

## G.O.C. STAFF RULE ABSTRACT

AGENCY: Agriculture, Division of Consumer & Industry Services

DIVISION: Consumer & Industry Services

SUBJECT: Restricted Use Pesticides

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 62-21-101 et seq. requires pest control applicators to be examined and licensed or certified.

EFFECTIVE DATES: May 15, 2020 through November 11, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Because of the Covid-19 pandemic, all the available testing centers at which new pest control commercial applicators take qualifying examinations are closed. Pest control companies are not able to hire new employees during this period of high demand for their services. This emergency rule waives the testing requirement for commercial applicators if the prospective employee is trained and registered with the department. The temporary certifications will expire on October 31, 2020.

### **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;

Because of the Covid-19 pandemic, all the available testing centers at which new pest control commercial applicators take qualifying examinations are closed. Pest control companies are not able to hire new employees during this period of high demand for their services. This rule waives the testing requirement for commercial applicators if the prospective employee is trained and registered with the department. The temporary certifications will expire on October 31, 2020.

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

The Tennessee Application of Pesticides Act T.C.A. § 62-21-101 et seq. requires pest control applicators to be examined and licensed or certified.

- (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 pest control industry supports the adoption of this emergency rule

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

There are no relevant opinions or cases relevant to this rule.

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

This rule will have minimal fiscal impact.

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

David Waddell, Director of Law and Policy, 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;

David Waddell, Director of Law and Policy, 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) 837-5331; [david.waddell@tn.gov](mailto:david.waddell@tn.gov)

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

Department of State  
Division of Publications  
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
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For Department of State Use Only

Sequence Number: 05-08-20  
Rule ID(s): 9353  
File Date: 5/15/2020  
Last Effective Day: 11/11/2020

## Emergency Rule Filing Form

*Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.*

Agency/Board/Commission: Department of Agriculture  
Division: Consumer & Industry Services  
Contact Person: David Waddell  
Address: Post Office Box 40627, Nashville, Tennessee  
Zip: 37204  
Phone: (615) 837-5331  
Email: [david.waddell@tn.gov](mailto:david.waddell@tn.gov)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Statement of Necessity:**

During the period of emergency declared by the governor in response to Covid-19 pandemic there are not enough testing opportunities for new entrants into the pest control industry to provide enough applicators to perform essential services

**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 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-.14	Emergency Provisions

New

Chapter 0080-09-04  
Pest Control Operators

0080-09-02-.14 Emergency Provisions

- (1) In response to the unavailability of testing opportunities for new entrants into the pest control industry because of the COVID-19 pandemic, a temporary certification process is necessary to provide enough commercial applicators to perform essential services.
- (2) Temporary certification is available in lieu of testing provided that:
  - (a) The commercial applicator is registered with the department under the employer's charter;
  - (b) The charter holder can document that the commercial applicator has received 40 hours of field training; and
  - (c) The charter holder can document that the commercial applicator has received 16 hours of classroom training.
- (3) All temporary certifications issued under this rule shall expire on October 31, 2020.

Authority: T.C.A. §§ 4-5-208, 43-8-106, and 62-21-118.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

Date: 04/28/2020

Signature: 

Name of Officer: Charlie Hatcher, D.V.M.

Title of Officer: Commissioner

Subscribed and sworn to before me on: \_\_\_\_\_

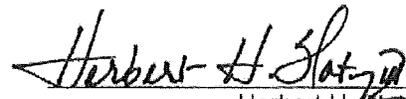
Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

Agency/Board/Commission: Department of Agriculture—Consumer and Industry Services

Rule Chapter Number(s): 0080-09-02

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  
5/13/2020  
 Date

**Department of State Use Only**

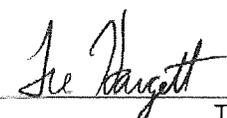
Filed with the Department of State on: 5/15/2020

Effective for: 180 \*days

Effective through: 11/11/2020

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

RECEIVED  
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## G.O.C. STAFF RULE ABSTRACT

AGENCY: Board for Licensing Health Care Facilities

SUBJECT: Standards for Nursing Homes, Assisted Care Living Facilities, and Home for the Aged

STATUTORY AUTHORITY: The Centers for Medicare and Medicaid Services (CMS) have issued a recommendation that long term care facilities have a testing plan that considers a number of components. These components include a single baseline COVID-19 test of all residents and staff, re-testing of residents upon identification of an individual with symptoms consistent with COVID-19 or if a staff member tests positive for COVID-19, and re-testing of all staff on a weekly basis. The Centers for Disease Control (CDC) have issued guidance regarding the testing of residents in long term care facilities.

EFFECTIVE DATES: May 29, 2020 through November 25, 2020

FISCAL IMPACT: There will be no increase or decrease to local government revenues and expenditures. The Department of Health is paying for the COVID-19 testing for each facility. COVID-19 tests are approximately one hundred dollars (\$100.00) a piece. There are seven hundred (700) currently licensed nursing homes, assisted-care living facilities, and residential homes for the aged. Every resident and staff member in these licensed facilities must be tested.

STAFF RULE ABSTRACT: To prevent the spread of COVID-19 in long term care facilities, rules changes requiring testing in nursing homes, assisted-care living facilities, and residential homes for the aged are necessary. The rule changes require that nursing homes, assisted-care living facilities, and residential homes for the aged test residents and staff. The Board for Licensing Health Care Facilities finds, pursuant to Tennessee Code Annotated, Section 4-5-208(a)(1), that COVID-19 poses an immediate danger to the public health, safety, or welfare, that the testing required by these emergency rule amendments is necessary to protect the residents of Tennessee long term

### **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 emergency rules should have no impact on local government.

**Additional Information Required by Joint Government Operations Committee**

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

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

To prevent the spread of COVID-19 in long term care facilities, rules changes requiring testing in nursing homes, assisted-care living facilities, and residential homes for the aged are necessary. The rules changes require that nursing homes, assisted-care living facilities, and residential homes for the aged test residents and staff. The Board for Licensing Health Care Facilities finds, pursuant to T.C.A. § 4-5-208(a)(1), that COVID-19 poses an immediate danger to the public health, safety, or welfare, that the testing required by these emergency rule amendments is necessary to protect the residents of Tennessee long term care facilities, and that any other form of rulemaking would not adequately protect the public.

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

The Centers for Medicare and Medicaid Services (CMS) have issued a recommendation that long term care facilities have a testing plan that considers a number of components. These components include a single baseline COVID-19 test of all residents and staff, re-testing of residents upon identification of an individual with symptoms consistent with COVID-19 or if a staff member tests positive for COVID-19, and re-testing of all staff on a weekly basis.

<https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertificationgeninfo/states-and-regional-policy-and/nursing-home-reopening-recommendations-state-and-local-officials>

The Centers for Disease Control (CDC) have issued guidance regarding the testing of residents in long term care facilities. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/nursing-homes-testing.html>

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

Nursing homes, assisted-care living facilities, and residential homes for the aged will be required to test residents and staff. The Tennessee Health Care Association (THCA) and Tennessee Center for Assisted Living (TNCAL) have many members who may be impacted by 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;

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;

There will be no increase or decrease to local government revenues and expenditures. The Department of Health is paying for the COVID-19 testing for each facility. COVID-19 tests are approximately one hundred dollars (\$100.00) a piece. There are seven hundred (700) currently licensed nursing homes, assisted-care living facilities, and residential homes for the aged. Every resident and staff member in these licensed facilities must be tested.

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

Caroline R. Tippens  
Senior Associate General Counsel  
665 Main Stream Drive, 2<sup>nd</sup> Floor  
Nashville, TN 37243  
(615) 741-1611  
[Caroline.tippens@tn.gov](mailto:Caroline.tippens@tn.gov)

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

Caroline R. Tippens  
Senior Associate General Counsel  
665 Main Stream Drive, 2<sup>nd</sup> Floor  
Nashville, TN 37243  
(615) 741-1611  
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**For Department of State Use Only**

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Rule ID(s): 9354-9356  
File Date: 5/29/2020  
Last Effective Day: 11/25/2020

## Emergency Rule Filing Form

*Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.*

**Agency/Board/Commission:** Board for Licensing Health Care Facilities  
**Division:**  
**Contact Person:** Caroline R. Tippens  
**Address:** 665 Main Stream Drive, 2<sup>nd</sup> Floor, Nashville, TN  
**Zip:** 37243  
**Phone:** (615) 741-1611  
**Email:** [Caroline.tippens@tn.gov](mailto:Caroline.tippens@tn.gov)

**Revision Type (check all that apply):**

Amendment  
 New  
 Repeal

**Statement of Necessity:**

On or about March 12, 2020, Governor Bill Lee issued Executive Order No. 14, declaring a state of emergency in Tennessee to facilitate the treatment and containment of COVID-19. On May 22, 2020, he issued Executive Order No. 38, strongly urging administrators of nursing homes, assisted-care living facilities, and residential homes for the aged to provide COVID-19 testing for all residents and staff members across the state by May 31, 2020. The Centers for Medicare and Medicaid Services (CMS) and the Centers for Disease Control and Prevention (CDC) have recommended that all nursing home residents receive a single baseline COVID-19 test, with re-testing of all staff continuing every week upon identification of an individual testing positive for COVID-19, until all residents test negative. Residents of Long Term Care Facilities are at increased risk from COVID-19 infection, with extremely high rates of mortality during outbreaks in such settings. The introduction of COVID-19 into a facility is typically via an infected staff member. As many staff members infected with the virus will have few or no symptoms yet still be infectious, testing is the only reliable means of identifying infection and preventing its spread into a facility. Because the infection can be acquired during many activities of daily living outside the facility, one-time testing is insufficient for nursing home staff members, and it must be done intermittently to be effective. Baseline testing of residents is critical for identifying those with current infection, to ensure that they are isolated immediately and appropriate safety precautions are taken to prevent its spread. There are many examples across the country, and in Tennessee, demonstrating how explosively this spread can occur, with deadly consequences.

The Board for Licensing Health Care Facilities finds, pursuant to T.C.A. § 4-5-208(a)(1), that COVID-19 poses an immediate danger to the public health, safety, or welfare, that the testing required by these emergency rule amendments is necessary to protect the residents of Tennessee long term care facilities, and that any other form of rulemaking would not adequately protect the public.

**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 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

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-08-25	Standards for Assisted Care Living Facilities
<b>Rule Number</b>	<b>Rule Title</b>
1200-08-25-.06	Administration

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-08-11	Standards for Homes for the Aged
<b>Rule Number</b>	<b>Rule Title</b>
1200-08-11-.04	Administration

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 <https://sos.in.gov/products/division-publications/rulemaking-guidelines>.

Rule 1200-08-06-.06 Basic Services is amended by inserting new subparagraph (3)(j) and relettering the remaining subparagraphs accordingly, so that the new subparagraph (3)(j) shall read:

**(j) Mandatory Testing for COVID-19.**

1. The requirements of this subparagraph apply to all nursing homes licensed under Title 68, Chapter 11.
2. Nursing homes shall comply with all Department of Health infection and prevention directives concerning staff and resident testing, including making off-shift staff available at the facility for testing.
3. "Staff" or "Staff member" for the purposes of this subparagraph shall mean an employee or any individual who contracts with the facility to provide resident care.
4. Initial Statewide Testing:
  - (i) Each nursing home must complete an "intent to test" survey as provided for by the Department prior to June 1, 2020.
  - (ii) Each nursing home resident and staff member must be tested by June 30, 2020.
  - (iii) Initial statewide testing may be done at the State Public Health Lab (SPHL), commercial labs with whom the State has agreements or through commercial laboratories with whom the facility has agreements. The facility may use any commercial labs using a test with U.S. Food and Drug Administration (FDA) emergency use authorization and which will report results as required by law.
  - (iv) A nursing home may use a commercial lab without the prior consent of the Department.
  - (v) Within one (1) day of the effective date of this rule, the Department shall publish a list of previously approved labs.
  - (vi) The Department will provide sufficient personal protective equipment for the initial statewide testing described in this subparagraph.
5. Ongoing Staff Testing:
  - (i) Once a nursing home has completed initial testing, each facility shall test all staff members for COVID-19 at least once every seven (7) days beginning the later of June 30, 2020 or the date the facility completes initial testing.
  - (ii) Any staff member who has a positive U.S. Food and Drug Administration (FDA) approved COVID-19 antibody test is exempted from weekly testing.
  - (iii) Ongoing staff testing may be conducted using the State Public Health Lab (SPHL) or any commercial lab on the list of approved labs published by the Department.
6. Residents and staff have the right to refuse testing. Each facility shall document the staff or resident's refusal by having the individual sign documentation created by the facility

indicating that they have refused testing.

7. A violation of this subparagraph is considered to be a serious deficiency. For a violation of any part of this subparagraph, the Department may seek any remedy authorized by Tenn. Code Ann. §§ 68-11-207 and 68-11-801, including but not limited to, license revocation, license suspension, and the imposition of civil monetary penalties.
8. It shall be a defense to any disciplinary action taken under this subparagraph that a facility is unable to identify a COVID-19 testing laboratory, or that total statewide testing capacity is insufficient to accommodate the anticipated number of tests required by these rules.

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, 68-11-207, 68-11-209, 68-11-216, 68-11-240, 68-11-241, and 68-11-801.

Rule 1200-08-25-.06 Administration is amended by inserting new subparagraph (5)(e) which shall read:

(e) Mandatory Testing for COVID-19.

1. The requirements of this subparagraph apply to all assisted-care living facilities licensed under Title 68, Chapter 11.
2. Assisted-care living facilities shall comply with all Department of Health infection and prevention directives concerning staff and resident testing, including making off-shift staff available at the facility for testing.
3. "Staff" or "Staff member" for the purposes of this subparagraph shall mean an employee or any individual who contracts with the facility to provide resident care.
4. Initial Statewide Testing:
  - (i) Each assisted-care living facility must complete an "intent to test" survey as provided for by the Department prior to June 1, 2020.
  - (ii) Each assisted-care living facility resident and staff member must be tested by June 30, 2020.
  - (iii) Initial statewide testing may be done at the State Public Health Lab (SPHL), commercial labs with whom the State has agreements or through commercial laboratories with whom the facility has agreements. The facility may use any commercial labs using a test with U.S. Food and Drug Administration (FDA) emergency use authorization and which will report results as required by law.
  - (iv) The Department shall assist any assisted-care living facility without nursing staff in securing the licensed personnel necessary to take resident and staff samples, but facility support will be required for administrative tasks.
  - (v) An assisted-care living facility may use a commercial lab without the prior consent of the Department.
  - (vi) Within one (1) day of the effective date of this rule, the Department shall publish a list of previously approved labs.
  - (vii) The Department will provide sufficient personal protective equipment for the initial statewide testing described in this subparagraph.
5. Residents and staff have the right to refuse testing. Each facility shall document the staff or resident's refusal by having the individual sign documentation created by the facility indicating that they have refused testing.
6. A violation of this subparagraph is considered to be a serious deficiency. For a violation

of any part of this subparagraph, the Department may seek any remedy authorized by Tenn. Code Ann. §§ 68-11-207 and 68-11-213, including but not limited to, license revocation, license suspension, and the imposition of civil monetary penalties.

7. It shall be a defense to any disciplinary action taken under this subparagraph that a facility is unable to identify a COVID-19 testing laboratory, or that total statewide testing capacity is insufficient to accommodate the anticipated number of tests required by these rules.

Authority: T.C.A. §§ 39-17-1804, 39-17-1805, 68-3-511, 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-213, 68-11-254, 68-11-268, and 71-6-121.

1200-08-11-.04 Administration is amended by inserting new paragraph (11) which shall read:

(11) Mandatory Testing for COVID-19.

- (a) The requirements of this paragraph apply to all homes for the aged licensed under Title 68, Chapter 11.
- (b) Homes for the aged shall comply with all Department of Health infection and prevention directives concerning staff and resident testing, including making off-shift staff available at the facility for testing.
- (c) "Staff" or "Staff member" for the purposes of this paragraph shall mean an employee or any individual who contracts with the facility to provide resident care.
- (d) Initial Statewide Testing:
  1. Each home for the aged must complete an "intent to test" survey as provided for by the Department prior to June 1, 2020.
  2. Each home for the aged resident and staff member must be tested by June 30, 2020.
  3. Initial statewide testing may be done at the State Public Health Lab (SPHL), commercial labs with whom the State has agreements or through commercial laboratories with whom the facility has agreements. The facility may use any commercial labs using a test with U.S. Food and Drug Administration (FDA) emergency use authorization and which will report results as required by law.
  4. The Department shall assist any home for the aged without nursing staff in securing the licensed personnel necessary to take resident and staff samples, but facility support will be required for administrative tasks.
  5. A home for the aged may use a commercial lab without the prior consent of the Department.
  6. Within one (1) day of the effective date of this rule, the Department shall publish a list of previously approved labs.
  7. The Department will provide sufficient personal protective equipment for the initial statewide testing described in this paragraph.
- (e) Residents and staff have the right to refuse testing. Each facility shall document the staff or resident's refusal by having the individual sign documentation created by the facility indicating that they have refused testing.
- (f) A violation of this paragraph is considered to be a serious deficiency. For a violation of any part of this paragraph, the Department may seek any remedy authorized by Tenn. Code Ann. §§ 68-11-207 and 68-11-213, including but not limited to, license revocation, license suspension, and

**the imposition of civil monetary penalties.**

- (g) It shall be a defense to any disciplinary action taken under this paragraph that a facility is unable to identify a COVID-19 testing laboratory, or that total statewide testing capacity is insufficient to accommodate the anticipated number of tests required by these rules.**

**Authority: T.C.A. §§ 4-5-202, 4-5-204, 39-17-1803, 39-17-1804, 39-17-1805, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-213, 68-11-257, 68-11-268, and 71-6-121.**

**RULES  
OF  
TENNESSEE DEPARTMENT OF HEALTH  
BOARD FOR LICENSING HEALTH CARE FACILITIES  
DIVISION OF HEALTH CARE FACILITIES**

**CHAPTER 1200-08-06  
STANDARDS FOR NURSING HOMES**

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**1200-08-06-.01 DEFINITIONS.**

- (1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.
- (2) Administrator. A person currently licensed as such by the Tennessee Board of Examiners for Nursing Home Administrators.
- (3) Adult. An individual who has capacity and is at least 18 years of age.
- (4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (5) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- (6) Board. The Tennessee Board for Licensing Health Care Facilities.
- (7) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.
- (8) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to restore or support cardiopulmonary functions in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a resident where cardiac or respiratory arrest has occurred or is believed to be imminent.
- (9) Certified Nurse Aide or Certified Nursing Assistant. An individual who has successfully completed an approved nursing assistant training program and is registered with the department.

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

- (10) Clinical Fellow. A Speech Language Pathologist who is in the process of obtaining his or her paid professional experience, as defined by a Communications Disorders and Sciences Board-approved accreditation agency, before being qualified for licensure.
- (11) Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.
- (12) Competent. A resident who has capacity.
- (13) Department. The Tennessee Department of Health.
- (14) Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- (15) Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners. Persons exempt from licensure shall be registered with the American Dietetics Association pursuant to T.C.A. § 63-25-104.
- (16) Director of Nursing (DON). A Registered Nurse employed full time in a nursing home who satisfies the responsibilities set forth in this chapter.
- (17) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.
- (18) Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.
- (19) Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.
- (20) Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- (21) Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state or federal regulations.
- (22) Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- (23) Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.
- (24) Health Care Decision-maker. In the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or conservator with health care decision-making authority, the resident's surrogate as determined pursuant to Rule 1200-08-06-.13 or T.C.A. § 33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (25) Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

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

- (26) Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.
- (27) Hospital. Any institution, place, building or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the use, in connection with the services of a physician or dentist, of one (1) or more nonrelated persons who may be suffering from deformity, injury or disease or from any other condition for which nursing, medical or surgical services would be appropriate for care, diagnosis or treatment.
- (28) Hospitalization. The reception and care of any person for a continuous period longer than twenty-four (24) hours, for the purpose of giving advice, diagnosis, nursing service or treatment bearing on the physical health of such person, and maternity care involving labor and delivery for any period of time.
- (29) Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (30) Individual instruction. An individual's direction concerning a health care decision for the individual.
- (31) Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.
- (32) Involuntary Transfer. The movement of a resident between nursing homes, without the consent of the resident, the resident's legal guardian, next of kin or representative.
- (33) Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.
- (34) Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.
- (35) Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.
- (36) Medical Director. A licensed physician employed by the nursing home to be responsible for medical care in the facility.
- (37) Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the resident's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.
- (38) Medical Equipment. Equipment used for the diagnosis, treatment and monitoring of patients, including, but not limited to, oxygen care equipment and oxygen delivery systems, enteral and parenteral feeding pumps, and intravenous pumps.
- (39) Medical Record. Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations and other written, electronic, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to residents.

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

- (40) **Medically Inappropriate Treatment.** Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident.
- (41) **Misappropriation of Patient/Resident Property.** The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.
- (42) **Neglect.** The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.
- (43) **NFPA.** The National Fire Protection Association.
- (44) **Nurse Aide or Nursing Assistant Training Program.** A specialized program approved by the Department to provide classroom instruction and supervised clinical experience for individuals who wish to be employed as Nurse Aides or Nursing Assistants.
- (45) **Nursing Personnel.** Licensed nurses and certified nurse aides who provide nursing care.
- (46) **Occupational Therapist.** A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.
- (47) **Person.** An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (48) **Personally Informing.** A communication by any effective means from the resident directly to a health care provider.
- (49) **Pharmacist.** A person currently licensed as such by the Tennessee Board of Pharmacy.
- (50) **Physical Therapist.** A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.
- (51) **Physician Assistant.** A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.
- (52) **Physician Orders for Scope of Treatment or POST.** Written orders that:
  - (a) Are on a form approved by the Board for Licensing Health Care Facilities;
  - (b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and
  - (c)
    - 1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

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

2. Specify other medical interventions that are to be provided or withheld; or
  3. Specify both 1 and 2.
- (53) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.
- (54) Podiatrist. A person currently licensed as such by the Tennessee Board of Registration in Podiatry.
- (55) Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.
- (56) Program Coordinator. A registered nurse who possesses a minimum of two years nursing experience with at least one year in long term care and is responsible for ensuring that the requirements of the Nurse Aide Training Program are met.
- (57) Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- (58) Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- (59) Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.
- (60) Resident/Patient. Includes but is not limited to any person who is suffering from an illness or injury and who is in need of nursing care.
- (61) Secured Unit. A facility or distinct part of a facility where residents are intentionally denied egress by any means.
- (62) Shall or Must. Compliance is mandatory.
- (63) Social Worker. In a facility with more than 120 beds a qualified social worker is an individual with:
- (a) A bachelor's degree in social work or a bachelor's degree in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology; and,
  - (b) One year of supervised social work experience in a health care setting working directly with individuals.
- (64) Speech Language Pathologist. As defined in T.C.A. § 63-17-103, a person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.
- (65) 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.
- (66) Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board.

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

- (67) **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.
- (68) **Surrogate.** An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.
- (69) **Survey.** An on-site examination by the department to determine the quality of care and/or services provided.
- (70) **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.
- (71) **Treating Health Care Provider.** A health care provider who at the time is directly or indirectly involved in providing health care to the resident.
- (72) **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. Amendments filed July 10, 2018; effective October 8, 2018.

#### 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:
  - (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.

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

- (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;
    - 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,

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

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          | \$ 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.

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

- (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.
- (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, and 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. Amendments filed March 21, 2018; to have been effective June 19, 2018. However, on May 24, 2018, the Government Operations Committee filed a 5-day stay; new effective date June 24, 2018.

**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:

(Rule 1200-08-06-.03, continued)

- (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.
  - (b) Prior to imposing probation, the board may consider and address in its findings all factors which it deems relevant, including, but not limited to, the following:
    - 1. What degree of sanctions is necessary to ensure immediate and continued compliance; and
    - 2. Whether the non-compliance was an unintentional error or omission, or was not fully within the control of the facility; and
    - 3. Whether the nursing home recognized the non-compliance and took steps to correct the identified issues, including whether the facility notified the department of the non-compliance either voluntarily or as required by state law or regulations; and
    - 4. The character and degree of impact of the non-compliance on the health, safety and welfare of the patient or patients in the facility; and
    - 5. The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the non-compliance; and
    - 6. The facility's prior history of compliance or non-compliance.
- (4) If the Board places a facility on probation, the facility shall detail in a plan of correction those specific actions, which when followed, will correct the non-compliance identified by the board.
- (5) During the period of probation, the facility must make reports on a schedule determined by the board. These reports must demonstrate and explain to the board how the facility is implementing the actions identified in its plan of correction. In making such reports, the board shall not require the facility to disclose any information protected as privileged and confidential under any state or federal law or regulation.

(Rule 1200-08-06-.03, continued)

- (6) The Board is authorized at any time during the probation to remove the probational status of the facility's license, based upon information presented to it showing that the conditions identified by the board have been corrected and are reasonably likely to remain corrected.
- (7) The Board must rescind the probational status of the facility if it determines that the facility has complied with its plan of correction as submitted and approved by the board, unless the facility has additional non-compliance that warrants an additional term of probation as defined in T.C.A. § 68-11-207(e)(1).
- (8) A single period of probation for a facility shall not extend beyond twelve (12) months. If the board determines during or at the end of the probation that the facility is not taking steps to correct non-compliance or otherwise not responding in good faith pursuant to the plan of correction, the board may take any additional action as authorized by law.
- (9) The hearing to place a facility on probation and judicial review of the board's decision shall be in accordance with the Uniform Administrative Procedures Act.
- (10) When a nursing home 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 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.
- (11) 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 nursing home's license to possible disciplinary action.
- (12) Whenever the commissioner exercises the authority to suspend the admission of any new resident(s) to the nursing home because of detrimental conditions, as provided by T.C.A. § 68-11-207(b), the nursing home shall post a copy of the commissioner's order upon the public entrance doors of the facility and prominently display it there for so long as it remains effective. During the suspension of admissions, the nursing home shall inform any person who inquires about the admission of a new resident of the provisions of the order and make a copy of the order available.
- (13) Any licensee or applicant for a license, aggrieved by a decision or action of the department or board, pursuant to this chapter, may request a hearing before the board. The proceedings and judicial review of the board's decision shall be in accordance with the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq.
- (14) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209. **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,

(Rule 1200-08-06-.03, continued)

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 May 24, 2004; August 7, 2004. Amendment filed March 1, 2007; effective May 15, 2007.

#### 1200-08-06-.04 ADMINISTRATION.

- (1) The nursing home shall have a full-time (working at least 32 hours per week) administrator licensed in Tennessee, who shall not function as the director of nursing. Any change of administrators shall be reported in writing to the department within fifteen (15) days. The administrator shall designate in writing an individual to act in his/her absence in order to provide the nursing home with administrative direction at all times. The administrator shall assure the provision of appropriate fiscal resources and personnel required to meet the needs of the residents.
- (2) The hospital administrator may serve as the administrator of a hospital-based nursing home provided that he/she is a Tennessee licensed nursing home administrator, the facilities are located on the same campus, and the surveys do not reflect substandard care.
- (3) Any agreement to manage a nursing home must be reported in writing to the department within fifteen (15) days of its implementation.
- (4) Upon the unexpected loss of the facility administrator, the facility shall proceed according to the following provisions:
  - (a) The term "unexpected loss" means the absence of a nursing home administrator due to serious illness or incapacity, unplanned hospitalization, death, resignation with less than thirty (30) days notice or unplanned termination.
  - (b) The facility must notify the department within twenty-four (24) hours after notice of the unexpected loss of the administrator. Notification to the department shall identify an individual to be responsible for administration of the facility for the immediate future not to exceed thirty (30) days. This responsible individual need not be licensed as an administrator and may be the facility's director of nursing.
  - (c) Within seven (7) days of notice of the unexpected loss, the facility must request a waiver of the appropriate regulations from the board.
  - (d) On or before the expiration of thirty (30) days after notice of the unexpected loss, the facility shall appoint a temporary administrator to serve until either a permanent administrator is employed or the request for a waiver is considered by the board, whichever occurs first. The temporary administrator shall be any of the following:
    1. A full-time administrator licensed in Tennessee or any other state;
    2. One (1) or more part-time administrators licensed in Tennessee. Part-time shall not be less than twenty (20) hours per week; or,
    3. A full-time candidate for licensure as a Tennessee administrator who has completed the required training and the application process. Such candidate shall be scheduled for the next licensure exam and is eligible for the continued administrator role only with the successful completion of that exam.
  - (e) The procedures set forth above shall be followed until the next regularly scheduled meeting of the board in which the board considers the facility's application for a waiver. After reviewing the circumstances, the board may grant, refuse or condition a waiver as necessary to protect the health, safety and welfare of the residents in the facility.

(Rule 1200-08-06-.04, continued)

- (f) Any facility which follows these procedures shall not be subject to a civil penalty for absence of an administrator at any time preceding the board's consideration of the facility's request for a waiver.
- (5) The facility shall make reasonable efforts to safeguard personal property and promptly investigate complaints of such loss. A record shall be prepared of all clothing, personal possessions and money brought by the resident to the nursing home at the time of admission. The record shall be filled out in duplicate. One copy of the record shall be given to the resident or the resident's representative and the original shall be maintained in the nursing home record. This record shall be updated as additional personal property is brought to the facility.
- (6) The facility shall maintain a surety bond on all resident funds held in trust. Such surety bonds shall be sufficient to cover the amount of such funds. The surety bond shall be an agreement between the company issuing the bond and the nursing home and shall remain in the possession of the nursing home.
- (7) If the facility holds resident funds, such funds shall be kept in an account separate from the facility's funds. Resident funds shall not be used by the facility. The facility shall maintain and allow each resident access to a written record of all financial arrangements and transactions involving the individual resident's funds. The facility shall provide each resident or his/her representative with a written itemized statement at least quarterly of all financial transactions involving the resident's funds.
- (8) Within thirty (30) days of a resident's death, the facility shall provide an accounting of the resident's funds held by the facility and an inventory of the resident's personal property held by the facility to the resident's executor, administrator or other person authorized by law to receive the decedent's property. The facility shall obtain a signed receipt from any person to whom the decedent's property is transferred.
- (9) Upon the sale of the facility, the seller shall provide written verification that all the resident's funds and property have been transferred and shall obtain a signed receipt from the new owner. Upon receipt, the buyer shall provide, to the residents, an accounting of funds and property held on their behalf.
- (10) When licensure is applicable for a particular job, verification of the current license must be included as a part of the personnel file. Each personnel file shall contain accurate information as to the education, training, experience and personnel background of the employee. Documentation that references were verified shall be on file. Documentation that all appropriate abuse registries have been checked shall be on file. Adequate medical screenings to exclude communicable disease shall be required of each employee.
- (11) Prior to employment, all nursing homes shall complete a criminal background check on any person who will be in a position which involves providing direct care to a resident or patient.
  - (a) Any person who applies for employment in a position which involves providing direct patient care to a resident in such a facility shall consent to:
    1. Provide past work and personal references to be checked by the nursing home; and/or
    2. Agree to release and use of any and all information and investigative records necessary for the purpose of verifying whether the individual has been convicted of a criminal offense in the state of Tennessee, to either the nursing home or its

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- agent, to any agency that contracts with the state of Tennessee, to any law enforcement agency, or to any other legally authorized entity; and/or
3. Supply a fingerprint sample and submit to a state criminal history records check to be conducted by the Tennessee Bureau of Investigations, or a state and federal criminal history records check to be conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation; and/or
  4. Release any information required for a criminal background investigation by a professional background screening organization or criminal background check service or registry.
- (b) A nursing home shall not disclose criminal background check information obtained to a person who is not involved in evaluating a person's employment, except as required or permitted by state or federal law.
  - (c) Any costs incurred by the Tennessee Bureau of Investigation, professional background screening organization, law enforcement agency, or other legally authorized entity, in conducting such investigations of such applicants may be paid by the nursing home, or any agency that contracts with the state of Tennessee requesting such investigation and information, or the individual who seeks employment or is employed. Payment of such costs to the Tennessee Bureau of Investigation are to be made in accordance with T.C.A. §§ 38-6-103 and 38-6-109. The costs of conducting criminal background checks shall be an allowable cost under the state Medicaid program, if paid for by the nursing home.
  - (d) Criminal background checks are also required by any organization, company, or agency that provides or arranges for the supply of direct care staff to any nursing home licensed in the state of Tennessee. Such company, organization, or agency shall be responsible for initiating a criminal background check on any person hired by that entity for the purpose of working in a nursing home, and shall be required to report the results of the criminal background check to any facility in which the organization arranges the employee to work, upon request by a facility.
  - (e) A nursing home that declines to employ or terminates a person based upon criminal background information provided to the facility shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.
- (12) Whenever the rules of this chapter require that a licensee develop a written policy, plan, procedure, technique, or system concerning a subject, the licensee shall develop the required policy, maintain it and adhere to its provisions. A nursing home which violates a required policy also violates the rule establishing the requirement.
  - (13) Policies and procedures shall be consistent with professionally recognized standards of practice.
  - (14) No nursing home shall retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the board, the department, the Department of Human Services Adult Protective Services, the long term care ombudsman, the Comptroller of the State Treasury, or any government agency. A nursing home shall neither retaliate, nor discriminate, because of information lawfully provided to these authorities, because of a person's cooperation with them, or because a person is subpoenaed to testify at a hearing involving one of these authorities.
  - (15) Each nursing home shall adopt safety policies for the protection of residents from accident and injury.

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- (16) Each nursing home shall post whether they have liability insurance, the identity of their primary insurance carrier, and if self-insured, the corporate entity responsible for payment of any claims. It shall be posted on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height and displayed at the main public entrance.
- (17) Documentation pertaining to the payment agreement between the nursing home and the resident shall be completed prior to admission. A copy of the documentation shall be given to the resident and the original shall be maintained in the nursing home records.
- (18) The nursing home shall ensure a framework for addressing issues related to care at the end of life.
- (19) The nursing home shall provide a process that assesses pain in all patients. There shall be an appropriate and effective pain management program.
- (20) The nursing home shall carry out the following functions, all of which shall be documented in a written medical equipment management plan:
  - (a) Develop and maintain a current itemized inventory of medical equipment used in the facility, that is owned or leased by the operator of the facility;
  - (b) Develop and maintain a schedule for the maintenance, inspection and testing of medical equipment according to manufacturers' recommendations or other generally accepted standards. The schedule shall include the date and time such maintenance, inspection and testing was actually performed, and the name of the individual who performed such tasks; and
  - (c) Ensure maintenance, inspection and testing were conducted by facility personnel adequately trained in such procedures or by a contractor qualified to perform such procedures.
- (21) All health care facilities licensed pursuant to T.C.A. §§ 68-11-201, *et seq.* shall post on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height the following in the main public entrance:
  - (a) a statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance.
- (22) "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.
- (23) Residents of the facility are exempt from the smoking prohibition. The resident smoking practices shall be governed by the policies and procedures established by the facility. Smoke from such areas shall not infiltrate into the areas where smoking is prohibited.
- (24) The facility shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 39-17-1803, 39-17-1804, 39-17-1805, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-225, 68-11-254, 68-11-256, 68-11-257, 68-11-268, 68-11-906, 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. Amendment filed May 24, 1985; effective June 23, 1985. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed October 22, 1987; effective

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*December 6, 1987. Amendment filed May 10, 1990; effective June 24, 1990. Amendment filed March 9, 1992; effective April 23, 1992. Amendment filed March 10, 1995; effective May 24, 1995. Amendment filed June 13, 1997; effective August 27, 1997. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed May 24, 2004; effective August 7, 2004. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendment filed October 20, 2015; effective January 18, 2016.*

**1200-08-06-.05 ADMISSIONS, DISCHARGES, AND TRANSFERS.**

- (1) Every person admitted for care or treatment shall be under the supervision of a physician who holds a license in good standing to practice in Tennessee. The name of the resident's attending physician shall be recorded in the resident's medical record. The nursing home shall not admit the following types of residents:
  - (a) Persons who pose a clearly documented danger to themselves or to other residents in the nursing home.
  - (b) Children under fourteen (14) years of age, except when the department has approved the admission of a specific child.
  - (c) Persons for whom the nursing home is not capable of providing the care ordered by the attending physician. Documentation of the reason(s) for refusal of the admission shall be maintained.
- (2) A diagnosis must be entered in the admission records of the nursing home for every person admitted for care or treatment.
- (3) Prior to the admission of a resident to a nursing home or prior to the execution of a contract for the care of a resident in a nursing home (whichever occurs first), each nursing home shall disclose in writing to the resident or to the resident's guardian, conservator or representative, if any, whether the facility has liability insurance and the identity of the primary insurance carrier. If the facility is self-insured, their statement shall reflect that fact and indicate the corporate entity responsible for payment of any claims.
- (4) Any residential facility licensed by the board of licensing health care facilities shall upon admission provide to each resident the division of adult protective services' statewide toll-free number: 888-277-8366.
- (5) Facilities utilizing secured units must be able to provide survey staff with twelve (12) months of the following performance information specific to the secured unit and its residents:
  - (a) Documentation that each secured resident has been evaluated by an interdisciplinary team consisting of at least a physician, a social worker, a registered nurse, and a family member (or patient care advocate) prior to admittance to the unit;
  - (b) Ongoing and up-to-date documentation of quarterly review by each resident's interdisciplinary team as to the appropriateness of placement in the secured unit;
  - (c) A current listing of the number of deaths and hospitalizations with diagnoses that have occurred on the unit;
  - (d) A current listing of all unusual incidents and/or complications on the unit;
  - (e) An up-to-date staffing pattern and staff ratios for the unit is recorded on a daily basis. The staffing pattern must ensure that there is a minimum of one (1) attendant, awake,

(Rule 1200-08-06-.05, continued)

on duty, and physically located on the unit twenty-four (24) hours per day, seven (7) days per week at all times;

- (f) A formulated calendar of daily group activities scheduled including a resident attendance record for the previous three (3) months;
- (g) An up-to-date listing of any incidences of decubitus and/or nosocomial infections, including resident identifiers; and,
- (h) Documentation showing that 100% of the staff working on the unit receives and has received annual in-service training which shall include, but not be limited to the following subject areas:
  - 1. Basic facts about the causes, progression and management of Alzheimer's Disease and related disorders;
  - 2. Dealing with dysfunctional behavior and catastrophic reactions in the residents;
  - 3. Identifying and alleviating safety risks to the resident;
  - 4. Providing assistance in the activities of daily living for the resident; and,
  - 5. Communicating with families and other persons interested in the resident.
- (6) The facility shall ensure that no person on the grounds of race, color, national origin, or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the facility. The facility shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.
- (7) Any admission in excess of the licensed bed capacity is prohibited except when an emergency admission is directed by the department.
- (8) No resident shall be discharged 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. Each nursing home shall establish a policy for handling patients who wish to leave against medical advice.
- (9) When a resident is discharged, a brief description of the significant findings and events of the resident's stay in the nursing home, the condition on discharge and the recommendation and arrangement for future care, if any, shall be provided.
- (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:

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- (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.
- (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

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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;
    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

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

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.
  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;

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

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;
  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

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

- (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,
    - (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.

<sup>a</sup> (i) Mandatory Testing for COVID-19.

1. The requirements of this subparagraph apply to all nursing homes licensed under Title 68, Chapter 11.

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

2. Nursing homes shall comply with all Department of Health infection and prevention directives concerning staff and resident testing, including making off-shift staff available at the facility for testing.

3. "Staff" or "Staff member" for the purposes of this subparagraph shall mean an employee or any individual who contracts with the facility to provide resident care.

4. Initial Statewide Testing:

(i) Each nursing home must complete an "intent to test" survey as provided for by the Department prior to June 1, 2020.

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(ii) Each nursing home resident and staff member must be tested by June 30, 2020.

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(iii) Initial statewide testing may be done at the State Public Health Lab (SPHL), commercial labs with whom the State has agreements or through commercial laboratories with whom the facility has agreements. The facility may use any commercial labs using a test with U.S. Food and Drug Administration (FDA) emergency use authorization and which will report results as required by law.

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(iv) A nursing home may use a commercial lab without the prior consent of the Department.

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(v) Within one (1) day of the effective date of this rule, the Department shall publish a list of previously approved labs.

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(vi) The Department will provide sufficient personal protective equipment for the initial statewide testing described in this subparagraph.

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5. Ongoing Staff Testing:

(i) Once a nursing home has completed initial testing, each facility shall test all staff members for COVID-19 at least once every seven (7) days beginning the later of June 30, 2020 or the date the facility completes initial testing.

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(ii) Any staff member who has a positive U.S. Food and Drug Administration (FDA) approved COVID-19 antibody test is exempted from weekly testing.

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(iii) Ongoing staff testing may be conducted using the State Public Health Lab (SPHL) or any commercial lab on the list of approved labs published by the Department.

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6. Residents and staff have the right to refuse testing. Each facility shall document the staff or resident's refusal by having the individual sign documentation created by the facility indicating that they have refused testing.

7. A violation of this subparagraph is considered to be a serious deficiency. For a violation of any part of this subparagraph, the Department may seek any remedy

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

authorized by Tenn. Code Ann. §§ 68-11-207 and 68-11-801, including but not limited to, license revocation, license suspension, and the imposition of civil monetary penalties.

8. It shall be a defense to any disciplinary action taken under this subparagraph that a facility is unable to identify a COVID-19 testing laboratory, or that total statewide testing capacity is insufficient to accommodate the anticipated number of tests required by these rules.

(j,k) 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,l) 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,m) 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,n) 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,o) 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;

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(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.

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- (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;

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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.

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- (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) 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, 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

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

(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.
  - 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.

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

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.
  - (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.

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

- (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.
- (12) Ventilator Services. A nursing home that provides ventilator services shall meet or exceed the following minimum standards by:

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

- (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, 68-11-207, 68-11-209, 68-11-216, 68-11-240, and 68-11-241, and 68-11-801. **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 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. Emergency rule filed February 28, 2018; effective through August 27, 2018. Amendments filed April 19, 2018; effective July 18, 2018.

(Rule 1200-08-06-.07, continued)

**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.
- (10) In addition to the classroom instruction required in the nurse aide training program, each nurse aide assigned to the unit shall have forty (40) hours of classroom instruction which shall include but not be limited to the following subject areas:

(Rule 1200-08-06-.07, continued)

- (a) Basic facts about the causes, progression and management of Alzheimer's Disease and related disorders;
  - (b) Dealing with dysfunctional behavior and catastrophic reactions in the resident;
  - (c) Identifying and alleviating safety risks to the resident;
  - (d) Providing assistance in the activities of daily living for the resident; and,
  - (e) Communicating with families and other persons interested in the resident.
- (11) Each resident shall have a treatment plan developed, periodically reviewed and implemented by an interdisciplinary treatment team consisting at least of a physician experienced in the management of residents with Alzheimer's Disease and related disorders, a registered nurse, a social worker, an activity coordinator and a relative of the resident or a resident care advocate.
- (12) A protocol for identifying and alleviating job related stress among staff on the special care unit must be developed and carried out.
- (13) The staff of the unit shall organize a support group for families of residents which meets at least quarterly for the purpose of:
- (a) Providing ongoing education for families;
  - (b) Permitting families to give advice about the operation of the unit;
  - (c) Alleviating stress in family members; and
  - (d) Resolving special problems relating to the residents in the unit.

**Authority:** T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-1404.

**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.

#### 1200-08-06-.08 BUILDING STANDARDS.

- (1) A nursing home shall construct, arrange, and maintain the condition of the physical plant and the overall nursing home environment in such a manner that the safety and well-being of the residents are assured.
- (2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All facilities shall conform to the current edition of the following applicable codes as approved by the Board for Licensing Health Care Facilities: International Building Code (excluding Chapters 1 and 11) including referenced International Fuel Gas Code, International Mechanical Code, and International Plumbing Code; National Fire Protection Association (NFPA) NFPA 101 Life Safety Code excluding referenced NFPA 5000; Guidelines for Design and Construction of Health Care Facilities (FGI) including referenced Codes and Standards; U.S. Public Health Service Food Code; and Americans with Disabilities Act (ADA) Standards for Accessible Design. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes, regulations and provisions of this chapter, the most stringent requirements shall apply.

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

- (3) The codes in effect at the time of submittal of plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.
- (4) The licensed contractor shall perform all new construction and renovations to nursing homes, other than minor alterations not affecting fire and life safety or functional issues, in accordance with the specific requirements of these regulations governing new construction in nursing homes, including the submission of phased construction plans and the final drawings and the specifications to each.
- (5) No new nursing home shall be constructed, nor shall major alterations be made to an existing nursing home without prior written approval of the department, and unless in accordance with plans and specifications approved in advance by the department. Before any new nursing home is licensed or before any alteration or expansion of a licensed nursing home can be approved, the applicant must furnish two (2) complete sets of plans and specifications to the department, together with fees and other information as required. Plans and specifications for new construction and major renovations, other than minor alterations not affecting fire and life safety or functional issues, shall be prepared by or under the direction of a licensed architect and/or a licensed engineer and in accordance with the rules of the Board of Architectural and Engineering Examiners.
- (6) Final working drawings and specifications shall be accurately dimensioned and include all necessary explanatory notes, schedules and legends. The working drawings and specifications shall be complete and adequate for contract purposes.
- (7) Detailed plans shall be drawn to a scale of at least one-eighth inch equals one foot ( $1/8" = 1'$ ), and shall show the general arrangement of the building, the intended purpose and the fixed equipment in each room, with such additional information as the department may require. An architect or engineer licensed to practice in the State of Tennessee shall prepare the plans the department requires.
  - (a) The project architect or engineer shall forward two (2) sets of plans to the appropriate section of the department for review. After receipt of approval of phased construction plans, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the owner's understanding that such work is at the owner's own risk and without assurance that final approval of final plans and specifications shall be granted. The project architect or engineer shall submit final plans and specifications for review and approval. The department must grant final approval before the project proceeds beyond foundation work.
  - (b) Review of plans does not eliminate responsibility of owner and/or architect to comply with all rules and regulations.
- (8) Specifications shall supplement all drawings. They shall describe the characteristics of all materials, products and devices, unless fully described and indicated on the drawings. Specification copies should be bound in an 8½ x 11 inch folder.
- (9) Drawings and specifications shall be prepared for each of the following branches of work: Architectural, Structural, Mechanical, Electrical and Sprinkler.
- (10) Architectural drawings shall include where applicable:
  - (a) Plot plan(s) showing property lines, finish grade, location of existing and proposed structures, roadways, walks, utilities and parking areas;
  - (b) Floor plan(s) showing scale drawings of typical and special rooms, indicating all fixed and movable equipment and major items of furniture;

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- (c) Separate life safety plans showing the compartment(s), all means of egress and exit markings, exits and travel distances, dimensions of compartments and calculation and tabulation of exit units. All fire and smoke walls must be identified;
  - (d) The elevation of each facade;
  - (e) The typical sections throughout the building;
  - (f) The schedule of finishes;
  - (g) The schedule of doors and windows;
  - (h) Roof plans;
  - (i) Details and dimensions of elevator shaft(s), car platform(s), doors, pit(s), equipment in the machine room, and the rates of car travel must be indicated for elevators; and
  - (j) Code analysis.
- (11) Structural drawings shall include where applicable:
- (a) Plans of foundations, floors, roofs and intermediate levels which show a complete design with sizes, sections and the relative location of the various members;
  - (b) Schedules of beams, girders and columns; and
  - (c) Design live load values for wind, roof, floor, stairs, guard, handrails, and seismic.
- (12) Mechanical drawings shall include where applicable:
- (a) Specifications which show the complete heating, ventilating, fire protection, medical gas systems and air conditioning systems;
  - (b) Water supply, sewerage and HVAC piping systems;
  - (c) Pressure relationships shall be shown on all floor plans;
  - (d) Heating, ventilating, HVAC piping, medical gas systems and air conditioning systems with all related piping and auxiliaries to provide a satisfactory installation;
  - (e) Water supply, sewage and drainage with all lines, risers, catch basins, manholes and cleanouts clearly indicated as to location, size, capacities, etc., and location and dimensions of septic tank and disposal field; and
  - (f) Color coding to show clearly supply, return and exhaust systems.
- (13) Electrical drawings shall include where applicable:
- (a) A seal, certifying that all electrical work and equipment is in compliance with all applicable codes and that all materials are currently listed by recognized testing laboratories;
  - (b) All electrical wiring, outlets, riser diagrams, switches, special electrical connections, electrical service entrance with service switches, service feeders and characteristics of the light and power current, and transformers when located within the building;

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

- (c) An electrical system that complies with applicable codes;
  - (d) Color coding to show all items on emergency power;
  - (e) Circuit breakers that are properly labeled; and
  - (f) Ground-Fault Circuit Interrupters (GFCI) that are required in all wet areas, such as kitchens, laundries, janitor closets, bath and toilet rooms, etc, and within six (6) feet of any lavatory.
- (14) The electrical drawings shall not include knob and tube wiring, shall not include electrical cords that have splices, and shall not show that the electrical system is overloaded.
- (15) In all new facilities or renovations to existing electrical systems, the installation must be approved by an inspector or agency authorized by the State Fire Marshal.
- (16) Sprinkler drawings shall include where applicable:
- (a) Shop drawings, hydraulic calculations, and manufacturer cut sheets;
  - (b) Site plan showing elevation of fire hydrant to building, test hydrant, and flow data (Data from within a 12 month period); and
  - (c) Show "Point of Service" where water is used exclusively for fire protection purposes.
- (17) The licensed contractor shall not install a system of water supply, plumbing, sewage, garbage or refuse disposal nor materially alter or extend any existing system until the architect or engineer submits complete plans and specifications for the installation, alteration or extension to the department demonstrating that all applicable codes have been met and the department has granted necessary approval.
- (a) Before the nursing home is used, Tennessee Department of Environment and Conservation shall approve the water supply system.
  - (b) Sewage shall be discharged into a municipal system or approved package system where available; otherwise, the sewage shall be treated and disposed of in a manner of operation approved by the Department of Environment and Conservation and shall comply with existing codes, ordinances and regulations which are enforced by cities, counties or other areas of local political jurisdiction.
  - (c) Water distribution systems shall be arranged to provide hot water at each hot water outlet at all times. Hot water at shower, bathing and hand washing facilities shall be between 105°F and 115°F.
- (18) It shall be demonstrated through the submission of plans and specifications that in each nursing home a negative air pressure shall be maintained in the soiled utility area, toilet room, janitor's closet, dishwashing and other such soiled spaces, and a positive air pressure shall be maintained in all clean areas including, but not limited to, clean linen rooms and clean utility rooms.
- (19) The department shall acknowledge that it has reviewed plans and specifications in writing with copies sent to the project architect, the project engineer, the owner, the manager or other executive of the institution. The department may modify the distribution of such review at its discretion.

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

- (20) In the event submitted materials do not appear to satisfactorily comply with 1200-08-06-.08(2), the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.
- (21) The licensed contractor shall execute all construction in accordance with the approved plans and specifications.
- (22) If construction begins within one hundred eighty (180) days of the date of department approval, the department's written notification of satisfactory review constitutes compliance with 1200-08-06-.08(2). This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes or rules of any responsible agency.
- (23) Prior to final inspection, a CD Rom disc, in TIF or PDF format, of the final approved plans including all shop drawings, sprinkler, calculations, hood and duct, addenda, specifications, etc., shall be submitted to the department.
- (24) The department requires the following alarms that shall be monitored twenty-four (24) hours per day:
  - (a) Fire alarms;
  - (b) Generators (if applicable); and
  - (c) Medical gas alarms (if applicable).
- (25) Each nursing home shall ensure that an emergency keyed lock box is installed next to each bank of functioning elevators located on the main level. Such lock boxes shall be permanently mounted seventy-two inches (72") from the floor to the center of the box, be operable by a universal key no matter where such box is located, and shall contain only fire service keys and drop keys to the appropriate elevators.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-57, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-261. **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 July 3, 1984; effective August 1, 1984. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed February 11, 1992; effective March 27, 1992. Amendment filed January 6, 1995; effective March 22, 1995. Amendment filed June 13, 1997; effective August 27, 1997. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed February 18, 2003; effective May 4, 2003. Repeal and new rule filed September 21, 2005; effective December 5, 2005. Amendment filed February 23, 2007; effective May 9, 2007. Repeal and new rule filed December 20, 2011; effective March 19, 2012. Amendment filed January 21, 2016; effective April 20, 2016.

#### 1200-08-06-.09 LIFE SAFETY.

- (1) Any nursing home which complies with the required applicable building and fire safety regulations at the time the board adopts new codes or regulations will, so long as such compliance is maintained (either with or without waivers of specific provisions), be considered to be in compliance with the requirements of the new codes or regulations.
- (2) The nursing home shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. Fire drills shall be held at least quarterly for each work shift for nursing home personnel in each separate patient-occupied nursing home building. There shall be a written report documenting the evaluation of each drill and the action recommended or taken for any

(Rule 1200-08-06-.09, continued)

deficiencies found. Records which document and evaluate these drills must be maintained for at least three (3) years. All fires which result in a response by the local fire department shall be reported to the department within seven (7) days. The report shall contain sufficient information to ascertain the nature and location of the fire, its probable cause and any injuries incurred by any person or persons as a result of the fire. Initial reports by the facility may omit the name(s) of resident(s) and parties involved, however, should the department find the identities of such persons to be necessary to an investigation, the facility shall provide such information.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.

**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. Repeal and new rule filed September 21, 2005; effective December 5, 2005.

#### 1200-08-06-.10 INFECTIOUS AND HAZARDOUS WASTE.

- (1) Each nursing home must develop, maintain and implement written policies and procedures for the definition and handling of its infectious and hazardous wastes. These policies and procedures must comply with the standards of this section and all other applicable state and federal regulations.
- (2) The following waste shall be considered to be infectious waste:
  - (a) Waste contaminated by residents who are isolated due to communicable disease, as provided in the U.S. Centers for Disease Control "Guidelines for Isolation Precautions in Hospitals";
  - (b) Cultures and stocks of infectious agents including specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, waste from the production of biologicals, discarded live and attenuated vaccines, culture dishes and devices used to transfer, inoculate, and mix cultures;
  - (c) Waste human blood and blood products such as serum, plasma, and other blood components;
  - (d) All discarded sharps (e.g., hypodermic needles, syringes, pasteur pipettes, broken glass, scalpel blades) used in resident care or which have come into contact with infectious agents during use in medical, research, or industrial laboratories; or,
  - (e) Other waste determined to be infectious by the facility in its written policy.
- (3) Infectious and hazardous waste must be segregated from other waste at the point of generation, i.e., the point at which the material becomes a waste within the facility.
- (4) Waste must be packaged in a manner that will protect waste handlers and the public from possible injury and disease that may result from exposure to the waste. Such packaging must provide for containment of the waste from the point of generation up to the point of proper treatment or disposal. Packaging must be selected and utilized for the type of waste the package will contain, how the waste will be treated and disposed, and how it will be handled and transported prior to treatment and disposal.

(Rule 1200-08-06-.10, continued)

- (a) Contaminated sharps must be directly placed in leakproof, rigid, and puncture-resistant containers which must then be tightly sealed.
  - (b) Whether disposable or reusable, all containers, bags, and boxes used for containment and disposal of infectious waste must be conspicuously identified. Packages containing infectious waste which pose additional hazards (e.g., chemical, radiological) must also be conspicuously identified to clearly indicate those additional hazards.
  - (c) Reusable containers for infectious waste must be thoroughly sanitized each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners or other devices removed with the waste.
  - (d) Opaque packaging must be used for pathological waste.
- (5) After packaging, waste must be handled and transported by methods ensuring containment and preserving the integrity of the packaging, including the use of secondary containment where necessary.
- (a) Infectious waste must not be compacted or ground (i.e., in a mechanical grinder) prior to treatment, except that pathological waste may be ground prior to disposal.
  - (b) Plastic bags of infectious waste must be transported by hand.
- (6) Waste must be stored in a manner which preserves the integrity of the packaging, inhibits rapid microbial growth and putrefaction, and minimizes the potential of exposure or access by unknowing persons. Waste must be stored in a manner and location which affords protection from animals, precipitation, wind, and direct sunlight, does not present a safety hazard, does not provide a breeding place or food source for insects or rodents and does not create a nuisance.
- (7) In the event of spills, ruptured packaging, or other incidents where there is a loss of containment of waste, the facility must ensure that proper actions are immediately taken to:
- (a) Isolate the area from the public and all except essential personnel;
  - (b) To the extent practicable, repackage all spilled waste and contaminated debris in accordance with the requirements of this rule;
  - (c) Sanitize all contaminated equipment and surfaces appropriately. Written policies and procedures must specify how this will be done; and,
  - (d) Complete an incident report and maintain a copy on file.
- (8) Except as provided otherwise in this rule, a facility must treat or dispose of infectious waste by one or more of the methods specified in this paragraph.
- (a) A facility may treat infectious waste in an on-site sterilization or disinfection device, or in an incinerator or a steam sterilizer, which has been designed, constructed, operated and maintained so that infectious waste treated in such a device is rendered non-infectious and is, if applicable, authorized for that purpose pursuant to current rules of the Department of Environment and Conservation. A valid permit or other written evidence of having complied with the Tennessee Air Pollution Control Regulations shall be available for review, if required. Each sterilizing or disinfection cycle must contain appropriate indicators to assure conditions were met for proper sterilization or disinfection of materials included in the cycle, and records kept. Proper operation of such devices must be verified at least monthly, and records of these monthly checks

(Rule 1200-08-06-.10, continued)

shall be available for review. Waste that contains toxic chemicals that would be volatilized by steam must not be treated in steam sterilizers. Infectious waste that has been rendered to carbonized or mineralized ash shall be deemed non-infectious. Unless otherwise hazardous and subject to the hazardous waste management requirements of the current rules of the Department of Environment and Conservation, such ash shall be disposable as a non-hazardous solid waste under current rules of the Department of Environment and Conservation.

- (b) The facility may discharge liquid or semi-liquid infectious waste to the collection sewerage system of a wastewater treatment facility which is subject to a permit pursuant to T.C.A. §§ 69-3-101, et seq., provided that such discharge is in accordance with any applicable terms of that permit and/or any applicable municipal sewer use requirements.
  - (c) Any health care facility accepting waste from another state must promptly notify the Department of Environment and Conservation, county, and city public health agencies, and must strictly comply with all applicable local, state and federal regulations.
- (9) The facility may have waste transported off-site for storage, treatment, or disposal. Such arrangements must be detailed in a written contract, available for review. If such off-site location is in Tennessee, the facility must ensure that it has all necessary state and local approvals, and such approvals shall be available for review. If the off-site location is in another state, the facility must notify in writing all public health agencies with jurisdiction that the location is being used for management of the facility's waste. Waste shipped off-site must be packaged in accordance with applicable federal and state requirements. Waste transported to a sanitary landfill in this state must meet the requirements of current rules of the Department of Environment and Conservation.
- (10) All garbage, trash and other non-infectious waste shall be stored and disposed of in a manner that shall not permit the transmission of disease, create a nuisance, provide a breeding place for insects and rodents, or constitute a safety hazard. All containers for waste shall be water tight, constructed of easily cleanable material and shall be kept on elevated platforms.

**Authority:** T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, and 68-11-209. **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 July 3, 1984; effective August 1, 1984. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed February 11, 1992; effective March 27, 1992. Amendment filed January 6, 1995; effective March 22, 1995. Amendment filed June 13, 1997; effective August 27, 1997. Repeal and new rule filed January 31, 2000; effective April 15, 2000.

#### 1200-08-06-.11 RECORDS AND REPORTS.

- (1) The nursing home shall report each case of communicable disease to the local county health officer in the manner provided by existing regulations. Failure to report a communicable disease may result in disciplinary action, including revocation of the facility's license.
- (2) The nursing home shall report all incidents of abuse, neglect, and misappropriation to the Department of Health in accordance with T.C.A. § 68-11-211.
- (3) The nursing home shall report the following incidents to the Department of Health in accordance with T.C.A. § 68-11-211.
  - (a) Strike by staff at the facility;

(Rule 1200-08-06-.11, continued)

- (b) External disasters impacting the facility;
  - (c) Disruption of any service vital to the continued safe operation of the nursing home or to the health and safety of its patients and personnel; and
  - (d) Fires at the nursing home that disrupt the provision of patient care services or cause harm to the patients or staff, or that are reported by the facility to any entity, including but not limited to a fire department charged with preventing fires.
- (4) The nursing home shall retain legible copies of the following records and reports for thirty-six months following their issuance. They shall be maintained in a single file and shall be made available for inspection during normal business hours to any person who requests to view them:
- (a) Local fire safety inspections;
  - (b) Local building code inspections, if any;
  - (c) Fire marshal reports;
  - (d) Department licensure and fire safety inspections and surveys;
  - (e) Federal Health Care Financing Administration surveys and inspections, if any;
  - (f) Orders of the Commissioner or Board, if any;
  - (g) Comptroller of the Treasury's audit reports and findings, if any; and,
  - (h) Maintenance records of all safety and patient care equipment.
    - 1. Routine maintenance shall be administered according to the manufacture's recommended maintenance for the above equipment.
    - 2. Ensure that facility staff or contract personnel are appropriately trained to conduct safety and patient care equipment inspections.
- (5) A yearly statistical report, the "Joint Annual Report of Nursing Homes", shall be submitted to the Department. The forms are mailed to each nursing home by the Department each year. The forms shall be completed and returned to the Department as requested.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-804. **Administrative History:** Original rule filed March 27, 1975; effective April 25, 1997. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed December 29, 1993; effective February 15, 1993. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed September 4, 2003; effective November 18, 2003. Amendment filed April 17, 2007; effective July 1, 2007. Amendments filed January 3, 2012; effective April 2, 2012.

