obtain the occupational diploma may continue to work towards the high school diploma through the end of the school year in which they turn twenty-two (22) years old.

6. An alternate academic diploma may be awarded to students with significant cognitive disabilities at the end of their fourth (4th) year of high school who have: (1) participated in the high school alternate assessments, (2) earned the prescribed twenty-two (22) credit minimum, (3) received special education services or supports and made satisfactory progress on an IEP, (4) have satisfactory records of attendance and conduct, and (5) have completed a transition assessment(s) that measures, at a minimum, preparedness for postsecondary education and training; employment; independent living; and community involvement. The required credits may be earned either through the state-approved standards or through alternate academic diploma modified course requirements approved by the State Board. A student who earns an alternate academic diploma shall continue to be eligible for special education services under IDEA until he or she receives a regular high school diploma or through the school year in which the student turns twenty-two (22).
7. All full-time students in grades nine (9) through twelve (9-12) shall be enrolled each semester in subjects that produce a minimum of five (5) units of credit for graduation per year. Students with hardships and gifted students may appeal this requirement to the Director of Schools and then to the local board of education.
- ~~8.~~ Students must complete four (4) credits of English, including English I, English II, English III, and English IV.
- ~~9.~~ Students must complete four (4) credits of mathematics including Algebra I and II, Geometry or the equivalent Integrated Math I, II, and III, and another mathematics course beyond Algebra I or Integrated Math I. Students must be enrolled in a mathematics course each school year. Students who complete any of the required math credits prior to the ninth (9th) grade may receive graduation credit for that coursework; however, those students are still required to enroll in math during each high school year.
- ~~10.~~ Students with a qualifying disability who have deficits in mathematics as documented in the individualized education program (IEP) shall be required to achieve at least Algebra I and Geometry (or the equivalent Integrated Math I and Integrated Math II). The required number of credits in math will be achieved through strategies such as, but not limited to, increased time, appropriate methodologies, and accommodations as determined by the IEP team.
- ~~6.~~ 11. Students must complete three (3) credits of Science. Students must complete Biology, Chemistry or Physics, and a third lab science. Students with a qualifying disability as documented in the IEP shall be required to achieve at least Biology I and two (2) other lab science credits. The required number of credits in science will be achieved through strategies such as, but not limited to, increased time, appropriate methodologies, and accommodations as determined by the IEP team.
- ~~7.~~ 12. Students must complete three (3) credits of Social Studies. The content of the social studies courses will be consistent with Tennessee Academic Standards and with admissions requirements of Tennessee public institutions of

(Rule 0520-01-03-.06, ~~continued~~, continued)

higher education. Required courses include United States History and Geography, World History and Geography, Economics, and United States Government and Civics.

- 8- ~~13.~~ 13. Students must complete one-half ($\frac{1}{2}$) credit in Personal Finance. Three (3) years of JROTC may be substituted for one-half ($\frac{1}{2}$) credit of Personal Finance if the JROTC instructor attends the Personal Finance training.

14. Students must complete one (1) credit in wellness. The wellness courses will integrate concepts from health, physical fitness, and wellness and may be taught by a team of teachers from one (1) or more teaching areas, including health, physical education, family and nutrition sciences, and health sciences education.

- 9- Participation in marching band and interscholastic athletics may not be substituted for this aspect of the graduation requirements. Credit earned in two (2) years of JROTC may be substituted provided the local system has complied with requirements of the State Board of Education.

Credit for basic training may be substituted, upon the choice of the student, for the required credit in lifetime wellness and credit in one (1) elective course or for credit in two (2) elective courses.

- 10- ~~15.~~ 15. Students must complete one-half ($\frac{1}{2}$) credit in physical education. This requirement may be met by substituting a documented and equivalent time of physical activity in marching band, JROTC, cheerleading, interscholastic athletics, school sponsored intramural athletics, and other areas approved by the local board of education.

- 11- ~~16.~~ 16. Students must complete two (2) credits of the same Foreign Language. The credit requirement for foreign language may be waived by the local school district for students, under certain circumstances, to expand and enhance the elective focus.

- 12- ~~17.~~ 17. Students must complete one (1) credit in Fine Arts. The credit requirement for fine arts may be waived by the local school district for students, under certain circumstances, to expand and enhance the elective focus.

- 13- ~~18.~~ 18. Students must complete three (3) credits in an elective focus. All students will pursue a focused program of study designed to prepare them for the workforce and postsecondary study. The elective focus may be CTE, science and math, humanities, fine arts, AP/IB, or other areas approved by the local board of education. Students completing a CTE elective focus must complete three (3) credits in the same CTE career cluster or state-approved program of study.

- 14- ~~19.~~ 19. Every candidate for graduation must have received a full year of computer education at some point during the candidate's educational career pursuant to T.C.A. § 49-6-1010.

~~(b) Graduation with Honors, State Honors, and State Distinction.~~

- ~~1. School systems may design student recognition programs that allow students to graduate with honors if they have met the graduation requirements and have obtained an overall grade point average of at least a 3.0 or higher on a 4.0 scale. School systems may set a higher GPA at their discretion. School systems may specify additional requirements, such as requiring students to demonstrate performance of distinction in one (1) or more areas.~~

(Rule 0520-01-03-.06, ~~continued~~, continued)

~~2. Students who score at or above all the subject area readiness benchmarks on the ACT or equivalent score on the SAT will graduate with state honors.~~

~~— Each local school board shall develop a policy prescribing how students graduating with “state honors” will be noted and recognized.~~

~~3. Students will be recognized as graduating with “state distinction” by attaining a B or better average and completing one of the following:~~

~~(i) Earn a state or nationally recognized industry certification~~

~~(ii) Participate in at least one (1) of the Governor’s Schools~~

~~(iii) Participate in one (1) of the state’s ALL State musical organizations~~

~~(iv) Be selected as a National Merit Finalist or Semi-Finalist~~

~~(v) Attain a score of thirty one (31) or higher composite score on the ACT or SAT equivalent~~

~~(vi) Attain a score of three (3) or higher on at least two advanced placement exams~~

~~(vii) Successfully complete the International Baccalaureate Diploma Programme~~

~~(viii) Earn twelve (12) or more semester hours of transcribed postsecondary credit~~

~~— Each local school board shall develop a policy prescribing how students graduating with “state distinction” will be noted and recognized.~~

~~4. Students that voluntarily complete at least ten (10) hours of community service each semester the student is in attendance at a public high school shall be recognized at their graduation ceremony.~~

~~Each local school board shall develop a policy prescribing how these students will be noted and recognized.~~

(b) Examinations.

1. End of Course examinations will be given in English I, English II, English III, Algebra I, Geometry, Algebra II, Integrated Math I, Integrated Math II, Integrated Math III, U.S. History, Biology I, Chemistry, and Physics, upon development. Students are not required to pass any one (1) examination, but instead students must achieve a passing score for the course in accordance with the State Board of Education’s Uniform Grading Policy.

2. The department ~~Department of education~~ Education shall provide raw score data from the End of Course (EOC) examinations to each local education agency (LEA) for the purpose of including student scores on the EOC examinations into a student’s final grade for the course. The weight of the EOC examination on the student’s final average shall be ten percent (10%) in the 2016-2017 school year, fifteen percent in the 2017-2018 school year; and shall be determined by the LEA from a range of not less than fifteen percent (15%) and not more than twenty-five percent (25%) in the 2018-2019 school year and thereafter.

Each LEA must establish a local board policy that details the methodology used and the required weighting for incorporating students’ scores on EOC examinations into final report card grades.

(Rule 0520-01-03-.06, ~~continued~~, continued)

Results of individual student performance from all administered EOC examinations will be provided to LEAs in time to facilitate the inclusion of these results as part of the students' grade. If an LEA does not receive its students' EOC examination scores at least (5) instructional days before the scheduled end of the course, then the LEA may choose not to include its students' EOC examination scores in the students' final average.

3. As a strategy for assessing student readiness for postsecondary education, every public school student shall take either the ACT, SAT, or other eleventh (11th) grade assessment as determined by the ~~Commissioner~~ Commissioner of Education.
4. All LEAs shall implement a project-based assessment in civics at least once in grades nine (9) through twelve (9-12) pursuant to T.C.A. § 49-6-1028.
5. Beginning January 1, 2017, students must participate in the United States civics test during the candidate's high school career pursuant to T.C.A. § 49-6-408.

(~~c~~) Academic Program. All courses listed in State Board of Education Policy 3.205 may be offered for credit in grades nine (9) through twelve (12).

(~~d~~) Every local board of education shall develop a policy regarding the minimum and maximum units in any course or subject area for which a student may earn credit toward graduation.

(2) Testing for Credit.

- (a) Local boards of education may adopt policies permitting students who are enrolled in grades nine (9) through twelve (12) and who have taken the equivalent of high school level courses to earn unit(s) of high school credit for these courses. Students may earn credit toward graduation upon passing a comprehensive written examination in accordance with standards determined by the local board of education.
- (b) High school credit may not be given by examination in American History.

(3) Work-Based Learning Experiences.

- (a) Students will have access to a system of structured work-based learning (WBL) experiences that allows them to apply classroom theories to practical problems and to explore career options.
- (b) The state board's Work-Based Learning Framework will govern all WBL experiences. The Department of Education will provide school systems with a Work-Based Learning Policy Guide and a Work-Based Learning Implementation Guide to address training requirements, program expectations, and legal requirements. These documents will be reviewed annually by the Department of Education and will be updated as necessary for dissemination to school systems.

(4) Enrollment in College Level Courses.

- (a) Local education agencies shall award high school credit to students who successfully complete college level courses aligned to a graduation requirement course, including general education and elective focus courses.

(Rule 0520-01-03-.06, ~~continued~~, continued)

- (b) (b) Early admission into college may be considered for a twelfth (12th) grade student who has at least a 3.5 grade point average and a minimum ACT composite score of twenty-five (25) (or equivalent SAT score). A student must have written endorsement from the high school principal, counseling staff, and the partnering postsecondary institution. The written agreement shall include a review by the principal of the postsecondary coursework and verification that it is appropriate to substitute for any remaining graduation requirements for the student. Written agreements submitted by the student and the parents must be placed on file in the office of the principal.
 - (c) A qualified student enrolled in high school may enroll in a postsecondary institution and take college-level courses, which are taught at the high school, postsecondary institution, or online by postsecondary faculty or credentialed adjunct faculty. Students who take and pass dual enrollment courses at a postsecondary institution shall have their postsecondary credits accepted by their local high school for credit as a substitution for an aligned graduation requirement course, including general education and elective focus courses. State funds to the local school system shall not be diminished because of the student's participation.
 - (d) Local boards of education may adopt policies providing for college-level courses to be offered during the school day on the high school campus. Such courses must be taught by a licensed high school teacher or credentialed postsecondary faculty member approved by the local school system and partnering postsecondary institution. These courses are to be considered part of the high school program, with content and instruction subject to the supervision of the school principal and local board of education.
- (5) The High School Equivalency Testing (HiSET) Program and the Issuance of Equivalency Diplomas.
- (a) The testing program is operated in accordance with the HiSET manual of the Education Testing Service and the rules established by the Department of Labor and Workforce Development.
 - (b) The chief examiners shall ensure that all examinees meet the state requirements for age, residency, proper identification, and any other qualifications prior to admission to the testing session.
 - (c) A candidate must be eighteen (18) years of age before being eligible to take the HiSET test. A seventeen (17) year old may be allowed to take the examination upon recommendation of the local school superintendent. The superintendent may require written documentation from the applicant to support this recommendation. This rule shall not be used to circumvent participation in the regular high school program.
 - (d) The HiSET test consists of five (5) core areas that count twenty (20) points each. In order to pass, the total composite score on the HiSET test shall not be less than forty-five (45) and no score on any one (1) core area of the test battery shall be less than eight (8).

Authority: T.C.A. §§ 49-1-302, 49-1-302(a)(2) and (13), 49-6-101, 49-6-201, 49-6-3001(c) and (c)(1), 49-6-3003, 49-6-3005(a) and (a)(4), 49-6-3104, 49-6-3105, 49-6-6001(g), 49-6-6201, and Sections 30, 78 through 80, 88 of Chapter 535 of the Public Acts of 1992, and Public Chapter 448 (2013).

Administrative History: Original rule certified June 10, 1974. Amendment filed July 18, 1974; effective August 17, 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 filed October 15, 1979; effective January 8, 1980. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed April 13, 1982; effective May 28, 1982. Amendment filed September 28, 1982; effective December 15, 1982. Amendment filed January 19, 1983; effective April 18, 1983. Amendment filed September 28,

(Rule 0520-01-03-.06, ~~continued~~, continued)

1983; effective December 14, 1983. Amendment filed January 6, 1984; effective April 15, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed June 28, 1984; effective September 11, 1984. Amendment filed May 12, 1985; effective August 13, 1985. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed March 25, 1986; effective June 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1987; effective October 28, 1987. Amendment filed July 22, 1987; effective October 28, 1987. Amendment filed September 20, 1987; effective December 29, 1987. Amendment filed November 18, 1987; effective February 28, 1988. Amendment filed April 18, 1988; effective July 27, 1988. Amendment filed May 13, 1988; effective August 29, 1988. Amendment filed October 18, 1988; effective January 29, 1989. Amendment filed November 22, 1988; effective February 28, 1989. Amendment filed November 16, 1989; effective February 28, 1990. Amendment filed June 5, 1990; effective September 26, 1990. Amendment filed October 12, 1990; effective January 29, 1991. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed June 24, 1992; effective September 28, 1992. Amendment filed July 21, 1992; effective October 28, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed April 14, 1993; effective July 28, 1993. Amendment filed August 10, 1993; effective December 29, 1993. Amendment filed October 28, 1993; effective March 1, 1994. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed March 27, 1995; effective July 28, 1995. Amendment filed May 31, 1996; effective September 27, 1996. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed July 13, 1998; effective November 27, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed October 31, 2000; effective February 28, 2001. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed December 31, 2001; effective April 30, 2002. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed March 31, 2003; effective July 29, 2003. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed August 30, 2004; effective December 29, 2004. Amendments filed May 19, 2005; effective September 28, 2005. Amendments filed June 30, 2005; effective October 28, 2005. Amendment filed June 19, 2007; effective October 26, 2007. Amendments filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed June 11, 2008; effective October 28, 2008. Amendment filed July 17, 2009; effective December 29, 2009. Amendment filed February 24, 2010; effective July 29, 2010. Amendment filed February 6, 2013; effective July 29, 2013. Amendment filed June 18, 2013; effective November 28, 2013. Amendments filed September 6, 2013; effective February 28, 2014. Amendments filed October 7, 2013; to be effective March 31, 2014. However, the State Board of Education filed a withdrawal of the rule. Amendments filed November 27, 2013; effective April 30, 2014. Amendment filed May 8, 2014; effective October 29, 2014. Amendment filed October 13, 2015; effective January 11, 2015. Amendment to rule 0520-01-03-.06 (1)(b) filed May 22, 2015; effective August 20, 2015. Amendment to rule 0520-01-03-.06 (3) filed May 22, 2015; effective August 20, 2015. Amendments filed December 30, 2015; effective March 29, 2016.

0520-01-03-.07 LIBRARY INFORMATION CENTER, ~~REQUIREMENT-E.~~

(1) School Library Information Center.

- (a) All school libraries shall serve as resources for students, teachers, and community members to strengthen student learning. School library information specialists shall work collaboratively with classroom teachers and school administrators to integrate both curricular concepts and information skills that assist research and other learning activities. The collection and the services of the library shall adequately support the curricular priorities within the school.
- (b) School libraries shall provide an environment that allows efficient access to resources, including both print and electronic. Schools must be organized to allow the library

(Rule 0520-01-03-.07, continued)

_____program m
-to operate a flexible schedule that allows students and teachers to access resources at the point of need.

(c) School libraries shall provide parents and community members access to resources, so that the school library information center serves as a community resource.

(2) Library Information Center Personnel.

(a) Elementary/Middle Schools. Schools including grades kindergarten (K) through eight (K-8) or any combination thereof shall provide library information personnel as follows:

1. A school having a current average daily membership of 550 or more students shall have a full-time library information specialist with endorsement as a library information specialist.
2. A school with a current average daily membership of 400 to 549 students shall have a half-time library information specialist with endorsement as a library information specialist. During the time that the library is open during regular school hours and the library information specialist is not present, staff member(s) shall be designated to provide supervision to students in the library.
3. In a school with fewer than 400 students, a faculty member shall serve as a library information coordinator. If the library information coordinator is not present during the time that the library is open during regular school hours, staff member(s) shall be designated to provide supervision to students in the library.
4. It is optimal to have the library open outside the regularly scheduled school day and if library personnel specialist or coordinator is not present, appropriate supervision shall be provided to the students in the library.

(b) High Schools. Schools including any high school grade shall provide library information personnel as follows:

1. A school with a current average daily membership of 1,500 or more students shall have two (2) full-time library information specialists, each with endorsement as a library information specialist.
2. A school with a current average daily membership of more than 300 but less than 1,500 students shall have a full-time library information specialist with endorsement as a library information specialist.
3. A school with a current average daily membership of fewer than 300 students shall have a half-time library information specialist. During the time that the library is open during regular school hours and the library information specialist is not present, staff member(s) shall be designated to provide supervision to students in the library.
4. It is optimal to have the library open outside the regularly scheduled school day and if the library information specialist is not present, appropriate supervision shall be provided to the students in the library.

(3) Library Information Center Collection.

(Rule 0520-01-03-.07, continued)

The three (3) levels of collection standards for Tennessee school libraries are: Basic, Standard, and Exemplary. The criteria by which school library collections are evaluated are listed below:

(a) Item Count.

Basic collection - Contains a minimum of twelve (12) items per student in Average Daily Membership (ADM);

Standard collection - Contains fifteen (15) items per student in ADM; and

Exemplary collection - Contains eighteen (18) items per students in ADM.

(b) Collection Compilation.

1. Pamphlets, textbooks, class sets, periodicals, out-of-date items, and items in poor physical condition shall neither be counted nor reported in the total collection. No more than five (5) copies of the same print title may be counted to meet standards for a minimum number of items per student.
2. Digital resources should be accessible through a school library webpage or Online Public Access Catalog (OPAC) and may comprise fifty percent (50%) of the collection.
3. The library shall provide access to the virtual library administered by the Tennessee State Library and Archives and the library personnel should receive training. -These resources may count for up to twenty percent (20%) of the overall collection or, in schools in which the librarian has received official training within the last five (5) years, they may count for up to thirty percent (30%) of the overall collection.
4. The collection shall include access to a current, complete encyclopedia in any format. In secondary schools, the collection shall also include an unabridged dictionary, one (1) foreign language dictionary in the native language of ESL students in attendance at the school, a local newspaper, and one (1) daily newspaper presenting news on both state and national levels. For digital materials, only full text should be counted in the total.
5. The collection should include a balance of fiction and nonfiction with an appropriate level of text complexity. The resources in the collection should be chosen to: complement and augment the most recently adopted curriculum standards, be a motivational springboard for student research, and encourage self-expression and curiosity by offering a variety of recreational reading material.

(c) Age.

Collections meeting the compilation standards are evaluated based on age of the collection as measured in years from the current year:

Basic collection – sixteen (16) years and older;

Standard collection – fifteen (15) years; and

Exemplary collection – fourteen (14) years or less.

(Rule 0520-01-03-.07, continued)

(d) Technology - Access to Digital Materials.

1. Workstations with ~~Internet~~-internet access in the library information center are sufficient to provide access for students. The number of workstations should be no less than the maximum average class size allowable by the state. A workstation may be a desktop, laptop, tablet or similar device, but devices available for checkout should not be counted in the total.
2. School libraries should be equipped with instructional technology, including, but not limited to, LCD projector, screen and/or interactive smart board, document camera, computer, etc., and provide user training for such devices.
3. Separate computers must be maintained for both the library management system/circulation and for the library personnel.

Authority: T.C.A. §§ 49-1-302 and 49-3-305. **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 30, 1985; 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 filed October 15, 1979; effective January 8, 1980. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 22, 1987; effective October 28, 1987. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed March 28, 2002; effective July 29, 2002. Repeal and new rule filed May 16, 2014; effective October 29, 2014.

0520-01-03-.08 PUPIL PERSONNEL SERVICES, REQUIREMENT F.

- (1) Each local board of education shall develop standards and policies for:
 - (a) Attendance Services
 - (b) Guidance Services
 - (c) School Psychological Services
 - (d) School Social Work Services
 - (e) School Health Services
- (2) The school health services program shall include but not be limited to the following:
 - (a) Each local school system shall have a written policy providing for a physical examination of every child entering school for the first time. A doctor of medicine, osteopathic physician, physician assistant, certified nurse practitioner, or a properly trained public health nurse shall perform this examination. No child shall be admitted to school without proof of immunization except those who are exempt by statute as provided in T.C.A. § 49-6-5001.
 - (b) Each local school system shall have a written policy providing for a physical examination of every student participating in interscholastic athletics. A doctor of medicine, osteopathic physician, physician assistant, or certified nurse practitioner shall perform this examination.
 - (c) Each local school system shall have a written policy for excluding pupils with communicable diseases and for readmitting them following recovery. In the case of diseases (listed in Regulations Governing Communicable Diseases in Tennessee:

(Rule 0520-01-03-.08, continued)

_____Tennessee Department of Health) the policy shall be in accordance with the recommendations of the State Department of Health as approved by the State Commissioner ~~commissioner~~ of Education.

- (d) Each local school system shall have a written policy for handling drug/alcohol problems that may arise in the schools.
 - (e) Each local school system shall develop procedures for reporting suspected cases of child abuse and neglect as provided in T.C.A. § 37-1-403.
 - (f) After an offer of employment has been made to an applicant and prior to the commencement of the employment duties, each employee shall present a physician's certificate showing a satisfactory health record. Employees shall present a certificate thereafter at intervals determined by the State Department of Health and approved by the State ~~C~~ commissioner ~~of~~ Education. The provisions of this subsection shall be administered in a manner consistent with the Americans with Disabilities Act (42 U.S.C.A. § 12101 *et. seq*) and the associated regulations (29 C.F.R. Part 1630 *et. seq*).
 - (g) HIV, HIV-Related Illness, and AIDS.
 - 1. All children with HIV, HIV-related illness, and AIDS infection who enroll in the public school systems of Tennessee shall attend and participate in educational programs appropriate to meet medical and educational needs.
 - 2. Each local school system shall:
 - (i) Develop a comprehensive local AIDS plan that addresses appropriate education programs, confidentiality, liability, personnel, safety, curriculum, education, communications and public relations. The plan will be developed in conjunction with public health officials based upon guidelines approved by the State Board of Education.
 - (ii) Include in the AIDS plan education/training programs for all school personnel, parents, and board members; and cooperate with other community organizations and state agencies in AIDS education for all citizens.
 - (iii) Include in the AIDS plan a policy for personnel with HIV, HIV-related illness and AIDS infection. Employment conditions will be determined on a case-by-case basis. The review of individual cases will involve at a minimum the superintendent or designee, the employee's physician, and a public health official.
 - 3. Information including names, records, reports, and/or correspondence and any other identifying information on HIV, HIV-related illness and AIDS infection status for any individual child or adult shall be maintained in confidence.
 - 4. Local school systems and school personnel shall implement for all children and adults the universal precautions as defined by the State Department of Health for handling blood and other body fluids. Information about universal precautions and related safety procedures shall be distributed by the State Department of Education to all school systems and school personnel in Tennessee.
- * HIV, HIV-related illness and AIDS infection are the three (3) terms used to denote the three (3) medically diagnosed stages of the infection caused by Human

(Rule 0520-01-03-.08, continued)

_____Immunodeficiency Virus. (AIDS - Acquired Immune Deficiency Syndrome; ARC - Aids-AIDS Related Complex; and HIV Infection - Human Immunodeficiency Virus antibodies detected in blood.)

Authority: T.C.A. §§ 49-1-302, 49-1-302(a)(2) and (13). **Administrative History:** Original rule certified 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 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. Amendment filed July 22, 1987; effective October 28, 1987. Amendment filed October 18, 1988; effective January 29, 1989. Amendment filed November 16, 1989; effective February 28, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed April 30, 2001; effective August 28, 2001. Amendment filed April 17, 2006; effective August 28, 2006. Amendment to rule 0520-01-03-.08 filed June 11, 2008; to become effective October 28, 2008; was withdrawn August 4, 2008.

0520-01-03-.09 _____ **SPECIAL EDUCATION PROGRAMS AND SERVICES, REQUIREMENT G.**

For Requirement H, see See Chapter Rule 0520-01-09.

Authority: T.C.A. § 49-10-101 et seq. **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. (For Requirement H, see Chapter 0520-01-09, per Tennessee State Board of Education letter dated April 29, 1999.)

0520-01-03-.10 **WAIVERS.**

- (1) The Commissioner-commissioner of Education is authorized to grant waivers to a school that does not comply with these rules and regulations only when requested by action of the local board of education.
- (2) For limitation on the Commissioner's-commissioner's authority to waive rules and regulations, see T.C.A. §§ 49-1-104 and 49-1-203.

Authority: T.C.A. §§ 49-1-203 and 49-1-302. **Administrative History:** Original rule certified June 10, 1974. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 15, 1979; effective January 8, 1980. Amendment filed November 13, 1981; effective March 16, 1982. Amendment filed April 13, 1982; effective May 28, 1982. Amendment filed April 12, 1983; effective May 12, 1983. Amendment filed May 7, 1985; effective June 6, 1985. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed August 26, 1986; effective November 29, 1986. Amendment filed December 30, 1986; effective March 31, 1987. Amendment filed May 21, 1987; effective August 29, 1989. Amendment filed April 18, 1988; effective July 27, 1988. Amendment filed January 23, 1989; effective March 9, 1989. Amendment filed November 16, 1989; effective February 28, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992.

(Rule 0520-01-03-.10, continued)

0520-01-03-.11 THROUGH 0520-01-03-.13 REPEALED.

Authority: T.C.A. §§ 49-1-103 and 49-1-302. **Administrative History:** (For history prior to June, 1992, see pages iii-ix). Repeal filed March 16, 1992; effective June 29, 1992.

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

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

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 10/20/2017 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: 2/23/18

Signature: [Handwritten Signature]

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 2-23-18

Notary Public Signature: [Handwritten Signature]

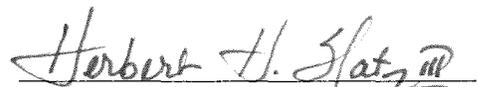
My commission expires on: 3-8-21



Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): Chapter 0520-01-03 Minimum Requirements for the Approval of Public Schools

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


Herbert H. Slatery III
Attorney General and Reporter

3/12/2018 Date

Department of State Use Only

Filed with the Department of State on: 3/20/18

Effective on: 6/18/18


Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Wildlife Resources Agency

DIVISION: Director's Office

SUBJECT: Animal Importation

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 70-4-411

EFFECTIVE DATES: July 19, 2018 through June 30, 2019

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Currently under Rule 1660-01 -15-.02, only cervid carcasses originating from states or Canadian Provinces with known CWD positive are required to follow the importation restrictions. This rulemaking hearing rule amendment would require all cervid carcasses that are imported into Tennessee to be done in accordance with the current importation restrictions. This amendment is being proposed as a means to reduce the likelihood of the prion that causes Chronic Wasting Disease in cervids from being brought into Tennessee.

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.

RULE: 1660-01-15-.02

| | |
|-----------|--------------|
| New | _____ |
| Amendment | <u> x </u> |
| Repeal | _____ |

There were no public comments to the above-described rule.

Attached hereto are the responses to public comments.

MEMO

TO: Secretary of State, Publications Division
FROM: Ed Carter, Executive Director, TWRA 
DATE: March 8, 2018
SUBJECT: 1660-01-15-.02 - Responses to Public Comments

Mike Butler, CEO for the Tennessee Wildlife Federation (TWF), voiced his non-profit's "100% support" of the proposed rule and noted that several organizations that had sent the Director and the Commissioners letters and e-mails* in support of the proposed rule had been working with the TWF for over a year trying to find a solution to the problem addressed by the rule.