**1200-08-06-.12 RESIDENT RIGHTS.**

- (1) The nursing home shall establish and implement written policies and procedures setting forth the rights of residents for the protection and preservation of dignity, individuality and, to the extent medically feasible, independence. Residents and their families or other representatives shall be fully informed and documentation shall be maintained in the resident's file of the following rights:

(Rule 1200-08-06-.12, continued)

- (a) To privacy in treatment and personal care;
- (b) To privacy, if married, for visits by his/her spouse;
- (c) To share a room with his/her spouse (if both are residents);
- (d) To be different, in order to promote social, religious and psychological well being;
- (e) To privately talk and/or meet with and see anyone;
- (f) To send and receive mail promptly and unopened;
- (g) To be free from mental and physical abuse. Should this right be violated, the facility must notify the department within five (5) working days. The Tennessee Department of Human Services, Adult Protective Services shall be notified immediately as required in T.C.A. § 71-6-103;
- (h) To be free from chemical and physical restraints;
- (i) To meet with members of and take part in activities of social, commercial, religious and community groups. The administrator may refuse access to the facility to any person if that person's presence would be injurious to the health and safety of a resident or staff, or would threaten the security of the property of the resident, staff or facility;
- (j) To form and attend resident council meetings. The facility shall provide space for meetings and reasonable assistance to the council when requested;
- (k) To retain and use personal clothing and possessions as space permits;
- (l) To be free from being required by the facility to work or perform services;
- (m) To be fully informed by a physician of his/her health and medical condition. The facility shall give the resident and family the opportunity to participate in planning the resident's care and medical treatment;
- (n) To refuse treatment. The resident must be informed of the consequences of that decision. The refusal and its reason must be reported to the physician and documented in the medical record;
- (o) To refuse experimental treatment and drugs. The resident's or health care decision maker's written consent for participation in research must be obtained and retained in his or her medical record;
- (p) To have their records kept confidential and private. Written consent by the resident must be obtained prior to release of information except to persons authorized by law. If the resident lacks capacity, written consent is required from the resident's health care decision maker. The nursing home must have policies to govern access and duplication of the resident's record;
- (q) To manage personal financial affairs. Any request by the resident for assistance must be in writing. A request for any additional person to have access to a resident's funds must also be in writing;

(Rule 1200-08-06-.12, continued)

- (r) To be told in writing before or at the time of admission about the services available in the facility and about any extra charges, charges for services not covered under Medicare or Medicaid, or not included in the facility's bill;
  - (s) To be free from discrimination because of the exercise of the right to speak and voice complaints;
  - (t) To exercise his/her own independent judgment by executing any documents, including admission forms;
  - (u) To have a free choice of providers of medical services, such as physician and pharmacy. However, medications must be supplied in packaging consistent with the medication system of the nursing home;
  - (v) To be free from involuntary transfer or discharge, except for these reasons:
    - 1. Medical reasons;
    - 2. His/her welfare or that of the other residents; or
    - 3. Nonpayment, except as prohibited by the Medicaid program;
  - (w) To voice grievances and complaints, and to recommend changes in policies and services to the facility staff or outside representatives of the resident's choice. The facility shall establish a grievance procedure and fully inform all residents and family members or other representatives of the procedure;
  - (x) To have appropriate assessment and management of pain; and
  - (y) To be involved in the decision making of all aspects of their care.
- (2) The rights set forth in this section may be abridged, restricted, limited or amended only as follows:
- (a) When medically contraindicated;
  - (b) When necessary to protect and preserve the rights of other residents in the facility; or
  - (c) When contradicted by the explicit provisions of another rule of the board.
- (3) Any reduction in residents' rights based upon medical consideration or the rights of other residents must be explicit, reasonable, appropriate to the justification, and the least restrictive response feasible. They may be time-limited, shall be explained to the resident, and must be documented in the individual resident's record by reciting the limitation's reason and scope. Medical contraindications shall be supported by a physician's order. At least once each month, the administrator and the director of nursing shall review the restriction's justification and scope before removing it, amending it, or renewing it. The names of any residents in the facility whose rights have been restricted under the provisions of this rule shall be maintained on a separate list which shall be available for inspection by the department and by the area long-term care ombudsman.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-901, and 68-11-902. **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 May 24, 2985; effective June 23, 1985. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed May 10, 1990; effective June 24, 1990. Amendment filed

*March 9, 1992; effective April 23, 1992. Amendment filed March 10, 1995; effective May 24, 1995. Amendment filed June 13, 1997; effective August 27, 1997. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed September 21, 2005; effective December 5, 2005.*

**1200-08-06-.13 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.**

- (1) Pursuant to this Rule, each nursing home shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the resident could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the resident could have made while having capacity.
- (3) The advance directive shall be in writing, signed by the resident, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the resident upon the death of the resident. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.
- (4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the resident lacks capacity, and ceases to be effective upon a determination that the resident has recovered capacity.
- (5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.
- (6) A determination that a resident lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (7) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the agent shall consider the resident's personal values to the extent known.
- (8) An advance directive may include the individual's nomination of a court-appointed guardian.
- (9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.
- (10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(Rule 1200-08-06-.13, continued)

- (11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.
- (12) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (13) A resident having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.
- (14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (16) Surrogates.
  - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
  - (b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:
    1. The resident has been determined by the designated physician to lack capacity, and
    2. No agent or guardian has been appointed, or
    3. The agent or guardian is not reasonably available.
  - (c) In the case of a resident who lacks capacity, the resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the resident is receiving health care.
  - (d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.
  - (e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:
    1. The resident's spouse, unless legally separated;
    2. The resident's adult child;
    3. The resident's parent;
    4. The resident's adult sibling;

(Rule 1200-08-06-.13, continued)

5. Any other adult relative of the resident; or
  6. Any other adult who satisfies the requirements of 1200-08-06-.13(16)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the resident or in accordance with the resident's best interests;
  2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;
  3. The proposed surrogate's demonstrated care and concern;
  4. The proposed surrogate's availability to visit the resident during his or her illness; and
  5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If the resident lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-06-.13(16)(c) through 1200-08-06-.13(16)(g) is reasonably available, the designated physician may make health care decisions for the resident after the designated physician either:
1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
  2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the resident's best interest. In determining the resident's best interest, the surrogate shall consider the resident's personal values to the extent known to the surrogate.
- (k) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second

(Rule 1200-08-06-.13, continued)

independent physician certify in the resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.

- (l) Except as provided in 1200-08-06-.13(16)(m):
    - 1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and
    - 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.
  - (m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:
    - 1. The employee so designated is a relative of the resident by blood, marriage, or adoption; and
    - 2. The other requirements of this section are satisfied.
  - (n) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (17) Guardian.
- (a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order to the contrary.
  - (b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.
  - (c) A health care provider may require an individual claiming the right to act as guardian for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (18) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.
- (19) Except as provided in 1200-08-06-.13(20) through 1200-08-06-.13(22), a health care provider or institution providing care to a resident shall:
- (a) Comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and
  - (b) Comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.

(Rule 1200-08-06-.13, continued)

- (20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:
  - (a) Contrary to a policy of the institution which is based on reasons of conscience, and
  - (b) The policy was timely communicated to the resident or to a person then authorized to make health care decisions for the resident.
- (22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.
- (23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-06-.13(20) through 1200-08-06-.13(22) shall:
  - (a) Promptly so inform the resident, if possible, and any person then authorized to make health care decisions for the resident;
  - (b) Provide continuing care to the resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;
  - (c) Unless the resident or person then authorized to make health care decisions for the resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or institution that is willing to comply with the instruction or decision; and
  - (d) If a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.
- (24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
  - (a) Complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;
  - (b) Declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
  - (c) Complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.
- (26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(Rule 1200-08-06-.13, continued)

- (28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (29) The withholding or withdrawal of medical care from a resident in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (30) Physician Orders for Scope of Treatment (POST)
- (a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:
1. With the informed consent of the patient;
  2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or
  3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.
- (b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:
1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);
  2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;
  3. Either:
    - (i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or
    - (ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and
  4. Either:
    - (i) With the informed consent of the patient;

(Rule 1200-08-06-.13, continued)

- (ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or
  - (iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
- (c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.
- (d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.
- (e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.
- (f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.
- (g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

(Rule 1200-08-06-.13, continued)

- (h) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to then-current law, shall remain valid and shall be given effect as provided in these rules.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, and 68-11-1801 through 68-11-1815. **Administrative History:** Original rule filed June 22, 1992; effective August 6, 1992. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 28, 2003; effective July 12, 2003. Repeal and new rule filed September 21, 2005; effective December 5, 2005. Amendment filed February 7, 2007; effective April 23, 2007. Amendments filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.

#### 1200-08-06-.14 DISASTER PREPAREDNESS.

- (1) Emergency Electrical Power.
- (a) All nursing homes must have one or more on-site electrical generators which are capable of providing emergency electrical power to at least all life sustaining equipment and life sustaining resources such as: ventilators, blood banks, biological refrigerators, safety switches for boilers, safety lighting for corridors and stairwells, and other essential equipment.
  - (b) Connections shall be through a switch which shall automatically transfer the circuits to the emergency power source in case of power failure. It is recognized that some equipment may not sustain automatic transfer and provisions will have to be made to manually change these items from a non-emergency powered outlet to an emergency powered outlet or other power source. All emergency power transfer switches shall be labeled as such. Switches affecting heat, ventilation, and all systems shall be labeled.
  - (c) The emergency power system shall have a minimum of twenty four (24) hours of either propane, gasoline or diesel fuel. The quantity shall be based on its expected or known connected load consumption during power interruptions. In addition, the nursing home shall have a written contract with an area fuel distributor which guarantees first priority service for re-fills during power interruptions.
  - (d) The emergency power system (generator) shall be inspected weekly and exercised under actual load and operating temperature conditions for at least thirty (30) minutes, once each month, including automatic and manual transfer of equipment. The generator shall be exercised by trained facility staff who are familiar with the systems operation. Instructions for the operation of the systems and the manual transfer of emergency power shall be maintained with the facility's disaster preparedness plan and shall be separately identified in the plan. Records shall be maintained for all weekly inspections and monthly tests and be kept on file for a minimum of three (3) years.
- (2) Physical Facility and Community Emergency Plans.
- (a) Physical Facility (Internal Situations).
    1. Every nursing home shall have a current internal emergency plan, or plans, that provides for fires, bomb threats, severe weather, utility service failures, plus any local high risk situations such as floods, earthquakes, toxic fumes and chemical spills. The plan should consider the probability of the types of disasters which might occur, both natural and "man-made".
    2. The plan(s) must include provisions for the relocation of persons within the building and/or either partial or full building evacuation. Facilities which do not have sufficient emergency generator capacity to provide a place of refuge for

(Rule 1200-08-06-.14, continued)

residents during severe hot or cold weather emergencies shall specifically establish an emergency plan to assure a common area (dining room, hallway, or day rooms) is heated or cooled sufficiently to sustain residents during an emergency. This can be accomplished through several approaches including the installation of a transfer switch at the facility to which an emergency generator may be connected to operate a HVAC system for the place of refuge, or transportation of a generator to the facility and direct connection from the generator to emergency portable heating or cooling units. The plan must be coordinated with local emergency management agencies that provide emergency generators or heating or cooling units; and facilities are encouraged to enter into private agreements with local generator suppliers, rental agencies or other reliable sources of emergency power. Plans that provide for the relocation of residents to other health care facilities must have written agreements for emergency transfers. The agreements may be mutual, i.e. providing for transfers either way.

3. Copies of the plan(s), either complete or outlines, including specific emergency telephone numbers related to that type of disaster, shall be available to all staff. A copy shall be readily available at all times in the telephone operator's position or at the security center. Provisions that have security implications may be omitted from the outline versions. Familiarization information shall be included in employee orientation sessions and more detailed instructions must be included in continuing education programs. Records of orientation and education programs must be maintained for at least three (3) years.
4. The plan must provide for additional staffing, medical supplies, blood and other resources which would probably be needed.
5. Each of the following disaster preparedness plans shall be conducted annually prior to the month listed in the plan. Drills are for the purpose of educating staff, resource determination, testing personnel safety provisions and communications with other facilities and community agencies. Records which document and evaluate these drills must be maintained for at least three (3) years.
  - (i) Fire Safety Procedures Plan, to be exercised at any time during the year, shall include:
    - (I) Minor fires;
    - (II) Major fires;
    - (III) Fighting the fire;
    - (IV) Evacuation procedures;
    - (V) Staff functions by department and job assignment; and,
    - (VI) Fire drill schedules (fire drills shall be held at least quarterly on each work shift).
  - (ii) External disaster procedures plan (for tornado, flood, earthquake), to be exercised prior to March, shall include:
    - (I) Staff duties by department and job assignment; and,
    - (II) Evacuation procedures.

(Rule 1200-08-06-.14, continued)

- (iii) Bomb Threat Procedures Plan, to be exercised at any time during the year:
    - (I) Staff duties by department and job assignment; and,
    - (II) Search team, searching the premises.
  - 6. The nursing home shall develop and periodically review with all employees a prearranged plan for the orderly evacuation of all residents in case of a fire, internal disaster or other emergency. The plan of evacuation shall be posted throughout the home. Fire drills shall be held at least quarterly for each work shift for nursing home personnel in each separate patient-occupied nursing home building. There shall be a written report documenting the evaluation of each drill and the action recommended or taken for any deficiencies found. Records which document and evaluate these drills must be maintained for at least three (3) years.
- (b) Community Emergency (Mass Casualty).
- 1. Every nursing home, unless exempted due to its limited scope of clinical services, shall have a plan that provides for the reception and treatment, within its capabilities, of medical emergencies resulting from a disaster within its usual service area. The plan should consider the probability of the types of disasters which might occur, both natural and "man-made".
  - 2. The plan must provide for additional staffing, medical supplies, blood and other resources which would probably be needed. The plan must also provide for the deferral of elective admission patients and also for the early transfer or discharge of some current patients if it appears that the number of casualties will exceed available staffed beds.
  - 3. Copies of the plan(s), either complete or outlines, including specific emergency telephone numbers related to that type of disaster, shall be available to staff who would be assigned non-routine duties during these types of emergencies. Familiarization information shall be included in employee orientation sessions and more detailed instruction must be included in continuing education programs. Records of orientation and education must be maintained for at least three (3) years.
  - 4. At least one drill shall be conducted each year for the purpose of educating staff, resource determination, and communications with other facilities and community agencies. Records which document and evaluate these drills must be maintained for at least three (3) years.
  - 5. As soon as possible, actual community emergency situations that result in the treatment of more than twenty (20) patients, or fifteen percent (15%) of the licensed bed capacity, whichever is less, must be documented. Actual situations that had education and training value may be substituted for a drill. This includes documented actual plan activation during community emergencies, even if no patients are received.
- (c) Emergency Planning with Local Government Authorities.
- 1. All nursing homes shall establish and maintain communications with the county Emergency Management Agency. This includes the provision of the information and procedures that are needed for the local comprehensive emergency plan.

(Rule 1200-08-06-.14, continued)

The facility shall cooperate, to the extent possible, in area disaster drills and local emergency situations.

2. Each nursing home must rehearse both the Physical Facility and Community Emergency plan as required in this rule, even if the local Emergency Management Agency is unable to participate.
3. A file of documents demonstrating communications and cooperation with the local agency must be maintained.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.  
**Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed September 21, 2005; effective December 5, 2005.

**1200-08-06-.15 NURSE AIDE TRAINING AND COMPETENCY EVALUATION.** All nurse aide training programs must comply with the federal nurse aide training and competency regulations, promulgated pursuant to the Omnibus Budget Reconciliation Act of 1987, and with federal labor laws, including but not limited to minimum age requirements. Copies of these regulations may be obtained from the department.

(1) Testing service.

- (a) The Department shall provide or contract for the provision of nurse aide testing services as follows:
  1. Annual publication of testing schedules and sites.
  2. Test sites shall be located so that no individual is required to drive farther than thirty (30) miles to reach a test site.
  3. Scheduled tests shall be administered, except when no individual is scheduled to test at a particular test site.
  4. The number of individuals passing and failing shall be published following each test.
  5. The minimum passing grade for each test shall be seventy-five percent (75%) for the written or oral component. The performance demonstration portion of the test shall consist, at minimum, of five performance tasks, which shall be selected randomly for each registrant from a pool of skills evaluation tasks ranked according to degree of difficulty, with at least one task selected from each degree of difficulty. Registrants are required to pass a minimum of five (5) performance tasks.
  6. Individuals who fail any portion of the test three (3) consecutive times shall repeat training prior to taking the test again.
- (b) Applications to take the test shall be sent by the program coordinator to the appropriate testing agency postmarked no later than thirty (30) days prior to the test date. Requests for special testing needs shall be made to the testing agency at this time.
- (c) The department shall provide the board with quarterly reports on the number of individuals passing and failing each test.
- (d) A practical and written test will be developed to reflect that a trainee has acquired the minimum competency skills necessary to become a competent and qualified nurse

(Rule 1200-08-06-.15, continued)

aide. The Nurse Aide Advisory Committee, composed of twelve (12) members with at least three (3) members nominated by the Tennessee Health Care Association, will periodically review testing materials and set criteria for survey visits of the nurse aide programs.

- (e) The test will be developed from a pool of questions, only a portion of which is to be used for grading purposes in any one test, not to exceed one hundred (100) questions. A system must be developed which prevents the disclosure of the pool of questions and of the performance demonstration portion of the test.

(2) Training program.

- (a) Requests for approval of a nurse aide training program shall be submitted to the department and shall include the following:
  - 1. Name, address and telephone number of the facility, institution or agency offering the program;
  - 2. The program coordinator's name, address, license number and verification of a minimum of two (2) years nursing experience, at least one of which must be in the provision of long-term care facility services;
  - 3. Statement of course objectives;
  - 4. Description of course content specifying the number of hours to be spent in the classroom and in clinical settings; and,
  - 5. In lieu of (3) and (4) above, the fact that the curriculum is previously department-approved.
- (b) Notification of any change to any one of the above five (5) items or termination of the program must be submitted to the department within 30 days.
- (c) Each training program shall have a pass rate on both written and performance exams of at least 70%. Annual reviews of Nurse Aide Training Programs shall include:
  - 1. Letter of commendation for exceptional pass rate as evaluated by the department;
  - 2. Letter of concern for programs having one year of test pass rates below 70%;
  - 3. Request for plan of program improvement for programs with two consecutive years of test pass rates below 70%;
  - 4. After the third year of consecutive test pass rates below seventy-percent (70%), the program shall be closed for no less than twenty-four (24) months. All students enrolled in the program shall be allowed to complete the course. Any program closed may appeal the closure to the Board pursuant to the Uniform Administrative Procedures Act compiled in Title 4, Chapter 5, Part 3.
- (d) Each program coordinator shall be responsible for ensuring that the following requirements are met:
  - 1. Course objectives are accomplished;

(Rule 1200-08-06-.15, continued)

2. Only persons having appropriate skills and knowledge are selected to conduct any part of the training;
  3. The provision of direct individual care to residents by a trainee is limited to appropriately supervised clinical experiences; a program instructor must be present or readily available on-site during all clinical training hours including direct patient care for the seventy-five (75) hour training program. All activities of daily living (ADL) skills, including but not limited to bathing, feeding, toileting, grooming, oral care, and perineal care, must be taught prior to student performing direct patient care;
  4. The area used for training is well-lighted, well-ventilated and provides for privacy for instruction. Such requirements are not to exceed the requirements for physical space in a nursing facility;
  5. Each trainee demonstrates competence in clinical skills and fundamental principles of resident care;
  6. Records are kept to verify the participation and performance of each trainee in each phase of the training program. The satisfactory completion of the training program by each trainee shall be attested to on each trainee's record;
  7. Each trainee is issued a certificate of completion which includes at least the name of the program, the date of issuance, the trainee's name and the signature of the program coordinator.
  8. The program coordinator shall be responsible for the completion, signing and submission to the department of all required documentation.
- (e) Student to teacher ratio must be as follows: 25:1 in classroom and 15:1 for direct patient care training.
- (3) Nurse Aide Registry. A nursing home must not use any individual working in a facility as a nurse aide for more than four (4) months unless that individual's name is included on the Nurse Aide Registry. A facility must not use on a temporary, per diem, leased or any basis other than permanent, any individual who does not meet the requirements of training and competency testing.
- (a) The nurse aide registry shall include:
1. The individual's full name, including a maiden name and any other surnames used;
  2. The individual's last known home address;
  3. The individual's date of birth; and,
  4. The date that the individual passed the competency test and the expiration date of the individual's current registration.
- (b) The name of any individual who has not performed nursing or nursing related services for a period of twenty-four (24) consecutive months shall be removed from the Nurse Aide Registry.

(Rule 1200-08-06-.15, continued)

- (4) Continued Competency. The facility must complete a performance review of each nurse aide employee at least once every 12 months and must provide regular in-service education based on the outcome of these reviews.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-804. **Administrative History:** Original rule filed September 4, 2003; effective November 18, 2003. Amendment filed March 27, 2015; effective June 25, 2015..

1200-08-06-.16 APPENDIX I

- (1) Physician Orders for Scope of Treatment (POST) Form

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST")	Patient's Last Name
This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, <u>first</u> follow these orders, then contact physician.	First Name/Middle Initial
	Date of Birth
<b>Section A</b> Check One Box Only	<b>CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse <u>and</u> is not breathing.</b> <input type="checkbox"/> Resuscitate(CPR) <input type="checkbox"/> Do <u>Not</u> Attempt Resuscitation (DNR / no CPR) ( <u>Allow Natural Death</u> ) When not in cardiopulmonary arrest, follow orders in B, C, and D.
<b>Section B</b> Check One Box Only	<b>MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.</b> <input type="checkbox"/> <b>Comfort Measures Only.</b> Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. <b>Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.</b> <input type="checkbox"/> <b>Limited Additional Interventions.</b> In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BIPAP). <b>Transfer to hospital if indicated. Generally avoid the intensive care unit. Treatment Plan: basic medical treatments.</b> <input type="checkbox"/> <b>Full Treatment.</b> In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. <b>Transfer to hospital and/or intensive care unit if indicated. Treatment Plan: Full treatment including in the intensive care unit.</b> Other Instructions: _____
<b>Section C</b> Check One	<b>ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids &amp; nutrition must be offered if feasible.</b> <input type="checkbox"/> No artificial nutrition by tube. <input type="checkbox"/> Defined trial period of artificial nutrition by tube. <input type="checkbox"/> Long-term artificial nutrition by tube. Other Instructions: _____

(Rule 1200-08-06-.16, continued)

<b>Section D</b>  <i>Must be Completed</i>	<b>Discussed with:</b> <input type="checkbox"/> Patient/Resident <input type="checkbox"/> Health care agent <input type="checkbox"/> Court-appointed guardian <input type="checkbox"/> Health care surrogate <input type="checkbox"/> Parent of minor <input type="checkbox"/> Other: _____ (Specify)	<b>The Basis for These Orders Is: (Must be completed)</b> <input type="checkbox"/> Patient's preferences <input type="checkbox"/> Patient's best interest (patient lacks capacity or preferences unknown) <input type="checkbox"/> Medical indications <input type="checkbox"/> (Other) _____		
	Physician/NP/CNS/PA Name (Print)	Physician/NP/CNS/PA Signature    Date  NP/CNS/PA (Signature at Discharge)	MD/NP/CNS/PA    Phone Number:	
<b>Signature of Patient, Parent of Minor, or Guardian/Health Care Representative</b>				
Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.				
Name (print)		Signature	Relationship (write "self" if patient)	
Agent/Surrogate		Relationship	Phone Number	
Health Care Professional Preparing Form		Preparer Title	Phone Number    Date Prepared	



(Rule 1200-08-06-.16, continued)

**Directions for Health Care Professionals****Completing POST**

Must be completed by a health care professional based on patient preferences, patient best interest, and medical indications.

To be valid, POST must be signed by a physician or, at discharge or transfer from a hospital or long term care facility, by a nurse practitioner (NP), clinical nurse specialist (CNS), or physician assistant (PA). Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

Persons with DNR in effect at time of discharge must have POST completed by health care facility prior to discharge and copy of POST provided to qualified medical emergency personnel.

Photocopies/faxes of signed POST forms are legal and valid.

**Using POST**

Any incomplete section of POST implies full treatment for that section.

No defibrillator (including AEDs) should be used on a person who has chosen "Do Not Attempt Resuscitation".

Oral fluids and nutrition must always be offered if medically feasible.

When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only", should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).

IV medication to enhance comfort may be appropriate for a person who has chosen "Comfort Measures Only".

Treatment of dehydration is a measure which prolongs life. A person who desires IV fluids should indicate "Limited Interventions" or "Full Treatment".

A person with capacity, or the Health Care Agent or Surrogate of a person without capacity, can request alternative treatment.

**Reviewing POST**

This POST should be reviewed if:

- (1) The patient is transferred from one care setting or care level to another, or
- (2) There is a substantial change in the patient's health status, or
- (3) The patient's treatment preferences change.

Draw line through sections A through D and write "VOID" in large letters if POST is replaced or becomes invalid.

(Rule 1200-08-06-.16, continued)

(2) Advance Directive for Health Care Form

**ADVANCE DIRECTIVE FOR HEALTH CARE\***  
(Tennessee)

**Instructions:** Parts 1 and 2 may be used together or independently. Please mark out/void any unused part(s). Part 5, Block A or Block B must be completed for all uses.

I, \_\_\_\_\_, hereby give these advance instructions on how I want to be treated by my doctors and other health care providers when I can no longer make those treatment decisions myself.

**Part 1 Agent:** I want the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: \_\_\_\_\_ Relation: \_\_\_\_\_ Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_ Other Phone: \_\_\_\_\_

**Alternate Agent:** If the person named above is unable or unwilling to make health care decisions for me, I appoint as alternate the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: \_\_\_\_\_ Relation: \_\_\_\_\_ Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_ Other Phone: \_\_\_\_\_

My agent is also my personal representative for purposes of federal and state privacy laws, including HIPAA.

**When Effective** (mark one):  I give my agent permission to make health care decisions for me at any time, even if I have capacity to make decisions for myself.  I do not give such permission (this form applies only when I no longer have capacity).

**Part 2 Indicate Your Wishes for Quality of Life:** By marking "yes" below, I have indicated conditions I would be willing to live with if given adequate comfort care and pain management. By marking "no" below, I have indicated conditions I would not be willing to live with (that to me would create an **unacceptable** quality of life).

<input type="checkbox"/>	<input type="checkbox"/>	<b>Permanent Unconscious Condition:</b> I become totally unaware of people or surroundings with little chance of ever waking up from the coma.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Permanent Confusion:</b> I become unable to remember, understand, or make decisions. I do not recognize loved ones or cannot have a clear conversation with them.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Dependent in all Activities of Daily Living:</b> I am no longer able to talk or communicate clearly or move by myself. I depend on others for feeding, bathing, dressing, and walking. Rehabilitation or any other restorative treatment will not help.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>End-Stage Illnesses:</b> I have an illness that has reached its final stages in spite of full treatment. Examples: Widespread cancer that no longer responds to treatment; chronic and/or damaged heart and lungs, where oxygen is needed most of the time and activities are limited due to the feeling of suffocation.
Yes	No	

**Indicate Your Wishes for Treatment:** If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "no" below, I have indicated treatment I **do not want**.

(Rule 1200-08-06-.16, continued)

<input type="checkbox"/>	<input type="checkbox"/>	<b>CPR (Cardiopulmonary Resuscitation):</b> To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Life Support / Other Artificial Support:</b> Continuous use of breathing machine, IV fluids, medications, and other equipment that helps the lungs, heart, kidneys, and other organs to continue to work.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Treatment of New Conditions:</b> Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Tube feeding/IV fluids:</b> Use of tubes to deliver food and water to a patient's stomach or use of IV fluids into a vein, which would include artificially delivered nutrition and hydration.
Yes	No	

**Part 3** Other instructions, such as hospice care, burial arrangements, etc.: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Attach additional pages if necessary)

**Part 4 Organ donation:** Upon my death, I wish to make the following anatomical gift for purposes of transplantation, research, and/or education (mark one):

- Any organ/tissue     My entire body     Only the following organs/tissues: \_\_\_\_\_  
 \_\_\_\_\_  
 No organ/tissue donation

**SIGNATURE**

**Part 5** Your signature must either be witnessed by two competent adults ("Block A") or by a notary public ("Block B").

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Patient)

**Block A** Neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Witnesses:

1. I am a competent adult who is not named as the agent or alternate. I witnessed the patient's signature on this form. \_\_\_\_\_  
 Signature of witness number 1

2. I am a competent adult who is not named as the agent or alternate. I am not related to the patient by blood, marriage, or adoption and I would not be entitled to any portion of the patient's estate upon his or her death under any existing will or codicil or by operation of law. I witnessed the patient's signature on this form. \_\_\_\_\_  
 Signature of witness number 2

**Block B** You may choose to have your signature witnessed by a notary public instead of the witnesses described in Block A.

STATE OF TENNESSEE  
 COUNTY OF \_\_\_\_\_

(Rule 1200-08-06-.16, continued)

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed as the "patient." The patient personally appeared before me and signed above or acknowledged the signature above as his or her own. I declare under penalty of perjury that the patient appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

**WHAT TO DO WITH THIS ADVANCE DIRECTIVE:** (1) provide a copy to your physician(s); (2) keep a copy in your personal files where it is accessible to others; (3) tell your closest relatives and friends what is in the document; and (4) provide a copy to the person(s) you named as your health care agent.

\* This form replaces the old forms for durable power of attorney for health care, living will, appointment of agent, and advance care plan, and eliminates the need for any of those documents.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.  
**Administrative History:** Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendments filed February 8, 2017; effective May 9, 2017.

**RULES  
OF  
TENNESSEE DEPARTMENT OF HEALTH  
BOARD FOR LICENSING HEALTH CARE FACILITIES**

**CHAPTER 1200-08-11  
STANDARDS FOR HOMES FOR THE AGED**

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**1200-08-11-.01 DEFINITIONS.**

- (1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.
- (2) Activities of Daily Living (ADL's). Those personal functional activities which indicate an individual's independence in eating, dressing, personal hygiene, bathing, toileting, and moving from one place to another.
- (3) Adult. An individual who has capacity and is at least 18 years of age.
- (4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (5) Aged. A person who is fifty-five (55) years of age or older.
- (6) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- (7) Ambulatory resident. A resident who is physically and mentally capable under emergency conditions of finding a way to safety without physical assistance from another person. An ambulatory resident may use a cane, wheelchair or other supportive device and may require verbal prompting.
- (8) Board. The Tennessee Board for Licensing Health Care Facilities.
- (9) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.
- (10) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to restore or support cardiopulmonary function in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual

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

or mechanical ventilators or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a resident where cardiac or respiratory arrest has occurred or is believed to be imminent.

- (11) Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.
- (12) Department. The Tennessee Department of Health.
- (13) Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- (14) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.
- (15) Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.
- (16) Emergency. Any situation or condition which presents an imminent danger of death or serious physical or mental harm to residents.
- (17) Emergency responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.
- (18) Evacuation Capability. The ability to either evacuate the building or move to a point of safety.
- (19) Guardian. A judicially appointed guardian of conservator having authority to make a health care decision
- (20) Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state, or federal regulations.
- (21) Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5)
- (22) Health care decision. Consent, refusal or consent or withdrawal of consent to health care.
- (23) Health Care Decision-maker. In the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or conservator with healthcare decision-making authority, the resident's surrogate as determined pursuant to Rule 1200-08-11-.12 or T.C.A. § 33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (24) Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.
- (25) Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

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

- (26) Holding Out to the Public. Advertising or soliciting the public through the use of personal, telephone, mail or other forms of communication to provide information about services provided by the facility.
- (27) Home for the Aged. A home represented and held out to the general public as a home which accepts primarily aged persons for relatively permanent, domiciliary care with primarily being defined as 51% or more of the population of the home for the aged. It provides room, board and personal services to four (4) or more nonrelated persons. The term home includes any building or part thereof which provides services as defined in these rules.
- (28) Home for the Aged Resident. A person who is ambulatory and who requires permanent, domiciliary care but who will be transferred to a licensed hospital, licensed nursing home or licensed assisted care living facility when health care services are needed which must be provided in such other facilities.
- (29) Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (28) Individual instruction. An individual's direction concerning a health care decision for the individual.
- (30) Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.
- (31) Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.
- (32) Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.
- (33) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident.
- (34) N.F.P.A. The National Fire Protection Association.
- (35) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.
- (36) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.
- (37) Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.
- (38) Personal Services. Those services that are rendered to residents who need supervision or assistance in activities of daily living. Personal services must include protective care of the resident, responsibility for the safety of the resident when in the facility, daily awareness of

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

the resident's whereabouts and the ability and readiness to intervene if crises arise. Personal services do not include nursing or medical care.

- (39) Personally Informing. A communication by any effective means from the resident directly to a health care provider.
- (40) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.
- (41) Physician Orders for Scope of Treatment or POST. Written orders that:
  - (a) Are on a form approved by the Board for Licensing Health Care Facilities;
  - (b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and
  - (c)
    - 1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;
    - 2. Specify other medical interventions that are to be provided or withheld; or
    - 3. Specify both 1 and 2.
- (42) Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.
- (43) Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency services personnel providers, or entities acting within the usual course of their professions, and other emergency responders.
- (44) Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not limited to, availability by telephone.
- (45) Responsible Attendant. The person designated by the licensee who remains awake to provide personal services to the residents. In the absence of the licensee, the responsible attendant is responsible for ensuring the home complies with all rules and regulations.
- (46) Secured Unit. A facility or distinct part of a facility where the residents are intentionally denied egress by any means.
- (47) Shall or Must. Compliance is mandatory.
- (48) 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.
- (49) 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.

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

- (50) Surrogate. An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.
- (51) 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. Amendments filed July 10, 2018; effective October 8, 2018.

#### 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           | \$ 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

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

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.
- (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

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

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) 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

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

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, and 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. Amendments filed March 21, 2018; to have been effective June 19, 2018. However, on May 24, 2018, the Government Operations Committee filed a 5-day stay; new effective date June 24, 2018.

#### 1200-08-11-.03 DISCIPLINARY PROCEDURES.

- (1) The board may suspend or revoke a license for:
  - (a) Violation of 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 home;
  - (d) Conduct or practice found by the board to be detrimental to the health, safety, or welfare of the residents of the 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 home;
  - (c) The conduct of the home in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and
  - (d) Any prior violations by the home of statutes, rules or orders of the Commissioner or the board.
- (3) Failure to timely submit an acceptable plan of correction shall subject the home's license to possible disciplinary action.
- (4) The Commissioner may suspend the admission of any new residents to the home, pending a prompt hearing before the board or an administrative law judge, when the conditions are or are likely to be detrimental to the health, safety or welfare of the residents.

(Rule 1200-08-11-.03, continued)

- (5) Whenever the Commissioner suspends the admission of any new residents to the home because of the detrimental conditions found, the home shall post a copy of the Commissioner's Order upon the public entrance doors of the facility and prominently display it there for so long as it remains effective and until the Commissioner or the board removes the suspension and restores the facility's ability to admit new residents. During the suspension, the home shall inform any person who inquires about the admission of a new resident of the provisions of the order and make a copy of the order available for the inquirer's inspection.
- (6) Following a contested case hearing, the board may find a facility's license subject to suspension or revocation and may then immediately impose any sanction authorized by law.
- (7) The board may recommend the appointment of one or more special monitors to serve such term and to be present in the home for such hours each week as the board finds necessary and appropriate, as specified in its order. The home shall reimburse the reasonable fees and expenses of any special monitor so appointed by the board.
- (8) Any licensee or applicant for a license, aggrieved by a decision or action of the department or board, pursuant to this rule, may request a hearing before the board. The proceedings and judicial review of the board's decision shall be in accordance with the Uniform Procedures Act, T.C.A. §§ 4-5-101, et seq.
- (9) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-208, 68-11-209, and 68-11-221. **Administrative History:** Original rule filed June 21, 1979; effective August 6, 1979. Amendment filed August 16, 1988; effective September 30, 1988. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed March 1, 2007; effective May 15, 2007.

**1200-08-11-.04 ADMINISTRATION.**

- (1) The licensee shall be at least eighteen (18) years of age, of reputable and responsible character, able to comply with these rules, and must maintain financial resources and income sufficient to provide for the needs of the residents, including their room, board and personal services.
- (2) The licensee must designate in writing a capable and responsible person to act on administrative matters and to exercise all the powers and responsibilities of the licensee as set forth in this chapter in the absence of the licensee.
- (3) Each home must have an administrator who shall be certified by the board, unless the administrator is currently licensed in Tennessee as a nursing home administrator pursuant to T.C.A. §§ 63-16-101, et seq.
- (4) An applicant for certification as a home for the aged administrator shall meet the following requirements:
  - (a) Must be at least eighteen (18) years of age and a high school graduate or the holder of a general equivalency diploma.
  - (b) Must not have been convicted of a criminal offense involving the abuse or intentional neglect of an elderly or vulnerable individual.

(Rule 1200-08-11-.04, continued)

- (c) Must submit an application, on a form provided by the department, and a fee of one hundred eighty dollars (\$180) prior to issuance or renewal of a certificate. All certificates shall expire biennially on June 30, thereafter.
- (d) Biennial renewal of certification is required. The renewal application and fee of one hundred eighty dollars (\$180) shall be submitted with written proof of attendance, during the period prior to renewal, of at least twenty-four (24) classroom hours of continuing education courses. The initial biennial re-certification expiration date of Home for the Aged administrator candidates who receive their initial administrator certification between the dates of January 1 and June 30 of any year will be extended to two (2) years plus the additional months remaining in the fiscal year. The extension applies only to the first biennial certification period for any such administrator and may only be applied when there are less than six (6) months remaining in the State fiscal year.
- (e) Continuing education.
  - 1. The twenty-four (24) classroom hours of required continuing education courses shall include instruction in the following:
    - (i) State rules and regulations for homes for the aged;
    - (ii) Health care management;
    - (iii) Nutrition and food service;
    - (iv) Financial management; and
    - (v) Healthy lifestyles.
  - 2. All educational courses must be approved by the board. Courses sponsored by the National Association of Residential Care Facilities and the National Association of Nursing Home Administrators are deemed approved by the board.
  - 3. In order to obtain board approval for educational courses, a copy of the course curriculum must be submitted to the board for approval prior to attending the course.
  - 4. Proof of administrator certification course attendance shall be submitted to the department upon completion of the course.
- (5) Infection Control. A Home for the Aged shall have an annual influenza vaccination program which shall include at least:
  - (a) 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 Home for the Aged will encourage all staff and independent practitioners to obtain an influenza vaccination;
  - (b) 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 <https://www.tn.gov/content/dam/tn/health/documents/SampleIndividualFluForm.pdf>);
  - (c) Education of all employees about the following:

(Rule 1200-08-11-.04, continued)

1. Flu vaccination,
  2. Non-vaccine control measures, and
  3. The diagnosis, transmission, and potential impact of influenza;
- (d) An annual evaluation of the influenza vaccination program and reasons for non-participation; and
- (e) 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.
- (6) Each home for the aged shall:
- (a) Have an identified responsible attendant and a sufficient number of employees to meet the needs of the residents. The responsible attendant must be at least eighteen (18) years of age and able to comply with these rules.
  - (b) Have a responsible awake attendant on the premises at all times.
  - (c) Maintain documentation of the checks of the "Registry of Persons who have Abused or Intentionally Neglected Elderly or Vulnerable Individuals" prior to hiring any employee.
  - (d) Have a written statement of policies and procedures outlining the responsibilities of the licensee to the resident and any obligation of the resident to the facility.
  - (e) Post whether they have liability insurance, the identity of their primary insurance carrier, and if self-insured, the corporate entity responsible for payment of any claims. It shall be posted on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height and displayed at the main public entrance.
  - (f) Keep a written up-to-date log of all residents and produce the log for the local fire department in the event of an emergency.
  - (g) Maintain written policies and procedures informing the resident of his/her rights and how to register grievances and complaints.
  - (h) Not allow an owner, responsible attendant, employee or representative thereof to act as a court-appointed guardian, trustee, or conservator for any resident of the facility or any of such resident's property or funds, except as provided by rule 1200-08-11-.10.
  - (i) Cooperate in the Department's inspections including allowing entry at any hour and providing all required records.
  - (j) Develop and follow a written policy, plan, procedure, technique or system regarding a subject whenever these rules require that a licensee develop such a plan. A residential home which violates a required policy also violates the rule establishing the requirements.
  - (k) Not retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the board, the department, Adult Protective Services, the Comptroller of the State Treasury or the Long Term Care Ombudsman Program. A home shall neither retaliate nor discriminate because of information lawfully provided to these authorities, because of a person's cooperation

(Rule 1200-08-11-.04, continued)

with them or because a person is subpoenaed to testify at a hearing involving one of these authorities.

- (l) Allow pets in the home only when they are not a nuisance or do not pose a health hazard.
  - (m) Comply with all local laws, rules or ordinances, and with this chapter.
  - (n) The facility shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.
- (7) No occupant or employee who has a reportable communicable disease, as stipulated by the department, is permitted to reside or work in a home unless the home has a written protocol approved by the department.
- (8) All health care facilities licensed pursuant to T.C.A. §§ 68-11-201, et seq. shall post the following in the main public entrance:
- (a) Contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office;
  - (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
  - (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.
- Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.
- (9) "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.
- (10) Residents of the facility are exempt from the smoking prohibition. The resident smoking practices shall be governed by the policies and procedures established by the facility. Smoke from such areas shall not infiltrate into areas where smoking is prohibited.

(11) Mandatory Testing for COVID-19.

- (a) The requirements of this paragraph apply to all homes for the aged licensed under Title 68, Chapter 11.
- (b) Homes for the aged shall comply with all Department of Health infection and prevention directives concerning staff and resident testing, including making off-shift staff available at the facility for testing.
- (c) "Staff" or "Staff member" for the purposes of this paragraph shall mean an employee or any individual who contracts with the facility to provide resident care.
- (d) Initial Statewide Testing:

(Rule 1200-08-11-.04, continued)

1. Each home for the aged must complete an "intent to test" survey as provided for by the Department prior to June 1, 2020.
  2. Each home for the aged resident and staff member must be tested by June 30, 2020.
  3. Initial statewide testing may be done at the State Public Health Lab (SPHL), commercial labs with whom the State has agreements or through commercial laboratories with whom the facility has agreements. The facility may use any commercial labs using a test with U.S. Food and Drug Administration (FDA) emergency use authorization and which will report results as required by law.
  4. The Department shall assist any home for the aged without nursing staff in securing the licensed personnel necessary to take resident and staff samples, but facility support will be required for administrative tasks.
  5. A home for the aged may use a commercial lab without the prior consent of the Department.
  6. Within one (1) day of the effective date of this rule, the Department shall publish a list of previously approved labs.
  7. The Department will provide sufficient personal protective equipment for the initial statewide testing described in this paragraph.
- (e) Residents and staff have the right to refuse testing. Each facility shall document the staff or resident's refusal by having the individual sign documentation created by the facility indicating that they have refused testing.
- (f) A violation of this paragraph is considered to be a serious deficiency. For a violation of any part of this paragraph, the Department may seek any remedy authorized by Tenn. Code Ann. §§ 68-11-207 and 68-11-213, including but not limited to, license revocation, license suspension, and the imposition of civil monetary penalties.
- (g) It shall be a defense to any disciplinary action taken under this paragraph that a facility is unable to identify a COVID-19 testing laboratory, or that total statewide testing capacity is insufficient to accommodate the anticipated number of tests required by these rules.

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**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 39-17-1803, 39-17-1804, 39-17-1805, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-213, 68-11-257, 68-11-268, and 71-6-121. **Administrative History:** Original rule filed June 21, 1997; effective August 6, 1979. Amendment filed August 16, 1988; effective September 30, 1988. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendments filed July 18, 2016; effective October 16, 2016. Administrative correction made to URL on September 18, 2018.

**1200-08-11-.05 ADMISSIONS, DISCHARGES AND TRANSFERS.**

- (1) Only residents whose needs can be met by the facility within its licensure category shall be admitted.

(Rule 1200-08-11-.05, continued)

- (2) Prior to the admission of a resident or prior to the execution of a contract for the care of a resident (whichever occurs first), each home for the aged shall disclose in writing to the resident or to the resident's guardian, conservator or representative, if any, whether the facility has liability insurance and the identity of the primary insurance carrier. If the facility is self-insured, their statement shall reflect that fact and indicate the corporate entity responsible for payment of any claims.
- (3) The home shall:
  - (a) Be able to identify at the time of admission and during continued stay those residents whose needs for services are consistent with these rules and those residents who should be transferred to a higher level of care.
  - (b) Have a written admission agreement that includes a procedure for handling the transfer or discharge of residents and that does not violate the residents' rights under the law or these rules.
  - (c) Have an accurate written statement regarding fees and services which will be provided upon admission.
  - (d) Give a thirty (30) day notice to all residents before any changes in fees can be made.
  - (e) Ensure that residents see a physician for acute illness or injury and are transferred in accordance with any physician's orders.
  - (f) 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 vaccine, unless such 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 sixty five (65) years of age or older, in accordance with the recommendations 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.
  - (g) Provide to the resident at the time of admission a copy of the Resident's Rights for the resident's review and signature. A signed copy must be provided to the resident at the time of admission.
- (4) Individuals who require professional medical or nursing observation and/or care on a continual or daily basis shall not be admitted to or retained in the home, with the following exception: When an individual who resides in the facility develops a temporary illness, injury, or disability requiring short-term medical or nursing care, the individual may remain in the home if such care can be safely and appropriately given in that setting and is provided by licensed professionals.

(Rule 1200-08-11-.05, continued)

- (5) Individuals who are usually, typically or customarily incapable of self-administering medications or who require medications that are usually, typically or customarily not self-administered shall not be admitted to or retained in the home unless provided by a home care organization or physician.
- (6) Residents who require professional medical or nursing observation and/or care on a continual or daily basis or who require more technical medical or nursing care than the personnel and the home can lawfully offer on a short-term basis as described in paragraph (3), shall be transferred to a licensed hospital, nursing home or assisted care living facility.
- (7) A home for the aged shall not admit or retain residents who pose a clearly documented danger to themselves or to other residents in the home. Persons in the early stages of Alzheimer's Disease and Related Disorders may be admitted only after it has been determined by an interdisciplinary team that care can appropriately and safely be given in the facility. The interdisciplinary team must review such persons at least quarterly as to the appropriateness of placement in the facility. The interdisciplinary team shall consist of, at a minimum, a physician experienced in the treatment of Alzheimer's Disease and Related Disorders, a social worker, a registered nurse, and a family member (or patient care advocate).
- (8) Residents shall be capable of evacuating the home in accordance with Chapter 22 of the Life Safety Code. Residents who cannot evacuate within thirteen (13) minutes shall not be admitted or retained in the facility.
- (9) The licensee shall not admit or retain a resident who requires physical or chemical restraint.
- (10) Facilities utilizing secured units must be able to annually provide survey staff with twelve (12) months of the following performance information specific to the secured unit and its residents:
  - (a) Documentation that each secured resident has been evaluated by the interdisciplinary team prior to admittance to the unit;
  - (b) Ongoing and up-to-date documentation of quarterly review by each resident's interdisciplinary team as to the appropriateness of placement in the secured unit;
  - (c) A current listing of the number of deaths and hospitalizations with diagnoses that have occurred on the unit;
  - (d) A current listing of all unusual incidents and/or complications on the unit;
  - (e) An up-to-date staffing pattern and staff ratios for the unit recorded on a daily basis. The staffing pattern must ensure that there is a minimum of one (1) attendant, awake, on duty and physically located on the unit twenty-four (24) hours per day, seven (7) days per week at all times;
  - (f) A formulated calendar of daily group activities scheduled including a resident attendance record for the previous three (3) months;
  - (g) An up-to-date listing of any incidences of decubitus and/or nosocomial infections, including resident identifiers; and
  - (h) Documentation showing that 100% of the staff working on the unit receives and has received annual in-service training which shall include but not be limited to the following subject areas:

(Rule 1200-08-11-.05, continued)

1. Basic facts about the causes, progression and management of Alzheimer's Disease and related disorders;
  2. Dealing with dysfunctional behavior and catastrophic reactions in the residents;
  3. Identifying and alleviating safety risks to the residents;
  4. Providing assistance in the activities of daily living for the residents; and
  5. Communicating with families and other persons interested in the residents.
- (11) The facility shall ensure that no person on the grounds of race, color, national origin, or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the facility. The facility shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.
- (12) Any residential facility licensed by the board of licensing health care facilities shall upon admission provide to each resident the division of adult protective services' statewide toll-free number: 888-277-8366.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-210, 68-11-257, and 71-6-121. **Administrative History:** Original rule filed June 21, 1979; effective August 6, 1997. Amendment filed August 16, 1988; effective September 30, 1988. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed February 23, 2007; effective May 9, 2007.

#### 1200-08-11-.06 PERSONAL SERVICES.

- (1) Personal services must include protective care of the resident, responsibility for the safety of the resident when in the facility, daily awareness of the resident's whereabouts and the ability and readiness to intervene if crises arise. Personal services do not include nursing or medical care. Personal services must be provided by employees of the home.
- (2) Medications shall be self-administered. If the home chooses to employ a currently licensed nurse, medications may be administered by the nurse.
- (3) Assistance in reading labels, opening bottles, reminding residents of their medication, observing the resident while taking medication and checking the self-administered dose against the dosage shown on the prescription are permissible in the self-administration of medications.
- (4) All medications shall be stored so that no resident can obtain another resident's medication.
- (5) Residents shall be provided assistance, if needed, in personal care such as bathing, grooming and dressing.
- (6) The home for the aged shall provide laundry arrangements for linens for the home and for residents' clothing.
- (7) Appropriate storage areas for soiled linen and residents' clothing shall be provided.
- (8) Clean linen shall be maintained in sufficient quantity to provide for the needs of the residents. Linens shall be changed whenever necessary.

(Rule 1200-08-11-.06, continued)

- (9) There must be a designated person responsible for the food service, including the purchasing of adequate food supplies and the maintenance of sanitary practices in food storage, preparation and distribution. Sufficient arrangements or employees shall be maintained to cook and serve the food.
- (10) Residents shall be provided at least three (3) meals per day. The meals shall constitute an acceptable diet. There shall be no more than fourteen (14) hours between the evening and morning meals. All food served to the residents shall be of good quality and variety, sufficient quantity, attractive and at safe temperatures. Prepared foods shall be kept hot (140°F or above) or cold (41°F or less). The food must be adapted to the habits, preferences, needs and physical abilities of the residents.
- (11) Sufficient food provision capabilities and dining space shall be provided.
- (12) A forty-eight (48) hour supply of food shall be maintained and properly stored at all times.
- (13) Appropriate equipment and utensils for cooking and serving food shall be provided in sufficient quantity to serve all residents and must be in good repair.
- (14) The kitchen shall be maintained in a clean and sanitary condition.
- (15) Equipment, utensils and dishes shall be washed after each use.
- (16) A suitable and comfortable furnished area shall be provided in the facility for activities and family visits. Furnishings shall include a current calendar and a functioning television set, radio and clock.
- (17) The facility shall provide current newspapers, magazines or other reading materials.
- (18) The home must have a telephone accessible to all residents to make and receive personal telephone calls twenty-four (24) hours per day.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, and 68-11-204. **Administrative History:** Original rule filed June 21, 1979; effective August 6, 1979. Amendment filed August 16, 1988; effective September 30, 1988. Repeal and new rule filed July 27, 2000; effective October 10, 2000.

#### 1200-08-11-.07 BUILDING STANDARDS.

- (1) An RHA shall construct, arrange, and maintain the condition of the physical plant and the overall RHA environment in such a manner that the safety and well-being of the patients are assured.
- (2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All facilities shall conform to the current edition of the following applicable codes as approved by the Board for Licensing Health Care Facilities: International Building Code (excluding Chapters 1 and 11) including referenced International Fuel Gas Code, International Mechanical Code, and International Plumbing Code; National Fire Protection Association (NFPA) NFPA 101 Life Safety Code excluding referenced NFPA 5000; Guidelines for Design and Construction of Health Care Facilities (FGI) including referenced Codes and Standards; U.S. Public Health Service Food Code; and Americans with Disabilities Act (ADA) Standards for Accessible Design. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes, regulations and provisions of this chapter, the most stringent requirements shall apply.

(Rule 1200-08-11-07, continued)

- (3) The codes in effect at the time of submittal of plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.
- (4) The licensed contractor shall perform all new construction and renovations to RHAs, other than minor alterations not affecting fire and life safety or functional issues, in accordance with the specific requirements of these regulations governing new construction in RHAs, including the submission of phased construction plans and the final drawings and the specifications to each.
- (5) No new RHA shall be constructed, nor shall major alterations be made to an existing RHA without prior written approval of the department, and unless in accordance with plans and specifications approved in advance by the department. Before any new RHA is licensed or before any alteration or expansion of a licensed RHA can be approved, the applicant must furnish two (2) complete sets of plans and specifications to the department, together with fees and other information as required. Plans and specifications for new construction and major renovations, other than minor alterations not affecting fire and life safety or functional issues, shall be prepared by or under the direction of a licensed architect and/or a licensed engineer and in accordance with the rules of the Board of Architectural and Engineering Examiners.
- (6) Final working drawings and specifications shall be accurately dimensioned and include all necessary explanatory notes, schedules and legends. The working drawings and specifications shall be complete and adequate for contract purposes.
- (7) Detailed plans shall be drawn to a scale of at least one-eighth inch equals one foot ( $1/8" = 1'$ ), and shall show the general arrangement of the building, the intended purpose and the fixed equipment in each room, with such additional information as the department may require. An architect or engineer licensed to practice in the State of Tennessee shall prepare the plans the department requires.
  - (a) The project architect or engineer shall forward two (2) sets of plans to the appropriate section of the department for review. After receipt of approval of phased construction plans, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the owner's understanding that such work is at the owner's own risk and without assurance that final approval of final plans and specifications shall be granted. The project architect or engineer shall submit final plans and specifications for review and approval. The department must grant final approval before the project proceeds beyond foundation work.
  - (b) Review of plans does not eliminate responsibility of owner and/or architect to comply with all rules and regulations.
- (8) Specifications shall supplement all drawings. They shall describe the characteristics of all materials, products and devices, unless fully described and indicated on the drawings. Specification copies should be bound in an  $8\frac{1}{2} \times 11$  inch folder.
- (9) Drawings and specifications shall be prepared for each of the following branches of work: Architectural, Structural, Mechanical, Electrical and Sprinkler.
- (10) Architectural drawings shall include where applicable:
  - (a) Plot plan(s) showing property lines, finish grade, location of existing and proposed structures, roadways, walks, utilities and parking areas;
  - (b) Floor plan(s) showing scale drawings of typical and special rooms, indicating all fixed and movable equipment and major items of furniture;

(Rule 1200-08-11-.07, continued)

- (c) Separate life safety plans showing the compartment(s), all means of egress and exit markings, exits and travel distances, dimensions of compartments and calculation and tabulation of exit units. All fire and smoke walls must be identified;
  - (d) The elevation of each facade;
  - (e) The typical sections throughout the building;
  - (f) The schedule of finishes;
  - (g) The schedule of doors and windows;
  - (h) Roof plans;
  - (i) Details and dimensions of elevator shaft(s), car platform(s), doors, pit(s), equipment in the machine room, and the rates of car travel must be indicated for elevators; and
  - (j) Code analysis.
- (11) Structural drawings shall include where applicable:
- (a) Plans of foundations, floors, roofs and intermediate levels which show a complete design with sizes, sections and the relative location of the various members;
  - (b) Schedules of beams, girders and columns; and
  - (c) Design live load values for wind, roof, floor, stairs, guard, handrails, and seismic.
- (12) Mechanical drawings shall include where applicable:
- (a) Specifications which show the complete heating, ventilating, fire protection, medical gas systems and air conditioning systems;
  - (b) Water supply, sewerage and HVAC piping systems;
  - (c) Pressure relationships shall be shown on all floor plans;
  - (d) Heating, ventilating, HVAC piping, medical gas systems and air conditioning systems with all related piping and auxiliaries to provide a satisfactory installation;
  - (e) Water supply, sewage and drainage with all lines, risers, catch basins, manholes and cleanouts clearly indicated as to location, size, capacities, etc., and location and dimensions of septic tank and disposal field; and
  - (f) Color coding to show clearly supply, return and exhaust systems.
- (13) Electrical drawings shall include where applicable:
- (a) A seal, certifying that all electrical work and equipment is in compliance with all applicable codes and that all materials are currently listed by recognized testing laboratories;
  - (b) All electrical wiring, outlets, riser diagrams, switches, special electrical connections, electrical service entrance with service switches, service feeders and characteristics of the light and power current, and transformers when located within the building;

(Rule 1200-08-11-.07, continued)

- (c) An electrical system that complies with applicable codes;
  - (d) Color coding to show all items on emergency power;
  - (e) Circuit breakers that are properly labeled; and
  - (f) Ground-Fault Circuit Interrupters (GFCI) that are required in all wet areas, such as kitchens, laundries, janitor closets, bath and toilet rooms, etc, and within six (6) feet of any lavatory.
- (14) The electrical drawings shall not include knob and tube wiring, shall not include electrical cords that have splices, and shall not show that the electrical system is overloaded.
- (15) In all new facilities or renovations to existing electrical systems, the installation must be approved by an inspector or agency authorized by the State Fire Marshal.
- (16) Sprinkler drawings shall include where applicable:
- (a) Shop drawings, hydraulic calculations, and manufacturer cut sheets;
  - (b) Site plan showing elevation of fire hydrant to building, test hydrant, and flow data (Data from within a 12 month period); and
  - (c) Show "Point of Service" where water is used exclusively for fire protection purposes.
- (17) The licensed contractor shall not install a system of water supply, plumbing, sewage, garbage or refuse disposal nor materially alter or extend any existing system until the architect or engineer submits complete plans and specifications for the installation, alteration or extension to the department demonstrating that all applicable codes have been met and the department has granted necessary approval.
- (a) Before the RHA is used, Tennessee Department of Environment and Conservation shall approve the water supply system.
  - (b) Sewage shall be discharged into a municipal system or approved package system where available; otherwise, the sewage shall be treated and disposed of in a manner of operation approved by the Department of Environment and Conservation and shall comply with existing codes, ordinances and regulations which are enforced by cities, counties or other areas of local political jurisdiction.
  - (c) Water distribution systems shall be arranged to provide hot water at each hot water outlet at all times. Hot water at shower, bathing and hand washing facilities shall be between 105°F and 115°F.
- (18) It shall be demonstrated through the submission of plans and specifications that in each RHA:
- (a) A negative air pressure shall be maintained in the soiled utility area, toilet room, janitor's closet, dishwashing and other such soiled spaces, and a positive air pressure shall be maintained in all clean areas including, but not limited to, clean linen rooms and clean utility rooms;
  - (b) A minimum of eighty (80) square feet of bedroom space must be provided each resident. No bedroom shall have more than two (2) beds. Privacy screens or curtains must be provided and used when required by the resident;

(Rule 1200-08-11-.07, continued)

- (c) Living room and dining areas capable of accommodating all residents shall be provided, with a minimum of fifteen (15) square feet per resident per dining area; and
  - (d) Each toilet, lavatory, bath or shower shall serve no more than six (6) persons. Grab bars and non-slip surfaces shall be installed at tubs and showers.
- (19) The department shall acknowledge that it has reviewed plans and specifications in writing with copies sent to the project architect, the project engineer, the owner, the manager or other executive of the institution. The department may modify the distribution of such review at its discretion.
- (20) In the event submitted materials do not appear to satisfactorily comply with 1200-08-11-.07(2), the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.
- (21) The licensed contractor shall execute all construction in accordance with the approved plans and specifications.
- (22) If construction begins within one hundred eighty (180) days of the date of department approval, the department's written notification of satisfactory review constitutes compliance with 1200-08-11-.07(2). This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes or rules of any responsible agency.
- (23) Prior to final inspection, a CD Rom disc, in TIF or PDF format, of the final approved plans including all shop drawings, sprinkler, calculations, hood and duct, addenda, specifications, etc., shall be submitted to the department.
- (24) The department requires the following alarms that shall be monitored twenty-four (24) hours per day:
- (a) Fire alarms; and
  - (b) Generators (if applicable).
- (25) With the submission of plans the facility shall specify the evacuation capabilities of the patients as defined in the National Fire Protection Code (NFPA). This declaration will determine the design and construction requirements of the facility.
- (26) Each RHA shall ensure that an emergency keyed lock box is installed next to each bank of functioning elevators located on the main level. Such lock boxes shall be permanently mounted seventy-two inches (72") from the floor to the center of the box, be operable by a universal key no matter where such box is located, and shall contain only fire service keys and drop keys to the appropriate elevators.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-261.  
**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. Amendment filed January 6, 1995; effective March 22, 1995. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed February 18, 2003; effective May 4, 2003. Amendment filed September 6, 2006; effective November 22, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Repeal and new rule filed December 20, 2011; effective March 19, 2012. Amendment filed January 21, 2016; effective April 20, 2016.

**1200-08-11-.08 LIFE SAFETY.**

- (1) Any residential home for the aged which complies with the required applicable building and fire safety regulations at the time the board adopts new codes or regulations will, so long as such compliance is maintained (either with or without waivers of specific provisions), be considered to be in compliance with the requirements of the new codes or regulations.
- (2) The residential home for the aged shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. Fire drills shall be held at least quarterly for each work shift for residential home for the aged personnel in each separate building. There shall be one fire drill per quarter during sleeping hours. There shall be a written report documenting the evaluation of each drill and the action recommended or taken for any deficiencies found. Records which document and evaluate these drills must be maintained for at least three (3) years. All fires which result in a response by the local fire department shall be reported to the department within seven (7) days. The report shall contain sufficient information to ascertain the nature and location of the fire, its probable cause and any injuries incurred by any person or persons as a result of the fire. Initial reports by the facility may omit the name(s) of resident(s) and parties involved, however, should the department find the identities of such persons to be necessary to an investigation, the facility shall provide such information.
- (3) Residents who cannot evacuate within thirteen (13) minutes may be retained in the facility so long as such residents are retained in designated areas in accordance with of the Standard Building Code and the National Fire Protection Code (NFPA).
- (4) Each resident's room shall have a door that opens directly to the outside or a corridor which leads directly to an exit door and must always be capable of being unlocked by the resident.
- (5) Doors to residents' rooms shall not be louvered.
- (6) Corridors shall be lighted at all times, to a minimum of one foot candle.
- (7) General lighting and night lighting shall be provided for each resident. Night lighting shall be equipped with emergency power.
- (8) Corridors and exit doors shall be kept clear of equipment, furniture and other obstacles at all times. There shall be a clear passage at all times from the exit doors to a safe area.
- (9) Combustible finishes and furnishings shall not be used.
- (10) Open flame and portable space heaters shall not be permitted in the home. Cooking appliances other than microwave ovens shall not be allowed in sleeping rooms.
- (11) All heaters shall be guarded and spaced to prevent ignition of combustible material and accidental burns. The guard shall not have a surface temperature greater than 120° F.
- (12) Fireplaces and/or fireplace inserts may be used only if provided with guards or screens which are secured in place. Fireplaces and chimneys shall be inspected and cleaned annually and verified documentation shall be maintained.
- (13) All electrical equipment shall be maintained in good repair and in safe operating condition.
- (14) Electrical cords shall not be run under rugs or carpets.
- (15) The electrical systems shall not be overloaded. Power strips must be equipped with circuit breakers. Extension cords shall not be used.

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

- (16) All facilities must have electrically-operated smoke detectors with battery back-up power operating at all times in, at least, sleeping rooms, day rooms, corridors, laundry room, and any other hazardous areas.
- (17) Fire extinguishers, complying with NFPA 10, shall be provided and mounted so they are accessible to all residents in the kitchen, laundries and at all exits. Extinguishers in the kitchen and laundries shall be a minimum of 2-A: 10-BC and an extinguisher with a rating of 20-A shall be adjacent to every hazardous area. The minimum travel distance shall not exceed fifty (50) feet between the extinguishers.
- (18) Smoking and smoking materials shall be permitted only in designated areas under supervision. Ashtrays must be provided wherever smoking is permitted. Smoking in bed is prohibited. The facility shall have written policies and procedures for smoking within the facility which shall designate a room or rooms to be used exclusively for residents who smoke. The designated smoking room or rooms shall not be the dining room or activity room.
- (19) No smoking signs shall be posted in areas where oxygen is used or stored.
- (20) Trash and other combustible waste shall not be allowed to accumulate within and around the home and shall be stored in appropriate containers with tight-fitting lids. Resident rooms shall be furnished with a UL approved trash container.
- (21) All safety equipment shall be maintained in good repair and in a safe operating condition.
- (22) Janitorial supplies shall not be stored in the kitchen, food storage area, dining area or resident accessible areas.
- (23) Flammable liquids shall be stored in approved containers and stored away from the living areas of the facility.
- (24) Floor and dryer vents shall be cleaned as frequently as needed to prevent accumulation of lint, soil and dirt.
- (25) Emergency telephone numbers must be posted near a telephone accessible to the residents.
- (26) The physical environment shall be maintained in a safe, clean and sanitary manner.
  - (a) Any condition on the facility 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.
  - (b) The building shall not become overcrowded with a combination of the facility's residents and other occupants.
  - (c) Each resident bedroom shall contain a chair, bed, mattress, springs, linens, chest of drawers and wardrobe or closet space, either provided by the facility or by the resident if the resident prefers. All furniture provided by the resident must meet NFPA. All resident's clothing must be maintained in good repair and suitable for the use of elderly persons.
  - (d) The building and its heating, cooling, plumbing and electrical systems shall be maintained in good repair and a clean condition at all times.

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

- (e) Temperatures in residents' rooms and common areas shall not be less than 65°F and no more than 85°F.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.  
**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. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed September 6, 2006; effective November 6, 2006.

#### 1200-08-11-.09 INFECTIOUS AND HAZARDOUS WASTE.

- (1) Each home for the aged must develop, maintain and implement written policies and procedures for the definition and handling of its infectious waste. These policies and procedures must comply with the standards of this section.
- (2) The following waste shall be considered to be infectious waste:
  - (a) Waste contaminated by residents who are isolated due to communicable disease, as provided in the U.S. Centers for Disease Control "Guidelines for Isolation Precautions in Hospitals";
  - (b) Cultures and stocks of infectious agents including specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;
  - (c) Waste human blood and blood products such as serum, plasma, and other blood components;
  - (d) Pathological waste, such as tissues, organs, body parts, and body fluids that are removed during surgery and autopsy;
  - (e) All discarded sharps (including but not limited to, hypodermic needles, syringes, pasteur pipettes, broken glass, scalpel blades) used in resident care or which have come into contact with infectious agents during use in medical, research, or industrial laboratories;
  - (f) Other waste determined to be infectious by the facility in its written policy.
- (3) Infectious and hazardous waste must be segregated from other waste at the point of generation (i.e., the point at which the material becomes a waste) within the facility.
- (4) Waste must be packaged in a manner that will protect waste handlers and the public from possible injury and disease that may result from exposure to the waste. Such packaging must provide for containment of the waste from the point of generation up to the point of proper treatment or disposal. Packaging must be selected and utilized for the type of waste the packages will contain, how the waste will be treated and disposed, and how it will be handled and transported, prior to treatment and disposal.
  - (a) Contaminated sharps must be directly placed in leakproof, rigid, and puncture-resistant containers which must be tightly sealed.
  - (b) Whether disposable or reusable, all containers, bags, and boxes used for containment and disposal of infectious waste must be conspicuously identified. Packages containing infectious waste which pose additional hazards (including but not limited to, chemical,

(Rule 1200-08-11-.09, continued)

radiologicals) must also be conspicuously identified to clearly indicate those additional hazards.

- (c) Reusable containers for infectious waste must be thoroughly sanitized each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners or other devices removed with the waste.
  - (d) Opaque packaging must be used for pathological waste.
- (5) After packaging, waste must be handled and transported by methods ensuring containment and preservation of the integrity of the packaging, including the use of secondary containment where necessary. Plastic bags of infectious waste must be transported by hand.
- (6) Waste must be stored in a manner which preserves the integrity of the packaging, inhibits rapid microbial growth and putrefaction, and minimizes the potential of exposure or access by unknowing persons.
- (a) Waste must be stored in a manner and location which affords protection from animals, precipitation, wind, and direct sunlight, does not present a safety hazard, does not provide a breeding place or food source for insects or rodents, and does not create a nuisance.
  - (b) Pathological waste must be promptly treated, disposed of, or placed into refrigerated storage.
- (7) In the event of spills, ruptured packaging, or other incidents where there is a loss of containment of waste, the facility must ensure that proper actions are immediately taken to:
- (a) Isolate the area from the public and non-essential personnel;
  - (b) To the extent practicable, repackage all spilled waste and contaminated debris in accordance with the requirements of paragraph 6 of this section;
  - (c) Sanitize all contaminated equipment and surfaces according to written policies and procedures which specify how this will be done appropriately; and,
  - (d) Complete an incident report and maintain a copy on file.
- (8) Except as provided otherwise in this rule, a facility must treat or dispose of infectious waste by one or more of the methods specified in this paragraph.
- (a) A facility may treat infectious waste in an on-site sterilization or disinfection device, or in an incinerator or a steam sterilizer, which has been designed, constructed, operated and maintained so that infectious waste treated in such a device is rendered non-infectious and is, if applicable, authorized for that purpose pursuant to current rules of the Department of Environment and Conservation. A valid permit or other written evidence of having complied with the Tennessee Air Pollution Control Regulations shall be available for review, if required. Each sterilizing or disinfecting cycle must contain appropriate indicators to assure that conditions were met for proper sterilization or disinfection or materials included in the cycle, and appropriate records kept. Proper operation of such devices must be verified at least monthly, and records of the monthly verifications shall be available for review. Waste that contains toxic chemicals that would be volatilized by steam must not be treated in steam sterilizers. Infectious waste that has been rendered to carbonized or mineralized ash shall be deemed non-infectious. Unless otherwise hazardous and subject to the hazardous waste management requirements of the current rules of the Department of Environment and

(Rule 1200-08-11-.09, continued)

Conservation, such ash shall be disposable as a (non-hazardous) solid waste under current rules of the Department of Environment and Conservation.

- (b) A facility may discharge liquid or semi-liquid infectious waste to the collection sewerage system of a wastewater treatment facility which is subject to a permit pursuant to T.C.A. §§ 69-3-101, et seq., provided that such discharge is in accordance with any applicable terms of that permit and/or any applicable municipal sewer use requirements.
- (c) Any health care facility accepting waste from another state must promptly notify the Department of Environment and Conservation, county, and city public health agencies, and must strictly comply with all applicable local, state and federal regulations.
- (9) The facility may have waste transported off-site for storage, treatment, or disposal. Such arrangements must be detailed in a written contract, available for review. If such off-site location is located within Tennessee, the facility must ensure that it has all necessary State and local approvals, and such approvals shall be available for review. If the off-site location is within another state, the facility must notify in writing all public health agencies with jurisdiction that the location is being used for management of the facility's waste. Waste shipped off-site must be packaged in accordance with applicable federal and state requirements. Waste transported to a sanitary landfill in this state must meet the requirements of current rules of the Department of Environment and Conservation.
- (10) Human anatomical remains which are transferred to a mortician for cremation or burial shall be exempt from the requirements of this rule.
- (11) All garbage, trash and other non-infectious waste shall be stored and disposed of in a manner that must not permit the transmission of disease, create a nuisance, provide a breeding place for insects and rodents, or constitute a safety hazard. All containers for waste shall be water tight, constructed of easily-cleanable material, and shall be kept on elevated platforms.

**Authority:** T.C.A. §§ 4-5-202 through 4-5-206, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.

**Administrative History:** Original rule filed June 21, 1979; effective August 6, 1979. Repeal and new rule filed July 27, 2000; effective October 10, 2000.

#### 1200-08-11-.10 RECORDS AND REPORTS.

- (1) An individual resident file shall be maintained for each resident in the home. Personal information shall be confidential and shall not be disclosed, except to the resident, the department and others with written authorization from the resident. These files shall be retained for one (1) year after the resident is transferred or discharged. The resident file shall include:
  - (a) Name, Social Security Number, veteran status and number, marital status, age, sex, previous address and any health insurance provider and number, including Medicare and Medicaid numbers;
  - (b) Name, address and telephone number of next of kin, legal guardian and any other person identified by the resident to contact on his/her behalf;
  - (c) Name, address and telephone number of any person or agency providing additional services to the resident;
  - (d) Date of admission, transfer, discharge and any new forwarding address;

(Rule 1200-08-11-.10, continued)

- (e) Name and address of the resident's preferred physician, hospital, pharmacist, assisted care living facility and nursing home, and any other instructions from the resident to be followed in case of emergency;
  - (f) Record of all monies and other valuables entrusted to the home for safekeeping, with appropriate updates;
  - (g) Health information including all current prescriptions, major changes in resident's habits or health status, results of physician's visits, and any health care instructions; and
  - (h) A copy of the admission agreement signed and dated by the resident.
- (2) The RHA shall report all incidents of abuse, neglect, and misappropriation to the Department of Health in accordance with T.C.A. § 68-11-211.
- (3) The RHA shall report the following incidents to the Department of Health in accordance with T.C.A. § 68-11-211.
- (a) Strike by staff at the facility;
  - (b) External disasters impacting the facility;
  - (c) Disruption of any service vital to the continued safe operation of the RHA or to the health and safety of its residents and personnel; and
  - (d) Fires at the RHA that disrupt the provision of resident services or cause harm to the residents or staff, or that are reported by the facility to any entity, including but not limited to a fire department charged with preventing fires.
- (4) Legible copies of the following records and reports shall be retained in the facility, shall be maintained in a single file, and shall be made available for inspection during normal business hours for thirty-six (36) months following their issuance. Each resident and each person assuming any financial responsibility for a resident must be fully informed, before admission, of their existence in the home and given the opportunity to inspect the file before entering into any monetary agreement with the facility.
- (a) Local fire safety inspections;
  - (b) Local building code inspections, if any;
  - (c) Department licensure and fire safety inspections and surveys;
  - (d) Orders of the Commissioner or Board, if any; and
  - (e) Maintenance records of all safety equipment.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, and 68-11-213. **Administrative History:** Original rule filed June 21, 1979; effective August 6, 1979. Amendment filed February 26, 1985; effective March 28, 1985. Amendment filed August 16, 1988; effective September 30, 1988. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed December 23, 2009; effective March 23, 2010. Amendments filed January 3, 2012; effective April 2, 2012.

**1200-08-11-.11 RESIDENT RIGHTS.** Each resident has at least the following rights:

- (1) To privacy in treatment and personal care;

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

- (2) To be free from mental and physical abuse. Should this right be violated, the facility must notify the department within five (5) working days. The Tennessee Department of Human Services, Adult Protective Services shall be notified immediately as required in T.C.A. § 71-6-103;
- (3) To refuse treatment. The resident must be informed of the consequences of that decision, and the refusal and its reason must be reported to the physician and documented in the resident's record;
- (4) To have his or her file kept confidential and private. Written consent by the resident must be obtained prior to release of information except to persons authorized by law;
- (5) To be fully informed of the Resident's Rights, of any policies and procedures governing resident conduct, any services available in the home and the schedule of all fees for all services;
- (6) To participate in drawing up the terms of the admission agreement, including providing for the resident's preferences for physician care, hospitalization, assisted living facility care, nursing home care, acquisition of medication, emergency plans and funeral arrangements;
- (7) To be given thirty (30) days written notice prior to transfer or discharge, except when ordered by any physician because a higher level of care is required;
- (8) To voice grievances and recommend changes in policies and services of the home with freedom from restraint, interference, coercion, discrimination or reprisal. The resident shall be informed of procedures for registering complaints confidentially and to voice grievances;
- (9) To manage his or her personal financial affairs, including the right to keep and spend his or her own money. If the resident requests assistance from the home in managing his or her personal financial affairs, the request must be in writing and may be terminated by the resident at any time. The home must separate such monies from the home's operating funds and all other deposits or expenditures, submit a written accounting to the resident at least quarterly, and immediately return the balance upon transfer or discharge. A current copy of this report shall be maintained in the resident's file maintained by the licensee;
- (10) To be treated with consideration, respect and full recognition of his or her dignity and individuality;
- (11) To be accorded privacy for sleeping and for storage space for personal belongings;
- (12) To have free access to day rooms, dining and other group living or common areas at reasonable hours and to come and go from the home, unless such access infringes upon the rights of other residents or unless the resident is admitted to the secured unit;
- (13) To wear his or her own clothes, to keep and use his or her own toilet articles and personal possessions;
- (14) To send and receive unopened mail;
- (15) To associate and communicate privately with persons of his or her choice, including receiving visitors at reasonable hours;
- (16) To participate or to refuse to participate in community activities, including cultural, educational, religious, community service, vocational and recreational activities;

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

- (17) To not be required to perform services for the home. The resident and licensee may mutually agree, in writing, for the resident to perform certain activities or services as part of the fee for his or her stay; and,
- (18) To execute, modify, or rescind a Living Will.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.  
**Administrative History:** Original rule filed June 21, 1997; effective August 6, 1979. Amendment filed August 16, 1988; effective September 30, 1988. Repeal and new rule filed July 27, 2000; effective October 10, 2000.

#### 1200-08-11-.12 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

- (1) Pursuant to this Rule, each home for the aged shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the resident could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the resident could have made while having capacity.
- (3) The advance directive shall be in writing, signed by the resident, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the resident upon the death of the resident. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.
- (4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the resident lacks capacity, and ceases to be effective upon a determination that the resident has recovered capacity.
- (5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.
- (6) A determination that a resident lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (7) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the agent shall consider the resident's personal values to the extent known.
- (8) An advance directive may include the individual's nomination of a court-appointed guardian.

(Rule 1200-08-11-.12, continued)

- (9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.
- (10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.
- (12) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (13) A resident having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.
- (14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (16) Surrogates.
  - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
  - (b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:
    1. The resident has been determined by the designated physician to lack capacity, and
    2. No agent or guardian has been appointed, or
    3. The agent or guardian is not reasonably available.
  - (c) In the case of a resident who lacks capacity, the resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the resident is receiving health care.
  - (d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.
  - (e) Consideration may be, but need not be, be given in order of descending preference for service as a surrogate to:

(Rule 1200-08-11-.12, continued)

1. The resident's spouse, unless legally separated;
  2. The resident's adult child;
  3. The resident's parent;
  4. The resident's adult sibling;
  5. Any other adult relative of the resident; or
  6. Any other adult who satisfies the requirements of 1200-08-11-.12(16)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the resident or in accordance with the resident's best interests;
  2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;
  3. The proposed surrogate's demonstrated care and concern;
  4. The proposed surrogate's availability to visit the resident during his or her illness; and
  5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If the resident lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-11-.12(16)(c) through 1200-08-11-.12(16)(g) is reasonably available, the designated physician may make health care decisions for the resident after the designated physician either:
1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
  2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the resident's best interest. In determining the resident's best interest,

(Rule 1200-08-11-.12, continued)

the surrogate shall consider the resident's personal values to the extent known to the surrogate.

- (k) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.
  - (l) Except as provided in 1200-08-11-.12(16)(m):
    - 1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and
    - 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.
  - (m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:
    - 1. The employee so designated is a relative of the resident by blood, marriage, or adoption; and
    - 2. The other requirements of this section are satisfied.
  - (n) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (17) Guardian.
- (a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order to the contrary.
  - (b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.
  - (c) A health care provider may require an individual claiming the right to act as guardian for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (18) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.
- (19) Except as provided in 1200-08-11-.12(20) through 1200-08-11-.12(22), a health care provider or institution providing care to a resident shall:

(Rule 1200-08-11-.12, continued)

- (a) Comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and
  - (b) Comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.
- (20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:
- (a) Contrary to a policy of the institution which is based on reasons of conscience, and
  - (b) The policy was timely communicated to the resident or to a person then authorized to make health care decisions for the resident.
- (22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.
- (23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-11-.12(20) through 1200-08-11-.12(22) shall:
- (a) Promptly so inform the resident, if possible, and any person then authorized to make health care decisions for the resident;
  - (b) Provide continuing care to the resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;
  - (c) Unless the resident or person then authorized to make health care decisions for the resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or institution that is willing to comply with the instruction or decision; and
  - (d) If a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.
- (24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) Complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;
  - (b) Declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(Rule 1200-08-11-.12, continued)

- (c) Complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.
  
- (26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
  
- (27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
  
- (28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
  
- (29) The withholding or withdrawal of medical care from a resident in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
  
- (30) Physician Orders for Scope of Treatment (POST)
  - (a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:
    - 1. With the informed consent of the patient;
    - 2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or
    - 3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.
  
  - (b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:
    - 1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);
    - 2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;
    - 3. Either:
      - (i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(Rule 1200-08-11-.12, continued)

- (ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and
- 4. Either:
  - (i) With the informed consent of the patient;
  - (ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or
  - (iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse practitioner or clinical nurse specialist determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
- (c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.
- (d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.
- (e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.
- (f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(Rule 1200-08-11-.12, continued)

- (g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.
- (h) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to then-current law, shall remain valid and shall be given effect as provided in these rules.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, and 68-11-1801 through 68-11-1815. **Administrative History:** Original rule filed June 22, 1992; effective August 6, 1992. Repeal and new rule filed July 27, 2000; effective October 10, 2000. 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. Amendments filed January 3, 2012; effective April 2, 2012. Amendments filed March 27, 2015; effective June 25, 2015.

#### 1200-08-11-.13 DISASTER PREPAREDNESS.

- (1) The administration of every facility shall have in effect and available for all supervisory personnel and staff, written copies of the following required disaster plans for the protection of all persons in the event of fire and other emergencies for evacuation to areas of refuge and/or evacuation from the building. A detailed log with staff signatures of training received shall be maintained. All employees shall be trained annually as required in the following plans and shall be kept informed with respect to their duties under the plans. A copy of the plans and the specific emergency numbers related to that type of disaster shall be readily available at all times. Each of the following plans shall be exercised annually:
  - (a) Fire Safety Procedures Plan shall include:
    - 1. Minor fires;
    - 2. Major fires;
    - 3. Fighting the fire;
    - 4. Evacuation procedures; and
    - 5. Staff functions.
  - (b) Tornado/Severe Weather Procedures Plan shall include:
    - 1. Staff duties; and
    - 2. Evacuation procedures.
  - (c) Bomb Threat Procedures Plan:
    - 1. Staff duties;
    - 2. Search team, searching the premises;
    - 3. Notification of authorities;
    - 4. Location of suspicious objects; and

(Rule 1200-08-11-.13, continued)

5. Evacuation procedures.
- (d) Flood Procedure Plan, if applicable:
1. Staff duties;
  2. Evacuation procedures; and
  3. Safety procedures following the flood.
- (e) Severe Cold Weather and Severe Hot Weather Procedure Plans:
1. Staff duties;
  2. Equipment failures;
  3. Evacuation procedures; and
  4. Emergency food service.
- (f) Earthquake Disaster Procedures Plan:
1. Staff duties;
  2. Evacuation procedures;
  3. Safety procedures; and
  4. Emergency services.
- (2) All facilities shall participate in the Tennessee Emergency Management Agency local/county emergency plan on an annual basis. Participation includes filling out and submitting a questionnaire on a form to be provided by the Tennessee Emergency Management Agency. Documentation of participation must be maintained and shall be made available to survey staff as proof of participation.
- (3) For facilities which elect to have an emergency generator, the generator shall be designed to meet the facility's HVAC and essential needs and shall have a minimum of twenty-four (24) hours of fuel designed to operate at its rated load. This requirement shall be coordinated with the Disaster Preparedness Plan or with local resources.
- (a) All generators shall be exercised for thirty (30) minutes each month under full load, including automatic and manual transfer of equipment.
- (b) The emergency generator shall be operated at the existing connected load and not on dual power, and a monthly log shall be maintained by the facility. The facility shall have trained staff familiar with the generator's operation.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.

**Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Repeal and new rule filed July 27, 2000; effective October 10, 2000.

1200-08-11-.14 APPENDIX I

(1) Physician Orders for Scope of Treatment (POST) Form

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED			
Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST")		Patient's Last Name	
This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.		First Name/Middle Initial	
		Date of Birth	
<b>Section A</b> <i>Check One Box Only</i>	<b>CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse <u>and</u> is not breathing.</b> <input type="checkbox"/> Resuscitate(CPR) <input type="checkbox"/> Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death) When not in cardiopulmonary arrest, follow orders in B, C, and D.		
<b>Section B</b> <i>Check One Box Only</i>	<b>MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.</b> <input type="checkbox"/> <b>Comfort Measures Only.</b> Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. <b>Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.</b> <input type="checkbox"/> <b>Limited Additional Interventions.</b> In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). <b>Transfer to hospital if indicated. Generally avoid the intensive care unit. Treatment Plan: basic medical treatments.</b> <input type="checkbox"/> <b>Full Treatment.</b> In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. <b>Transfer to hospital and/or intensive care unit if indicated. Treatment Plan: Full treatment including in the intensive care unit.</b> Other Instructions: _____		
<b>Section C</b> <i>Check One</i>	<b>ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids &amp; nutrition must be offered if feasible.</b> <input type="checkbox"/> No artificial nutrition by tube. <input type="checkbox"/> Defined trial period of artificial nutrition by tube. <input type="checkbox"/> Long-term artificial nutrition by tube. Other Instructions: _____		
<b>Section D</b> <i>Must be Completed</i>	<b>Discussed with:</b> <input type="checkbox"/> Patient/Resident <input type="checkbox"/> Health care agent <input type="checkbox"/> Court-appointed guardian <input type="checkbox"/> Health care surrogate <input type="checkbox"/> Parent of minor <input type="checkbox"/> Other: _____ (Specify)	<b>The Basis for These Orders Is: (Must be completed)</b> <input type="checkbox"/> Patient's preferences <input type="checkbox"/> Patient's best interest (patient lacks capacity or preferences unknown) <input type="checkbox"/> Medical indications <input type="checkbox"/> (Other) _____	
Physician/NP/CNS/PA Name (Print)	Physician/NP/CNS/PA Signature	Date	MD/NP/CNS/PA Phone Number:
	NP/CNS/PA (Signature at Discharge)		
<b>Signature of Patient, Parent of Minor, or Guardian/Health Care Representative</b>			
Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your			

(Rule 1200-08-11-.14, continued)

**preferences as best understood by your surrogate.**

Name (print)	Signature	Relationship (write "self" if patient)	
Agent/Surrogate	Relationship	Phone Number	
Health Care Professional Preparing Form	Preparer Title	Phone Number	Date Prepared

**HIPAA PERMITS DISCLOSURE OF POST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY**

**Directions for Health Care Professionals**

**Completing POST**

Must be completed by a health care professional based on patient preferences, patient best interest, and medical indications.

To be valid, POST must be signed by a physician or, at discharge or transfer from a hospital or long term care facility, by a nurse practitioner (NP), clinical nurse specialist (CNS), or physician assistant (PA). Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

Persons with DNR in effect at time of discharge must have POST completed by health care facility prior to discharge and copy of POST provided to qualified medical emergency personnel.

Photocopies/faxes of signed POST forms are legal and valid.

**Using POST**

Any incomplete section of POST implies full treatment for that section.

No defibrillator (including AEDs) should be used on a person who has chosen "Do Not Attempt Resuscitation".

Oral fluids and nutrition must always be offered if medically feasible.

When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only", should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).

IV medication to enhance comfort may be appropriate for a person who has chosen "Comfort Measures Only".

Treatment of dehydration is a measure which prolongs life. A person who desires IV fluids should indicate "Limited Interventions" or "Full Treatment".

A person with capacity, or the Health Care Agent or Surrogate of a person without capacity, can request alternative treatment.

**Reviewing POST**

This POST should be reviewed if:

- (1) The patient is transferred from one care setting or care level to another, or
- (2) There is a substantial change in the patient's health status, or
- (3) The patient's treatment preferences change.

Draw line through sections A through D and write "VOID" in large letters if POST is replaced or becomes invalid.

(Rule 1200-08-11-.14, continued)

**COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.**

(2) Advance Directive for Health Care Form

**ADVANCE DIRECTIVE FOR HEALTH CARE\***  
(Tennessee)

**Instructions:** Parts 1 and 2 may be used together or independently. Please mark out/void any unused part(s). Part 5, Block A or Block B must be completed for all uses.

I, \_\_\_\_\_, hereby give these advance instructions on how I want to be treated by my doctors and other health care providers when I can no longer make those treatment decisions myself.

**Part 1 Agent:** I want the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: \_\_\_\_\_ Relation: \_\_\_\_\_ Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_ Other Phone: \_\_\_\_\_

**Alternate Agent:** If the person named above is unable or unwilling to make health care decisions for me, I appoint as alternate the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: \_\_\_\_\_ Relation: \_\_\_\_\_ Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_ Other Phone: \_\_\_\_\_

My agent is also my personal representative for purposes of federal and state privacy laws, including HIPAA.

**When Effective** (mark one):  I give my agent permission to make health care decisions for me at any time, even if I have capacity to make decisions for myself.  I do not give such permission (this form applies only when I no longer have capacity).

**Part 2 Indicate Your Wishes for Quality of Life:** By marking "yes" below, I have indicated conditions I would be willing to live with if given adequate comfort care and pain management. By marking "no" below, I have indicated conditions I would not be willing to live with (that to me would create an unacceptable quality of life).

<input type="checkbox"/>	<input type="checkbox"/>	<b>Permanent Unconscious Condition:</b> I become totally unaware of people or surroundings with little chance of ever waking up from the coma.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Permanent Confusion:</b> I become unable to remember, understand, or make decisions. I do not recognize loved ones or cannot have a clear conversation with them.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Dependent in all Activities of Daily Living:</b> I am no longer able to talk or communicate clearly or move by myself. I depend on others for feeding, bathing, dressing, and walking. Rehabilitation or any other restorative treatment will not help.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>End-Stage Illnesses:</b> I have an illness that has reached its final stages in spite of full treatment. Examples: Widespread cancer that no longer responds to treatment; chronic and/or damaged heart and lungs, where oxygen is needed most of the time and activities are limited due to the feeling of suffocation.
Yes	No	

(Rule 1200-08-11-.14, continued)

**Indicate Your Wishes for Treatment:** If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "no" below, I have indicated treatment I do not want.

<input type="checkbox"/>	<input type="checkbox"/>	<b>CPR (Cardiopulmonary Resuscitation):</b> To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Life Support / Other Artificial Support:</b> Continuous use of breathing machine, IV fluids, medications, and other equipment that helps the lungs, heart, kidneys, and other organs to continue to work.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Treatment of New Conditions:</b> Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Tube feeding/IV fluids:</b> Use of tubes to deliver food and water to a patient's stomach or use of IV fluids into a vein, which would include artificially delivered nutrition and hydration.
Yes	No	

**Part 3** Other instructions, such as hospice care, burial arrangements, etc.: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Attach additional pages if necessary)

**Part 4 Organ donation:** Upon my death, I wish to make the following anatomical gift for purposes of transplantation, research, and/or education (mark one):

- Any organ/tissue     My entire body     Only the following organs/tissues: \_\_\_\_\_  
 \_\_\_\_\_  
 No organ/tissue donation

**SIGNATURE**

**Part 5** Your signature must either be witnessed by two competent adults ("Block A") or by a notary public ("Block B").

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Patient)

**Block A** Neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Witnesses:

1. I am a competent adult who is not named as the agent or alternate. I witnessed the patient's signature on this form. \_\_\_\_\_  
 Signature of witness number 1

2. I am a competent adult who is not named as the agent or alternate. I am not related to the patient by blood, marriage, or adoption and I would not be entitled to any portion of the patient's estate upon his or her death under any existing will or codicil or by operation of law. I witnessed the patient's signature on this form. \_\_\_\_\_  
 Signature of witness number 2

(Rule 1200-08-11-.14, continued)

**Block B** You may choose to have your signature witnessed by a notary public instead of the witnesses described in Block A.

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed as the "patient." The patient personally appeared before me and signed above or acknowledged the signature above as his or her own. I declare under penalty of perjury that the patient appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

**WHAT TO DO WITH THIS ADVANCE DIRECTIVE:** (1) provide a copy to your physician(s); (2) keep a copy in your personal files where it is accessible to others; (3) tell your closest relatives and friends what is in the document; and (4) provide a copy to the person(s) you named as your health care agent.

\* This form replaces the old forms for durable power of attorney for health care, living will, appointment of agent, and advance care plan, and eliminates the need for any of those documents.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1801 through 68-11-815. **Administrative History:** Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendments filed February 8, 2017; effective May 9, 2017.

**RULES  
 OF  
 TENNESSEE DEPARTMENT OF HEALTH  
 BOARD FOR LICENSING HEALTH CARE FACILITIES**

**CHAPTER 1200-08-25  
 STANDARDS FOR ASSISTED-CARE LIVING FACILITIES**

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**1200-08-25-.01 PURPOSE.**

- (1) The purpose of assisted-care living services is to:
  - (a) Promote the availability of appropriate residential facilities for the elderly and adults with disabilities in the least restrictive and most homelike environment;
  - (b) Provide assisted-care living services to residents in facilities by meeting each individual's medical and other needs safely and effectively; and
  - (c) Enhance the individual's ability to age in place while promoting personal individuality, respect, independence, and privacy.

**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, and 68-11-1802. **Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed November 25, 1998; effective February 8, 1999. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed January 24, 2006; effective April 9, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009.

**1200-08-25-.02 DEFINITIONS.**

- (1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.
- (2) "Activities of Daily Living (ADL's)" means those activities which indicate an individual's independence in eating, dressing, personal hygiene, bathing, toileting, ambulating, and medication management.
- (3) "Administering Medication" means the direct application of a single dose of medication to the body of a resident by injection, inhalation, ingestion, topical application or by any other means and the placement of a single dose of medication into a container.

(Rule 1200-08-25-.02, continued)

- (4) "Administrator" means a natural person designated by the licensee to have the authority and responsibility to manage the ACLF and who is appropriately certified as an assisted-care living facility administrator or is currently licensed in Tennessee as a nursing home administrator as required by T.C.A. §§ 63-16-101, et seq.
- (5) "Adult" means a person 18 years of age or older.
- (6) "Ambulatory" means the resident's ability to bear weight, pivot and safely walk with the use of a cane, walker, or other mechanical supportive device with or without the minimal assistance of another person. The resident must be physically and mentally capable of self-preservation by evacuating in response to an emergency. A resident who requires a wheelchair must be capable of transferring to and propelling the wheelchair independently.
- (7) "Assisted-care living facility (ACLF)" means a building, establishment, complex or distinct part thereof that accepts primarily aged persons for domiciliary care and services.
- (8) "Assistance with Self-Administration of Medication" means assistance in reading labels, opening medication containers or packaging, reminding residents of their medication, or observing the resident while taking medication in accordance with the plan of care.
- (9) "Assisted-care living facility resident" or "resident" means primarily an aged person who requires domiciliary care, and who upon admission to the facility, if not ambulatory, is capable of self-transfer from the bed to a wheelchair or similar device and is capable of propelling such wheelchair or similar device independently. Such a resident may require one or more of the following services: room and board, assistance with non-medical activities of daily living, administration of typically self-administered medications, and medical services subject to the limitations of these rules.
- (10) "Assessment" means a procedure for determining the nature and extent of the problem(s) and needs of a resident or potential resident to ascertain if the ACLF can adequately address those problems, meet those needs, and secure information for the use in the development of the individual care plan.
- (11) "Cardiopulmonary resuscitation (CPR)" means the administering of any means or device to restore or support cardiopulmonary functions in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirators, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a resident where cardiac or respiratory arrest has occurred or is believed to be imminent.
- (12) "Continuous nursing care" means round-the-clock observation, assessment, monitoring, supervision, or provision of nursing services that can only be performed by a licensed nurse.
- (13) "Distinct part" means a unit or part thereof that is organized and operated to give a distinct type of care within the larger organization which renders other types or levels of care. "Distinct" denotes both organizational and physical separateness. A distinct part of an ACLF must be physically identifiable and be operated distinguishably from the rest of the institution. It must consist of all the beds within that unit such as a separate building, floor, wing or ward. Several rooms at one end of a hall or one side of a corridor is acceptable as a distinct part of an ACLF.
- (14) "Do-Not-Resuscitate Order (DNR)" means a written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(Rule 1200-08-25-.02, continued)

- (15) "Emergency" means any situation or condition which presents an imminent danger of death or serious physical or mental harm to residents.
- (16) "Health care" means any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- (17) "Health care decision" means an individual's consent, refusal of consent or withdrawal of consent to health care.
- (18) "Health care decision-maker" means that in the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or conservator with health care decision-making authority, the resident's surrogate as determined pursuant T.C.A. § 68-11-1806, or the individual's designated physician pursuant to T.C.A. § 68-11-1802(a)(4).
- (19) "Infectious waste" means solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure could result in an infectious disease.
- (20) "Licensed health care professional" means:
  - (a) Any health care professional currently licensed by the State of Tennessee to practice within the scope of a regulated profession, such as a nurse practitioner, dietitian, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, social worker, speech-language pathologist, and emergency service personnel; or
  - (b) A medication aide (as defined in Tennessee Code Annotated § 63-7-127).
- (21) "Licensee" means the person, association, partnership, corporation, company or public agency to which the license is issued.
- (22) "Life threatening or serious injury" means an injury requiring the resident to undergo significant diagnostic or treatment measures.
- (23) "Medical record" means documentation of medical histories, nursing and treatment records, care needs summaries, physician orders, and records of treatment and medication ordered and given which must be maintained by the ACLF, regardless of whether such services are rendered by ACLF staff or by arrangement with an outside source.
- (24) "Medically inappropriate treatment" means resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments that cannot be expected to achieve the expressed goals of the informed resident.
- (25) "Medication Aide" means an individual who administers medications, as set forth in Tennessee Code Annotated § 63-7-127, under the general supervision of a licensed nurse pursuant to this section.
- (26) "Misappropriation of patient/resident property" means the deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.
- (27) "Neglect" means the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in

(Rule 1200-08-25-.02, continued)

accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

- (28) "NFPA" means the National Fire Protection Association.
- (29) "Person" means an individual, association, estate, trust, corporation, partnership, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (30) "Personal services" means those services rendered to residents who need supervision or assistance in activities of daily living. Personal services do not include nursing or medical care.
- (31) "Physician Assistant" means a person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.
- (32) "Physician Orders for Scope of Treatment" or "POST" means written orders that:
  - (a) Are on a form approved by the Board for Licensing Health Care Facilities;
  - (b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and
  - (c)
    - 1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;
    - 2. Specify other medical interventions that are to be provided or withheld; or
    - 3. Specify both 1 and 2.
- (33) "Power of Attorney for Health Care" means the legal designation of an agent to make health care decisions for the individual granting such power under T.C.A. Title 34, Chapter 6, Part 2.
- (34) "Primarily aged" means that a minimum of fifty-one percent (51%) of the population of the facility is at least sixty-two (62) years of age.
- (35) "Resident sleeping unit" means a single unit providing sleeping facilities for one or more persons. Resident sleeping units can also include permanent provisions for living, eating and sanitation.
- (36) "Responsible attendant" means the individual person designated by the licensee to provide personal services to the residents.
- (37) "Secured unit" means a distinct part of an ACLF where the residents are intentionally denied egress except as is necessary to comply with life safety requirements.
- (38) "Self-Administration of Medication" means the ability to administer medicine to oneself without assistance other than receiving help with reading labels or with physically opening the container or packaging, being reminded of one's medication, or being observed while taking medication in accordance with the plan of care.

(Rule 1200-08-25-.02, continued)

- (39) "Supervising health care provider" means the health care provider who has undertaken primary responsibility for an individual's health care.
- (40) "Surrogate" means an individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident pursuant to T.C.A. § 68-11-1806.
- (41) "Treating health care provider" means a health care provider directly or indirectly involved in providing health care to a resident at the time such care is needed by the resident.

**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, 68-11-210, and 68-11-211. **Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed November 19, 2003; effective February 2, 2004. Amendment filed January 19, 2007; effective April 4, 2007. Amendment filed February 23, 2007; effective May 9, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendments filed July 10, 2018; effective October 8, 2018.

#### 1200-08-25-.03 LICENSING REQUIREMENTS.

- (1) An applicant for an ACLF license shall submit the following to the office of the Board for Licensing Health Care Facilities:
  - (a) A completed application on a form approved by the Board;
  - (b) Nonrefundable application fee;
  - (c) Demonstration of the ability to meet the financial obligations of the ACLF with a financial statement prepared by a certified public accountant;
  - (d) A copy of a local business license (if one is required by the locality);
  - (e) A copy of any and all documents demonstrating the legal status of the business organization that owns the ACLF. If the applicant is a corporation or a limited liability company the applicant must submit a certificate of good standing; and
  - (f) Any other documents or information requested by the Board.
- (2) Before a license is granted, the applicant shall submit to an inspection conducted by Department of Health inspectors to ensure compliance with all applicable laws and rules.
- (3) 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 applicant has been denied a license or has had a license disciplined or has attempted to avoid the survey and review process.
- (4) ACLF licenses shall expire and become invalid annually on the anniversary date of their original issuance.
  - (a) In order to successfully renew a license, Department inspectors will periodically inspect each ACLF to determine its compliance with these rules and regulations. If the inspectors find deficiencies, the licensee shall submit an acceptable corrective action plan and shall remedy the deficiencies.
  - (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

(Rule 1200-08-25-.03, continued)

- 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 1200-08-25-.04(1).
  - (d) Upon reapplication, the licensee shall submit to an inspection of the ACLF by Department of Health inspectors.
- (5) The Board shall issue a license only for the licensee and the location designated on the license application. If an ACLF moves to a new location, it shall obtain a new license and submit to an inspection of the new building before admitting residents.
- (6) A separate license shall be required for each ACLF when more than one facility is operated under the same management or ownership.
- (7) Any admission in excess of the licensed bed capacity is prohibited.
- (8) Change of Ownership.
- (a) A change of ownership occurs whenever the ultimate legal authority for the responsibility of the ACLF's operation is transferred, including a change in the legal structure by which the ACLF is owned and operated, and/or whenever ownership of the preceding or succeeding entity changes.
  - (b) A licensee shall notify the Board's administrative office of a proposed change of ownership within at least thirty (30) days prior to its occurrence by submitting the following to the Board office:
    - 1. A completed change of ownership application on a form approved by the Board;
    - 2. Nonrefundable application fee;
    - 3. Demonstration of ability to meet the financial obligations of the ACLF with a financial statement prepared by a certified public accountant;
    - 4. A copy of a local business license (if one is required by the locality);
    - 5. A copy of any and all documents demonstrating the formation of the business organization that owns the ACLF;
    - 6. The bill of sale and/or closing documents indicating the transfer of operations of the business entity; and
    - 7. Any other documents or information requested by the Board.
  - (c) Transactions constituting a change of ownership include, but are not limited to, the following:
    - 1. Transfer of the ACLF's legal title;

(Rule 1200-08-25-.03, continued)

2. Lease of the ACLF's operations;
  3. Dissolution of any partnership that owns, or owns a controlling interest in, the ACLF;
  4. The removal, addition or substitution of a partner;
  5. Removal of the general partner or general partners, if the ACLF is owned by a limited partnership;
  6. Merger of an ACLF 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 ACLF 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. Merger of two (2) or more corporations where one of the originally-licensed corporations survives;
  3. Changes in the membership of a non-profit corporation;
  4. Transfers between departments of the same level of government;
  5. Corporate stock transfers or sales, even when a controlling interest.
  6. Sale/lease-back agreements if the lease involves the ACLF'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; or
  7. Management agreements if the owner continues to retain ultimate authority for the operation of the ACLF; however, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.
- (9) Certification of Administrator.
- (a) Each ACLF must have an administrator who shall be certified by the Board, unless the administrator is currently licensed in Tennessee as a nursing home administrator as required by T.C.A. §§ 63-16-101, *et seq.*
  - (b) An applicant for certification as an ACLF administrator shall submit the following to the Board office:
    1. A completed application on a form approved by the Board;
    2. Nonrefundable application fee;
    3. Proof that the applicant is at least twenty-one (21) years of age;

(Rule 1200-08-25-.03, continued)

4. Proof that the applicant is a high school graduate or the holder of a general equivalency diploma;
  5. Results of a criminal background check; and
  6. Proof that the applicant has not been convicted of a criminal offense involving the abuse or intentional neglect of an elderly or vulnerable individual.
- (c) Renewal of ACLF administrator certification.
1. Certification shall be renewed biennially on June 30.
  2. The initial biennial re-certification expiration date of ACLF administrator candidates who receive their first certification between the dates of January 1 and June 30 of any year will be extended to two (2) years plus the additional months remaining in the fiscal year.
  3. In order to renew certification, the ACLF administrator shall submit the following to the Board office: renewal application; fee established by rule 1200-08-25-.04; and proof of having obtained at least twenty-four (24) classroom hours of continuing education during the previous two (2) years.
  4. An ACLF administrator shall complete twenty-four (24) classroom hours of continuing education approved by the Board prior to attendance, including, but not limited to the following topics:
    - (i) State rules and regulations for ACLFs;
    - (ii) Health care management;
    - (iii) Nutrition and food service;
    - (iv) Financial management; and
    - (v) Healthy lifestyles.
  5. All educational courses sponsored by the National Association of Boards of Examiners for Nursing Home Administrators (NAB) and continuing education courses sponsored by State and/or national associations that focus on geriatric care are board approved.
  6. An ACLF administrator who allows an administrator certification to lapse and reapplies for new certification must submit written proof of attendance of at least twenty-four (24) classroom hours of continuing education courses, as described in Part 4 above, within six (6) months after submitting a new application.
- (10) The licensee shall immediately notify the Board's administrative office in the event of an absence or change of administrator due to serious illness, incapacity, death or resignation of its named administrator.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-208, 68-11-209, 68-11-213, 68-11-216, and Chapter 846 of the Public Acts of 2008, § 1. **Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed March 1, 2007; effective May 15, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20,

(Rule 1200-08-25-.03, continued)

2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014. Amendments filed July 10, 2018; effective October 8, 2018.

#### 1200-08-25-.04 FEES.

- (1) Each ACLF, except those operated by the United States of America or the State of Tennessee, making application for licensure under this chapter shall pay annually to the Board's administrative office, a fee based on the number of ACLF 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 ACLFs 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.

- (2) Each ACLF administrator shall submit to the Board's administrative office an application fee of one hundred eighty dollars (\$180.00). The fee shall be submitted with the initial application or renewal application and is not refundable.

**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, 68-11-216, 68-11-257, and 71-6-121. **Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed November 25, 1998; effective February 8, 1999. Amendment filed September 21, 2001; effective December 5, 2001. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Public necessity rule filed May 13, 2009; through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendments filed March 26, 2019; effective June 24, 2019.

#### 1200-08-25-.05 REGULATORY STANDARDS.

- (1) A Department of Health representative shall make an unannounced inspection of every ACLF holding a license granted by the Board for its compliance with applicable state law and regulations within fifteen (15) months following the date of its last inspection, and as necessary, to protect the public's health, safety and welfare. An ACLF must cooperate during Department of Health conducted inspections, including allowing entry at any hour and providing all required records.
- (2) Plan of Correction. When Department of Health inspectors find that an ACLF has committed a violation of this chapter, the Department of Health, as the Board's representative, will issue a statement of deficiencies to the ACLF. Within ten (10) days of receipt of the statement of deficiencies, the ACLF must return a plan of correction including the following:

(Rule 1200-08-25-.05, continued)

- (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.
- (3) Either failure to submit a plan of correction in a timely manner or a finding by the Department of Health that the plan of correction is unacceptable may subject the ACLF's license to disciplinary action.
- (4) Upon a finding by the Board that an ACLF has violated any provision of the Health Facilities and Resources Act, Part 2—Regulation of Health and Related Facilities (T.C.A. §§ 68-11-201, *et seq.*) or the rules promulgated pursuant thereto, action may be taken, upon proper notice to the licensee, to impose a civil penalty, deny, suspend, or revoke its license.
- (5) Civil Penalties. The Board may, in a lawful proceeding respecting licensing (as defined in the Uniform Administrative Procedures Act), in addition to or in lieu of other lawful disciplinary action, assess civil penalties for violations of statutes, rules or orders enforceable by the Board in accordance with the following schedule:

Violation	Penalty
T.C.A. § 68-11-201(4)(B) (Provision of Room and Board and Non-Medical Living Assistance Services)	\$0-\$1000
T.C.A. § 68-11-201(4)(C) (Provision of Medical and other Professional Services; Medicare Services; Oversight of Medical Services; Plan of Care & Assessment; Personal and Medical Records; and, Fire Safety)	\$0-\$1000
T.C.A. § 68-11-213(i)(2) (Admission or Retention of Inappropriately Placed Resident. ) Each resident shall constitute a separate violation.)	\$0-\$3000
T.C.A. § 68-11-213(i)(1) (Operating ACLF without Required License. Each day of operation shall constitute a separate violation.)	\$0-\$5000

In determining the amount of any civil penalty to be assessed pursuant to this rule the Board may consider such factors as the following:

- (a) Willfulness of the violation;
- (b) Repetitiveness of the violation;

(Rule 1200-08-25-.05, continued)

- (c) Magnitude of the risk of harm caused by the violation.
- (6) Each violation of any statute, rule or order enforceable by the Board shall constitute a separate and distinct offense and may render the ACLF committing the offense subject to a separate penalty for each violation.
- (7) A licensee may appeal any disciplinary action taken against it in accordance with the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101, *et seq.*
- (8) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-213 (j), and 68-11-257. **Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed November 25, 1998; effective February 8, 1999. Amendment filed February 15, 2000; effective April 30, 2000. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed May 24, 2004; effective August 7, 2004. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009.

#### 1200-08-25-.06 ADMINISTRATION.

- (1) Each ACLF shall meet the following staffing and procedural standards:
  - (a) Staffing Requirements:
    - 1. The licensee must designate in writing a capable and responsible person to act on administrative matters and to exercise all the powers and responsibilities of the licensee as set forth in this chapter in the absence of the licensee.
    - 2. If the licensee is a natural person, the licensee shall be at least eighteen (18) years of age, of reputable and responsible character, able to comply with these rules, and must maintain financial resources and income sufficient to provide for the needs of the residents, including their room, board, and personal services.
    - 3. An ACLF shall have an identified responsible attendant who is alert and awake at all times and a sufficient number of employees to meet the residents' needs, including medical services as prescribed. The responsible attendant and direct care staff must be at least eighteen (18) years of age and capable of complying with statutes and rules governing ACLFs.
    - 4. An ACLF shall have a licensed nurse available as needed.
    - 5. An ACLF shall employ a qualified dietitian, full time, part-time, or on a consultant basis.
    - 6. An ACLF may not employ an individual listed on the Abuse Registry maintained by the Department of Health.
  - (b) Policies and Procedures:
    - 1. An ACLF shall have a written statement of policies and procedures outlining the facility's responsibilities to its residents, any obligation residents have to the facility, and methods by which residents may file grievances and complaints.

(Rule 1200-08-25-.06, continued)

2. An ACLF shall develop and implement an effective facility-wide performance improvement plan that addresses plans for improvement for self-identified deficiencies and documents the outcome of remedial action.
  3. An ACLF shall develop a written policy, plan or procedure concerning a subject and adhere to its provisions whenever required to do so by these rules. A licensee that violates its own policy established as required by these rules and regulations also violates the rules and regulations establishing the requirement.
  4. An ACLF shall develop a written policy and procedure governing smoking practices of residents.
    - (i) Residents of the facility are exempt from the smoking prohibition that otherwise applies to the ACLF.
    - (ii) Smoke from permissible smoking areas shall not infiltrate into areas where smoking is prohibited.
  5. An ACLF shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.
- (c) An ACLF shall keep a written up-to-date log of all residents that can be produced in the event of an emergency.
  - (d) An ACLF shall allow pets in the ACLF only when they are not a nuisance and do not pose a health hazard. Plans for pet management must be approved by the Department.
  - (e) No person associated with the licensee or ACLF shall act as a court-appointed guardian, trustee, or conservator for any resident of the ACLF or any of such resident's property or funds, except as provided by rule 1200-08-25-.14(1)(i).
  - (f) An ACLF shall not retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the Board, the Department, the Adult Protective Services, or the Comptroller of the State Treasury. An ACLF shall neither retaliate nor discriminate, because any person lawfully provides information to these authorities, cooperates with them, or is subpoenaed to testify at a hearing involving them.
- (2) In the event a resident dies at an ACLF, a registered nurse may make the actual determination and pronouncement of death under the following circumstances:
    - (a) Death was anticipated and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present and with the deceased at the place of death;
    - (b) The nurse is licensed by the Tennessee Board of Nursing; and
    - (c) The nurse is employed by the ACLF in which the deceased resided.
  - (3) In the event that resident, receiving services of a Medicare certified hospice program licensed by the state, dies at an ACLF, a registered nurse may make the actual determination and pronouncement of death under the following circumstances:
    - (a) The deceased was suffering from a terminal illness;

(Rule 1200-08-25-.06, continued)

- (b) Death was anticipated and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present and with the deceased at the place of death;
  - (c) The nurse is licensed by the Tennessee Board of Nursing; and
  - (d) The nurse is employed by the hospice program from which the deceased had been receiving hospice services.
- (4) An ACLF shall post the following at the main public entrance:
- (a) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the Division of Adult Protective Services. The statement shall include the statewide toll-free number for the Division and the telephone number for the local district attorney's office. The posting shall be on a sign no smaller than eleven inches by seventeen inches. (This same information shall be provided to each resident in writing upon admission to any facility);
  - (b) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline for immediate assistance, with that number printed in boldface type, and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height;
  - (c) A statement regarding whether it has liability insurance, the identity of their primary insurance carrier, and if self-insured, the corporate entity responsible for payment of any claims. It shall be posted on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height; and
  - (d) "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.
  - (e) A statement that any person who has experienced a problem with a specific licensed ACLF may file a complaint with the Division of Health Care Facilities. The posting shall include the statewide toll-free telephone number for the Division's centralized complaint intake unit.
- (5) Infection Control
- (a) An ACLF shall ensure that neither a resident nor an employee of the ACLF with a reportable communicable disease shall reside or work in the ACLF unless the ACLF has a written protocol approved by the Board's administrative office.
  - (b) An Assisted-Care Living Facility 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 Assisted-Care Living Facility 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>);

(Rule 1200-08-25-.06, continued)

3. Education of all employees about the following:
    - (i) Flu vaccination;
    - (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.
- (c) An ACLF and its employees shall adopt and utilize standard precautions in accordance with guidelines established by the Centers for Disease Control and Prevention (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 resident contact if hands are not visibly soiled;
  2. Use of gloves during each resident contact with blood or where other potentially infectious materials, mucous membranes, and non-intact skin could occur and gloves shall be changed before and after each resident contact;
  3. Use of either non-antimicrobial soap and water or antimicrobial soap and water for visibly soiled hands; and
  4. Health care worker education programs which may include:
    - (i) Types of resident 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 residents; and
    - (iv) Morbidity, mortality, and costs associated with health care associated infections.
- (d) An ACLF shall develop and implement a system for measuring improvements in adherence to the hand hygiene program and influenza vaccination program.
- (e) Mandatory Testing for COVID-19.
1. The requirements of this subparagraph apply to all assisted-care living facilities licensed under Title 68, Chapter 11.
  2. Assisted-care living facilities shall comply with all Department of Health infection and prevention directives concerning staff and resident testing, including making off-shift staff available at the facility for testing.
  3. "Staff" or "Staff member" for the purposes of this subparagraph shall mean an

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(Rule 1200-08-25-.06, continued)

employee or any individual who contracts with the facility to provide resident care.

4. Initial Statewide Testing:

(i) Each assisted-care living facility must complete an "intent to test" survey as provided for by the Department prior to June 1, 2020.

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(ii) Each assisted-care living facility resident and staff member must be tested by June 30, 2020.

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(iii) Initial statewide testing may be done at the State Public Health Lab (SPHL), commercial labs with whom the State has agreements or through commercial laboratories with whom the facility has agreements. The facility may use any commercial labs using a test with U.S. Food and Drug Administration (FDA) emergency use authorization and which will report results as required by law.

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(iv) The Department shall assist any assisted-care living facility without nursing staff in securing the licensed personnel necessary to take resident and staff samples, but facility support will be required for administrative tasks.

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(v) An assisted-care living facility may use a commercial lab without the prior consent of the Department.

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(vi) Within one (1) day of the effective date of this rule, the Department shall publish a list of previously approved labs.

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(vii) The Department will provide sufficient personal protective equipment for the initial statewide testing described in this subparagraph.

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5. Residents and staff have the right to refuse testing. Each facility shall document the staff or resident's refusal by having the individual sign documentation created by the facility indicating that they have refused testing.

6. A violation of this subparagraph is considered to be a serious deficiency. For a violation of any part of this subparagraph, the Department may seek any remedy authorized by Tenn. Code Ann. §§ 68-11-207 and 68-11-213, including but not limited to, license revocation, license suspension, and the imposition of civil monetary penalties.

7. It shall be a defense to any disciplinary action taken under this subparagraph that a facility is unable to identify a COVID-19 testing laboratory, or that total statewide testing capacity is insufficient to accommodate the anticipated number of tests required by these rules.

- (6) An ACLF shall ensure that no person will be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the provision of any care or service of the ACLF on the grounds of race, color, national origin, or handicap. An ACLF shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

**Authority:** T.C.A. §§ 39-17-1804, 39-17-1805, 68-3-511, 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-213, 68-11-254, 68-11-268, and 71-6-121. **Administrative History:** Original rule filed

(Rule 1200-08-25-.06, continued)

*February 9, 1998; effective April 25, 1998. Amendment filed January 7, 2000; effective March 22, 2000. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed March 27, 2015; effective June 25, 2015. Amendments filed July 18, 2016; effective October 16, 2016.*

**1200-08-25-.07 SERVICES PROVIDED.**

- (1) An ACLF may provide medical services as follows:
  - (a) Administer medications to residents that are typically self-administered as subject to limitations described within these rules and regulations.
  - (b) All other medical services prescribed by the physician that could be provided to a private citizen in the citizen's home, including, but not limited to:
    1. Part-time or intermittent nursing care;
    2. Various therapies;
    3. Podiatry care;
    4. Medical social services;
    5. Medical supplies;
    6. Durable medical equipment; and
    7. Hospice services.
  - (c) Intravenous medications may only be administered to:
    1. Existing residents who receive them on an intermittent basis; and
    2. Residents receiving hospice care.
- (2) Medical services in an ACLF shall be provided by:
  - (a) Appropriately licensed or qualified staff of an ACLF;
  - (b) Appropriately licensed or qualified contractors of an ACLF;
  - (c) A licensed home care organization;
  - (d) Another appropriately licensed entity; or
  - (e) Appropriately licensed staff of a nursing home.
- (3) Oversight of medical services in an ACLF shall be consistent with oversight provided in private residential settings as defined through rules and regulations promulgated by the applicable licensing boards and shall ensure quality of care to residents.
- (4) Medicare reimbursable services shall be provided to an ACLF resident by a certified Medicare provider.
- (5) Resident medication. An ACLF shall:

(Rule 1200-08-25-.07, continued)

- (a) Ensure that medication shall be self-administered in accordance with the resident's plan of care;
  - (b) Ensure that all drugs and biologicals shall be administered by a licensed or certified health care professional operating within the scope of the professional license or certification and according to the resident's plan of care.
  - (c) Ensure that during the course of administering medication, a medication aide shall not be assigned any other non-medication administration duties. However, a medication aide shall not be precluded from responding, as appropriate, to an emergency;
  - (d) Store all medications via a locked or closed container and/or room which includes, but is not limited to, some type of box, piece of furniture, an individual resident room, and/or a designated room within the facility which maintains resident medication out of the sight of other residents; and
  - (e) Ensure that facility staff shall not repack medication and shall not administer medication from repackaging.
- (6) An ACLF shall dispose of medications as follows:
- (a) Upon discharge of a resident, unused prescription medication shall be released to the resident, the resident's family member, or the resident's legal representative, unless specifically prohibited by the attending physician.
  - (b) Upon death of a resident, unused prescription medication must be destroyed in the manner outlined, and by the individuals designated, in the facility's medication disposal policy, unless otherwise requested by the resident's family member or the resident's legal representative and accompanied by a written order by a physician. The ACLF's medication disposal policy shall be written in accordance with current FDA or current DEA medication disposal guidelines;
  - (c) The ACLF shall properly dispose of prescription medication administered by the facility in accordance with the facility's medication disposal policy, which shall be written in accordance with current FDA or current DEA medication disposal guidelines.
  - (d) The ACLF may dispose of prescription medication that is self-administered by the resident according to the facility's medication disposal policy, which shall be written in accordance with current FDA or current DEA medication disposal guidelines, or the facility may provide information to the resident's family member or the resident's legal representative regarding the proper method to dispose of the medication.
  - (e) If the resident is a hospice patient, hospice shall be responsible for disposing of the prescription medication upon the death of the resident.
  - (f) The ACLF's medication disposal policy shall be performed by a licensed or certified health care professional and either the facility's administrator, or a second licensed or certified health care professional.
  - (g) The ACLF's medication disposal policy shall also address the disposal of scheduled drugs, non-scheduled drugs, and devices that are misbranded, expired, deteriorated, not kept under proper conditions, and kept in containers with illegible or missing labels.
- (7) An ACLF shall provide personal services as follows:

(Rule 1200-08-25-.07, continued)

- (a) Each ACLF shall provide each resident with at least the following personal services:
1. Protective care;
  2. Safety when in the ACLF;
  3. Daily awareness of the individual's whereabouts;
  4. The ability and readiness to intervene if crises arise;
  5. Room and board; and
  6. Non-medical living assistance with activities of daily living.
- (b) Laundry services. An ACLF shall:
1. Provide arrangements for laundry of ACLF linens and residents' clothing;
  2. Provide appropriate separate storage areas for soiled linens and residents' clothing; and
  3. Maintain clean linens in sufficient quantity to provide for the needs of the residents. Linens shall be changed whenever necessary.
- (c) Dietary services.
1. An ACLF shall have organized dietary services that are directed and staffed by adequate qualified personnel. An ACLF may contract with an outside food management company if the company has a dietitian who serves the ACLF on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this section while providing for constant liaison with the ACLF for recommendations on dietetic policies affecting resident treatment.
  2. An ACLF shall have an employee who:
    - (i) Serves as director of the food and dietetic service;
    - (ii) Is responsible for the daily management of the dietary services and staff training; and
    - (iii) Is qualified by experience or training.
  3. An ACLF shall ensure that menus meet the needs of the residents as follows:
    - (i) The practitioner or practitioners, as qualified within the scope of practice, responsible for the care of the residents shall prescribe therapeutic diets as necessary.
    - (ii) An ACLF shall meet nutritional needs, in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the residents.
    - (iii) An ACLF shall have a current therapeutic diet manual approved by the dietitian readily available to all ACLF personnel.

(Rule 1200-08-25-.07, continued)

- (iv) Menus shall be planned one week in advance.
4. An ACLF shall:
- (i) Provide at least three (3) meals constituting an acceptable and/or prescribed diet per day. There shall be no more than fourteen (14) hours between the evening and morning meals. All food served to the residents shall be of good quality and variety, sufficient quantity, attractive and at safe temperatures. Prepared foods shall be kept hot (140°F. or above) or cold (41°F. or less) as appropriate. The food must be adapted to the habits, preferences and physical abilities of the residents. Additional nourishment and/or snacks shall be provided to residents with special dietary needs or upon request.
  - (ii) Provide sufficient food provision capabilities and dining space.
  - (iii) Maintain and properly store a forty-eight (48) hour food supply at all times.
  - (iv) Provide appropriate, properly-repaired equipment and utensils for cooking and serving food in sufficient quantity to serve all residents.
5. An ACLF shall maintain a clean and sanitary kitchen.
6. Employees shall wash and sanitize equipment, utensils and dishes after each use.
- (d) An ACLF shall provide a suitable and comfortable furnished area for activities and family visits. Furnishings shall include a calendar and a functioning television set, radio, and clock.
  - (e) An ACLF shall provide current newspapers, magazines or other reading materials.
  - (f) An ACLF shall have a telephone accessible to all residents to make and receive personal telephone calls twenty-four (24) hours per day.

**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, and 68-11-261. **Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed November 25, 1999; effective February 8, 1999. Amendment filed August 26, 2002; effective November 9, 2002. Amendment filed February 18, 2003; effective May 4, 2003. Repeal and new rule filed January 24, 2006; effective April 9, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed March 27, 2015; effective June 25, 2015. Amendments filed July 10, 2018; effective October 8, 2018.