The Commission thanked Mr. Butler for his input.

*The letters and emails from the following groups supporting the proposed rule are available for review:

The Archery Trade Association
The Association of Fish & Wildlife Agencies
The Boone & Crockett Club
The Catch-A-Dream Foundation
The Congressional Sportsmen's Foundation
Delta Waterfowl
The Houston Safari Club
The Mississippi River Trust
The Mule Deer Foundation
The National Deer Alliance
The National Shooting Sports Foundation
The National Wildlife Federation
Pheasants Forever
Quail Forever
The Quality Deer Management Association
The Rocky Mountain Elk Foundation
The Sportsmen's Alliance
The Texas Wildlife Association
The Theodore Roosevelt Conservation Partnership
Whitetails Unlimited
The Wild Sheep Foundation
Wildlife Forever
The Wildlife Management Institute
Wildlife Mississippi
The University of Georgia College of Veterinary Medicine

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.

(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, and/or directly benefit from the proposed rule;

Approximately 70 meat processors and 105 taxidermists could be impacted by the proposed rule.

(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;

None

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

There may be a nominal decrease in the number of carcasses a taxidermist or meat processor might receive from other states. Taxidermists and meat processors can still provide services on carcasses taken in other states, provided they comply with the provisions of this rule.

(4) A 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;

None at this time.

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

There are currently 11 states, including Missouri and Arkansas that have adopted a substantially similar regulation. Additionally, there are several states, including, Alabama, Mississippi, Georgia and Kentucky that are currently considering a similar regulation.

(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 purpose of the rule is to help prevent a devastating disease from finding its way to Tennessee. Due to the nature of the rule, an exemption of small businesses would undermine the purpose of the rule.

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)

Will passage of this rule have a projected financial impact on local governments?

No.

Please describe the increase in expenditures or decrease in revenues:

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;

Currently under 1660-01-15-.02, only cervid carcasses originating from states or Canadian Provinces with known CWD positive are required to follow the importation restrictions. This amendment as written would require all cervid carcasses that are imported into Tennessee to be done in accordance with the current importation restrictions. This amendment is being proposed as a means to reduce the likelihood of the prion that causes Chronic Wasting Disease in cervids from being brought into Tennessee.

- (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 70-4-411. Importation of wildlife – Permits – Papers.

- (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;

Meat processors and taxidermists, along with hunters are most directly impacted by the adoption of this rule. There is no clear consensus on whether they support or oppose the proposed rule. Mike Butler, of the Tennessee Wildlife Federation, spoke at the rulemaking hearing to voice "100% support" of the regulation and referenced letters from 25 organizations sent to the Director and Commissioners supporting the proposed rule.

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

None

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

None

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

Chris Richardson, TWRA Assistant Director 615-308-0477 chris.richardson@tn.gov

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

Chris Richardson, TWRA Assistant Director, will explain the rule at the scheduled meeting of the Government Operations Committee.

- (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

Chris Richardson, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 837-6016, Chris.Richardson@tn.gov

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

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Sequence Number: 04-20-18
Rule ID(s): 6745
File Date: 4/20/18
Effective Date: 7/19/18

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

| | |
|---------------------------------|-------------------------------------|
| Agency/Board/Commission: | Tennessee Wildlife Resources Agency |
| Division: | Director's Office |
| Contact Person: | Sheryl Holtam |
| Address: | PO Box 40747, Nashville, TN |
| Zip: | 37204 |
| Phone: | 615-781-6607 |
| Email: | sheryl.holtam@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 |
|----------------|--|
| 1660-01-15 | Rules and Regulations for Animal Importation |
| Rule Number | Rule Title |
| 1660-01-15-.02 | Importation of Wildlife Carcasses, Parts, and Products |

Rulemaking Hearing Rules
of
Tennessee Wildlife Resources Agency
Wildlife Resources

Chapter 1660-01-15
Rules and Regulations for Animal Importation

1660-01-15-.02, Importation of Wildlife Carcasses, Parts, and Products, is amended by deleting the current language in its entirety and substituting the following language so that, as amended, the rule shall read as follows:

- (1) ~~No person may import, transport, or possess in Tennessee a cervid carcass or carcass part from any area that has a known case of chronic wasting disease (CWD) except as provided herein:~~

- (1) No person may import, transport, or possess in Tennessee a cervid carcass or carcass part from anywhere outside the state except as provided herein:
 - (a) Meat that has bones removed.
 - (b) Antlers, antlers attached to cleaned skull plates, or cleaned skulls (where no meat or tissues are attached to the skull.)
 - (c) Cleaned teeth.
 - (d) Finished taxidermy and antler products.
 - (e) Hides and tanned products.
- (2) ~~The Tennessee Wildlife Resources Commission will annually compile a list of these areas and make such list available to the public.~~

Authority: T.C.A. §§ 70-1-206 and 70-4-107. Administrative History: Original rule filed July 12, 2005; effective September 25, 2005. Amendment filed January 5, 2009; effective March 21, 2009. Repeal and new rule filed May 3, 2012; effective August 1, 2012.

- (c) Cleaned teeth.
- (d) Finished taxidermy and antler products.
- (e) Hides and tanned products.

Authority: T.C.A. §§ 70-1-206 and 70-4-107. Administrative History: Original rule filed July 12, 2005; effective September 25, 2005. Amendment filed January 5, 2009; effective March 21, 2009. Repeal and new rule filed May 3, 2012; effective August 1, 2012.

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|----------------|-----|----|---------|--------|-------------------------|
| Chad Baker | ✓ | | | | |
| Angie Box | ✓ | | | | |
| Jeff Cook | ✓ | | | | |
| Bill Cox | ✓ | | | | |
| Dennis Gardner | ✓ | | | | |
| Kurt Holbert | ✓ | | | | |
| Connie King | ✓ | | | | |
| Brian McLerran | ✓ | | | | |
| Tony Sanders | ✓ | | | | |
| James Stroud | ✓ | | | | |
| Bill Swan | ✓ | | | | |
| Kent Woods | | | | ✓ | |
| Jamie Woodson | ✓ | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 02/28/2018, 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: 01/09/18

Rulemaking Hearing(s) Conducted on: (add more dates). 02/28/18

Date: 3/1/18

Signature: Ed Carter

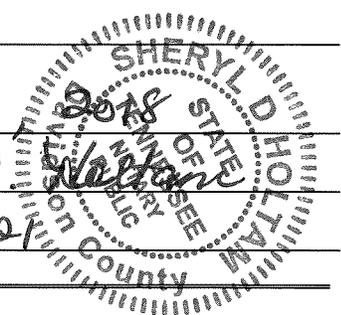
Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: March 1

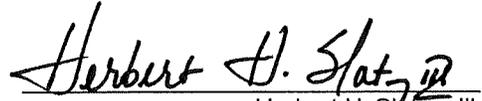
Notary Public Signature: Sheryl D. Hottel

My commission expires on: 3-8-2021



Tennessee Wildlife Resources Agency
Rule 1660-01-15-.02
Rules and Regulations for Animal Importation
Importation of Wildlife Carcasses, Parts, and Products

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
4/13/2018 Date

Department of State Use Only

Filed with the Department of State on: 4/20/18
Effective on: 7/19/18

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Energy Efficient Schools Council

DIVISION:

SUBJECT: Energy Efficient Schools Initiative Loan Program

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-17-101, et seq. Energy Efficient Schools Initiative Act of 2008.

EFFECTIVE DATES: July 8, 2018 through June 30, 2019

FISCAL IMPACT: The Energy Efficient Schools Council fund was created by the referenced statute with \$90 million from excess lottery funds and these funds do not revert to the General Fund. All loans and administrative expenses are paid from this fund.

STAFF RULE ABSTRACT: Codification of the Energy Efficient Schools Council intent to provide loans to school systems from the Energy Efficient Schools Council Fund as provided in the Energy Efficient Schools Initiative Act of 2008. Includes project eligibility, application process and loan terms.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

All proposed rules provided for herein are not projected to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

Codification of the Energy Efficient Schools Council intent to provide loans to school systems from the Energy Efficient Schools Council Fund as provided in the Energy Efficient Schools Initiative Act of 2008. Includes project eligibility, application process and loan terms.

- (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. § 49-17-101 et seq. Energy Efficient Schools Initiative Act of 2008.

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

The Energy Efficient Schools Council urges adoption of rules for the benefit of K-12 school systems 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;

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;

The Energy Efficient Schools Council fund was created by the referenced statute with \$90 million from excess lottery funds and these funds do not revert to the General Fund. All loans and administrative expenses are paid from this fund.

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

Paul Cross, Executive Director Energy Efficient Schools Initiative
Paul.Cross@tn.gov

Scott Slusher
Scott.S.Slusher@tn.gov

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

Paul Cross, Executive Director Energy Efficient Schools Initiative
Paul.Cross@tn.gov

Scott Slusher
Scott.S.Slusher@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

Paul Cross, Executive Director Energy Efficient Schools Initiative

Paul.Cross@tn.gov

10th Floor, Andrew Johnson Tower

710 James Robertson Parkway

Nashville, TN 37243

615-532-9643

Scott Slusher

Scott.S.Slusher@tn.gov

10th Floor, Andrew Johnson Tower

710 James Robertson Parkway

Nashville, TN 37243

615-741-4366

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

See above

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Sequence Number: 04-07-18
 Rule ID(s): 6738
 File Date: 4/9/18
 Effective Date: 7/8/18

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: Energy Efficient Schools Council
 Division:
 Contact Person: Paul Cross
 Address: 10th Floor Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN
 Zip: 37243
 Phone: 615/532-9643
 Email: Paul.Cross@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 |
|----------------|--|
| 0520-13-01 | Energy Efficient Schools Initiative Loan Program |
| Rule Number | Rule Title |
| 0520-13-01-.01 | Authority |
| 0520-13-01-.02 | Purpose and Scope |
| 0520-13-01-.03 | Definitions |
| 0520-13-01-.04 | Eligible Projects |
| 0520-13-01-.05 | Loan Application |
| 0520-13-01-.06 | Loan Terms |
| 0520-13-01-.07 | Loan Repayment |
| 0520-13-01-.08 | Reporting Requirements |

New Rule

Chapter 0520-13 Energy Efficient Schools Council Rules and Regulations establishes minimum requirements to award grants or loans from the Energy Efficient Schools Council Fund to school systems for qualifying capital outlay projects, including projects where a provider has warranted predetermined energy use objectives under the criteria established by the technical advisory committee and approved by the council is amended by adding Chapter 0520-13-01, a table of contents, and rules .01 through .08, so that as amended shall read:

RULES OF THE ENERGY EFFICIENT SCHOOLS COUNCIL
CHAPTER 0520-13-01
ENERGY EFFICIENT SCHOOLS LOAN PROGRAM

TABLE OF CONTENTS

| | | | |
|----------------|-------------------|----------------|------------------------|
| 0520-13-01-.01 | Authority | 0520-13-01-.06 | Loan Terms |
| 0520-13-01-.02 | Purpose and Scope | 0520-13-01-.07 | Loan Repayment |
| 0520-13-01-.03 | Definitions | 0520-13-01-.08 | Reporting Requirements |
| 0520-13-01-.04 | Eligible Projects | | |
| 0520-13-01-.05 | Loan Application | | |

0520-13-1-.01 AUTHORITY. Pursuant to the provisions of T.C.A. § 49-17-104(b), the Energy Efficient Schools Council ("Council") may promulgate rules and regulations necessary for operation.

Authority: T.C.A. § 49-17-104(b).

0520-13-01-.02 PURPOSE AND SCOPE. The Energy Efficient Schools Council may award grants or loans to school systems for qualifying capital outlay projects.

Authority: T.C.A. § 49-17-103(e).

0520-13-01-.03 DEFINITIONS. The following definitions shall apply to these rules:

- (1) Applicant – Any Tennessee public K-12 school district.
- (2) Energy Efficient Schools Council ("Council") – A twelve (12) member body that includes the commissioners of education, environment and conservation, and economic and community development or their designees; three (3) members appointed by the Governor; three (3) members appointed by the speaker of the senate; and, three (3) members appointed by the house of representatives pursuant to the provisions of T.C.A. § 49-17-103.
- (3) Technical Advisory Committee ("TAC") - A seven (7) member body that includes two (2) Ex-Officio members representing Oak Ridge National Laboratory and Tennessee Valley Authority, and five (5) members chosen by the Council pursuant to the provisions of T.C.A. § 49-17-103.
- (4) Payback Period – The time within which the cost savings realized by incorporating energy efficient technologies equals the initial cost of the technology employed.
- (5) Prescriptive Measures – Energy efficient technologies that the Council has determined through a cost-benefit analysis have a reasonable payback period.
- (6) Qualifying Capital Outlay Project - Any project for new or existing kindergarten through grade twelve (K-12) education facilities that satisfies the Council guidelines for improving energy efficiency.

Authority: T.C.A. § 49-17-102, T.C.A. § 49-17-103, and T.C.A. § 49-17-104.

RULES OF THE ENERGY EFFICIENT SCHOOLS COUNCIL
CHAPTER 0520-13-01
ENERGY EFFICIENT SCHOOLS LOAN PROGRAM

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| <u>0520-13-01-.01</u> | <u>Authority</u> | <u>0520-13-01-.06</u> | <u>Loan Terms</u> |
| <u>0520-13-01-.02</u> | <u>Purpose and Scope</u> | <u>0520-13-01-.07</u> | <u>Loan Repayment</u> |
| <u>0520-13-01-.03</u> | <u>Definitions</u> | <u>0520-13-01-.08</u> | <u>Reporting</u> |
| <u>Requirements</u> | | | |
| <u>0520-13-01-.04</u> | <u>Eligible Projects</u> | | |
| <u>0520-13-01-.05</u> | <u>Loan Application</u> | | |

0520-13-1-.01 AUTHORITY. Pursuant to the provisions of T.C.A. § 49-17-104(b), the Energy Efficient Schools Council ("Council") may promulgate rules and regulations necessary for operation.

Authority: T.C.A. § 49-17-104(b).

0520-13-01-.02 PURPOSE AND SCOPE. The Energy Efficient Schools Council may award grants or loans to school systems for qualifying capital outlay projects.

Authority: T.C.A. § 49-17-103(e).

0520-13-01-.03 DEFINITIONS. The following definitions shall apply to these rules:

- (1) Applicant – Any Tennessee public K-12 school district.
- (2) Energy Efficient Schools Council ("Council") – A twelve (12) member body that includes the commissioners of education, environment and conservation, and economic and community development or their designees; three (3) members appointed by the Governor; three (3) members appointed by the speaker of the senate; and, three (3) members appointed by the house of representatives pursuant to the provisions of T.C.A. § 49-17-103.
- (3) Technical Advisory Committee ("TAC") - A seven (7) member body that includes two (2) Ex-Officio members representing Oak Ridge National Laboratory and Tennessee Valley Authority, and five (5) members chosen by the Council pursuant to the provisions of T.C.A. § 49-17-103.
- (4) Payback Period – The time within which the cost savings realized by incorporating energy efficient technologies equals the initial cost of the technology employed.
- (5) Prescriptive Measures – Energy efficient technologies that the Council has determined through a cost-benefit analysis have a reasonable payback period.
- (6) Qualifying Capital Outlay Project - Any project for new or existing kindergarten through grade twelve (K-12) education facilities that satisfies the Council guidelines for improving energy efficiency.

Authority: T.C.A. § 49-17-102, T.C.A. § 49-17-103, and T.C.A. § 49-17-104.

0520-13-01-.04 ELIGIBLE PROJECTS. Eligibility is determined either by:

- (1) Prescriptive measures approved by the Council; or,

- (2) Custom projects that contain a cost-benefit analysis that shows incorporating energy efficient technologies provides a reasonable payback period or warranted pre-determined energy use objectives.

Custom projects must be reviewed by the TAC and recommended to the Council for approval. Eligibility determinations may be appealed to the Council by submitting a written request to the EESI Executive Director for consideration by an appeals committee appointed by the Council President.

Authority: T.C.A. § 49-17-103 and T.C.A. § 49-17-104.

0520-13-01-.05 LOAN APPLICATION. Eligible Applicants must submit a completed and signed loan application to EESI in order to qualify for consideration for loan funds. The loan application and any loan agreement must be signed by the School District Director; School Board Chair; and, if the applicant is not a special school district, the jurisdictional County or City Mayor. Loan applications will be approved according to written policies established by the Council.

Authority: T.C.A. § 49-17-104.

0520-13-01-.06 LOAN TERMS. The repayment period and interest rate is established for each loan approved by the Council based upon written Council policy. The application must include a cost-benefit analysis which demonstrates that the annual energy savings are sufficient to retire the loan within the term requested.

Authority: T.C.A. § 49-17-104.

0520-13-01-.07 LOAN REPAYMENT. The loan recipient will make monthly payments in accordance with a repayment schedule provided by EESI. A participating school system may repay the loan at any time without prepayment penalty.

Authority: T.C.A. § 49-17-104.

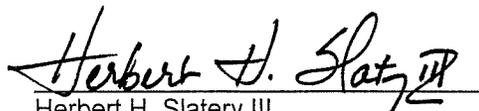
0520-13-01-.08 REPORTING REQUIREMENTS. Loan recipients will provide monthly progress reports to EESI during the construction phase of the project. All projects must be professionally commissioned and a commissioning report submitted to EESI. Loan recipients must enter baseline utility consumption and cost data in Energy Star Portfolio Manager for each facility for the year prior to project implementation, and shall update that data each month during the payback period. EESI shall be given access to reports on such data upon request. If loan projects are undertaken under a performance contract, the loan recipient shall require the contractor to provide annual measurement and verification reports.

Authority: T.C.A. § 49-17-104.

Agency/Board/Commission: Energy Efficient Schools Council

Rule Chapter Number(s): 0520-13-01

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


Herbert H. Slatery III
Attorney General and Reporter

4/2/2018
Date

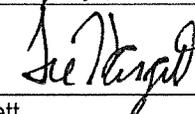
Department of State Use Only

Filed with the Department of State on:

4/9/18

Effective on:

7/9/18


Tre Hargett
Secretary of State

2018 APR -9 AM 10:09
SECRETARY OF STATE
PUBLIC RELATIONS

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.

All proposed rules provided for herein are not projected to have an impact on small business.

11/11/11

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Public Utility Commission

DIVISION: Legal

SUBJECT: Water Regulations

STATUTORY AUTHORITY: Applicability of the Safe Drinking Water Act to Submetered Properties, 68 Fed. Reg. 74233 (Dec. 16, 2003); TDEC Rule 1200-05-01-.03 and Submetering Policy Memorandum dated January 5, 2007; Tenn. Code Ann. 65-4-101(6)(A), which defines "public utility;" and *Nashville Water Co. v. Dunlap*, 138 S.W.2d 424 (Tenn. 1940), which discusses the characteristics of a public utility.

EFFECTIVE DATES: July 10, 2018 through June 30, 2019

FISCAL IMPACT: No changes anticipated in state or local government revenues as a result of the amendment of this rule.

STAFF RULE ABSTRACT: Submetering is the practice of a landlord, property management firm, condominium association, or a third party, purchasing water from a utility and then billing tenants for individual measured utility usage. Combined billing is the same practice, but without individual metering. The rule, as it currently exists, was adopted in by the agency in 1974, and since its inception, the agency has not instituted a single proceeding to enforce the rule's prohibition on submetering. The proposed change simply deletes the outdated portion of the existing rule provision that prohibits combined billing or submetering. By removing the phrase related to submetering, the agency's rules are consistent with Tennessee law, in that submetering entities are not public utilities, and clears up any ambiguity surrounding the Commission's regulatory treatment of such entities.

Removal of the water submetering rule also brings the Commission's rules into agreement with the policies of other governmental entities with water regulation authority; specifically, the Environmental Protection Agency (EPA) and the Tennessee Department of Environment and

Conservation (TDEC). In 2003, the EPA revised its policy with regard to the "Applicability of the Safe Drinking Water Act to Submetered Properties," and determined that landowners that install submetering to accurately track water usage by tenants on the landowner's property are not deemed to be public water systems, and therefore, not subject to the Safe Drinking Water Act solely as a result of taking action to submeter and bill. Thereafter, TDEC examined the EPA's policy revision and issued the Tennessee Submetering Policy, which determined that public water systems that meet certain characteristics are excluded from TDEC's drinking water rule 1200-05-01-.03. TDEC cited examples of systems that might qualify for exemption include apartment complexes, condominiums, mobile home parks, and shopping malls.

Public Hearing Comments

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

See attached Memorandum.

MEMORANDUM

From: Kelly Cashman Grams
General Counsel

RE: Public Hearing Comments
Rulemaking 1220-04-03-.06 Water Regulations

Date: March 6, 2018

The Tennessee Public Utility Commission filed its Notice of Rulemaking Hearing with the Secretary of State on February 23, 2017, and held a rulemaking hearing on the proposed rule amendment on April 11, 2017. No person filed written comments in the docket file, nor requested to be heard or presented comments during the rulemaking hearing.

Regulatory Flexibility Addendum

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

The proposed rule change eliminates the portion of the rule that prohibits investor-owned public utilities subject to the Commission's jurisdiction from allowing combined billing or submetering of water service. The purpose of this rulemaking is to clarify the rule and eliminate confusion that may be created by outdated language in the existing rule. As such, the proposed rule change does not impose additional regulation on any party and not expected impose costs on any small business.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule is not anticipated to impact 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;

Submetering is the practice of a landlord, property management firm, condominium association, or a third party, purchasing water from a utility and then billing tenants for individual measured utility usage. Combined billing is the same practice, but without individual metering. The rule, as it currently exists, was adopted in by the agency in 1974, and since its inception, the agency has not instituted a single proceeding to enforce the rule's prohibition on submetering. The proposed change simply deletes the outdated portion of the existing rule provision that prohibits combined billing or submetering. By removing the phrase related to submetering, the agency's rules are consistent with Tennessee law, in that submetering entities are not public utilities, and clears up any ambiguity surrounding the Commission's regulatory treatment of such entities.

Removal of the water submetering rule also brings the Commission's rules into agreement with the policies of other governmental entities with water regulation authority; specifically, the Environmental Protection Agency (EPA) and the Tennessee Department of Environment and Conservation (TDEC). In 2003, the EPA revised its policy with regard to the "Applicability of the Safe Drinking Water Act to Submetered Properties," and determined that landowners that install submetering to accurately track water usage by tenants on the landowner's property are not deemed to be public water systems, and therefore, not subject to the Safe Drinking Water Act solely as a result of taking action to submeter and bill. Thereafter, TDEC examined the EPA's policy revision and issued the Tennessee Submetering Policy, which determined that public water systems that meet certain characteristics are excluded from TDEC's drinking water rule 1200-05-01-.03. TDEC cited examples of systems that might qualify for exemption include apartment complexes, condominiums, mobile home parks, and shopping malls.

- (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;

Applicability of the Safe Drinking Water Act to Submetered Properties, 68 Fed. Reg. 74233 (Dec. 16, 2003). TDEC Rule 1200-05-01-.03 and Submetering Policy Memorandum dated January 5, 2007 (see attached). Tenn. Code Ann. 65-4-101(6)(A), which defines "public utility" and, see *Nashville Water Co. v. Dunlap*, 138 S.W.2d 424 (Tenn. 1940), which discusses the characteristics of a public utility.

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

The rule impacts the Commission's seven (7) investor-owned water public utilities and their customers. Such entities include the Tennessee-American Water Company; Tennessee Water Service, Inc.; Aqua Utilities Company, Inc.; Condo Villas of Gatlinburg Association, Inc.; Newport Resort Water System; Old Hickory Water, LLC; and Shiloh Falls Utilities, Inc. No one, including any of these utilities, filed any comment or made any comment during the hearing either for or against the change to the rule.

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

None

- (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 changes anticipated in state or local government revenues as a result of the amendment of this rule.

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

Kelly Cashman-Grams, General Counsel and Aaron Conklin, Staff Attorney

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

Kelly Cashman-Grams, General Counsel and Aaron Conklin, Staff Attorney

- (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

Kelly Cashman-Grams, General Counsel
502 Deaderick Street, 4th Floor
Nashville, TN 37243
(615) 770-6856
kelly.grams@tn.gov

Aaron Conklin, Staff Attorney
502 Deaderick Street, 4th Floor
Nashville, TN 37243
615-770-6896
aaron.conklin@tn.gov

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

See attached.

Department of State
Division of Publications
 312 Rosa L. Parks Ave., 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: 04-13-18
 Rule ID(s): 6742
 File Date: 4/11/18
 Effective Date: 7/10/18

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 Public Utility Commission |
| Division: | Legal Division |
| Contact Person: | Kelly Cashman Grams |
| Address: | 502 Deaderick Street, 4 th Floor, Nashville, Tennessee |
| Zip: | 37243 |
| Phone: | (615) 770-6856 |
| Email: | kelly.grams@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 |
|----------------|----------------------|
| 1220-04-03 | Water Regulations |
| Rule Number | Rule Title |
| 1220-04-03-.06 | Disposition Of Water |
| | |
| | |

| Chapter Number | Chapter Title |
|----------------|---------------|
| | |
| Rule Number | Rule Title |
| | |
| | |
| | |

(Rule 1220-4-3-.05, continued)

- (i) The lists of the items which the utility furnishes, owns, and maintains on the customer's premises, such as water services, meters, and shut-off valves.
 - (ii) General statement of the utility's policy in making adjustments for wastage of water when such wastage occurs without the knowledge of the customer.
 - (iii) A statement indicating the minimum number of days allowed for payment of a customer's bill before service will be discontinued for non-payment.
 - (iv) The utility's extension plan as required in Rule 603.7.
- (b) A copy of each special contract for service.
 - (c) A copy of each type of customer bill form.
 - (d) The name, title, address, and telephone number of the person who should be contacted in connection with:
 - 1. general management duties;
 - 2. customer relations (complaints);
 - 3. engineering operations;
 - 4. meter tests and repairs; and
 - 5. emergencies during non-office hours.
 - (e) Conform with all applicable rules and regulations contained in Section 1 (General Public Utilities Rules Applicable to all Utilities).

Authority: T.C.A. §65-2-102. **Administrative History:** Original rule certified May 9, 1974. Editorial changes made by the Secretary of State pursuant to Public Chapter 305 of 1995; "Commission" and references to the "Commission" were changed to "Authority" and references to the "Authority"; effective March 28, 2003.

1220-4-3-.06 DISPOSITION OF WATER.

- (1) All water sold by a utility shall be on a basis of meter measurement or as otherwise provided in its rate schedule.
- (2) Wherever practicable, consumption of water within the utility itself, or by administrative units associated with it, shall be metered.
- (3) Separate premises shall be separately metered and billed. ~~Combined billing or submetering shall not be permitted.~~

Authority: T.C.A. §65-2-102. **Administrative History:** Original rule certified May 9, 1974.

1220-4-3-.07 METER READING SHEETS OR CARDS.

- (1) The meter reading sheets or cards shall show:
 - (a) customer's name, address and service classification;
 - (b) identifying number and/or description of the meter(s);

* 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) |
|----------------------------------|-----|----|---------|--------|-------------------------|
| Chairman David F. Jones | X | | | | |
| Vice-Chairman Robin Morrison | X | | | | |
| Commissioner Herbert H. Hilliard | X | | | | |
| Commissioner Kenneth C. Hill | X | | | | |
| Commissioner Keith Jordan | X | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Public Utility Commission on January 16, 2018 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: 2/16/2017

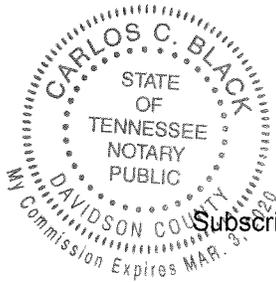
Rulemaking Hearing(s) Conducted on: (add more dates). 4/11/2017

Date: 3/6/18

Signature: Kelly Cashman Grams

Name of Officer: Kelly Cashman Grams

Title of Officer: General Counsel



Subscribed and sworn to before me on: 3/8/2018

Notary Public Signature: Carlos C Black

My commission expires on: 3/3/2020

Agency/Board/Commission: _____

Rule Chapter Number(s): 1220-04-03

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
4/2/2018

Date

Department of State Use Only

Filed with the Department of State on: 4/11/18

Effective on: 7/10/18

Tre Hargett

Tre Hargett
Secretary of State

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FILING OFFICE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Consumer and Industry Services

SUBJECT: Restricted Use Pesticides

STATUTORY AUTHORITY: Dicamba products are registered and labeled in accordance with the federal Insecticide, Fungicide, and Rodenticide Act. Pursuant to Tennessee Code Annotated, Section 62-21 -116, dicamba may be applied consistent with its labeling. This rule places additional time of application restrictions in addition to product labeling.

EFFECTIVE DATES: July 23, 2018 through June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking hearing rule places time of day and year restrictions on application of certain dicamba pesticide concentrations in commercial production of cotton and soybeans.

Public Hearing Comments

The Department of Agriculture held a public hearing on March 20, 2018. Jay Miller served as hearing officer for the Rulemaking Hearing concerning 0080-09-02 Restricted Use Pesticides. No questions or comments from the public were presented at the hearing.



TENNESSEE DEPARTMENT OF AGRICULTURE

JAI TEMPLETON
COMMISSIONER

DIVISION OF CONSUMER & INDUSTRY SERVICES

HAND DELIVERY

March 26, 2018

Department of State
Division of Publications
8th Floor Snodgrass/TN Tower
312 Rosa L. Parks
Nashville, Tennessee 37243

RE: Rulemaking Hearing March 20, 2018

I served as hearing officer for a Rulemaking Hearing on March 20, 2018, concerning 0080-09-02 Restricted Use Pesticides. The public presented no questions or comments during the hearing.

Sincerely,

Jason B. Miller, Esq. /s/
Tennessee Department of Agriculture
Division of Consumer & Industry Services

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) Type or types of small business subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule:

Pesticide applicators who serve commercial producers of cotton and soybeans are subject to the proposed rule.
- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 5,500 private applicators and 250 commercial applicators of pesticides are expected to be subject to the proposed rule.
- (3) 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 rule change is not expected to increase administrative costs of affected firms.
- (4) Statement of the probable effect on impacted small businesses and consumers:

This rule implements time of day and year restrictions for application of certain dicamba pesticide concentrations in commercial production of cotton and soybeans. It is anticipated that affected firms will require greater planning and diligence during portions of the day and year to apply the same quantities of product as applied for previous harvests. However, the department expects those limits are reasonable and will minimally impact those firms' production, if at all.
- (5) 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:

No less burdensome methods for achieving this purpose are possible.
- (6) Comparison of the proposed rule with any federal or state counterparts:

This rule operates in conjunction with label requirements of the dicamba pesticide products at issue. In 2017, labels of most of those products were amended and/or additional federal 24-C label applications were submitted or completed. The additional label requirements include: classifying the products as restricted use pesticides; requiring dicamba-specific training prior to use; maintaining additional application records; limiting applications based on wind speed; restricting applications by time of day; heightening tank clean-out requirements; and monitoring sensitive crop registries prior to use.
- (7) 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 of small businesses from this rule may expose the state to greater risks associated with use of dicamba pesticide products.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

No impact is expected on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

This rule places time of day and year restrictions on application of certain dicamba pesticide concentrations in commercial production of cotton and soybeans.

- (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;

Dicamba products are registered and labeled in accordance with the federal Insecticide, Fungicide, and Rodenticide Act. Pursuant to T.C.A. §62-21-116, dicamba may be applied consistent with its labeling. This rule places additional time of application restrictions in addition to product labeling.

- (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;

Cotton and soybean producers in Tennessee are affected by this rule.

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

Terminix International Company, L.P. v. Tennessee Department of Labor, 77 S.W.3d 185 (Tenn. Ct. App. 2001) (State jurisdiction to regulate sale or use of pesticides is not preempted by federal authority).

- (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 effect on departmental revenues and expenditures resulting from this rule is minimal.

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

Keith Harrison, Assistant Commissioner, Tennessee Department of Agriculture

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

Keith Harrison, Assistant Commissioner, Tennessee Department of Agriculture

- (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

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5152; keith.harrison@tn.gov

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

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 312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
 Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 04-23-18
 Rule ID(s): U740
 File Date: 4/24/18
 Effective Date: 7/23/18

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 Agriculture
Division: Consumer & Industry Services
Contact Person: Jay Miller
Address: Post Office Box 40627, Nashville, Tennessee
Zip: 37204
Phone: (615) 837-5341
Email: jay.miller@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 |
|----------------|---------------------------|
| 0080-09-02 | Restricted Use Pesticides |
| Rule Number | Rule Title |
| 0080-09-02-.13 | Dicamba |

New

Chapter 0080-09-02
Restricted Use Pesticides

0080-09-02-.13 Dicamba.

- (1) Scope. This rule applies to any person who makes or causes a row crop application of dicamba. Provisions of this rule are made in addition to all other definitions and requirements for the sale and application of pesticides under the Act, its corresponding regulations, and associated product labels.
- (2) Definitions. When used in this rule, unless the context requires otherwise:
 - (a) Dicamba means 3, 6-Dichloro-2-methoxybenzoic acid; 3-6-Dichloro-o-anisic acid; or any pesticide containing either substance in a concentration greater than or equal to 6.5%; and,
 - (b) Row crop application means for production of cotton or soybeans in commerce.
- (3) Application.
 - (a) A person shall not make a row crop application of dicamba before 7:30 a.m. or after 5:30 p.m. local time for the application site.
 - (b) Between May 15 and October 1, a person shall not make a row crop application of dicamba unless the dicamba product is labeled for in-crop use.
- (4) Records. Any person who makes or causes a row crop application of dicamba shall keep records of the application as required under 0080-09-02-.07.
- (5) Violations.
 - (a) Each acre where dicamba is applied in violation of the Act, its corresponding regulations, or this rule shall constitute a separate violation.
 - (b) A person is responsible for violations when committed by either the person or his agent.
 - (c) Each violation is grounds for denial or revocation of any certificate, license, or charter issued under the Act; actions for injunction, assessment of civil penalties up to \$1500 per violation; and imposition of criminal charges against the violator.

Authority: T.C.A. §§ 4-3-203, 4-3-204, and 62-21-118.

* 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 Department of Agriculture (board/commission/ other authority) on 03/27/18 (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: 01/26/18

Rulemaking Hearing(s) Conducted on: (add more dates). 03/20/18

Date: March 27, 2018

Signature: Jai Templeton

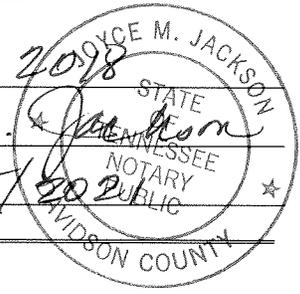
Name of Officer: Jai Templeton

Title of Officer: Commissioner

Subscribed and sworn to before me on: March 27, 2018

Notary Public Signature: Joyce M. Jackson

My commission expires on: 07/05/2021



Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

4/20/2018
Date

Department of State Use Only

Filed with the Department of State on: 4/24/18

Effective on: 7/23/18

Tre Hargett

Tre Hargett
Secretary of State

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 CLERK

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Consumer and Industry Services

SUBJECT: Dairy Promotion Committee / Redirection of Assessment

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 44-19-120 provides that "the commissioner may make and promulgate such rules and regulations in accordance with the Uniform Administrative Procedures Act, ... as may be necessary to effectuate the provisions and intent of this chapter." Further, Section 44-19-114(d) provides that the "duties and responsibilities of the committee shall be prescribed by the commissioner" and shall include "duties necessary for the operation of the dairy industry promotion program in coordination with the commissioner."

EFFECTIVE DATES: July 24, 2018 through June 30, 2019

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Pursuant to the federal Dairy and Tobacco Adjustment Act of 1983, which created the National Dairy Promotion and Research Board, every dairy farmer in the U. S. pays a total assessment of 15 cents per hundredweight (cwt) of milk produced. Of this, 10 cents is paid to a regional qualified state program, which in Tennessee is the Dairy Promotion Committee. This Committee was created in 1984 by statute, the Dairy Industry Promotion Act (Tennessee Code Annotated, Section 44-19-101 et seq.) to administer the assessment funds by investing the collected funds in marketing, promotion and research activities designed to increase the consumption of milk. The Committee represents approximately 270 licensed dairies and is an 11 member committee appointed by the Commissioner of Agriculture. This rulemaking hearing rule will allow dairy producers,

subject to assessments pursuant to the federal Act, to petition the Committee for the redirection of an individual's assessment to a qualified state program of their choice or to the national program. This rule allows the individual dairy producer to have a decision-making role in the direction of assessed funds.

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.

The Department of Agriculture held a public hearing on March 16, 2018. Theresa Denton, General Counsel, Tennessee Department of Agriculture, served as hearing officer for the Rulemaking Hearing. The following comments from the public were received at the hearing. There were no written comments received.

Comment #1: From the Executive Director of the Tennessee Dairy Producers Association that the Tennessee Dairy Producers Association supports the rule changes as proposed by the commissioner.

Agency Response: The proposed rule changes were discussed and unanimously approved by the Tennessee Dairy Promotion Committee at its December 28, 2017 meeting.

Comment #2: From Tennessee Dairy Promotion Committee member as to whether the funds to be redirected will come to the Tennessee Dairy Promotion Committee and then be sent to the qualified program of the producer's choice.

Agency Response: The proposed new rule authorizes the Tennessee Dairy Promotion Committee to receive requests from dairy producers to redirect that portion of the producer's assessment credited to the Committee to a qualified program designated by the producer. To prepare for the promulgation of the proposed rule, the Committee, at its March 16, 2017 meeting, adopted a petition form for use by producers to make redirection requests to the Committee. The form includes space for the producer to identify a qualified program for funds redirection. Also, the Committee and Department of Agriculture staff have sought expert advice from The Dairy Alliance on best management practices for accounting and funds transfer for redirection petitions.

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) Type or types of small businesses subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule.

Dairy producers subject to assessments collected pursuant to the federal Dairy and Tobacco Adjustment Act of 1983, which created the National Dairy Promotion and Research Board. Every dairy farmer in the U. S. pays a total assessment of 15 cents per hundredweight (cwt) of milk produced. Of this, 10 cents is paid to a regional qualified state program, which in Tennessee is the Dairy Promotion Committee. The Committee administers the assessment funds by investing the collected funds in marketing, promotion and research activities designed to increase the consumption of milk.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 261 licensed Tennessee dairies.

- (3) Project 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:

- (4) State of the probable effect on impacted small businesses and consumers:

The rule would have no impact on consumers. The impact on dairy producers would be to allow greater autonomy and decision making in that an individual dairy producer could petition the Dairy Promotion Committee to redirect that portion of the assessment credited to the individual producer to a qualified state program of their choice; rather than having all the funds directed according to Committee decisions.

- (5) 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:

No less burdensome methods for achieving this purpose are possible.

- (6) Comparison of the proposed rule with any federal or state counterparts.

Several states allow for a producer to request that funds be redirected to a qualified program of the producer's choice. This choice is what is intended by these proposed rule amendments.

- (7) 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 of small businesses covered by this rule will compromise the intent of the rule, which is to allow greater decision making by all dairy producers in the direction of assessed funds administered by the Dairy Promotion Committee.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

No impact is expected 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;

Pursuant to the federal Dairy and Tobacco Adjustment Act of 1983, which created the National Dairy Promotion and Research Board, every dairy farmer in the U. S. pays a total assessment of 15 cents per hundredweight (cwt) of milk produced. Of this, 10 cents is paid to a regional qualified state program, which in Tennessee is the Dairy Promotion Committee. This Committee was created in 1984 by statute, the Dairy Industry Promotion Act, T. C. A. 44-19-101 et seq., to administer the assessment funds by investing the collected funds in marketing, promotion and research activities designed to increase the consumption of milk. The Committee represents approximately 270 licensed dairies and is an 11 member committee appointed by the Commissioner of Agriculture.

This rule will allow dairy producers, subject to assessments pursuant to the federal Act, to petition the Committee for the redirection of an individual's assessment to a qualified state program of their choice or to the national program.

This rule allows the individual dairy producer to have a decision-making role in the direction of assessed funds.

- (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. § 44-19-120 of the Tennessee Dairy Industry Promotion Act provides that "the commissioner may make and promulgate such rules and regulations in accordance with the Uniform Administrative Procedures Act, ... as may be necessary to effectuate the provisions and intent of this chapter." Further, Section 44-19-114(d) of the Act provides that the "duties and responsibilities of the committee shall be prescribed by the commissioner" and shall include "duties necessary for the operation of the dairy industry promotion program in coordination with the commissioner."

- (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;

Dairy producers and the TN Dairy Promotion Committee. The Committee unanimously approved this rule at its meeting on Dec. 28, 2017. Individual dairy producers have asked the commissioner to allow the petition for redirection of funds permitted by this rule.

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

None

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

This rule will not have any impact on local government.

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

Keith Harrison, Assistant Commissioner, Consumer & Industry Services
Theresa Denton, General Counsel

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

Keith Harrison, Assistant Commissioner, Consumer & Industry Services
Theresa Denton, General Counsel

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

Keith Harrison, Assistant Commissioner, Consumer & Industry Services, 436 Hogan Road, Nashville, TN 37220; (615) 837-5152 keith.harrison@tn.gov
Theresa Denton, General Counsel, 440 Hogan Road, Nashville, TN 37220; (615) 837-5280, Theresa.denton@tn.gov

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

Neither federal nor state law relative to the dairy assessment allows for the direct refund of assessed funds to the individual dairy producer. This rule allows for the producer to request a redirection of funds, not a refund.

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Sequence Number: 04-27-18
 Rule ID(s): 6750
 File Date: 4/26/18
 Effective Date: 7/24/18

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 Agriculture |
| Division: | Consumer & Industry Services |
| Contact Person: | Theresa Denton, General Counsel |
| Address: | Post Office Box 40627, Nashville, Tennessee |
| Zip: | 37204 |
| Phone: | (615) 837-5280 |
| Email: | Theresa.denton@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 |
|----------------|-------------------------------------|
| 0080-03-07 | Tennessee Dairy Promotion Committee |
| Rule Number | Rule Title |
| 0080-03-07-.01 | Definitions |
| 0080-03-07-.06 | Redirection of Assessment |
| | |
| | |

Amendments
Chapter 0080-3-7-01

Rule 0080-3-7-01 Definitions is amended by adding the following definitions for Assessment, Qualified Program, and National Dairy Promotion and Research Board as appropriately numbered paragraphs.

- (1) "COMMITTEE" means Tennessee Dairy Promotion Committee.
- (2) "COMMISSIONER" means Commissioner of Tennessee Department of Agriculture.
- (3) "PRODUCER" means every person in the State of Tennessee who produces milk or cream from cows and thereafter causes the same to marketed as milk, cream or other milk and dairy products who have been issued and possess a valid current producer's permit, or certification, issued by the Department of Agriculture.
- ~~(3)~~(4) "ASSESSMENT" means the amounts collected from producers pursuant to the Dairy and Tobacco Adjustment Act of 1983, 7 C.F.R. 1150, and the Tennessee Dairy Industry Promotion Act, T. C. A. § 44-19-101, et seq.
- ~~(4)~~(5) "QUALIFIED PROGRAM" means any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153.
- ~~(5)~~(6) "National Dairy Promotion and Research Board" means the Board established pursuant to 7 C.F.R. 1150.131 to administer the Dairy Promotion Program.

Authority: T. C. A. § 44-19-120

New
Chapter 0080-3-7-06

0080-3-7-.06 REDIRECTION OF ASSESSMENT. The Committee may, upon receipt of a request from a producer to redirect that portion of the producer's assessment credited to the Committee, honor that request by forwarding an amount equal to the amount of credit that otherwise would be applicable to the Committee to a qualified program designated by the producer; or, if no qualified program is designated, to the National Dairy Promotion and Research Board.

Authority: T. C. A. § 44-19-120

* 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 Department of Agriculture (board/commission/ other authority) on 04/04/2018 (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: 01/13/18

Rulemaking Hearing(s) Conducted on: (add more dates). 03/16/18

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 PDM DIVISION

Date: April 4, 2018

Signature: Jai Templeton

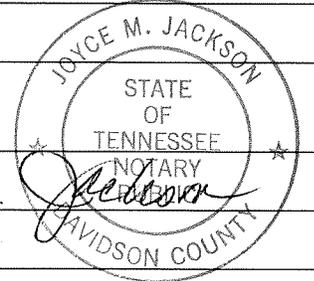
Name of Officer: Jai Templeton

Title of Officer: Commissioner

Subscribed and sworn to before me on: April 4, 2018

Notary Public Signature: Joyce M. Jackson

My commission expires on: July 5, 2021



Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter

4/20/2018
 Date

Department of State Use Only

Filed with the Department of State on: 4/25/18

Effective on: 7/24/18

Tre Hargett

Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Private Protective Services Program

DIVISION: Regulatory Boards

SUBJECT: Special Event Permits

STATUTORY AUTHORITY: Public Chapter 226 of 2017 mandates the promulgation of these rules.

EFFECTIVE DATES: July 24, 2018 through June 30, 2019

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The proposed rules define the terms "special event" and "special event permit" and introduce application and compliance standards for contract security companies who are granted a special event permit by the Private Protective Services Program.

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;**
As of July 18, 2017, there are 371 actively licensed Tennessee Contract Security Companies. Those aforementioned companies will be afforded the opportunity to apply for and use a special event permit for temporary employment through the year.
- 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 special event permit requires a separate application to be processed. It is estimated that there will not be additional professional skills necessary for the preparation of this new application. There are no estimated increase administrative costs for this application.
- 3. A statement of the probable effect on impacted small businesses and consumers;**
The proposed changes will allow Licensed Tennessee Contract Security Companies to hire temporary employees for certain limited events throughout the State.
- 4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;**
The proposed changes to the existing rules are minimally burdensome and/or intrusive to small businesses.
- 5. A comparison of the proposed rule with any federal or state counterparts; and**
The proposed rules reflect the legislative change detailed in 2017 Public Chapter 226 and provide for efficient implementation.
- 6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**
These proposed rules affect licensed Tennessee Contract Security Companies seeking a special permit to hire temporary employees for limited events throughout the State.

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)

There is no expected impact on local government by the promulgation of the proposed rules.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rules define terms "special event" and "special event permit" and introduce application and compliance standards for contract security companies who are granted a special event permit by the Private Protective Services program.

- (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;

Newly passed legislation, i.e. 2017 Public Chapter 226, mandates promulgation of the proposed 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;

The proposed rules will affect licensed Tennessee Contract Security Companies who elect to apply for a special event permit.

- (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 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;

There is no probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of these rules of two percent (2%) or greater or five hundred thousand dollars (\$500,000).

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

Ashley N. Thomas
Assistant General Counsel
Division of Regulatory Boards
Department of Commerce and Insurance

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

Ashley N. Thomas
Assistant General Counsel
Division of Regulatory Boards
Department of Commerce and Insurance

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

Ashley N. Thomas
500 James Robertson Parkway
Nashville, TN 37243
(615) 741-3072
ashley.thomas@tn.gov

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

No additional information requested.

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Sequence Number: 04-26-18
Rule ID(s): 6749
File Date: 4/25/18
Effective Date: 7/24/18

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: | Private Protective Services Program |
| Division: | Department of Commerce and Insurance |
| Contact Person: | Ashley N. Thomas, Assistant General Counsel |
| Address: | 500 James Robertson Parkway |
| Zip: | 37243 |
| Phone: | (615) 741-3072 |
| Email: | ashley.thomas@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 |
|----------------|-----------------------------|
| 0780-05-02 | Private Protective Services |
| Rule Number | Rule Title |
| 0780-05-02-.02 | Definitions |

| Chapter Number | Chapter Title |
|----------------|-----------------------------|
| 0780-05-02 | Private Protective Services |
| Rule Number | Rule Title |
| 0780-05-02-.25 | Special Event Permit |

Chapter 0780-05-02
Private Protective Services
Amendments

Rule 0780-05-02-.02(2) Definitions is amended by adding the following subparagraphs in alphabetical order and renumbering the existing subparagraphs appropriately:

- () "Special Event" means any public event that requires security services for a specific and defined period of time.
- () "Special Event Permit" means a permit issued to a licensed Tennessee Contract Security Company that allows for the temporary employment of individuals for security guard and patrol services during a special event.

Authority: T.C.A. § 62-35-129.

Chapter 0780-05-02
Private Protective Services
New Rules

New Rule 0780-05-02-.25 Special Event Permit is added and reads:

- (1) Any licensed Tennessee Contract Security Company that seeks to qualify for a special event permit as defined by T.C.A. § 62-35-105(d) shall submit an application to the Commissioner on a prescribed form. The application shall include:
 - (a) Names of temporary security officers;
 - (b) Addresses of temporary security officers;
 - (c) Birth dates of temporary security officers;
 - (d) Social security numbers of temporary security officers;
 - (e) Whether the temporary security officer is licensed in another jurisdiction, and if so, which state and license number; and
 - (f) Identity, location, and date of special event for which the temporary security officers are to be employed.
- (2) The non-refundable fee shall be one thousand dollars (\$1,000.00) per special event. The special event permit shall expire on the end date as indicated on the printed permit.
- (3) The Commissioner reserves the right to limit, deny, and/or revoke any special event permit granted to a licensed Tennessee Contract Security Company, in accordance with T.C.A. §§ 62-35-105(g) and 62-35-130.
- (4) Applications for a special event permit shall be submitted at least five (5) days prior to the start date of the special event.
- (5) As a condition of approval, the licensed Tennessee Contract Security Company affirms that each individual named on the application submitted in accordance with paragraph (1) will be identifiable by uniform as security officers employed under the special event license.
- (6) As a condition of approval, the licensed Tennessee Contract Security Company affirms that each individual named on the application submitted in accordance with paragraph (1) has not worked more than ten (10) days in the current calendar year as a temporary security officer.

- (7) Any licensed Tennessee Contract Security Company approved for a special event permit shall maintain accurate records for all persons employed as temporary security officers for a period of one (1) calendar year from the last day of the special event. The records shall include the name, date of birth, social security number, and number of days the individual has been employed as a temporary security officer during the current calendar year pursuant to T.C.A. § 62-35-105(d).

Authority: T.C.A. § 62-35-105; T.C.A. § 62-35-129; T.C.A. § 62-35-130.

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

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

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 06/09/2017, 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: 02/09/2018

Signature: Ashley N. Thomas

Name of Officer: Ashley N. Thomas

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: February 9, 2019

Notary Public Signature: Carol McGlynn

My commission expires on: Nov. 5, 2019

Agency/Board/Commission: Private Protective Services Program

Rule Chapter Number(s): 0780-05-02-.02; 0780-05-02-.25

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.

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 SECRETARY OF STATE
 PUBLIC AFFAIRS

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter

4/13/2018
 Date

Department of State Use Only

Filed with the Department of State on: 4/25/18

Effective on: 7/24/18

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

| | |
|-----------------------------|---|
| <u>DEPARTMENT:</u> | Commerce and Insurance |
| <u>DIVISION:</u> | Regulatory Boards - Board of Architectural and Engineering Examiners |
| <u>SUBJECT:</u> | Registration Requirements and Procedures |
| <u>STATUTORY AUTHORITY:</u> | None |
| <u>EFFECTIVE DATES:</u> | July 24, 2018 through June 30, 2019 |
| <u>FISCAL IMPACT:</u> | Minimal |
| <u>STAFF RULE ABSTRACT:</u> | <p>The amendments to Rule 0120-01-.03 list specifically what is not considered to be "offering to practice" architecture, engineering, or landscape architecture. The amendments also clarify that an architect, engineer, or landscape architect must become registered in Tennessee before submitting proposals, signing contracts, or commencing work.</p> <p>The amendments to Rule 0120-01-.04 reduce the length of time that comity applications, reapplications, and engineering intern applications are held in a "pending" status with the Tennessee Board of Architectural and Engineering Examiners ("Board") from five (5) years to one (1) year.</p> <p>The amendment to Rule 0120-01-.06 eliminates a \$15.00 application fee for engineering interns. Small businesses may have paid this fee for interns in the past, but will no longer have to pay the fee.</p> <p>The amendment to Rule 0120-01-.11 adds back to the rules the ability for applicants with education through qualified Canadian programs to apply for licensure. This rule was mistakenly removed, and this amendment merely restores it.</p> <p>The amendments to Rule 0120-01-.15 and 0120-01-.16 allow applicants to apply to sit and test for required</p> |

examinations directly with the testing entity. Without this rule, applicants must apply with the Board and the testing entity. The process has been seen as confusing to some applicants. These amendments would simplify and streamline the testing procedures for potential licensees.

The amendment to Rule 0120-04-.03 adds an expiration of one (1) year for applications and reapplications for registration as a registered interior designer. Extensions may be granted as determined by the Board upon written request.

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 amendment to Rule 0120-01-.03 clarifies what is not considered an "offer to practice architecture, engineering, or landscape architecture." The amendment further clarifies that an architect, engineer, or landscape architect must become registered in Tennessee before any proposals may be submitted, any contracts may be signed, and any work may be commenced. Small businesses which contain licensed architects, engineers, or landscape architects may benefit from this amendment because the amendment clarifies that registration is required for any out of state architect, engineer, or landscape architect to offer to practice in Tennessee. Currently, there are around 1,800 registered Architecture firms, around 4,100 registered Engineering firms, and around 200 registered Landscape Architecture Firms; the majority of these would be considered a small business in Tennessee and thus would benefit from this rule.

The amendments to Rule 0120-01-.04 reduce the length of time that comity applications, reapplications, and engineering intern applications are held in a "pending" status with the Tennessee Board of Architectural and Engineering Examiners ("Board") from five (5) years to one (1) year. These rule changes will not impact small businesses.

The amendment to Rule 0120-01-.06 eliminates a \$15.00 application fee for engineer interns. Small businesses may have paid this fee for interns in the past, but will no longer have to pay the fee.

The amendment to Rule 0120-01-.11 adds back to the rules the ability for applicants with education through qualified Canadian programs to apply for licensure. This rule was mistakenly removed, and this amendment merely restores it. This rule could positively impact small businesses by increasing the qualified applicants available for licensure and ultimately employment in the State of Tennessee.

The amendments to Rules 0120-01-.15 and 0120-01-.16 allow applicants to apply to sit and test for required examinations directly with the testing entity. Without this rule, applicants must apply with the Board and the testing entity. The process has been seen as confusing to some applicants. These amendments would simplify and streamline the testing procedures for potential licensees. These changes would benefit small businesses if those businesses cover application fees for interns or other employees sitting for testing. Currently, the applicant must pay the \$30 application fee and then attempt to pass his or her examination. If testing takes longer than five (5) years to pass, the application expires, and the applicant must pay the application fee again. Now, the applicants will not apply with the Board until they have passed their examinations. This simplicity may benefit small businesses that assist in the cost in getting an employee licensed.

The amendment to Rule 0120-04-.03 adds an expiration of one (1) year for applications and reapplications for registration as a registered interior designer. Extensions may be granted as determined by the Board upon written request. This rule change will not impact 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.

These rule changes will reduce administrative and recordkeeping costs, because applications will be maintained and stored for shorter periods of time. Currently, because of the five-year hold requirement for certain applications, the Tennessee Board of Architectural and Engineering Examiners is storing and maintaining more applications than any other Board housed in the Tennessee Department of Commerce and Insurance. Professional licensing staff must be trained in the utilization of multiple electronic databases in order to store these applications. The rule changes will reduce the quantity of applications both by reducing the time certain applications must be stored, and by streamlining the process for when applicants apply. Because under the rule changes, applicants will only apply after passing examinations, applications will be processed much faster and the cost associated with maintaining pending applications will be reduced.

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

Small businesses will save money and time due to the ability to have future employees those businesses wish to have licensed test directly with the provider without having to first apply with the Board.