#### 1200-08-25-.08 ADMISSIONS, DISCHARGES, AND TRANSFERS.

- (1) An ACLF shall not admit or permit the continued stay of any ACLF resident who has any of the following conditions:
  - (a) Requires treatment for stage III or stage IV decubitus ulcers or with exfoliative dermatitis;
  - (b) Requires continuous nursing care;

(Rule 1200-08-25-.08, continued)

- (c) Has an active, infectious and reportable disease in a communicable state that requires contact isolation;
  - (d) Exhibits verbal or physical aggressive behavior which poses an imminent physical threat to self or others, based on behavior, not diagnosis;
  - (e) Requires physical or chemical restraints, not including psychotropic medications for a manageable mental disorder or condition; or
  - (f) Has needs that cannot be safely and effectively met in the ACLF.
- (2) An ACLF resident shall be discharged and transferred to another appropriate setting such as home, a hospital, or a nursing home when the resident, the resident's legal representative, ACLF administrator, or the resident's treating physician determine that the ACLF cannot safely and effectively meet the resident's needs, including medical services.
- (a) The Board may require that an ACLF resident be discharged or transferred to another level of care if it determines that the resident's needs, including medical services, cannot be safely and effectively met in the ACLF.
- (3) Except for the limitations set forth in (4)(a) and (4)(b) of this rule, an ACLF may admit and permit the continued stay of an individual meeting the level of care requirement for nursing facility services, if:
- (a) The resident's treating physician certifies in writing that the resident's needs, including medical services, can be safely and effectively met by care provided in the ACLF; and
  - (b) The ACLF can provide assurances that the resident can be timely evacuated in case of fire or emergency.
- (4) An ACLF shall not admit, but may permit the continued stay of residents who require:
- (a) The following treatments on an intermittent basis of up to three (3) twenty-one (21) day periods. The resident's treating physician must certify that treatment can be safely and effectively provided by the ACLF for the last two (2) twenty-one (21) day periods.
    - 1. Nasopharyngeal or tracheotomy aspiration;
    - 2. Nasogastric feedings;
    - 3. Gastrostomy feedings; or
    - 4. Intravenous therapy or intravenous feedings.
  - (b) The treatments described in parts (1)-(4) above can be provided on an on-going basis if:
    - 1. The resident is receiving hospice services;
    - 2. The resident does not qualify for nursing facility level care and the board grants a waiver; or
    - 3. The resident is able to care for the specified conditions without assistance of facility personnel or other appropriately licensed entity. Such a resident may be admitted or permitted to continue as a resident of the ACLF.

(Rule 1200-08-25-.08, continued)

- (5) An ACLF resident qualifying for hospice care shall be able to receive hospice care services and continue as a resident if the resident's treating physician certifies that such care can be appropriately provided in the ACLF.
  - (a) In the event that the resident is able to receive hospice services in an ACLF, the resident's hospice provider and the ACLF shall be jointly responsible for a plan of care that is prepared pursuant to current hospice guidelines promulgated by the Centers for Medicaid and Medicare and ensures both the safety and well-being of the resident's living environment and provision of the resident's health care needs.
  - (b) The hospice provider shall be available to assess, plan, monitor, direct and evaluate the resident's palliative care with the resident's treating physician and in cooperation with the ACLF.
- (6) An ACLF shall:
  - (a) Be able to identify at the time of admission and during continued stay those residents whose needs for services are consistent with these rules and regulations, and those residents who should be transferred to a higher level of care;
  - (b) Have a written admission agreement that includes a procedure for handling the transfer or discharge of residents and that does not violate the residents' rights under the law or these rules;
  - (c) Have an accurate written statement regarding fees and services which will be provided residents upon admission;
  - (d) Give a thirty (30) day notice to all residents before making any changes in fee schedules;
  - (e) Ensure that residents see a physician for acute illness or injury and are transferred in accordance with any physician's orders;
  - (f) Provide to each resident at the time of admission a copy of the resident's rights for the resident's review and signature;
  - (g) Have written policies and procedures to assist residents in the proper development, filing, modification and rescission of an advance directive, a living will, a do-not-resuscitate order, and the appointment of a durable power of attorney for health care;
  - (h) Prior to the admission of a resident or prior to the execution of a contract for the care of a resident (whichever occurs first), each ACLF shall disclose in writing to the resident or to the resident's legal representative, whether the ACLF has liability insurance and the identity of the primary insurance carrier. If the ACLF is self-insured, its statement shall reflect that fact and indicate the corporate entity responsible for payment of any claims;
  - (i) Document evidence of annual vaccination against influenza for each resident, in accordance with the recommendation of the Advisory Committee on Immunization Practices of the Centers for Disease Control most recent to the time of vaccine, unless such 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; and

(Rule 1200-08-25-.08, continued)

- (j) Document evidence of vaccination against pneumococcal disease for all residents who are sixty-five (65) years of age or older, in accordance with the recommendations 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.
  - (k) Prior to the admission of a resident or prior to the execution of a contract for the care of a resident (whichever occurs first), each ACLF shall disclose in writing to the resident or to the resident's legal representative a copy of the medication disposal policy, which shall be written in accordance with current FDA or current DEA medication disposal guidelines.
- (7) An ACLF shall have documented plans and procedures to show evacuation of all residents.
- (8) An ACLF may not retain a resident who cannot evacuate within thirteen (13) minutes unless the ACLF complies with Chapter 19 of the 2006 edition of the NFPA Life Safety Code, and the Institutional Unrestrained Occupancy of the 2006 edition of the International Building Code.
- (9) An ACLF utilizing secured units shall provide survey staff with twelve (12) months of the following performance information specific to the secured unit and its residents at its annual survey:
- (a) Documentation that an interdisciplinary team consisting of at least a physician, a registered nurse, and a family member (or patient care advocate) has evaluated each secured resident prior to admittance to the unit;
  - (b) Ongoing and up-to-date documentation that each resident's interdisciplinary team has performed a quarterly review as to the appropriateness of placement in the secured unit;
  - (c) A current listing of the number of deaths and hospitalizations, with diagnoses, that have occurred on the unit;
  - (d) A current listing of all unusual incidents and/or complications on the unit;
  - (e) An up-to-date staffing pattern and staff ratios for the unit that is recorded on a daily basis. The staffing pattern must ensure that there is a minimum of one (1) attendant, awake, on duty, and physically located on the unit twenty-four (24) hours per day, seven (7) days per week, at all times;
  - (f) A formulated calendar of daily group activities scheduled, including a resident attendance record for the previous three (3) months;
  - (g) An up-to-date listing of any incidences of decubitus and/or nosocomial infections, including resident identifiers; and
  - (h) Documentation showing that 100% of the staff working on the unit receives annual in-service training which shall include, but not be limited to, the following subject areas:
    - 1. Basic facts about the causes, progression and management of Alzheimer's disease and related disorders;

(Rule 1200-08-25-.08, continued)

2. Dealing with dysfunctional behavior and catastrophic reactions in the residents;
3. Identifying and alleviating safety risks to the resident;
4. Providing assistance in the activities of daily living for the resident; and
5. Communicating with families and other persons interested in the resident.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-201(5), 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-211, 68-11-263, and 68-11-266. **Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed January 7, 2000; effective March 22, 2000. Amendment filed February 18, 2003; effective May 4, 2003. Repeal and new rule filed January 24, 2006; effective April 9, 2006. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed March 27, 2015; effective June 25, 2015. Amendments filed July 10, 2018; effective October 8, 2018.

#### 1200-08-25-.09 BUILDING STANDARDS.

- (1) An ACLF shall construct, arrange, and maintain the condition of the physical plant and the overall ACLF living facility environment in such a manner that the safety and well-being of residents are assured.
- (2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All facilities shall conform to the current edition of the following applicable codes as approved by the Board for Licensing Health Care Facilities: International Building Code (excluding Chapters 1 and 11) including referenced International Fuel Gas Code, International Mechanical Code, and International Plumbing Code; National Fire Protection Association (NFPA) NFPA 101 Life Safety Code excluding referenced NFPA 5000; Guidelines for Design and Construction of Health Care Facilities (FGI) including referenced Codes and Standards; U.S. Public Health Service Food Code; and Americans with Disabilities Act (ADA) Standards for Accessible Design. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes, regulations and provisions of this chapter, the most stringent requirements shall apply.
- (3) The codes in effect at the time of submittal of plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.
- (4) The licensed contractor shall perform all new construction and renovations to assisted care living facilities, other than minor alterations not affecting fire and life safety or functional issues, in accordance with the specific requirements of these regulations governing new construction in assisted care living facilities, including the submission of phased construction plans and the final drawings and the specifications to each.
- (5) No new ACLF shall be constructed, nor shall major alterations be made to an existing ACLF without prior approval of the department, and unless in accordance with plans and specifications approved in advance by the department. Before any new ACLF is licensed or before any alteration or expansion of a licensed ACLF can be approved, the applicant must furnish two (2) complete sets of plans and specifications to the department, together with fees and other information as required. Plans and specifications for new construction and major renovations, other than minor alterations not affecting fire and life safety or functional issues, shall be prepared by or under the direction of a licensed architect and/or a licensed engineer and in accordance with the rules of the Board of Architectural and Engineering Examiners.

(Rule 1200-08-25-.09, continued)

- (6) Final working drawings and specifications shall be accurately dimensioned and include all necessary explanatory notes, schedules and legends. The working drawings and specifications shall be complete and adequate for contract purposes.
- (7) Detailed plans shall be drawn to a scale of at least one-eighth inch equals one foot ( $1/8" = 1'$ ), and shall show the general arrangement of the building, the intended purpose and the fixed equipment in each room, with such additional information as the department may require. An architect or engineer licensed to practice in the State of Tennessee shall prepare the plans the department requires.
  - (a) The project architect or engineer shall forward two (2) sets of plans to the appropriate section of the department for review. After receipt of approval of phased construction plans, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the owner's understanding that such work is at the owner's own risk and without assurance that final approval of final plans and specifications shall be granted. The project architect or engineer shall submit final plans and specifications for review and approval. The department must grant final approval before the project proceeds beyond foundation work.
  - (b) Review of plans does not eliminate responsibility of owner and/or architect to comply with all rules and regulations.
- (8) Specifications shall supplement all drawings. They shall describe the characteristics of all materials, products and devices, unless fully described and indicated on the drawings. Specification copies should be bound in an  $8\frac{1}{2} \times 11$  inch folder.
- (9) Drawings and specifications shall be prepared for each of the following branches of work: Architectural, Structural, Mechanical, Electrical and Sprinkler.
- (10) Architectural drawings shall include:
  - (a) Plot plan(s) showing property lines, finish grade, location of existing and proposed structures, roadways, walks, utilities and parking areas;
  - (b) Floor plan(s) showing scale drawings of typical and special rooms, indicating all fixed and movable equipment and major items of furniture;
  - (c) Separate life safety plans showing the compartment(s), all means of egress and exit markings, exits and travel distances, dimensions of compartments and calculation and tabulation of exit units. All fire and smoke walls must be identified;
  - (d) The elevation of each facade;
  - (e) The typical sections throughout the building;
  - (f) The schedule of finishes;
  - (g) The schedule of doors and windows;
  - (h) Roof plans;
  - (i) Details and dimensions of elevator shaft(s), car platform(s), doors, pit(s), equipment in the machine room, and the rates of car travel must be indicated for elevators; and
  - (j) Code analysis.

(Rule 1200-08-25-.09, continued)

- (11) Structural drawings shall include:
  - (a) Plans of foundations, floors, roofs and intermediate levels which show a complete design with sizes, sections and the relative location of the various members;
  - (b) Schedules of beams, girders and columns; and
  - (c) Design live load values for wind, roof, floor, stairs, guard, handrails, and seismic.
- (12) Mechanical drawings shall include:
  - (a) Specifications which show the complete heating, ventilating, fire protection, medical gas systems and air conditioning systems;
  - (b) Water supply, sewerage and HVAC piping systems;
  - (c) Pressure relationships shall be shown on all floor plans;
  - (d) Heating, ventilating, HVAC piping, medical gas systems and air conditioning systems with all related piping and auxiliaries to provide a satisfactory installation;
  - (e) Water supply, sewage and drainage with all lines, risers, catch basins, manholes and cleanouts clearly indicated as to location, size, capacities, etc., and location and dimensions of septic tank and disposal field; and
  - (f) Color coding to show clearly supply, return and exhaust systems.
- (13) Electrical drawings shall include where applicable:
  - (a) A seal, certifying that all electrical work and equipment is in compliance with all applicable codes and that all materials are currently listed by recognized testing laboratories;
  - (b) All electrical wiring, outlets, riser diagrams, switches, special electrical connections, electrical service entrance with service switches, service feeders and characteristics of the light and power current, and transformers when located within the building;
  - (c) An electrical system that complies with applicable codes;
  - (d) Color coding to show all items on emergency power;
  - (e) Circuit breakers that are properly labeled; and
  - (f) Ground-Fault Circuit Interrupters (GFCI) that are required in all wet areas, such as kitchens, laundries, janitor closets, bath and toilet rooms, etc, and within six (6) feet of any lavatory.
- (14) The electrical drawings shall not include knob and tube wiring, shall not include electrical cords that have splices, and shall not show that the electrical system is overloaded.
- (15) In all new facilities or renovations to existing electrical systems, the installation must be approved by an inspector or agency authorized by the State Fire Marshal.
- (16) Sprinkler drawings shall include:
  - (a) Shop drawings, hydraulic calculations, and manufacturer cut sheets;

(Rule 1200-08-25-.09, continued)

- (b) Site plan showing elevation of fire hydrant to building, test hydrant, and flow data (Data from within a 12 month period); and
  - (c) Show "Point of Service" where water is used exclusively for fire protection purposes.
- (17) The licensed contractor shall not install a system of water supply, plumbing, sewage, garbage or refuse disposal nor materially alter or extend any existing system until the architect or engineer submits complete plans and specifications for the installation, alteration or extension to the department demonstrating that all applicable codes have been met and the department has granted necessary approval.
- (a) Before the ACLF is used, Tennessee Department of Environment and Conservation shall approve the water supply system.
  - (b) Sewage shall be discharged into a municipal system or approved package system where available; otherwise, the sewage shall be treated and disposed of in a manner of operation approved by the Department of Environment and Conservation and shall comply with existing codes, ordinances and regulations which are enforced by cities, counties or other areas of local political jurisdiction.
  - (c) Water distribution systems shall be arranged to provide hot water at each hot water outlet at all times. Hot water at shower, bathing and hand washing facilities shall be between 105°F and 115°F.
- (18) The licensed contractor shall ensure through the submission of plans and specifications that in each ACLF:
- (a) A negative air pressure shall be maintained in the soiled utility area, toilet room, janitor's closet, dishwashing and other such soiled spaces, and a positive air pressure shall be maintained in all clean areas including, but not limited to, clean linen rooms and clean utility rooms;
  - (b) A minimum of eighty (80) square feet of bedroom space must be provided each resident. No bedroom shall have more than two (2) beds. Privacy screens or curtains must be provided and used when requested by the resident;
  - (c) Living room and dining areas capable of accommodating all residents shall be provided, with a minimum of fifteen (15) square feet per resident per dining area; and
  - (d) Each toilet, lavatory, bath or shower shall serve no more than six (6) persons. Grab bars and non-slip surfaces shall be installed at tubs and showers.
- (19) With the submission of plans the facility shall specify the evacuation capabilities of the residents as defined in the National Fire Protection Code (NFPA). This declaration will determine the design and construction requirements of the facility.
- (20) The department shall acknowledge that it has reviewed plans and specifications in writing with copies sent to the project architect, the project engineer and the owner as well as the manager or other executive of the institution. The department may modify the distribution of such review at its discretion.
- (21) In the event submitted materials do not appear to satisfactorily comply with 1200-08-25-.09(2), the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.

(Rule 1200-08-25-.09, continued)

- (22) The licensed contractor shall execute all construction in accordance with the approved plans and specifications.
- (23) If construction begins within one hundred eighty (180) days of the date of department approval, the department's written notification of satisfactory review constitutes compliance with 1200-08-25-.09(20). This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes or rules of any responsible agency.
- (24) Prior to final inspection, a CD Rom disc, in TIF or PDF format, of the final approved plans including all shop drawings, sprinkler, calculations, hood and duct, addenda, specifications, etc., shall be submitted to the department.
- (25) The department requires the following alarms that shall be monitored twenty-four (24) hours per day:
  - (a) Fire alarms; and
  - (b) Generators (if applicable).
- (26) Each ACLF shall ensure that an emergency keyed lock box is installed next to each bank of functioning elevators located on the main level. Such lock boxes shall be permanently mounted seventy-two inches (72") from the floor to the center of the box, be operable by a universal key no matter where such box is located, and shall contain only fire service keys and drop keys to the appropriate elevators.

**Authority:** T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-261.  
**Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendments filed December 20, 2011; effective March 19, 2012. Amendment filed January 21, 2016; effective April 20, 2016.

#### 1200-08-25-.10 LIFE SAFETY.

- (1) The department will consider any ACLF that complies with the required applicable building and fire safety regulations at the time the Board adopts new codes or regulations, so long as such compliance is maintained (either with or without waivers of specific provisions), to be in compliance with the requirements of the new codes or regulations.
- (2) An ACLF shall ensure fire protection for residents by doing at least the following:
  - (a) Eliminate fire hazards;
  - (b) Install necessary fire fighting equipment;
  - (c) Adopt a written fire control plan;
  - (d) Ensure that each resident sleeping unit shall have a door that opens directly to the outside or to a corridor which leads directly to an exit door and that is always capable of being unlocked by the resident;
  - (e) Ensure that louvers shall not be present in doors to residents' sleeping units;

(Rule 1200-08-25-.10, continued)

- (f) Keep corridors and exit doors clear of equipment, furniture and other obstacles at all times. Passage to exit doors leading to a safe area shall be clear at all times;
  - (g) Prohibit use of combustible finishes and furnishings;
  - (h) Prohibit open flame and portable space heaters;
  - (i) Ensure that upon entering the ACLF, the resident or his or her responsible party is asked if they wish to have a cooking appliance that is appropriate for their level of cognition. If the facility chooses to provide a requested cooking appliance, it shall be used in accordance with the facility's policies. If the resident or his or her responsible party wishes to provide their own cooking appliance, it shall meet the facility's policies and safety standards. The cooking appliances shall be designed so that they can be disconnected and removed for resident safety or if the resident chooses not to have cooking capability within his or her apartment. The cooking appliances shall have an automatic timer;
  - (j) Ensure that all heaters shall be guarded and spaced to prevent ignition of combustible material and accidental burns. The guard shall not have a surface temperature greater than 120°F;
  - (k) Allow use of fireplaces and/or fireplace inserts only if the ACLF ensures that they have guards or screens which are secured in place;
  - (l) Inspect and clean fireplaces and chimneys annually and maintain documentation that such inspection has occurred;
  - (m) Ensure that there are electrically-operated smoke detectors with battery back-up power operating at all times in, at least, resident sleeping units, day rooms, corridors, laundry room, and any other hazardous areas; and
  - (n) Provide and mount fire extinguishers and maintain travel distance between fire extinguishers, complying with NFPA 10, so they are accessible to all residents in the kitchen, laundries and at all exits.
- (3) An ACLF shall conduct fire drills in accordance with the following:
- (a) Fire drills shall be held for each ACLF work shift in each separate ACLF building at least quarterly;
  - (b) There shall be one (1) fire drill per quarter during sleeping hours;
  - (c) An ACLF shall prepare a written report documenting the evaluation of each drill that includes the action that is recommended or taken to correct any deficiencies found; and,
  - (d) An ACLF shall maintain records that document and evaluate these drills for at least three (3) years.
- (4) An ACLF shall take the following action should a fire occur:
- (a) An ACLF shall report all fires which result in a response by the local fire department to the department within seven (7) days of its occurrence.
  - (b) An ACLF's report to the department shall contain the following:

(Rule 1200-08-25-.10, continued)

1. Sufficient information to ascertain the nature and location of the fire;
  2. Sufficient information to ascertain the probable cause of the fire; and
  3. A list and description of any injuries to any person or persons as a result of the fire.
  4. An ACLF may omit the name(s) of resident(s) and parties involved in initial reports. Should the department later find the identities of such persons to be necessary to an investigation, the ACLF shall provide such information.
- (5) An ACLF shall take the following precautions regarding electrical equipment to ensure the safety of residents:
- (a) Provide lighted corridors at all times, to a minimum of one foot candle;
  - (b) Provide general and night lighting for each resident and equip night lighting with emergency power;
  - (c) Maintain all electrical equipment in good repair and safe operating condition;
  - (d) Ensure that electrical cords shall not run under rugs or carpets;
  - (e) Ensure that electrical systems shall not be overloaded;
  - (f) Ensure that power strips are equipped with circuit breakers; and
  - (g) Prohibit use of extension cords.
- (6) If an ACLF allows residents to smoke, it shall ensure the following:
- (a) Permit smoking and smoking materials only in designated areas under supervision;
  - (b) Provide ashtrays wherever smoking is permitted;
  - (c) Smoking in bed is prohibited;
  - (d) Written policies and procedures for smoking within the ACLF shall designate a room or rooms to be used exclusively for residents who smoke. The designated smoking room or rooms shall not be the dining room, the activity room, or an individual resident sleeping unit, and;
  - (e) Post no smoking signs in areas where oxygen is used or stored.
- (7) An ACLF shall not allow trash and other combustible waste to accumulate within and around the ACLF. It shall store trash in appropriate containers with tight-fitting lids. An ACLF shall furnish resident sleeping units with an UL approved trash container.
- (8) An ACLF shall ensure that:
- (a) The ACLF maintains all safety equipment in good repair and in a safe operating condition;
  - (b) The ACLF stores janitorial supplies away from the kitchen, food storage area, dining area or other resident accessible areas;

(Rule 1200-08-25-.10, continued)

- (c) The ACLF stores flammable liquids in approved containers and away from the facility living areas; and
  - (d) The ACLF cleans floor and dryer vents as frequently as needed to prevent accumulation of lint, soil and dirt.
- (9) An ACLF shall post emergency telephone numbers near a telephone accessible to the residents.
- (10) An ACLF shall maintain its physical environment in a safe, clean and sanitary manner by doing at least the following:
- (a) Prohibit any condition on the ACLF site conducive to the harboring or breeding of insects, rodents or other vermin;
  - (b) Properly identify chemical substances of a poisonous nature used to control or eliminate vermin and store such substances away from food or medications;
  - (c) Ensure that the building shall not become overcrowded with a combination of the ACLF's residents and other occupants;
  - (d) Ensure that each resident sleeping unit shall contain a chair, bed, mattress, springs, linens, chest of drawers and wardrobe or closet space, either provided by the ACLF or by the resident if the resident prefers. All furniture provided by the resident must meet NFPA standards;
  - (e) Maintain all residents' clothing in good repair and ensure that it is suitable for the use of elderly persons;
  - (f) Maintain the building and its heating, cooling, plumbing and electrical systems in good repair and in clean condition at all times; and
  - (g) Maintain temperatures in resident sleeping units and common areas at not less than 65°F and no more than 85°F.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, and 68-11-213. **Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed April 11, 2003; effective June 25, 2003. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendments filed July 10, 2018; effective October 8, 2018.

#### 1200-08-25-.11 INFECTIOUS AND HAZARDOUS WASTE.

- (1) An ACLF must develop, maintain and implement written policies and procedures for the definition and handling of its infectious waste. These policies and procedures must comply with the standards of this rule.
- (2) The following waste shall be considered to be infectious waste:
  - (a) Waste contaminated by residents who are isolated due to communicable disease, as provided in the U.S. Centers for Disease Control "Guidelines for Isolation Precautions in Hospitals";
  - (b) Cultures and stocks of infectious agents including specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from

(Rule 1200-08-25-.11, continued)

- research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;
- (c) Waste human blood and blood products such as serum, plasma, and other blood components;
  - (d) Pathological waste, such as tissues, organs, body parts, and body fluids that are removed during surgery and autopsy;
  - (e) All discarded sharps (e.g., hypodermic needles, syringes, pasteur pipettes, broken glass, scalpel blades) used in resident care or which have come into contact with infectious agents during use in medical, research, or industrial laboratories; and
  - (f) Other waste determined to be infectious by the ACLF in its written policy.
- (3) Infectious and hazardous waste must be segregated from other waste at the point of generation (i.e., the point at which the material becomes a waste) within the ACLF.
- (4) Waste must be packaged in a manner that will protect waste handlers and the public from possible injury and disease that may result from exposure to the waste. Such packaging must provide for containment of the waste from the point of generation up to the point of proper treatment or disposal. Packaging must be selected and utilized for the type of waste the package will contain, how the waste will be treated and disposed, and how it will be handled and transported, prior to treatment and disposal.
- (a) Contaminated sharps must be directly placed in leakproof, rigid, and puncture-resistant containers which must then be tightly sealed.
  - (b) Whether disposable or reusable, all containers, bags, and boxes used for containment and disposal of infectious waste must be conspicuously identified. Packages containing infectious waste which pose additional hazards (e.g., chemical, radiological) must also be conspicuously identified to clearly indicate those additional hazards.
  - (c) Reusable containers for infectious waste must be thoroughly sanitized each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners or other devices removed with the waste.
  - (d) Opaque packaging must be used for pathological waste.
- (5) After packaging, waste must be handled and transported by methods ensuring containment and preservation of the integrity of the packaging, including the use of secondary containment where necessary. Plastic bags of infectious waste must be transported by hand.
- (6) Waste must be stored in a manner which preserves the integrity of the packaging, inhibits rapid microbial growth and putrefaction, and minimizes the potential of exposure or access by unknowing persons.
- (a) Waste must be stored in a manner and location which affords protection from animals, precipitation, wind, and direct sunlight, does not present a safety hazard, does not provide a breeding place or food source for insects or rodents, and does not create a nuisance.
  - (b) Pathological waste must be promptly treated, disposed of, or placed into refrigerated storage.

(Rule 1200-08-25-.11, continued)

- (7) In the event of spills, ruptured packaging, or other incidents where there is a loss of containment of waste, the ACLF must ensure that proper actions are immediately taken to:
  - (a) Isolate the area from the public and all except essential personnel;
  - (b) To the extent practicable, repackage all spilled waste and contaminated debris in accordance with the requirements of paragraph 6 of this rule;
  - (c) Sanitize all contaminated equipment and surfaces according to written policies and procedures which specify how this will be done appropriately; and
  - (d) Complete an incident report and maintain a copy on file.
- (8) Except as provided otherwise in this rule a facility must treat or dispose of infectious waste by one or more of the methods specified in this paragraph.
  - (a) An ACLF may treat infectious waste in an on-site sterilization or disinfection device, or in an incinerator or a steam sterilizer, which has been designed, constructed, operated and maintained so that infectious waste treated in such a device is rendered non-infectious and is, if applicable, authorized for that purpose pursuant to current rules of the Department of Environment and Conservation. A valid permit or other written evidence of having complied with the Tennessee Air Pollution Control Regulations shall be available for review, if required. Each sterilizing or disinfection cycle must contain appropriate indicators to assure that conditions were met for proper sterilization or disinfection of materials included in the cycle, and appropriate records kept. Proper operation of such devices must be verified at least monthly, and records of the monthly verifications shall be available for review. Waste that contains toxic chemicals that would be volatilized by steam must not be treated in steam sterilizers. Infectious waste that has been rendered to carbonized or mineralized ash shall be deemed non-infectious. Unless otherwise hazardous and subject to the hazardous waste management requirements of the current rules of the Department of Environment and Conservation, such ash shall be disposable as a (non-hazardous) solid waste under current rules of the Department of Environment and Conservation.
  - (b) An ACLF may discharge liquid or semi-liquid infectious waste to the collection sewerage system of a wastewater treatment facility which is subject to a permit pursuant to T.C.A. §§ 69-3-101, et seq., provided that such discharge is in accordance with any applicable terms of that permit and/or any applicable municipal sewer use requirements.
  - (c) Any health care facility accepting waste from another state must promptly notify the Department of Environment and Conservation, county, and city public health agencies, and must strictly comply with all applicable local, state and federal regulations.
- (9) An ACLF may have waste transported off-site for storage, treatment, or disposal. Such arrangements must be detailed in a written contract, available for review. If such off-site location is located within Tennessee, the ACLF must ensure that it has all necessary State and local approvals, and such approvals shall be available for review. If the off-site location is within another state, the ACLF must notify in writing all public health agencies with jurisdiction that the location is being used for management of the ACLF's waste. Waste shipped off-site must be packaged in accordance with applicable federal and state requirements. Waste transported to a sanitary landfill in this state must meet the requirements of current rules of the Department of Environment and Conservation.
- (10) Human anatomical remains which are transferred to a mortician for cremation or burial shall be exempt from the requirements of this rule.

(Rule 1200-08-25-.11, continued)

- (11) All garbage, trash and other non-infectious waste shall be stored and disposed of in a manner that must not permit the transmission of disease, create a nuisance, provide a breeding place for insects and rodents, or constitute a safety hazard. All containers for waste shall be water tight, constructed of easily-cleanable material, and shall be kept on elevated platforms.

**Authority:** T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, and 68-11-209. **Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009.

#### 1200-08-25-.12 RESIDENT RECORDS.

- (1) An ACLF shall develop and maintain an organized record for each resident and ensure that all entries shall be written legibly in ink, typed, or kept electronically, and signed, and dated.
- (2) Personal record. An ACLF shall ensure that the resident's personal record includes at a minimum the following:
  - (a) Name, Social Security Number, veteran status and number, marital status, age, sex, any health insurance provider and number, including Medicare and/or Medicaid number, and photograph of the resident;
  - (b) Name, address and telephone number of next of kin, legal representative (if applicable), and any other person identified by the resident to contact on the resident's behalf;
  - (c) Name and address of the resident's preferred physician, hospital, pharmacist and nursing home, and any other instructions from the resident to be followed in case of emergency;
  - (d) Record of all monies and other valuables entrusted to the ACLF for safekeeping, with appropriate updates;
  - (e) Date of admission, transfer, discharge and any new forwarding address;
  - (f) A copy of the admission agreement that is signed and dated by the resident;
  - (g) A copy of any advance directives, DNR Order, Durable Power of Attorney, or living will, when applicable, and made available upon request; and
  - (h) A record that the resident has received a copy of the ACLF's resident's rights and procedures policy.
- (3) Medical record. An ACLF shall ensure that its employees develop and maintain a medical record for each resident who requires health care services at the ACLF regardless of whether such services are rendered by the ACLF or by arrangement with an outside source, which shall include at a minimum:
  - (a) Medical history;
  - (b) Consultation by physicians or other authorized healthcare providers;
  - (c) Orders and recommendations for all medication, medical/and other care, services, procedures, and diet from physicians or other authorized healthcare providers, which

(Rule 1200-08-25-.12, continued)

shall be completed prior to, or at the time of admission, and subsequently, as warranted. Verbal orders received shall include the time of receipt of the order, description of the order, and identification of the individual receiving the order;

- (d) Care/services provided, including identification of providing party;
  - (e) Medications administered and procedures followed if an error is made;
  - (f) Special procedures and preventive measures performed;
  - (g) Notes, including, but not limited to, observation notes, progress notes, and nursing notes;
  - (h) Listing of current vaccinations,
  - (i) Time and circumstances of discharge or transfer, including condition at discharge or transfer, or death;
  - (j) Provisions of routine and emergency medical care, to include the name and telephone number of the resident's physician, plan for payment, and plan for securing medications;
  - (k) Special information, e.g., do-not resuscitate orders, allergies, etc.; and
  - (l) Copy of quarterly Alzheimer's review, if medically indicated.
- (4) An ACLF shall complete a written assessment of the resident to be conducted by a direct care staff member within a time-period determined by the ACLF, but no later than seventy-two (72) hours after admission.
- (5) Plan of care.
- (a) An ACLF shall develop a plan of care for each resident admitted to the ACLF with input and participation from the resident or the resident's legal representative, treating physician, or other licensed health care professionals or entity delivering patient services within five (5) days of admission. The plan of care shall be reviewed and/or revised as changes in resident needs occur, but not less than semi-annually by the above-appropriate individuals.
  - (b) The plan of care shall describe:
    - 1. The needs of the resident, including the activities of daily living and medical services for which the resident requires assistance, i.e., what assistance/care, how much, who will provide the assistance/care, how often, and when;
    - 2. Requirements and arrangements for visits by or to physicians or other authorized health providers;
    - 3. Advance care directive, healthcare power-of-attorney; as applicable;
    - 4. Recreational and social activities which are suitable, desirable, and important to the well-being of the resident; and
    - 5. Dietary needs.

(Rule 1200-08-25-.12, continued)

- (6) Personal information shall be confidential and shall not be disclosed, except to the resident, the department and others with written authorization from the resident. Records shall be retained for three (3) years after the resident has been transferred or discharged.
- (7) An ACLF shall retain legible copies of the following records and reports for thirty-six (36) months following their issuance. The reports shall be maintained in a single file, and shall be made available for inspection during normal business hours to any resident who requests to view them. Each resident and each person assuming any financial responsibility for a resident must be fully informed, before admission, of the existence of the reports in the ACLF and given the opportunity to inspect the file before entering into any monetary agreement with the ACLF.
  - (a) Local fire safety inspections.
  - (b) Local building code inspections, if any.
  - (c) Department licensure and fire safety inspections and surveys.
  - (d) Orders of the Commissioner or Board, if any.
  - (e) Maintenance records of all safety equipment.

**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, 68-11-224, and 68-11-1801 through 68-11-1815. **Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed April 28, 2003; effective July 12, 2003. Repeal and new rule filed January 24, 2006; effective April 9, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009.

#### 1200-08-25-.13 REPORTS.

- (1) The ACLF shall report all incidents of abuse, neglect, and misappropriation to the Department of Health in accordance with T.C.A. § 68-11-211.
- (2) The ACLF shall report the following incidents to the Department of Health in accordance with T.C.A. § 68-11-211.
  - (a) Strike by staff at the facility;
  - (b) External disasters impacting the facility;
  - (c) Disruption of any service vital to the continued safe operation of the ACLF or to the health and safety of its patients and personnel; and
  - (d) Fires at the ACLF that disrupt the provision of patient care services or cause harm to the patients or staff, or that are reported by the facility to any entity, including but not limited to a fire department charged with preventing fires.
- (3) An ACLF shall file the Joint Annual Report of Assisted Care Living Facilities with the department. The forms shall be furnished and mailed to each ACLF by the department each year and the forms must be completed and returned to the department as required.

**Authority:** T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-211. **Administrative History:** Original rule filed February 9, 1998; effective April 25, 1998. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009;

(Rule 1200-08-25-.13, continued)

*effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendments filed January 3, 2012; effective April 2, 2012.*

**1200-08-25-.14 RESIDENT RIGHTS.**

- (1) An ACLF shall ensure at least the following rights for each resident:
  - (a) To be afforded privacy in treatment and personal care;
  - (b) To be free from mental and physical abuse. Should this right be violated, the ACLF shall notify the department and the Tennessee Department of Human Services, Adult Protective Services at 1-888-277-8366;
  - (c) To refuse treatment. An ACLF must inform the resident of the consequences of that decision. The ACLF must report the resident's refusal and its reason to the resident's treating physician and it must document such in the resident's record;
  - (d) To have his or her file kept confidential and private. An ACLF shall obtain the resident's written consent prior to release of information except as otherwise authorized by law;
  - (e) To be fully informed of the Resident's Rights, of any policies and procedures governing resident conduct, of any services available in the ACLF, and of the schedule of all fees for any and all services;
  - (f) To participate in drawing up the terms of the admission agreement, including, but not limited to, providing for resident's preferences for physician care, hospitalization, nursing home care, acquisition of medication, emergency plans and funeral arrangements;
  - (g) To be given thirty (30) days written notice prior to transfer or discharge, except when any physician orders the transfer because the resident requires a higher level of care;
  - (h) To voice grievances and recommend changes in policies and services of the ACLF without restraint, interference, coercion, discrimination or reprisal. An ACLF shall inform the resident of procedures to voice grievances and for registering complaints confidentially;
  - (i) To manage his or her personal financial affairs, including the right to keep and spend his or her own money. If the resident requests assistance from the ACLF in managing his or her personal financial affairs, the request must be in writing and the resident may terminate it at any time. The ACLF must separate such monies from the ACLF's operating funds and all other deposits or expenditures, submit a written accounting to the resident at least quarterly, and immediately return the balance upon transfer or discharge. The ACLF shall maintain a current copy of this report in the resident's file;
  - (j) To be treated with consideration, respect and full recognition of his or her dignity and individuality;
  - (k) To be accorded privacy for sleeping and for storage space for personal belongings;
  - (l) To have free access to day rooms, dining and other group living or common areas at reasonable hours and to come and go from the ACLF, unless such access infringes upon the rights of other residents;

(Rule 1200-08-25-.14, continued)

- (m) To wear his or her own clothes, to keep and use his or her own toilet articles and personal possessions;
- (n) To send and receive unopened mail;
- (o) To associate and communicate privately with persons of his or her choice, including receiving visitors at reasonable hours;
- (p) To participate, or to refuse to participate, in community activities, including cultural, educational, religious, community service, vocational and recreational activities;
- (q) To not be required to perform services for the ACLF. The resident and licensee may mutually agree, in writing, that the resident may perform certain activities or services as part of the fee for his or her stay; and
- (r) To execute, modify, or rescind a Living Will, Do-Not-Resuscitate Order or advance directive.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.  
**Administrative History:** Original rule filed February 16, 2007; effective May 2, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009.

#### 1200-08-25-.15 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

- (1) Pursuant to this rule, each ACLF shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the resident could have made while having capacity, or it may limit the power of the agent, and it may include individual instructions. An advance directive that makes no limitation on the agent's authority shall authorize the agent to make any health care decision the resident could have made while having capacity.
- (3) The advance directive shall be in writing, signed by the resident, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the resident's estate upon his or her death. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.
- (4) Unless otherwise specified in an advance directive, the agent's authority becomes effective only upon a determination that the resident lacks capacity, and it ceases to be effective upon a determination that the resident has recovered capacity.
- (5) An ACLF may use the model advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (6) The resident's designated physician shall make a determination that a resident either lacks or has recovered capacity. The designated physician shall also have authority to make a

(Rule 1200-08-25-.15, continued)

determination that another condition exists that affects an individual instruction or the authority of an agent. To make such determinations the resident's designated physician shall be authorized to consult with such other persons as the physician may deem appropriate.

- (7) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the agent shall consider the resident's personal values to the extent known.
- (8) An advance directive may include the individual's nomination of a court-appointed guardian.
- (9) An ACLF shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.
- (10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.
- (12) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (13) A resident having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates intent to revoke.
- (14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (15) An advance directive that conflicts with a previously executed advance directive revokes the earlier directive to the extent of the conflict.
- (16) Surrogates.
  - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing, either orally or in writing, the supervising health care provider.
  - (b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:
    1. The designated physician determines that the resident lacks capacity, and
    2. There is not an appointed agent or guardian; or
    3. The agent or guardian is not reasonably available.
  - (c) In the case of a resident who lacks capacity, the resident's current clinical record of the ACLF shall identify his or her surrogate.

(Rule 1200-08-25-.15, continued)

- (d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.
- (e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:
  - 1. The resident's spouse, unless legally separated;
  - 2. The resident's adult child;
  - 3. The resident's parent;
  - 4. The resident's adult sibling;
  - 5. Any other adult relative of the resident; or
  - 6. Any other adult who satisfies the requirements of 1200-08-25-.15(16)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
  - 1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the resident's known wishes or best interests;
  - 2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;
  - 3. The proposed surrogate's demonstrated care and concern;
  - 4. The proposed surrogate's availability to visit the resident during his or her illness; and
  - 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If the resident lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-25-.15(16)(c) through 1200-08-25-.15(16)(g) is reasonably available, the designated physician may make health care decisions for the resident after the designated physician either:
  - 1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
  - 2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(Rule 1200-08-25-.15, continued)

- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
  - (j) A surrogate shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the resident's best interest. In determining the resident's best interest, the surrogate shall consider the resident's personal values to the extent known.
  - (k) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.
  - (l) Except as provided in 1200-08-25-.15(16)(m):
    - 1. A designated surrogate may not be one of the following:
      - (i) The treating health care provider;
      - (ii) An employee of the treating health care provider;
      - (iii) An operator of a health care institution; or
      - (iv) An employee of an operator of a health care institution; and
    - 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.
  - (m) A designated surrogate may be an employee of the treating health care provider or an employee of an operator of a health care institution if:
    - 1. The employee so designated is a relative of the resident by blood, marriage, or adoption; and
    - 2. The other requirements of this section are satisfied.
  - (n) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (17) Guardian.
- (a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order to the contrary.
  - (b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(Rule 1200-08-25-.15, continued)

- (c) A health care provider may require an individual claiming the right to act as guardian for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (18) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record such a determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.
- (19) Except as provided in 1200-08-25-.15(20) through 1200-08-25-.15(22), a health care provider or institution providing care to a resident shall:
  - (a) Comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and
  - (b) Comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.
- (20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:
  - (a) Contrary to the institution's policy which is based on reasons of conscience, and
  - (b) The institution timely communicated the policy to the resident or to a person then authorized to make health care decisions for the resident.
- (22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.
- (23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-25-.15(20) through 1200-08-25-.15(22) shall:
  - (a) Promptly inform the resident, if possible, and/or any other person then authorized to make health care decisions for the resident;
  - (b) Provide continuing care to the resident until he can be transferred to another health care provider or institution or it is determined that such a transfer is not possible;
  - (c) Immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or institution that is willing to comply with the instruction or decision unless the resident or person then authorized to make health care decisions for the resident refuses assistance; and
  - (d) If a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(Rule 1200-08-25-.15, continued)

- (24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
  - (a) Complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;
  - (b) Declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
  - (c) Complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.
- (26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct if such identification is made in good faith.
- (28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (29) The withholding or withdrawal of medical care from a resident in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (30) Physician Orders for Scope of Treatment (POST)
  - (a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:
    - 1. With the informed consent of the patient;
    - 2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or
    - 3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.
  - (b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

(Rule 1200-08-25-.15, continued)

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);
  2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;
  3. Either:
    - (i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or
    - (ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and
  4. Either:
    - (i) With the informed consent of the patient;
    - (ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or
    - (iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
- (c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.
- (d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(Rule 1200-08-25-.15, continued)

- (e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.
- (f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.
- (g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.
- (h) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to then-current law, shall remain valid and shall be given effect as provided in these rules.

**Authority:** T.C.A. §§ 68-11-209, 68-11-224, and 68-11-1801, et seq. **Administrative History:** Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed March 27, 2015; effective June 25, 2015.

#### 1200-08-25-.16 DISASTER PREPAREDNESS.

- (1) An ACLF shall have in effect and available for all supervisory personnel and staff written copies of the following disaster, refuge and/or evacuation plans readily available at all times:
  - (a) Fire Safety Procedures Plan shall include:
    - 1. Minor fires;
    - 2. Major fires;
    - 3. Fighting the fire;
    - 4. Evacuation procedures; and
    - 5. Staff functions.
  - (b) Tornado/Severe Weather Procedures Plan shall include:
    - 1. Staff duties; and
    - 2. Evacuation procedures.
  - (c) Bomb Threat Procedures Plan shall include:

(Rule 1200-08-25-.16, continued)

1. Staff duties;
  2. Search team, searching the premises;
  3. Notification of authorities;
  4. Location of suspicious objects; and
  5. Evacuation procedures.
- (d) Flood Procedure Plan, if applicable, shall include:
1. Staff duties;
  2. Evacuation procedures; and
  3. Safety procedures following the flood.
- (e) Severe Cold Weather and Severe Hot Weather Procedure Plans shall include:
1. Staff duties;
  2. Equipment failures;
  3. Evacuation procedures; and
  4. Emergency food service.
- (f) Earthquake Disaster Procedures Plan shall include:
1. Staff duties;
  2. Evacuation procedures;
  3. Safety procedures; and
  4. Emergency services.
- (2) An ACLF shall comply with the following:
- (a) Maintain a detailed log with staff signatures designating training each employee receives regarding disaster preparedness.
  - (b) Train all employees annually as required in the plans listed above and keep each employee informed with respect to the employee's duties under the plans.
  - (c) Exercise each of the plans listed above annually.
- (3) An ACLF shall participate in the Tennessee Emergency Management Agency local/county emergency plan on an annual basis. Participation includes:
- (a) Filling out and submitting a questionnaire on a form to be provided by the Tennessee Emergency Management Agency; and
  - (b) Maintaining documentation of participation that shall be made available to survey staff as proof of participation.

(Rule 1200-08-25-.16, continued)

- (4) ACLFs which elect to have an emergency generator shall ensure that the generator is designed to meet the ACLF's HVAC and essential needs and shall have a minimum of twenty-four (24) hours of fuel designed to operate at its rated load. This requirement shall be coordinated with the Disaster Preparedness Plan or with the local resources.
  - (a) All generators shall be exercised for thirty (30) minutes each month under full load, including automatic and manual transfer of equipment.
  - (b) The emergency generator shall be operated at the existing connected load and not on dual power. The ACLF shall maintain a monthly log and have trained staff familiar with the generator's operation.

**Authority:** T.C.A. §§ 68-11-202 and 68-11-209. **Administrative History:** Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009.

**1200-08-25-.17 APPENDIX I.**

- (1) Physician Orders for Scope of Treatment (POST) Form

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(Rule 1200-08-25-.17, continued)

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST")		Patient's Last Name	
This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.		First Name/Middle Initial	
		Date of Birth	
<b>Section A</b> Check One Box Only	<b>CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.</b> <input type="checkbox"/> Resuscitate (CPR) <input type="checkbox"/> Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death) When not in cardiopulmonary arrest, follow orders in B, C, and D.		
<b>Section B</b> Check One Box Only	<b>MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.</b> <input type="checkbox"/> <b>Comfort Measures Only.</b> Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. <b>Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.</b> <input type="checkbox"/> <b>Limited Additional Interventions.</b> In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). <b>Transfer to hospital if indicated. Generally avoid the intensive care unit. Treatment Plan: basic medical treatments.</b> <input type="checkbox"/> <b>Full Treatment.</b> In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. <b>Transfer to hospital and/or intensive care unit if indicated. Treatment Plan: Full treatment including in the intensive care unit.</b> Other Instructions: _____		
<b>Section C</b> Check One	<b>ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids &amp; nutrition must be offered if feasible.</b> <input type="checkbox"/> No artificial nutrition by tube. <input type="checkbox"/> Defined trial period of artificial nutrition by tube. <input type="checkbox"/> Long-term artificial nutrition by tube. Other Instructions: _____		
<b>Section D</b> Must be Completed	Discussed with: <input type="checkbox"/> Patient/Resident <input type="checkbox"/> Health care agent <input type="checkbox"/> Court-appointed guardian <input type="checkbox"/> Health care surrogate <input type="checkbox"/> Parent of minor <input type="checkbox"/> Other: _____ (Specify)	The Basis for These Orders Is: (Must be completed) <input type="checkbox"/> Patient's preferences <input type="checkbox"/> Patient's best interest (patient lacks capacity or preferences unknown) <input type="checkbox"/> Medical indications <input type="checkbox"/> (Other) _____	
Physician/NP/CNS/PA Name (Print)		Physician/NP/CNS/PA Signature	Date
		MD/NP/CNS/PA Phone Number:	
		NP/CNS/PA (Signature at Discharge)	
<b>Signature of Patient, Parent of Minor, or Guardian/Health Care Representative</b>			
Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.			
Name (print)		Signature	Relationship (write "self" if patient)

(Rule 1200-08-25-.17, continued)

Agent/Surrogate	Relationship	Phone Number	
Health Care Professional Preparing Form	Preparer Title	Phone Number	Date Prepared

### Directions for Health Care Professionals

#### Completing POST

Must be completed by a health care professional based on patient preferences, patient best interest, and medical indications.

To be valid, POST must be signed by a physician or, at discharge or transfer from a hospital or long term care facility, by a nurse practitioner (NP), clinical nurse specialist (CNS), or physician assistant (PA). Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

Persons with DNR in effect at time of discharge must have POST completed by health care facility prior to discharge and copy of POST provided to qualified medical emergency personnel.

Photocopies/faxes of signed POST forms are legal and valid.

#### Using POST

Any incomplete section of POST implies full treatment for that section.

No defibrillator (including AEDs) should be used on a person who has chosen "Do Not Attempt Resuscitation".

Oral fluids and nutrition must always be offered if medically feasible.

When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only", should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).

IV medication to enhance comfort may be appropriate for a person who has chosen "Comfort Measures Only".

Treatment of dehydration is a measure which prolongs life. A person who desires IV fluids should indicate "Limited Interventions" or "Full Treatment".

A person with capacity, or the Health Care Agent or Surrogate of a person without capacity, can request alternative treatment.

#### Reviewing POST

This POST should be reviewed if:

- (1) The patient is transferred from one care setting or care level to another, or
- (2) There is a substantial change in the patient's health status, or
- (3) The patient's treatment preferences change.

Draw line through sections A through D and write "VOID" in large letters if POST is replaced or becomes invalid.

(Rule 1200-08-25-.17, continued)

(2) Advance Directive for Health Care Form

**ADVANCE DIRECTIVE FOR HEALTH CARE\***  
(Tennessee)

**Instructions:** Parts 1 and 2 may be used together or independently. Please mark out/void any unused part(s). Part 5, Block A or Block B must be completed for all uses.

I, \_\_\_\_\_, hereby give these advance instructions on how I want to be treated by my doctors and other health care providers when I can no longer make those treatment decisions myself.

**Part 1 Agent:** I want the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: \_\_\_\_\_ Relation: \_\_\_\_\_ Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_ Other Phone: \_\_\_\_\_

**Alternate Agent:** If the person named above is unable or unwilling to make health care decisions for me, I appoint as alternate the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: \_\_\_\_\_ Relation: \_\_\_\_\_ Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_ Other Phone: \_\_\_\_\_

My agent is also my personal representative for purposes of federal and state privacy laws, including HIPAA.

**When Effective** (mark one):  I give my agent permission to make health care decisions for me at any time, even if I have capacity to make decisions for myself.  I do not give such permission (this form applies only when I no longer have capacity).

**Part 2 Indicate Your Wishes for Quality of Life:** By marking "yes" below, I have indicated conditions I would be willing to live with if given adequate comfort care and pain management. By marking "no" below, I have indicated conditions I would not be willing to live with (that to me would create an **unacceptable** quality of life).

<input type="checkbox"/>	<input type="checkbox"/>	<b>Permanent Unconscious Condition:</b> I become totally unaware of people or surroundings with little chance of ever waking up from the coma.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Permanent Confusion:</b> I become unable to remember, understand, or make decisions. I do not recognize loved ones or cannot have a clear conversation with them.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Dependent in all Activities of Daily Living:</b> I am no longer able to talk or communicate clearly or move by myself. I depend on others for feeding, bathing, dressing, and walking. Rehabilitation or any other restorative treatment will not help.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>End-Stage Illnesses:</b> I have an illness that has reached its final stages in spite of full treatment. Examples: Widespread cancer that no longer responds to treatment; chronic and/or damaged heart and lungs, where oxygen is needed most of the time and activities are limited due to the feeling of suffocation.
Yes	No	

**Indicate Your Wishes for Treatment:** If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "no" below, I have indicated treatment I **do not want**.

(Rule 1200-08-25-.17, continued)

<input type="checkbox"/>	<input type="checkbox"/>	<b>CPR (Cardiopulmonary Resuscitation):</b> To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Life Support / Other Artificial Support:</b> Continuous use of breathing machine, IV fluids, medications, and other equipment that helps the lungs, heart, kidneys, and other organs to continue to work.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Treatment of New Conditions:</b> Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Tube feeding/IV fluids:</b> Use of tubes to deliver food and water to a patient's stomach or use of IV fluids into a vein, which would include artificially delivered nutrition and hydration.
Yes	No	

**Part 3** Other instructions, such as hospice care, burial arrangements, etc.: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Attach additional pages if necessary)

**Part 4 Organ donation:** Upon my death, I wish to make the following anatomical gift for purposes of transplantation, research, and/or education (mark one):

- Any organ/tissue     My entire body     Only the following organs/tissues: \_\_\_\_\_  
 No organ/tissue donation

**SIGNATURE**

**Part 5** Your signature must either be witnessed by two competent adults ("Block A") or by a notary public ("Block B").

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Patient)

**Block A** Neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Witnesses:

1. I am a competent adult who is not named as the agent or alternate. I witnessed the patient's signature on this form. \_\_\_\_\_  
 Signature of witness number 1

2. I am a competent adult who is not named as the agent or alternate. I am not related to the patient by blood, marriage, or adoption and I would not be entitled to any portion of the patient's estate upon his or her death under any existing will or codicil or by operation of law. I witnessed the patient's signature on this form. \_\_\_\_\_  
 Signature of witness number 2

**Block B** You may choose to have your signature witnessed by a notary public instead of the witnesses described in Block A.

STATE OF TENNESSEE

(Rule 1200-08-25-.17, continued)

COUNTY OF \_\_\_\_\_

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed as the "patient." The patient personally appeared before me and signed above or acknowledged the signature above as his or her own. I declare under penalty of perjury that the patient appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: \_\_\_\_\_  
Signature of Notary Public

**WHAT TO DO WITH THIS ADVANCE DIRECTIVE:** (1) provide a copy to your physician(s); (2) keep a copy in your personal files where it is accessible to others; (3) tell your closest relatives and friends what is in the document; and (4) provide a copy to the person(s) you named as your health care agent.

\* This form replaces the old forms for durable power of attorney for health care, living will, appointment of agent, and advance care plan, and eliminates the need for any of those documents.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.  
**Administrative History:** Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Repeal and new rule filed August 28, 2012; effective November 26, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendments filed February 8, 2017; effective May 9, 2017.

\* 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)
Mr. Paul Boyd	X				
Mr. Robert Breeden	X				
Dr. Patsy Crichfield	X				
Mr. Joshua Crisp	X				
Mr. Chuck Griffin	X				
Ms. Patricia Ketterman	X				
Ms. Carissa Lynch	X				
Mr. Roger Mynatt	X				
Mrs. Susan Peach	X				
Dr. Sherry Robbins	X				
Mr. Jim Shulman	X				

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

Date: May 28, 2020

Signature: 

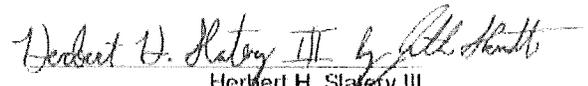
Name of Officer: Caroline R. Tippens

Title of Officer: Senior Associate General Counsel

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

Rule Chapter Number(s): 1200-08-06, 1200-08-11, and 1200-08-25

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

May 29, 2020

Date

Department of State Use Only

RECEIVED

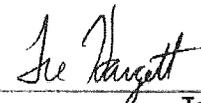
Filed with the Department of State on: 5/29/2020

Effective for: 180 days

Effective through: 11/25/2020

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

2020 MAY 29 PM 2:27  
SECRETARY OF STATE  
PUBLICATIONS



Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Comptroller of the Treasury

DIVISION: State Board of Equalization

SUBJECT: Contested Case Procedures, Assessment of Commercial and Industrial Tangible Personal Property, and Property Tax Exemptions

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 67-5-901 et seq. prescribes general requirements for reporting and assessment of business tangible personal property. Section 67-5-1605(a) states that the State Board of Equalization "has the responsibility to determine whether or not property within each county of the state has been valued and assessed in accordance with the constitution and laws of Tennessee."

EFFECTIVE DATES: August 10, 2020 through June 30, 2021

FISCAL IMPACT: All proposed amendments are either procedural, codify existing practice, or offer clarification. As there are no substantial changes to assessments or what property qualifies for exemption, it is anticipated that there will be little to no changes to state or local government revenue. The Tennessee Association of Assessing Officers disagrees with this assessment.

STAFF RULE ABSTRACT: The proposed amendments to 0600-01 make several changes that promote transparency in and accessibility of hearings before the State Board of Equalization. First, the proposed amendments require that counterclaims be filed in writing, which prevents surprise at hearings by limiting a party's requested relief to what was requested in writing. Second, the proposed amendments require that parties engage in informal discovery, if possible. Third, the proposed amendments define reasonable cause to provide more guidance as to how to interpret the State Board of Equalization's statutes. Finally, the proposed amendments delete a rule that is now wholly covered by statute.

The proposed amendments to 0600-05 provide taxpayer guidance on reporting 'total acquisition cost'; and update the tangible personal property reporting schedule.

The proposed amendments to 0600-08 define parsonage and primary medical care to match State Board practice, clarify the requirements for spaces that are available for use but not in regular use, and delete language that is superseded by statute.

## Public Hearing Comments

**0600-01-.01 Definitions, re: reasonable cause.** A taxpayer representative brought concerns that the definition of reasonable cause imposed additional burden on the taxpayer, especially the phrase "and despite reasonable efforts". The representative also noted concern that this rule would expand the definition of reasonable cause beyond what was allowed by T.C.A. § 67-5-1412.

**Response:** The phrase "and despite reasonable efforts" will be removed.

**0600-01-.01 Definitions re: definition of Change to Contended Value; 0600-01-.10 Counterclaims.** Assessors and representatives for assessors brought two primary concerns with this rule:

- 1) The purpose of a hearing regarding the appraised value of a property is to determine the true and accurate value of the property. The rule, as written, limits an administrative law judge's authority to make an accurate finding.

**Response:** The purpose of this rule is to prevent a taxpayer or assessor from having to argue a value about which he knew nothing before the hearing. Proper notice is a fundamental aspect of due process. Minor changes to the final wording of the rule have been made to balance the competing concerns.

- 2) An assessor may not have an opportunity to properly value a property 30 or more days before a hearing; the proposed rule would prevent an assessor's office from seeking the fair market value in this case.

**Response:** The property was assigned an appraised value at the time of the most recent reappraisal. There is no evidentiary bar to an assessor using a property's current appraised value at the evidentiary hearing. If a party needs additional time to properly prepare for a hearing, they may request a continuance.

**0600-01-.11 Hearings Before Administrative Judge re: informal discovery.** TNAAO expressed the following concerns with the proposed rule regarding informal discovery:

- 3) Counties will be unable to accurately calculate an appeals allowance without access to formal discovery.

**Response:** The rule has been updated after comments. Under the updated rule, counties have the option to engage in formal discovery. The county also has the option to engage in efficient informal discovery, which may be able to expedite the process of gathering information and receiving responses. Efficient and timely resolution of appeals will result in a more accurate appeals allowance.

- 4) Parties in litigation before the State Board of Equalization have an absolute statutory right to formal discovery under the rules of civil procedure.

**Response:** T.C.A. 4-5-311(a) specifically states that an administrative law judge or hearing officer shall effect discovery. T.C.A. § 4-5-311(c) gives state agencies the authority to promulgate rules to prevent abuse and oppression in discovery.

- 5) Recipients of informal discovery will not feel obligated to respond to informal discovery requests.

**Response:** If a party willfully refuses to participate in reasonable discovery, formal or informal, the party seeking discovery has the option to request the administrative law judge or hearing officer to impose sanctions for failure to respond.

- 6) The proposed rule introduces an additional step before formal discovery can begin, which will introduce a delay into the process.

**Response:** The rule has been updated after comments. The updated rule addresses this concern.

**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.

These rule amendments do 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)

The proposed rules will ultimately have no fiscal impact on local governments, as the rule updates do not alter or change the rights of any party.

### 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 amendments to 0600-01 make several changes that promote transparency in and accessibility of hearings before the State Board of Equalization. First, the proposed amendments require that counterclaims be filed in writing, which prevents surprise at hearings by limiting a party's requested relief to what was requested in writing. Second, the proposed amendments require that parties engage in informal discovery, if possible. Third, the proposed amendments define reasonable cause to provide more guidance as to how to interpret the State Board of Equalization's statutes. Finally, the proposed amendments delete a rule that is now wholly covered by statute.

The proposed amendments to 0600-05 provide taxpayer guidance on reporting 'total acquisition cost'; and update the tangible personal property reporting schedule.

The proposed amendments to 0600-08 define parsonage and primary medical care to match State Board practice, clarify the requirements for spaces that are available for use but not in regular use, and delete language that is superseded by statute.

- (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. § 67-5-901 *et seq.* prescribe general requirements for reporting and assessment of business tangible personal property. T.C.A. § 67-5-1605(a) states that the State Board of Equalization "has the responsibility to determine whether or not property within each county of the state has been valued and assessed in accordance with the constitution and laws of Tennessee."

- (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;

TNAAO, County Assessors, Taxpayer representatives. The TNAAO urges rejection of proposed changes to rules 0600-01-.10, and .11. Changes were made to the proposed rules, including adoption of alternative language proposed by the TNAAO. TNAAO remains opposed to the proposed changes despite amendments. Based on comments by taxpayer representatives, changes were made to 0600-01-.01; no further comment on this rule was received.

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

The definition of parsonage is drawn from *Blackwood Bros. Evangelistic Ass'n v. State Bd. of Equalization*, 614 S.W.2d 364 (Tenn. Ct. App. 1980).

- (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;

All proposed amendments are either procedural, codify existing practice, or offer clarification. As there are no substantial changes to assessments or what property qualifies for exemption, it is anticipated that there will be little to no changes to state or local government revenue. As stated above, the Tennessee Association of Assessing Officers disagrees with this assessment.

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

Betsy Knotts, Executive Secretary of the State Board of Equalization; Stephanie Maxwell, General Counsel to the Tennessee Comptroller of the Treasury

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

Betsy Knotts, Executive Secretary of the State Board of Equalization; Stephanie Maxwell, General Counsel to the Tennessee Comptroller of the Treasury

- (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

Betsy Knotts, Executive Secretary of the State Board of Equalization, Cordell Hull Building, 425 Fifth Ave. N., Nashville, TN 37243, (615) 401-7954, [betsy.knotts@cot.tn.gov](mailto:betsy.knotts@cot.tn.gov); Stephanie Maxwell, General Counsel to the Tennessee Comptroller of the Treasury, Cordell Hull Building, 425 Fifth Ave. N., Nashville, TN 37243,

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

Available on request.

Department of State  
 Division of Publications  
 312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TNTower  
 Nashville, TN 37243  
 Phone: 615-741-2650  
 Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 05-05-20  
 Rule ID(s): 9350-9352  
 File Date: 5/12/2020  
 Effective Date: 8/10/2020

## 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 Comptroller of the Treasury  
**Division:** State Board of Equalization  
**Contact Person:** Betsy Knotts  
**Address:** Cordell Hull Building, 525 Fifth Avenue North, Nashville, TN  
**Zip:** 37243  
**Phone:** 615-401-7954  
**Email:** [Betsy.knotts@cot.tn.gov](mailto:Betsy.knotts@cot.tn.gov)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed 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
0600-01	Contested Case Procedures
Rule Number	Rule Title
0600-01-.01	Definitions
0600-01-.10	Counterclaims
0600-01-.11	Hearings Before Administrative Judge
0600-01-.17	Fees

Chapter Number	Chapter Title
0600-05	Assessment of Commercial and Industrial Tangible Personal Property
Rule Number	Rule Title
0600-05-.04	Reporting
0600-05-.06	Standard Valuation
0600-05-.11	Reporting Schedule

<b>Chapter Number</b>	<b>Chapter Title</b>
0600-08	Property Tax Exemptions
<b>Rule Number</b>	<b>Rule Title</b>
0600-08-.02	Criteria for Exemption of Land
0600-08-.03	Criteria for Exemption of Medical Clinics

# APPENDIX A





REDLINE VERSION FOR 0600-01

0600-01-.01 DEFINITIONS.