Tennessee small businesses will likely have an advantage when offering to practice in Tennessee, as the amendment clarifies that any out of state architect, engineer, or landscape architect must be licensed in Tennessee before they can offer to practice. Also, engineer intern applicants will no longer have to pay a fee.

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

The Board believes that this change is not burdensome, intrusive or costly and – as such – there do not appear to be any alternatives that would reasonably be expected to be less burdensome.

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

These rules do not have any federal or state counterparts.

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

Exemption from these rules would not be expected to be beneficial for small businesses because the effects of these rules on small businesses are tangential at best, and all expected effects would be positive 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 rule changes are not expected to 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 to Rule 0120-01-.03 list specifically what is not considered to be "offering to practice" architecture, engineering, or landscape architecture. The amendments also clarify that an architect, engineer, or landscape architect must become registered in Tennessee before submitting proposals, signing contracts, or commencing work.

The amendments to Rule 0120-01-.04 reduce the length of time that comity applications, reapplications, and engineering intern applications are held in a "pending" status with the Tennessee Board of Architectural and Engineering Examiners ("Board") from five (5) years to one (1) year.

The amendment to Rule 0120-01-.06 eliminates a \$15.00 application fee for engineering interns. Small businesses may have paid this fee for interns in the past, but will no longer have to pay the fee.

The amendment to Rule 0120-01-.11 adds back to the rules the ability for applicants with education through qualified Canadian programs to apply for licensure. This rule was mistakenly removed, and this amendment merely restores it.

The amendments to Rules 0120-01-.15 and 0120-01-.16 allow applicants to apply to sit and test for required examinations directly with the testing entity. Without this rule, applicants must apply with the Board and the testing entity. The process has been seen as confusing to some applicants. These amendments would simplify and streamline the testing procedures for potential licensees.

The amendment to Rule 0120-04-.03 adds an expiration of one (1) year for applications and reapplications for registration as a registered interior designer. Extensions may be granted as determined by the Board upon written request.

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

There is no known state or federal law mandating the promulgation of these 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;

Applicants will be affected by these rules. No objections or concerns regarding these rules have been voiced by affected parties. Board urges adoption.

- (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 these rules.

- (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;

It is anticipated that the elimination of the \$15 engineer intern application fee will reduce Board revenue by approximately \$5,000 a year based on the number of applications received in the last fiscal year. Surplus revenue from the collection of other fees will enable the Board to absorb this loss and remain self-sufficient, as

required by T.C.A. § 4-29-121.

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

Roxana Gumucio, Interim Executive Director
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
(615) 532-7081
Roxana.Gumucio@tn.gov

Elizabeth Goldstein, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
(615) 741-3072
Elizabeth.Goldstein@tn.gov

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

Roxana Gumucio, Interim Executive Director
Elizabeth Goldstein, Assistant General Counsel

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

Roxana Gumucio, Interim Executive Director
500 James Robertson Parkway
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Elizabeth Goldstein, Assistant General Counsel
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

There is no known additional relevant information.

**Department of State
Division of Publications**

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Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 4-25-18
Rule ID(s): 0747-0748
File Date: 4/25/18
Effective Date: 7/24/18

Proposed Rule(s) FILING FORM

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

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

Agency/Board/Commission: Tennessee Board of Architectural and Engineering Examiners
Division: Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person: Elizabeth Goldstein
Address: 500 James Robertson Parkway
Zip: 37243
Phone: (615) 532-6304
Email: elizabeth.goldstein@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

| Chapter Number | Chapter Title |
|----------------|---|
| 0120-01 | Registration Requirements and Procedures |
| Rule Number | Rule Title |
| 0120-01-03 | Individuals Registered in Other Jurisdictions |
| 0120-01-04 | Applications - General |
| 0120-01-06 | Applications - Engineer Intern |
| 0120-01-10 | Education and Experience Requirements - Engineer |
| 0120-01-11 | Education and Experience Requirements - Architect |
| 0120-01-15 | Examinations - Architect |
| 0120-01-16 | Examinations - Landscape Architect |

| Chapter Number | Chapter Title |
|----------------|--------------------|
| 0120-04 | Interior Designers |
| Rule Number | Rule Title |
| 0120-04-03 | Applications |

Chapter 0120-01
Rules of Tennessee Board of Architectural and Engineering Examiners

Amendments

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| 0120-01-.01 Definitions | 0120-01-.15 Examinations - Architect |
| 0120-01-.02 Applicability | 0120-01-.16 Examinations-Landscape Architect |
| 0120-01-.03 Individuals Registered in Other Jurisdictions | |
| Clarifications to Offering to Practice | 0120-01-.17 Repealed |
| 0120-01-.04 Applications - General | 0120-01-.18 Repealed |
| 0120-01-.05 Applications - Engineer | 0120-01-.19 Repealed |
| 0120-01-.06 Applications Engineer intern | 0120-01-.20 Reexamination - Engineer |
| 0120-01-.07 Applications - Architect | 0120-01-.21 Repealed |
| 0120-01-.08 Applications - Landscape Architect | 0120-01-.22 Reexamination - Architect |
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| 0120-01-.10 Education and Experience Requirements - Engineer | 0120-01-.24 Duplicate Certificates of Registration |
| 0120-01-.11 Education and Experience Requirements - Architect | 0120-01-.25 Renewal of Registration |
| 0120-01-.12 Education and Experience Requirements - Landscape Architect | 0120-01-.26 Repealed |
| 0120-01-.13 Examinations – General | 0120-01-.27 Notification to the Board |
| 0120-01-.14 Examinations - Engineer, Engineer intern | 0120-01-.28 Military Application – Spouses –Expedited Registration |
| | 0120-01-.29 Repealed |

Rule 0120-01-.03

~~Rule 0120-01-.03 Individuals Registered in Other Jurisdictions~~

- ~~(1) Unless properly registered, individuals shall not make use of the title "engineer," "architect," "landscape architect," or any appellation thereof that gives the impression that the individual is an architect, engineer, or landscape architect in Tennessee. Individuals not registered in Tennessee but registered in other jurisdictions may use these titles so long as the jurisdiction in which they are registered is clearly specified so as not to mislead the public regarding their credentials. This clarification is not required on communications from an out-of-state office, provided that the individual is registered in that jurisdiction.~~
- ~~(2) Individuals registered in other jurisdictions cannot offer or perform architectural, engineering, or landscape architectural services to the public in Tennessee unless they are either acting as consulting associates in accordance with T.C.A. § 62-2-103(2) or working under the responsible charge of a Tennessee registrant.~~

0120-01-.03 Clarifications to Offering to Practice

- (1) The following items are not considered offering to practice architecture, engineering, or landscape architecture, provided that the architect, engineer or landscape architect is registered in another jurisdiction:
- (a) Advertising in publications or electronic media, provided there is no holding out of professional services in jurisdictions where not registered.
 - (b) Responding to letters of inquiry regarding requests for proposals or requests for qualifications, provided there is written disclosure that the architect, engineer, or landscape architect is not registered in Tennessee and the response is limited to inquiries regarding scope of project and to demonstrate interest.

- (c) Responding to letters of inquiry from prospective clients, provided there is written disclosure that the architect, engineer, or landscape architect is not registered in Tennessee and the response is limited to inquiries regarding scope of project and to demonstrate interest.
 - (d) Using the title "engineer," "architect," "landscape architect," or any appellation thereof, provided that the individual using the title is registered in another jurisdiction and clearly specifies the jurisdiction in which they are registered following the title so as not to mislead the public regarding their credentials.
 - (e) Using the title "engineer," "architect," "landscape architect," or any appellation thereof in communications from an office in the jurisdiction where registration is held.
- (2) Notwithstanding paragraph (1), proposals may not be submitted, contracts signed, nor work commenced until the architect, engineer, or landscape architect becomes registered in Tennessee, unless the architect, engineer, or landscape architect is either acting as a consulting associate in accordance with T.C.A. § 62-2-103(2) or working under the responsible charge of a Tennessee registrant.

Authority: T.C.A. §§ 62-2-101, 62-2-103, and 62-203(c).

Rule 0120-01-.04 Applications-General

- (1) Applications for registration and certification are available on the Board website and upon request from the office of the Board.
- ~~(2) Any application submitted which lacks required information or reflects a failure to meet any requirement will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed five (5) years from the date of application.~~
- (2) (a) Comity applications and reapplications for registration as an engineer, architect, and landscape architect and applications for engineer intern certification shall expire one (1) year from the date of application. Upon written request by the applicant, an extension of time may be granted for good cause as determined by the Board.
- (b) Applications to sit for professional examinations shall expire five (5) years from the date of application.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-304.

Rule 0120-01-.06 Applications – Engineer Intern

~~An application for certification as an engineer intern shall be accompanied by a nonrefundable fee of fifteen dollars (\$15.00). An applicant who has passed the required examination and has met the other legal requirements shall receive a certificate.~~

Individuals may apply for certification as an engineer intern. An applicant who has passed the required examination and has met the other legal requirements shall receive a certificate.

Authority: T.C.A. §§ 62-2-203(c), 62-2-402(b), and 62-2-404(c)(2).

Rule 0120-01-.10 Education and Experience Requirements – Engineer

- (1) (a) Accredited engineering programs. An engineering curriculum of four (4) years or more which was accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET) (or its predecessor) at the time of graduation, or graduation was not more than two (2) academic years prior to accreditation, may be approved by the Board

as being satisfactory.

- (b) Nonaccredited engineering programs. An engineering curriculum of four (4) years or more which is a non-ABET accredited program shall be referred at the applicant's expense to a person or entity approved by the Board and qualified to evaluate equivalency to an ABET accredited engineering program for evaluation and recommendation. If the curriculum for the degree at the time of the applicant's graduation is substantially equivalent to ABET accreditation requirements, the application shall be reviewed in accordance with the requirements for applicants holding engineering degrees from institutions which do not have ABET accredited engineering programs in consideration of the factors outlined below.
 - (c) In reviewing applicants holding degrees from nonaccredited engineering programs, whether obtained in the United States or otherwise, which are substantially equivalent to degrees from ABET accredited programs, the Board may consider the following factors:
 - 1. Evidence of having obtained the statutory minimum acceptable progressive professional experience of a grade and character which indicates to the Board that the applicant may be competent to practice engineering; and
 - 2. At least five (5) references from individuals having knowledge of the applicant's technical competence as an engineer on projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering.
 - (d) Applicants meeting the above requirements shall be reviewed by the Board for determination of eligibility for either the Fundamentals of Engineering examination or the Principles and Practice of Engineering examination or for registration by comity.
 - (e) An engineering technology program, whether four (4) or two (2) years in length, is not considered by the Board to be an acceptable curriculum.
 - (f) Programs that allow credit for work experience and experiential learning (with the exception of cooperative education programs), or which are not part of an institution that is accredited or recognized as a degree-granting institution of higher learning within a national territory or in the United States, are not considered by the Board to be acceptable curricula.
 - (g) Engineering degrees from programs accredited by the Canadian Engineering Accreditation Board (CEAB) that were awarded in or after 1980 are considered substantially equivalent and do not require evaluation.
- (2) In general, "progressive experience in the practice of engineering" consists of engineering experience which is supervised by a registered professional engineer. The Board may grant toward experience requirements for registration as an engineer one (1) year of credit for graduation with a Master's degree (or higher) in engineering from an approved curriculum or up to one (1) year of qualified experience obtained in an established cooperative education program, which is carried out within the framework of an approved engineering curriculum, and which has been approved by the Board. At least one (1) year of engineering experience must be completed in the United States. A graduate level degree that is used, in part or in whole, to satisfy the education requirements for registration cannot also be used to satisfy the experience requirements for registration. Unless otherwise noted above, an applicant's engineering experience must be obtained after graduation with the qualifying degree and completed by the date of the examination.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-401.

Rule 0120-01-.11(3) Education and Experience Requirements – Architect

(3) Non-accredited architecture programs.

- (a) For purposes of T.C.A. §§ 62-2-501(2) and 62-2-502(b), an architectural curriculum of four (4) years or more which is a non-NAAB accredited program shall be referred at the applicant's

expense to a person or entity approved by the Board and qualified to evaluate equivalency to an NAAB accredited program for evaluation and recommendation. If the curriculum for the degree at the time of the applicant's graduation is equivalent to NAAB accreditation requirements, the application shall be reviewed in accordance with the requirements for applicants holding architecture degrees from institutions which do not have NAAB accredited architecture programs in consideration of the factors outlined below.

- (b) In reviewing a non-accredited architectural curriculum, the Board may approve either an architectural curriculum of not less than four (4) years offered by a school of architecture as part of an architectural curriculum toward a NAAB accredited degree or its equivalent.
- (c) In reviewing applicants holding degrees from non-accredited architecture programs, whether obtained in the United States or otherwise, which are substantially equivalent to degrees from NAAB accredited programs, the Board may consider the following factors:
 - 1. Evidence of having obtained the statutory minimum acceptable practical experience in architectural work, and
 - 2. At least five (5) references from individuals having knowledge of the applicant's technical competence as an architect.

(d) For purposes of this paragraph, an architectural degree from a program accredited by the Canadian Architectural Certification Board (CACB), or from a program deemed substantially equivalent by the NAAB, is deemed to be equivalent to a degree from a NAAB-accredited program.

Authority: T.C.A. §§ 62-2-203(c), 62-2-501, 62-2-502 and 62-2-503.

Rule 0120-01-.15 Examinations - Architect

~~Examinations administered to candidates for registration as an architect will be prepared by the NCARB.~~

- (1) The NCARB shall prepare and administer examinations for candidates for registration as an architect. The use of materials, reference books, notes, calculators and equipment in such examinations shall be in accordance with instructions from the NCARB.
- (2) Applicants shall apply directly to NCARB for admittance to the examination needed for registration as an architect.

Authority: T.C.A. §§ ~~62-20462-2-203(c)~~ and 62-20-504(a).

Rule 0120-01-.16 Examinations Landscape - Architect

~~Written examinations prepared by CLARB will be offered to applicants for registration as a landscape architect.~~

- (1) The CLARB shall prepare and administer examinations for candidates for registration as a landscape architect. The use of materials, reference books, notes, calculators and equipment in such examinations shall be in accordance with instructions from the CLARB.
- (2) Applicants shall apply directly to CLARB for admittance to the examination needed for registration as a landscape architect.

Authority: T.C.A. §§ ~~62-20462-2-203(c)~~ and 62-20-804(a).

Chapter 0120-04
Interior Designers

Amendment

Rule 0120-04-.03 Applications

- (1) Each applicant for registration as a registered interior designer must be at least twenty-one (21) years old and must not have been convicted of any offense that bears directly on the applicant's fitness to be registered as determined by the Board. The applicant shall indicate the applicant's age and shall give a full explanation of any conviction of any offense on a form provided by the Board.
- (2) An application for registration as a registered interior designer under the provisions of T.C.A. § 62-2-904 (registration requiring examination), shall be made on a form prescribed by the Board and shall be accompanied by a nonrefundable fee of fifty-five dollars (\$55.00). The applicant shall provide the Board with NCIDQ examination verification or equivalent examination verification by submitting the following to the examination sponsor:
 - (a) An examination verification form supplied by the Board; and
 - (b) The fee, if any, charged by the examination sponsor for verification.
- (3) Applications and reapplications for registration as a registered interior designer shall expire one (1) year from the date of application. Upon written request by the applicant, an extension of time may be granted for good cause as determined by the Board.

Authority: T.C.A. §§ 62-2-203(c), 62-2-301(a), 62-2-904 and 62-2-905.

* 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) |
|-------------------------|-----|----|---------|--------|-------------------------|
| Susan K. Ballard, RID | | | | X | |
| Frank W. Wagster, RA | X | | | | |
| Robert Campbell, Jr. PE | X | | | | |
| R. Blair Parker, RLA | X | | | | |
| Richard D. Thompson, RA | X | | | | |
| Brian Tibbs, RA | X | | | | |
| Kathryn S. Ware, PE | X | | | | |
| Ricky Bursi, PE | X | | | | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board on December 7, 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: March 22, 2018

Signature: *Elizabeth Goldstein*

Name of Officer: Elizabeth Goldstein

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: March 22, 2018

Notary Public Signature: *Carol McGlynn*

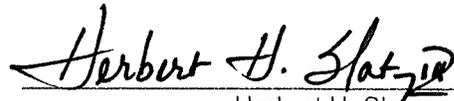
My commission expires on: Nov. 5, 2019



Agency/Board/Commission: Tennessee Board of Architectural and Engineering Examiners

Rule Chapter Numbers: 0120-01
0120-04

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


Herbert H. Slatery III
Attorney General and Reporter
4/13/2018
Date

Department of State Use Only

Filed with the Department of State on: 4/25/18
Effective on: 7/24/18

Tre Hargett
Secretary of State

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PUBLIC AFFAIRS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Board of Physical Therapy

DIVISION:

SUBJECT: General Rules Governing the Practice of Physical Therapy;
Fees

STATUTORY AUTHORITY: The promulgation of this rule, or the establishment of guidelines relevant thereto, is not mandated by any federal or state law or regulation.

EFFECTIVE DATES: July 9, 2018 through June 30, 2019

FISCAL IMPACT: These rules should not affect state or local government revenues or expenditures.

STAFF RULE ABSTRACT: These rule amendments decrease the biennial renewal fee for Physical Therapists from \$65.00 to \$55.00 and decrease the biennial renewal fee for Occupational Therapy Assistants from \$65.00 to \$45.00.

Public Hearing Comments

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

There were no comments received, either written or oral.

Regulatory Flexibility Addendum

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

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

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

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

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

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

These rule amendments do not establish any new compliance or reporting requirements.

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

These rule amendments do not establish any new compliance or reporting requirements.

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

These rule amendments do not establish any new compliance or reporting requirements.

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

These rule amendments do not establish performance, operational, or design standards.

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

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

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Physical Therapy

Rulemaking hearing date: 02/09/2018

- 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:**

Physical Therapists and Physical Therapy Assistants, as well as those that employ them will be affected. These groups will benefit from the fee reductions and consolidations.

- 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 not affect reporting or recordkeeping and do not involve administrative costs.

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

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

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

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

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

Federal: None.

State: Many Health Related Boards in Tennessee currently operating at a surplus are reducing some licensure fees, including the Board of Respiratory Care, the Board of Medical Examiners Committee on Physician Assistants, and the Board of Examiners in Psychology.

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

These proposed rule amendments do not provide exemptions for small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule amendments should not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rule amendments decrease the biennial renewal fee for Physical Therapists from \$65.00 to \$55.00 and decrease the biennial renewal fee for Occupational Therapy Assistants from \$65.00 to \$45.00.

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

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

The decrease in biennial renewal fees affects all licensees and future licensees under the Board. Currently, there are five thousand two hundred and seventy-seven (5,277) Physical Therapists and three thousand five hundred and thirteen (3,513) Physical Therapy Assistants licensed in Tennessee. There were no comments received regarding 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;

These rules should not affect state or local government revenues or expenditures.

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

Andrea Huddleston, Chief 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;

Andrea Huddleston, Chief Deputy General Counsel, Department of Health.

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

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

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

None.

**Department of State
Division of Publications**

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

For Department of State Use Only

Sequence Number: 04-10-18
Rule ID(s): 6741
File Date: 4/10/18
Effective Date: 7/9/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission: Tennessee Board of Physical Therapy
Division:
Contact Person: Andrea Huddleston, Deputy General Counsel
Address: 665 Mainstream Drive, Nashville, Tennessee
Zip: 37243
Phone: (615) 741-1611
Email: Andrea.Huddleston@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 |
|----------------|--|
| 1150-01 | General Rules Governing the Practice of Physical Therapy |
| Rule Number | Rule Title |
| 1150-01-.06 | Fees |

(Rule 1150-01-.05, continued)

- (4) Additional procedures for internationally educated applicants
 - (a) Passage of the required examination pursuant to rule 1150-01-.08 is a prerequisite to licensure.
 - (b) It is the applicant's responsibility to have his professional education evaluated and verified as equivalent by a credentialing agency approved by the Board, pursuant to Rule 1150-01-.04. No applicant shall be approved for licensure as a physical therapist or physical therapist assistant until the Board is satisfied that the applicant's education is substantially equivalent to the requirements of accredited educational programs.
 - (c) An applicant shall submit proof of United States or Canada citizenship or evidence of being legally entitled to live and work in the United States. Such evidence may include notarized copies of birth certificates, naturalization papers or current visa status.
 - (d) An applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of license) from each such licensing/certification agency which indicates the applicant holds or has held an active license and whether it is in good standing presently or was at the time it became inactive.
 - (e) When necessary, all required documents shall be translated into English and such translation and the original document must be certified as to authenticity by the issuing source. Both versions must be submitted.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-103, 63-13-108, 63-13-301, 63-13-304, 63-13-306, 63-13-307, and 63-13-312. **Administrative History:** Original rule filed June 6, 1978; effective July 6, 1978. Amendment filed September 29, 1981; effective December 29, 1981. Repeal and new rule filed September 30, 1987; effective November 14, 1987. Amendment filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed June 3, 2004; effective August 17, 2004. Amendment filed March 14, 2006; effective May 28, 2006.

1150-01-.06 FEES.

- (1) The fees authorized by statutes are established as follows:
 - (a) Application fee - A nonrefundable fee to be paid by all applicants including those seeking licensure by reciprocity. It must be paid each time an application for licensure is filed.
 - (b) Duplicate (Replacement) License - To be paid when an individual requests a replacement for a lost or destroyed "artistically designed" license or renewal certificate.
 - (c) Endorsement/Verification - A fee paid whenever an individual requests the Board endorse him to another state or whenever a request is made to verify a license.
 - (d) Reinstatement fee - A fee to be paid to the Board to reactivate a license which has been administratively revoked due to the licensee's failure to renew.
 - (e) License fee - A nonrefundable fee to be paid prior to the issuance of the "artistically designed" license.
 - (f) Provisional License/Application fee - A nonrefundable fee to be paid by all applicants or licensees seeking a provisional license.

(Rule 1150-01-.06, continued)

- (g) Renewal fee - A fee to be paid by all license holders. This fee also applies to individuals who reactivate a retired or lapsed license.
- (h) Late renewal fee - A fee to be paid when a licensee has failed to renew his license in a timely manner and the license has not yet been administratively revoked.
- (i) Reciprocity - A fee to be paid in addition to the application fee.
- (j) State Regulatory Fee - To be paid by all individuals at the time of application and with all renewal applications.

(2) All fees shall be established, reviewed and changed by the Board.

(3) All fees must be submitted to the Board's administrative office by certified or personal check or money order. Checks or money orders are to be made payable to the Board of Physical Therapy.

(4) Fee Schedule:

| | PT | PTA |
|---|---------------------|---------------------|
| (a) Application Fee | \$100.00 | \$90.00 |
| (b) Duplicate (replacement) License Fee | \$25.00 | \$25.00 |
| (c) Endorsement/Verification Fee | \$25.00 | \$25.00 |
| (d) License Fee | \$25.00 | \$25.00 |
| (e) Provisional License/Application Fee | \$25.00 | \$25.00 |
| (f) Reciprocity | \$100.00 | \$100.00 |
| (g) Reinstatement Fee | \$100.00 | \$100.00 |
| (h) Renewal Fee (biennial) | \$65.00 | \$65.00 |
| (i) Late Renewal Fee | \$50.00 | \$50.00 |
| (j) State Regulatory Fee (biennial) | \$10.00 | \$10.00 |

(4) Fee Schedule:

| | PT | PTA |
|---|----------|----------|
| (a) Application Fee | \$100.00 | \$90.00 |
| (b) Duplicate (replacement) License Fee | \$25.00 | \$25.00 |
| (c) Endorsement/Verification Fee | \$25.00 | \$25.00 |
| (c) License Fee | \$25.00 | \$25.00 |
| (d) Provisional License/Application Fee | \$25.00 | \$25.00 |
| (e) Reciprocity | \$100.00 | \$100.00 |
| (g) Reinstatement Fee | \$100.00 | \$100.00 |

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(Rule 1150-01-.06, continued)

| | | | |
|-----|---------------------------------|----------|----------|
| (h) | Renewal Fee (biennial) | \$ 55.00 | \$ 45.00 |
| (i) | Late Renewal Fee | \$ 50.00 | \$ 50.00 |
| (j) | State Regulatory Fee (biennial) | \$ 10.00 | \$10.00 |

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Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-1-103, 63-13-108, 63-13-304, 63-13-306 through 63-13-309, and 63-13-316. **Administrative History:** Original rule filed September 29, 1981; effective December 29, 1981. Amendment filed April 13, 1984; effective May 13, 1984. Repeal and new rule filed September 30, 1987; effective November 14, 1987. Amendment filed January 3, 1990; effective February 17, 1990. Amendment filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Withdrawal to rule 1150-01-.06 (4)(d), effective April 15, 2000, filed and effective February 28, 2000. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed January 16, 2003; effective April 1, 2003. Amendment filed April 8, 2003; effective June 22, 2003. Amendment filed May 18, 2007; effective August 1, 2007. Amendment filed December 27, 2011; effective March 26, 2012.

1150-01-.07 APPLICATION REVIEW, APPROVAL AND DENIAL.

- (1) An application packet shall be requested from the Board's administrative office.
- (2) Applications for licensure will be accepted throughout the year.
- (3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the Board's Unit Director. The Board will ratify licensure action taken by the Unit Director or designated Board member.
- (4) If an application for licensure is incomplete when received in the Board's administrative office, the applicant will be notified of such deficiency. The individual will not be deemed eligible to take the examination until the application is judged to be complete and accurate by the administrative office.
- (5) The Board may at its discretion delay a decision on eligibility to take the examination for any applicant for whom the Board wishes additional information.
- (6) If a completed application has been denied and ratified as such by the Board, the action shall become final and the following shall occur:
 - (a) A notification of the denial shall be sent by the Board's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or other matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial.
 - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.) to contest the denial and the procedure necessary to accomplish that action.
 - (c) An applicant has a right to a contested case hearing if the licensure denial was based on subjective or discretionary criteria.
 - (d) An applicant may be granted a contested case hearing if licensure denial is based on objective, clearly defined criteria. If after review and attempted resolution by the

* 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) |
|------------------------|-----|----|---------|--------|-------------------------|
| Ronald De Vera Barredo | X | | | | |
| LeAnn F. Childress | X | | | | |
| David Harris | X | | | | |
| David Finch | X | | | | |
| Minty R. Ballard | X | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Physical Therapy (board/commission/ other authority) on 02/09/2018(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: 10/17/17 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 02/09/18 (mm/dd/yy)

Date: 2-15-18

Signature: _____

Name of Officer: Andrea Huddleston

Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: February 15, 2018

Notary Public Signature: Mark Andrew Cook

My commission expires on: March 8, 2021

Agency/Board/Commission: Tennessee Board of Physical Therapy

Rule Chapter Number(s): 1150-01

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

4/4/2018

Date

Department of State Use Only

Filed with the Department of State on: 04-10-18

Effective on: 7-9-18


Tre Hargett
Secretary of State

RECEIVED
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COURT HOUSE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Board of Pharmacy

SUBJECT: Prescribing and Dispensing of Hormonal Contraceptives

STATUTORY AUTHORITY: Acts 2016, Public Chapter 942

EFFECTIVE DATES: July 18, 2018 through June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The Tennessee Board of Pharmacy proposes a new rule chapter [Prescribing and Dispensing of Hormonal Contraceptives] to comply with 2016 Public Chapter 942, signed by the Governor on April 27, 2016, and codified in Tenn. Code Ann. § 63-10-219.

The new rule includes requirements and guidance in the following areas: training, collaborative pharmacy practice agreements, delivery of care, procedural mandates, prohibited practices, records, and fees, along with a purpose statement and necessary definitions.

***NOTE: The copy of the rule provided in this packet does not include underlining or strikethroughs since it is a new rule.

Public Hearing Comments

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

January 30, 2018
Tennessee Board of Pharmacy Rulemaking Hearing
Public Hearing Comments

This new rule chapter was developed in collaboration with the Board of Medical Examiners and the Board of Osteopathic Examination, as required by Tenn. Code Ann. § 63-10-219(d). During the late fall and early winter months of 2016, public meetings were held between the required groups to formulate the basis for this rule.

The Tennessee Board of Pharmacy ("BOP") received two written comments and three oral comments regarding this new rule chapter.

The Tennessee Pharmacy Association ("TPA") submitted the first written comment. The written comments of TPA were also orally presented to the BOP by Dr. Micah Cost, executive director of the TPA. TPA first requested the BOP to change the definition of "Hormonal Contraceptives" (Rule 1140-15-.02(1)) by changing "practitioner" to "pharmacists" to make clear that the pharmacist may administer the hormonal contraceptive. The BOP accepted this change. Next, TPA asked the BOP to amend the definition of "total cost" (Rule 1140-15-.02(2)) by adding language to clarify the total cost is the cost of the hormonal contraceptive and the fee charged by the pharmacist for the administration, application, or any other patient care service provided to the patient by the pharmacist. The BOP voted to accept this change to the definition of total cost.

TPA requested for the BOP to add language to Rule 1140-15-.03(1) to clarify that training (to provide hormonal contraceptives) is pursuant to the rule and "[t]his rule does not prohibit pharmacists from providing care and service to patients, including hormonal contraceptives, pursuant to a valid patient-specific collaborative practice agreement." The BOP accepted both comments. Additionally, TPA suggested changing draft Rule 1140-15-.03(4) to allow the trained pharmacist to retain the certificate of completion, rather than requiring the pharmacist to provide it to the Department. The BOP accepted this change. TPA addressed concerns and presented sample language to the BOP regarding out-of-state practitioners with reference to the training requirement. TPA argued the published rule, which required the pharmacist to obtain training from a school or college of pharmacy recognized by the BOP, did not account for out-of-state licensed pharmacists seeking licensure in the State of Tennessee. While the BOP did not accept the language provided, the BOP amended the rule by adding "or a training program recognized by the Board" to leave room for approving out-of-state training/education. TPA also requested the BOP to delete paragraph (3) from Rule 1140-15-.03 in its entirety. The BOP accepted this comment as it had previously accepted the change to paragraph (4) allowing for retention of the certificate of completion to mirror other rules, to avoid confusion, and to reduce the burdens on the pharmacists.

The next comment received by TPA regarded 1140-15-.05. TPA suggested the BOP delete the paragraphs as published in their entirety and re-word the introductory paragraph to reference "eligible individuals as identified in Tennessee Code Annotated § 63-10-219" to prevent unnecessary rule changes in the future. The BOP accepted this request.

TPA requested for the BOP reconsider the "immediacy" language in Rule 1140-15-.06(3). The BOP adopted the language suggested by TPA which reads "as soon as practical" as found in the statute.

Along these same lines, TPA requested 1140-15-.07 be changed to allow a pharmacist to recommend optimal times to a patient for obtaining hormonal contraceptive services. The BOP rejected this language with concerns that it does not meet the statutory requirement which prohibited the pharmacist from requiring appointments for contraceptive services; however, the BOP did address concerns that the rule, as published, might do a disservice to the public as it could result in longer waiting times or rushed care for other patients in

need of the pharmacist's services. The BOP amended the language to indicate that the statute did not prevent a pharmacist from incorporating hormonal contraceptive service into the normal flow of business to promote efficiency and optimize care.

The next request from TPA addressed 1140-15-.08(1) accompanied with a suggestion to change the language to expound on "all aspects of the encounter," and thereby offer pharmacists more protections from future auditing. TPA suggested adding language "at a minimum" in the rule, which mandates retention of the self-screening risk assessment and the contraceptive dispensed, along with adding authorization for the pharmacist to "include additional information." TPA also pointed out that California and Oregon have similar, more detailed provisions in rule. The BOP accepted TPA's proposed language.

The last comment by TPA addressed 1140-15-.09. First, TPA requested paragraph (1) be amended by changing "may" to "is authorized to" and by adding "to patients." The BOP voted to adopt this change. TPA also sought amendments to paragraph (3). The amendments requested to clarify the assessment of total costs, which the BOP accepted.

The final written comment was sent by the National Association of Chain Drug Stores ("NACDS"). There were no oral comments received by NACDS, but the written comments were provided to the BOP and each comment was addressed accordingly. The first request was to change the language as published in 1140-15-.03(3) to make the certificate of completion (of the required training) readily available or require an attestation by the pharmacist. The BOP did not accept this change, because it previously voted to strike this paragraph pursuant to TPA's comments, addressed above.

The BOP addressed the final two comments submitted by NACDS in the same vote. NACDS proposed amending 1140-15-.04 to require that collaborative practice agreements be kept on file for inspection or to require an attestation on the renewal form by the pharmacists, rather than requiring a written attestation within thirty days. Next, NACDS requested the BOP to amend 1140-15-.08 to only require the pharmacist to keep records pursuant to this chapter for two (2) years, rather than ten (10) years. The BOP discussed these comments and voted to reject the changes as both rules are line with current rules regarding the retention of records of medical doctors and doctors of osteopathic medicine, current BOP rules and federal regulations.

The first oral comment, which occurred prior to TPA's oral comments, was from Rich Collumbo from Express Scripts. He asked the BOP if there would be a list of contraceptive providers posted through the BOP's website for the public/consumers or if the intention is to keep the information in-house. BOP staff informed the BOP that other collaborative practice agreements are not posted. The BOP chose not to address the comment at this time.

Dr. Jeenu Philip, Walgreen's Senior Manager of Pharmacy Affairs and Chair of the Florida Board of Pharmacy, was the last commenter to address the BOP. He first suggested the BOP include language in Rule 1140-15-.06(1) that "the standardized self-screening tool may be incorporated into the pharmacy computer system" which would make it easier for large-scale pharmacies to perform these services from workflow standpoint and would make the process more seamless. The BOP addressed this comment and inquired about the specifics of the form. Dr. Philip answered that Walgreen's would use the form approved by the Department of Health and would print the form for inclusion with the patient's records or would work to make its software system allow for patient signatures. After discussion, the BOP accepted Dr. Philip's request by adding a new sentence to Rule 1140-15-.06(1) with language settled on by the BOP, the Office of General Counsel, and Dr. Philip. Dr. Philip also requested assistance from the BOP regarding concerns that Rule 1140-15-.06(7) could cause kickback amongst pharmacists and physicians. After discussion from BOP staff that other work-place inquiries require pharmacists to recommend "a" physician and that the rule would not place a pharmacist in violation of stark laws, under the assumption the pharmacist receives no financial gain for making the referral and based upon other factually specific instances, Mr. Philip withdrew his comment.

Regulatory Flexibility Addendum

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

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

The proposed rule chapter, pertaining explicitly to a pharmacist prescribing oral contraceptives does not overlap, duplicate or conflict with other federal, state or local governmental rules. Every other element of the encounter with the consumer overlaps in some capacity with federal or state law. However, there are no conflicts with existing law.

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

The proposed rule chapter exhibits clarity, conciseness, and lack of ambiguity.

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

While the proposed rule chapter does require additional reporting and recordkeeping for pharmacists, compliance with such requirements should be minimal and flexible.

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

The proposed rule chapter sets out clear schedules and deadlines for reporting and compliance.

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

The proposed rule chapter does not consolidate or simplify compliance or reporting requirements for small businesses.

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

The proposed rule chapter does not establish performance standards for small business as opposed to design or operation standards required for the proposed rules.

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

The proposed rule chapter does not create entry barriers or other impacts which may stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Pharmacy

Rulemaking hearing date: January 30, 2018

- 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:**

The proposed rule chapter impacts citizens of the state of Tennessee and pharmacists / pharmacies by authorizing a Tennessee licensed pharmacist to prescribe and dispense a self-administered or transdermal patch of hormonal contraceptives to eligible consumers. The purpose of this rule chapter, as indicated by the General Assembly in 2016 Public Chapter 942, is to establish processes and procedures for pharmacists to be able to prescribe hormonal contraceptives to consumers through collaborative pharmacy practice agreements, to improve the health and lives of consumers, and to reduce the number of unintended pregnancies in the State of Tennessee. By allowing a Tennessee licensed pharmacist to prescribe a hormonal contraceptive, pharmacies and consumers should benefit because pharmacies may attract more consumers and consumers will have quicker, less costly access to contraceptives. Pharmacies may have a minimal increase in expenditures for recordkeeping related to the prescribing of hormonal contraceptives. Furthermore, each pharmacist would be required to obtain training related to the prescribing of hormonal contraceptives. Consumers shall make payment for the hormonal contraceptive in the amount of their contractually agreed upon co-payment which is set by the consumers' pharmacy benefits provider or the consumer shall make payment for the cost of the hormonal contraceptive plus an annual administrative fee for the pharmacist's services.

- 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:**

The pharmacy (from where the hormonal contraceptive is prescribed) shall be responsible for maintaining the following records: a collaborative pharmacy practice agreement, proof of training, documentation of the encounter with the consumer which includes, but is not limited to, the standardized self-screening risk assessment tool and records of the dispensed hormonal contraceptive. With the exception of the records pertaining to the dispensed hormonal contraceptive, the pharmacy practice site shall maintain the aforementioned records for a period of ten years. Records of the dispensed hormonal contraceptive shall be maintained for two years.

The Tennessee Board of Pharmacy's administrative staff shall be responsible for maintaining records of completed training for each prescribing pharmacist and written attestation of the collaborative pharmacy practice agreement.

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

Pharmacies and consumers should benefit because pharmacies may attract more consumers and consumers will have quicker, less costly access to contraceptives. Pharmacies may have a minimal increase in expenditures for recordkeeping related to the prescribing of hormonal contraceptives. Furthermore, each pharmacist would be required to obtain training related to the prescribing of hormonal contraceptives. Consumers shall make payment for the hormonal contraceptive through their contractually agreed upon co-payment which is set by the consumers' pharmacy benefits provider, or the consumer shall make payment for the cost of the hormonal contraceptive plus an annual administrative fee for the pharmacist's services.

- 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:**

This rule chapter is required by 2016 Public Chapter 942, signed by the Governor on April 27, 2016, and codified in Tenn. Code Ann. § 63-10-219; and therefore, there are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and or objectives of this rule chapter.

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

Federal: Federal law is silent in regards to a pharmacist prescribing hormonal contraceptives. There are a plethora of federal statutes and rules pertaining to medication(s), the storage of medications, the form of a prescription, and how medications can be dispensed. The proposed rule chapter does not change a pharmacist's obligation to abide by federal law. Regulation concerning the day-to-day practice of pharmacy is usually reserved for the states and the individual boards of pharmacy.

State: Tennessee is one of the few states to allow pharmacists to prescribe contraceptives. Currently, California and Oregon have passed similar legislation; however, California and Oregon do not require a pharmacist to collaborate with a physician if the patient is age 18 or older. Similar legislation has been introduced in Colorado, Washington, Hawaii, Missouri, and South Carolina.

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.

There are no exemptions provided by the rule amendments in this new rule chapter.

Impact on Local Governments

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

The Tennessee Board of Pharmacy proposes a new rule chapter [Prescribing and Dispensing of Hormonal Contraceptives] to comply with 2016 Public Chapter 942, signed by the Governor on April 27, 2016, and codified in Tenn. Code Ann. § 63-10-219.

The new rule includes requirements and guidance in the following areas: training, collaborative pharmacy practice agreements, delivery of care, procedural mandates, prohibited practices, records, and fees along with a purpose statement and necessary definitions.

- (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 942, signed by the Governor on April 27, 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;

This rule affects Tennessee residents, Tennessee licensed pharmacists, and pharmacies by authorizing a pharmacist to prescribe and dispense hormonal contraceptives to eligible persons. The Board received several comments supporting the new rule chapter with various requested changes included in the comment section above. The Board did not receive any comments urging rejection of this new rule chapter.

- (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 directly affect state or local governments.

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

Matthew Gibbs, Assistant General Counsel, Department of Health.

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

Matthew Gibbs, Assistant General Counsel, Department of Health.

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

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

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

None.

**Department of State
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 04-19-18
Rule ID(s): 6744
File Date: 4/19/18
Effective Date: 7/18/18

Rulemaking Hearing Rule(s) Filing Form

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

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

| | |
|---------------------------------|--|
| Agency/Board/Commission: | Tennessee Board of Pharmacy |
| Division: | |
| Contact Person: | Matthew Gibbs, Assistant General Counsel |
| Address: | 665 Mainstream Drive, Nashville, Tennessee |
| Zip: | 37243 |
| Phone: | (615) 741-1611 |
| Email: | Matthew.Gibbs@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 |
|----------------|---|
| 1140-15 | Prescribing and Dispensing of Hormonal Contraceptives |
| Rule Number | Rule Title |
| 1140-15-.01 | Purpose |
| 1140-15-.02 | Definitions |
| 1140-15-.03 | Training |
| 1140-15-.04 | Collaborative Pharmacy Practice Agreements |
| 1140-15-.05 | Delivery of Care |
| 1140-15-.06 | Procedural Mandates |
| 1140-15-.07 | Prohibited Practices |
| 1140-15-.08 | Records |
| 1140-15-.09 | 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-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 1140-15
Prescribing and Dispensing of Hormonal Contraceptives

New Rule Chapter

Table of Contents.

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| 1140-15-.01 | Purpose |
| 1140-15-.02 | Definitions |
| 1140-15-.03 | Training |
| 1140-15-.04 | Collaborative Pharmacy Practice Agreements |
| 1140-15-.05 | Delivery of Care |
| 1140-15-.06 | Procedural Mandates |
| 1140-15-.07 | Prohibited Practices |
| 1140-15-.08 | Records |
| 1140-15-.09 | Fees |

1140-15-.01 Purpose. A pharmacist is authorized to prescribe hormonal contraceptives, in good faith, pursuant to a valid collaborative pharmacy practice agreement which contains a nonpatient-specific prescriptive order and standardized procedures developed and executed by one (1) or more authorized prescribers.

Authority: T.C.A. § 63-10-219.

1140-15-.02 Definitions.

- (1) "Hormonal contraceptive" means a self-administered drug, or a transdermal patch applied to the skin of a patient, by the patient or by a pharmacist, which releases a drug composed of a combination of hormones that are approved by the United States Food and Drug Administration ("FDA") to prevent pregnancy.
- (2) "Total cost" means the specific information regarding the cost of the hormonal contraceptive and the fee charged by the pharmacist for the administration, application, or any other patient care service provided to the patient by the pharmacist.
- (3) "Pharmacist's agent" means an individual, such as a registered pharmacy technician, pharmacy clerk, or pharmacy intern, working under the supervision of a pharmacist who is authorized to assist in tasks and responsibilities related to the delivery of patient care services pursuant to a valid collaborative pharmacy practice agreement.

Authority: T.C.A. § 63-10-219.

1140-15-.03 Training

- (1) Each pharmacist licensed in the state of Tennessee shall complete educational training pertaining to the prescribing of hormonal contraceptives prior to providing contraceptive therapies to patients pursuant to this rule. This rule does not prohibit pharmacists from providing care and services to patients, including hormonal contraceptives, pursuant to a valid patient-specific collaborative pharmacy practice agreement.
- (2) The minimum required educational training shall be approved by the Tennessee Department of Health ("TDH"), listed on the TDH website, and provided by an Accreditation Council for Pharmacy Education ("ACPE") -approved provider.
- (3) The pharmacist shall permanently maintain the certificate of completion of training at their place of practice and shall make the certificate of completion available to the Board of Pharmacy upon request.
- (4) The training program shall provide, at a minimum, information pertaining to the types and pharmacology

of hormonal contraceptives which may be prescribed, the risk and benefits of each hormonal contraceptive, any side effects associated with the hormonal contraceptive, and any contraindications associated with the hormonal contraceptive.

The training program shall provide the prescribing pharmacist with a minimum level of proficiency regarding proper prescribing of hormonal contraceptives.

- (5) An equivalent curriculum-based training program completed in or after the year 2017 from a school or college of pharmacy recognized by the Board or a training program recognized by the Board shall satisfy the requirement of training prior to the prescribing of hormonal contraceptives.
- (6) It shall be the professional responsibility of each pharmacist engaged in the prescribing of hormonal contraceptives to maintain current knowledge regarding the science and trends of hormonal contraceptives.

Authority: T.C.A. § 63-10-219.

1140-15-.04 Collaborative Pharmacy Practice Agreements. Within 30 days from the effective date of a collaborative pharmacy practice agreement, the prescribing pharmacist shall submit written attestation to the Board for the purpose of notifying the Board of the collaborative agreement.

Authority: T.C.A. §§ 63-10-217 and 63-10-219.

1140-15-.05 Delivery of Care. A pharmacist may provide hormonal contraceptives under this rule to eligible individuals as identified in T.C.A. § 63-10-219.

Authority: T.C.A. §§ 39-11-106 and 63-10-219.

1140-15-.06 Procedural Mandates. For each new patient requesting a hormonal contraceptive, and, at a minimum of every twelve months for each returning patient, the prescribing pharmacist shall:

- (1) Ask the patient to use and complete the TDH-produced standardized self-screening risk assessment tool. The TDH-produced standardized self-screening risk assessment tool shall be the only self-screening risk assessment tool to be utilized when evaluating a patient's candidacy for a hormonal contraceptive. The TDH-produced standardized self-screening risk assessment tool shall be made available through the TDH website. The same TDH-approved standardized self-screening risk assessment tool may be incorporated into a pharmacy's management system's software.
- (2) Review the self-screening risk assessment answers and clarify responses with the patient as needed before using professional judgment regarding whether to prescribe a hormonal contraceptive.
- (3) Dispense a hormonal contraceptive to the patient or refer the patient to a pharmacy that may dispense the hormonal contraceptive, if the pharmacist determines the patient is eligible to receive the medication.

Dispensing a hormonal contraceptive or referring the patient to another pharmacy that may dispense a hormonal contraceptive shall occur as soon as practicable after making the determination that the patient is eligible to receive a hormonal contraceptive.

- (4) Counsel the patient on matters contained in Tenn. Comp. R. & Regs. 1140-03-.01(1)(e)1 through 1140-03-.01(1)(e)8 at the time the hormonal contraceptive is prescribed and dispensed.
- (5) Provide the patient with the FDA-required patient product information document that is included with the hormonal contraceptive and a factsheet which includes, but is not limited to, the indications and contraindications for the use of the drug, the appropriate method for using the drug, the importance of a medical follow-up, and other appropriate information.
- (6) Advise the patient to consult with the patient's primary care practitioner or women's health practitioner.
- (7) Provide the patient, at the time the hormonal contraceptive is prescribed, with a list which contains contact information for primary care practitioners or women's health practitioners. In the event it is not

practicable to provide contact information at the time the hormonal contraceptive is prescribed, the prescribing pharmacist shall provide contact information for primary care practitioners or women's health practitioners within seventy-two (72) hours after the contraceptive is prescribed.

Authority: T.C.A. § 63-10-219.

1140-15-.07 Prohibited Practices. A prescribing pharmacist shall not require the patient to schedule an appointment with the pharmacist for the purpose of prescribing or dispensing of a hormonal contraceptive. However, nothing in this rule shall prevent a pharmacist from providing services which are incorporated into normal flow of business in order to promote efficiency and to optimize patient care.

Authority: T.C.A. § 63-10-219.

1140-15-.08 Records.

- (1) The prescribing pharmacist shall document, at a minimum, the completed self-screening risk assessment and the medication prescribed to the patient by the pharmacist. While not required by this rule, the pharmacist is authorized to include additional information related to the patient encounter. These records shall be maintained by the pharmacy practice site for a period of ten years.

Records regarding the dispensed hormonal contraceptive shall be maintained in accordance with Tenn. Comp. R. & Regs. 1140-03-.03.

Authority: T.C.A. § 63-10-219.

1140-15-.09 Fees.

- (1) A pharmacist, pharmacist's employer, or pharmacist's agent is authorized to charge an annual administrative fee for services provided to patients pursuant to this Chapter in addition to any costs associated with the dispensing of the drug. However, patients who are insured or covered and receive a pharmacy benefit that covers the cost of hormonal contraceptives shall not be required to pay an administrative fee; instead, these patients shall be required to pay co-payments pursuant to the terms and conditions of their coverage.
- (2) Upon an oral, telephonic, electronic, or written request from a patient or customer, a pharmacist or pharmacist's employee shall disclose the total cost that a consumer would pay for pharmacist-provided hormonal contraceptives.
- (3) The "total cost" requirement is not intended to interfere with patients who have active hormonal contraceptive coverage under an insurance plan or pharmacy benefit which has been contractually agreed upon between a pharmacist, a pharmacist's employer, or a pharmacist's agent, and a health insurance plan or insurer.

Authority: T.C.A. § 63-10-219.

* 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) |
|--------------------------------|-----|----|---------|--------|-------------------------|
| Debra Wilson, D.Ph | X | | | | |
| Rissa H. Pryse D.Ph | X | | | | |
| Katy Wright, D.Ph. | X | | | | |
| Lisa Tittle | X | | | | |
| Adams Rodgers, D.Ph. | X | | | | |
| Kevin K. Eidson, Pharm. D. | X | | | | |
| R. Michael Dickenson, D.Ph. | X | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Pharmacy (board/commission/ other authority) on 01/30/2018 (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: 10/25/17 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 01/30/18 (mm/dd/yy)

Date: February 9, 2018

Signature: *Matthew Gibbs*

Name of Officer: Matthew Gibbs

Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 2-9-18

Notary Public Signature: *Suzanne Mechkowski*

My commission expires on: January 26, 2021



Agency/Board/Commission: Tennessee Board of Pharmacy

Rule Chapter Number(s): 1140-15

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

4/13/2018

Date

Department of State Use Only

Filed with the Department of State on: 4/19/18

Effective on: 7/18/18

Tre Hargett

Tre Hargett
Secretary of State

RECORDED
2018 APR 19 PM 3:26
SECRETARY OF STATE
FUNDING UNIT

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Board for Licensing Health Care Facilities

SUBJECT: Standards for Nursing Homes

STATUTORY AUTHORITY: Acts 2017, Public Chapter 355

EFFECTIVE DATES: July 18, 2018 through June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rule amendments contain new requirements for the disposal of medications in nursing homes and are required by 2017 Public Chapter 355, which was signed by the Governor on May 11, 2017. Specifically, the public chapter allows nursing homes to participate in drug donation repository programs if such participation is outlined in the facility's policies and procedures. The rules set out this requirement as well as the procedures for drug disposal for nursing homes that decline to participate in the drug donation repository program.

Regulatory Flexibility Addendum

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

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

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

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

These rule amendments establish clarity, conciseness, and lack of ambiguity.

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

These rule amendments do not create any new compliance or reporting requirements.

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

These rule amendments do not create any new compliance or reporting requirements.

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

These rule amendments do not create any new compliance or reporting requirements.

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

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

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

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

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board for Licensing Health Care Facilities

- 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 rule amendments will affect nursing homes and those employees designated to dispose of unused medications.

- 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 rule amendments will require nursing homes to develop policies and procedures to ensure that medications are disposed of pursuant to this rule, and that such policies and procedures are in compliance with DEA regulations. This requirement may result in increased costs; however, nursing homes are currently required to maintain records regarding medication disposal, and the rule is required by 2017 Public Chapter 355, which was signed by the Governor on May 11, 2017.

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

These rule amendments will require additional oversight in the destruction of medication in nursing homes, which may lead to increased costs for the facilities. Consumers should not be impacted by this rule amendment.

- 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 these rule amendments.

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

Federal: None.

State: None.

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

These rule amendments do not contain 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule amendments should not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rule amendments contain new requirements for the disposal of medications in nursing homes and is required by 2017 Public Chapter 355, which was signed by the Governor on May 11, 2017. Specifically, the public chapter allows nursing homes to participate in drug donation repository programs if such participation is outlined in facility's policies and procedures. The rules set out this requirement as well as the procedures for drug disposal for nursing homes that decline to participate in the drug donation repository program.

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

These rule amendments contain new requirements for the disposal of medications in nursing homes and is required by 2017 Public Chapter 355, which was signed by the Governor on May 11, 2017.

- (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 rule amendments will affect nursing homes and those employees designated to dispose of unused medications.

- (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 affect state or local governments.

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

Caroline Tippens, Assistant General Counsel, Department of Health.

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

Caroline Tippens, Assistant General Counsel, Department of Health.

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

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Caroline.Tippens@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 Ave., 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: 04-18-18
 Rule ID(s): 6743
 File Date: 4/19/18
 Effective Date: 7/19/18

Proposed Rule(s) Filing Form

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

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

| | |
|---------------------------------|--|
| Agency/Board/Commission: | Board for Licensing Health Care Facilities |
| Division: | |
| Contact Person: | Caroline Tippens |
| Address: | 665 Mainstream Drive, Nashville, Tennessee |
| Zip: | 37243 |
| Phone: | (615) 741-1611 |
| Email: | Caroline.Tippens@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 |
|----------------|-----------------------------|
| 1200-08-06 | Standards for Nursing Homes |
| Rule Number | Rule Title |
| 1200-08-06-.06 | Basic Services |

(Rule 1200-08-06-.05, continued)

- (10) No resident shall be transferred without a written order from the attending physician or through other legal processes and timely notification of next of kin and/or sponsor or authorized representative, if any.
- (11) When a resident is transferred, a summary of treatment given at the nursing home, condition of the resident at time of transfer and date and place to which he is transferred shall be entered in the record. If the transfer is due to an emergency, this information will be recorded within forty-eight (48) hours, otherwise, it will precede the transfer of the resident.
- (12) When a resident is transferred, a copy of the clinical summary shall, with consent of the resident, be sent to the nursing home that will continue the care of the resident.
- (13) Where an involuntary transfer is proposed, in addition to any other relevant factors, the following factors shall be taken into account:
 - (a) The traumatic effect on the resident.
 - (b) The proximity of the proposed nursing home to the present nursing home and to the family and friends of the resident.
 - (c) The availability of necessary medical and social services at the proposed nursing home.
 - (d) Compliance by the proposed nursing home with all applicable Federal and State regulations.
- (14) When the attending physician has ordered a resident transferred or discharged, but the resident or a representative of the resident opposes the action, the nursing home shall counsel with the resident, the next of kin, sponsor and representative, if any, in an attempt to resolve the dispute and shall not transfer the resident until such counseling has been provided. No involuntary transfer or discharge shall be made until the nursing home has first informed the department and the area long-term care ombudsman. Unless a disaster occurs on the premises or the attending physician orders the transfer as a medical emergency (due to the resident's immediate need for a higher level of care) no involuntary transfer or discharge shall be made until five (5) business days after these agencies have been notified, unless they each earlier declare that they have no intention of intervening.
- (15) Except when the Board has revoked or suspended the license, a nursing home which intends to close, cease doing business, or reduce its licensed bed capacity by ten percent (10%) or more shall notify both the department and the area long-term care ombudsman at the earliest moment of the decision, but not later than thirty (30) days before the action is to be implemented. The facility shall establish a protocol, subject to the department's approval, for the transfer or discharge of the residents. Should the nursing home violate the provisions of this paragraph, the department shall request the Attorney General of the State of Tennessee to intervene to protect the residents, as is provided by T.C.A. § 68-11-213(a).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-257, and 71-6-121. **Administrative History:** Original rule filed March 27; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 10, 2000; effective June 24, 2000. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed April 17, 2007; effective July 1, 2007.

1200-08-06-.06 BASIC SERVICES.

- (1) Performance Improvement.