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

- (1) "Administrative judge" means an individual employed or appointed under authority of T.C.A. § 67-5-1505 or otherwise to conduct contested cases with or on behalf of the Board or Commission.
- (2) "Agent" means a person who is authorized under the provisions of T.C.A. § 67-5-1514 to represent taxpayers and assessors of property in a contested case before the State Board of Equalization.
- (3) "Assessing authority" means the assessor of property where the assessment at issue is of locally assessed property and the Office of State Assessed Properties of the Comptroller of the Treasury where the assessment at issue involves centrally assessed public utility property.
- (4) "Board" means the State Board of Equalization created by T.C.A. § 4-3-5101.
- (5) "Change to Contended Value" means a value submitted by any party that is different from the county board of equalization's value, the original assessment value in the case of a direct appeal, and the contended value represented on a party's initial appeal to the State Board of Equalization.
- (6) "Commission" means the Assessment Appeals Commission created by the Board pursuant to T.C.A. § 67-5-1502.
- (7) "Contested case" is defined as in T.C.A. § 4-5-102(3).
- (8) "County board" means a city, county, or metropolitan board of equalization established under T.C.A. §§ 67-1-401, *et seq.*
- (9) "Executive Secretary" means the Executive Secretary of the Board appointed under T.C.A. § 4-3-5104.
- (10) "Party" means a person permitted to participate in a contested case.
- (11) "Person" means any individual, firm, company, association, corporation, or other artificial or governmental entity.
- (12) "Real estate appraiser" means a person who is subject to the State Licensing and Certified Real Estate Appraisers Law, codified at T.C.A. §§ 62-39-101, *et seq.* (1) "Administrative judge" means an individual employed or appointed under authority of T.C.A. § 67-5-1505 or otherwise to conduct contested cases with or on behalf of the Board or Commission.
- (13) "Reasonable Cause" as used in T.C.A. § 67-5-1412 means a legally sufficient reason outside the party's control.
- (14) "Valuation analysis" means an estimate of value for ad valorem tax purposes which is prepared in conjunction with a contested case before the Board, Commission, or administrative judge.

Authority: T.C.A. §§ 4-5-217, 67-1-305, 67-5-1514, and 67-5-1412. Administrative History: Original rule certified June 7, 1974. Repeal filed and effective July 1, 1984. New rule filed June 30, 2000; effective September 12, 2000. Amendments filed July 5, 2017; effective October 3, 2017.

0600-01-.10 COUNTERCLAIMS.

- (1) In a contested case, a party intending to make a Change of Contended Value must file with the State Board of Equalization and send to all other parties a written notice of the change no later than thirty (30) days before the date of a scheduled hearing. It is acceptable to file and send a notice under this rule by email. This rule does not preclude any party at the hearing of the appeal from introducing relevant evidence of a higher or lower value for the property in question than that determined by the county board of equalization, or the assessor in the case of a direct appeal. Failure to file a notice of a Change to Contended Value as required in this rule may limit the relief a party may request to upholding the county board of equalization value, reverting to the original assessment value, or adopting the contended value included on the initial appeal filing, within the discretion of the administrative law judge.
- (2) An original real property appeal timely filed at the Board may be amended to include an assessment year or years subsequent to the year for which the original appeal was filed, until the next reappraisal. There is a presumption of reasonable cause when an original real property appeal has not been heard by the time the appellant is due to file an appeal for any subsequent assessment year. The administrative judge, the Commission, or the Board may carry forward the original tax year adjudication of value into subsequent tax years within the same reappraisal cycle, but only if there has been no material change to the property, market conditions, or other circumstances or factors substantially impacting value.
  - (a) An original real property appeal filed late may be amended to include an assessment year or years subsequent to the year for which the appeal was filed, until the next reappraisal, if
    1. The late appeal was nonetheless eligible for a reasonable cause determination under T.C.A. § 67-5-1412; and
    2. The written order disposing of the original appeal was entered later than ten (10) days before the deadline for appealing the subsequent year assessment to the county or state boards of equalization.
  - (b) All other requests to amend shall lie within the discretion of the administrative judge.
  - ~~(c) The appellant permitted to amend shall file a separate appeal form for the subsequent year or years if directed by the executive secretary or administrative judge, and the appellant shall be responsible for additional hearing or processing costs related to the subsequent year assessments.~~

Authority: T.C.A. §§ 67-1-305, 67-5-1412, and 67-5-1501(d). Administrative History: Original rule certified June 7, 1974. Repeal filed and effective July 1, 1984. New rule filed June 30, 2000; effective September 12, 2000. Amendment filed May 30, 2013; effective August 28, 2013. Amendments filed February 21, 2018; effective May 22, 2018.

0600-01-.11 HEARINGS BEFORE ADMINISTRATIVE JUDGE.

- (1) In the hearing of an appeal before an administrative judge concerning the classification and/or assessment of a property, the party seeking to change the current classification and/or assessment shall have the burden of proof.
- (2) In the hearing of an appeal from an initial determination on an application for property tax exemption, the party seeking to change the initial determination shall have the burden of proof. In a show cause hearing for revocation of an exemption, the person claiming exemption shall bear the burden of showing by a preponderance of evidence why the exemption should not be revoked. Upon request of a party or order of the administrative judge, the Board designee who made the initial determination under appeal will attend the hearing. The designee may testify and, at the discretion of the administrative judge, examine witnesses or otherwise participate in the hearing. The designee may be permitted to anticipate by telephone or other electronic means when hearings are conducted at locations other than Nashville.
- (3) A record of the hearing of any appeal before an administrative judge will be made by digital recording. Any party may, at its own expense, procure a court reporter to record the oral

proceedings or a written transcript of the digital recording.

- (4) Parties are encouraged where practicable to achieve any necessary discovery informally, in order to avoid undue expense and delay in the resolution of the matter at hand. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure. An example of an informal discovery request follows:

**REQUEST FOR INFORMATION**

Date:

The periodic reappraisal of this county and all counties in Tennessee is a mass consideration of all parcels in their respective jurisdiction. Data needed and assembled to develop a mass appraisal of the entire county is different from the data necessary for individual property valuation pursuits. Appeals before the State Board of Equalization are filed on an individual parcel basis. In answer to such appeals, valuations are conducted on an individual parcel basis, and testimony is expected to be presented on the same basis.

This information being requested is data used in the Appraisal Industry with methods and theories taught from the textbooks and classrooms of the Appraisal Industry on how to arrive at an estimated value based on the Three Approaches to Value. Any request outside of these parameters is not required.

Learning as much as possible about the subject of each appeal is essential. As a result, the assessor's office requests very specific data in an effort to gain a clearer understanding of the subject property. Our request is not intended to be burdensome; however, some information is essential to establish a credible appeal. Any information received in response to the Standard Request for Information shall be held confidential pursuant to T.C.A. § 67-5-303(d)(2). Therefore, for the subject property(s) under appeal, we request the following from the subject property(s):

- A) If the property under appeal has been under contract to sell or sold within 24 months (before or after) the effective appeal date, please submit a copy of the sales contract. If, during the same period, the property was listed for sale, please submit a copy of the listing sheet together with asking price(s) and any offers.
- B) Please submit a copy of all leases for the property under appeal in effect on the effective appeal date (January 1 or Prorate Date). Alternatively, rent roll (tenant and vacant space roster) and complete lease summaries are acceptable. Lease summaries must: identify the individual tenant spaces whether occupied or vacant and list the rentable footage for each space; specify the beginning and ending date of each lease primary term together with any renewals; specify base rent together with rent escalations or reductions and the timing thereof; specify any additional rentals per tenant space such as expense stops and/or expense pass-throughs, percentage rents, parking rents and any other rentals specified by each lease.
- C) Please submit property management's annualized income and expense statements for each of the three years preceding the year under appeal. (For example, if the value under appeal is for Year 2017, the income and expense statements for Years 2014, 2015 and 2016 are required.) Reconstructed operating statements of historical performance in place of management reports are not acceptable. For lodging properties, we also need average daily rate and occupancy rate for each operating year. For retail properties and restaurants in particular where rent is a function of gross sales, we will need a history of gross sales for the three years immediately preceding the tax year under appeal. (For convenience markets, gross sales will need to be segregated between inside sales and pump sales.)

- D) Any additional information deemed relevant by the taxpayer or representative is welcomed, i.e., current appraisal, rent rolls for prior relevant years, permanent property deficiencies not obvious to the assessment office that would be market-recognizable and value-impacting.
- E) If the property under appeal is vacant land or an owner-occupied improved property, submission of relevant comparable transfers is requested.
- F) Please provide the basis together with supporting data for your contention that the property has been overvalued by the reappraisal staff.
- G) Each property is unique. Should, during the course of our investigation, it be found that additional information relative to the subject of the appeal would be helpful toward a resolution of the appeal, we will make that request.

Please provide the requested information by:

Authority: T.C.A. §§ 67-1-305; 4-5-311(c) and 67-5-1501(d). Administrative History: Original rule certified June 7, 1974. Repeal filed and effective July 1, 1984. New rule filed June 30, 2000; effective September 12, 2000. Amendment filed February 1, 2011; to have been effective May 2, 2011. On April 29, 2011, the Government Operations Committee stayed the rule for 15 days; new effective date May 17, 2011. Amendments filed February 21, 2018; effective May 22, 2018.

0600-01-.17 FEES.

- (1) Persons initiating a contested case before the Board shall pay a ten dollar (\$10) nonrefundable filing fee.
- (2) No fee shall be due from a person who qualifies as an indigent person for purposes of civil actions in the courts of Tennessee and who establishes indigence by filing a uniform affidavit in the form stated in Rule 29 of the Rules of the Supreme Court of Tennessee. No fee shall be due from an appellant who has attained the age of sixty-five (65) years at the time of filing the appeal where the subject property of the appeal is owned by the appellant and used as the appellant's primary residence and has a value not in excess of \$150,000.

Authority: T.C.A. §§ 67-1-305 and 67-5-1501(d). Administrative History: Original rule filed April 30, 2004; effective July 14, 2004. Amendments file February 1, 2011; to have been effective May 2, 2011. On April 29, 2011, the Government Operations Committee stayed the rule for 15 days; new effective date May 17, 2011. Amendment filed August 24, 2015; effective November 22, 2015. Amendments filed July 5, 2017; effective October 3, 2017.

REDLINE VERSION FOR 0600-05

0600-05-.04 REPORTING.

- (1) The tangible personal property schedule adopted in Rule 0600-05-.11 below shall be furnished annually by the assessor to every potential commercial and industrial personal property taxpayer on or before February 1. A substantially equivalent form may be used, provided that such form is approved by the Division of Property Assessments.
- (2) The taxpayer shall annually be required to complete, sign, and file the tangible personal property schedule with the assessor on or before March 1. Failure to file the schedule will subject the taxpayer to a penalty as provided by state law.
- (3) In accordance with T.C.A., Title 67, the following types of tangible personal property are not to be reported or assessed:
  - (a) Growing crops;
  - (b) The direct product of the soil in the hands of the producer or his immediate vendee;
  - (c) Finished goods in the hands of the manufacturer;
  - (d) Inventories of merchandise held for sale or exchange;
  - (e) Property in transit through the state to a final destination outside the state;
  - (f) Property imported from outside the United States, held in a foreign trade zone or subzone, and then exported to a location outside Tennessee:
- (4) A taxpayer must report the total acquisition costs of property as follows:
  - (a) For property that was new when the taxpayer purchased it, the taxpayer must report the total acquisition cost of the property as of the year the property was purchased.
  - (b) For property that was used when the taxpayer purchased it, the taxpayer must report the total acquisition cost of the property as of the year the property was new. However, if the taxpayer does not know or cannot reasonably determine the cost of the property when it was new or the year the property was new, the taxpayer may report the total acquisition cost of the used property as of the year the taxpayer acquired the property.
  - (c) For property previously reported as CIP tangible personal property, the taxpayer must report its total acquisition cost as of the year the property was placed in service, rather than the year of purchase, if those years differ.
  - (d) For all property, the total acquisition cost reported should include the full invoiced cost without deduction for the value of certain inducements, such as agreements and warranties, when these inducements are provided without additional charge.
- (5) A capitalized expenditure made with respect to property after the initial acquisition must be reported in the year the expenditure was booked as a fixed asset. The costs of the capitalized expenditure should be reported as they are shown on the taxpayer's financial accounting fixed asset records. Any expensed furniture, computer equipment, or other expensed items with a life of one year or longer should also be reported in the appropriate groups as assets. Expenses, costs, or amounts paid or incurred for incidental repairs and maintenance of property should not be reported.

Authority: T.C.A. §§ 67-1-305 and 67-5-902. Administrative History: Original rule filed August 29, 1988; effective October 13, 1988. Amendments filed February 21, 2017; effective May 22, 2017.

0600-05-.06 STANDARD VALUATION.

- (1) In the absence of evidence to the contrary, the fair market value of commercial and industrial tangible personal property, except raw materials, supplies, and scrap property, shall be presumed to be either the total acquisition cost less straight line depreciation or the residual value, whichever is greater. The grouping of personal property and the depreciation allowed for each group shall be consistent with the schedule prescribed in Rule 0600-05-.11 below, and shall be based on a reasonable economic life for that group of items.
- (2) The fair market value of raw materials and supplies shall be presumed to be their total acquisition cost as determined by the "first-in-first-out" (FIFO) method of accounting, in the absence of evidence to the contrary.
- (3) The residual value of personal property shall be presumed to be twenty percent (20%) of total acquisition cost, in the absence of evidence to the contrary.
- (4) The scrap value of personal property shall be presumed to be two percent (2%) of total acquisition cost, in the absence of evidence to the contrary.
- (5) In making forced assessments on non-reporting accounts, the following factors shall be considered:
  - (a) Previous data on file for that account;
  - (b) Data from comparable accounts;
  - (c) Data collected during any field visits.
- (6) Any tangible personal property which the taxpayer claims or will claim as CIP for federal income tax purposes based on the status of the property on the assessment date for property taxes may be reported by the taxpayer as CIP for property tax purposes. The value of CIP shall be presumed to be fifteen percent (15%) of all direct and indirect costs incurred and claimed by the taxpayer for federal income tax purposes as of the assessment date. The value of qualified pollution control equipment, whether or not reportable as CIP, shall be governed by T.C.A. § 67-5-604.

Authority: T.C.A. §§ 4-3-5103, 67-1-305, 67-5-902, and 67-5-903. Administrative History: Original rule filed August 29, 1988; effective October 13, 1988. Amendment filed May 31, 1991; effective July 15, 1991. Amendment filed August 17, 1994; effective October 31, 1994. Amendments filed February 21, 2017; effective May 22, 2017.

0600-05-.11 REPORTING SCHEDULE.

The following schedule or a facsimile shall be used by owners of commercial and industrial tangible personal property to report ownership of such property to the assessor pursuant to T.C.A. § 67-5-903. A substantially equivalent form may be used with prior approval of the director of the state Division of Property Assessments.



					Other	
					Operating Capital Other	
					Operating Capital Other	
					Operating Capital Other	
					Operating Capital Other	
					Operating Capital Other	
					Operating Capital Other	
					Operating Capital Other	

**PART IV. OWNED PERSONAL PROPERTY - NONSTANDARD VALUE** - Report property on which you wish to report a value different from standard depreciated cost where such value more closely reflects fair market value. Include evidence to support the request for a non-standard value, such as a recent appraisal or a value from an authoritative price or valuation guide. Such evidence will be considered in any determination of a nonstandard value. If additional space is needed, attach a separate sheet using the same format.

GRP	ITEM DESCRIPTION	YEAR MADE	ACQUISITION COST	DEPR FACTOR	VALUE AS OF JANUARY 1	ASSESSOR USE ONLY	
						DEPR	VALUE

**PART V. POLLUTION CONTROL** - Report pollution control equipment qualified under T.C.A. 67-5-604 (enclose copy of certificate). Such equipment will be valued at one-half percent of cost.

ACQUISITION COST	CERTIFICATE YEAR	CERTIFICATE EXPIRES

NOTES

**SMALL ACCOUNTS CERTIFICATION (OPTIONAL)**. By checking the box at left, I certify that the total depreciated value of my property (all groups) is \$1,000 or less. I understand this certification is subject to penalties for perjury and I may be subject to statutory penalty and cost if this certification is proven false.

I certify that the information herein, including any accompanying schedules or data, is true, correct and complete, to the best of my knowledge and belief.

PRINT NAME \_\_\_\_\_ PRINT TITLE \_\_\_\_\_

SIGNED \_\_\_\_\_ TITLE \_\_\_\_\_ DATE \_\_\_\_\_

REDLINE VERSION FOR 0600-08

0600-08-.02 CRITERIA FOR EXEMPTION OF LAND.

- (1) The purpose of this rule is to establish criteria for determining eligibility of land for religious, charitable, educational or scientific exemption from property taxes.
- (2) Land must be in actual use for exempt purposes of the exempt institution before it may qualify for exemption. Land will be presumed to be in use if
  - (a) it is land underlying exempt structures or paving;
  - (b) if the total land area claimed for exemption, including that which is underlying exempt structures, is five acres or less; or
  - (c) if the land exceeds the foregoing measures but is nevertheless necessary to meet government health, planning, or other requirements for configuration or minimum area prior to granting of any variance. In the absence of locally adopted zoning standards, resort may be had to requirements imposed for similar structures in nearby communities that impose zoning requirements or to zoning requirements recommended by a model generally accepted or used in this state. For purpose of this presumption the minimum area thus determined will be multiplied by a factor of 1.5.
- (3) The presumption in this rule is rebuttable. The assessor or taxing jurisdiction may rebut the presumption by proving that vacant land otherwise within the presumption is not being used for exempt purposes or is being offered for sale as a tract separate from the remaining land in use. The applicant for exemption may rebut the presumption by proving that vacant land which would be denied exemption under the presumption, is in fact being regularly used for exempt purposes qualifying for exemption in accordance with law.
- (4) Land held solely for future construction or other future uses does not qualify for exemption. Land that is held solely or primarily for its preservation, conservation, protection, or its scientific or ecological significance will not be eligible for exemption under T.C.A. § 67-5-212 unless and to the extent there is a clear showing of active research or other active exempt use taking place on the subject property.
- (5) Land held by a religious institution solely or primarily for solitary or individual reflection, prayer, or meditation will not be eligible for exemption under T.C.A. § 67-5-212 unless and to the extent there is a clear showing of active and persistent use by the organization, its members, congregants, or other persons authorized to use the property.
- (6) As used in T.C.A. § 67-5-212, parsonage means a residence owned by a religious institution where a full-time regular minister resides.

Authority: T.C.A. §§ 67-1-305 and 67-5-212 (b). Administrative History: Original rule filed April 30, 2004; effective July 14, 2004.

0600-08-.03 CRITERIA FOR EXEMPTION OF MEDICAL CLINICS.

- (1) As used in this rule "clinic" means a facility other than a hospital or other licensed health care facility that provides primary medical care.
- (2) As used in this rule "primary medical care" means health care services that cover a range of disease prevention and general wellness services, including diagnosis and treatment of common conditions, patient counseling, and the management of a patient's overall care.
- (3) A clinic owned by a charitable institution will be approved for exemption if it meets the following criteria:

- (a) The clinic is located in a medically underserved area or serves a medically underserved population as designated by the U.S. Department of Health and Human Services or the State of Tennessee;
- (b) The clinic provides services without regard to ability to pay and, if it submits claims to any third party payer, it does not decline TennCare, Medicare, or the uninsured;
- (c) The clinic either does not charge for services to any patient, or if it charges for services, charges are based on a sliding-fee scale that is based on patients' family size and income, and
- (d) No physician or other employee of the clinic is compensated in amounts in excess of what is reasonable for services performed for the clinic and comparable to other qualified and experienced providers.

Authority: T.C.A. §§ 67-1-305 67-5-212 and 67-5-212 (b). Administrative History: Original rule filed April 30, 2004; effective July 14, 2004. Amendment filed June 25, 2008; effective September 8, 2008.

\* 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)
Bill Lee				X	
Tre Hargett	X				
Justin P. Wilson	X				
David H. Lillard, Jr.	X				
David Gerregano	X				
Betty Burchett	X				
Lang Wiseman	X				
David Lenoir	X				

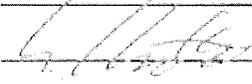
I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Equalization (board/commission/ other authority) on January 6, 2020 (01/01/20) and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: August 8, 2019 (08/08/19)

Rulemaking Hearing(s) Conducted on: (add more dates). October 3, 2019 (10/03/19)

Date: April 22, 2020

Signature: 

Name of Officer: Elizabeth Knotts

Title of Officer: Executive Secretary

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

Agency/Board/Commission: State Board of Equalization

Rule Chapter Number(s): 0600-01, -05, and -08

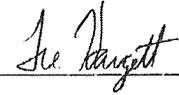
All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
 Herbert H. Slatery III  
 Attorney General and Reporter  
5/6/2020 Date

Department of State Use Only

Filed with the Department of State on: 5/12/2020

Effective on: 8/10/2020



Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

AGENCY: Agriculture

DIVISION: Animal Health

SUBJECT: Swine Markets

STATUTORY AUTHORITY: Tennessee Code Annotated, Title 44; 9 C.F.R. 71

EFFECTIVE DATES: June 11, 2020 through December 8, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These emergency rules requires all swine entering a slaughter market to be identified with a permanent USDA approved ear tag so that origin of the animal can be identified to stop the spread of disease cause by illegal importation of swine.

### **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)

There is no impact on local government.

**Additional Information Required by Joint Government Operations Committee**

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

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

This rule requires all swine entering a slaughter market to be identified with a permanent USDA approved ear tag so that origin of the animal can be identified to stop the spread of disease cause by illegal importation of swine.

- (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;

Title 44 of T.C.A. gives the commissioner and state veterinarian to authority to regulate the movement of animals for the control of disease. 9 C.F.R. 71 deals with the identification of animals in interstate commerce.

- (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 pork industry as well as the general agriculture community supports the adoption of 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;

There are no relevant cases or opinions regarding this rule.

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

The fiscal impact of this rule will be minimal

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

David Waddell, Director of Law and Policy

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

David Waddell, Director of Law and Policy

- (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

442 Hogan Road, Nashville, TN 377220; 615-837-5331; david.waddell@tn.gov

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

**Department of State**  
**Division of Publications**  
 312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
 Nashville, TN 37243  
 Phone: 615-741-2650  
 Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 06-15-20  
 Rule ID(s): 9361  
 File Date: 6/11/2020  
 Last Effective Day: 12/8/2020

# Emergency Rule Filing Form

*Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.*

**Agency/Board/Commission:** Department of Agriculture  
**Division:** Animal Health  
**Contact Person:** David Waddell  
**Address:** 442 Hogan Road, Nashville, TN  
**Zip:** 37220  
**Phone:** 615-837-5331  
**Email:** [david.waddell@tn.gov](mailto:david.waddell@tn.gov)

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Statement of Necessity:**

Decreased slaughter capacity in the Midwest and the northern states caused by Covid-19 is causing large numbers of swine to move illegally into this state. The small local markets in Tennessee are inundated with these pigs. There is very limited slaughter capacity in the state as well. The fear is that the state's capacity will be filled with illegally imported swine. Disease is also of concern. Without proper identification there is no way to determine if the animals are coming from quarantined areas or other areas where disease is present. Under current rules swine headed to a slaughter market and directly to slaughter are not subject to detailed identification. With adoption of these rules illegally imported swine can be identified and excluded from the market. It is important to adopt these rules to protect the health and welfare of the swine industry as well as the public.

**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 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
0080-02-13	Swine Markets
Rule Number	Rule Title
0080-02-13-.01	General

**0080-02-13-.01 GENERAL.**

(1) Only swine markets that are approved as having met state and federal standards are authorized to handle swine in Tennessee. Only three (3) types of swine markets will be approved:

(a) Slaughter-Only Market

1. Slaughter-only markets shall be approved in accordance with the requirements of 9 C.F.R. 71.20 and meet all the pertinent requirements of 9 C.F.R. 71, 78 and 85.
2. All swine shall enter the market under quarantine.
3. ~~All swine shall be identified to the seller. Sows and boars shall be individually identified to the seller.~~ All swine entering a market shall be officially identified with a United States Department of Agriculture approved ear tag to identify the consignor. The market shall record the name, address, and signature of the consignee, the slaughter facility destination, and the identification of the swine purchased
4. All swine shall be consigned from the market only to an approved slaughter establishment or to another approved market.

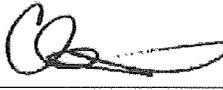
Authority: T.C.A. §§ 4-3-203, 44-2-102, 44-2-1304, and 44-10-204

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

Date: 05/20/2020

Signature: 

Name of Officer: Charlie Hatcher, D.V.M.

Title of Officer: Commissioner

Subscribed and sworn to before me on: \_\_\_\_\_

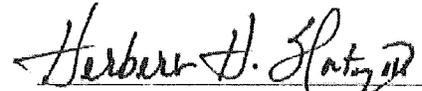
Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

Agency/Board/Commission: Department of Agriculture

Rule Chapter Number(s): 0080-02-13

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  
6/8/2020  
 Date

**Department of State Use Only**

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SECRETARY OF STATE  
PUBLICATIONS

Filed with the Department of State on: 6/11/2020

Effective for: 180 \*days

Effective through: 12/8/2020

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

  
 Tre Hargett  
 Secretary of State

## G.O.C. STAFF RULE ABSTRACT

AGENCY: State

DIVISION: Publications, Safe at Home Address Confidentiality Program

SUBJECT: Tennessee Address Confidentiality Program General Provisions

STATUTORY AUTHORITY: Chapter 577 of the Public Acts of 2020

EFFECTIVE DATES: June 2, 2020 through November 29, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These emergency rules govern the Safe at Home Address Confidentiality Program. All changes are deigned to conform these emergency rules to Public Chapter 577, enacted on March 19, 2020. These changes make clear that all participants must reside within the State of Tennessee and clarify that participants will be considered unreachable if the Department of State is unable to make contact with the participant, either by mail, phone, or electronic mail, for a period of 20 days.

### **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 changes will have minimal impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

These rules govern the Safe at Home Address Confidentiality Program. All changes are designed to conform these rules to Public Chapter 577, enacted on March 19, 2020. These changes make clear that all participants must reside within the State of Tennessee and clarify that participants will be considered unreachable if the Department of State is unable to make contact with the participant, either by mail, phone, or electronic mail, for a period of 20 days.

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

Public Chapter 577 (2020).

- (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;

Department of State, Safe at Home Address Confidentiality Program

- (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 fiscal impact of the proposed changes is minimal.

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

Mary Beth Thomas, General Counsel  
Office of the Secretary of State

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

Mary Beth Thomas, General Counsel  
Office of the Secretary of State

- (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 the Secretary of State  
State Capitol, 1<sup>st</sup> FL  
Nashville, Tennessee 37243  
(615) 741-2819  
Mary.Beth.Thomas@tn.gov

- (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](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 06-10-20  
 Rule ID(s): 9357  
 File Date: 6/2/2020  
 Last Effective Day: 11/29/2020

# Emergency Rule Filing Form

*Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.*

**Agency/Board/Commission:** Department of State  
**Division:** Division of Publications, Safe at Home Address Confidentiality Program  
**Contact Person:** Mary Beth Thomas  
**Address:** State Capitol, 1<sup>st</sup> FL, Nashville, Tennessee  
**Zip:** 37243  
**Phone:** (615) 741-2819  
**Email:** [Mary.Beth.Thomas@tn.gov](mailto:Mary.Beth.Thomas@tn.gov)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Statement of Necessity:**

Senate Bill 1980 was passed by the General Assembly on March 2, 2020. This bill was signed into law by Governor Lee on March 19, 2020 and became Public Chapter 577. Section 6 of Public Chapter 577 states that the act shall take effect upon becoming law. Therefore, emergency rules are required in order to immediately conform the rules of the Safe at Home Address Confidentiality Program to the applicable statutes as revised by Public Chapter 577.

**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 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
1360-11-01	Tennessee Address Confidentiality Program General Provisions
Rule Number	Rule Title
1360-11-01-.02	Eligibility and Application Procedures
1360-11-01-.03	Participant Responsibilities
1360-11-01-.05	Cancellation from Program Participation; Withdrawal.

**RULES  
OF  
THE TENNESSEE DEPARTMENT OF STATE  
DIVISION OF PUBLICATIONS**

**CHAPTER 1360-11-01  
TENNESSEE ADDRESS CONFIDENTIALITY PROGRAM GENERAL PROVISIONS**

**TABLE OF CONTENTS**

1360-11-01-.01	Definitions	1360-11-01-.06	Appeal Procedures
1360-11-01-.02	Eligibility and Application Procedures	1360-11-01-.07	Disclosures
1360-11-01-.03	Participant Responsibilities	1360-11-01-.08	Application Assistants
1360-11-01-.04	Service of Process		
1360-11-01-.05	Cancellation of Program Participation; Withdrawal		

**1360-11-01-.01 DEFINITIONS.**

- (1) The terms defined in Tennessee Code Annotated Title 40, Chapter 38, Part 6, T.C.A. §§ 40-38-601 et seq., shall have the same meaning for the purpose of these rules and definitions in these rules shall apply to T.C.A. §§ 40-38-601 et seq.
- (2) For purposes of these rules, "program participant" may also refer to the parent, guardian, or fiduciary who filed the initial application for program participation on behalf of a minor or a person with a disability who has been certified as a program participant. "Program participant" may also refer to the participant's minor children, if included on the initial application as a "co-applicant".
- (3) "Applicant" means the individual submitting an application to participate in the address confidentiality program, or the parent or fiduciary acting on such individual's behalf.
- (4) "Co-applicant" means an individual residing at the same residential address as an individual applicant who applies to participate in the program on the same application as the primary applicant. If a co-applicant is an adult, then the co-applicant must consent to participate in the program and abide by all program rules. In order to participate as a co-applicant, the co-applicant must not be prohibited from program participation by T.C.A. § 40-38-603.
- (5) "Date of application" or "time of application" means the date on which the application for enrollment is received for processing by the secretary of state. Applications must be completed, and all necessary supporting documentation provided, before an applicant and/or co-applicant will be approved to participate in the Safe at Home Address Confidentiality Program. Applications must be completed within 30 days from the date of application in order to be approved for enrollment unless, at the sole discretion of the secretary, just cause can be shown to excuse a delay.
- (6) "Residential address" means the address at which the applicant currently resides.

**Authority:** T.C.A. §§ 40-38-601, et seq. **Administrative History:** Emergency rules filed October 30, 2018; effective through April 28, 2019. Emergency rules expired effective April 29, 2019. Original rules filed November 21, 2019; effective February 19, 2020.

**1360-11-01-.02 ELIGIBILITY AND APPLICATION PROCEDURES.**

- (1) To be eligible for participation in the Address Confidentiality Program, an individual must be a resident of the State of Tennessee and meet the following requirements:

(Rule 1360-11-01-.02, continued)

- (a) Be a victim of domestic abuse, stalking, human trafficking, or any sexual offense, including violent sexual offenses; and,
  - (b) Have moved to a new residential address, which is unknown to the victims' abuser, within the previous thirty (30) days, or presently intend to move to a new residential address unknown to the victims' abuser, within ninety (90) days from the date of application; or,
  - (c) Be a co-applicant residing at the residence of a primary applicant who satisfies the two criteria above.
- (2) A person who is required by law to be registered under any of the following is not eligible to participate in the address confidentiality program:
- (a) Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004, T.C.A. §§ 40-39-201 et seq.;
  - (b) Tennessee Animal Abuser Registration Act, T.C.A. §§ 40-39-101 et seq.;
  - (c) Registry of persons who have abused, neglected, or misappropriated the property of vulnerable individuals, T.C.A. §§ 68-11-1001 et seq.; or
  - (d) Drug Offender Registry, T.C.A. § 39-17-436.
- (3) A prospective applicant may submit an application for program participation to the Office of the Secretary of State, with the assistance of an application assistant. An application for program participation must be submitted on the designated form prescribed by the Office of the Secretary of State. The application must include all of the following:
- (a) The mailing address and telephone number(s) at which the applicant may be contacted;
  - (b) The address or addresses of the applicant's residence address, school, institution of higher education, business and/or place of employment, and/or those of the applicant's minor children, which the applicant requests be treated as confidential;
  - (c) Documentary evidence that, either:
    - 1. There exists an ongoing criminal case that may result in, or an ongoing criminal case that has resulted in, a conviction by a judge or jury or by a defendant's guilty plea, in which the applicant was a victim of domestic abuse, stalking, human trafficking, or any sexual offense; or,
    - 2. A court of competent jurisdiction has granted an order of protection to the applicant, which is in effect at the time of application;
  - (d) In the absence of an ongoing criminal case that may result, or an ongoing criminal case that has resulted, in a conviction or guilty plea, or an order of protection granted by a court of competent jurisdiction within this state which is in effect at the time of application, the applicant may submit a notarized statement by a licensed professional with knowledge of the circumstances, such as an attorney, social worker, or therapist, confirming that such individual believes that the applicant is in danger of further harm;
  - (e) Either of the following:

(Rule 1360-11-01-.02, continued)

1. Documentary evidence that the applicant has moved to a new residential address within the State of Tennessee, which is unknown to the applicant's abuser to the best of the applicant's knowledge and belief, within the previous thirty (30) days; or,
  2. A sworn statement by the applicant that the applicant has the present intent to move to a new address within the State of Tennessee, which will be unknown to the applicant's abuser, within the ninety (90) days following the application date.
  3. The documentary evidence required by subparagraph division (1i) above may consist of a rental agreement or utility service agreement bearing the name of the applicant as a party to the agreement and evidencing a residential address within the State of Tennessee, or any other documentary evidence which is determined to be acceptable by the Office of the Secretary of State.
- (f) A sworn statement by the applicant that disclosure of the confidential address or addresses would endanger the safety of the applicant or the minor or the person with a disability on whose behalf the application is made;
- (g) A sworn statement by the applicant confirming that the applicant understands all of the following:
1. That during the time the applicant chooses to have a confidential voter registration record, the applicant may vote only by absentee ballot;
  2. That the applicant may provide a program participation number instead of their residential address on an application for an absentee ballot or on an absentee voter's ballot identification envelope statement of voter with the voter's signature;
  3. That casting any ballot in person during program participation will reveal the applicant's precinct and residence address to precinct election officials and employees of the county election commission, and may reveal the applicant's precinct or residential address to members of the public; and,
  4. That if the applicant signs an election petition during program participation, the applicant's address will be made available to the public.
- (h) A knowing and voluntary designation of the Secretary of State as the applicant's agent for the purposes of receiving service of process and the receipt of mail;
- (i) A knowing and voluntary release and waiver of all future claims against the state for any claim that may arise from participation in the address confidentiality program, except for a claim based on the performance or nonperformance of a public duty that was manifestly outside the scope of the officer's or employee's office or employment or in which the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner;
- (j) -A statement of the applicants consent for the Department of State to release their information, including their residential address, to the Department of Correction and/or the Board of Parole, if the participant is subject to probation and/or parole;
- (k) -A statement of the applicants consent for the Department of State to release their information, including their residential address, to the Department of Children's Services, if the participant is receiving services from the Department of Children's Services or are

(Rule 1360-11-01-.02, continued)

- otherwise required to participate in home visits with the Department of Children's Services.
- (l) The notarized signature of the applicant, the name and notarized signature of the application assistant who assisted the applicant, and the date on which the applicant and application assistant signed the application;
  - (m) If, at the time of application, the applicant is subject to a court order or is involved in a court action related to the dissolution of marriage proceedings, child support, or the allocation of parental responsibilities or parenting time, the applicant must also provide the name of the court, contact information for the court, and the case number(s) associated with those proceedings; and,
  - (n) A voter registration form, if the applicant is eligible to vote and wishes to register to vote or update a current voter registration.
- (4) If an applicant submits an application based on the applicant's present intent to relocate to a new residential address within the State of Tennessee within the ninety (90) days following the date of application, the applicant must submit documentation of the applicant's move to such residential address within ninety (90) days from the date of application. Such documentation may include, but is not limited to, a rental agreement or a utility service agreement executed within ninety (90) days of the date of application and evidencing a residential address within the State of Tennessee, or any other documentary evidence which is determined to be acceptable by the Office of the Secretary of State.
  - (5) Following receipt and certification of a properly submitted application, the Secretary of State shall issue to the program participant a unique substitute address, a unique participant identification number, and documentary evidence of such participation that may be used as proof of program participation, if requested, when the applicant requests that a governmental entity or third party use the substitute address as the participant's official address of record. The Secretary of State shall also issue to the participant all other informational documentation required by law.
  - (6) Following certification of program participation, the Office of the Secretary of State will accept all first class mail and/or certified mail received at the substitute address and forward this material to the participant at the address designated by the participant on the participant's application within three (3) business days from the date of receipt. The Office of the Secretary of State will also accept all service of process received at the substitute address and shall immediately forward this material to the participant at the address designated by the program participant on the participant's application.
  - (7) The Office of the Secretary of State will not accept or forward packages, periodicals, or marketing materials. If these materials are received by the Office of the Secretary of State, they will be immediately returned to sender or securely shredded as applicable. For these purposes, a package is defined as any piece of mail with any dimension greater than 12 inches wide, 15 inches long,  $\frac{3}{4}$  inches thick, or over 13 ounces in weight.
  - (8) Mail received by the Office of the Secretary of State for forwarding cannot be retrieved by participants in person for any reason. Participants should not attempt to physically retrieve their mail from the Office of the Secretary of State at any time.

**Authority:** T.C.A. §§ 40-38-601, et seq. **Administrative History:** Emergency rules filed October 30, 2018; effective through April 28, 2019. Emergency rules expired effective April 29, 2019. Original rules filed November 21, 2019; effective February 19, 2020.

(Rule 1360-11-01-.02, continued)

**1360-11-01-.03 PARTICIPANT RESPONSIBILITIES.**

- (1) Program participants must provide the substitute address to all governmental and private entities to ensure the confidentiality of the program participant's confidential address. Program participants must also provide the substitute address to all governmental and private entities in matters relating to the participant's minor children to ensure the confidentiality of the program participant's confidential address.
- (2) Program participants are not permitted to use their substitute address for the following purposes, and must instead use their confidential address:
  - (a) For purposes of listing, appraising, or assessing property taxes and collecting property taxes; or
  - (b) On any document related to real property recorded with a county clerk and recorder.
- (3) If a program participant obtains a legal name change, the participant must provide evidence of the legal name change to the Office of the Secretary of State within ten (10) days of the date of the legal name change.
- (4) Program participants must notify the Office of the Secretary of State of any change in the participant's residential address and/or application information in writing within thirty (30) days after any change has occurred by submitting a Notice of Change Form to the Office of Secretary of State. This Notice of Change must be notarized; if the Notice of Change is not properly notarized, the Participant's information cannot be updated and the Participant may become subject to cancellation.
  - (a) Program participants will be required to provide documentation to verify any change in the program participant's residential address to the satisfaction of the Office of the Secretary of State. Such documentation may include, but is not limited to, a rental agreement or a utility service agreement, executed within thirty (30) days of the date of the reported change.
  - (b) In the event that the participant moves to a new residential address, or the participant's contact information otherwise changes, and the participant does not provide notification of such to the Office of the Secretary of State, any materials received at the participant's substitute address may not be received by the participant upon forwarding of the materials by the Office of the Secretary of State and the program participant may be prevented from voting in any precinct other than the precinct established by the program participant's application. Any materials which cannot be delivered to the program participant will be maintained by the Office of the Secretary of State for a period of sixty ~~(60)~~ twenty (20) business days and will then be destroyed if unclaimed.
  - (c) In the event that a program participant moves to a new residential address outside of the State of Tennessee, the program participant may submit a Change of Address form showing the new, out-of-state address and the Office of the Secretary of State will forward program participant mail received at the substitute address for up to sixty (60) days or until the program participant enrolls in the state's address confidentiality program, if available. Participants who enroll in an address confidentiality program in another state should withdraw their program participation in Tennessee. If the program participant does not withdraw their program participation in Tennessee and does not return to Tennessee within the sixty (60) day forwarding period, program participation will be cancelled.

(Rule 1360-11-01-.03, continued)

- (5) Program participants must request that any public record created within thirty (30) days prior to the date of the participant's application for participation and which contains the participant's confidential address be treated as confidential by the governmental entity holding the public record and/or that the confidential address be substituted with the substitute address, and must provide proof of program participation to the governmental entity.
- (6) Program participants must abide by all applicable voter registration and absentee deadlines, as well as any procedures established by the coordinator of elections for the submission and processing of absentee ballots by program participants.
- (7) Program participants must provide the substitute address and evidence of program participation to public schools for purposes of enrollment for themselves or their minor children in order to ensure the confidentiality of the program participant's confidential address. Public school officials must then contact the Office of the Secretary of State in order to obtain verification of eligibility for enrollment, if residential verification is required. The Office of the Secretary of State shall then provide confirmation or denial of enrollment eligibility based on the most recent information provided to the Office of the Secretary of State by the program participant.
- (8) Program participants may be required to provide their confidential residential address to a utility service provider for the purposes of obtaining utility services. Program participants must also provide the utility service provider with evidence of program participation and request that the utility service provider treat their residential address as confidential. The program participant may also request that the utility service provider use the substitute address as the program participant's official mailing address.
- (9) Program participation certification shall be valid for four (4) years following the date of filing of the application by the Office of the Secretary of State, unless participation is otherwise withdrawn or invalidated prior to the end of the four year term. A program participant who wishes to renew their participation beyond the current four (4) year term may do so by submitting a renewal application to the Office of the Secretary of State within the ninety (90) days prior to the termination of the current four (4) year term. The renewal application must contain all of the information required by Rule 1360-11-01-.02(c).
- (10) Program participants are exempt from selection for state and municipal jury duty. In the event that the program participant receives a jury summons for either a state or municipal jury, it shall be the responsibility of the program participant to notify the summoning court of the participant's participation in the program and exempt status. Program participants may not fail to respond to a jury summons.
- (11) If an individual ceases to be a program participant, by reason of either cancellation or withdrawal, it shall be the responsibility of such individual to notify persons and entities that use of the substitute address is no longer valid.

**Authority:** T.C.A. §§ 40-38-601, et seq. **Administrative History:** Emergency rules filed October 30, 2018; effective through April 28, 2019. Emergency rules expired effective April 29, 2019. Original rules filed November 21, 2019; effective February 19, 2020.

#### **1360-11-01-.04 SERVICE OF PROCESS.**

- (1) Upon request by a person who intends to serve process on an individual, the Office of the Secretary of State shall confirm whether the individual is a program participant but shall not disclose any other information concerning a program participant.

(Rule 1360-11-01-.04, continued)

- (2) Any person intending or attempting to serve process on a program participant may do so by serving Secretary of State as agent of a program participant at Department of State, Safe At Home Address Confidentiality Program, W.R. Snodgrass Tower, 3<sup>rd</sup> Floor, 312 Rosa L. Parks Avenue, Nashville, TN 37243. Service of process may be delivered by mail to: Department of State, Safe At Home Address Confidentiality Program, W.R. Snodgrass Tower, 6<sup>th</sup> Floor, 312 Rosa L. Parks Avenue, Nashville, TN 37243.

**Authority:** T.C.A. §§ 40-38-601, et seq. **Administrative History:** Emergency rules filed October 30, 2018; effective through April 28, 2019. Emergency rules expired effective April 29, 2019. Original rules filed November 21, 2019; effective February 19, 2020.

**1360-11-01-.05 CANCELLATION OF PROGRAM PARTICIPATION; WITHDRAWAL.**

- (1) Program participation shall be cancelled if any of the following occurs:
  - (a) The Office of the Secretary of State finds or determines that the participant's application contained one or more false statements;
  - (b) The program participant fails to relocate to a new residential address, or fails to provide documentary evidence of the new residential address to the Office of the Secretary of State, within ninety (90) days from the date of application, unless the Secretary of State determines that the program participant is currently residing at a shelter, as defined by T.C.A. § 71-6-202, or a similar facility;
  - (c) The program participant obtains a name change, unless the program participant provides the Office of the Secretary of State with documentation of a legal name change within ten (10) business days of the name change;
  - (d) The program participant's certification has expired and the program participant has not submitted a renewal application prior to the expiration of the current four (4) year term;
  - (e) The Office of the Secretary of State finds or determines that the program participant is unreachable for a period of ~~sixty (60)~~ twenty (20) business days or more;
  - (f) The Office of the Secretary of State finds or determines that circumstances have changed such that the participant no longer meets the criteria outlined by statute or by Rule 1360-11-01-.02 for program participation; or
  - (g) The program participant submits to the Office of the Secretary of State a request to withdraw from the program.
- (2) A program participant will be found to be unreachable when the Office of the Secretary of State has determined that any materials forwarded to the program participant at the designated address have been returned to the Office of the Secretary of State by the United States Postal Service, or other mail carrier, as either undeliverable or refused and the Office of the Secretary of State has been unable to reach the program participant by phone or electronic mail for a period of at least ~~sixty (60)~~ twenty (20) business days.
- (3) A program participant may request to withdraw from program participation by submitting a written and notarized Withdrawal form to the Office of the Secretary of State. The Withdrawal form must include the following:
  - (a) The program participant's name, residential address and participant identification number;

(Rule 1360-11-01-.05, continued)

- (b) A statement that the participant wishes to cease being a program participant;
  - (c) An acknowledgement that the participant's address(es) will no longer be kept confidential, the Secretary of State will no longer accept or process mail received on their behalf, and participant's voter registration will no longer be kept confidential; and,
  - (d) A statement that the administrator of election should either treat the participant's voter registration in the same manner as other voter registration forms, or purge the participant's voter registration.
- (4) Upon finding that a program participant's participation should be cancelled, either by means of cancellation or withdrawal, the Office of the Secretary of State shall mail a notice of cancellation to the program participant at the last known address by certified mail. This notice shall set out the reason(s) for cancellation, the program participant's right to appeal the cancellation, and the procedures for appealing the notice of cancellation before an administrative law judge.
- (a) In the event that cancellation occurs because the Office of the Secretary of State has found the program participant to have been unreachable for a period of ~~sixty (60)~~ twenty (20) business days or more, and the notice of cancellation sent to the program participant by certified mail is returned to the Office of the Secretary of State as either undeliverable or refused, the program participant shall not have the right to appeal the cancellation of program participation.

**Authority:** T.C.A. §§ 40-38-601, et seq. **Administrative History:** Emergency rules filed October 30, 2018; effective through April 28, 2019. Emergency rules expired effective April 29, 2019. Original rules filed November 21, 2019; effective February 19, 2020.

#### 1360-11-01-.06 APPEAL PROCEDURES.

- (1) A program participant has the right to appeal the cancellation of program participation within thirty (30) days from the date of the notice of cancellation, unless otherwise limited by law or these rules. A petition for appeal may be submitted to the Office of the Secretary of State.
- (2) A program participant has the right to appeal the disclosure by the Office of the Secretary of State of the program participant's confidential address, or any other information pertaining to the program participant, disclosed to a state or federal agency within ten (10) business days of the Secretary's determination that such information should be disclosed.
- (3) Upon receipt of a petition for appeal, the Office of the Secretary of State will transmit the petition to the Administrative Procedures Division for a contested case hearing before an administrative law judge in accordance with the Uniform Administrative Procedures Act.

**Authority:** T.C.A. §§ 40-38-601, et seq. **Administrative History:** Emergency rules filed October 30, 2018; effective through April 28, 2019. Emergency rules expired effective April 29, 2019. Original rules filed November 21, 2019; effective February 19, 2020.

#### 1360-11-01-.07 DISCLOSURES.

- (1) Except as otherwise allowed by law, the Office of the Secretary of State shall not disclose the confidential address or any other information contained within a program participant's file, other than the substitute address designated by the Secretary of State.
- (2) Public schools and other governmental entities that require verification of residency for purposes of public school enrollment or public benefits enrollment must submit to the Office of the Secretary of State a completed Request for Residency Verification form to verify a program

(Rule 1360-11-01-.07, continued)

participant's eligibility for enrollment and/or the eligibility for enrollment of the participant's minor children. The public school or other governmental entity seeking such verification must provide a written statement and/or a map, as required by the Secretary of State, outlining the applicable residential district eligible for enrollment.

- (3) As authorized by law, properly designated law enforcement agency officials and administrative agency officials may request confirmation of program participation pertaining to a supposed program participant by submitting a Request for Program Participation Confirmation Form to the Office of the Secretary of State. The Office of the Secretary of State shall make a determination and respond to such requests within three (3) business days, unless emergency circumstances exist.
- (4) The Office of the Secretary of State shall provide an after-hours emergency phone number to the Chief Law Enforcement Official of every state law enforcement agency, county sheriff's office, and municipal police department that may be used only by such chief law enforcement official. In such emergency situations, where there exists a significant threat to the physical health or welfare of the program participant or a member of the program participant's immediate family, the Chief Law Enforcement Official of the requesting agency may request the immediate disclosure of the program participant's confidential address. The Office of the Secretary of State may require the requesting official to verify their identity prior to the release of the program participant's confidential address.
- (5) As authorized by law, properly designated law enforcement agency officials and administrative agency officials may request disclosure of information pertaining to a program participant by submitting a Request for Disclosure Form to the Office of the Secretary of State.
  - (a) Request for Disclosure Forms submitted by law enforcement officials will be reviewed and addressed by the Secretary of State, or the Secretary's designee, as soon as practicable. A program participant is not entitled to notice of the Secretary's determination prior to the disclosure of the requested information.
  - (b) Request for Disclosure Forms submitted by state or federal administrative agency officials will be reviewed and addressed by the Secretary of State, or the Secretary's designee, as soon as practicable. However, the program participant shall be notified of the nature of the request received and afforded an opportunity to respond to the request in writing stating any objections to the disclosure.
    1. The program participant shall have ten (10) business days from the date of the notice issued to the program participant in which to respond to the notice. If no response from the program participant is received after ten (10) business days from the date of notice, then the information requested shall be disclosed to the requesting agency as soon as practicable.
    2. If the program participant responds to the notice provided, the Secretary or the Secretary's designee shall review the objections received and weigh those objections against the reasons cited by the requesting agency official for the disclosure. The Secretary or the Secretary's designee shall then issue a determination within three (3) business days.
    3. Any party may appeal the Secretary's decision within ten (10) business days from the notice of the Secretary's determination by submitting a petition for appeal to the Office of the Secretary of State. If no request for appeal is received within ten (10) business days, the Secretary's decision shall be implemented according to its terms.

(Rule 1360-11-01-.07, continued)

- (6) Disclosure of a participant's confidential address, or any other information contained within a program participant's file, shall be limited under the terms of the court's order or, in the absence of a court order, the secretary's determination, to ensure that the disclosure and dissemination of the confidential address will be no greater than necessary for the specific purpose for which it was requested.
- (7) Individuals granted access to the program participant's confidential information, whether by court order or by virtue of the individual's position as an employee of a governmental entity, are prohibited from knowingly disclosing such information to unauthorized individuals, except as otherwise required by law.
- (8) No person shall knowingly obtain a program participant's confidential address or telephone number from any governmental agency knowing that the person is not authorized to obtain the confidential information.
- (9) The Secretary of State may grant a request for disclosure to a state or local government agency upon receipt of a program participant's written and notarized consent to do so. In the event that a program participant submits a written and notarized consent for disclosure relating to a specific request for disclosure, the requested information shall be disclosed as soon as practicable and the program participant shall have no further right to appeal the disclosure.
- (10) In the event that the state, a county, a municipality, an agency of the state or county or municipality, or an employee of the state or county or municipality negligently or otherwise unlawfully discloses the program participant's confidential address, such entity must immediately upon learning of the disclosure notify the program participant of the disclosure and the full extent of the disclosure.

**Authority:** T.C.A. §§ 40-38-601, et seq. **Administrative History:** Emergency rules filed October 30, 2018; effective through April 28, 2019. Emergency rules expired effective April 29, 2019. Original rules filed November 21, 2019; effective February 19, 2020.

#### 1360-11-01-.08 APPLICATION ASSISTANTS.

- (1) Individuals seeking certification as an application assistant must:
  - (a) Be an employee or a volunteer at an approved agency or organization that serves victims of domestic abuse, stalking, human trafficking, rape, sexual battery, or any other sexual offense;
  - (b) Submit an application for certification as an application assistant to the Office of the Secretary of State; and,
  - (c) Receive training and instruction from the Office of the Secretary of State relating to the address confidentiality program and these rules to help prospective applicants to complete applications for program participation.
- (2) Application assistants may not offer legal advice to any prospective applicant for program participation or program participant, unless otherwise authorized to engage in the practice of law in this state.

**Authority:** T.C.A. §§ 40-38-601, et seq. **Administrative History:** Emergency rules filed October 30, 2018; effective through April 28, 2019. Emergency rules expired effective April 29, 2019. Original rules filed November 21, 2019; effective February 19, 2020.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

Date: 5/11/2020

Signature: Mang Ben Thomas

Name of Officer: Mang Ben Thomas

Title of Officer: General Counsel

Agency/Board/Commission: Department of State

Rule Chapter Number(s): 1360-11-01

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

Herbert H. Slatery III

Herbert H. Slatery III  
Attorney General and Reporter

5/19/2020

Date

**Department of State Use Only**

Filed with the Department of State on: 6/2/2020

Effective for: 180 days

Effective through: 11/29/2020

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

Tre Hargett

Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

<u>AGENCY:</u>	Board of Education
<u>SUBJECT:</u>	Special Education Programs and Services; Individualized Education Accounts
<u>STATUTORY AUTHORITY:</u>	Chapter 652 of the Public Acts of 2020
<u>EFFECTIVE DATES:</u>	June 10, 2020 through December 7, 2020
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>These emergency rules address special circumstances created by the statewide closure of schools in the spring semester of the 2019-2020 school year due to COVID-19. These emergency rules address eligibility for special education services under the category of developmental delay for students who turned seven (7) prior to the completion of the evaluation in the 2019-2020 school year, and 2019-2020 spending requirements for individualized Education Account holders due to the inability of some account holders to access therapies during the end of the 2019-2020 school year.</p>

### **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.

**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 emergency rules address special circumstances created by the statewide closure of schools in the spring semester of the 2019-20 school year due to COVID-19. These rules address eligibility for special education services under the category of developmental delay for students who turned seven (7) prior to the completion of the evaluation in the 2019-20 school year, and 2019-20 spending requirements for Individualized Education Account holders due to the inability of some account holders to access therapies during the end of the 2019-20 school year.

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

Public Chapter 652 of 2020 gave the State Board of Education authority to promulgate emergency rules addressing issues as a result of COVID-19.

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

These rules impact students who were being evaluated for eligibility for special education under the category of developmental delay, and account holders participating in the Individualized Education Account program for the 2019-20 contract year. These rules were developed in consultation with the Department of Education office of special populations, and office of policy and legislative affairs and all urge 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;

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;

None.

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

Angie Sanders  
[Angela.C.Sanders@tn.gov](mailto:Angela.C.Sanders@tn.gov)  
  
Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)  
  
Jay Klein  
[Jay.Klein@tn.gov](mailto:Jay.Klein@tn.gov)

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

Angie Sanders  
[Angela.C.Sanders@tn.gov](mailto:Angela.C.Sanders@tn.gov)  
  
Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Jay Klein  
[Jay.Klein@tn.gov](mailto:Jay.Klein@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

Angie Sanders  
500 James Robertson Parkway, 5<sup>th</sup> Floor  
Nashville, TN 27243  
(615) 253-5707  
[Angela.C.Sanders@tn.gov](mailto:Angela.C.Sanders@tn.gov)

Nathan James  
500 James Robertson Parkway, 5<sup>th</sup> Floor  
Nashville, TN 27243  
(615) 532-3528  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Jay Klein  
710 James Robertson Parkway, 9<sup>th</sup> Floor  
Nashville, TN 27243  
(615) 260-4420  
[Jay.Klein@tn.gov](mailto:Jay.Klein@tn.gov)

(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](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 06-14-20  
 Rule ID(s): 9359-9360  
 File Date: 6/10/2020  
 Last Effective Day: 12/7/2020

## Emergency Rule Filing Form

*Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.*

Agency/Board/Commission: State Board of Education  
 Division: N/A  
 Contact Person: Angie Sanders  
 Address: 500 James Robertson Parkway, 5<sup>th</sup> Floor  
 Zip: 37243  
 Phone: 615 253-5707  
 Email: [Angela.C.Sanders@tn.gov](mailto:Angela.C.Sanders@tn.gov)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Statement of Necessity:**

The following emergency rules are authorized by Public Chapter 652 of 2020 to address issues arising from the state-wide closure of public and private schools and post-secondary institutions in the Spring of 2019-20 due to the COVID-19 public health emergency. These rules address eligibility for special education services under the category of developmental delay, and 2019-20 spending requirements for Individualized Education Account holders.

**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 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.)**

<b>Chapter Number</b>	<b>Chapter Title</b>
0520-01-09	Special Education Programs and Services
<b>Rule Number</b>	<b>Rule Title</b>
0520-01-09-.24	Extension of Initial Evaluation Timelines for the 2019-20 School Year
<b>Chapter Number</b>	<b>Chapter Title</b>
0520-01-11	Individualized Education Accounts
<b>Rule Number</b>	<b>Rule Title</b>
0520-01-11-.13	Spending Requirements for 2019-20 Contract Year

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

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

AMEND rule 0520-01-09-.24(1), Special Education Programs and Services, by adding subsection (b) which shall read as follows:

**0520-01-09-.24 EXTENSION OF INITIAL EVALUATION TIMELINES FOR THE 2019-20 SCHOOL YEAR**

(b) For initial evaluations initiated or in process as of March 3, 2020, eligibility for developmental delay may be determined in accordance with 0520-01-09-.02(6) after the student's seventh birthday if the student's seventh birthday occurred within the extended timeline as authorized by Section 0520-01-09-.24(1) or Subsection 0520-01-09-.24(1)(a).

**Authority:** Executive Order No. 14 of 2020 (and applicable, subsequent Executive Orders addressing COVID-19 relief), Chapter 652 of the Public Acts of 2020, 34 C.F.R. § 300.301(c). **Administrative History:** Emergency rules filed April 16, 2020; effective through October 13, 2020.

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

AMEND Chapter 0520-01-11, Individualized Education Accounts, by adding the a new rule .13 and FURTHER AMEND the table of contents for Chapter 0520-01-11 to add a new section .13, so that, as amended the new table of contents and rule shall read:

**TABLE OF CONTENTS**

0520-01-11-.01	Purpose	0520-01-11-.07	Monitoring and Compliance
0520-01-11-.02	Definitions	0520-01-11-.08	Participating Schools and Providers
0520-01-11-.03	Application	0520-01-11-.09	Return to Local Education Agency
0520-01-11-.04	Term of the IEA	0520-01-11-.10	Appeal Procedures
0520-01-11-.05	Contract and Funds Transfer	0520-01-11-.11	Conflict of Interest
0520-01-11-.06	Use of Funds	0520-01-11-.12	Reserved
		0520-01-11-.13	<u>Spending Requirements for 2019-20 Contract Year</u>

**0520-01-11-.13 SPENDING REQUIREMENTS FOR 2019-20 CONTRACT YEAR**

(1) Pursuant to the Governor's Executive Orders of the year 2020 declaring the existence of a State of Emergency in response to COVID-19 and Chapter 652 of the Public Acts of 2020, for the 2019-20 contract year, there is no requirement that overall spending equal fifty (50) percent of the annual award by the deadline for submission of the last expense report of the contract year.

(a) If overall spending does not equal fifty (50) percent by the deadline for submission of the last expense report and if the IEA is renewed for the 2020-21 contract year, the Department will not subtract the difference from the payments in the 2020-21 contract year. If a student withdraws from the IEA program or if the IEA is not renewed, the IEA shall be closed and any remaining funds shall be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

**Authority:** Executive Order No. 14 of 2020 (and applicable, subsequent Executive Orders addressing COVID-19 relief), Chapter 652 of the Public Acts of 2020, T.C.A. §§ 49-1-302 and 49-10-1401 *et seq.*  
**Administrative History:**

\* 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)
Lillian Hartgrove	X				
Bob Eby	X				
Darrell Cobbins	X				
Larry Jensen	X				
Gordon Ferguson	X				
Elissa Kim	X				
Mike Edwards	X				
Nick Darnell	X				
Nate Morrow				X	

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

Date: 6/9/20

Signature: 

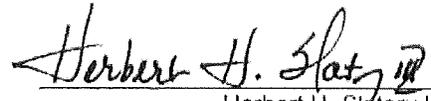
Name of Officer: Angie Sanders

Title of Officer: General Counsel

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-09; 0520-01-11

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  
6/8/2020  
 Date

**Department of State Use Only**

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Filed with the Department of State on: 6/10/2020

Effective for: 180 \*days

Effective through: 12/7/2020

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

  
 Tre Hargett  
 Secretary of State

## G.O.C. STAFF RULE ABSTRACT

- AGENCY: Human Services
- SUBJECT: Child Support Services
- STATUTORY AUTHORITY: Title IV-D of the Social Security Act (42 U.S.C. §§ 651-669), specifically 42 U.S.C. § 667 and 45 C.F.R. § 302.56, requires that states establish guidelines for setting and modifying child support order amounts in each state. Tennessee Code Annotated §§ 36-5-101(e), 71-1-105(a)(15), and 71-1-132 implement these requirements and direct the Tennessee Department of Human Services to establish those guidelines to enforce the provisions of federal law.
- EFFECTIVE DATES: May 10, 2020, through June 30, 2021
- FISCAL IMPACT: The Department intends to fund the federal directive that necessitated this rule by reallocating resources within the existing TANF grant monies to account for the implementation costs. The Department has concluded that the costs associated with implementation of these requirements can be handled with existing TANF dollars. The Department has determined that implementation of rule will come at no additional cost since existing resources are sufficient to administer it.
- STAFF RULE ABSTRACT: This rulemaking hearing rule establishes guidelines for setting and modifying child support order amounts for the state of Tennessee as required by federal law. The majority of changes to the Tennessee Child Support Guidelines are being proposed in order to fulfill new federal requirements of state guidelines. Fifteen (15) factors were added and must be considered before imputation of income may be allowed. A Self Support Reserve to ensure obligors have sufficient income to maintain a minimum standard of living based on 110% of the 2018 federal poverty level for one person (\$1,150 gross income per month) is being implemented with these changes. The Child Support (CS) Schedule for low-income was updated, showing the Self Support Reserve as the shaded area on the Schedule. A minimum child support order of at least one hundred (\$100) is being established on most child support cases. Striking through the language that says TennCare Medicaid does not satisfy the requirement for child's health care needs in order to match state and federal law. Deleting the language that states incarceration shall be treated as willful or voluntary unemployment, as required by federal law. This will allow modifications for those incarcerated due to the incarceration as being considered their change in circumstances. There were

also edits to the Child Support Worksheet in order to match the Rule changes.