(Rule 1200-08-06-.06, continued)

- (a) The nursing home must ensure that there is an effective, facility-wide performance improvement program to evaluate resident care and performance of the organization.
 - (b) The performance improvement program must be ongoing and have a written plan of implementation which assures that:
 - 1. All organized services related to resident care, including services furnished by a contractor, are evaluated;
 - 2. Nosocomial infections and medication therapy are evaluated;
 - 3. All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment; and
 - 4. The facility shall develop and implement a system for measuring improvements in adherence to the hand hygiene program and influenza vaccination program.
 - (c) The nursing home must have an ongoing plan, consistent with available community and facility resources, to provide or make available services that meet the medically-related needs of its residents.
 - (d) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action.
 - (e) Performance improvement program records are not disclosable, except when such disclosure is required to demonstrate compliance with this section.
 - (f) Good faith attempts by the performance improvement program committee to identify and correct deficiencies will not be used as a basis for sanctions.
- (2) Physician Services.
- (a) Policies and procedures concerning services provided by the nursing home shall be available for the admitting physicians.
 - (b) Residents shall be aided in receiving dental care as deemed necessary.
 - (c) Each nursing home shall retain by written agreement a physician to serve as a Medical Director.
 - (d) The Medical Director shall be responsible for the medical care in the nursing home. The Medical Director shall:
 - 1. Delineate the responsibilities of and communicate with attending physicians to ensure that each resident receives medical care;
 - 2. Ensure the delivery of emergency and medical care when the resident's attending physician or his/her designated alternate is unavailable;
 - 3. Review reports of all accidents or unusual incidents occurring on the premises, identifying hazards to health and safety and recommending corrective action to the administrator;
 - 4. Make periodic visits to the nursing home to evaluate the existing conditions and make recommendations for improvements;

(Rule 1200-08-06-.06, continued)

5. Review and take appropriate action on reports from the Director of Nursing regarding significant clinical developments;
6. Monitor the health status of nursing home personnel to ensure that no health conditions exist which would adversely affect residents; and,
7. Advise and provide consultation on matters regarding medical care, standards of care, surveillance and infection control.

(3) Infection Control.

- (a) The nursing home must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.
- (b) The physical environment shall be maintained in such a manner to assure the safety and well being of the residents.
 1. Any condition on the nursing home site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.
 2. Cats, dogs or other animals shall not be allowed in any part of the facility except for specially trained animals for the handicapped and except as addressed by facility policy for pet therapy programs. The facility shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the facility performed by medically trained personnel.
 3. Telephones shall be readily accessible and at least one (1) shall be equipped with sound amplification and shall be accessible to wheelchair residents.
 4. Equipment and supplies for physical examination and emergency treatment of residents shall be available.
 5. A bed complete with mattress and pillow shall be provided. In addition, resident units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.
 6. Individual wash cloths, towels and bed linens must be provided for each resident. Linen shall not be interchanged from resident to resident until it has been properly laundered.
 7. Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.
 8. Water pitchers, glasses, thermometers, emesis basins, douche apparatus, enema apparatus, urinals, mouthwash cups, bedpans and similar items of equipment coming into intimate contact with residents shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between residents and as often as necessary to maintain them in a clean and sanitary condition. Single use, resident disposable items are acceptable but shall not be reused.

(Rule 1200-08-06-.06, continued)

9. The facility shall have written policies and procedures governing care of residents during the failure of the air conditioning, heating or ventilation system, including plans for hypothermia and hyperthermia. When the temperature of any resident area falls below 65° F. or exceeds 85° F., or is reasonably expected to do so, the facility shall be alerted to the potential danger, and the department shall be notified.
- (c) The administrator shall assure that an infection control program including members of the medical staff, nursing staff and administrative staff develop guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the program shall include the establishment of:
1. Written infection control policies;
 2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;
 3. Written procedures governing the use of aseptic techniques and procedures in the facility;
 4. Written procedures concerning food handling, laundry practices, disposal of environmental and resident wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;
 5. A log of incidents related to infectious and communicable diseases;
 6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of resident care equipment and supplies; and,
 7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.
- (d) The administrator, the medical staff and director of nursing services must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.
- (e) The facility shall develop policies and procedures for testing a resident's blood for the presence of the hepatitis B virus and the HIV virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a resident's blood or other body fluid. The testing shall be performed at no charge to the resident, and the test results shall be confidential.
- (f) The facility and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV, and communicable diseases, including adherence to a hand hygiene program which shall include:
1. Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each patient contact if hands are not visibly soiled;

(Rule 1200-08-06-.06, continued)

2. Use of gloves during each patient contact with blood or where other potentially infectious materials, mucous membranes, and non-intact skin could occur and gloves changed before and after each patient contact;
 3. Use of either a non-antimicrobial soap and water or an antimicrobial soap and water for visibly soiled hands; and
 4. Health care worker education programs which may include:
 - (i) Types of patient care activities that can result in hand contamination;
 - (ii) Advantages and disadvantages of various methods used to clean hands;
 - (iii) Potential risks of health care workers' colonization or infection caused by organisms acquired from patients; and
 - (iv) Morbidity, mortality, and costs associated with health care associated infections.
- (g) All nursing homes shall adopt appropriate policies regarding the testing of residents and staff for HIV and any other identified causative agent of acquired immune deficiency syndrome.
- (h) The facility shall document evidence of annual vaccination against influenza for each resident, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control most recent to the time of the vaccine. Influenza vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccination for all residents accepting the vaccine shall be completed by November 30 of each year or within ten (10) days of the vaccine becoming available. Residents admitted after this date during the flu season and up to February 1, shall as medically appropriate, receive influenza vaccination prior to or on admission unless refused by the resident.
- The facility shall document evidence of vaccination against pneumococcal disease for all residents who are 65 years of age or older, in accordance with the recommendation of the Advisory Committee on Immunization Practices of the Centers for Disease Control at the time of vaccination, unless such vaccination is medically contraindicated or the resident has refused offer of the vaccine. The facility shall provide or arrange the pneumococcal vaccination of residents who have not received this immunization prior to or on admission unless the resident refuses offer of the vaccine.
- (i) A Nursing Home shall have an annual influenza vaccination program which shall include at least:
1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Nursing Home will encourage all staff and independent practitioners to obtain an influenza vaccination;
 2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at <http://tennessee.gov/health/topic/hcf-provider>);
 3. Education of all employees about the following:
 - (i) Flu vaccination,

(Rule 1200-08-06-.06, continued)

- (ii) Non-vaccine control measures, and
 - (iii) The diagnosis, transmission, and potential impact of influenza;
- 4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and
- 5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee.
- (j) Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents. Decontamination and preparation areas shall be separated.
- (k) Space and facilities for housekeeping equipment and supply storage shall be provided in each service area. Storage for bulk supplies and equipment shall be located away from patient care areas. The building shall be kept in good repair, clean, sanitary and safe at all times.
- (l) The facility shall appoint a housekeeping supervisor who shall be responsible for:
 - 1. Organizing and coordinating the facility's housekeeping service;
 - 2. Acquiring and storing sufficient housekeeping supplies and equipment for facility maintenance; and,
 - 3. Assuring the clean and sanitary condition of the facility to provide a safe and hygienic environment for residents and staff. Cleaning shall be accomplished in accordance with the infection control rules herein and facility policy.
- (m) Laundry facilities located in the nursing home shall:
 - 1. Be equipped with an area for receiving, processing, storing and distributing clean linen;
 - 2. Be located in an area that does not require transportation for storage of soiled or contaminated linen through food preparation, storage or dining areas;
 - 3. Provide space for storage of clean linen within nursing units and for bulk storage within clean areas of the facility; and,
 - 4. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.
- (n) The facility shall name an individual who is responsible for laundry service. This individual shall be responsible for:
 - 1. Establishing a laundry service, either within the nursing home or by contract, that provides the facility with sufficient clean, sanitary linen at all times;
 - 2. Knowing and enforcing infection control rules and regulations for the laundry service;

(Rule 1200-08-06-.06, continued)

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules and procedures; and,
4. Assuring that a contract laundry service complies with all applicable infection control rules and procedures.

(4) Nursing Services.

- (a) Each nursing home must have an organized nursing service that provides twenty-four (24) hour nursing services furnished or supervised by a registered nurse. Each home shall have a licensed practical nurse or registered nurse on duty at all times and at least two (2) nursing personnel on duty each shift.
- (b) The facility must have a well-organized nursing service with a plan of administrative authority and delineation of responsibilities for resident care. The Director of Nursing (DON) must be a licensed registered nurse who has no current disciplinary actions against his/her license. The DON is responsible for the operation of the service, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the facility.
- (c) The Director of Nursing shall have the following responsibilities:
 1. Develop, maintain and periodically update:
 - (i) Nursing service objectives and standards of practice;
 - (ii) Nursing service policy and procedure manuals;
 - (iii) Written job descriptions for each level of nursing personnel;
 - (iv) Methods for coordination of nursing service with other resident services; and,
 - (v) Mechanisms for monitoring quality of nursing care, including the periodic review of medical records.
 2. Participate in selecting prospective residents in terms of the nursing services they need and nursing competencies available.
 3. Make daily rounds to see residents.
 4. Notify the resident's physician when medically indicated.
 5. Review each resident's medications periodically and notify the physician where changes are indicated.
 6. Supervise the administration of medications.
 7. Supervise assignments of the nursing staff for the direct care of all residents.
 8. Plan, develop and conduct monthly in-service education programs for nursing personnel and other employees of the nursing home where indicated. An organized orientation program shall be developed and implemented for all nursing personnel.

(Rule 1200-08-06-.06, continued)

9. Supervise and coordinate the feeding of all residents who need assistance.
 10. Coordinate the dietary requirements of residents with the staff responsible for the dietary service.
 11. Coordinate housekeeping personnel.
 12. Assure that discharge planning is initiated in a timely manner.
 13. Assure that residents, along with their necessary medical information, are transferred or referred to appropriate facilities, agencies or outpatient services, as needed, for follow-up or ancillary care.
- (d) The nursing service must have adequate numbers of licensed registered nurses, licensed practical nurses, and certified nurse aides to provide nursing care to all residents as needed. Nursing homes shall provide a minimum of two (2) hours of direct care to each resident every day including 0.4 hours of licensed nursing personnel time. There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the availability of a licensed nurse for bedside care of any resident.
- (e) A registered nurse must supervise and evaluate the nursing care for each resident.
- (f) The facility must ensure that an appropriate individualized plan of care is prepared for each resident with input from appropriate disciplines, the resident and/or the resident's family or the resident's representative.
- (g) A registered nurse must assign the nursing care of each resident to other nursing personnel in accordance with the resident's needs and the specialized qualifications and competence of the nursing staff available.
- (h) Non-employee licensed nurses who are working in the nursing home must adhere to the policies and procedures of the facility. The director of the nursing service must provide for the adequate supervision and evaluation of the clinical activities of non-employee nursing personnel which occur within the responsibility of the nursing service.
- (i) All drugs, devices and related materials must be administered by, or under the supervision of, nursing or other personnel in accordance with federal and state laws and regulations, including applicable licensing requirements, and in accordance with the approved medical staff policies and procedures.
- (j) There must be a facility procedure for reporting adverse drug reactions and errors in administration of drugs.
- (k) When non-employees are utilized as sitters or attendants, they shall be under the authority of the nursing service and their duties shall be set forth clearly in written nursing service policies.
- (l) Each resident shall be given proper personal attention and care of skin, feet, nails and oral hygiene in addition to the specific professional nursing care as ordered by the resident's physician.
- (m) Medications, treatments, and diet shall be carried out as prescribed to safeguard the resident, to minimize discomfort and to attain the physician's objective.

(Rule 1200-08-06-.06, continued)

- (n) Residents shall have baths or showers at least two (2) times each week, or more often if requested by the resident.
- (o) Body position of residents in bed or chair bound shall be changed at least every two (2) hours, day and night, while maintaining good body alignment. Proper skin care shall be provided for bony prominences and weight bearing parts to prevent discomfort and the development of pressure areas, unless contraindicated by physician's orders.
- (p) Residents who are incontinent shall have partial baths each time the bed or bed clothing has been wet or soiled. The soiled or wet bed linen and the bed clothing shall be replaced with clean, dry linen and clothing immediately after being soiled.
- (q) Residents shall have shampoos, haircuts and shaves as needed, or desired.
- (r) Rehabilitation measures such as assisting patients with range of motion, prescribed exercises and bowel and bladder retraining programs shall be carried out according to the individual needs and abilities of the resident.
- (s) Residents shall be active and out of bed except when contraindicated by written physician's orders.
- (t) Residents shall be encouraged to achieve independence in activities of daily living, self-care, and ambulation as a part of daily care.
- (u) Residents shall have clean clothing as needed and shall be kept free from odor.
- (v) Residents' weights shall be taken and recorded at least monthly unless contraindicated by a physician's order.
- (w) Physical restraints shall be checked every thirty (30) minutes and released every two (2) hours so the resident may be exercised and offered toilet access.
- (x) Restraints may be applied or administered to residents only on the signed order of a physician. The signed physician's order must be for a specified and limited period of time and must document the necessity of the restraint. There shall be no standing orders for restraints.
- (y) When a resident's safety or safety of others is in jeopardy, the nurse in charge shall use his/her judgment to use physical restraints if a physician's order cannot be immediately obtained. A written order must be obtained as soon as possible.
- (z) Locked restraints are prohibited.
- (aa) Assistance with eating shall be given to the resident as needed in order for the resident to receive the diet for good health care.
- (bb) Abnormal food intake will be evaluated and recorded.
- (cc) A registered nurse may make the actual determination and pronouncement of death under the following circumstances:
 - 1. The deceased was a resident of a nursing home;
 - 2. The death was anticipated, and the attending physician or nursing home medical director has agreed in writing to sign the death certificate. Such agreement by

(Rule 1200-08-06-.06, continued)

the attending physician or nursing home medical director must be present with the deceased at the place of death;

3. The nurse is licensed by the state; and,
4. The nurse is employed by the nursing home in which the deceased resided.

(5) Medical Records.

- (a) The nursing home shall comply with the Tennessee Medical Records Act, T.C.A. §§ 68-11-301, et seq.
- (b) The nursing home must maintain a medical record for each resident. Medical records must be accurate, promptly completed, properly filed and retained, and accessible. The facility must use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries.
- (c) All medical records, in either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years after which such records may be destroyed. However, in cases of residents under mental disability or minority, their complete facility records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the resident, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the facility's policies and procedures, and no record may be destroyed on an individual basis.
- (d) When a nursing home closes with no plans of reopening, an authorized representative of the facility may request final storage or disposition of the facility's medical records by the department. Upon transfer to the department, the facility relinquishes all control over final storage of the records and the files shall become property of the State of Tennessee.
- (e) The nursing home must have a system of coding and indexing medical records. The system must allow for timely retrieval by diagnosis and procedure.
- (f) The nursing home must have a procedure for ensuring the confidentiality of resident records. Information from or copies of records may be released only to authorized individuals, and the facility must ensure that unauthorized individuals cannot gain access to or alter resident records. Original medical records must be released by the facility only in accordance with federal and state laws, court orders or subpoenas.
- (g) The medical record must contain information to justify admission, support the diagnosis, and describe the resident's progress and response to medications and services.
- (h) All entries must be legible, complete, dated and authenticated according to facility policy.
- (i) All records must document the following:
 1. Evidence of a physical examination, including a health history, performed no more than thirty (30) days prior to admission or within forty-eight (48) hours following admission;

(Rule 1200-08-06-.06, continued)

2. Admitting diagnosis;
 3. A dietary history as part of each resident's admission record;
 4. Results of all consultative evaluations of the resident and appropriate findings by clinical and other staff involved in the care of the resident;
 5. Documentation of complications, facility acquired infections, and unfavorable reactions to drugs;
 6. Properly executed informed consent forms for procedures and treatments specified by facility policy, or by federal or state law if applicable, as requiring written resident consent;
 7. All practitioners' orders, nursing notes, reports of treatment, medication records, radiology and laboratory reports, and vital signs and other information necessary to monitor the resident's condition;
 8. Discharge summary with disposition of case and plan for follow-up care; and,
 9. Final diagnosis with completion of medical records within thirty (30) days following discharge.
- (j) Electronic and computer-generated records and signature entries are acceptable.
- (6) Pharmaceutical Services.
- (a) The nursing home shall have pharmaceutical services that meet the needs of the residents and are in accordance with the Tennessee Board of Pharmacy statutes and rules. The medical staff is responsible for developing policies and procedures that minimize drug errors.
 - (b) All internal and external medications and preparations intended for human use shall be stored separately. They shall be properly stored in medicine compartments, including cabinets on wheels, or drug rooms. Such cabinets or drug rooms shall be kept securely locked when not in use, and the key must be in the possession of the supervising nurse or other authorized persons. Poisons or external medications shall not be stored in the same compartment and shall be labeled as such.
 - (c) Schedule II drugs must be stored behind two (2) separately locked doors at all times and accessible only to persons in charge of administering medication.
 - (d) Every nursing home shall comply with all state and federal regulations governing Schedule II drugs.
 - (e) A notation shall be made in a Schedule II drug book and in the resident's nursing notes each time a Schedule II drug is given. The notation shall include the name of the resident receiving the drug, name of the drug, the dosage given, the method of administration, the date and time given and the name of the physician prescribing the drug.
 - (f) All oral orders shall be immediately recorded, designated as such and signed by the person receiving them and countersigned by the physician within ten (10) days.

(Rule 1200-08-06-.06, continued)

- (g) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the resident. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they shall be:
1. Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and,
 2. Signed or initialed by the prescribing practitioner according to nursing home policy.
- (h) Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies. No Schedule II drug shall be given or continued beyond seventy-two (72) hours without a written order by the physician.
- (i) Medication administration records (MAR) shall be checked against the physician's orders. Each dose shall be properly recorded in the clinical record after it has been administered.
- (j) Preparation of doses for more than one scheduled administration time shall not be permitted.
- (k) Medication shall be administered only by licensed medical or licensed nursing personnel or other licensed health professionals acting within the scope of their licenses.
- (l) Unless the unit dose package system is used, individual prescriptions of drugs shall be kept in the original container with the original label intact showing the name of the resident, the drug, the physician, the prescription number and the date dispensed.
- (m) Legend drugs shall be dispensed by a licensed pharmacist.
- ~~(n) Any unused portions of prescriptions shall be turned over to the resident only on a written order by the physician. A notation of drugs released to the resident shall be entered into the medical record. All unused prescriptions left in a nursing home must be destroyed on the premises and recorded by a pharmacist. Such record shall be kept in the nursing home.~~
- (n) Nursing homes may participate in drug donation repository programs as defined in Title 63, Chapter 10 and may use such programs for drug disposal services. The facility's participation in a drug donation repository program shall be outlined in the facility's policies and procedures.
- (o) Alternatively, if a nursing home declines to participate in the drug donation repository program or in the case of drugs not acceptable under the program, any unused portions of prescription drugs shall be turned over to the resident only on a written order by the physician. If not turned over to the resident, such unused drugs left in a nursing home must be destroyed on the premises by a licensed nurse and a witness. The facility's policies and procedures shall outline person(s) who may serve as a witness and methodology. The facility's policies and procedures must be in compliance with applicable DEA regulations.
- (7) Radiology Services. The nursing home must maintain or have available diagnostic radiologic services according to the needs of the residents. If therapeutic services are also provided,

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(Rule 1200-08-06-.06, continued)

they, as well as the diagnostic services, must meet professionally approved standards for safety and personnel qualifications.

- (8) **Laboratory Services.** The nursing home must maintain or have available, either directly or through a contractual agreement, adequate laboratory services to meet the needs of the residents. The nursing home must ensure that all laboratory services provided to its residents are performed in a facility licensed in accordance with the Tennessee Medical Laboratory Act (TMLA). All technical laboratory staff shall be licensed in accordance with the TMLA and shall be qualified by education, training and experience for the type of services rendered.
- (9) **Food and Dietetic Services.**
- (a) The nursing home must have organized dietary services that are directed and staffed by adequate qualified personnel. A facility may contract with an outside food management company if the company has a dietitian who serves the facility on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this paragraph and provides for constant liaison with the facility medical staff for recommendations on dietetic policies affecting resident treatment. If an outside contract is utilized for management of its dietary services, the facility shall designate a full-time employee to be responsible for the overall management of the services.
- (b) The nursing home must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services. The food and dietetic services director shall be:
1. A qualified dietitian; or,
 2. A graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association; or,
 3. An individual who has successfully completed in-person or online coursework that provided ninety (90) or more hours of classroom instruction in food service supervision. If the course has not been completed, this person shall be enrolled in a course and making satisfactory progress for completion within the time limit specified by the course requirement; or,
 4. An individual who is a certified dietary manager (CDM), or certified food protection professional (CFPP); or,
 5. A current or former member of the U.S. military who has graduated from an approved military dietary manager training program.
- (c) There must be a qualified dietitian, full time, part-time, or on a consultant basis, who is responsible for the development and implementation of a nutrition care process to meet the needs of residents for health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition. Medical nutrition therapy includes assessment of the nutritional status of the resident and treatment through diet therapy, counseling and/or use of specialized nutrition supplements.
- (d) Menus must meet the needs of the residents.

(Rule 1200-08-06-.06, continued)

1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the residents and must be prepared and served as prescribed.
 2. Special diets shall be prepared and served as ordered.
 3. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the residents.
 4. A current therapeutic diet manual approved by the dietitian and medical staff must be readily available to all medical, nursing, and food service personnel.
- (e) Education programs, including orientation, on-the-job training, inservice education, and continuing education shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in the use of equipment, personal hygiene, proper inspection, and the handling, preparing and serving of food.
- (f) A minimum of three (3) meals in each twenty-four (24) hour period shall be served. A supplemental night meal shall be served if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishments shall be provided to patients with special dietary needs. A minimum of three (3) days supply of food shall be on hand.
- (g) Menus shall be prepared at least one week in advance. A dietitian shall be consulted to help write and plan the menus. If any change in the actual food served is necessary, the change shall be made on the menu to designate the foods actually served to the residents. Menus of food served shall be kept on file for a thirty (30) day period.
- (h) The dietitian or designee shall have a conference, dated on the medical chart, with each resident and/or family within two (2) weeks of admission to discuss the diet plan indicated by the physician. The resident's dietary preferences shall be recorded and utilized in planning his/her daily menu.
- (i) Food shall be protected from dust, flies, rodents, unnecessary handling, droplet infection, overhead leakage and other sources of contamination whether in storage or while being prepared and served and/or transported through hallways.
- (j) Perishable food shall not be allowed to stand at room temperature except during necessary periods of preparation or serving. Prepared foods shall be kept hot (140 °F or above) or cold (45 °F or less). Appropriate equipment for temperature maintenance, such as hot and cold serving units or insulated containers, shall be used.
- (k) All nursing homes shall have commercial automatic dishwashers approved by the National Sanitation Foundation. Dishwashing machines shall be used according to manufacturer specifications.
- (l) All dishes, glassware and utensils used in the preparation and serving of food and drink shall be cleaned and sanitized after each use.
- (m) The cleaning and sanitizing of handwashed dishes shall be accomplished by using a three-compartment sink according to the current "U.S. Public Health Service Sanitation Manual".
- (n) The kitchen shall contain sufficient refrigeration equipment and space for the storage of perishable foods.

(Rule 1200-08-06-.06, continued)

- (o) All refrigerators and freezers shall have thermometers. Refrigerators shall be kept at a temperature not to exceed 45 °F. Freezers shall be kept at a temperature not to exceed 0 °F.
 - (p) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments" and the current "U.S. Public Health Service Sanitation Manual" should be used as a guide to food sanitation.
- (10) Social Work Services.
- (a) Social services must be available to the resident, the resident's family and other persons significant to the resident, in order to facilitate adjustment of these individuals to the impact of illness and to promote maximum benefits from the health care services provided.
 - (b) Social work services shall include psychosocial assessment, counseling, coordination of discharge planning, community liaison services, financial assistance and consultation.
 - (c) A resident's social history shall be obtained within two (2) weeks of admission and shall be appropriately maintained.
 - (d) Social work services shall be provided by a qualified social worker.
 - (e) Facilities for social work services shall be readily accessible and shall permit privacy for interviews and counseling.
- (11) Physical, Occupational and Speech Therapy Services.
- (a) Physical therapy, occupational therapy and speech therapy shall be provided directly or through contractual agreement by individuals who meet the qualifications specified by nursing home policy, consistent with state law.
 - (b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.
 - (c) A licensed physical therapist shall be in charge of the physical therapy service and a licensed occupational therapist shall be in charge of the occupational therapy service.
 - (d) Direct contact shall exist between the resident and the therapist for those residents that require treatment ordered by a physician.
 - (e) The physical therapist and occupational therapist, pursuant to a physician order, shall provide treatment and training designed to preserve and improve abilities for independent functions, such as: range of motion, strength, tolerance, coordination and activities of daily living.
 - (f) Therapy services shall be coordinated with the nursing service and made a part of the resident care plan.
 - (g) Sufficient staff shall be made available to provide the service offered.

(Rule 1200-08-06-.06, continued)

- (12) Ventilator Services. A nursing home that provides ventilator services shall meet or exceed the following minimum standards by:
- (a) Ensuring a licensed respiratory care practitioner as defined by Tennessee Code Annotated Section 63-27-102(7), shall be physically present at the facility twenty four (24) hours per day, seven (7) days per week to provide:
 1. ventilator care;
 2. administration of medical gases;
 3. administration of aerosol medications; and
 4. diagnostic testing and monitoring of life support systems;
 - (b) Ensuring that an appropriate, individualized plan of care is prepared for each patient requiring ventilator services. The plan of care shall be developed with input and participation from a pulmonologist or a physician with experience in ventilator care;
 - (c) Ensuring that admissions criteria is established to ensure the medical stability of ventilator-dependent patients prior to transfer from an acute care setting;
 - (d) Ensuring that Arterial Blood Gas (ABG) is readily available in order to document the patient's acid base status and/or End Tidal Carbon Dioxide (etCOs) and whether continuous pulse oximetry measurements should be performed in lieu of ABG studies;
 - (e) Ensuring that an audible, redundant external alarm system is located outside of each ventilator-dependent patient's room for the purpose of alerting caregivers of patient disconnection, ventilator disconnection or ventilator failure;
 - (f) Ensuring that the nursing home is equipped with emergency suction equipment and an adequate number of Ambu bags for manual ventilation;
 - (g) Ensuring that ventilator equipment is connected to electrical outlets connected to back-up generator power;
 - (h) Ensuring that ventilators are equipped with battery back-up systems;
 - (i) Ensuring that the nursing home is equipped to employ the use of current ventilator technology consistent with meeting patients' needs for mobility and comfort; and
 - (j) Ensuring that a back-up ventilator is available at all times.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-3-511, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216. **Administrative History:** Original rule filed March 27, 1975; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed January 29, 1991; effective March 15, 1991. Amendment filed December 29, 1992; effective February 15, 1993. Amendment filed June 15, 1993; effective July 30, 1993. Amendment filed April 17, 1996; effective July 1, 1996. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed January 31, 2000; effective April 15, 2000. Amendment filed March 29, 2000; effective June 12, 2000. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed September 4, 2003; effective November 18, 2003. Amendment filed September 21, 2005; effective December 5, 2005. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed

(Rule 1200-08-06-.06, continued)

December 16, 2013; effective March 16, 2014. Amendment filed September 15, 2015; effective December 14, 2015. Amendments filed July 18, 2016; effective October 16, 2016.

1200-08-06-.07 SPECIAL SERVICES: ALZHEIMER'S UNITS. Structurally distinct parts of a nursing home may be designated as special care units for ambulatory residents with dementia or Alzheimer's Disease and related disorders. Such units shall be designed to encourage self-sufficiency, independence and decision-making skills, and may admit residents only after the unit is found to be in compliance with licensure standards and upon final approval by the department. Units which hold themselves out to the public as providing specialized Alzheimer's services shall comply with the provisions of T.C.A. § 68-11-1404 and shall be in compliance with the following minimum standards:

- (1) In order to be admitted to the special care unit:
 - (a) A diagnosis of dementia must be made by a physician. The specific etiology causing the dementia shall be identified to the best level of certainty prior to admission to the special care unit; and,
 - (b) The need for admission must be determined by an interdisciplinary team consisting at least of a physician experienced in the management of residents with Alzheimer's Disease and related disorders, a social worker, a registered nurse and a relative of the resident or a resident care advocate.
- (2) Special care units shall be separated from the remaining portion of the nursing home by a locked door and must have extraordinary and acceptable fire safety features and policies which ensure the well being and protection of the residents.
- (3) The residents must have direct access to a secured, therapeutic outdoor area. This outdoor area shall be designed and maintained to facilitate emergency evacuation.
- (4) There must be limited access to the designated unit so that visitors and staff do not pass through the unit to get to other areas of the nursing home.
- (5) Each unit must contain a designated dining/activity area which shall accommodate 100% seating for residents.
- (6) Corridors or open spaces shall be designed to facilitate ambulation and activity, and shall have an unobstructed view from the central working or nurses' station.
- (7) Drinking facilities shall be provided in the central working area or nurses' station and in the primary activities areas. Glass front refrigerators may be used.
- (8) The unit shall be designed, equipped and maintained to promote positive resident response through the use of:
 - (a) Reduced-glare lighting, wall and floor coverings, and materials and decorations conducive to appropriate sensory and visual stimulation; and,
 - (b) Meaningful wandering space shall be provided that encourages physical exercise and ensures that residents will not become frustrated upon reaching dead-ends.
- (9) The designated units shall provide a minimum of 3.5 hours of direct care to each resident every day including .75 hours of licensed nursing personnel time. Direct care shall not be limited to nursing personnel time and may include direct care provided by dietary employees, social workers, administrator, therapists and other care givers, including volunteers.

* 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) |
|-------------------------|-----|----|---------|--------|-------------------------|
| Paul Boyd | | | | X | |
| Robert Breeden | X | | | | |
| Evelyn Brock | | | | X | |
| Joshua Crisp | X | | | | |
| Thomas Gee | X | | | | |
| Jennifer Gordon-Maloney | | | | X | |
| Chuck Griffin | | | | X | |
| Patricia Ketterman | X | | | | |
| Carissa Lynch | X | | | | |
| Annette Marlar | | | | X | |
| Roger Mynatt | X | | | | |
| Lisa Piercey | X | | | | |
| Sherry Robbins | X | | | | |
| Kenneth Robertson | X | | | | |
| Rene Saunders | | | | X | |
| Jim Shulman | X | | | | |
| Gina Thorneberry | X | | | | |
| Janet Williford | X | | | | |
| Bobby Wood | X | | | | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board for Licensing Health Care Facilities (board/commission/other authority) on 03/15/2018 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: March 15, 2018

Signature: Caroline R Tippens

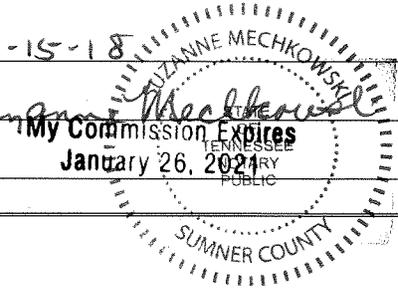
Name of Officer: Caroline Tippens
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 3-15-18

Notary Public Signature: Suzanne Mechkowski

My commission expires on: January 26, 2021



Agency/Board/Commission: Board for Licensing Health Care Facilities

Rule Chapter Number(s): 1200-08-06

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 H. Slattery III
Herbert H. Slattery III
Attorney General and Reporter
4/13/2018
Date

Department of State Use Only

Filed with the Department of State on: 4/19/18

Effective on: 7/18/18

Tre Hargett
Tre Hargett
Secretary of State

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PURIFICATIONS

G.O.C. STAFF RULE ABSTRACT

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|-----------------------------|--|
| <u>DEPARTMENT:</u> | State Board of Education |
| <u>DIVISION:</u> | |
| <u>SUBJECT:</u> | Administrative Rules State Special Schools |
| <u>STATUTORY AUTHORITY:</u> | Tennessee Code Annotated, Sections 49-10-801 and 49-10-901 |
| <u>EFFECTIVE DATES:</u> | July 3, 2018 through June 30, 2019 |
| <u>FISCAL IMPACT:</u> | This promulgation of these amendments will not have a fiscal impact on a state or local government revenues and expenditures. |
| <u>STAFF RULE ABSTRACT:</u> | <p>These amendments update and clarify the standards of eligibility for admission to the Tennessee School for the Blind (TSB), Tennessee School for the Deaf (TSD), and West Tennessee School for the Deaf (WTSD). In an effort to ensure all students are learning in school environments that provide the most appropriate placement within the least restrictive environment, the following changes were made to the rule:</p> <ul style="list-style-type: none">• Clarified that students may be eligible for admission to TSB, TSD, and WTSD beginning at age three (3).• Added additional criteria by which students may be eligible for admission to TSB, TSD, and WTSD.• Clarified that students with multiple disabilities (in addition to visual and/or hearing impairment) are eligible for admission to TSB, TSD, and WTSD.• Clarified that a student must be referred by his or her IEP team, which includes a representative from one of the state special schools. |

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.

Not applicable

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These amendments update and clarify the standards of eligibility for admission to the Tennessee School for the Blind (TSB), Tennessee School for the Deaf (TSD), and West Tennessee School for the Deaf (WTSD). In an effort to ensure all students are learning in school environments that provide the most appropriate placement within the least restrictive environment, the following changes were made to the rule:

- Clarified that students may be eligible for admission to TSB, TSD, and WTSD beginning at age three (3).
- Added additional criteria by which students may be eligible for admission to TSB, TSD, and WTSD
- Clarified that students with multiple disabilities (in addition to visual and/or hearing impairment) are eligible for admission to TSB, TSD, and WTSD
- Clarified that a student must be referred by his or her IEP team, which includes a representative from one of the state special schools

- (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. §§ 49-10-801 and 49-10-901 provide the State Board of Education the authority to set policies and operating guidelines for the state special schools.

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

Students and parents of students who are eligible for admission to a state special school, the Tennessee Department of Education, and the State Board of Education are most directly affected by this rule. Parents and students have neither urged adoption nor rejection. The State Board of Education and Department of Education urge adoption of this rule.

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

This promulgation of these amendments will not have a fiscal impact on a state or local government revenues and 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
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710 James Robertson Parkway
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710 James Robertson Parkway
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

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Phone: 615-741-2650
Email: publications.information@tn.gov

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Sequence Number: 04-06-18
Rule ID(s): 6737
File Date: 4/4/18
Effective Date: 7/3/18

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: | State Board of Education |
| Division: | |
| Contact Person: | Elizabeth Taylor |
| Address: | Andrew Johnson Tower, 1 st Floor 710 James Robertson Pkwy Nashville, TN |
| Zip: | 37243 |
| Phone: | 615-253-5707 |
| Email: | Elizabeth.Taylor@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 |
|----------------|--|
| 0520-04-03 | Administrative Rules State Special Schools |
| Rule Number | Rule Title |
| 0520-04-03-.01 | Purpose |
| 0520-04-03-.02 | Standards of Eligibility for Admission to the Tennessee School for the Deaf and West Tennessee School for the Deaf |
| 0520-04-03-.03 | Duty Free Lunch at State Special Schools |

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-0-4-0-3
ADMINISTRATIVE RULES
-STATE SPECIAL SCHOOLS**

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| 0520-0-4-0-3-.02 | Standards of Eligibility for Admission to the Tennessee School for | | |

0520-0-4-0-3-.01 STANDARDS OF ELIGIBILITY FOR ADMISSION TO THE TENNESSEE SCHOOL FOR THE BLIND.

- (1) Students ages three (3) through twenty-one (21) who are residents of the state of Tennessee and who have a visual impairment, including both partial sight and blindness, even with correction, that adversely affects the student's educational performance shall be eligible for admission to the Tennessee School for the Blind.
- (2) A student who meets one (1) or more of the following visual impairments may be eligible for admission to the Tennessee School for the Blind:
 - (a) Visual acuity in the better eye or both with best possible correction:
 - 1. Legal blindness – 20/200 or less at distance and/or near; or
 - 2. Low vision – 20/70 or less at distance and/or near.
 - (b) 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; or
 - 3. Medical and educational documentation of progressive loss of vision, which may in the future affect the student's ability to learn visually.
 - (c) Other visual impairment, not perceptual in nature, resulting from a medically documented condition. (i.e. cortical visual impairment)
Tennessee children ages 4-21 whose visual impairments are of such quality and magnitude that they are unable to see well enough to receive an appropriate education by using materials, equipment and supplies provided for children with normal vision shall be eligible for admission to the Tennessee School for the Blind. Eligibility for admission shall be determined by the Superintendent of the Tennessee School for the Blind and shall be based on the following criteria:
- (3) Students who have disabilities in addition to visual impairment shall be eligible for admission to the Tennessee School for the Blind.
- (4) The Director of Schools for the Tennessee School for the Blind may admit students who meet the eligibility criteria, provided:

(Rule 0530-4-3-.02, continued)

- (a) The student has been evaluated and referred by his or her Individual Education Program (IEP) team, that includes a representative from the Tennessee School for the Blind, for services at the school as the most appropriate placement within the least restrictive environment;
- (b) The Tennessee School for the Blind has a program designed to meet the child's needs; and
- (c) A complete ophthalmological report for the student has been submitted.
- (a) The child meets one or more of these visual requirements:
1. Visual acuity not better than 20/200 in the better eye with best correction.
 2. A field defect in which the widest diameter of visual field subtends an angle no greater than 20 degrees.
 3. Visual acuity not better than 20/100 supported by an ophthalmological statement that visual acuity is decreasing rapidly.
- (b) The Tennessee School for the Blind has a program designed to meet the child's needs.
- (c) The child has been evaluated and referred by his local school system for services at the school.
- (2) All applications will be accompanied by a complete ophthalmological report. The visual findings of the ophthalmologist employed by the school shall be final.

Authority: T.C.A. §§ 49-10-701 and 49-10-801. **Administrative History:** Original rule filed August 26, 1986; effective November 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992.

0520-04-0-3-.02 STANDARDS OF ELIGIBILITY FOR ADMISSION TO THE TENNESSEE SCHOOL FOR THE DEAF AND WEST TENNESSEE SCHOOL FOR THE DEAF.

- (1) Students ages three (3) through twenty-one (21) who are residents of Tennessee and who have a hearing impairment that is so significant/severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance, shall be eligible for admission to the Tennessee School for the Deaf and West Tennessee School for the Deaf.
- (2) A student who meets one (1) or more of the following hearing impairments may be eligible for admission to the Tennessee School for the Blind/Deaf or West Tennessee School for the Deaf:
- (a) A permanent or fluctuating hearing threshold level evidenced by:
1. An unaided hearing threshold level of 30 dB or greater based on the pure tone average of 500, 1000, and 2000 Hz 30dB or greater in the better ear;
 2. A high frequency hearing threshold level of 30 dB or greater based on the pure tone average of 1000, 2000 and 3000 Hz;

(Rule 0530-4-3-.02, continued)

3. An unilateral hearing threshold level of 30 dB or greater, based on the pure tone average of 500, 1000, and 2000 Hz unaided; or
 4. An auditory evoked potential response evidencing permanent hearing loss at multiple frequencies equivalent to or in excess of the decibel hearing loss threshold criteria for pure tone audiometric testing specified above.
- (b) A hearing threshold that interferes with progress in developmental skills or academic performance, social-emotional development, or linguistic and communicative skills.
 - (c) An inability to discriminate speech within the normal range, or a medical condition that prevents the child from processing spoken language auditorially in spite of normal hearing.
 - (d) Evidence of genetic deafness history in the student's family and early identification of progressive hearing loss.
- (3) Students with disabilities in addition to a hearing impairment shall be eligible for admission to the Tennessee School for the Deaf and West Tennessee School for the Deaf.
 - (4) The Ddirector of Sschools for the Tennessee School for the Deaf and West Tennessee School for the Deaf may admit students who meet the eligibility criteria, provided:
 - (a) The student has been evaluated and referred by his or her Individual Education Program (IEP) team, that includes a representative from the Tennessee School for the Deaf or West Tennessee School for the Deaf, for services at the school as the most appropriate placement within the least restrictive environment; and
 - (b) The school has a program designed to meet the child's needs and has space available.
- ~~(1) Tennessee children ages 4-21 (and 3 years old deaf) who are hearing impaired and who because of that impairment cannot be appropriately served in a local school district and whose parents or guardians are residents of the State of Tennessee shall be eligible for admission to the Tennessee School for the Deaf. Consideration for admission shall be on the referral by a local school system. Admission shall be determined on the basis of evaluations conducted by the Child Study Center at the Tennessee School for the Deaf, and will take into consideration the following criteria:~~
- ~~(a) A sensorineural hearing loss greater than 50db in the speech frequencies in the better ear.~~
 - ~~(b) Inability to discriminate speech normally (less than 80% with a hearing aid) through hearing alone as measured by a standardized test.~~
 - ~~(c) Ability to function in a group living and learning situation.~~
 - ~~(d) Available space.~~
 - ~~(e) Availability of an appropriate program.~~

Authority: T.C.A. §§ 49-10-701, 49-10-901, 49-10-902. **Administrative History:** Original rule filed August 26, 1986; effective November 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992.

0520-0-4-0-3-.03 DUTY-FREE LUNCH AT STATE SPECIAL SCHOOLS.

(Rule 0530-4-3-.02, continued)

- (1) All teachers, grades kindergarten (K-through) through twelve (12), shall have a duty-free lunch period of at least the length of the student lunch period.
- (2) During the duty-free lunch period teachers shall have no other assigned responsibilities.

Authority: T.C.A. §§ 49-1-302(e)(2). **Administrative History:** Original rule filed March 16, 1992; effective June 29, 1992.

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

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

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 01/26/2018, 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: 3/6/18

Signature: *awj*

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 3-6-18

Notary Public Signature: *C. Griffin*

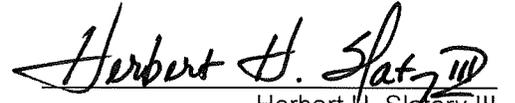
My commission expires on: 3-8-21



Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): 0520-04-03 Administrative Rules State Special Schools

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
Attorney General and Reporter
3/22/2018 Date

Department of State Use Only

Filed with the Department of State on: 4/4/18

Effective on: 7/3/18


Tre Hargett
Secretary of State

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PHOTOGRAPHY

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Student Assistance Corporation (TSAC)

DIVISION:

SUBJECT: Tennessee Middle College Scholarship Program

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 49-4-924 and 49-4-909

EFFECTIVE DATES: July 2, 2018 through June 30, 2019

FISCAL IMPACT: There shall be no increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule.

STAFF RULE ABSTRACT: The proposed rules implement 2017 Tenn. Pub. Acts, Ch. No. 405, which establishes the Tennessee Middle College Scholarship. The scholarship, funded through net proceeds of the state lottery, provides for a program operated by an eligible public two-year postsecondary institution in partnership with a local education agency (LEA) that permits students in the fall semester of their junior year in high school to enter the eligible public two-year postsecondary institution and to earn both a high school diploma and an associate degree in two years.

To be eligible for a Tennessee Middle College Scholarship a student must be classified as an in-state student under the rules of the Tennessee Board of Regents on the date of enrollment in middle college and on the date of reenrollment in a subsequent academic year, have obtained a minimum cumulative grade point average of 3.0 by the end of the student's sophomore year; and be admitted to, and enrolled in, an eligible public two-year postsecondary institution that is partnering with an LEA to offer middle college in the fall semester of the student's junior year in high school.

A student who successfully completes middle college and receives both a high school diploma and an associate degree shall be eligible to receive the Tennessee HOPE

scholarship at the time of transfer to an eligible four-year postsecondary institution in pursuit of a baccalaureate degree if the student meets all other eligibility conditions.

As these rules are proposed as new rules there are no changes in previous regulations effectuated by such rule.

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

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business. The statute requires that as a part of its analysis, each agency shall prepare an economic impact statement as an addendum to each rule that is deemed to affect small businesses, which shall be published in the Tennessee Administrative Register, filed with the Secretary of State's Office, and made available to all interested parties, including the Secretary of State, Attorney General, and the House and Senate Government Operations Committees.

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Rule

The proposed rules implement 2017 Tenn. Pub. Acts, Ch. No. 405, which establishes the Tennessee Middle College Scholarship. The scholarship, funded through net proceeds of the state lottery, provides for a program operated by an eligible public two-year postsecondary institution in partnership with a local education agency (LEA) that permits students in the fall semester of their junior year in high school to enter the eligible public two-year postsecondary institution and to earn both a high school diploma and an associate degree in two years.

Regulatory Flexibility Analysis - Methods of Reducing the Impact of Rules on Small Businesses

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rules:

The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

3. Flexible compliance and/or reporting requirements for small businesses:

The proposed rules were drafted to facilitate administration of the program for eligible secondary and postsecondary education institutions.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

TSAC worked diligently with the postsecondary financial aid community, the Tennessee Higher Education Commission, and the Tennessee Board of Regents to ensure that proposed compliance and reporting requirements can be practically applied by eligible institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible secondary and postsecondary institutions and should have no impact on small businesses.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses 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 rules; 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; a statement of the probable effect on impacted small businesses and consumers; a 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 businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible secondary and postsecondary institutions and should have no impact on small businesses.

2. Projected reporting, recordkeeping, and other administrative costs:

There are no significant changes in reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

There will be no effect on small businesses.

4. Less burdensome, intrusive, or costly alternative methods:

As these proposed rules present no foreseeable cost to the eligible secondary and postsecondary institutions, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

There are no federal or state counterparts to the issues addressed by these proposed rules.

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these proposed rules.

Impact on Local Governments

The rules for the Tennessee Middle College Scholarship Program, Chapter 1640-01-29, as proposed, have no projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rules implement 2017 Tenn. Pub. Acts, Ch. No. 405, which establishes the Tennessee Middle College Scholarship. The scholarship, funded through net proceeds of the state lottery, provides for a program operated by an eligible public two-year postsecondary institution in partnership with a local education agency (LEA) that permits students in the fall semester of their junior year in high school to enter the eligible public two-year postsecondary institution and to earn both a high school diploma and an associate degree in two years.

To be eligible for a Tennessee Middle College Scholarship a student must be classified as an in-state student under the rules of the Tennessee Board of Regents on the date of enrollment in middle college and on the date of reenrollment in a subsequent academic year, have obtained a minimum cumulative grade point average of 3.0 by the end of the student's sophomore year; and be admitted to, and enrolled in, an eligible public two-year postsecondary institution that is partnering with an LEA to offer middle college in the fall semester of the student's junior year in high school.

A student who successfully completes middle college and receives both a high school diploma and an associate degree shall be eligible to receive a Tennessee HOPE scholarship at the time of transfer to an eligible four-year postsecondary institution in pursuit of a baccalaureate degree if the student meets all other eligibility conditions.

As these rules are proposed as new rules there are no changes in previous regulations effectuated by such rule.

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

These rules implement the Tennessee Middle College Scholarship Program authorized in T.C.A. § 49-4-909, and rulemaking authority is granted in T.C.A. § 49-4-924.

- (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;

TSAC, the Tennessee Higher Education Commission, Tennessee Board of Regents, Tennessee Board of Education, community support organizations, and adult learners are most directly affected by these proposed rules.

These organizations and individuals urge adoption of 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;

There are no opinions of the attorney general and reporter or any judicial ruling that directly relates to these proposed rules.

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

There shall be no increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule.

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

Peter Abernathy, Chief of Student Aid and Compliance, and Tim Phelps, TSAC Associate Executive Director for Grants and Scholarships.

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

Peter Abernathy, Chief of Student Aid and Compliance, and Tim Phelps, TSAC Associate Executive Director for Grants and Scholarships.

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

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

There have been no requests for additional information received to date.

Department of State**Division of Publications**

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Sequence Number: 04-03-18
 Rule ID(s): 6736
 File Date: 4/3/18
 Effective Date: 7/2/18

Proposed Rule(s) Filing Form

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

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

| | |
|---------------------------------|--|
| Agency/Board/Commission: | Tennessee Student Assistance Corporation |
| Division: | Higher Education |
| Contact Person: | Peter Abernathy |
| Address: | Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, TN |
| Zip: | 37243 |
| Phone: | 615.532.6065 |
| Email: | Peter.Abernathy@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 |
|----------------|--|
| 1640-01-29 | Tennessee Middle College Scholarship Program |
| Rule Number | Rule Title |
| 1640-01-29-.01 | Introduction |
| 1640-01-29-.02 | Definitions |
| 1640-01-29-.03 | Scholarship Award Amount |
| 1640-01-29-.04 | Application Process |
| 1640-01-29-.05 | Eligibility |
| 1640-01-29-.06 | Terminating Events |
| 1640-01-29-.07 | Certification |

| | |
|----------------|--------------------------|
| 1640-01-29-.08 | Distribution of Funds |
| 1640-01-29-.09 | Refunds |
| 1640-01-29-.10 | Postsecondary Enrollment |
| 1640-01-29-.11 | Substitute Courses |

New Rules

Chapter 1640-01-29
Tennessee Middle College Scholarship Program

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| 1640-01-29-.05 | Eligibility | 1640-01-29-.11 | Substitute Courses |
| 1640-01-29-.06 | Terminating Events | | |

1640-01-29-.01 Introduction.

- (1) These rules implement the Tennessee Middle College Scholarship Program authorized in T.C.A., Title 49, Chapter 4, Part 9 as amended by 2017 Tennessee Public Acts, Chapter 405 (the Act). The Act provides scholarships to high school students who attend a middle college program beginning with the 2018-2019 academic year.

Authority: T.C.A §§ 49-4-201, 49-4-924, and 49-4-909.

1640-01-29-.02 Definitions.

- (1) Full-time Student: The term is defined in T.C.A § 49-4-902.
- (2) Grade Point Average: The grade point average used to determine eligibility as determined by the high school.
- (3) Middle College: The term is defined in T.C.A. § 49-4-902.
- (4) Semester: The term is defined in T.C.A. § 49-4-902.
- (5) TSAC: The term is defined in T.C.A. § 49-4-902.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-909.

1640-01-29-.03 Scholarship Award Amount.

- (1) The Middle College scholarship provides financial assistance to offset educational expenses for high school juniors and seniors who are pursuing an associate degree at an eligible middle college.
- (2) Award amount for the program shall be determined in accordance with T.C.A. § 49-4-909 and shall be set in the General Appropriations Act.
- (3) The receipt of the Middle College scholarship is contingent upon admission to and enrollment in an eligible Middle College program.

Authority: T.C.A. §§ 49-4-201, 49-4-924, 49-4-909, and 49-4-914.

1640-01-29-.04 Application Process.

- (1) Students participating in the Middle College Scholarship Program shall complete an annual application no later than September 1 for each academic year. If the deadline occurs on a weekend or holiday, then the application deadline will be the next business day.
- (2) The Middle College scholarship application shall serve as the only application. No additional application shall be required.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-909.

1640-01-29-.05 Eligibility.

- (1) To be eligible for the Middle College Scholarship a student shall meet the requirements of T.C.A. § 49-4-909(a).
- (2) To continue to be eligible for the Middle College Scholarship, a student shall meet the requirements of T.C.A § 49-4-909(b).

Authority T.C.A. §§ 49-4-201, 49-4-924, and 49-4-909.

1640-01-29-.06 Terminating Events.

- (1) A student may receive the Middle College Scholarship until reaching a terminating event as described in T.C.A. § 49-4-909(c).

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-909.

1640-01-29-.07 Certification.

- (1) Each eligible Middle College shall be responsible for certifying to TSAC that the student has met all eligibility requirements.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-909.

1640-01-29-.08 Distribution of Funds.

- (1) Scholarship funds shall be disbursed to each eligible Middle College on behalf of students eligible for and enrolled in the program.
- (2) In no case shall funds be disbursed directly to students.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-909.

1640-01-29-.09 Refunds.

- (1) If a recipient of a Middle College scholarship fails to complete a semester for any reason, the eligible Middle College shall apply its refund policy to determine whether a refund may be required and funds returned to TSAC. The eligible Middle College shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to TSAC. Additionally, the eligible Middle College shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from TSAC until the refund is paid.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-909.

1640-01-29-.10 Postsecondary Enrollment.

- (1) Middle College graduates shall have sixteen (16) months to enroll in a four-year eligible postsecondary institution after completion of high school. Failure to enroll in a four-year eligible postsecondary institution within sixteen (16) months shall render a student permanently ineligible for the HOPE Scholarship.
- (2) Enrollment at a non-regionally accredited institution between graduation from Middle College and enrollment at a four-year eligible postsecondary institution shall make a student permanently ineligible for the HOPE Scholarship.
- (3) To be eligible for the HOPE Scholarship upon transfer to an eligible four-year postsecondary institution, a Middle College graduate shall have met all academic and non-academic requirements of the HOPE Scholarship while previously enrolled in any regionally accredited postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-909.

1640-01-29-.11 Substitute Courses.

- (1) An eligible middle college program may accept early postsecondary opportunity courses taken by middle college students in high school for purposes of determining full-time enrollment and associate degree graduation requirements, so long as postsecondary credit for such courses is not based on results from an end-of-course summative assessment.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-909.

The vote by the Agency on these rules was as follows:

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|-----|----|---------|--------|----------------------------|
| Governor Haslam, by Ms. Jayme Simmons | X | | | | |
| Mr. Mike Krause | X | | | | |
| Dr. Claude Pressnell | X | | | | |
| Mr. David H. Lillard, Jr., by Ms. Whitney Goetz | X | | | | |
| Comptroller Justin P. Wilson, by Mr. Joshua Testa | X | | | | |
| Dr. Claude Pressnell | X | | | | |
| Commissioner Larry Martin, by Mr. Greg Turner | X | | | | |
| Commissioner Candice McQueen, by Dr. Vicki Kirk | X | | | | |
| Chancellor Flora Tydings | X | | | | |
| Dr. Joe Dipietro, by Dr. Nancy Dietrich | X | | | | |
| Dr. J. Gary Adcox | X | | | | |
| Charles Harper | X | | | | |
| Ms. Keri McInnis | | | | X | |
| Mr. Tom Hughes | X | | | | |
| Dr. Randy Lowry, by Mr. John Smarrelli | X | | | | |
| JuliAnna Dykes | | | | X | |
| Mr. Charles W. Layne | X | | | | |
| Ms. Sharon Hayes | X | | | | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Student Assistance Corporation Board of Directors on 09/27/2017, 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: 1-26-18

Signature: [Handwritten Signature]

Name of Officer: Mike Krause

Title of Officer: Director



Subscribed and sworn to before me on: 01-26-2018

Notary Public Signature: [Handwritten Signature]

My commission expires on: 08-04-2020

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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.

[Handwritten Signature]
Herbert H. Slatery, III
Attorney General and Reporter
3/22/2018
Date

Department of State Use Only

Filed with the Department of State on: 4/3/19

Effective on: 7/2/18

[Handwritten Signature]
Tre Hargett Secretary of State

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OFFICE OF THE SECRETARY

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Student Assistance Corporation (TSAC)

DIVISION:

SUBJECT: Tennessee Reconnect Grant

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 49-4-924 and 49-4-944

EFFECTIVE DATES: July 2, 2018 through June 30, 2019

FISCAL IMPACT: There will be no increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule.

STAFF RULE ABSTRACT: The proposed rules implement 2017 Tenn. Pub. Acts, Ch. No. 448, which establishes the Tennessee Reconnect Grant. The grant, funded through net proceeds of the state lottery, establishes a last-dollar scholarship for adults to attend a community college tuition-free and provides an opportunity for eligible adult learners the opportunity to enter or reenter public higher education with no tuition expenses.

To be eligible for a Tennessee Reconnect Grant, a student shall not already have an associate or bachelor degree, have been a Tennessee resident for one year immediately preceding the date of application, complete the Free Application for Student Aid (FAFSA) and be determined as an independent student, be admitted to an eligible institution, enroll in a degree or certificate program, attend at least part-time, maintain a minimum 2.0 cumulative GPA at the end of the academic year, and participate in a partnering advising program.

This program will replace the Community College Reconnect Grant, enacted by 2015 Tenn. Pub. Acts Ch. No. 363, as amended by HB2117. A student who remains enrolled in and eligible for the Community College Reconnect Grant program at the end of the 2017-2018 academic year is eligible for the Tennessee Reconnect

Grant program for the fall semester of 2018 if the student meets all eligibility requirements relative to the program.