## 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.

Following are comments received either orally or in writing at the public hearing(s) concerning the above rules or which were received within the time permitted for submission of comments following the hearing, together with the responses of the Department of Human Services. Similar or identical responses have been grouped together for purposes of response:

### Comment 1:

One commenter questioned why the state is required by federal law to ensure in the child support guidelines that a child support order be based on the Alternate Residential Parent's (ARP's) earnings, income, and other evidence of ability to pay while the Primary Residential Parent's (PRP's) income and earnings can be considered at the state's discretion and also questioned why it is not a standard part of these Guidelines to take the PRP into consideration.

The commenter further asked why it was within the state's discretion as opposed to judicial discretion.

### Response to Comment 1:

The controlling federal law allows all states to use discretion as to whether to consider the PRP's income in determining the child support order, and the state's child support guidelines do take into account the income of both the ARP and PRP.

The federal law does not speak to judicial discretion in this context.

No change will be made in response to this comment.

### Comment 2:

One commenter questioned the federal requirement that a state's child support guidelines must provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders, arguing that this provision be removed and that this change appears to allow any parent who is incarcerated for any reason (including failure to pay support) to file for a modification of their support obligation.

The commenter further stated that there is no consideration given to an incarcerated person's assets, generally, or income while incarcerated, which the commenter alleges many individuals receive from family to spend during their incarceration.

### Response to Comment 2:

The new federal guidelines mandate that incarceration cannot be treated as voluntary under employment.

All income, even during incarceration, has been and will continue to be included in determining the support obligation.

No change will be made in response to this comment.

### Comment 3:

One commenter argued that there should be no child support between mothers and fathers, but rather the

expectation of both parents providing for the needs of their children, asking that the Department please revisit these archaic child support guidelines to more equitable and reasonable ones.

Response to Comment 3:

Federal law requires each state to operate a child support program and establish guidelines for setting and modifying child support. 45 C.F.R. § 302.56 requires each state to establish child support guidelines and review them every four (4) years. Tennessee state law, T.C.A. § 36-5-101, requires the child support guidelines be reviewed by the department of human services every three (3) years. Income shares guidelines take into account the income of both parties to ensure children are adequately supported by both parents.

No change will be made in response to this comment.

Comment 4:

One commenter had concerns about the increase in child support based on the number of children and suggested that payments should be automatically cut-off after the child(ren) reach the age of eighteen (18).

Another commenter suggested child support should cease at graduation even if the child is sixteen (16) or seventeen (17) years-old.

Response to Comment 4:

These comments do not address a matter within the scope of these guidelines. T.C.A. § 34-1-102(b) provides parents are legally responsible for support until the child's eighteenth birthday, and he or she is no longer in high school. If the child turned eighteen (18) while still a high school student, child support continues until regular graduation with the senior class.

No change will be made in response to these comments.

Comment 5:

One commenter expressed dissatisfaction with changes to the definition of "Days" that the commenter argues allow for the discretion to consider parenting time of durations shorter than twelve (12) hours in a twenty-four (24) hour period and that cumulate to single day of visitation, which the commenter states is to the detriment of the child.

Response to Comment 5:

The parenting time credit for partial days takes into consideration days in which a significant amount of time is spent with the child. The Department believes that this is not to the detriment of the child, but rather operates to the child's benefit.

No change will be made in response to this comment.

Comment 6:

One commenter questioned the language used regarding the requirement related to obtaining health insurance for the children, questioning why the requirement applies "if available, at reasonable cost". The commenter stated that there are instances where an insurance cost is incurred that would not fit the "5% rule" (over 5%) but is in place and the ARP or the PRP should get credit for that coverage. The commenter questioned whether this meant "over 5%" is unreasonable and if this were what a parent had would they not get credit for it or would the credit otherwise be limited in by this language.

Response to Comment 6:

The Department does not believe the commenter's hypothetical reflects an accurate interpretation of the rule

language at issue. The party receives credit for the actual cost of insurance coverage for the child(ren). The requirement to obtain such insurance applies where the insurance is available at a reasonable cost.

No change will be made in response to this comment.

#### Comment 7:

Multiple comments were received regarding the definition(s) and nomenclature relating to the designations of parents within the guidelines.

One commenter argued that ARP definition should be removed because parents will argue over the designation and the child should be considered as residing with both parents at all times. The commenter suggested further that parents should be called "Payor" or "Payee".

Another commenter suggested that "Natural father of the child" be listed under the definition of "Parent", rather than "Voluntary Acknowledgers".

#### Response to Comment 7:

The terms "Alternate Residential Parent" and "Primary Residential Parent" have less negative connotations than the previously used terms "Non-custodial Parent" and "Custodial Parent."

The terms Payor or Payee do not necessarily reflect with whom the child resides the majority amount of time as parenting time and income are considered.

The Department believes that the existing definition of "Parent", which was not subject to any proposed changes in this rulemaking, does not require further modification. The term "natural father" does not encompass or otherwise address scenarios not already included in the existing definition, while removing those who voluntarily acknowledge paternity from the definition would fail to encompass a statutorily recognized mechanism for the establishment of paternity.

No change will be made in response to this comment.

#### Comment 8:

Multiple comments were received regarding the removal of language providing the goals and purposes of the Child Support Guidelines, specifically the proposed deletion of a list of these goals currently found in 1240-02-04-.01(3).

Multiple commenters asked that the goals for the Income Shares model be re-instated.

Other comments received in reference to one or more of the specific goals and purposes listed in the paragraph that the Department had originally proposed removing.

One commenter referring to the goal to encourage parents to maintain contact with children, suggested that a goal needs to be added to ensure the parent receiving support is incentivized to allow parent paying support to have access to the child.

Another commenter stated that the goal to ensure that when parents live separately, the economic impact on the child is minimized, and, to the extent that either parent enjoys a higher standard of living, the child shares in that higher standard should not be a goal at all because it shifts the focus away from the child to the obligor parent.

Multiple commenters argued that the proposed removal of the goals and purposes reflects a shift in focus from the children and their welfare to the obligor and the obligor's rights.

One commenter explained that the current Guidelines make it clear that the focus of the Child Support Program is to reduce the number of children living in poverty and that the children are the focus and their welfare and best interest are paramount while the proposed changes shift the focus from the children (as shown by the notable

deletions referenced previously) and instead hide the new goals deep within the pages for modifying support orders.

Another comment expressed similar concerns, adding that the removal of the language stating that the purpose of the guidelines is for the welfare and stability of the child was “disturbing” as essentially taking the “Child” out of the Child Support Guidelines. The commenter further stated that the removal of the goals not only was a removal of the mission statement of the Child Support Program but also appeared to be an acknowledgement by the Department that the changes being made with respect to the automatic SSR [sic] do not benefit the children of the state in any meaningful way. The commenter questioned whether the removal of this language meant that the Child Support Program was no longer concerned about reducing the number of children living in poverty and asked if these goals are not among the first priorities of the Child Support Program, then what is its primary purpose.

Response to Comment 8:

The Department did not anticipate the removal of this language would be interpreted in such a broad but specific manner as representing a fundamental shift in the focus of the Child Support Program. This was certainly not the Department’s intent, as the fundamental purpose of the Child Support Program continues to be in furthering the best interests and welfare of the children of the state.

As such, the Department is returning the language explaining the goals and purposes of the guidelines to the rules with minor modifications to the existing language to encompass new federal goals.

Comment 9:

Multiple commenters asked that the Department re-examine and publish the economic tables of the costs of supporting the child because, according to the commenter, the current guidelines do not accurately reflect the split of duplicated costs between the parental households.

Another commenter claimed the Schedule is outdated and was last updated to 2003 levels.

Response to Comment 9:

Economic data was researched and compiled by Dr. Jane Venohr, Economist with Center for Policy Research. The Schedule has been evaluated as part of each guideline review in consideration of the most current economic data on the cost of raising children. These costs have not changed enough to warrant changes to the Schedule.

No change was made as a result of this comment.

Comment 10:

Multiple comments were received related to the application of the “Income Shares” framework/model for the determination of child support obligations, generally, but that did not appear to address any proposed rule changes or specific provision within the existing rules.

One commenter argued that if an ex-wife's income is three (3) times – or even two (2) times – the father's salary, the father should not have to pay child support. The commenter also suggested that the person who files for divorce should be the person who pays child support.

One commenter suggested that in cases where parents are identified as primary and primary [fifty-fifty/equal parenting] that there is no need for a child support worksheet. This commenter further argues for two (2) types of models/frameworks for determining support based on a child’s age – one that doesn’t consider and one that employs a “flat rate” model.

Another commenter stated that household incomes need to determine child support with both using both parties involved – custodial and non-custodial parents – not just the non-custodial parents.

Response to Comment 10:

Both parents do have a duty to support their children. The guidelines, which based on Income Shares model, take into account the difference in the parents' income, health insurance and child care expenses, and parenting time and other factors when calculating a parent's child support obligation.

No change will be made in response to this comment.

Comment 11:

One commenter stated that twenty-one percent (21%) of an income is insane and adding another twenty percent (20%) for insurance is a death sentence and that forty-one percent (41%) of any person's yearly income on the top of taxes is downright against the rights of any person in this country or on this planet.

Response to Comment 11:

Tennessee changed to the income shares model for setting support in 2005 and, therefore, no longer operates under a flat percentage model. The child support office can assist with reviewing and modifying child support orders. Further, the new Self Support Reserve takes into account an amount both parties need to pay for basic living expenses.

No change will be made in response to this comment.

Comment 12:

There were numerous comments received that appear based on the misconception that the guidelines utilize "per capita" assumptions for costs and fails to look at the "marginal" cost of adding a child to the parental household.

One commenter stated that analysis of the marginal cost incurred by each household is required to be fair and accurate.

Another commenter asked that the Department reconsider the [income] cap and table, stating that based on the current child support law and tables nearly twenty percent (20%) of take-home income is being paid to support because of how these laws are written.

Response to Comment 12:

Economic data of child-rearing costs was researched, compiled, and analyzed by Dr. Jane Venohr, Economist with Center for Policy Research, and which included studies by David Betson, Erwin Rothbarth, and Ernst Engel as well as studies conducted by the United States Department of Agriculture and the United States Department of Labor's Bureau of Labor Statistics involving expenditures for the care of children.

This data used in these studies was based on a marginal cost basis, not a per capita basis.

No change will be made in response to these comments.

Comment 13:

One commenter alleged that there is a flaw in guideline development regarding the failure to consider expenses inside the non-custodial household and that Robert Williams, whom the commenter asserts developed all "income shares" guidelines like Tennessee's, has admitted that he had assumed zero child related costs for the non-custodial parent.

Response to Comment 13:

Economic data was researched and compiled by Dr. Jane Venohr, Economist with Center for Policy Research. The Schedule has been evaluated as part of each guideline review in consideration of the most current economic data on the cost of raising children. The guidelines do provide for adjustments for parenting time by each parent

and the costs incurred. Further, the guidelines incorporate a new self support reserve (SSR) applicable to both parents and which considers the amounts both parties need for basic living expenses.

No change will be made in response to this comment.

Comment 14:

Regarding transportation costs, one commenter argued that the moving parent should pay all transportation costs and there should be no deviation for transportation costs.

Response to Comment 14:

This is a decision which should be made by the tribunal on a case by case basis depending upon the facts of the case and falls outside the scope of these guidelines.

No change will be made in response to this comment.

Comment 15:

Regarding the determination of child support, generally, one commenter stated that they feel it is unfair that they are asked to provide a monthly child support payment plus seventy-six percent (76%) of all expenses when they have the children fifty percent (50%) of the time. The commenter further stated their belief that the fact that the state only looks at income when determining how much should be paid a month but does not consider expenses is not fair.

Response to Comment 15:

The comment appears to be based on a misunderstanding of how the guidelines operate. The guidelines do consider each parent's respective parenting time and income and bases the child support obligation on a pro rata basis.

No change will be made in response to this comment.

Comment 16:

Multiple comments were received arguing that the failure to include federal tax credits in the income of the Primary Residential Parent (PRP) distorts the application of the underlying economic tables for the purposes of developing a Basic Child Support Obligation (BCSO) and fails to balance out the economic models in different states and further arguing that the economic [BCSO] tables are not reflective of the duplicate costs of a shared parenting situation because there are pure economic costs that need to be duplicated in the [BCSO] tables which are not being shown up.

Response to Comment 16:

One recurring concern is the expansion of the Earned Income Tax Credit (EITC) and the Child Tax Credit, and whether this can offset the obligor's share of the Schedule amount. But as provided in 1240-2-4-.04(c)(2), benefits from means-tested public assistance are to be excluded from income., and the EITC is considered means-tested public assistance.

Although the Schedule is based on gross income, one of the underlying assumptions after-tax income is considered to be the income available for child-rearing expenditures. The existing Schedule was built in 2003 and considered payroll taxes (IRS income tax formulas developed for employer withholding) in 2003. The Tax Cuts and Jobs Act (P.L 115-97), that was passed December 2017 and became effective January 1, 2018, is the most recent, significant tax change.

No change will be made in response to these comments.

Comment 17:

Multiple commenters argued against the provision allowing only the primary residential parent (PRP) to claim a child as a dependent for tax purposes, especially if the parents share fifty-fifty parenting time.

Some commenters further suggested that in situations where the parents share fifty-fifty parenting time, they should alternate the years for claiming the exemption for the child.

Response to Comment 17:

Although there are no longer personal exemptions for individuals, including minor children, in the federal tax code, the federal tax assumptions remain generally unchanged. The language added to the rules was intended to provide clarity to guideline users regarding tax benefits associated with the child. The Department has no authority or control over United State federal tax law or policies.

No change will be made in response to these comments.

Comment 18:

One commenter suggested that the person paying child support should be able to count the child support paid as a yearly deduction on their federal income tax return while the person receiving the child support should have to claim it as an "income".

Response to Comment 18:

Federal income tax rules and requirements are beyond the scope of these rules and the Department's authority.

No change will be made in response to this comment.

Comment 19:

Among the many comments received both for and against the implementation of a Self Support Reserve (SSR), there were many that appeared confuse and/or comingle the terms, "Self Support Reserve" (SSR) and "Minimum Child Support Order" as provided in the proposed rules at 1240-02-04-.03(4)(b)(2) and 1240-02-04-.04(12), respectively.

Response to Comment 19:

The Department wanted to first address these terms/concepts directly in order to help clarify any confusion that may exist regarding the meanings of these terms and how they operate within the CS Guidelines.

The "Self Support Reserve (SSR)" is essentially the minimum amount of money a parent needs to have available to support themselves. The SSR amount is based on one hundred ten percent (110%) of the federal poverty income level for a household of one (1) and is reflected in the "shaded area" of the proposed Child Support Schedule. The SSR operates in the determination of child support under the guidelines for certain low-income individuals in such a way that may limit the amount of support ordered but that does not produce any automatic or fixed child support award.

Whereas the "Minimum Child Support Order" operates to set the minimum amount of a child support award that may be ordered with exceptions for certain specified circumstances as provided in the rules.

Comment 20:

Many comments were received expressing disapproval that was not directly related to the formulation, definition, or other aspects of the concept itself as found in the rules. Rather these commenters' criticism focused on the impact that the application of the SSR would have of lowering the child support awarded on the behalf of children

of low-income ARPs.

Multiple comments were received expressing concern that the SSR could be abused by parents who fail to report their income to the state or IRS and that it should be removed as the use of the SSR itself is not federally mandated. These comments also stated that the SSR does not appear to be narrowly targeted at very low-income individuals.

One commenter argued that the self support reserve should be calculated not on the basis of a one-person household but, rather, on the basis of the number of people who will be in the non-custodial home.

Another commenter felt that the low income should compare to the minimum requirements for SNAP benefits on the federal level.

While another commenter stated that it would be impossible to provide for a child's basic needs with the SSR.

One commenter appeared to be in favor of the SSR, stating that Tennessee needs to re-examine the entire BCSO Schedule and provide adjustment provisions in the child support calculator worksheet to ensure that every obligor is allowed a "self-support reserve" based upon actual cost before finalizing the child support obligor's order amount.

Response to Comment 20:

While the new federal guidelines do not specifically mandate state adoption of a self support reserve (SSR), the guidelines do mandate consideration of the basic subsistence needs of the obligated parent by incorporating a low-income adjustment, such as a SSR. The reasoning behind this federal requirement is based on the premise that setting child support orders to reflect a parent's actual ability to pay is crucial for encouraging compliance, increasing accountability for making regular payments, and discouraging the accumulation of uncollectible arrears.

Research supports this reasoning finding that high arrearages can have counter-productive results on child support collections by substantially reducing the formal earnings of noncustodial parents and child support payments in economically disadvantaged families, while also finding that reducing unmanageable arrearages can result in increased payments.

Consistent child support payments can help custodial families achieve economic stability, which is especially important to the millions of low- and moderate-income families served by the Child Support Enforcement program. However, basic fairness requires that child support obligations reflect an obligor's actual ability to pay them. The research also indicates that orders that are unrealistically high may undermine stable employment and family relationships, encourage participation in the underground economy, and increase recidivism.

Regarding the comments arguing for incorporation of SNAP eligibility requirements or using case-specific household sizes, these suggestions are not practical or reflect how the SSR operates in the context of the guidelines.

No change will be made in response to these comments.

Comment 21:

One commenter expressed concerns about the implementation of the SSR and also addressed other proposed changes to the guidelines in some detail.

Regarding the SSR, the commenter argued:

The proposed Amendments actually change the Child Support Schedule and drastically reduce the support obligations of Obligor's who earn more than \$2,000 per month by implementation of this Reserve.

....

The current Child Support Guidelines provide all of the protection needed in the form of the Low Income Deviation which allows the Court to “consider the low income of the primary residential parent or the alternate residential parent as a basis for deviation from the guideline amounts. The current guideline provision meets the goals of the Federal mandate and provides flexibility for courts to examine the parties’ situation on a case by case basis. The Self Support Reserve as proposed further carves out an exception from the Income Shares paradigm and prohibits consideration of the Primary Residential Parent for purposes of application of the Reserve. It is a one-sided “solution.”

.....

The Self Support Reserve as proposed further carves out an exception from the Income Shares paradigm and prohibits consideration of the Primary Residential Parent (PRP) for purposes of application of the Reserve. Non-custodial parents are limited in what they can do because they’re giving money that they can’t afford. The State isn’t taking into consideration the non-custodial parents whose job is cutting hours and not able to pay doctor bills for themselves and other medical expenses.

Regarding the Minimum Child Support Order and Basic Child Support Obligation (BCSO), the commenter stated:

When comparing the proposed Schedule of Basic Child Support Obligations of Rule 1240-2-4-.09 (which starts on page 29 of the Amendments) to those that were in place previously when Tennessee utilized a Flat Percentage basis for child support, I was completely and utterly shocked. The support for those children most at risk is proposed to be slashed to rates that are only one-third of what the child support guidelines from 1991 provided. Twenty-eight years ago, an ARP with a gross monthly income of \$1150 would be ordered to pay \$196.14 per month for one child. Today’s proposal would set the same order at \$65.00 per month.

.....

While implementation of the proposed reduced minimum order and the SSR may achieve one financial goal of the Tennessee Department of Human Services in that it is possible that the statewide child support program may receive increased Federal funding based upon statistics for cases with collection on order, both changes will cost the taxpayers of the State of Tennessee in several unforeseen ways.

The commenter also included the following criticism of the guideline review process for soliciting and receiving public input:

The State is subject to the Federal requirement “that the State’s review of the child support guidelines must provide a meaningful opportunity for public input.” It is apparent that the Department has gone out of its way to ensure that the smallest possible segment of the population have a meaningful opportunity to share input. The Department instead appears to have engaged in a calculated plan to lower the bar of child support orders because it is in the Department’s interest to do so due to the lure of Federal funding dollars.

Response to Comment 21:

The new federal guidelines mandate consideration of the basic subsistence needs of the obligated parent by incorporating a low-income adjustment such as a self support reserve (SSR).

Although the current Tennessee Child Support Guidelines do provide for a deviation for low-income parents, the provision does not specify a maximum percentage of income or a self support reserve but rather the parents’ income and expenses must be taken into consideration when making a decision to deviate. The fact that the current low-income provision is not presumptive is why the current provision does not meet the federal requirement for a low-income adjustment. The comparison of a seven and one-half percent (7.5%) significant variance verses a fifteen percent (15%) for parties with low-income also does not satisfy the requirement as this is solely regarding modifications.

As to the comments regarding the “Minimum Child Support Order” and proposed change to the basic child

support obligation (BCSO), the Department first notes that there is difference between a minimum child support order, which operates to set the minimum amount of a child support award that may be ordered with certain specified exceptions, and the BCSO, which is the amount owed by both parents prior to proration.

The existing Tennessee guidelines do not provide a minimum order amount but instead only provide for a minimum basic child support obligation (BCSO) of one hundred dollars (\$100) per month. The Department is introducing a minimum child support order to the guidelines for the first time in these rules.

The Department had originally proposed a minimum order amount of sixty-five dollars (\$65) and had proposed reducing the BCSO from one hundred dollars (\$100) to sixty-five dollars (\$65).

In response to multiple comments expressing concern that both the minimum order amount and the proposed sixty-five dollar (\$65) BCSO were too low, the Department has decided to modify the rules to provide for a minimum child support order of one hundred dollars (\$100) and return the minimum starting amount on the schedule to its current amount of one hundred dollars (\$100).

The Department disagrees with the assertion that it “went out of its way” to avoid public input and collaboration in the review process.

The proposed child support guideline changes were promoted regularly and throughout the state to receive feedback from diverse groups. As a result of the feedback, many suggestions were implemented. A Task Force was formed consisting of various child support experts from across the state, including, but not limited to, magistrates, IV-D attorneys, private attorneys, Legal Aid representatives, administrators, court clerks, child support staff, assistant commissioner of child support, directors of child support, and TDHS general counsel’s office. This Task Force convened regularly to review the guidelines for required changes pursuant to federal law and other changes needed to better serve the families of Tennessee.

Several outreach events were held to obtain public input, judicial input and input from any attorneys across the state who had an interest in the guidelines. These public forums were well advertised throughout the state and held at difference dates and times in Memphis, Nashville, and Knoxville. Presentations to various groups regarding the proposed changes were held across the state at various dates and times over the course of this review. Surveys were developed regarding the proposed changes and many responses received. A survey was made available in June 2018 and 53 responses were received during the survey period. Another survey was made available through the TDHS website for the public and 387 responses were received during the survey period of October 15, 2018 – November 11, 2018.

Comment 22:

Multiple commenters requested clarification as to the meaning of the term “the shaded area of the schedule” and how it was calculated.

Response to Comment 22:

The shaded area on the Child Support Schedule represents the self support adjustment and incorporates a self support reserve (SSR) of one thousand one hundred thirteen dollars (\$1,113), which equals one hundred ten percent (110%) of the net 2018 federal poverty level income standard for one person.

No change will be made in response to this comment.

Comment 23:

Many comments were received arguing that the minimum child support obligation should be higher.

Multiple commenters specifically argued that a child cannot be supported on sixty-five dollars (\$65) a month.

Another commenter argued that the amount was too low by comparing it to the average cost of child care, which the commenter approximates to be four to six times the minimum order amount.

Other commenters felt this amount was arbitrary as it was neither federally mandated nor empirically based with some commenters further alleging that the Department chose this amount solely for the purpose increasing its collection performance measurements.

There were also multiple comments that were similar to those noted above in arguing the amount was too low but that also appeared to be confusing this provision with the basic child support obligation (BCSO) by criticizing the reduction of the minimum child support order amount, which is only being introduced to these guidelines for the first time in these proposed rules, and arguing that it be "returned" to one hundred dollars (\$100).

Response to Comment 23:

The Department responds by first noting and clarifying the difference between a minimum child support order, which operates to set the minimum amount of a child support award that may be ordered with certain specified exceptions, and the BCSO, which is the amount owed by both parents prior to proration.

The existing Tennessee guidelines do not provide a minimum order amount but instead only provide for a minimum basic child support obligation (BCSO) of one hundred dollars (\$100) per month. The Department is introducing a minimum child support order to the guidelines for the first time in these rules.

The Department had originally proposed a minimum order amount of sixty-five dollars (\$65) and had proposed reducing the BCSO from one hundred dollars (\$100) to sixty-five dollars (\$65).

In response to multiple comments expressing concern that both the minimum order amount and the proposed sixty-five dollar (\$65) BCSO were too low, the Department has decided to modify the rules to provide for a minimum child support order of one hundred dollars (\$100) and return the minimum BCSO to its current amount of one hundred dollars (\$100).

Comment 24:

Regarding the use of total household income for calculating child support, one commenter asked that the Department please consider changing the calculator to reflect total household income on the recipient side up to equal zero (meaning the recipient would not have to pay the other one just because the total household income was higher).

Response to Comment 24:

The Income Shares model, which Tennessee's guidelines are based on, considers the income of each parent, is based on data on how much families actually spend on children, and accommodates a wide range of special circumstances.

The underlying premises of the Income Shares model is that children should receive the same amount of expenditures as they would have if the parents lived together and shared financial resources with each parent then being responsible for his or her prorated share of that expense. Other persons in the home are not legally obligated to support the children; therefore, their income is not considered.

No change will be made in response to this comment.

Comment 25:

One commenter disagreed with part 1240-02-04-.04(12)(b)1, which states that the minimum child support order provisions do not apply "[i]f the obligor's only source of income is Supplemental Security Income (SSI)", questioning why an order should be set at zero dollars (\$0) per month just because they [obligors] are receiving means-tested income and asking why this exception is not also applied to partial SSD/SSI income.

The commenter also questioned how this would apply to inmates that do not earn income and whether this meant that if they were not earning any income then no income can be imputed and the order would have to be set at zero dollars (\$0) instead of a sixty-five dollar (\$65) order.

Response to Comment 25:

The federal law does not allow child support to be set against income that consists of Supplemental Security Income (SSI) only; however, if other income is received, the court may set support against it.

TANF benefits are not considered income for child support purposes; however, the court may determine whether the parent earns income outside of this means-tested source that may be considered.

Regarding incarcerated individuals, the court may consider actual income earned by an inmate in setting or modifying child support.

No change will be made in response to this comment.

Comment 26:

One commenter stated they supported allowing the Department of Children's Services (DCS) to have child support set at an accepted minimum amount and enter orders in state custody cases without a worksheet and that they felt this would greatly increase efficiency.

The commenter further added, however, that they think it matters whether the child is placed in State's custody due to the fault of the parent(s) or not.

Response to Comment 26:

The Department agrees that allowing orders to be set without requiring a worksheet will expedite orders in DCS cases.

The reason why the child is placed in state custody, however, is not relevant to the child support obligation under the guidelines and not a factor that can be used to differentiate the application of the guidelines.

No change will be made in response to this comment.

Comment 27:

Many comments were received regarding provisions related to the determination of gross income found in 1240-02-04-.04(3).

Multiple comments were received arguing that overtime should not be included.

Some commenters requested clearer guidance on how veteran's and disability benefits are treated based on what appears to be the belief that they are not considered income.

Other comments were received arguing that all disability income should be included as well as military pay and worker's compensation insurance benefits.

Other comments were received arguing that the parent receiving support should be required to provide proof of income.

Multiple commenters argued that bonuses as well as other types of variable income, such as commissions, bonuses, overtime pay, and dividends, should not be averaged over time or otherwise included in determining gross income.

One commenter stated that only base pay be used to determine gross income and further suggested that a flat twenty percent (20%) rate of the amount of any bonuses or commissions should be provided to the payee at the time they are received.

Another commenter stated that income from a second job not be included at all in determining child support

because the parent is typically working the second job to better themselves and the home life of the child(ren) when they have them and dividing that income up [by including it in determining child support] defeats the purpose of trying to survive easier financially.

Response to Comment 27:

The Department's position, as reflected in the guidelines, is that a child should benefit from both parents' gross income, including overtime, bonuses, and income from a second job. The averaging of these types of income over a reasonable period of time is done to account for the fluctuation of this income.

Both parents' income is considered under the Income Shares model, and as such, both are required to verify income.

Veteran's benefits and social security disability benefits (SSDI) are considered income for purposes of calculating child support.

Under applicable federal law, Supplemental Security Income (SSI) is not, however, considered income for purposes of calculating child support, as it is a means-tested income.

No change will be made in response to these comments.

Comment 28:

Two comments were received regarding the treatment of living expenses.

One commenter stated that rent and mortgage should be factored in on both sides of the child support obligation and further added that child support paid in cash to other parent shouldn't be considered a gift.

Another commenter asked how the computation is affected when the ARP has minimal or no cost of living expenses, for example, in situations where the ARP lives with friends, family, or a significant other that pays for all or most of the living expenses.

Response to Comment 28:

Changes to the guidelines were made to the treatment of living expenses paid on a parent's behalf. Under the proposed rule changes, housing paid by others may be considered a gift and added to gross income.

As to the treatment of child support paid in cash, the requirement that child support be paid through the State Disbursement Unit and not directly to the other parent is a statutory requirement. Thus, the commenter's proposal is beyond the scope of these rules.

No change will be made in response to these comments.

Comment 29:

One commenter argued that there are no guidelines regarding those who are self-employed and do not file taxes and, as a result, self-employed individuals who work a regular wage-earning job and do self-employment on the side would benefit from this by being able to under-report their wages.

Response to Comment 29:

The Department disagrees that the guidelines do not provide clear guidance regarding the treatment of self-employment income.

Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties less ordinary and reasonable expenses necessary to produce such income.

The court would consider factors such as assets, residence, employment and earnings history, job skills, educational levels, the local job market, and other relevant factors in making a determination of a parent's income pursuant to the guidelines.

No change will be made in response to this comment.

Comment 30:

One commenter suggested that the income of a new spouse should not have any effect on child support as it does not change the amount necessary to care for the child in the other parent's home.

Response to Comment 30:

A new spouse's income is not being considered in the support of a child, as he/she does not have a legal obligation to support the child.

No change will be made in response to this comment.

Comment 31:

To obtain child support, I believe the PRP should have to prove they have had at least six (6) months to a year of up-to-date work history and that the PRP should not be able to live off the other parent's child support payments alone.

Response to Comment 31:

Both parties have the duty to support their child, and the Department believes that the child would suffer if there is a waiting period like the commenter suggests before support is ordered.

No change will be made in response to this comment.

Comment 32:

One commenter questioned why veteran's benefits income is not subject to garnishment when Social Security benefits and income earned by working fathers can be garnished to collect child support owed.

Response to Comment 32:

Federal law authorizes the pay of active, reserve, and retired members of the military and the pay of civilian employees of the federal government to be garnished for the payment of child and/or spousal support.

Neither federal law nor the Child Support Guidelines prohibit the garnishment of veteran's benefits. It is within the discretion of the TDHS Child Support Central Office to pursue child support collections from veteran's benefits, and this determination is assessed on a case-by-case basis.

No change will be made in response to this comment.

Comment 33:

Multiple comments were received regarding subpart 1240-02-04-.04(3)(a)2(ii), relating to the Determination of Willful Underemployment or Unemployment.

Multiple commenters expressed their belief that able-bodied individuals who can work should work.

There were some commenters who expressed concern about the impact of the adding of additional factors for making this determination on judicial proceedings as court dockets will be lengthier because judges will be

required to convene deviation hearings to consider fourteen (14) factors in every case where there's an allegation that a parent is underemployed.

Another commenter recommended changing the language about a parent choosing a lower paying job, explaining that if we start eliminating a view towards under-employment except in very limited circumstances and in the new guidelines then it appears to only be addressing the under-employment of who is described as the alternate residential parent (ARP).

One commenter stated that they "applaud the idea that we expect both parents to work to their capacity" but also expressed concern that "the child has to be somewhere so we have to find a balance."

Response to Comment 33:

The revised guidelines give examples of additional factors to be considered by the court to the extent known to consider when making a determination of whether a person is willfully underemployed or unemployed.

The provision that there is not a presumption that a person is found to be willfully underemployed or unemployed has not changed with the revised guidelines.

The revised guidelines give more examples of factors to be considered to the extent known when there is no reliable evidence of income. This must be done before the court imputes income. The guidelines consider the income of both parents and either parent may be considered voluntarily underemployed by the court, if the facts support this.

No change will be made in response to these comments.

Comment 34:

Numerous comments were made stating that both parents should be required to work or that a "stay-at-home" parent should not be praised or defined as an "important and valuable factor in a child's life" unless the needs of the child require around the clock attention.

Commenters also argued that if a parent isn't willing to work and support their child then the other parent should not be held responsible for that parent's income.

Response to Comment 34:

A court considers the age of the child, other needs, and the parties' prior decision of whether a parent would stay home with a child in determining if this continued arrangement is in the best interest of the child and whether to find a parent voluntarily under or unemployed.

No change was made as a result of these comments.

Comment 35:

One commenter expressed approval that the guidelines allow lump sum disability payments to be credited toward arrears owed without being considered a [prohibited] retroactive modification.

Response to Comment 35:

The Department agrees with this interpretation.

No change will be made in response to this comment.

Comment 36:

Multiple commenters stated that the guidelines inadequately reflect the new federal mandate(s) to assure that

child support orders do not exceed an individual's ability to pay.

Response to Comment 36:

The Department disagrees and believes that the revisions in the guidelines to provide more detailed information and additional guidance regarding imputed income in more detail and guidance and to implement the Self Support Reserve (SSR) to set and/or modify child support to take into account a person's minimum standard of living sufficiently will adequately ensure compliance with this new federal requirement.

No change was made as a result of these comments.

Comment 37:

A commenter argued that there is no consideration in the guidelines to what the parent has the ability to earn.

Response to Comment 37:

The guidelines take into account the parent's ability to earn and may consider the following non-exhaustive list of factors: assets; residence; employment and earnings history; job skills; educational attainment; literacy; age; health; criminal record and other employment barriers; records of seeking work; the local job market; the availability of employers willing to hire the parents; prevailing earnings level in the local community; and other relevant background factors.

No change will be made in response to this comment.

Comment 38:

One commenter stated that Tennessee's guidelines purport to give credit when there are children from a second marriage in the non-custodial household but fails to give a similar credit for having the first marriage kids in the non-custodial household, suggesting that Tennessee's guidelines need to be revised at least to give an adjustment for the kids from the first marriage in the same way that it gives an adjustment for kids from the second marriage.

Response to Comment 38:

In this scenario, the kids from the first marriage are given credit on the first page of the worksheet when the parenting days with each parent are included.

No change will be made in response to this comment.

Comment 39:

One comment was received regarding "not-in-home" children asking that since this issue was not addressed in the proposed rule amendments, does this mean it is removed entirely or that it has not been changed and expressed concern about the ramifications of having it removed in terms of how or whether there would still be a credit as under the current guidelines.

Response to Comment 39:

No changes were made as to the existing rules regarding "in-home" and "not-in-home" children, and thus those provisions remain the same.

No change will be made in response to this comment.

Comment 40:

One commenter expressed concern as to what criteria/evaluation is completed to ensure that the ARP is not solely demanding more “parental time” with the children in order to lower the support required, but then not utilizing the time, leaving the PRP with the additional time, less financial support, and also additional expenses and issues while trying to get childcare during the ARP’s unused visitation.

Response to Comment 40:

The Department believes that spending quality time with both parents is generally in the best interest of a child. If a parent is not exercising his/her court ordered parenting time, there are judicial remedies for to address this situation; however, those remedies are outside the scope of the guidelines.

No change will be made in response to this comment.

Comment 41:

One commenter stated that there are studies that show no significant difference based on the amount of time with each parent based on housing, food, and transportation, which the commenter argues against there being time adjustments in the law and that “This entire section should go away!”

The commenter further suggested that an equitable value can be calculated to ensure the child’s needs are being met regardless of parenting time and that it is actually in the best interest of every child in the State of Tennessee to not have parenting time as basis for child support.

The commenter did note that “the formula in place now seems good on paper” but also felt that it incentivizes the person with the lower income to try and take more time away from the opposing parent in order to get more money and that money and time should not be tied into each other.

Response to Comment 41:

There is a provision in the guidelines for a parenting time adjustment which accounts for monetary differences in the households when either more or less parenting time is being exercised.

No change will be made in response to this comment.

Comment 42:

Many commenters stated their general belief that more consideration should be given to non-custodial parents and their efforts to take care of their children.

Multiple commenters specifically argued that no child support should be paid when the parenting time is fifty-fifty.

Other commenters also further suggested that joint custody should be automatic and equally shared and that both parents should have to pay when the child is in the individual custody of each parent.

Some comments were received that expressed a belief that is generally unfair for a parent to have to pay child support to another otherwise able-bodied parent just because he/she makes more money.

Response to Comment 42:

Child support is based on the income of both parents and consideration is given to parenting time, but support may still be ordered if the incomes of the two parents are vastly different. Even in fifty-fifty/equal parenting cases, support may be ordered if the parents’ income is different under the Income Shares model upon Tennessee’s guidelines.

The issue regarding custody is not within the authority or scope of the child support guidelines.

No change will be made in response to these comments.

Comment 43:

One commenter stated that if the noncustodial parent is paying child support they should not also be required to pay for health insurance for child(ren) and that the standard should be that they only have to provide one or the other.

Response to Comment 43:

Child support and other expenses, such as health care and child care, are shared on a pro rata basis by each parent based on income.

No change will be made in response to this comment.

Comment 44:

One commenter suggested that "work-related" child care should only be considered if both parents are not available to consistently care for the child because there are often situations where the children do not actually attend daycare and are instead with grandparents or family members yet child care expenses are still taken from the calculation.

Response to Comment 44:

Either parent who incurs of work-related child care costs are given credit on the worksheet pursuant to the guidelines. If they are not incurring an actual cost, this is not to be included in the worksheet.

No change will be made in response to this comment.

Comment 45:

Regarding insurance provided by a step-parent, one commenter questioned whether that should be considered income to that parent and/or treated as a financial gift to the parent. The commenter further asked whether the five percent (5%) rule applies to this credit and why this is not limited to five percent (5%) of ARP's income as the amount the ARP is responsible for?

Response to Comment 45:

The Department's position is that such insurance is a financial benefit for both parents and the child(ren) and should not be considered a gift to either parent.

The five percent (5%) rule pertains to determining what is considered to be a reasonable cost of insurance, such that a parent will not be required to provide health insurance if it exceeds five percent (5%) of his/her gross income.

No change will be made in response to this comment.

Comment 46:

One commenter expressed support of changes related to health insurance and sought additional clarification as to whether this requires the amount of the insurance that their spouse pays, the amount for the child, or the total amount of the insurance be imputed to the ARP.

Response to Comment 46:

Whichever parent (ARP or PRP) who has a spouse carrying the health insurance for the child should be given credit in his/her column on the worksheet for the cost of the child's portion. This is to be calculated the same way as it would were the parent carrying the insurance.

No change will be made in response to this comment.

Comment 47:

Many commenters argued that Tennessee needs better procedures for speedy order modifications when either parent's income changes so that if the non-custodial parent loses his job or is laid-off then adjustments should be made as soon as possible to avoid getting behind.

Response to Comment 47:

Such a process, as suggested in the comment, is outside the scope and authority of the guidelines rules. However, pursuant to 45 C.F.R. § 303.8, Review and Adjustment of Child Support Orders, a review and possible adjustment should be completed within one hundred eighty (180) calendar days of receiving a request for review or locating the non-requesting parent, whichever occurs later. The time-line on these procedures may vary depending upon whether accurate information for addresses and income is available and presented. It also varies as to whether a modification is completed administratively or judicially.

No change was made as a result of these comments.

Comment 48:

Two commenters stated that the standard outlined for what constitutes a "significant variance" was unclear and open to interpretation and further suggested that if parents request no child support and no significant variance in incomes exist then the matter should be uncontested by the state.

Response to Comment 48:

A significant variance is defined as a fifteen percent (15%) difference in the current child support amount and the proposed child support amount based upon the change of circumstances, such as change in income by either parent, number of minor children to support, cost of child care, and other factors.

If parents do not request child support and there is not a significant variance, the state generally does not contest this issue unless there are state benefits involved.

No change will be made in response to these comments.

Comment 49:

Regarding the changes regarding modification requests for incarcerated individuals, a commenter expressed concerns about the processes that will be implemented with these new changes, asking whether under the new rules modifications are required (for non-custodial parents that go in and out of incarceration) on their orders each time they enter incarceration and again each time children go into state's custody.

The commenter further explained that those are things that can bounce back and forth in a relatively short time-frame and their main concern involved the impact of the new processes and procedures will have on the local child support offices and the courts. Because of this, the commenter urged that once the guidelines are in place that there be a waiting period to prevent individuals from coming in and requesting modifications just because the guidelines changed and further arguing that there needs to be [changed] circumstances that cause that modification. Finally, the commenter reiterated that it would be detrimental to the child support offices and the courts should they have to handle a large volume of modification requests as a result of these rule changes.

Response to Comment 49:

In order to modify child support based upon incarceration, a person must be incarcerated for one hundred eighty (180) consecutive days or more before a current child support would be reviewed for a possible modification.

When the revised guidelines go into effect, there will be a graduated period in which additional criteria must be met other than simply a fifteen percent (15%) variance.

No change will be made in response to this comment.

Comment 50:

One commenter suggested to back-date child support only to date of filing.

Another commenter stated that there should be a time limitation on how far back the courts set retroactive support and the proof shown in making a determination of the amount owed.

Response to Comment 50:

There are statutory limitations on a retroactive support award and, thus, the suggested changes are beyond the scope or authority of these rules.

T.C.A. Section 36-2-311(a)(11) provides that as to all petitions filed on or after July 1, 2017, retroactive child support would not be awarded for a period of more than five (5) years from the date the action for support is filed unless the court determines, for good cause shown, that a different award of retroactive child support is in the interest of justice.

No change will be made in response to these comments.

Comment 51:

One commenter argued that cap on high income payers should be abolished because they feel it is completely unfair to the child to have a super earning parent in one home and a struggling parent in the other home.

Response to Comment 51:

The income shares model takes into account the disparity of income and pro rates the support as a result. The court has the discretion to deviate in extraordinary circumstances.

The income cap/limitation on the child support obligation is a state statutory requirement under T.C.A. § 36-5-101(e)(1) and, thus, is outside the scope of these rules.

No change will be made in response to this comment.

Comment 52:

Regarding the calculation of parenting time, one commenter questioned the purpose and reasoning behind averaging time for different children and how allowing for different parenting for different children in the worksheet works to provide for appropriate amount of support. The commenter further questioned how this reconciles with the case law that requires what is put in the worksheet to reflect what is actually happening and again asking how this improves the circumstances of the children.

Response to Comment 52:

The comment appears based on a misunderstanding of "averaging" in the context of the worksheet. The formulas in the child support worksheets average the parenting time in the calculations. The parties, courts, and attorneys will continue to use the actual parenting days each parent spends with each child in the worksheet.

No change will be made in response to this comment.

Comment 53:

Multiple comments were received expressing concern that it is counter-productive to arrest someone over failure to pay child support and that many times parents are incarcerated over child support because they simply cannot pay as opposed to choosing not to pay.

Response to Comment 53:

The contempt remedy is a statutory remedy and is not addressed in the rules or otherwise within the scope of the guidelines.

No change will be made in response to these comments.

Comment 54:

One commenter questioned why states do not enforce visitation as strongly as they do in regard to child support payments.

Response to Comment 54:

This comment does not address a matter within the scope of these rules.

No change will be made in response to this comment.

Comment 55:

One commenter noted that parents with outstanding child support are less involved in the lives of their children.

Response to Comment 55:

The Department agrees and recognizes this concern. It is in part because of this potential impact, that the self support reserve (SSR) is being implemented based upon the research which has shown that when a support obligation is set at a reasonable rate based upon all factors, obligors are more likely to pay and stay current in their obligations and remain engaged in the lives of their children.

No change will be made in response to this comment.

Comment 56:

Multiple commenters argued that the parent receiving child support payments be required to account for what the money is used for.

Another commenter further suggested that there should be a system like the electronic benefit transfer (EBT) card system for SNAP benefits but that could only be used for child-related items.

Response to Comment 56:

No accounting is required for child support expenditures, as the child support program is not a means-tested benefit program with certain required or prohibited uses, such as SNAP or TANF.

The comment suggesting a system like the EBT card for the use of child support is outside the scope of these rules.

No change will be made in response to these comments.

Comment 57:

One commenter stated that non-custodial parents who have been found to be overpaying should receive a reimbursement check instead of lowering/reducing their future monthly payments.

Response to Comment 57:

This comment involves an issue outside the scope of the guidelines and not otherwise addressed within these rules.

No change will be made in response to this comment.

Comment 58:

One commenter asserted that the state should do a better job of preventing parental alienation.

Response to Comment 58:

This comment is outside the scope of these rules.

No change will be made in response to this comment.

Comment 59:

One commenter asked why if we have this change in the consideration of health insurance, we do not also have a provision that indicates that if there is a new insurance cost or a change in the insurance cost that can be considered in a modification without there being a fifteen percent (15%) change in the child support amount.

The commenter further questioned why this does not also apply to daycare, which is ordinarily a cost to the custodial parent.

Response to Comment 59:

Health insurance is required to be addressed in court orders throughout the child's minority whereas child care expenses vary greatly.

No change will be made in response to these comments.

Comment 60:

One commenter opined that the one thing the state has never really tried to consider as part of the guidelines is to request from the federal government an exception for a rule to abolish the requirement that the child support divisions are not allowed to take up issues involving parenting time and/or custody.

Response to Comment 60:

This comment is beyond the scope of these rules.

No change will be made in response to this comment.

Comment 61:

One commenter suggested that there be a set amount for military spouses that must pay in child support based on income and number of children.

Response to Comment 61:

The Income Shares model does not contemplate a flat percentage amount for child support as the commenter

appears to be suggesting. Rather, it considers the income of both parents to share the costs of raising a child while factoring in parenting time.

No change will be made in response to this comment.

Comment 62:

One commenter questioned why the state finds it necessary to garnish pay wages in order to pay a "civil debt or a bill" and suggested that the state "needs to let those paying payments to pay how they see fit without your help" and that "if they don't pay then lock them up."

Response to Comment 62:

The use of Income Withholding Orders (IWO) as an enforcement mechanism is required by federal law and has proven to be the most effective enforcement tool to ensure child support is paid consistently.

No change will be made in response to this comment.

Comment 63:

One comment was received stating that harsher penalties were needed for non-payment of child support.

While another commenter argued that the suspension of driving privileges [for non-payment of child support] needs to be completely eliminated.

Response to Comment 63:

The tools for enforcing the payment of child support obligations, including license suspension and revocation, are federally mandated and statutorily required.

These comments do not address any proposed changes to the guidelines and are otherwise beyond the scope of these rules.

No change will be made in response to these comments.

Comment 64:

One commenter argued that DNA tests be mandatory before establishing child support.

Response to Comment 64:

This comment does not address any proposed changes to the guidelines and is otherwise beyond the scope of these rules.

No change will be made in response to this comment.

Comment 65:

One commenter argued that the failure to pay any support should result in a loss of visitation rights.

Response to Comment 65:

This comment does not address any proposed changes to the guidelines and is otherwise beyond the scope of these rules.

No change will be made in response to this comment.

Comment 66:

Uninsured Medical Expense Reimbursement.

One commenter sought clarification regarding the reimbursement of uninsured medical expenses, noting that uninsured medical expenses are detailed as not being included in the BCSO and asking how the payment of those expenses are to be enforced. The commenter further explained that currently the process for the PRP to be reimbursed by the ARP is extensive, cumbersome, and ineffective and that there are no repercussions to the ARP for refusing to pay those expenses, while the PRP has only two (2) options, which are to either pay them out of pocket or refuse to pay the medical provider and ruin their credit.

Response to Comment 66:

While the Department recognizes the commenter's frustration regarding this scenario, the process for getting reimbursed for uninsured medical expenses is handled judicially in court and is, thus, beyond the scope of the guidelines.

No change will be made in response to this comment.

Comment 67:

A comment was received seeking clarification as to how is the payment of child support is enforced when the ARP chooses to get paid through channels other than their employer's standard payroll, such as taking short-term disability (STD) in order to take advantage of the fact that the employer pays STD through a different process than their payroll, which the commenter suggests may prevent the Department from collecting or otherwise allow the ARP to avoid meeting their child support obligations.

Response to Comment 67:

The Department would not be prevented from collecting support in this scenario. Income Withholding Orders (IWOs) are available to be used against short-term disability and other sources of income.

No change will be made in response to this comment.

Comment 68:

A commenter suggested that if child support becomes established after a parent has received Families First assistance, the party having to pay the support should have to pay off what's owed to the government and the parent receiving child support should still get what's owed as support without garnishment.

Response to Comment 68:

This comment does not address any proposed changes to the guidelines and is otherwise outside the scope of these rules.

No change will be made in response to this comment.

Comment 69:

One commenter suggested that there should be a requirement of six (6) months of couple counseling plus a full year of family counseling required for families with children under eighteen (18) before a divorce is granted with exceptions where abuse is present and documented.

Response to Comment 69:

This comment involves matters not addressed in the guidelines and otherwise outside the scope of these rules.

No change will be made in response to this comment.

Comment 70:

One commenter stated that a father has no rights to his child until a court tells him he does even though he signed the voluntary acknowledgment of paternity, which the commenter argues causes a delay in child support being set.

Response to Comment 70:

This comment does not address any proposed changes to the guidelines and is otherwise outside the scope of these rules.

No change will be made in response to this comment.

Comment 71:

One commenter questioned why it is the job of the Department to go to the court and petition for verification or an increase of child support but not also the Department's job to ensure that child support is stopped once children are no longer in the mother's care.

Response to Comment 71:

Once the information is verified by the child support office that the child is no longer in the care of the PRP, current child support will be terminated. Parties are responsible for updating the child support offices when circumstances and/or custody changes.

No change will be made in response to this comment.

Comment 72:

One commenter stated that it was not fair that his children were drawing from his social security disability benefits and that this was also the same income from which he had to pay his child support.

Response to Comment 72:

The social security benefit is retained by the caretaker of the child. The amount of the benefit is included in the child support worksheet for calculating child support owed. If the federal benefit is greater than the support obligation, the child support obligation is met, and no additional child support must be paid by the other parent. If the federal benefit is less than the child support obligation, the other parent would pay the difference after receiving credit for the federal benefit. Each parent has a duty to support the child.

No change will be made in response to this comment.

Comment 73:

A commenter suggested that if a non-custodial parent loses a job that there should be an efficient way to claim that so that child support payments can be temporarily reduced, further adding that the individual should be allowed three (3) months to find another job because if they are non-custodial then they can find two jobs to make the same money as before if need be since they have more time to work than the custodial parent.

Response to Comment 73:

This comment does not address any proposed changes to the guidelines and is otherwise outside the scope of

these rules.

No change will be made in response to this comment.

Comment 74:

One commenter asserted that the ARP can go months without seeing the child or without paying without consequences.

Response to Comment 74:

The child support office can assist with modifying a child support order; however, the setting and enforcement of parenting time is handled directly by the court and is outside the scope of the guidelines.

No change will be made in response to this comment.

Comment 75:

One commenter described their own personal experience as a step-parent and a parent, explaining that her husband adopted her son after he was legally abandoned by his biological father but that the biological father was not required to pay any type of child support or back-pay at the point of the adoption.

Response to Comment 75:

Under state law, the court can grant a judgment for the past-due arrears up until an adoption.

No change will be made in response to this comment.

Comment 76:

One commenter argued that if a father does not meet their support obligations, assist in raising his children, and has not even seen the children that his parental rights should be terminated and all rights be given to the mother.

Response to Comment 76:

This comment does not address any proposed changes to the guidelines and is otherwise outside the scope of these rules.

No change will be made in response to this comment.

Comment 77:

A commenter complained that child support is based on parenting time in a parenting plan when the other parent does not follow the parenting plan.

Response to Comment 77:

Parenting time is considered when setting or modifying a child support order and can be based on the expected parenting time that is provided in a parenting plan; however, only the court can enforce the parenting plan and is beyond the Department's authority and otherwise outside the scope of the guidelines.

No change will be made in response to this comment.

Comment 78:

Regarding the rulemaking hearing process, one commenter questioned why there was nobody at the hearing to provide answers to questions about the reasons the Department is proposing these rule changes.

Response to Comment 78:

The rulemaking hearings are solely for the purpose of providing the community and public the opportunity to make comments on the proposed rule changes, which are then responded to as part of the formal rulemaking hearing rules filing process.

The Department held informal forums across the state several months prior to the official rule hearings to allow the public to give information about the proposed revisions to the rules. At these forums, time was provided for questions and answers, and this feedback was used to inform the Department's rulemaking.

No change will be made in response to this comment.

Comment 79:

Another comment was received regarding the rulemaking hearing process stating that the State of Tennessee should provide more notice to the public of these rulemaking hearings and that low turnout was a result of this lack of notification.

Response to Comment 79:

The notice process for the hearings were done in accordance with state law with the official Notice of Rulemaking Hearing filing that was published/posted on the Secretary of State's website at least forty-five (45) days in advance of all such hearings. Although the Department is only required to have one public hearing, the Department chose to have eight (8) hearings throughout all three grand regions of the state at different times of day to accommodate people's varying work schedules in order to receive as much public feedback as possible. And, as noted above, the Department also held several non-required preliminary public forums throughout the state to obtain public input to which many parents, attorneys, and judges attended and commented.

No change is necessary in response to this comment.

Comment 80:

One comment was received citing to a CNN special report from January 2019 as stating that approximately 25,000 parents (mostly fathers) commit suicide each year because of custody and child support issues and additionally noting that women are awarded custody and large sums of child support more than eight-five percent (85%) of the time.

The commenter asserted that this [problem] is larger than the opioid epidemic but that there is the chance to fix it by significantly decreasing payment amounts and ending dependency on timely child support payments because there is no valid argument for these requirements and that it only hurts the children.

Response to Comment 80:

The proposed changes to the guidelines incorporate a self support reserve (SSR) for low-income parents. The proposed rule changes also address incarceration and no longer treat it as voluntary under-employment. These provisions are intended to remedy the underlying problem that the comment appears to address and improve the overall welfare of families.

No change will be made in response to this comment.

Comment 81:

One commenter argued that data shows that the child support system is biased against African-American non-custodial un-married parents, asserting that research shows that little is done for

unmarried African-American non-custodial fathers. The commenter continued that an interview of 8/11 [sic] people who met the criteria, themes were noted that counter the stereotype of un-caring non-custodial parent, that one hundred percent (100%) said child support negatively impacts their lives and one hundred percent (100%) said child support system is biased and unfair. The commenter concluded that the state needs to conduct quantitative research of Tennessee laws dealing with race and child support.

Response to Comment 81:

The child support system applies to all persons equally, regardless of race, and all children are entitled to child support from both parents. The child support program works with families to ensure children receive financial, emotional, and medical support from both parents when they live in separate households.

No change will be made in response to this comment.

Comment 82:

Regarding interest on past-due child support, one commenter stated that the way that interest is handled on arrearages encourages some payees [payors] to not settle in order to collect interest on unsettled amounts.

Response to Comment 82:

Prior to April 17, 2017, interest accrued on unpaid child support in Tennessee at the rate of twelve percent (12%) per annum. As a result of a change in state law effective from April 17, 2017 through June 30, 2018, interest on child support arrears accrued at the rate of zero to four percent (0-4%) at the discretion of the judge. The law was changed again so that beginning July 1, 2018, interest on child support arrears accrued at the rate of zero to six percent (0-6%) at the discretion of the judge.

Prior to July 1, 2015, child support arrearages were not allowed by law to be compromised or settled. However, effective July 1, 2015, child support arrearages owed to the custodial parent could be subject to debt compromise and settled if all statutory requirements are met, the custodial parent agrees, and the court approves of the agreement pursuant to T.C.A. § 36-5-101(f).

No change will be made in response to this comment.

Comment 83:

One commenter questioned the Department's motivations for these proposed rule changes to the guidelines, arguing that the Department was only interested in whether they could make the proposed changes rather than whether these changes should be made and to which the commenter states they should not. The commenter further opined that he believes that the Department decided that because we have billions of unpaid child support in this state that it was easier to lower the child support obligation than to fix our problem collecting child support and that the changes will only act to impoverish the households with the children. The commenter concluded by stating it is unclear why the Department would do this [make these changes] since it doesn't appear to be a mandate from "the Feds".

Response to Comment 83:

Some of the modifications were federally mandated, including not treating incarceration as voluntary underemployment and addressing low-income providers. Further, research has demonstrated that those with high arrearages are unlikely to ever make consistent child support payments, resulting in harm to the children involved. The modifications were made after economic studies and a committee review of all child support regulations with recommended changes.

No change will be made in response to this comment.

Comment 84:

One comment was received, stating that children need the active, physical and emotional involvement of a father and a mother; that the three best predictors of child support compliance are the fairness of the original order, the obligor's access to the child, and the obligor's work stability; but that we have proceeded on a simplistic ideology of "more is better" in all matters of support amount and punitive enforcement.

The commenter continued, "The keys to successful child support enforcement are: (1) minimization of caseloads and the avoidance of uncollectible; (2) treat NCPs as parents, citizens, and human beings entitled to the same consideration, communication, and cooperation afforded to custodial parents. Federal law requires state enforcement agencies to process downward support modifications as well as upward modifications. Implement programs recognizing that child support enforcement is more than the mere invention of new coercions. Assure that non-custodians and their advocates are adequately represented in the policy process. Give non-custodial parents the same access to federal services as custodial parents."

Response to Comment 84:

The IV-D child support program allows both alternate residential parents (ARPs) and primary residential parents (PRPs) to seek a modification of his/her child support obligation.

The child support programs and the guidelines are implementing actions to set support accurately and based upon the parties' ability to pay taking into account many factors such as educational levels, work history, etc. Part of the revised guidelines take into account the subsistence needs of the non-custodial parent called the self support reserve.

There are several programs across the state which assist both parties in job searches, education, resume building, and provide other resources to help them find and maintain employment to help them support themselves and their children.

Economic data was researched and compiled by Dr. Jane Venohr, Economist with Center for Policy Research. The Schedule has been evaluated as part of each guideline review in consideration of the most current economic data on the cost of raising children.

No change will be made in response to this comment.

Comment 85:

One comment was received that consisted of the following itemized list of ten (10) points:

1. Title 42 has Never been enacted into positive law codification, making Every child support " law " prima facie
2. the Bradley Amendment is a perpetuity strictly forbidden by the Constitution of the United States of America and was never properly ratified
3. Child support is fraud
4. Title IV-D is the fulfillment of the Hague Treaty Convention and the OCSE is the central repository for the Hague in the United States America and a violation of the 10th Amendment
5. Child support is unconscionable contract and Tennessee has laws against that.
6. Coram non judice. Per the requirements of Title IV-D , no judge can preside over the hearings...effectively nullifying the c.s orders and yet the state is extorting money from parents regardless of it being unconstitutional .
7. Bonds and securities fraud
8. Young Williams of Mississippi is running the state's DHS program which is a monopoly along with Maximus...again expressly forbidden by the Constitution.
9. Young Williams operates in darkness. Collecting exorbitant fees, interest rates and more fraud having in FY 2018, 30 million in undistributed Child support collections.
10. Expect all this to be exposed and more 42 USC 1983 lawsuits. It's coming.

Response to Comment 85:

Federal law requires each state to operate a child support program and establish guidelines for setting and

modifying child support.

This comment does not address any of the proposed rule changes and is otherwise outside the scope of the guidelines.

As such, no change will be made in response to this 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.

For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules do not appear to affect small businesses as defined in the Act. These rules do not regulate or attempt to regulate 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)

These rules will have no projected 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 Rule establishes guidelines for setting and modifying child support order amounts for the state of Tennessee as required by federal law. The majority of changes to the Tennessee Child Support Guidelines are being proposed in order to fulfill new federal requirements of state guidelines. Fifteen (15) factors were added and must be considered before imputation of income may be allowed. A Self Support Reserve to ensure obligors have sufficient income to maintain a minimum standard of living based on 110% of the 2018 federal poverty level for one person (\$1,150 gross income per month) is being implemented with these changes. The Child Support (CS) Schedule for low-income was updated, showing the Self Support Reserve as the shaded area on the Schedule. A minimum child support order of at least one hundred (\$100) is being established on most child support cases. Striking through the language that says TennCare Medicaid does not satisfy the requirement for child's health care needs in order to match state and federal law. Deleting the language that states incarceration shall be treated as willful or voluntary unemployment, as required by federal law. This will allow modifications for those incarcerated due to the incarceration as being considered their change in circumstances. There were also edits to the Child Support Worksheet in order to match the Rule changes.

- (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;

Title IV-D of the Social Security Act (42 U.S.C. §§ 651-669), specifically 42 U.S.C. § 667 and 45 C.F.R. § 302.56, requires that states establish guidelines for setting and modifying child support order amounts in each state. Tennessee Code Annotated §§ 36-5-101(e), 71-1-105(a)(15), and 71-1-132 implement these requirements and direct the Tennessee Department of Human Services to establish those guidelines to enforce the provisions of federal law.

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

The Department of Human Services, child support contractors, Courts, magistrates, judges, attorneys, private attorneys and the citizens of the State of Tennessee are impacted by these Rules. Many of these entities understand the federal law changes and requirements and therefore support the adoption of the rule changes. Some of the entities opposed certain provisions such as a \$65 minimum order, which has been modified in the proposed rules.

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

None known

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

There is no known increase in expenditures expected from these rule changes.

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

Whitney Page, Assistant Commissioner for the Department of Human Services, Public Information and Legislative Office.

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

Whitney Page, Assistant Commissioner for the Department of Human Services, Public Information and Legislative Office.

- (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

Whitney Page, Assistant Commissioner for the Department of Human Services, Public Information and Legislative Office. Office Address: 505 Deaderick Street, 17<sup>th</sup> Floor Nashville, TN 37243. Phone Number: (615) 313-4707 Email: [Whitney.Page@tn.gov](mailto:Whitney.Page@tn.gov)

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

**Department of State  
Division of Publications**

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Sequence Number: 02-11-20  
Rule ID(s): 9306  
File Date: 2/10/2020  
Effective Date: 5/10/2020

# 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).*

<b>Agency/Board/Commission:</b>	Department of Human Services
<b>Division:</b>	Child Support Services
<b>Contact Person:</b>	Charles Bryson, Assistant Commissioner
<b>Address:</b>	505 Deaderick Street, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-313-5126
<b>Email:</b>	<a href="mailto:Charles.Bryson@tn.gov">Charles.Bryson@tn.gov</a>

**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
1240-02-04	Child Support Guidelines
Rule Number	Rule Title
1240-02-04-.01	Legal Basis, Scope, and Purpose
1240-02-04-.02	Definitions
1240-02-04-.03	The Income Shares Model
1240-02-04-.04	Determination of Child Support
1240-02-04-.05	Modification of Child Support Orders
1240-02-04-.06	Retroactive Support
1240-02-04-.07	Deviations from the Child Support Guidelines
1240-02-04-.08	Worksheets and Instructions
1240-02-04-.09	Child Support Schedule

**§RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
CHILD SUPPORT SERVICES DIVISION**

**CHAPTER 1240-02-04  
CHILD SUPPORT GUIDELINES**

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1240-02-04-.03	The Income Shares Model	1240-02-04-.08	Worksheets and Instructions
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1240-02-04-.05	Modification of Child Support Orders		

**1240-02-04-.01 LEGAL BASIS, SCOPE, AND PURPOSE.**

- (1) Federal and State Legal Requirements for the Establishment and Application of Child Support Guidelines.
- (a) Title IV-D of the Social Security Act (42 U.S.C. §§ 651-669), specifically 42 U.S.C. § 667 and 45 C.F.R. § 302.56, requires that states establish guidelines for setting and modifying child support award amounts in each state. Tennessee Code Annotated §§ 36-5-101(e), 71-1-105(a)(15), and 71-1-132 implement these requirements and direct the Tennessee Department of Human Services to establish those guidelines to enforce the provisions of federal law.
- (b) The Tennessee Department of Human Services is the authorized state agency for the enforcement of the child support program in the State of Tennessee under Title IV-D of the Social Security Act. The Department of Human Services will comply with federal and state requirements to promulgate Child Support Guidelines to be used in setting awards of child support.
- (c) Pursuant to 42 U.S.C. § 667 and 45 C.F.R. § 302.56, the Child Support Guidelines must be made available to all persons in the state whose duty it is to set or modify child support award amounts in all child support cases.
- ~~(d) Pursuant to federal laws and regulations, the Child Support Guidelines established by a state must, at a minimum:~~
- ~~1. Be applied by all judicial or administrative tribunals and other officials of the state who have power to determine child support awards in the state as a rebuttable presumption as to the amount of child support to be awarded in child support cases and result in a presumptively correct child support award;~~
  - ~~2. Take into consideration all earnings and income of the alternate residential parent;~~
  - ~~3. Be based on specific descriptive and numeric criteria and result in the computation of the child support obligation; and~~
  - ~~4. Provide for the child's health care needs through health insurance coverage or other means.~~
- [(d) Pursuant to federal laws and regulations, the Child Support Guidelines established by a state must, at a minimum:

(Rule 1240-2-4-.01, continued)

1. Be applied by all judicial or administrative tribunals and other officials of the state who have power to determine child support orders in the state as a rebuttable presumption as to the amount of child support to be awarded in child support cases and result in a presumptively correct child support orders;
  2. Provide that the child support order is based on the Alternate Residential Parent's (ARP's) earnings, income, and other evidence of ability to pay that:
    - (i) Takes into consideration all earnings and income of the alternate residential parent;
    - (ii) Takes into consideration the basic subsistence needs of the ARP who has a limited ability to pay by incorporating a low-income adjustment, such as a self support reserve or some other method determined by the State; and
    - (iii) If imputation of income is authorized, takes into consideration the specific circumstances of the ARP (and at the State's discretion, the PRP) to the extent known, including such factors as the ARP's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the ARP, prevailing earnings level in the local community, and other relevant background factors in the case.
  3. Be based on specific descriptive and numeric criteria and result in the computation of the child support obligation;
  4. Address how the parents will provide for the child's health care needs through private or public health care coverage and/or through cash medical support; and
  5. Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.]
- (e) Federal law and regulations further provide that the amount of child support mandated by the Guidelines may be rebutted if the tribunal setting or modifying support includes, in writing, in the order:
1. The reasons the tribunal deviated from the presumptive amount of child support that would have been paid pursuant to the Guidelines;
  2. The amount of child support that would have been required under the Guidelines if the presumptive amount had not been rebutted; and
  3. A finding by the tribunal that states how, in its determination,
    - (i) Application of the Guidelines would be unjust or inappropriate in the particular case before the tribunal; and
    - (ii) The best interests of the child or children who are subject to the support award determination are served by deviation from the presumptive guideline amount.

(2) Effective Date and Applicability.

(Rule 1240-2-4-.01, continued)

- (a) The Child Support Guidelines established by this Chapter shall be applicable in every judicial or administrative action to establish, modify, or enforce child support, whether temporary or permanent, whether the action is filed before or after the effective date of these rules, where a hearing which results in an order establishing, modifying, or enforcing support is held after the effective date of these rules.
- (b) The Child Support Guidelines shall be applied to all of the following cases involving the establishment, modification, or enforcement of child support:
  1. Divorce or separate maintenance actions of married persons who are living separately, who have children of the marriage, including those actions in which a marital dissolution agreement or parenting plan is executed.
    - (i) If the parties stipulate to the child support to be paid for the support of the parties' children, the stipulations, whether in a marital dissolution agreement, parenting plan, or in any other document establishing the amounts to be paid for the support of the parties' children, shall be reviewed by the tribunal before approval.
    - (ii) No hearing shall be required as to the amount of child support awarded in such cases. However, the tribunal shall use the Guidelines in reviewing the adequacy of child support obligations negotiated by the parties, including provisions for medical care, and, if the negotiated agreement does not comply with the Guidelines or contain the findings of fact necessary to support a deviation, the tribunal shall reject the agreement.
    - (iii) In such stipulations, the order approving the agreement or parenting plan or other document:
      - (I) Shall establish a specific numerical dollar figure for support to be paid at specified intervals (weekly, ~~bi-weekly, semi-monthly~~ [biweekly, semimonthly], monthly). The final child support order shall not be expressed as a percentage of the parent's income.
      - (II) If the agreement does not state the amount of support calculated under the Guidelines, the order of the tribunal approving the agreement shall state the amount of support proposed in the agreement and the guideline amount and shall provide in writing:
        - I. The reasons the tribunal deviated from the presumptive amount of child support that would have been paid pursuant to the Guidelines;
        - II. The amount of child support that would have been required under the Guidelines if the presumptive amount had not been rebutted; and
        - III. A finding by the tribunal that states how, in its determination,
          - A. Application of the Guidelines would be unjust or inappropriate in the particular case before the tribunal; and

(Rule 1240-2-4-.01, continued)

B. The best interests of the child or children who are subject to the support award determination are served by deviation from the presumptive guideline amount.

2. Paternity determinations;
3. Actions involving orders for custody of a child, whether in state trial or juvenile tribunals, including actions where the State is seeking, or is given, custody of a child due to abuse, dependency, delinquency or unruliness of the child, or in any case in which legal or physical custody of the child is transferred to a private or public agency or to any entity for any other reason;
4. Domestic violence orders of protection;
5. Any other actions in which the provision of support for children is established by law; and
6. Actions seeking interstate enforcement of support orders for any of the reasons in parts 1-5 above.

~~(c) Pursuant to 42 U.S.C. § 654(6)(A) and 45 C.F.R. § 302.56(f), these Child Support Guidelines apply whether the order sought to be established, modified or enforced is for a period preceding October 13, 1989, which was the effective date of the mandatory Child Support Guidelines initially established by federal and state law, or subsequent to such date.~~

- ~~1. The order of the judicial or administrative tribunal must comply with the criteria established by these rules.~~
- ~~2. The order must state a specific dollar amount of support that is to be paid by the responsible party on a weekly, bi-weekly, semi-monthly or monthly basis. The final child support order shall not be expressed as a percentage of the parent's income.~~

~~(3) The major goals in the development and application of these Guidelines are, to the extent possible, to:~~

- ~~(a) Decrease the number of impoverished children living in single parent families;~~
- ~~(b) Make child support awards more equitable by ensuring more consistent treatment of persons in similar circumstances while ensuring that the best interests of the child in the case before the tribunal are taken into consideration;~~
- ~~(c) Improve the efficiency of the tribunal process by promoting settlements and by giving tribunals and parties guidance in establishing appropriate levels of support awards;~~
- ~~(d) Encourage parents paying support to maintain contact with their child;~~
- ~~(e) Ensure that, when parents live separately, the economic impact on the child is minimized, and, to the extent that either parent enjoys a higher standard of living, the child shares in that higher standard;~~
- ~~(f) Ensure that a minimum amount of child support is set for parents with a low income in order to maintain a bond between the parent and the child, to establish patterns of~~

(Rule 1240-2-4-.01, continued)

~~regular payment, and to enable the child support enforcement agency and party receiving support to maintain contact with the parent paying support; and~~

- ~~(g) Allocate a parent's financial child support responsibility from the parent's income among all of the parent's children for whom the parent is legally responsible in a manner that gives equitable consideration, as defined by the Department's Guidelines, to children for whom support is being set in the case before the tribunal and to other children for whom the parent is legally responsible and supporting.~~

[(3) The major goals in the development and application of these Guidelines are, to the extent possible, to:

- (a) Decrease the number of impoverished children living in single parent families by establishing guidelines that encourage regular, on-time payments to all families and increase the number of ARPs working and supporting their children;
- (b) Make child support orders more equitable by ensuring more consistent treatment of persons in similar circumstances while establishing an accurate child support order and obtain compliance with the order based on the real circumstances of the parties and the best interests of the child in the case before the tribunal are taken into consideration;
- (c) Improve the efficiency of the tribunal process by promoting settlements and by giving tribunals and parties guidance in establishing appropriate levels of support orders;
- (d) Encourage parents paying support to maintain contact with their child;
- (e) Ensure that, when parents live separately, the economic impact on the child is minimized while setting an accurate order based upon the ability to pay, and, to the extent that either parent enjoys a higher standard of living, the child shares in that higher standard;
- (f) Ensure that a minimum amount of child support is set for parents with a low income in order to maintain a bond between the parent and the child, to establish patterns of regular payment, and to enable the child support enforcement agency and party receiving support to maintain contact with the parent paying support; and
- (g) Allocate a parent's financial child support responsibility from the parent's income among all of the parent's children for whom the parent is legally responsible in a manner that gives equitable consideration, as defined by the Department's Guidelines, to children for whom support is being set in the case before the tribunal and to other children for whom the parent is legally responsible and supporting.]

(4) These Guidelines are a minimum base for determining child support obligations. The presumptive child support order may be increased according to the best interest of the child for whom support is being considered, the circumstances of the parties, and the rules of this chapter.

**Authority:** T.C.A. §§ 4-5-202, 36-5-101(e), 37-1-151; 71-1-105(a)(12) and (15), and 71-1-132; 42 U.S.C. §§ 654 and 667; and 45 C.F.R. § 302.56. **Administrative History:** New rule filed December 18, 1987; effective February 1, 1988. Amendment filed August 25, 1989; effective October 13, 1989. Amendment filed September 1994; effective December 14, 1994. Repeal and new rule filed November 4, 2004; effective January 18, 2005. Repeal and new rule filed April 6, 2006; effective June 20, 2006. Stay of effective date of rule filed April 19, 2006; new effective date of rule June 26, 2006.

(Rule 1240-2-4-.01, continued)

**1240-02-04-.02 DEFINITIONS.**

- (1) "Adjusted Gross Income" — The Adjusted Gross Income (AGI) is the net determination of a parent's income, calculated by modifying the parent's gross income as follows:
  - (a) Adding to the parent's gross income any social security benefit paid to the child on the parent's account;
  - (b) Deducting from gross income any applicable self-employment taxes being paid by the parent; and
  - (c) Deducting from gross income any credits as set forth in these Rules for the individual parent's other children for whom the parent is legally responsible and is actually supporting.
- (2) "Adjusted Support Obligation" — The adjusted support obligation (ASO) is the Basic Child Support Obligation (BCSO) from the Child Support Schedule (CS Schedule), adjusted for parenting time as set forth in these Rules, health care insurance, work-related childcare expenses, and recurring uninsured medical expenses.
- (3) "Adjustments for Additional Expenses" — The additional expenses associated with the cost of health care insurance for the child, work-related childcare, and recurring uninsured medical expenses are not included in the Basic Child Support Obligation (BCSO) and must be added to the BCSO to determine the Adjusted Support Obligation (ASO).
- (4) "Alternate Residential Parent (ARP)" — The "alternate residential parent" (ARP) is the parent with whom the child resides less than fifty percent (50%) of the time.
- ~~(5) "Basic Child Support Obligation" — The Basic Child Support Obligation (BCSO) is the amount of support displayed on the Child Support Schedule (CS Schedule) which corresponds to the combined Adjusted Gross Income (AGI) of both parents and the number of children for whom support is being determined. This amount is rebuttably presumed to be the appropriate amount of basic child support to be provided by both parents in the case immediately under consideration, prior to consideration of any adjustments for parenting time and/or additional expenses.~~
- [(5) "Basic Child Support Obligation" — The Basic Child Support Obligation (BCSO) is the amount of support displayed on the Child Support Schedule (CS Schedule) which corresponds to the combined Adjusted Gross Income (AGI) of both parents and the number of children for whom support is being determined. The BCSO amount is rebuttably presumed to be the appropriate amount of basic child support to be provided by both parents prior to consideration of any adjustments for parenting time or additional expenses. However, if the obligor's adjusted gross income falls within the shaded area of the CS Schedule, the BCSO may be computed using only the obligor's income. [see "Self Support Reserve" definition]]
- (6) "Caretaker" — The person or entity providing primary care and supervision of a child. The caretaker is the child's Primary Residential Parent. The caretaker may be a parent of the child, a non-parent person or agency who voluntarily or, pursuant to tribunal order or other legal arrangement, is providing care and supervision of the child (for example, the child's grandparent). A caretaker may be a private or public agency or person not related to the child providing custodial care and supervision for the child through voluntary or involuntary placement by the child's parent, non-parent relative, or other designated caretaker, or by court order or other legal arrangement (for example, a foster parent). In these rules, the designation "non-parent caretaker" refers to a private or public agency, a non-parent person

(Rule 1240-2-4-.02, continued)

who may or may not be related to the child, or another designated caretaker who provides the primary care and supervision for the child.

- (7) "Child" — "Child" includes the plural "children," and "children" includes the singular "child," where the context requires. For purposes of this chapter, "child" means:
- (a) A person, not otherwise emancipated, who is less than eighteen (18) years of age or a person who reaches eighteen (18) years while in high school until the person graduates from high school or until the class of which the person is a member when the person attains eighteen (18) years of age graduates, whichever occurs last; or
  - (b) A person who is disabled pursuant to Tennessee Code Annotated § 36-5-101(k).
- (8) "Child Support Schedule" — The Child Support Schedule (CS Schedule or Schedule) is a chart which displays the dollar amount of the BCSO corresponding to various levels of combined AGI of the children's parents and the number of children for whom a child support order is being established or modified. The Schedule shall be used to calculate the BCSO, according to the rules in this chapter. [The shaded area on the schedule represents the SSR amount.] Deviations from the Schedule shall comply with the requirements of 1240-2-4-.07.
- (9) "Combined Adjusted Gross Income" — The amount of AGI calculated by adding together the AGI of both parents. This amount is then used to determine the BCSO for both parents for the number of children for whom support is being calculated in the case immediately under consideration. [However, if the obligor's AGI falls within the shaded area of the CS Schedule, a comparison must be completed to determine if the BCSO is computed using only the obligor's income.]
- (10) "Days" — For purposes of this chapter, a "day" of parenting time occurs when the child spends more than twelve (12) consecutive hours in a twenty-four (24) hour period under the care, control or direct supervision of one parent or caretaker. The twenty-four (24) hour period need not be the same as a twenty-four (24) hour calendar day. Accordingly, a "day" of parenting time may encompass either an overnight period or a daytime period, or a combination thereof. [In extraordinary circumstances, routinely incurred parenting time of shorter duration may be cumulated as a single day for parenting time purposes.]
- (11) "Department" — The Tennessee Department of Human Services.
- (12) "Fifty-fifty Parenting/Equal Parenting" — For purposes of this chapter, parenting is fifty-fifty (50-50) or equal when the parents of the child each spend fifty percent (50%) of the parenting time with that child. On the Child Support Worksheet, each parent will be designated as having one hundred eighty-two point five (182.5) days with the child. For purposes of calculating the support obligation, fifty-fifty/equal parenting is a form of standard parenting.
- (13) "Final Child Support Order" — The presumptive child support order (PCSO) adjusted by any deviations ordered by the tribunal [or adjusted to the minimum child support order].
- [(14) "Health Insurance" — Health insurance includes medical, vision, and dental coverage, if available, for the minor child(ren) at a reasonable cost.]
- (14[15]) "Legally Responsible for a Child" — For purposes of this chapter, a person is "legally responsible for a child" or legally obligated for a child or children when the child is or has been:
- (a) Born of the parent's body;

(Rule 1240-2-4-.02, continued)

- (b) Born of the parents' marriage if the child is born during the marriage or within three hundred (300) days after termination of the marriage by death, annulment, declaration of invalidity, or divorce;
  - (c) Legally adopted by the parent;
  - (d) Voluntarily acknowledged by the parent as the parent's child pursuant to Tennessee Code Annotated § 24-7-113 or pursuant to the voluntary acknowledgement procedure of any other state or territory that comports with Title IV-D of the Social Security Act; or
  - (e) Determined to be the child of the parent by any tribunal of this State, any other state or territory, or a foreign country pursuant to a reciprocal agreement or treaty.
- (15[16]) "Obligee" — The parent or caretaker that receives payment of the child support obligation from the Obligor. The Obligee can be either the PRP, the ARP, or the non-parent caretaker of the child(ren).
- (16[17]) "Obligor" — The parent that is responsible for payment of the child support obligation to the Obligee. The Obligor can be either the PRP or ARP of the child(ren), but in no case shall the Obligor be a child's non-parent caretaker.
- (17[18]) "Parent" — For purposes of this chapter, "parent" means a person who:
- (a) Gave birth to the child;
  - (b) Was married to the mother of the child at the time of the birth of the child or within three hundred (300) days after termination of the marriage by death, annulment, declaration of invalidity, or divorce;
  - (c) Legally adopted the child;
  - (d) Voluntarily acknowledged the child pursuant to Tennessee Code Annotated § 24-7-113 or pursuant to the voluntary acknowledgement procedure of any other state or territory of the United States that comports with Title IV-D of the Social Security Act; or
  - (e) Has been determined to be a parent of the child by any tribunal of this State, any other state or territory, or a foreign country pursuant to a reciprocal agreement or treaty.
- (18[19]) "Parenting Time Adjustment" — Adjustment to the BCSO based upon parenting time.
- (19[20]) "Percentage of Income" — The Percentage of Income (PI) for each parent is obtained by dividing each parent's AGI [see paragraph (1) above] by the combined total of both parents' AGI. The PI is used to determine each parent's pro rata share of the BCSO, as well as each parent's share of the amount of additional expense for health insurance, work-related childcare, and recurring uninsured medical expenses. [Also see ~~paragraph 22~~ [paragraph 23] below – "pro rata"]
- (20[21]) "Presumptive Child Support Order."
- (a) The "Presumptive Child Support Order" (PCSO) is the amount of support to be paid for the child derived from the parent's proportional share of the basic child support obligation, adjusted for parenting time, plus the parent's proportional share of any additional expenses.
  - (b) This amount is rebuttably presumed to be the appropriate child support order.

(Rule 1240-2-4-.02, continued)

(24[22]) "Primary Residential Parent (PRP)."

- (a) The "primary residential parent" (PRP) is the parent with whom the child resides more than fifty percent (50%) of the time. The PRP also refers to the parent designated as such by Tennessee Code Annotated § 36-6-402 and, if not determined by these rules, the parent designated as such by the tribunal.
- (b) A non-parent caretaker that has physical custody of the child is the child's PRP for the purposes of these rules. See: Tennessee Code Annotated §§ 36-5-101(b); 71-3-124(a)(6)
- (c) If a primary residential parent has not been otherwise designated, the primary residential parent will be determined consistent with the criteria of subparagraphs (a) and (b) above.

(22[23]) "Pro rata."

- (a) For the purposes of this chapter, "pro rata" refers to the proportion of one parent's Adjusted Gross Income to both parents' combined Adjusted Gross Income, or to the proportion of one parent's support obligation to the whole support obligation. [Also see ~~paragraph 19~~ [paragraph 20] above – "percentage of income"]
- (b) A parent's pro rata share of income is calculated by combining both parents' Adjusted Gross Income and dividing each parent's separate Adjusted Gross Income by the combined Adjusted Gross Income.
- (c) A parent's pro rata share of the basic support obligation is calculated by multiplying the basic child support obligation obtained from the Child Support Schedule by each parent's pro rata percentage of the combined Adjusted Gross Income.

[(24) "Reasonable Cost of Insurance" — When the Order states that insurance should be provided when available at a reasonable cost, the cost of insurance is considered reasonable to the parent responsible for providing medical support for the child(ren) if the cost does not exceed five percent (5%) of his or her gross income. If adding vision and/or dental insurance for the child(ren) increases the total cost of the insurance to more than 5% of gross income, only medical insurance is required.

(25) "Self Support Reserve (SSR)" — The minimum amount of income required to meet the basic subsistence needs of a parent as determined under 1240-02-04-.03 is considered the self support reserve. The obligor is eligible for the SSR adjustment if his/her income falls within the shaded area of the CS Schedule. The SSR adjustment amount shall be compared to the obligor's proportionate share using the combined AGI of the parents to determine the BCSO from the CS Schedule and multiplying by the PI. The lesser amount of the two establishes the Calculated BCSO Owed.]

(23[26]) "Split Parenting"— For purposes of this chapter, "split parenting" can only occur in a child support case if there are two (2) or more children of the same parents, where one (1) parent is PRP for at least one (1) child of the parents, and the other parent is PRP for at least one (1) other child of the parents. In a split parenting case, each parent is the PRP of any child spending more than fifty percent (50%) of the time with that parent and is the ARP of any child spending more than fifty percent (50%) of the time with the other parent. A split parenting situation will have two (2) PRPs and two (2) ARPs, but no child will have more than one (1) PRP or ARP.

(Rule 1240-2-4-.02, continued)

(24[27]) "Standard Parenting" — For purposes of this chapter, "standard parenting" refers to a child support case in which all of the children supported under the order spend more than fifty percent (50%) of the time with the same PRP. There is only one (1) PRP and one (1) ARP in a standard parenting case.

(25[28]) "Theoretical Support Order" or "Theoretical Order" — A theoretical support order is a hypothetical order which allows the finder of fact to determine the amount of a child support obligation if an order existed. In these rules, a theoretical order is used to determine the amount of credit allowed as a deduction from a parent's gross income for a parent's qualified other children who are receiving support from that parent, whether or not the support is provided pursuant to a child support order.

(26[29]) "Tribunal" — A judicial or administrative body or agency granted legal authority to determine disputed issues within its jurisdiction including, but not limited to, the establishment, modification, or enforcement of child support and paternity issues.

(27[30]) "Uninsured Medical Expenses" — For the purposes of this chapter, the child's uninsured medical expenses include, but are not limited to, health insurance co-payments, deductibles, and such other costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any acute or chronic medical/health problem, or mental health illness, including counseling and other medical or mental health expenses, that are not covered by insurance.

(28[31]) "Variable Multiplier."

A mathematical formula based upon the number of days the ARP spends with the child and the amount of the BCSO which is used in the calculation of a parenting time adjustment in parenting situations where the ARP spends ninety-two (92) or more days per calendar year with a child, or an average of ninety-two (92) days with all applicable children.

(29[32]) "Work-Related Childcare Costs."

- (a) For the purposes of this chapter, work-related childcare costs mean expenses for the care of the child for whom support is being determined which are due to employment of either parent or non-parent caretaker.
- (b) In an appropriate case, the tribunal may consider the childcare costs associated with a parent's job search or the training or education of either parent necessary to obtain a job or enhance earning potential, not to exceed a reasonable time as determined by the tribunal, if the parent proves by a preponderance of the evidence that the job search, job training, or education will benefit the children being supported.
- (c) Childcare costs shall be projected for the next consecutive twelve (12) months and averaged to obtain a monthly amount.

**Authority:** T.C.A. §§4-5-202, 36-5-101(e), 71-1-105(a)(12) and (15), and 71-1-132; 42 U.S.C. § 667; and 45 C.F.R. § 302.56. **Administrative History:** New rule filed December 18, 1987; effective February 1, 1988. Amendment filed August 25, 1989; effective October 13, 1989. Amendment filed September 29, 1994; effective December 14, 1994. Repeal and new rule filed November 4, 2004; effective January 18, 2005. Repeal and new rule filed April 6, 2006; effective June 20, 2006. Stay of effective date of rule filed April 19, 2006; new effective date of rule June 26, 2006.

#### 1240-02-04-.03 THE INCOME SHARES MODEL.

(1) — General Basis.

(Rule 1240-2-4-.03, continued)

- (a) ~~The Tennessee Child Support Guidelines are based on an Income Shares Model. This model presumes that both parents contribute to the financial support of the child in pro rata proportion to the actual income available to each parent.~~
- (b) ~~The Income Shares model differs from the Department's prior Flat Percentage model, established in 1989, which calculated the amount of the child support award based upon the net income of the non-custodial or alternate residential parent and which assumed an equivalent amount of financial or in-kind support was being supplied to the child by the custodial or primary residential parent. Although federal law requires consideration of only the income of the alternate residential parent, under the Income Shares model, both parents' actual income and actual additional expenses of rearing the child are considered and made part of the support order.~~

[(1) General Basis.

The Tennessee Child Support Guidelines are based on an Income Shares Model. This model presumes that both parents contribute to the financial support of the child in pro rata proportion to the actual income available to each parent.]

- (2) ~~The Income Shares model for determining the amount of child support is predicated on the concept that the child should receive support at the same level that the child would receive if the parents were living together. While expenditures of two-household divorced, separated, or single parent families are different from intact family households, it is very important that the children of this State, to the extent possible, not be forced to live in poverty because of family disruption, and that they be afforded the same opportunities available to children in intact families consisting of parents with similar financial means to those of their own parents.~~
- (3) ~~A number of authoritative economic studies measuring average child-rearing expenditures among families indicate that, although the average dollar amount devoted to child-rearing expenditures increases as the parents' incomes increase, the average percentage of parents' income devoted to child-rearing expenditures decreases as the parents' incomes increase. These studies also indicate that child-rearing expenditures in families are generally greater than what is minimally necessary to provide for the child's basic survival needs but, instead, are made in proportion to household income. These studies measure total, average child-rearing expenditures while also recognizing that household spending on behalf of children is intertwined with spending on adults for most large expenditure categories (e.g., housing, transportation) and that these expenditures cannot be disentangled, even with exhaustive financial affidavits from the parties.~~
- (4[2]) The Income Shares model, which is used by over thirty ~~(30)~~ [forty (40)] other states, is generally based on economic studies of child-rearing costs, including those of David Betson, Erwin Rothbarth, and Ernst Engel, and studies conducted by the United States Department of Agriculture and the United States Department of Labor's Bureau of Labor Statistics involving expenditures for the care of children.
- (5[3]) The Child Support Guidelines established by this chapter were developed [and adjusted as needed] based upon:
  - (a) Studies of child-rearing costs conducted by David Betson, Erwin Rothbarth, and Ernst Engel which utilized information on child-rearing costs conducted by the United States Department of Agriculture and the United States Department of Labor's Bureau of Labor Statistics;

(Rule 1240-2-4-.03, continued)

- (b) Comments on these Guidelines by advocacy groups, judges, child support referees [magistrates], attorneys, legislators, Title IV-D child support contractors and staff of the Tennessee Department of Human Services, and oral and written comments resulting from public hearings;
- (c) The work and input of the Tennessee Department of Human Services' Child Support Guidelines Task Force established in 2002. The Task Force was established to assist the Department in reviewing and considering changes to the existing Child Support Guidelines that were originally adopted in 1989 and based upon the Flat Percentage Model;
- (d) Review of the child support guidelines of other states;
- (e) Recommendations made to states generally by the United States Office of Child Support Enforcement regarding measurements of child-rearing costs and their use in establishing child support guidelines; and
- (f) The Income Shares Advisory Committee established in 2005 pursuant to 2005 Tenn. Pub. Acts 403; and]
- [(g) A Task Force established in 2017 in order to address requirements outlined in the federal "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs" final rule of 2016, located at Fed. Reg. Vo. 81, No. 244 (Dec. 20, 2016).]

(6) ~~Assumptions and Methodology Used in the Income Shares Model.~~(a) ~~Determination of the Basic Child Support Obligation.~~

- ~~1. The Income Shares Model incorporates a numerical schedule, designated in these Guidelines as the Child Support Schedule (CS Schedule or Schedule), found in Rule 1240-2-4-.09, that establishes the dollar amount of child support obligations corresponding to various levels of parents' combined Adjusted Gross Income and the number of children for whom the child support order is being established or modified.~~
- ~~2. The Schedule is used to determine the basic child support obligation (BCSO), according to the rules in this chapter.~~
- ~~3. Each parent's share of the BCSO is determined by prorating the child support obligation between the parents in the same ratios as each parent's individual Adjusted Gross Income is to the combined Adjusted Gross Income.~~
- ~~4. The minimum BCSO upon which a child support obligation may be established is one hundred dollars (\$100) per month. The tribunal may deviate below this minimum BCSO in appropriate situations. See Rule 1240-2-4-.07(2)(f)6.~~
- ~~5. If custody or guardianship of a child is awarded to a person or entity other than a parent of the child as defined in 1240-2-4-.02(15), the child support obligation shall be calculated on the Worksheet according to the rules for standard parenting, and each parent will be responsible for paying his/her share of the final obligation to the non-parent caretaker of the child. If only one parent is available, then that parent's income alone is considered in establishing the child support award. The income of a non-parent caretaker is not considered. If the tribunal is able to order both parents to pay support for the children, the tribunal shall assign each parent a pro-rata share of the additional expenses.~~

(Rule 1240-2-4-.03, continued)

(b) ~~Child Support Schedule Assumptions.~~

- ~~1. The Child Support Schedule is based on the combined Adjusted Gross Income of both parties.~~
- ~~2. Taxation Assumptions.
  - ~~(i) All income is earned income subject to federal withholding and the Federal Insurance Contributions Act (FICA/Social Security).~~
  - ~~(ii) The alternate residential parent will file as a single wage earner claiming one withholding allowance, and the primary residential parent claims the tax exemptions for the child.~~
  - ~~(iii) The Schedule's combined obligation includes the tax adjustments for federal withholding and the Federal Insurance Contributions Act (FICA/Social Security).~~~~
- ~~3. The Schedule is based upon the 1996-1999 Consumer Expenditures Survey, conducted by the U.S. Bureau of Labor Statistics, and updated to 2003 levels by adjusting for the rise in the Consumer Price Index since 1996.~~
- ~~4. Basic Expenses.
  - ~~(i) The Schedule assumes that all families incur certain child-rearing expenses and includes in the basic child support obligation (BCSO) an average amount to cover these expenses for various levels of the parents' combined income and number of children. The bulk of these child-rearing expenses is comprised of housing, food, and transportation. The share of total expenditures devoted to clothing and entertainment is also included in the BCSO, but is relatively small compared to the other three items.~~
  - ~~(ii) Basic educational expenses associated with the academic curriculum for a public school education, such as fees, books, and local field trips, are also included in the BCSO as determined by the CS Schedule.~~
  - ~~(iii) The BCSO does not include the child's health insurance premium, work-related childcare costs, the child's uninsured medical expenses, special expenses, or extraordinary educational expenses because of the highly variable nature of these expenses among different families.~~~~
- ~~5. Extraordinary Education Expenses.
  - ~~(i) Extraordinary education expenses including, but not limited to, tuition, room and board, fees, books, and other reasonable and necessary expenses associated with special needs education or private elementary and secondary schooling are not included in the basic child support schedule.~~
  - ~~(ii) Extraordinary educational expenses may be added to the presumptive child support order as a deviation.~~~~
- ~~6. Special Expenses.~~

(Rule 1240-2-4-.03, continued)

- ~~(i) Special expenses include, but are not limited to, summer camp, music or art lessons, travel, school-sponsored extra-curricular activities, such as band, clubs, and athletics, and other activities intended to enhance the athletic, social or cultural development of a child that do not otherwise qualify as mandated expenses like health insurance premiums and work-related childcare costs.~~
- ~~(ii) Special expenses incurred for child rearing which are quantified shall be considered and may be added by the tribunal to the PCSO as a deviation when this category of expenses exceeds seven percent (7%) of the monthly Basic Child Support Obligation (BCSO).~~
- ~~(c) In the Income Shares model, it is presumed that the primary residential parent (PRP) spends his or her share of the child support obligation directly on the child and that the alternate residential parent's (ARP) share is only one component of the total child support obligation.~~
- ~~(d) Adjustments to the BCSO:
  - ~~1. In addition to basic support set forth in the Schedule, the child support award shall include adjustments that account for each parent's pro rata share of the child's health insurance premium costs, uninsured medical expenses, and work-related childcare costs, as provided in 1240-2-4-.04(8). These costs are not included in the Child Support Schedule because they are highly variable among cases.~~
  - ~~2. The BCSO shall also be adjusted based upon the parenting time of the ARP.~~~~

[(6[4]) Assumptions and Methodology Used in the Income Shares Model.

- ~~(a) Determination of the Basic Child Support Obligation.
  - ~~1. The Income Shares Model incorporates a numerical schedule, designated in these Guidelines as the CS Schedule or Schedule, found in Rule 1240-02-04-.09, that establishes the dollar amount of child support obligations corresponding to various levels of parents' combined AGI, the number of children for whom the child support order is being established or modified, and taking into consideration SSR requirements.~~
  - ~~2. The Schedule is used to determine the BCSO, according to the rules in this chapter.~~
  - ~~3. Each parent's share of the BCSO is determined by prorating the child support obligation between the parents in the same ratios as each parent's individual AGI is to the combined AGI.~~
  - ~~4. If custody or guardianship of a child is awarded to a person or entity other than a parent of the child as defined in 1240-02-04-.02(15), the child support obligation shall be calculated on the Worksheet according to the rules for standard parenting, and each parent will be responsible for paying his/her share of the final obligation to the non-parent caretaker of the child. If only one parent is available, then that parent's income alone is considered in establishing the child support award. The income of a non-parent caretaker is not considered. If the tribunal is able to order both parents to pay support for the children, the tribunal shall assign each parent a pro rata share of the additional expenses.~~~~

(Rule 1240-2-4-.03, continued)

5. When a child is placed in State custody, the Department of Children's Services may set the initial child support order without using the worksheet.

(b) Child Support Schedule Assumptions.

1. The Child Support Schedule is based on the combined AGI of both parties.
2. Self Support Reserve (SSR).
  - (i) The guidelines include a SSR that ensures obligors have sufficient income to maintain a minimum standard of living based on 110% of the 2018 federal poverty level for one person (\$1,113 net income per month).
  - (ii) If the obligor's AGI falls within the shaded area of the CS Schedule and the SSR is used, the BCSO is computed using only the obligor's income. This shaded area incorporates a SSR of \$1,113 (110% net income of the 2018 federal poverty level for one person). In all other cases, the BCSO is computed using the combined AGIs of both parents.
  - (iii) If the obligation using only the obligor's monthly gross income is an obligation within the shaded area of the CS Schedule, that amount shall be compared to the obligor's proportionate share using both parents' monthly gross incomes. The lesser amount establishes the BCSO. If the SSR is applied, the obligor will not receive the parenting time credit.
3. Taxation Assumptions.
  - (i) All income is earned income subject to federal withholding and the Federal Insurance Contributions Act (FICA/Social Security).
  - (ii) The ARP will file as a single wage earner claiming one withholding allowance, and the PRP claims the tax exemptions for the child [or tax benefits associated with the child such as the Federal Earned Income Tax Credit (EITC).]
  - (iii) The Schedule's combined obligation includes the tax adjustments for federal withholding and the Federal Insurance Contributions Act (FICA/Social Security).
4. The Schedule is based upon the 1996-1999 Consumer Expenditures Survey, conducted by the U.S. Bureau of Labor Statistics, and updated to 2003 levels by adjusting for the rise in the Consumer Price Index since 1996.
  - (i) The Schedule has been evaluated as part of each guidelines review in consideration of the most current economic data on the cost of raising children, more current expenditures data and price level data, and changes in Tennessee incomes. This information does not overwhelmingly indicate that substantial changes to the Schedule are necessary.
  - (ii) The Schedule also incorporates the 2018 federal poverty level for one person based on the 2016 federal requirement for states to consider the obligor's subsistence needs.
5. Basic Expenses.

(Rule 1240-2-4-.03, continued)

- (i) The Schedule assumes that all families incur certain child-rearing expenses and includes in the BCSO an average amount to cover these expenses for various levels of the parents' combined income and number of children. The bulk of these child-rearing expenses is comprised of housing, food, and transportation. The share of total expenditures devoted to clothing and entertainment is also included in the BCSO but is relatively small compared to the other three items.
  - (ii) Basic educational expenses associated with the academic curriculum for a public school education, such as fees, books, and local field trips, are also included in the BCSO as determined by the Schedule.
  - (iii) The BCSO does not include the child's health insurance premium, work-related childcare costs, the child's uninsured medical expenses, special expenses, or extraordinary educational expenses because of the highly variable nature of these expenses among different families.
6. Extraordinary Education Expenses.
- (i) Extraordinary education expenses including, but not limited to, tuition, room and board, fees, books, and other reasonable and necessary expenses associated with special needs education or private elementary and secondary schooling are not included in the basic child support schedule.
  - (ii) Extraordinary educational expenses may be added to the presumptive child support order as a deviation.
7. Special Expenses.
- (i) Special expenses include, but are not limited to, summer camp, music or art lessons, travel, school-sponsored extra-curricular activities, such as band, clubs, and athletics, and other activities intended to enhance the athletic, social, or cultural development of a child that do not otherwise qualify as mandated expenses like health insurance premiums and work-related childcare costs.
  - (ii) Special expenses incurred for child rearing which are quantified shall be considered and may be added by the tribunal to the Presumptive Child Support Order (PCSO) as a deviation when this category of expenses exceeds seven percent (7%) of the monthly Basic Child Support Obligation (BCSO).
- (c) In the Income Shares model, it is presumed that the PRP spends his or her share of the child support obligation directly on the child and that the alternate residential parent's (ARP) share is only one component of the total child support obligation.
- (d) Adjustments to the BCSO.
- 1. In addition to basic support set forth in the Schedule, the child support award shall include adjustments that account for each parent's pro rata share of the child's health insurance premium costs, uninsured medical expenses, and work-related childcare costs, as provided in 1240-2-4-.04(8). These costs are not included in the Schedule because they are highly variable among cases.

(Rule 1240-2-4-.03, continued)

2. The BCSO shall also be adjusted based upon the parenting time of the ARP.]

~~(7) Revisions to the Child Support Schedule.~~

~~(a) The CS Schedule will be reviewed every four (4) years by the Department, as required by Federal law, and revised, if necessary, to account for changes in the Basic Support Obligation due to tax changes and/or to account for changes in child rearing costs as reported by the Consumer Expenditures Survey conducted by the U.S. Bureau of Labor Statistics and to reflect authoritative economic studies of child rearing costs. If significant changes in tax laws and child rearing costs warrant, the Department may review and revise the CS Schedule prior to the regular four (4) year review.~~

~~(b) Any revised CS Schedule published subsequent to the first Schedule appearing in Rule 1240-2-4-.09 will be incorporated by rule amendment, provided to the Administrative Office of the Courts for distribution to all Tennessee judicial tribunals, distributed by the Department to its Title IV-D Offices, and posted for use by the public on the Department's website at <http://www.state.tn.us/humanserv/> in the Department's Child Support Division link.~~

~~[(7)5] Revisions to the Child Support Schedule.~~

(a) The CS Schedule will be reviewed by the Department, as required by T.C.A. § 36-5-101(e) and by Federal law, and revised, if necessary, to account for changes in the BCSO due to tax changes and/or to account for changes in child rearing costs as reported by the Consumer Expenditures Survey conducted by the U.S. Bureau of Labor Statistics and to reflect authoritative economic studies of child rearing costs. If significant changes in tax laws and child rearing costs warrant, the Department may review and revise the CS Schedule prior to the regular review.

(b) Any revised CS Schedule published subsequent to the first Schedule appearing in Rule 1240-2-4-.09 will be incorporated by rule amendment, provided to the Administrative Office of the Courts for distribution to all Tennessee judicial tribunals, distributed by the Department to its Title IV-D Offices, and posted for use by the public on the Department's website.]

**Authority:** T.C.A. §§ 4-5-202, 36-5-101(e), 71-1-105(a)(12) and (15), and 71-1-132; 42 U.S.C. § 667; and 45 C.F.R. § 302.56. **Administrative History:** New rule filed December 18, 1987; effective February 1, 1988. Amendment filed August 25, 1989; effective October 13, 1989. Amendment filed September 29, 1994; effective December 14, 1994. Amendment filed September 29, 2003; effective December 13, 2003. Repeal and new rule filed November 4, 2004; effective January 18, 2005. Emergency rule filed March 3, 2005; effective through August 15, 2005. Amendment filed June 1, 2005; effective August 15, 2005. Repeal and new rule filed April 6, 2006; effective June 20, 2006. Stay of effective date of rule filed April 19, 2006; new effective date of rule June 26, 2006.

#### **1240-02-04-.04 DETERMINATION OF CHILD SUPPORT.**

(1) Required Forms.

(a) These rules contain a Child Support Worksheet, a Credit Worksheet, Instructions for both Worksheets, and the Child Support Schedule which shall be required to implement the child support order determination. [The Child Support Worksheet calculator can be found at the Department's website.]

(Rule 1240-2-4-.04, continued)

- (b) The use of the Worksheets promulgated by the Department is mandatory in order to ensure uniformity in the calculation of child support awards pursuant to the rules. [A worksheet shall be used with the exception referenced in 1240-02-04-.04(h) below when a child is placed in State custody.]
  - (c) In the event that the language contained in the Worksheets, Instructions, or Schedule conflicts in any way with the language of subchapters 1240-2-4-.01 – .07, the language of those subchapters is controlling.
  - (d) The Credit Worksheet shall be used for listing information regarding a parent's qualified other children and/or for calculating the appropriate credit for support provided to a parent's other qualified children.
  - (e) The completed Worksheets must be maintained as part of the official record either by filing them as exhibits in the tribunal's file or as attachments to the order.
  - (f) Any child support obligation determined by calculations made using the Department Worksheets shall also be reflected in the tribunal's order, together with a description of any additional expenses the parent is to pay as part of the child's support as well as any deviations from the presumptive child support order.
  - (g) Worksheets, Instructions, and the Child Support Schedule, as promulgated by the Department, may be produced by the Department with different formatting and additional highlights for use by the courts, the bar, the public, Department personnel, and the Department's contractors.
  - [(h) When the child is placed in State custody, the Department of Children's Services may set the initial child support order without using the worksheet.]
- (2) In all cases, the top of the Child Support Worksheet shall be completed with the applicable case identifying information, including the names and dates of birth of the child for whom support is being determined in the case.
- ~~(3) Gross income.~~
- ~~(a) Determination of Gross Income.~~
- ~~1. Gross income of each parent shall be determined in the process of setting the presumptive child support order and shall include all income from any source (before deductions for taxes and other deductions such as credits for other qualified children), whether earned or unearned, and includes, but is not limited to, the following:~~
- ~~(i) Wages;~~
  - ~~(ii) Salaries;~~
  - ~~(iii) Commissions, fees, and tips;~~
  - ~~(iv) Income from self-employment;~~
  - ~~(v) Bonuses;~~
  - ~~(vi) Overtime payments;~~

(Rule 1240-2-4-.04, continued)

- ~~(vii) Severance pay;~~
- ~~(viii) Pensions or retirement plans including, but not limited to, Social Security, Veteran's Administration, Railroad Retirement Board, Keoughs, and Individual Retirement Accounts (IRAs);~~
- ~~(ix) Interest income;~~
- ~~(x) Dividend income;~~
- ~~(xi) Trust income;~~
- ~~(xii) Annuities;~~
- ~~(xiii) Net capital gains;~~
- ~~(xiv) Disability or retirement benefits that are received from the Social Security Administration pursuant to Title II of the Social Security Act, whether paid to the parent or to the child based upon the parent's account;~~
- ~~(xv) Workers compensation benefits, whether temporary or permanent;~~
- ~~(xvi) Unemployment insurance benefits;~~
- ~~(xvii) Judgments recovered for personal injuries and awards from other civil actions;~~
- ~~(xviii) Gifts that consist of cash or other liquid instruments, or which can be converted to cash;~~
- ~~(xix) Prizes;~~
- ~~(xx) Lottery winnings; and~~
- ~~(xxi) Alimony or maintenance received from persons other than parties to the proceeding before the tribunal.~~

~~2. Imputed Income.~~

- ~~(i) Imputing additional gross income to a parent is appropriate in the following situations:
  - ~~(I) If a parent has been determined by a tribunal to be willfully and/or voluntarily underemployed or unemployed; or~~
  - ~~(II) When there is no reliable evidence of income; or~~
  - ~~(III) When the parent owns substantial non-income producing assets, the court may impute income based upon a reasonable rate of return upon the assets.~~~~
- ~~(ii) Determination of Willful and/or Voluntary Underemployment or Unemployment.~~

(Rule 1240-2-4-.04, continued)

~~— The Guidelines do not presume that any parent is willfully and/or voluntarily under or unemployed. The purpose of the determination is to ascertain the reasons for the parent's occupational choices, and to assess the reasonableness of these choices in light of the parent's obligation to support his or her child(ren) and to determine whether such choices benefit the children.~~

~~(I) A determination of willful and/or voluntary underemployment or unemployment is not limited to choices motivated by an intent to avoid or reduce the payment of child support. The determination may be based on any intentional choice or act that adversely affects a parent's income. Criminal activity and/or incarceration shall not provide grounds for reduction of any child support obligation. Therefore, criminal activity and/or incarceration shall result in a finding of voluntary underemployment or unemployment under this section, and child support shall be awarded based upon this finding of voluntary underemployment or unemployment.~~

~~(II) Once a parent that has been found to be willfully and/or voluntarily under or unemployed, additional income can be allocated to that parent to increase the parent's gross income to an amount which reflects the parent's income potential or earning capacity, and the increased amount shall be used for child support calculation purposes. The additional income allocated to the parent shall be determined using the following criteria:~~

~~I. The parent's past and present employment; and~~

~~II. The parent's education and training.~~

~~(III) A determination of willful and voluntary unemployment or underemployment shall not be made when an individual enlists, is drafted, or is activated from a Reserve or National Guard unit, for full-time service in the Armed Forces of the United States.~~

~~(iii) Factors to be Considered When Determining Willful and Voluntary Unemployment or Underemployment.~~

~~— The following factors may be considered by a tribunal when making a determination of willful and voluntary underemployment or unemployment:~~

~~(I) The parent's past and present employment;~~

~~(II) The parent's education, training, and ability to work;~~

~~(III) The State of Tennessee recognizes the role of a stay-at-home parent as an important and valuable factor in a child's life. In considering whether there should be any imputation of income to a stay-at-home parent, the tribunal shall consider:~~

~~I. Whether the parent acted in the role of full-time caretaker while the parents were living in the same household;~~

~~II. The length of time the parent staying at home has remained out of the workforce for this purpose; and~~

(Rule 1240-2-4-.04, continued)

- III. ~~The age of the minor children.~~
  - (IV) ~~A parent's extravagant lifestyle, including ownership of valuable assets and resources (such as an expensive home or automobile), that appears inappropriate or unreasonable for the income claimed by the parent;~~
  - (V) ~~The parent's role as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker which eliminates or substantially reduces the parent's ability to work outside the home, and the need of that parent to continue in that role in the future;~~
  - (VI) ~~Whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the parent's obligation to support his/her children and, to this end, whether the training or education will ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future;~~
  - (VII) ~~Any additional factors deemed relevant to the particular circumstances of the case.~~
- (iv) ~~Imputing Income When There is No Reliable Evidence of Income.~~
- (I) ~~When Establishing an Initial Order.~~
    - I. ~~If a parent fails to produce reliable evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support or ability to support in prior years for calculating retroactive support); and~~
    - II. ~~The tribunal has no reliable evidence of the parent's income or income potential;~~
    - III. ~~Then, in such cases, gross income for the current and prior years shall be determined by imputing annual gross income of thirty-seven thousand five hundred eight-nine dollars (\$37,589) for male parents and twenty-nine thousand three hundred dollars (\$29,300) for female parents. These figures represent the full time, year round workers' median gross income, for the Tennessee population only, from the American Community Survey of 2006 from the U.S. Census Bureau.~~
  - (II) ~~When Modifying an Existing Order~~
    - I. ~~If a parent fails to produce reliable evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support); and~~
    - II. ~~The tribunal has no reliable evidence of that parent's income or income potential;~~

(Rule 1240-2-4-.04, continued)

~~III. After increasing the gross income of the parent failing or refusing to produce evidence of income by an increment not to exceed ten percent (10%) per year for each year since the support order was entered or last modified, the tribunal shall calculate the basic child support obligation using the increased income amount as that parent's gross income.~~

~~IV. If the order to be modified is not an income shares order, and the parent who fails or refuses to provide reliable evidence of income was not required to produce evidence of income under the prior order, the tribunal shall determine that parent's income under the directions of subpart (iv)(1) above.~~

~~(III) In either circumstance in subpart (iv)(1) or (II) above, upon motion to the tribunal served upon all interested parties pursuant to the Tennessee Rules of Civil Procedure, the parent may provide the reliable evidence necessary to determine the appropriate amount of support based upon this reliable evidence. Under this circumstance, the parent is not required to demonstrate the existence of a significant variance otherwise required for modification of an order under 1240-2-4-.05. In ruling on a proper motion, the tribunal may modify the amount of current support prospectively.~~

~~(IV) Arrearages accrued or retroactive amounts due under an order based upon imputed income shall not be forgiven or modified under this section.~~

### ~~3. Self-Employment Income.~~

~~(i) Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, etc., less ordinary and reasonable expenses necessary to produce such income.~~

~~(ii) Ordinary and Reasonable Expenses of Self-Employment Necessary to Produce Income.~~

~~(I) Excessive promotional, excessive travel, excessive car expenses or excessive personal expenses, or depreciation on equipment, the cost of operation of home offices, etc., shall not be considered reasonable expenses.~~

~~(II) Amounts allowed by the Internal Revenue Service for accelerated depreciation or investment tax credits shall not be considered reasonable expenses.~~

### ~~4. Fringe Benefits.~~

~~(i) Fringe benefits for inclusion as income or "in-kind" remuneration received by a parent in the course of employment, or operation of a trade or business, shall be counted as income if they reduce personal living expenses.~~

~~(ii) Such fringe benefits might include, but are not limited to, company car, housing, or room and board.~~

(Rule 1240-2-4-.04, continued)

- (iii) ~~Basic Allowance for Housing (BAH), Basic Allowance for Subsistence (BAS), and Variable Housing Allowances (VHA) for service members are considered income for the purposes of determining child support.~~
- (iv) ~~Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit (e.g., employer-paid portions of health insurance premiums or employer contributions to a retirement or pension plan).~~

~~5. Federal Benefits.~~

- (i) ~~Federal benefits, including veteran's benefits and Social Security Title II benefits, received by a child shall be included as income to the parent on whose account the child's benefit is drawn and applied against the support obligation ordered to be paid by that parent. The child's benefit is only considered when it springs from the parent's account. For example, if a child is drawing benefits from the Mother's Social Security account, the amount of the child's benefit is added to the Mother's income, and the amount of the child's benefit is subtracted from the Mother's child support obligation. If the child's benefit is drawn from the child's own disability, the child's benefit is not added to either parent's income and not deducted from either parent's obligation.~~

- (ii) ~~Child Support Greater Than the Benefit.~~

~~If after calculating the parent's gross income as defined in 1240-2-4-.04(3), including the countable federal benefits in subpart 5(i) above, and after calculating the amount of the child support obligation using the Child Support Worksheet, the amount of the child support award due from the parent on whose account the child is receiving benefits is greater than the benefit paid on behalf of the child on that parent's account, then that parent shall be required to pay the amount exceeding the benefit as part of the child support award in the case.~~

- (iii) ~~Child Support Equal to or Less Than the Benefit.~~

- (I) ~~If after calculating the parent's gross income as defined in 1240-2-4-.04(3), including the countable benefit paid for the child, referred to in part 5(i) above, and after calculating the amount of the child support obligation using the Child Support Worksheet, the amount of the child support award due from the parent on whose account the child is receiving benefits is less than or equal to the benefit paid to the caretaker on behalf of the child on that parent's account, the child support obligation of that parent is met and no additional child support amount must be paid by that parent.~~

- (II) ~~Any benefit amounts as determined by the Veteran's Administration or the Social Security Administration and sent to the caretaker by either agency for the child's benefit which are greater than the support ordered by the tribunal shall be retained by the caretaker for the child's benefit and shall not be used as a reason for decreasing the child support order or reducing arrearages.~~

(Rule 1240-2-4-.04, continued)

~~(iv) — The tribunal shall make a written finding in the support order regarding the use of the federal benefit in the calculation of the child support obligation.~~

[(3) Gross income.

(a) Determination of Gross Income.

1. Gross income of each parent shall be determined in the process of setting the presumptive child support order and shall include all income from any source (before deductions for taxes and other deductions such as credits for other qualified children), whether earned or unearned, and includes, but is not limited to, the following:
  - (i) Wages;
  - (ii) Salaries;
  - (iii) Commissions, fees, and tips;
  - (iv) Income from self-employment;
  - (v) Bonuses;
  - (vi) Overtime payments;
  - (vii) Severance pay;
  - (viii) Pensions or retirement plans including, but not limited to, Social Security, Veterans Affairs Department, Railroad Retirement Board, Keoughs, and Individual Retirement Accounts (IRAs);
  - (ix) Interest income;
  - (x) Dividend income;
  - (xi) Trust income;
  - (xii) Annuities;
  - (xiii) Net capital gains;
  - (xiv) Disability or retirement benefits that are received from the Social Security Administration pursuant to Title II of the Social Security Act or from the Veterans Affairs Department, whether paid to the parent or to the child based upon the parent's account;
  - (xv) Workers compensation benefits, whether temporary or permanent;
  - (xvi) Unemployment insurance benefits;
  - (xvii) Judgments recovered for personal injuries and awards from other civil actions;
  - (xviii) Gifts that consist of cash or other liquid instruments, or which can be converted to cash, or which can produce income such as real estate, or

(Rule 1240-2-4-.04, continued)

which reduces a parent's living expenses such as housing paid by others; in whole or in part;

- (xix) Inheritances that consist of cash or other liquid instruments, or which can be converted to cash, or which can produce income such as real estate;
- (xx) Prizes;
- (xxi) Lottery winnings;
- (xxii) Alimony or maintenance received from persons other than parties to the proceeding before the tribunal; and
- (xxiii) Actual income earned during incarceration by an inmate.

2. Imputed Income.

- (i) Imputing additional gross income to a parent is appropriate in the following situations:
  - (I) If a parent has been determined by a tribunal to be willfully underemployed or unemployed; or
  - (II) When there is no reliable evidence of income due to a parent failing to participate in a child support proceeding or a parent failing to supply adequate and reliable financial information in a child support proceeding; or
  - (III) When the parent owns substantial non-income producing assets, the court may impute income based upon a reasonable rate of return upon the assets.
- (ii) Determination of Willful Underemployment or Unemployment.

The Guidelines do not presume that any parent is willfully underemployed or unemployed. The purpose of the determination is to ascertain the reasons for the parent's occupational choices, to assess the reasonableness of these choices in light of the parent's obligation to support his or her child(ren), and to determine whether such choices benefit the children.

- (I) A determination of willful underemployment or unemployment is not limited to choices motivated by an intent to avoid or reduce the payment of child support.
  - I. The determination may be based on any intentional choice or act that adversely affects a parent's income.
  - II. Under the Guidelines, however, incarceration of a parent shall not be treated as willful underemployment or unemployment for the purpose of establishing or modifying a child support order.
- (II) Once a parent has been found to be willfully underemployed or unemployed, additional income can be allocated to that parent to

(Rule 1240-2-4-.04, continued)

increase the parent's gross income to an amount which reflects the parent's income potential or earning capacity, and the increased amount shall be used for child support calculation purposes. The additional income allocated to the parent shall be determined using the following criteria:

- I. The parent's past and present employment; and
  - II. The parent's education and training.
- (III) A determination of willful underemployment or unemployment shall not be made when an individual enlists, is drafted, or is activated from a Reserve or National Guard unit for full-time service in the Armed Forces of the United States.
- (iii) Factors to be Considered When Determining Willful Underemployment or Unemployment.

The following factors may be considered by a tribunal when making a determination of willful underemployment or unemployment:

- (I) The parent's past and present employment;
- (II) The parent's education, training, and ability to work;
- (III) The State of Tennessee recognizes the role of a stay-at-home parent as an important and valuable factor in a child's life. In considering whether there should be any imputation of income to a stay-at-home parent, the tribunal shall consider:
  - I. Whether the parent acted in the role of full-time caretaker while the parents were living in the same household;
  - II. The length of time the parent staying at home has remained out of the workforce for this purpose; and
  - III. The age of the minor children.
- (IV) A parent's extravagant lifestyle, including ownership of valuable assets and resources (such as an expensive home or automobile), that appears inappropriate or unreasonable for the income claimed by the parent;
- (V) The parent's role as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker which eliminates or substantially reduces the parent's ability to work outside the home, and the need of that parent to continue in that role in the future;
- (VI) Whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the parent's obligation to support his/her children and, to this end, whether the training or education will ultimately benefit the child in

(Rule 1240-2-4-.04, continued)

the case immediately under consideration by increasing the parent's level of support for that child in the future; and

- (VII) Any additional factors deemed relevant to the particular circumstances of the case.
- (iv) Imputing Income When There is No Adequate and Reliable Evidence of Income.
- (I) When Establishing an Initial Order.
    - I. If a parent fails to produce adequate and reliable evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support or ability to support in prior years for calculating retroactive support); and
    - II. The tribunal has no adequate and reliable evidence of the parent's income or income potential;
    - III. Then, in such cases, the tribunal must take into consideration the specific circumstances of the parent to the extent known, including, but not limited to, the following factors:
      - A. Assets;
      - B. Residence;
      - C. Employment and earnings history;
      - D. Job skills;
      - E. Educational attainment;
      - F. Literacy;
      - G. Age;
      - H. Health;
      - I. Criminal record and other employment barriers;
      - J. Records of seeking work;
      - K. The local job market;
      - L. The availability of employers willing to hire the parents;
      - M. Prevailing earnings level in the local community; and
      - N. Other relevant background factors.
    - IV. If imputation of income is authorized, gross income for the current and prior years shall be determined by imputing annual gross income of forty-three thousand seven hundred sixty-one

(Rule 1240-2-4-.04, continued)

dollars (\$43,761) for male parents and thirty-five thousand nine hundred thirty-six dollars (\$35,936) for female parents. These figures represent the full time, year-round workers' median gross income, for the Tennessee population only, from the American Community Survey of 2016 from the U.S. Census Bureau.

(II) When Modifying an Existing Order

- I. If a parent fails to produce adequate and reliable evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support); and
- II. The tribunal has no adequate and reliable evidence of that parent's income or income potential;
- III. Then, in such cases, the tribunal must take into consideration the specific circumstances of the parent to the extent known, including, but not limited to, the following factors:
  - A. Assets;
  - B. Residence;
  - C. Employment and earnings history;
  - D. Job skills;
  - E. Educational attainment;
  - F. Literacy;
  - G. Age;
  - H. Health;
  - I. Criminal record and other employment barriers;
  - J. Records of seeking work;
  - K. The local job market;
  - L. The availability of employers willing to hire the parents;
  - M. Prevailing earnings level in the local community; and
  - N. Other relevant background factors.
- IV. After increasing the gross income of the parent failing or refusing to produce evidence of income by an increment not to exceed ten percent (10%) per year for each year since the support order was entered or last modified, the tribunal shall calculate the BCSO using the increased income amount as that parent's gross income.