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

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business. The statute requires that as a part of its analysis, each agency shall prepare an economic impact statement as an addendum to each rule that is deemed to affect small businesses, which shall be published in the Tennessee Administrative Register, filed with the Secretary of State's Office, and made available to all interested parties, including the Secretary of State, Attorney General, and the House and Senate Government Operations Committees.

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Rule

The proposed rules implement 2017 Tenn. Pub. Acts, Ch. No. 448, which establishes the Tennessee Reconnect Grant, a last-dollar scholarship for adults to attend a community college tuition-free. With this extension of the Drive to 55, funded through net lottery proceeds, adult Tennesseans will have the opportunity to enter or reenter public higher education with no tuition expenses.

Regulatory Flexibility Analysis - Methods of Reducing the Impact of Rules on Small Businesses

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rules:

The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

3. Flexible compliance and/or reporting requirements for small businesses:

The proposed rules were drafted to facilitate administration of the program for eligible postsecondary education institutions.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

TSAC worked diligently with the postsecondary financial aid community, the Tennessee Higher Education Commission, and the Tennessee Board of Regents to ensure that proposed compliance and reporting requirements can be practically applied by eligible institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact on small businesses.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses 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 rules; 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; a statement of the probable effect on impacted small businesses and consumers; a 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 businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact on small businesses.

2. Projected reporting, recordkeeping, and other administrative costs:

There are no significant changes in reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

There will be no effect on small businesses.

4. Less burdensome, intrusive, or costly alternative methods:

As these proposed rules present no foreseeable cost to the eligible postsecondary institutions, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

There are no federal or state counterparts to the issues addressed by these proposed rules.

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these proposed rules.

Impact on Local Governments

The rules for the Tennessee Reconnect Grant Chapter 1640-01-28, as proposed, have no projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rules implement 2017 Tenn. Pub. Acts, Ch. No. 448, which establishes the Tennessee Reconnect Grant. The grant, funded through net proceeds of the state lottery, establishes a last-dollar scholarship for adults to attend a community college tuition-free and provides an opportunity for eligible adult learners the opportunity to enter or reenter public higher education with no tuition expenses.

To be eligible for a Tennessee Reconnect Grant, a student shall not already have an associate or bachelor degree, have been a Tennessee resident for one year immediately preceding the date of application, complete the Free Application for Student Aid (FAFSA) and be determined as an independent student, be admitted to an eligible institution, enroll in a degree or certificate program, attend at least part-time, maintain a minimum 2.0 cumulative GPA at the end of the academic year, and participate in a partnering advising program.

This program will replace the Community College Reconnect Grant, enacted by 2015 Tenn. Pub. Acts Ch. No. 363, as amended by HB2117. A student who remains enrolled in and eligible for the Community College Reconnect Grant program at the end of the 2017-2018 academic year is eligible for the Tennessee Reconnect Grant program for the fall semester of 2018 if the student meets all eligibility requirements relative to the program.

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

These rules implement the Tennessee Reconnect Grant authorized in T.C.A. § 49-4-944, and rulemaking authority is granted in T.C.A. § 49-4-924.

- (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;

TSAC, the Tennessee Higher Education Commission, Tennessee Board of Regents, Tennessee Board of Education, community support organizations, and adult learners are most directly affected by these proposed rules.

These organizations and individuals urge adoption of 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;

There are no opinions of the attorney general and reporter or any judicial ruling that directly relates to these proposed rules.

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

There will be no increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule.

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

Peter Abernathy, Chief of Student Aid and Compliance, and Tim Phelps, TSAC Associate Executive Director for Grants and Scholarships.

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

Peter Abernathy, Chief of Student Aid and Compliance, and Tim Phelps, TSAC Associate Executive Director for Grants and Scholarships.

- (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

Peter Abernathy
Chief of Student Aid and Compliance,
Tennessee Student Assistance Corporation
Suite 1900, Parkway Towers
404 James Robertson Parkway
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615.532.6065
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Tim Phelps
Associate Executive Director for Grants and Scholarships
Tennessee Student Assistance Corporation
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404 James Robertson Parkway
Nashville, TN 37243
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

There have been no requests for additional information received to date.

Department of State
Division of Publications
 312 Rosa L. Parks Ave., 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: 04-02-18
 Rule ID(s): 6735
 File Date: 4/3/18
 Effective Date: 7/2/18

Proposed Rule(s) Filing Form

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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 Student Assistance Corporation |
| Division: | Higher Education |
| Contact Person: | Peter Abernathy |
| Address: | Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, TN |
| Zip: | 37243 |
| Phone: | 615.532.6065 |
| Email: | Peter.Abernathy@tn.gov |

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

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| 1640-01-28-.02 | Scholarship Award Amounts |
| 1640-01-28-.03 | Distribution of Funds |
| 1640-01-28-.04 | Application Process |
| 1640-01-28-.05 | Eligibility |
| 1640-01-28-.06 | Terminating Events |
| 1640-01-28-.07 | Personal or Medical Leave of Absence |

| | |
|----------------|------------------------------|
| 1640-01-28-.08 | Award Made in Error |
| 1640-01-28-.09 | Refund Policy |
| 1640-01-28-.10 | Appeal and Exception Process |

New Rules

Chapter 1640-01-28 Tennessee Reconnect Grant

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| 1640-01-28-.02 | Scholarship Award Amounts | 1640-01-28-.08 | Award Made In Error |
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| 1640-01-28-.05 | Eligibility | | |
| 1640-01-28-.06 | Terminating Events | | |

1640-01-28-.01 Definitions.

- (1) Certificate: A credential, other than a degree or diploma, the receipt of which indicates satisfactory completion of training in a program of study offered by an eligible postsecondary institution.
- (2) College Success Program: An approved suite of resources for pre-enrollment, enrollment, and retention support offered through the Tennessee Reconnect Communities and eligible postsecondary institutions based on the goals and needs of individual adult students.
- (3) Continuous Enrollment: The term is defined in T.C.A. 49-4-902.
- (4) Cumulative Grade Point Average: The grade point average as calculated by the eligible postsecondary institution.
- (5) Degree: A two-year associate degree conferred on students by an eligible postsecondary institution.
- (6) Eligible Postsecondary Institution: The term is defined in T.C.A. § 49-4-708.
- (7) Eligible Program of Study: A federal Title IV-eligible curriculum of courses leading to a certificate or associate degree;
- (8) FAFSA: The term is defined in T.C.A. § 49-4-902.
- (9) FAFSA Verification: The process used by a postsecondary institution to verify the accuracy of information submitted on a student's FAFSA. For purposes of these rules, this process shall apply to verification documents required by the U.S. Department of Education regardless of how the student is selected.
- (10) Gift Aid: The term is defined in T.C.A. § 49-4-708.
- (11) Immediate Family Member: Spouse, parents, grandparents, children, or siblings.
- (12) Independent Student: A student who is classified as independent as determined by the FAFSA.
- (13) Part-time Student: The term is defined in T.C.A. § 49-4-902.

- (14) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the eligible postsecondary institution at which the student is currently enrolled.
- (15) Semester: The term is defined in T.C.A. § 49-4-902.
- (16) Tennessee Reconnect Community: A locally-based collaborative designated by THEC which is focused on engaging adult learners and helping them enroll in a postsecondary institution and persist to graduation while providing community-based, institution-neutral advising and navigation support specifically to adults.
- (17) THEC: Tennessee Higher Education Commission
- (18) Title IV: The term is defined in T.C.A. § 49-4-902.
- (19) TSAC: Tennessee Student Assistance Corporation.
- (20) Tuition and Mandatory Fees: Tuition and mandatory fees required for the enrollment or attendance of students at eligible postsecondary institutions that are charged to all students, and shall not include fees charged for the TN eCampus courses, online courses, specific programs of study, books, or supplies even if such fees are considered necessary for enrollment.

Authority: T.C.A. §§ 49-4-201, 49-4-708, 49-4-902, 49-4-924, and 49-4-944.

1640-01-28-.02 Scholarship Award Amounts.

- (1) The Tennessee Reconnect Grant is intended to provide financial assistance to offset tuition and mandatory fees associated with pursuing a certificate or associate degree at an eligible postsecondary institution after all other gift aid has been credited to tuition and mandatory fees.
- (2) Award amounts for the program shall be determined in accordance with T.C.A. § 49-4-944 and shall be set in the General Appropriations Act.
- (3) All tuition discounts and waivers for which a student qualifies shall first be deducted from the student's tuition and mandatory fees before gift aid is credited.
- (4) All gift aid from sources other than the Tennessee Reconnect Grant shall be credited first to tuition and mandatory fees to reduce the student's Tennessee Reconnect Grant award. In any given semester, if all other gift aid exceeds tuition and mandatory fees then the student shall not be eligible for the Tennessee Reconnect Grant in that semester.
- (5) The receipt of a Tennessee Reconnect Grant is contingent upon admission to and enrollment in an eligible postsecondary institution. Qualifying for the Tennessee Reconnect Grant does not guarantee admission to an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-944.

1640-01-28-.03 Distribution of Funds.

- (1) TSAC shall create a certification roster for each institution. The roster shall contain students who have met all requirements for the Tennessee Reconnect Grant.

- (2) The eligible postsecondary institution shall certify each student's eligibility for a financial award from the Tennessee Reconnect program based on continuing eligibility requirements established in these rules. The award amount reported to TSAC shall be the amount of tuition and mandatory fees remaining after other gift aid has first been applied to the student's tuition and mandatory fees. All tuition waivers and discounts for which a student qualifies shall first be deducted from the student's tuition and mandatory fees before gift aid is credited.
- (3) Once the eligible postsecondary institution has certified the student's eligibility for a financial award, the certification information shall be electronically transmitted to TSAC.
- (4) TSAC shall process a payment request directly to the eligible postsecondary institution on behalf of all Tennessee Reconnect Grant recipients who are eligible for a financial award. No funds shall be disbursed directly to the students or a Tennessee Reconnect Community.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-944.

1640-01-28-.04 Application Process.

- (1) Students participating in the Tennessee Reconnect Grant shall file a FAFSA, or renewal FAFSA, in each year of program participation. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions. Students shall file the FAFSA or renewal FAFSA according to the following deadlines:
 - (a) No later than September 1 for fall enrollment, or
 - (b) No later than February 1 for spring and summer enrollment.
- (2) Students shall complete the Tennessee Reconnect Grant application for each year of enrollment.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-944.

1640-01-28-.05 Eligibility.

- (1) Students meeting initial and continuing eligibility requirements shall:
 - (a) Meet the requirements of T.C.A. § 49-4-944;
 - (b) Timely submit all necessary documentation to allow the postsecondary institution to complete FAFSA verification. FAFSA verification shall be completed regardless of eligibility for federal or state grants;
 - (c) Enroll and attend at least part time in each semester of the program. A student may enroll less than part time in the semester of graduation if part-time enrollment is not required to complete the program of study, when not required by the program of study, and for semesters in which the student receives an approved leave of absence; and
 - (d) Participate in a College Success Program under the direction of THEC and a Tennessee Reconnect Community.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-944.

1640-01-28-.06 Terminating Events.

- (1) A student shall receive the Tennessee Reconnect Grant until reaching a terminating event as described in T.C.A. § 49-4-944.
- (2) A student may continue to receive a Tennessee Reconnect Grant for an associate degree or sequential certificate following completion of a certificate which directly leads to the associate degree program or sequential certificate.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-944

1640-01-28-.07 Personal or Medical Leave of Absence.

- (1) A student may be granted a medical or personal leave of absence from continuous or part-time enrollment at an eligible postsecondary institution as long as all other applicable eligibility criteria are met. Allowable medical or personal reasons may include illness of the student; illness or death of an immediate family member; extreme financial hardship of the student or student's immediate family; fulfillment of required military service; or other extraordinary circumstances beyond the student's control where attendance by the student creates a substantial hardship. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with these rules.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-944.

1640-01-28-.08 Award Made in Error.

- (1) Repayment from the student shall not be required if TSAC determines that the error was through no fault of the student.
- (2) Repayment from the student shall be required if TSAC determines that fraud was committed or the error was due to the fault of the student. When repayment is required, the student may not receive additional student aid from TSAC until repayment is made.
- (3) Repayment from the eligible postsecondary institution will be required if TSAC determines that the error was due to the fault of the institution.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-944.

1640-01-28-.09 Refund Policy.

- (1) If a recipient of the Tennessee Reconnect Grant fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student. The eligible postsecondary institution shall notify TSAC of the refund. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from TSAC until the refund is paid.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-944.

1640-01-28-.10 Appeal and Exception Process.

- (1) Each eligible postsecondary institution shall use their existing Institutional Review Panel (IRP) for purposes of reviewing and rendering decisions regarding appeals for the Tennessee Reconnect Grant. The IRP shall use the same procedures and timelines as those that

currently exist for the review of Tennessee Education Lottery Scholarship (TELS) appeals as outlined in Tenn. Comp. R. & Reg. 1640-01-19.

- (2) TSAC shall use the existing TELS Appeals Panel to consider appeals and render decisions for those students who appeal a decision made by the IRP and for appeals made directly to TSAC. The same guidelines shall exist for appeals of the Tennessee Reconnect Grant as those that are currently in place for TELS as outlined in Tenn. Comp. R & Reg. 1640-01-19.

Authority: T.C.A. §§ 49-4-201, 49-4-924, and 49-4-944.

The vote by the Agency on these rules was as follows:

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|-----|----|---------|--------|----------------------------|
| Governor Haslam, by Ms. Jayme Simmons | X | | | | |
| Mr. Mike Krause | X | | | | |
| Dr. Claude Pressnell | X | | | | |
| Mr. David H. Lillard, Jr., by Ms. Whitney Goetz | X | | | | |
| Comptroller Justin P. Wilson, by Mr. Joshua Testa | X | | | | |
| Dr. Claude Pressnell | X | | | | |
| Commissioner Larry Martin, by Mr. Greg Turner | X | | | | |
| Commissioner Candice McQueen, by Dr. Vicki Kirk | X | | | | |
| Chancellor Flora Tydings | X | | | | |
| Dr. Joe Dipietro, by Dr. Nancy Dietrich | X | | | | |
| Dr. J. Gary Adcox | X | | | | |
| Charles Harper | X | | | | |
| Ms. Keri McInnis | | | | X | |
| Mr. Tom Hughes | X | | | | |
| Dr. Randy Lowry, by Mr. John Smarrelli | X | | | | |
| JuliAnna Dykes | | | | X | |
| Mr. Charles W. Layne | X | | | | |
| Ms. Sharon Hayes | X | | | | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Student Assistance Corporation Board of Directors on 09/27/2017, 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: 1-26-18

Signature: [Handwritten Signature]

Name of Officer: Mike Krause

Title of Officer: Director

Subscribed and sworn to before me on: 01-26-18

Notary Public Signature: [Handwritten Signature]

My commission expires on: 08-04-2020

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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.

[Handwritten Signature]

Herbert H. Slatery III
Attorney General and Reporter

3/22/2018 Date

Department of State Use Only

Filed with the Department of State on: 4/3/18

Effective on: 7/2/18

[Handwritten Signature]
Tre Hargett, Secretary of State

RECEIVED
2018 APR -3 AM 10: 01
SECRETARY OF STATE
PUBLISHED ONLINE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: TennCare

SUBJECT: TennCare Medicaid

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109

EFFECTIVE DATES: July 8, 2018 through June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rule amendments are being adopted to address the over-use of prescription opioids in response to what has been called the opioid crisis and the opioid epidemic in Tennessee. These rule amendments impose evidence based limitations on the use of opioid prescription medications by adult enrollees in the TennCare Program. These rule amendments continue to permit medically necessary use of prescription opioids for persons age 21 and older, but impose dosage amount limits as well as time limits based on evidence based medical guidelines.

Public Hearing Comments

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

TennCare received one set of comments in response to this rulemaking. The commenter expressed concern that the exceptions to the limits contained in the rule focus too narrowly on individuals with sickle-cell disease and burn victims. The commenter recommended that TennCare identify additional exceptions to the limits or allow exceptions to the limits when supported by a treating physician's attestation of medical necessity. TennCare responded that the limits in the rule are appropriate and necessary at this time, and that TennCare intends to monitor the implementation and impact of the rule on an ongoing basis to ensure that enrollees have access to medically necessary covered services. The final rule contains additional flexibility for TennCare enrollees residing in nursing facilities.

Regulatory Flexibility Addendum

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

The rules are not anticipated to have an effect on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rule amendments are being adopted to address the over-use of prescription opioids in response to what has been called the opioid crisis and the opioid epidemic in Tennessee. These rule amendments impose evidence based limitations on the use of opioid prescription medications by adult enrollees in the TennCare Program. These rule amendments continue to permit medically necessary use of prescription opioids for persons age 21 and older, but impose dosage amount limits as well as time limits based on evidence based medical guidelines.

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

These rule amendments are lawfully adopted by the Division of TennCare in accordance with T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

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

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

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

These rule amendments were approved by the Tennessee Attorney General. No additional opinion was given or requested.

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

The adoption of these rule amendments is anticipated to produce a minimal decrease in state annual expenditures.

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

Donna K. Tidwell
Deputy General Counsel

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

Donna K. Tidwell
Deputy General Counsel

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

310 Great Circle Road
Nashville, TN 37243
(615) 507-6852

donna.tidwell@tn.gov

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

GW10218067dkt

Department of State
Division of Publications
 312 Rosa L. Parks Ave., 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: 04-08-18
 Rule ID(s): 6739
 File Date: 4/9/18
 Effective Date: 7/8/18

Rulemaking Hearing Rule(s) Filing Form

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

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

| | |
|---------------------------------|--|
| Agency/Board/Commission: | Tennessee Department of Finance and Administration |
| Division: | Division of TennCare |
| Contact Person: | George Woods |
| Address: | Division of TennCare 310 Great Circle Road Nashville, TN 37243 |
| Phone: | (615) 507-6446 |
| Email: | george.woods@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 |
|----------------|-------------------|
| 1200-13-13 | TennCare Medicaid |
| Rule Number | Rule Title |
| 1200-13-13-.04 | Covered Services |
| 1200-13-13-.10 | Exclusions |

RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-13
TENNCARE MEDICAID

1200-13-13-.04 COVERED SERVICES.

(1) Benefits covered under the managed care program

(c) Pharmacy

TennCare is permitted under the terms and conditions of the demonstration project approved by the federal government to restrict coverage of prescription and non-prescription drugs to a TennCare-approved list of drugs known as a drug formulary. TennCare must make this list of covered drugs available to the public. Through the use of a formulary, the following drugs or classes of drugs, or their medical uses, shall be excluded from coverage or otherwise restricted by TennCare as described in Section 1927 of the Social Security Act [42 U.S.C. §1396r-8]:

12. Opioid products for persons aged twenty-one (21) and older are restricted as follows:

(i) "Chronic opioid user" means:

(I) A TennCare enrollee whose TennCare paid claims data demonstrates that he has received at least a ninety (90) day quantity of prescribed opioids in the one hundred eighty (180) day period immediately preceding the opioid's prescription date.

(II) For a TennCare enrollee who has not been enrolled in TennCare long enough to demonstrate that he is a chronic opioid user as defined in Item (I), the enrollee may demonstrate that he has received at least a ninety (90) day quantity of prescribed opioids in the one hundred eighty (180) day period immediately preceding the opioid's prescription date by supplying paid claims data and medical records from his previous healthcare provider(s) or health insurer(s).

(ii) "Non-chronic opioid user" means a TennCare enrollee whose TennCare paid claims data demonstrates he has received less than a ninety (90) day quantity of prescribed opioids in the one hundred eighty (180) day period immediately preceding the opioid's prescription date.

(iii) Non-chronic opioid users shall be eligible to receive covered prescription opioid products as follows:

(I) A maximum of fifteen (15) dosage days in any six (6) month period; and

(II) Daily dosage shall not exceed sixty (60) morphine milligram equivalents (MME) per day.

(iv) The restrictions in Subpart (iii) do not apply for enrollees with severe cancer pain undergoing active or palliative cancer treatment and enrollees in hospice and palliative care.

(v) The following considerations apply for enrollees who experience more frequent or aggressive pain episodes due to these specific clinical disease states:

(I) Enrollees with Sickle Cell may receive up to forty-five (45) days of sixty (60) MME per day in any ninety (90) day period; and

(II) Severe burn victims may receive up to forty-five (45) days of sixty (60) MME per day in any ninety (90) day period.

(vi) Notwithstanding the restrictions in Subpart (iii), enrollees residing in a Medicaid-certified Nursing Facility may receive up to forty-five (45) days of sixty (60) MME per day in any ninety (90) day period.

1200-13-13-.10 EXCLUSIONS.

(3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES or ECF CHOICES programs or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services Waiver

(a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21

18. Certain pharmacy items as follows:

(x) Opioid products are restricted as set out in Rule .04(1)(c)12.

GW10318085

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Division of TennCare (board/commission/ other authority) on 03/22/2018 (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: 01/16/18

Rulemaking Hearing(s) Conducted on: (add more dates). 03/12/18

Date: 3/28/18

Signature: Wendy Long

Name of Officer: Wendy Long, M.D., M.P.H.

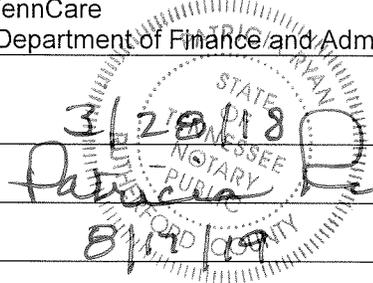
Division of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 3/20/18

Notary Public Signature: Patricia Ryan

My commission expires on: 8/10/19



Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-13

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

4/6/2018

Date

Department of State Use Only

Filed with the Department of State on: 4/9/18

Effective on: 7/9/18

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2018 APR -9 AM 10:18
SECRETARY OF STATE
PUBLIC AFFAIRS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: TennCare

SUBJECT: TennCare Standard

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109

EFFECTIVE DATES: July 8, 2018 through June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rule amendments are being adopted to address the over-use of prescription opioids in response to what has been called the opioid crisis and the opioid epidemic in Tennessee. These rule amendments impose evidence based limitations on the use of opioid prescription medications by adult enrollees in the TennCare Program. These rule amendments continue to permit medically necessary use of prescription opioids for persons age 21 and older, but impose dosage amount limits as well as time limits based on evidence based medical guidelines.

Public Hearing Comments

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

TennCare received one set of comments in response to this rulemaking. The commenter expressed concern that the exceptions to the limits contained in the rule focus too narrowly on individuals with sickle-cell disease and burn victims. The commenter recommended that TennCare identify additional exceptions to the limits or allow exceptions to the limits when supported by a treating physician's attestation of medical necessity. TennCare responded that the limits in the rule are appropriate and necessary at this time, and that TennCare intends to monitor the implementation and impact of the rule on an ongoing basis to ensure that enrollees have access to medically necessary covered services. The final rule contains additional flexibility for TennCare enrollees residing in nursing facilities.

Regulatory Flexibility Addendum

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

The rules are not anticipated to have an effect on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rule amendments are being adopted to address the over-use of prescription opioids in response to what has been called the opioid crisis and the opioid epidemic in Tennessee. These rule amendments impose evidence based limitations on the use of opioid prescription medications by adult enrollees in the TennCare Program. These rule amendments continue to permit medically necessary use of prescription opioids for persons age 21 and older, but impose dosage amount limits as well as time limits based on evidence based medical guidelines.

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

These rule amendments are lawfully adopted by the Division of TennCare in accordance with T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

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

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

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

These rule amendments were approved by the Tennessee Attorney General. No additional opinion was given or requested.

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

The adoption of these rule amendments is anticipated to produce a minimal decrease in state annual expenditures.

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

Donna K. Tidwell
Deputy General Counsel

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

Donna K. Tidwell
Deputy General Counsel

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

310 Great Circle Road
Nashville, TN 37243
(615) 507-6852

donna.tidwell@tn.gov

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

GW10118067dkt

**Department of State
Division of Publications**

312 Rosa L. Parks Ave., 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: 04-09-18
Rule ID(s): 6740
File Date: 4/9/18
Effective Date: 7/8/18

Rulemaking Hearing Rule(s) Filing Form

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

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

| | |
|---------------------------------|--|
| Agency/Board/Commission: | Tennessee Department of Finance and Administration |
| Division: | Division of TennCare |
| Contact Person: | George Woods |
| Address: | Division of TennCare 310 Great Circle Road Nashville, TN 37243 |
| Phone: | (615) 507-6446 |
| Email: | george.woods@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 |
|----------------|-------------------|
| 1200-13-14 | TennCare Standard |
| Rule Number | Rule Title |
| 1200-13-14-.04 | Covered Services |
| 1200-13-14-.10 | Exclusions |

RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-14
TENNCARE STANDARD

1200-13-14-.04 COVERED SERVICES.

(1) Benefits covered under the managed care program

(c) Pharmacy

TennCare is permitted under the terms and conditions of the demonstration project approved by the federal government to restrict coverage of prescription and non-prescription drugs to a TennCare-approved list of drugs known as a drug formulary. TennCare must make this list of covered drugs available to the public. Through the use of a formulary, the following drugs or classes of drugs, or their medical uses, shall be excluded from coverage or otherwise restricted by TennCare as described in Section 1927 of the Social Security Act [42 U.S.C. §1396r-8]:

12. Opioid products for persons aged twenty-one (21) and older are restricted as follows:

(i) "Chronic opioid user" means:

(I) A TennCare enrollee whose TennCare paid claims data demonstrates that he has received at least a ninety (90) day quantity of prescribed opioids in the one hundred eighty (180) day period immediately preceding the opioid's prescription date.

(II) For a TennCare enrollee who has not been enrolled in TennCare long enough to demonstrate that he is a chronic opioid user as defined in Item (I), the enrollee may demonstrate that he has received at least a ninety (90) day quantity of prescribed opioids in the one hundred eighty (180) day period immediately preceding the opioid's prescription date by supplying paid claims data and medical records from his previous healthcare provider(s) or health insurer(s).

(ii) "Non-chronic opioid user" means a TennCare enrollee whose TennCare paid claims data demonstrates he has received less than a ninety (90) day quantity of prescribed opioids in the one hundred eighty (180) day period immediately preceding the opioid's prescription date.

(iii) Non-chronic opioid users shall be eligible to receive covered prescription opioid products as follows:

(I) A maximum of fifteen (15) dosage days in any six (6) month period; and

(II) Daily dosage shall not exceed sixty (60) morphine milligram equivalents (MME) per day.

(iv) The restrictions in Subpart (iii) do not apply for enrollees with severe cancer pain undergoing active or palliative cancer treatment and enrollees in hospice and palliative care.

(v) The following considerations apply for enrollees who experience more frequent or aggressive pain episodes due to these specific clinical disease states:

(I) Enrollees with Sickle Cell may receive up to forty-five (45) days of sixty (60) MME per day in any ninety (90) day period; and

(II) Severe burn victims may receive up to forty-five (45) days of sixty (60) MME per day in any ninety (90) day period.

(vi) Notwithstanding the restrictions in Subpart (iii), enrollees residing in a Medicaid-certified Nursing Facility may receive up to forty-five (45) days of sixty (60) MME per day in any ninety (90) day period.

1200-13-14-.10 EXCLUSIONS.

(3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES or ECF CHOICES programs or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.

(a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21

18. Certain pharmacy items as follows:

(x) Opioid products are restricted as set out in Rule .04(1)(c)12.

GW10218085

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Division of TennCare (board/commission/ other authority) on 03/28/2018 (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: 01/16/18

Rulemaking Hearing(s) Conducted on: (add more dates). 03/12/18

Date: 3/28/18

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D., M.P.H.

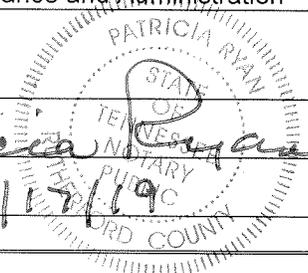
Division of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 3/28/18

Notary Public Signature: Patricia Ryan

My commission expires on: 8/17/19



Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-14

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
4/6/2018 Date

Department of State Use Only

Filed with the Department of State on: 4/9/18

Effective on: 7/9/18

Tre Hargett
Tre Hargett
Secretary of State

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