(Rule 1240-2-4-.04, continued)

- V. If the order to be modified is not an income shares order, and the parent who fails or refuses to provide reliable evidence of income was not required to produce evidence of income under the prior order, the tribunal shall determine that parent's income under the directions of subpart (iv)(I) above.
  - (III) In either circumstance in subpart (iv)(I) or (II) above, upon motion to the tribunal served upon all interested parties pursuant to the Tennessee Rules of Civil Procedure, the parent may provide the reliable evidence necessary to determine the appropriate amount of support based upon this reliable evidence. Under this circumstance, the parent is not required to demonstrate the existence of a significant variance otherwise required for modification of an order under 1240-02-04-.05. In ruling on a proper motion, the tribunal may modify the amount of current support prospectively.
  - (IV) Arrearages accrued or retroactive amounts due under an order based upon imputed income shall not be forgiven or modified under this section.
3. Self-Employment Income.
- (i) Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, etc., less ordinary and reasonable expenses necessary to produce such income.
  - (ii) Ordinary and Reasonable Expenses of Self-Employment Necessary to Produce Income.
    - (I) Excessive promotional expenses, excessive travel expenses, excessive car expenses or excessive personal expenses, or depreciation on equipment, the cost of operation of home offices, etc., shall not be considered reasonable expenses.
    - (II) Amounts allowed by the Internal Revenue Service for accelerated depreciation or investment tax credits shall not be considered reasonable expenses.
4. Fringe Benefits.
- (i) Fringe benefits for inclusion as income or "in-kind" remuneration received by a parent in the course of employment, or operation of a trade or business, shall be counted as income if they reduce personal living expenses.
  - (ii) Such fringe benefits might include, but are not limited to, company car, housing, or room and board.
  - (iii) Basic Allowance for Housing (BAH), Basic Allowance for Subsistence (BAS), and Variable Housing Allowances (VHA) for service members are considered income for the purposes of determining child support.

(Rule 1240-2-4-.04, continued)

- (iv) Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit (e.g., employer-paid portions of health insurance premiums or employer contributions to a retirement or pension plan).

5. Federal Benefits.

- (i) Federal benefits, including veteran's benefits and Social Security Title II benefits, received by a child shall be included as income to the parent on whose account the child's benefit is drawn and applied against the support obligation ordered to be paid by that parent. The child's benefit is only considered when it springs from the parent's account. For example, if a child is drawing benefits from the Mother's Social Security account, the amount of the child's benefit is added to the Mother's income, and the amount of the child's benefit is subtracted from the Mother's child support obligation. If the child's benefit is drawn from the child's own disability, the child's benefit is not added to either parent's income and not deducted from either parent's obligation.

- (ii) Child Support Greater Than the Benefit.

If after calculating the parent's gross income as defined in 1240-02-04-.04(3), including the countable federal benefits in subpart 5(i) above, and after calculating the amount of the child support obligation using the Child Support Worksheet, the amount of the child support award due from the parent on whose account the child is receiving benefits is greater than the benefit paid on behalf of the child on that parent's account, then that parent shall be required to pay the amount exceeding the benefit as part of the child support award in the case.

- (iii) Child Support Equal to or Less Than the Benefit.

- (I) If after calculating the parent's gross income as defined in 1240-02-04-.04(3), including the countable benefit paid for the child, referred to in subpart 5(i) above, and after calculating the amount of the child support obligation using the Child Support Worksheet, the amount of the child support award due from the parent on whose account the child is receiving benefits is less than or equal to the benefit paid to the caretaker on behalf of the child on that parent's account, the child support obligation of that parent is met and no additional child support amount must be paid by that parent.

- (II) Any benefit amounts as determined by the Veteran Affairs Department or the Social Security Administration and sent to the caretaker by either agency for the child's benefit which are greater than the support ordered by the tribunal shall be retained by the caretaker for the child's benefit and shall not be applied to prospective support or be used as a reason for decreasing the child support order.

- I. This provision is in reference to ongoing monthly, federal benefits and does not pertain to lump sum awards sent directly to the caretaker.

(Rule 1240-2-4-.04, continued)

- II. In such case as a lump sum award sent directly to a caretaker, if an arrearage exists, said lump sum shall be applied to the arrears balance and shall not be considered a retroactive modification of support.
  - III. Any lump sum payment over and above the arrears balance shall be retained by the caretaker for the benefit of the minor child and not applied to prospective support.
    - (iv) The tribunal shall make a written finding in the support order regarding the use of the federal benefit in the calculation of the child support obligation.
- (b) Variable income such as commissions, bonuses, overtime pay, dividends, etc. shall be averaged over a reasonable period of time consistent with the circumstances of the case and added to a parent's fixed salary or wages to determine gross income.
  - (c) Excluded from gross income are the following:
    1. Child support payments received by either parent for the benefit of children of another relationship; or
    2. Benefits received from means-tested public assistance programs such as, but not limited to:
      - (i) Families First, Temporary Assistance for Needy Families (TANF), or similar programs in other states or territories under Title IV-A of the Social Security Act;
      - (ii) Supplemental Nutrition Assistance Program (SNAP), also known as Food Stamps, or the value of food assistance provided by way of electronic benefits transfer procedures by the Food Stamp agency;
      - (iii) Supplemental Security Income (SSI) received under Title XVI of the Social Security Act;
      - (iv) Benefits received under Section 402(d) of the Social Security Act for disabled adult children of deceased disabled workers; and
      - (v) Low Income Heating and Energy Assistance Program (LIHEAP) payments.
    3. The child's income from any source, including, but not limited to, trust income and Social Security benefits drawn on the child's disability.
    4. Adoption Assistance subsidy under Tennessee's Interstate Compact on Adoption Assistance, found at T.C.A. § 36-1-201 et seq., or another state's adoption assistance subsidy which is based on the Adoption Assistance and Child Welfare Act (42 U.S.C. § 670 et seq.).
  - (d) Under no circumstance shall the tribunal fail to order a basic support obligation if the parent has non-exempt gross income. See Rule 1240-02-04-.03(4)(a)4.]
- (4) Adjustments to Gross Income for Self-Employed Parents.
- (a) The Child Support Schedule includes deductions from a parent's gross income for the employee's share of the contributions for the first six and two-tenths percent (6.2%) in

(Rule 1240-2-4-.04, continued)

Federal Insurance Contributions Act (FICA) and one and forty-five hundredths (1.45%) in Medicare taxes. The full tax rate, fifteen and three-tenths percent (15.3%), is a total of twelve and four-tenths percent (12.4%) for social security (old-age, survivors, and disability insurance) and two and nine-tenths percent (2.9%) for Medicare (hospital insurance). All net earnings of at least four hundred dollars (\$400) are subject to the Medicare part. Employers pay one-half of an employee's FICA and Medicare taxes.

- (b) For a self-employed parent who is paying self-employment tax, an amount for FICA — six and two-tenths percent (6.2%) Social Security plus one and forty-five hundredths percent (1.45%) Medicare as of 1991, or any amount subsequently set by federal law as FICA tax — shall be deducted from that parent's gross income earned from self-employment, up to the amounts allowed under federal law, and actually paid by the parent.
  - ~~(c) Social Security tax withholding (FICA) for high-income persons may vary during the year. Six and two-tenths percent (6.2%) is withheld on the first one hundred two thousand dollars (\$102,000) of gross earnings (for wage earners in 2008). A maximum of six thousand three hundred twenty-four dollars (\$6324) of FICA tax will be withheld in a year.~~
  - ~~(d) Self-employed persons are required by law to pay the full FICA tax of twelve and four tenths percent (12.4%) up to the gross earnings limit of one hundred two thousand dollars (\$102,000) and the full Medicare tax rate of two and nine tenths percent (2.9%) on all earned income. One half of each amount is already accounted for in the BCSO amounts on the Schedule.~~
  - [(c) Social Security tax withholding (FICA) for high-income persons may vary during the year. Six and two-tenths percent (6.2%) is withheld on the first one hundred twenty-eight thousand four hundred dollars (\$128,400) of gross earnings (for wage earners in 2018). A maximum of seven thousand nine hundred sixty dollars and eighty cents (\$7,960.80) of FICA tax will be withheld in a year.
  - (d) Self-employed persons are required by law to pay the full FICA tax of twelve and four tenths percent (12.4%) up to the gross earnings limit of one hundred twenty-eight thousand four hundred dollars (\$128,400) and the full Medicare tax rate of two and nine tenths percent (2.9%) on all earned income. One half of each amount is already accounted for in the BCSO amounts on the Schedule. The additional Medicare Tax of nine tenths percent (0.9%) applies to an individual's Medicare wages that exceed two hundred thousand dollars (\$200,000) per year.]
  - (e) Any self-employment tax paid up to one-half of the maximum amounts due in a year shall be deducted from gross income as part of the calculation of a parent's Adjusted Gross Income, as indicated in Part II of the CS Worksheet.
  - (f) When calculating credits for other qualified children under paragraph (5) below, any self-employment tax paid shall also be deducted on the Credit Worksheet from a parent's gross income for the purposes of calculating a theoretical child support order.
  - (g) The percentages and dollar amounts established or referenced in this paragraph (4) with respect to the payment of self-employment taxes shall be adjusted by the Department or by the tribunal, as necessary, as relevant changes occur in the federal tax laws.
- (5) Adjustments to Gross Income for Qualified Other Children.

(Rule 1240-2-4-.04, continued)

- (a) In addition to the adjustments to gross income for self-employment tax provided in 1240-2-4-.04(4) above, credits for either parent's other children, who are qualified under this subparagraph, shall be considered by the tribunal for the purpose of reducing the parent's gross income. Adjustments are available for a child:
  1. For whom the parent is legally responsible; and
  2. The parent is actually supporting; and
  3. Who is not before the tribunal to set, modify, or enforce support in the case immediately under consideration.
- (b) Children for whom support is being determined in the case under consideration, step-children, and other minors in the home that the parent has no legal obligation to support shall not be considered in the calculation of this credit.
- (c) To consider a parent's qualified other children for credit, a parent must present documentary evidence of the parent-child relationship to the tribunal. By way of example, and not by limitation, documentary evidence could include a birth certificate showing the child's name and the parent's name, or a court order establishing the parent-child relationship.
- (d) Use of Credits.
  1. Credits against income are available for all of the parent's other children who meet the qualifications in subparagraph (a) above including, but not limited to: a child being supported in the parent's home; a child being supported by the parent under a child support order in another case; and/or a child who does not live in the parent's home and is receiving support from the parent, but not pursuant to a court order.
  2. Credits against income for other qualified children are calculated and recorded on the Credit Worksheet and then entered on the Child Support Worksheet for the purpose of reducing the parent's gross income on the Child Support Worksheet. However, the credit amounts are not subtracted from the parent's gross income on the Credit Worksheet when calculating a theoretical child support under this paragraph (5).
- (e) Calculation of Credit for Qualified Other Children.
  1. "In-Home" Children.
    - (i) To receive a credit against gross income for qualified other children whose primary residence is with the parent seeking credit, but who are not part of the child support order being determined, the parent must establish a legal duty of support and that the child resides with the parent fifty percent (50%) or more of the time.
      - (I) By way of example, and not by limitation, documents that may be used to establish that the parent and child share the same residence include the child's school or medical records showing the child's address and the parent's utility bills mailed to the same address, court orders reflecting the parent is the primary residential parent or that the parent shares the parenting time of the child 50% of the time.

(Rule 1240-2-4-.04, continued)

- (II) Children may be deemed to be living in the parent's household though living away from the parent to attend private school [Kindergarten through grade 12].
  - (ii) The available credit against gross income for either parent's qualified "in-home" children is seventy-five percent (75%) of a theoretical support order calculated according to these Guidelines, using the Credit Worksheet, the parent's gross income less any self-employment taxes paid, the total number of qualified other children living in the parent's home, and the Schedule.
2. "Not-In-Home" Children.
- (i) To receive a credit against gross income for child support provided for qualified other children whose primary residence is not in the home of the parent seeking credit, that is, the child resides with this parent less than fifty percent (50%) of the time, the parent must establish the legal duty of support and provide documented proof of support paid for the other child consistently over a reasonable and extended period of time prior to the initiation of the proceeding that is immediately under consideration by the tribunal, but in any event, such time period shall not be less than twelve (12) months.
  - (ii) "Documented Proof of Support" includes:
    - (I) Physical evidence of monetary payments to the child's caretaker, such as canceled checks or money orders.
    - (II) Evidence of payment of child support under another child support order, such as a payment history from a tribunal clerk or child support office or from the Department's internet child support payment history.
    - (III) Evidence of "in kind" remuneration such as food, clothing, diapers or formula which has been reduced to a monetary amount approved by the court in the qualified other child's case or affirmed by the receiving parent in the other case.
  - (iii) The available credit against gross income for either parent's qualified "not-in-home" children is the actual documented monetary support of the qualified other children, averaged to a monthly amount of support paid over the most recent twelve (12) month period up to a maximum of seventy-five percent (75%) of a theoretical support order calculated according to these Guidelines, using the Credit Worksheet, the parent's gross income less any self-employment taxes paid, the total number of qualified other children living less than fifty percent (50%) of the time in the parent's home, and the Schedule.
3. The credits allowed pursuant to this subparagraph shall be calculated according to the instructions in this chapter alone, using the Credit Worksheet.
4. The amount of a theoretical order allowed as a credit against gross income under part 1 or 2 above is subject to the limitation of 1240-2-4-.07(2)(g).

(Rule 1240-2-4-.04, continued)

5. An order may be modified to reflect a change in the number of children for whom a parent is legally responsible only upon compliance with the significant variance requirement of 1240-2-4-.05.

(6) The Schedule of Basic Child Support Obligations.

~~(a) Rule 1240-2-4-.09 contains the Schedule of Basic Child Support Obligations (BCSO). The Schedule of Basic Child Support Obligations (the "Child Support Schedule" or "CS Schedule") shall be used to determine the combined obligation of both parents for the support of their children based upon their monthly combined Adjusted Gross Income and the number of children who are the subject of the child support determination. The CS Schedule, in chart form, displays the amount of the BCSO prior to adjustments for parenting time and additional expenses and is presumed correct for the combined income of the parents and the number of children for whom support is being determined.~~

(a) Rule 1240-02-04-.09 contains the CS Schedule which shall be used to determine the combined obligation of both parents for the support of their children based upon their monthly combined AGI and the number of children who are the subject of the child support determination. However, if the obligor's AGI falls within the shaded area of the CS Schedule, a comparison must be done to determine if the BCSO is computed using only the obligor's income. The CS Schedule, in chart form, displays the amount of the BCSO prior to adjustments for parenting time and additional expenses and is presumed correct for the combined income of the parents and the number of children for whom support is being determined.]

(b) Rounding Rule for Determination of BCSO.

When the combined Adjusted Gross Income falls between amounts shown in the Schedule, round up to the next amount of combined Adjusted Gross Income. The rounded-up number shall be used to determine the BCSO from the CS Schedule for the number of children for whom support is being determined.

(7) Adjustment for Parenting Time.

(a) These Guidelines presume that, in Tennessee, when parents live separately, the children will typically reside primarily with one parent, the PRP, and stay with the other parent, the ARP, a minimum of every other weekend from Friday to Sunday, two (2) weeks in the summer, and two (2) weeks during holidays throughout the year, for a total of eighty (80) days per year. The Guidelines also recognize that some families may have different parenting situations and, thus, allow for an adjustment in the child support obligation, as appropriate, in compliance with the criteria specified below.

(b) Parenting Time.

1. The adjustment is based upon the ARP's number of days of parenting time with the children in the case under consideration.
2. Fifty-Fifty / Equal-Parenting Situations.

In this situation, there is no PRP and/or ARP designation based upon parenting time. Accordingly, the PRP / ARP designation will be made as follows, solely for the purpose of calculating the parenting time adjustment:

- (i) Fifty-Fifty / Equal-Parenting.

(Rule 1240-2-4-.04, continued)

The Father [Father or Parent 2] is deemed the ARP when calculating the parenting time adjustment solely for an equal parenting situation.

(ii) Fifty-Fifty / Equal-Parenting Combined with Split Parenting.

The Father [Father or Parent 2] is deemed the ARP when calculating the parenting time adjustment for an equal parenting situation in conjunction with a split parenting situation.

(iii) Fifty-Fifty / Equal-Parenting Combined with Standard Parenting.

The ARP in the standard parenting situation will also be the ARP in the equal parenting situation when calculating the parenting time adjustment for an equal parenting situation in conjunction with a standard parenting situation.

~~3. No more than one (1) day of credit for parenting time can be taken in any twenty-four (24) hour period, i.e., only one parent can take credit for parenting time in one twenty-four (24) hour period. Except in extraordinary circumstances, as determined by the tribunal, partial days of parenting time that are not consistent with this definition shall not be considered a "day" under these Guidelines. An example of extraordinary circumstances would include a parenting situation where the ARP is scheduled to pick up the child after school three (3) or more days a week and keep the child until eight (8) o'clock p.m. This three (3) day period of routinely incurred parenting time of shorter duration may be cumulated as a single day for parenting time purposes.~~

~~4. Average Parenting Time:~~

~~If there are multiple children for whom support is being calculated, and the ARP is spending a different amount of time with each child, then an annual average of parenting time with all of the children shall be calculated. For example, if the ARP has sixty-seven (67) days of parenting time per year with Child A, eighty-four (84) days of parenting time per year with Child B, and one hundred thirty-two (132) days of parenting time per year with Child C, then the parenting time adjustment would be calculated based upon ninety-four (94) days of parenting time  $[67 + 84 + 132 = 283 / 3 = 94]$ . For this purpose, standard rounding rules apply.~~

[3. No more than one (1) day of credit for parenting time can be taken in any twenty-four (24) hour period, i.e., only one parent can take credit for parenting time in one twenty-four (24) hour period. Except in extraordinary circumstances, as determined by the tribunal, partial days of parenting time that are not consistent with this definition shall not be considered a "day" under these Guidelines. Routinely incurred parenting time of shorter duration may be cumulated as a single day for parenting time purposes.

4. Average Parenting Time.

If there are multiple children for whom support is being calculated, and the ARP is spending a different amount of time with each child, then an annual average of parenting time with all of the children shall be calculated. For example, if the ARP has sixty-seven (67) days of parenting time per year with Child A, eighty-four (84) days of parenting time per year with Child B, and one hundred thirty-two

(Rule 1240-2-4-.04, continued)

(132) days of parenting time per year with Child C, then the parenting time adjustment would be calculated based upon ninety-four (94) days of parenting time  $[67 + 84 + 132 = 283 / 3 = 94]$ . The Income Shares Worksheet formula will automatically calculate this average by using the actual number of days spent with each child. For this purpose, standard rounding rules apply.]

- ~~(c) In cases of split parenting, both parents are eligible for a parenting time adjustment for the child(ren) for whom the parent is the ARP.~~
- ~~(d) In a non-parent caretaker situation, neither parent is eligible for a parenting time adjustment.~~
- ~~(e) Parenting Time Adjustments are not mandatory, but presumptive. The presumption may be rebutted in a case where the circumstances indicate the adjustment is not in the best interest of the child.~~
- ~~(f) Due to the method for calculation of the adjustment, it is anticipated, in a case where the PRP has greater income than the ARP and the ARP has a high level of parenting time with the child, that support may be due from the PRP to the ARP to assist with the expenses of the children during the times spent with the ARP. In this circumstance, a support payment from the PRP to the ARP is allowed~~
- [(c) In cases of split parenting, both parents are eligible for a parenting time adjustment for the child(ren) for whom the parent is the ARP unless a SSR is applied.
- (d) In a non-parent caretaker situation, neither parent is eligible for a parenting time adjustment. However, a SSR may be applicable.
- (e) Parenting time adjustments are not mandatory, but presumptive. The presumption may be rebutted in a case where the circumstances indicate the adjustment is not in the best interest of the child.
- (f) Due to the method for calculation of the adjustment, it is anticipated, in a case where the PRP has greater income than the ARP and the ARP has a high level of parenting time with the child, that support may be due from the PRP to the ARP to assist with the expenses of the children during the times spent with the ARP. In this circumstance, a support payment from the PRP to the ARP is allowed. The SSR is also considered in this circumstance.]
- (g) The automated child support worksheet provided by the Department will automatically calculate all parenting time adjustments when the user enters the requested information. No manual calculation is required, however, instructions for manual calculation are provided in these rules. See: Rule 1240-2-4-.08(2)(c) 5.
- (h) Reduction in Child Support Obligation for Additional Parenting Time.
  1. If the ARP spends ninety-two (92) or more days per calendar year with a child, or an average of ninety-two (92) days with all applicable children, an assumption is made that the ARP is making greater expenditures on the child during his/her parenting time for transferred costs such as food and/or is making greater expenditures for child-rearing expenses for items that are duplicated between the two (2) households (e.g., housing or clothing). A reduction to the ARP's child support obligation may be made to account for these transferred and duplicated expenses, as set forth in this chapter. The amount of the additional expenses is determined by using a mathematical formula that changes according to the

(Rule 1240-2-4-.04, continued)

number of days the ARP spends with the child and the amount of the BCSO. The mathematical formula is called a "variable multiplier."

2. Upon reaching the threshold of ninety-two (92) days, the variable multiplier shall be applied to the BCSO, which will increase the amount of the BCSO in relation to the ARP's parenting time, in order to account for the child-rearing expenses incurred by the ARP during parenting time. These additional expenses are divided between the parents according to each parent's PI. The PRP's share of these additional expenses represents an amount owed by the PRP to the ARP and is applied as a credit against the ARP's obligation to the PRP.
3. The presumption that more parenting time by the ARP results in greater expenditures which should result in a reduction to the ARP's support obligation may be rebutted by evidence.
4. Calculation of the Parenting Time Credit.
  - (i) First, the variable multiplier is determined by multiplying a standard per diem of .0109589 [ $2 / 182.5$ ] by the ARP's parenting time determined pursuant to paragraph (7)(b) above. For example, the 94 days of parenting time calculated in the example from paragraph ~~(7)(b)4(i)~~ [part (7)(b)4 above] is multiplied by .0109589, resulting in a variable multiplier of 1.0301366 [ $94 \times .0109589$ ].
  - (ii) Second, the variable multiplier calculated in subpart (i) above is applied to the amount of the parties' total BCSO, which results in an adjusted BCSO. For example, application of the variable multiplier determined above for ninety-four (94) days of parenting time to a BCSO of one thousand dollars (\$1000) would result in an adjusted BCSO of one thousand thirty dollars and fourteen cents (\$1030.14) [ $\$1000 \times 1.0301366$ ].
  - (iii) Third, the amount of the BCSO is subtracted from the adjusted BCSO. The difference is the child-rearing expenses associated with the ARP's additional parenting time. In the example above, the additional child-rearing expenses associated with the ninety-four (94) days of parenting time would be thirty dollars and fourteen cents (\$30.14) [ $\$1030.14 - \$1000$ ].
  - (iv) The additional child-rearing expenses determined in subpart (iii) above are pro-rated between the parents according to each parent's percentage of income (PI). The PRP's share of these additional expenses is applied as an adjustment against the ARP's pro-rata share of the original BCSO. For instance, if the PRP's PI is forty percent (40%), the PRP's share of the additional expenses in the example above would be twelve dollars and six cents (\$12.06) [ $\$30.14 \times 40\%$ ]. The twelve dollars and six cents (\$12.06) is applied as a credit against the ARP's share of the BCSO, resulting in a child support obligation for the ARP of five hundred eighty-seven dollars and ninety-four cents (\$587.94) [ $\$1000 \times 60\% = \$600 - \$12.06$ ].
  - (v) Once the BCSO is reduced for parenting time, only one parent will owe a BCSO. Once it is determined who that one parent is, that parent's AGI and number of children for whom support is being determined shall be checked against the "shaded area" to determine if the SSR applies to that parent. If it does, the BCSO shall be the lower of the amount from (iv) or the shaded area based on the obligor's AGI and number of children for whom support

(Rule 1240-2-4-.04, continued)

is being determined. In the example above, (iv) indicates that the ARP's share of the BCSO is five hundred eighty-seven dollars and ninety-four cents (\$587.94). If the ARP's income is four thousand eight hundred ninety dollars (\$4,890) per month, the ARP's income does not fall into the shaded area and no additional adjustment is made. If the circumstance is as described in (f) where the PRP owes the ARP, which can result from the calculation if the PRP has greater income than the ARP and the ARP has a high level of parenting time with the child, then the BCSO shall be the lower of the PRP's BCSO from (iv) and the PRP's AGI using the shaded area and the number of children for whom support is being determined.]

## (i) Increase in Child Support Obligation for Less Parenting Time.

1. If the ARP spends sixty-eight (68) or fewer days per calendar year with the child(ren) in the case, or an average of sixty-eight (68) days with all applicable children, the ARP's child support obligation may be increased for the lack of parenting time. The first step in calculating the increase is to determine the number of days fewer than sixty-nine (69) the ARP spends with the child and then divide this number of days by three hundred sixty-five (365). For example, if the ARP has sixty-eight (68) days of parenting time, the percentage of days is 0.002739726 [ $69 - 68 = 1$ ;  $1/365$ ].
- ~~2. The second step is to multiply the percentage of days by the ARP's share of the BCSO. For example, if the ARP's share of the BCSO is one thousand two hundred dollars (\$1,200), and the parenting time is sixty-eight (68) days, the increased share of support is three dollars and twenty-nine cents (\$3.29) [ $0.002739726 \times \$1,200 = \$3.29$ ].~~
- [2. The second step is to multiply the percentage of days by the ARP's share of the BCSO. For example, if the ARP's share of the BCSO is one thousand two hundred dollars (\$1,200), and the parenting time is sixty-eight (68) days, the increased share of support is three dollars and twenty-nine cents (\$3.29) [ $0.002739726 \times \$1,200 = \$3.29$ ]. If the ARP's share of the BCSO is adjusted for the SSR, the percentage of days would also be multiplied to the ARP's share of the BCSO.]
3. The increased share of support is added to the ARP's share of the BCSO resulting in the adjusted BCSO. Continuing the example from above, the ARP's increased BCSO is one thousand two hundred three dollars and twenty-nine cents (\$1,203.29). [ $\$1,200 + \$3.29$ ]
4. The presumption that less parenting time by the ARP should result in an increase to the ARP's support obligation may be rebutted by evidence.
  - (i) In an action to modify an existing child support order to reflect a change in parenting time, the parent seeking the credit must prove a significant variance pursuant to 1240-2-4-.05 when comparing the current order to the proposed order with application of the parenting time adjustment.

## (8) Adjustments for Additional Expenses.

- (a) The CS Schedule does not include the cost of the child's health insurance premium, uninsured medical expenses, or work-related childcare costs.

(Rule 1240-2-4-.04, continued)

1. The additional expenses for the child's health/dental insurance premium, recurring uninsured medical expenses, and work-related childcare shall be included in the calculations to determine child support.
  2. The amount of the cost for the child's health insurance premium, recurring uninsured medical expenses, and work-related childcare shall be determined as indicated below in subparagraphs (b), (c), and (d) and added to the BCSO as "Additional Expenses" or "add-ons."
  3. The total amount of the cost for the child's health insurance premium, recurring uninsured medical expenses, and work-related childcare shall be divided between the parents pro rata based upon the PI of each parent to determine the total Presumptive Child Support Order and shall be included in the written order of the tribunal together with the amount of the BCSO.
  4. If the health insurance premium and/or the work-related child care is/are being paid by the ARP, the payment shall be reflected in the child support order to identify the amount and nature of the obligation, but shall not be included in the ARP's income assignment. The order shall require that these expenses continue to be paid by the ARP in the same manner as they were being paid prior to the instant action.
  5. Amounts paid by a non-parent caretaker for either child care or health care expenses shall be included in the calculation for payment by the parents.
  - ~~6. Amounts paid by a step-parent shall not be considered in the calculation.~~
  - [6. The amount of the health, vision, and dental care insurance premium paid for the benefit of the child(ren), such as a parent or step-parent who carries coverage for the child(ren), may be included and credited in the worksheet under that respective parent's column.]
- ~~(b) Health Insurance Premiums.~~
- ~~1. If health and/or dental insurance that provides for the health care needs of the child can be obtained by a parent at reasonable cost, then an amount to cover the cost of the premium shall be added to the BCSO as indicated above in subparagraph (a).~~
  - ~~2. In determining the amount to be added to the order for this cost, only the amount of the insurance cost attributable to the children who are the subject of the support order shall be included.~~
  - ~~3. If coverage is applicable to other persons and the amount of the health insurance premium attributable to the child who is the subject of the current action for support is not available to be verified, the total cost to the parent paying the premium shall be pro rated by the number of persons covered so that only the cost attributable to the children who are the subject of the order under consideration is included. Enter the monthly cost on the Child Support Worksheet in the column of the parent paying the premium. If health insurance coverage is provided for the children at issue at no additional cost to the parent, no amount for this expense should be included on the Worksheet.~~

(Rule 1240-2-4-.04, continued)

- ~~4. Eligibility for or enrollment of the child in TennCare or Medicaid shall not satisfy the requirement that the child support order provide for the child's health care needs.~~

[(b) Health Insurance Premiums.

1. If health insurance that provides for the health care needs of the child can be obtained by a parent at reasonable cost, then an amount to cover the cost of the premium(s) shall be added to the BCSO as indicated above in subparagraph (a).
2. In determining the amount to be added to the order for this cost, only the amount of the insurance cost attributable to the children who are the subject of the support order shall be included.
3. If coverage is applicable to other persons and the amount of the health insurance premium attributable to the child who is the subject of the current action for support is not available to be verified, the total cost to the parent paying the premium shall be pro-rated by the number of persons covered so that only the cost attributable to the children who are the subject of the order under consideration is included. Enter the monthly cost on the Child Support Worksheet in the column of the parent paying the premium. If health insurance coverage is provided for the children at issue at no additional cost to the parent, no amount for this expense should be included on the Worksheet.]

(c) Work-Related Childcare Expenses.

1. Childcare expenses necessary for either parent's employment, education, or vocational training that are determined by the tribunal to be appropriate, and that are appropriate to the parents' financial abilities and to the lifestyle of the child if the parents and child were living together, shall be averaged for a monthly amount and entered on the Worksheet in the column of the parent initially paying the expense.
2. If a childcare subsidy is being provided pursuant to a means-tested public assistance program, only the amount of the childcare expense actually paid by either parent or the non-parent caretaker shall be included in the calculation.
3. If either parent or the non-parent caretaker is the provider of childcare services to the child for whom support is being determined, the value of those services shall not be added to the basic child support obligation when calculating the support award.
4. The childcare expense shall be paid to the childcare provider by the parent incurring the expense. The other parent's pro rata share of the expense shall be included in the calculation that results in the child support order.

(d) Uninsured Medical Expenses.

1. The child's uninsured medical expenses including, but not limited to, deductibles, co-pays, dental, orthodontic, counseling, psychiatric, vision, hearing and other medical needs not covered by insurance are not included in the basic child support schedule and shall be the financial responsibility of both parents.
2. If uninsured medical expenses are routinely incurred so that a specific monthly amount can be reasonably established, a specific dollar amount shall be added

(Rule 1240-2-4-.04, continued)

to the basic child support obligation to cover those established expenses. These expenses shall be pro-rated between the parents according to each parent's percentage of income.

3. If uninsured medical expenses are not routinely incurred so that a specific monthly amount cannot be reasonably established, a specific dollar amount shall not be added to the basic child support obligation but the court order shall specify that these expenses shall be paid by the parents as incurred according to each parent's percentage of income unless some other division is specifically ordered by the tribunal.
4. If a parent fails to pay his/her pro rata share of the child's uninsured medical expenses, as specified in the child support order, within a reasonable time after receipt of evidence documenting the uninsured portion of the expense, the other parent, the non-parent caretaker, the State, or its IV-D contractors may enforce payment of the expense by any legal action permitted by law.
5. Every child support order shall specify how the parents are to pay both known and unknown medical expenses as they are incurred.

(e) Calculations for Additional Expenses.

1. The amounts paid by each parent and by a non-parent caretaker, where applicable, for the child's health insurance premium, recurring uninsured medical expenses, and/or work-related childcare costs shall be entered on the Child Support Worksheet to be used in calculating the total additional expenses.
2. Each parent's pro-rata share of all additional expenses paid by the other parent and/or non-parent caretaker shall be calculated using each parent's PI.

(9) Adjusted Support Obligation (ASO).

- (a) In standard parenting situations, the ASO is the parent's share of the BCSO owed to the other parent or non-parent caretaker plus the parent's share of any additional expense paid by the other parent and/or non-parent caretaker for the child's health insurance premium, recurring uninsured medical expenses, and work-related childcare; or
- (b) In split parenting situations, the ASO is each parent's BCSO for the children in the other parent's primary care plus each parent's share of any additional expense paid by the other parent for the children's health insurance premium, recurring uninsured medical expenses, and work-related childcare.
- (c) If a parenting time adjustment has been calculated in any case, that parent's share of the BCSO is adjusted as specified in 1240-2-4-.04(7), then each parent's ASO is calculated as indicated above in either subparagraph (a) or (b).
- (d) In standard parenting situations, after consideration of additional expenses, the PRP's ASO may exceed the ARP's ASO. In such circumstances, it is permissible for a child support obligation to be paid by the PRP to the ARP. [See also 1240-2-4-.04(7)(h)]

- (10) No adjustment to gross income shall be made in the calculation of a child support obligation which seriously impairs the ability of the PRP in the case under consideration to maintain minimally adequate housing, food, and clothing for the children being supported by the order and/or to provide other basic necessities, as determined by the court.

(Rule 1240-2-4-.04, continued)

(11) Presumptive Child Support Order.

- (a) The Presumptive Child Support Order (PCSO) is the result of the calculations under these Guidelines, rounded to the nearest whole dollar, and is the amount of support for which the obligor is responsible prior to consideration of any deviations.
- (b) Deviations from this amount must be supported by written findings in the support order, as required by 1240-2-4-.07(1).
- ~~(c) The completed Worksheet(s) must be maintained as part of the official record either by filing them as exhibits in the tribunal's file or as attachments to the order.~~
- ~~(d) Payments of child support shall be ordered to be paid in a specific dollar amount on a weekly, biweekly (every two weeks), semi-monthly, or monthly basis.~~
- [(c) The completed Worksheet(s) must be maintained as part of the official record either by filing them as exhibits in the tribunal's file or as attachments to the order except when the child is placed in State custody and the initial child support order is set by the Department of Children's Services without the Worksheet.
- (d) Payments of child support shall be ordered to be paid in a specific dollar amount on a weekly, biweekly (every two weeks), semimonthly, or monthly basis.]

[(12) Minimum Child Support Order.

- (a) It is the obligation of all parents to contribute to the support of their children with a minimum child support order of at least one hundred (\$100) per month unless as indicated in parts (b) and (d) below.
- (b) This provision does not apply:
  - 1. If the obligor's only source of income is Supplemental Security Income (SSI);
  - 2. When the federal benefit for a child results in a calculation of support owed to be less than the minimum amount; or
  - 3. When the parenting time adjustment results in an amount less than the minimum child support order.
- (c) The Tribunal shall make a written finding upon evidence submitted and taking all circumstances into consideration to set the current obligation at the minimum order amount.
- (d) In its discretion, the Court may deviate from the minimum child support order by either setting a higher or lower support order.]

**Authority:** T.C.A. §§4-5-202, 36-5-101(a), 36-5-101(a)(1), 36-5-101(e), 36-5-103(f), 71-1-105(a)(12), (15) and (16), and 71-1-132; 42 U.S.C. §§ 652 and 667; and 45 C.F.R. §§ 302.56, 303.8 and 303.31.  
**Administrative History:** New rule filed August 25, 1989; effective October 13, 1989. Amendment filed September 29, 1994; effective December 14, 1994. Amendment filed July 22, 1997; effective October 5, 1997. Amendment filed September 29, 2003; effective December 13, 2003. Repeal and new rule filed November 4, 2004; effective January 18, 2005. Emergency rule filed March 3, 2005; effective through August 15, 2005. Amendment filed June 1, 2005; effective August 15, 2005. Repeal and new rule filed April 6, 2006; effective June 20, 2006. Stay of effective date of rule filed April 19, 2006; new effective

(Rule 1240-2-4-.04, continued)

*date of rule June 26, 2006. On July 10, 2008, the Government Operations Committee stayed amendments filed May 8, 2008; to be effective July 22, 2008; new effective date August 15, 2008.*

**1240-02-04-.05 MODIFICATION OF CHILD SUPPORT ORDERS.**

~~(1) Beginning on the effective date of these rules, all modifications shall be calculated under the Income Shares Guidelines, whether the action was pending before the effective date or filed after the effective date, where a hearing which results in an order modifying support is held after the effective date of these rules.~~

~~(2) Significant Variance Required for Modification of Order.~~

~~(a) Unless a significant variance exists, as defined in this section, a child support order is not eligible for modification; provided, however, the necessity of providing for the child's health care needs shall be a basis for modification regardless of whether a modification in the amount of child support is warranted by other criteria.~~

~~(b) For all orders that were established or modified before January 18, 2005, under the flat percentage guidelines, and are being modified under the income shares provisions for the first time, a significant variance is defined as:~~

~~1. At least a fifteen percent (15%) change in the gross income of the ARP; and/or~~

~~2. A change in the number of children for whom the ARP is legally responsible and actually supporting; and/or~~

~~3. A child supported by this order becoming disabled; and/or~~

~~4. The parties voluntarily entering into an agreed order to modify support in compliance with these Rules, and submitting completed worksheets with the agreed order; and~~

~~5. At least a fifteen percent (15%) change between the amount of the current support order and the proposed amount of the obligor parent's pro rata share of the BCSO if the current support is one hundred dollars (\$100) or greater per month and at least fifteen dollars (\$15) if the current support is less than one hundred dollars (\$100) per month; or~~

~~6. At least a seven and one-half percent (7.5% or 0.075) change between the amount of the current support order and the amount of the obligor parent's pro rata share of the BCSO if the tribunal determines that the Adjusted Gross Income of the parent seeking modification qualifies that parent as a low-income provider.~~

~~(c) For all orders that were established or modified January 18, 2005 or after, under the income shares guidelines, a significant variance is defined as at least a fifteen percent (15%) change between the amount of the current support order (not including any deviation amount) and the amount of the proposed presumptive support order or, if the tribunal determines that the Adjusted Gross Income of the parent seeking modification qualifies that parent as a low-income provider, at least a seven and one-half percent (7.5% or 0.075) change between the amount of the current support order (not including any deviation amount) and the amount of the proposed presumptive support order.~~

~~(d) Low Income Provider.~~

~~For purposes of modification of orders, a low income provider is a person who:~~

(Rule 1240-2-4-.05, continued)

- ~~1. Is not willfully and voluntarily unemployed or underemployed when working at his/her full capacity according to his/her education and experience; and~~
  - ~~2. Has an Adjusted Gross Income at or below the federal poverty level for a single adult.
    - ~~(i) As of the effective date of the rules, the federal poverty level for a single adult is ten thousand four hundred dollars (\$10,400) annual gross income, which shall remain in effect until updated by the Department.~~
    - ~~(ii) Updated information regarding the federal poverty standards will be available on the Department's website at [www.state.tn.us/humanserv](http://www.state.tn.us/humanserv).~~~~
  - ~~(3) To determine if a modification is possible, a child support order shall first be calculated on the Child Support Worksheet using current evidence of the parties' circumstances. If the current child support order was calculated using the flat percentage guidelines, compare the existing ordered amount of current child support to the proposed amount of the ARP's pro-rata share of the basic child support obligation. If the current child support order was calculated using the income shares guidelines, compare the presumptive child support order amounts in the current and proposed orders. Do not include the amount of any previously ordered deviations or proposed deviations in the comparison. If a significant variance exists between the two amounts, such a variance would justify the modification of a child support order unless, in situations where a downward modification is sought, the obligor is willfully and voluntarily unemployed or underemployed, or except as otherwise restricted by paragraph (5) below or 1240-2-4-.04(10) above.~~
  - ~~(4) The tribunal shall not refuse to consider modification of a current support order relating to the payment of prospective support on the basis that the party requesting modification has accumulated an arrears balance, unless the arrearage is the result of the intentional actions by the party.~~
- [(1) All modifications shall be calculated under the Income Shares Guidelines.
- (2) Significant Variance Required for Modification of Order.
- (a) Unless a significant variance exists, as defined in this section, a child support order is not eligible for modification; provided, however, the necessity of providing for the child's health care needs shall be a basis for modification regardless of whether a modification in the amount of child support is warranted by other criteria.
  - (b) A significant variance is defined as at least fifteen percent (15%) difference in the current support obligation and the proposed support obligation.
  - (c) For all orders modified [effective date of this rule filing] through [effective date of this rule filing + 180 days], for the case to be modified per the current Guidelines, there must be a change of circumstances, such as income or number of children to support, in addition to at least a fifteen percent (15%) change between the amount of the current support order (not including any deviation amount) and the amount of the proposed presumptive support order.
  - (d) For all orders modified on or after [effective date of this rule filing + 181 days], for the case to be modified per the current Guidelines, there must be a at least a fifteen percent (15%) change between the amount of the current support order (not including any deviation amount) and the amount of the proposed presumptive support order.

(Rule 1240-2-4-.05, continued)

- (3) Within fifteen (15) business days of when the Title IV-D agency learns that the obligor will be incarcerated for more than one hundred and eighty (180) calendar days, a notice may be sent to both parties informing them of the right to request the State to review and, if appropriate, adjust the order consistent with this section.
- (4) To determine if a modification is possible, a child support order shall first be calculated on the Child Support Worksheet using current evidence of the parties' circumstances. If the current child support order was calculated using the flat percentage guidelines, compare the existing ordered amount of current child support to the proposed amount of the ARP's pro-rata share of the BCSO. If the current child support order was calculated using the income shares guidelines, compare the PCSO amounts in the current and proposed orders. Do not include the amount of any previously ordered deviations or proposed deviations in the comparison. If a significant variance exists between the two amounts, such a variance would justify the modification of a child support order unless, in situations where a downward modification is sought, the obligor is willfully and voluntarily unemployed or underemployed, or except as otherwise restricted by paragraph (5) below or 1240-02-04-.04(10) above.]
- (5) Upon a demonstration of a significant variance, the tribunal shall increase or decrease the support order as appropriate in accordance with these Guidelines unless the significant variance only exists due to a previous decision of the tribunal to deviate from the Guidelines and the circumstances that caused the deviation have not changed. If the circumstances that resulted in the deviation have not changed, but there exist other circumstances, such as an increase or decrease in income, that would lead to a significant variance between the amount of the current order, excluding the deviation, and the amount of the proposed order, then the order may be modified.
- ~~(6) An order may be modified to reflect a change in the number of children for whom a parent is legally responsible, a parenting time adjustment, and work-related childcare only upon compliance with the significant variance requirement specified in 1240-2-4-.05.~~
- ~~(7) Modification of Orders in Split Parenting Cases and Cases Where Parenting Time is Divided on a 50/50/Equal Basis.
  - ~~(a) If an order was established or modified under the Income Shares guidelines between January 18, 2005 and April 1, 2005, in a case with split parenting or a case in which parenting time is divided on a 50/50/equal basis, the order may be modified without compliance with the significant variance requirement only for the purpose of correcting a calculation error resulting from application of the rules implemented on January 18, 2005.~~
  - ~~(b) Any arrears which may have accumulated under any such order as originally established or modified under the Income Shares guidelines may be recalculated consistent with the amount of the child support obligation as modified pursuant to this part.~~~~
- ~~(8) No ordered child support is subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties. Any payment or installment of support under any child support order on or after the date it is due is a judgment by operation of law with the full force, effect, and attributes of a judgment, including the ability to be enforced, and is entitled as a judgment to full faith and credit. This provision applies to all child support orders issued in all Tennessee courts, including but not limited to circuit, chancery, and juvenile courts and all other tribunals with jurisdiction to modify child support,~~

~~whether the order originated under an action taken by the authority of Tennessee Code Annotated Titles 36 or 37, or the equivalent law in any other state.~~

[(6) Minimum Child Support Order.

- (a) It is the obligation of all parents to contribute to the support of their children with a minimum child support order of at least one hundred (\$100) per month unless as indicated in parts (b) and (d) below.
  - (b) This provision does not apply:
    - 1. If the obligor's only source of income is Supplemental Security Income (SSI);
    - 2. When the federal benefit for a child results in a calculation of support owed to be less than the minimum amount; or
    - 3. When the Parenting Time Adjustment results in an amount less than the minimum child support order.
  - (c) The Tribunal shall make a written finding upon evidence submitted and taking all circumstances into consideration to set the current obligation at the minimum order amount.
  - (d) In its discretion, the Court may deviate from the minimum child support order by either setting a higher or lower support order.
- (7) An order may be modified to reflect a change in the number of children for whom a parent is legally responsible, a parenting time adjustment, and work-related childcare only upon compliance with the significant variance requirement specified in Rule 1240-02-04-.05.
- (8) No ordered child support is subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties. Any payment or installment of support under any child support order on or after the date it is due is a judgment by operation of law with the full force, effect, and attributes of a judgment, including the ability to be enforced, and is entitled as a judgment to full faith and credit. This provision applies to all child support orders issued in all Tennessee courts, including but not limited to circuit, chancery, and juvenile courts and all other tribunals with jurisdiction to modify child support, whether the order originated under an action taken by the authority of Tennessee Code Annotated Titles 36 or 37, or the equivalent law in any other state. When a lump sum award of a federal benefit is sent directly to a caretaker, if an arrearage exists, said lump sum shall be applied to the arrears balance and shall not be considered a retroactive modification of support.]

**Authority:** T.C.A. §§ 4-5-202, 36-5-101(a)(1), 36-5-101(e), 36-5-103(f), 37-1-151, 71-1-105(a)(12), (15) and (16), and 71-1-132; 42 U.S.C. § 666, 667; and 45 C.F.R. §§ 302.56 and 303.8. **Administrative History:** Original rule filed November 4, 2004; effective January 18, 2005. Emergency rule filed March 3, 2005; effective through August 15, 2005. Amendment filed June 1, 2005; effective August 15, 2005. Emergency rule filed October 14, 2005; effective through March 28, 2006. Amendment filed January 6, 2006; effective March 22, 2006. Repeal and new rule filed April 6, 2006; effective June 20, 2006. Stay of effective date of rule filed April 19, 2006; new effective date of rule June 26, 2006. On July 10, 2008, the Government Operations Committee stayed amendments filed May 8, 2008; to be effective July 22, 2008; new effective date August 15, 2008.

**1240-02-04-.06 RETROACTIVE SUPPORT.**

(Rule 1240-2-4-.06, continued)

~~(1) Unless the rebuttal provisions of Tennessee Code Annotated §§ 36-2-311(a)(11) or 36-5-101(e) have been established by clear and convincing evidence provided to the tribunal, then, in cases in which initial support is being set, a judgment must be entered to include an amount of monthly support due up to the date that an order for current support is entered:~~

~~(a) From the date of the child's birth:~~

~~1. In paternity cases; or,~~

~~2. Where the child has been voluntarily acknowledged by the child's putative father as provided in Tennessee Code Annotated § 24-7-113, or pursuant to the voluntary acknowledgement procedure of any other state or territory of the United States that comports with Title IV-D of the Social Security Act, or, as applicable;~~

~~(b) From the date:~~

~~1. Of separation of the parties in a divorce or in an annulment; or~~

~~2. Of abandonment of the child and the remaining spouse by the other parent in such cases; or~~

~~3. Of physical custody of the child by a parent or non-parent caretaker.~~

[(1) Unless the rebuttal provisions of Tennessee Code Annotated §§ 36-2-311(a)(11) or 36-5-101(e) have been established by clear and convincing evidence provided to the tribunal, then, in cases in which initial support is being set, a judgment must be entered to include an amount of monthly support due up to the date that an order for current support is entered.

(2) Retroactive child support shall not be awarded for a period of more than five (5) years from the date the action for support is filed unless the court determines, for good cause shown according to Tennessee Code Annotated §§ 36-2-311(a)(11) or 36-5-101(e), that a different award of retroactive child support is in the interest of justice. The burden to show that a longer time period of retroactive support is in the interest of justice is on the PRP.]

(2[3]) Deviations from the presumption that a judgment for retroactive support shall be awarded back to the date of birth of the child, the date of the separation of the parties, or the date of abandonment of the child shall be supported by written findings in the tribunal's order that include:

(a) The reasons the tribunal, pursuant to Tennessee Code Annotated §§ 36-2-311(a)(11)(A) or 36-5-101(e)(1)(C), deviated from the presumptive amount of child support that would have been paid pursuant to the Guidelines; and

(b) The amount of child support that would have been required under the Guidelines if the presumptive amount had not been rebutted; and

(c) A written finding by the tribunal that states how, in its determination,

1. Application of the Guidelines would be unjust or inappropriate in the particular case before the tribunal; and

2. The best interests of the child or children who are subject to the support award determination are served by deviation from the presumptive guideline amount.

(Rule 1240-2-4-.06, continued)

(3[4]) The retroactive support amount shall be calculated as follows, using the Guidelines in effect at the time of the hearing on retroactive support:

- (a) For the monthly BCSO, apply the Guidelines in effect at the time of the order, using the Child Support Worksheet. Use the average monthly income of both parents over the past two (2) years as the amount to be entered for "monthly gross income," unless the tribunal finds that there is adequate evidence to support a different period of time for use in the calculation and makes such a finding in its order. Do not include any current additional expenses on the retroactive worksheet. Complete the worksheet for the retroactive monthly amount, and multiply the amount shown on the worksheet as the "Final Child Support Order" times the number of months the tribunal has determined to be the appropriate period for retroactive support.
- (b) An additional amount may be added onto the judgment for retroactive support calculated above in subparagraph (a) to account for the ARP's share of amounts paid by the primary residential parent for childcare, the child's health insurance premium, and uninsured medical expenses over the retroactive period under consideration, and other expenses allowed under Tennessee Code Annotated § 36-2-311.
- (c) Add the total amount from subparagraph (a) above to the amount from subparagraph (b) for the total retroactive support due. The retroactive support amount as calculated in subparagraphs (a) and (b) above is presumed to be correct unless rebutted by either party.
- (4) A periodic payment amount shall be included in the support order, in addition to any prospective amount of current support, to eliminate the retroactive judgment for support within a reasonable time. Payment of the monthly amount as ordered shall be considered compliance with the retroactive order, however, the department may use additional means of collection to reduce this judgment without regard to the timeliness of the periodic payment.

**Authority:** T.C.A. §§ 4-5-202, 36-2-311, 36-5-101(a), 36-5-101(e), 71-1-105(a)(12), (15) and (16), and 71-1-132; 42 U.S.C. § 667; and 45 C.F.R. § 302.56. **Administrative History:** Original rule filed November 4, 2004; effective January 18, 2005. Repeal and new rule filed April 6, 2006; effective June 20, 2006. Stay of effective date of rule filed April 19, 2006; new effective date of rule June 26, 2006. On July 10, 2008, the Government Operations Committee stayed amendments filed May 8, 2008; to be effective July 22, 2008; new effective date August 15, 2008.

#### **1240-02-04-.07 DEVIATIONS FROM THE CHILD SUPPORT GUIDELINES.**

- (1) Consideration of the Child's Best Interests; Written Findings to Support the Deviation.
  - (a) The amounts of support established by these Guidelines are rebuttable.
  - (b) The tribunal may order as a deviation an amount of support different from the amount of the presumptive child support order if the deviation complies with the requirements of this paragraph (1) and with this chapter. The amount or method of such deviation is within the discretion of the tribunal provided, however, the tribunal must state in its order the basis for the deviation and the amount the child support order would have been without the deviation. In deviating from the Guidelines, primary consideration must be given to the best interest of the child for whom support under these Guidelines is being determined.
  - (c) When ordering a deviation from the presumptive amount of child support established by the Guidelines, the tribunal's order shall contain written findings of fact stating:

(Rule 1240-2-4-.07, continued)

1. The reasons for the change or deviation from the presumptive amount of child support that would have been paid pursuant to the Guidelines; and
  2. The amount of child support that would have been required under the Guidelines if the presumptive amount had not been rebutted; and
  3. How, in its determination,
    - (i) Application of the Guidelines would be unjust or inappropriate in the particular case before the tribunal; and
    - (ii) The best interests of the child for whom support is being determined will be served by deviation from the presumptive guideline amount.
- (d) No deviation in the amount of the child support obligation shall be made which seriously impairs the ability of the PRP in the case under consideration to maintain minimally adequate housing, food, and clothing for the children being supported by the order and/or to provide other basic necessities, as determined by the court.
- (2) Deviation from the Guidelines may be appropriate for reasons in addition to those previously established in 1240-2-4-.01 – .06 when the tribunal finds it is in the best interest of the child, in accordance with the requirements of paragraph (1) above and the following procedures:
- (a) Consideration of Needs of the Children and Income and Expenses of the Parents for Purposes of Deviation.
    1. In making its determination regarding a request for deviation pursuant to this chapter, the tribunal shall consider all available income of the parents as defined by this chapter and shall make a written finding that an amount of child support other than the amount calculated under the Guidelines is reasonably necessary to provide for the needs of the minor child or children for whom support is being determined in the case immediately under consideration.
    2. If the circumstances that supported the deviation cease to exist, the child support order may be modified to eliminate the deviation irrespective of compliance with the significant variance requirement of 1240-2-4-.05.
  - ~~(b) In cases where the child is in the legal custody of the Department of Children's Services, the child protection or foster care agency of another state or territory, or any other child-caring entity, public or private, the tribunal may consider a deviation from the presumptive child support order if the deviation will assist in accomplishing a permanency plan or foster care plan for the child that has a goal of returning the child to the parent(s), and the parent's need to establish an adequate household or to otherwise adequately prepare herself or himself for the return of the child clearly justifies a deviation for this purpose.~~
  - ~~(c) If parenting time-related travel expenses are substantial due to the distance between the parents, the tribunal may order the allocation of such costs by deviation from the PCSO, taking into consideration the circumstances of the respective parties as well as which parent moved and the reason that the move was made.~~
  - [(b) In cases where the child is in the legal custody of the Department of Children's Services, the child protection or foster care agency of another state or territory, or any other child-caring entity, public or private, the tribunal may consider a deviation from

(Rule 1240-2-4-.07, continued)

the Presumptive Child Support Order (PCSO) if the deviation will assist in accomplishing a permanency plan or foster care plan for the child that has a goal of returning the child to the parent(s), and the parent's need to establish an adequate household or to otherwise adequately prepare herself or himself for the return of the child clearly justifies a deviation for this purpose. At the tribunal's discretion, an initial order may be established by the Department of Children's Services without the necessity of a Worksheet.

- (c) If parenting time-related travel expenses are substantial due to the distance between the parents, the tribunal may order the allocation of such costs by deviation from the PCSO, taking into consideration the circumstances of the respective parties as well as which parent moved and the reason that the move was made.]
- (d) Extraordinary Expenses.

The Schedule includes average child rearing expenditures for families based upon the parents' monthly combined income and number of children. Extraordinary expenses are in excess of these average amounts and are highly variable among families. For these reasons, extraordinary expenses are considered on a case-by-case basis in the calculation of support and are added to the basic support award as a deviation so that the actual amount of the expense is considered in the calculation of the final child support order for only those families actually incurring the expense. These expenses may be, but are not required to be, divided between the parents according to each parent's PI.

1. Extraordinary Educational Expenses.

- (i) Extraordinary educational expenses may be added to the presumptive child support as a deviation. Extraordinary educational expenses include, but are not limited to, tuition, room and board, lab fees, books, fees, and other reasonable and necessary expenses associated with special needs education or private elementary and/or secondary schooling that are appropriate to the parents' financial abilities and to the lifestyle of the child if the parents and child were living together.
- (ii) In determining the amount of deviation for extraordinary educational expenses, scholarships, grants, stipends, and other cost-reducing programs received by or on behalf of the child shall be considered.
- (iii) If a deviation is allowed for extraordinary educational expenses, a monthly average of these expenses shall be based on evidence of prior or anticipated expenses and entered on the Worksheet in the deviation section.

2. Special Expenses.

- (i) Special expenses incurred for child rearing which can be quantified may be added to the child support obligation as a deviation from the PCSO. Such expenses include, but are not limited to, summer camp, music or art lessons, travel, school-sponsored extra-curricular activities, such as band, clubs, and athletics, and other activities intended to enhance the athletic, social or cultural development of a child, but that are not otherwise required to be used in calculating the child support order as are health insurance premiums and work-related childcare costs.

(Rule 1240-2-4-.07, continued)

- (ii) A portion of the basic child support obligation is intended to cover average amounts of these special expenses incurred in the rearing of a child. When this category of expenses exceeds seven percent (7%) of the monthly BCSO, then the tribunal shall consider additional amounts of support as a deviation to cover the full amount of these special expenses.
- (e) In instances of extreme economic hardship, such as in cases involving extraordinary medical needs not covered by insurance or other extraordinary special needs for the child of a parent's current family [child living in the home with the parent for whom the parent is legally responsible], deviation from the Guidelines may be considered when the tribunal finds the deviation supported by the criteria of 1240-2-4-.07(1). In such cases, the tribunal must consider all resources available for meeting such needs, including those available from agencies and other adults.
- ~~(f) Deviation from Guidelines Amount for Low-Income Persons:~~
- ~~1. The tribunal may consider the low income of the primary residential parent or the alternate residential parent as a basis for deviation from the guideline amounts.~~
  - ~~2. The tribunal shall consider all non-exempt sources of income available to each party and all expenses actually paid by each party.~~
  - ~~3. The party seeking a low-income deviation must present to the tribunal documentation of all his/her income and expenses or provide sworn statements of all his/her income and expenses in support of the requested deviation.~~
  - ~~4. The tribunal shall make a written finding in its order that the deviation from the Guidelines based upon the low income and reasonable expenses of a party is clearly justified and shall make the necessary written findings pursuant to paragraph (1) above.~~
  - ~~5. For purposes of this subparagraph, a parent is considered to be a low-income person if his/her annual gross income is at or below the federal poverty level for a single person as established in 1240-2-4-.05(2)(d).~~
  - ~~6. Under no circumstance shall the tribunal fail to order a basic support obligation if the parent has non-exempt gross income. See Rule 1240-2-4-.03(6)(a)4.~~
- [(f) Unless all gross income is exempt, the tribunal must order a basic support obligation. See Rule 1240-02-04-.03(4)(a)4.]
- (g) Statutory Limitation on the Child Support Obligation – Rebuttal and Deviation.
1. When the presumptive child support order exceeds the amount found by multiplying a net income of ten thousand dollars (\$10,000) by the percentages set out below, pursuant to Tennessee Code Annotated § 36-5-101(e)(1)(B), a PRP seeking support in excess of the amount provided by the applicable percentage must prove by a preponderance of the evidence that more than this amount is reasonably necessary to provide for the needs of the child.
- The percentages are:
- (i) One child = Twenty-one percent (21%), [or two thousand one hundred dollars (\$2100)];

(Rule 1240-2-4-.07, continued)

- (ii) Two children = Thirty-two percent (32%), [or three thousand two hundred dollars (\$3200)];
- (iii) Three children = Forty-one percent (41%), [or four thousand one hundred dollars (\$4100)];
- (iv) Four children = Forty-six percent (46%), [or four thousand six hundred dollars (\$4600)]; and
- (v) Five or more children = Fifty percent (50%), [or five thousand dollars (\$5000)]

2. Application of Statutory Threshold to Child Support Determination.

- (i) If the PCSO calculated under these rules exceeds the amount specified above for the number of children for whom support is being calculated, then the amount of the PCSO shall be limited to the amount specified above for the number of children for whom support is being calculated, absent the rebuttal provided for in part 1.
- (ii) If the PRP proves the need for support in excess of the amount provided for in part 1, the tribunal shall add an appropriate amount to the PCSO of the ARP as a deviation.
- (iii) The court may require that sums paid pursuant to this subparagraph be placed in an educational or other trust fund for the benefit of the child.

~~(h) — Hardship Provisions Due to Modification of Order.~~

- ~~1. — Any time following the effective date of these Rules when a tribunal is considering modification of an order initially established under Tennessee's Flat Percentage Guidelines, and the tribunal finds a significant variance between the amount of the existing child support order and the amount of the proposed child support order calculated under this chapter, which change results from the application of the guidelines rather than from the change in the income and/or circumstances of the parties, then the tribunal may modify the current child support order up to the full amount of the variance or may apply a hardship deviation as described below in parts 2-4.~~
- ~~2. — For orders being modified as described in part 1 immediately above, the tribunal may deviate from the amount of child support required by the Income Shares Model and limit the amount of the upward or downward modification if:~~
  - ~~(i) — A deviation is supported in writing in the order by the criteria in 1240-2-4-.07(1); and~~
  - ~~(ii) — The tribunal finds that the change in the amount of child support caused by the transition to Income Shares will create a hardship either to:~~
    - ~~(I) — The recipient of the support who will have a substantial decrease of previously ordered support; or~~
    - ~~(II) — The payor who will have a substantial increase of previously ordered support.~~

(Rule 1240-2-4-.07, continued)

3. ~~It is not the intent or purpose of these guidelines to reduce the lifestyle the child(ren) enjoyed under the previous guidelines merely by the application of the income shares guidelines. Rather, the intent is to appropriately allocate the financial responsibilities of the parties with regard to the child(ren) while considering the status quo of the parties. Accordingly, the tribunal shall consider the following factors in determining whether a hardship will be created by the application of the income shares guidelines:~~
- ~~(i) Whether the significant variance is created solely by the application of the income shares guidelines or whether it also includes a significant change in the income of either or both of the parents~~
  - ~~(ii) Whether the parent has incurred fixed expenses based on the amount of support previously ordered, including but not limited to mortgage payments, automobile payments, and other long-term financial obligations;~~
  - ~~(iii) The standard of living the child(ren) enjoyed as a result of receiving the current level of support. In making this determination the tribunal shall consider the amount actually incurred by the PRP for basic expenses comparing the actual basic expenses incurred with the BCSO set forth by the guidelines. If the tribunal finds that the actual amount incurred for basic expenses exceeds the presumed BCSO and that the actual amount incurred is reasonable considering the relative incomes of the parents the tribunal may use the actual expenses as the BCSO.~~
  - ~~(iv) If the child(ren) incurred Extraordinary Educational Expenses or Special Expenses that were previously included in the support amount determined under the prior guidelines, the tribunal may consider those expenses if the application of the guidelines does not adequately take said expenses into account. The tribunal may also make an equitable division of these expenses so as to maintain the status quo with regard to the financial obligations of each party.~~
  - ~~(v) If the current order for support includes provisions for allocating the cost of medical and / or dental insurance and uninsured medical expenses, the tribunal may compare the allocation of said expenses under the application of the guidelines with the allocation under the order.~~
4. ~~The hardship deviation, if allowed, cannot be utilized in a later action to create a significant variance.~~
5. ~~No modification under this hardship provision shall be made to the extent that it would seriously impair the ability of the PRP in the case under consideration to maintain minimally adequate housing, food, and clothing for the children being supported by the order and/or to provide other basic necessities, as determined by the court.~~

**Authority:** T.C.A. §§ 4-5-202, 36-5-101(e), 71-1-105(a)(12) and (15), 71-1-132, 42 U.S.C. § 667; and 45 C.F.R. § 302.56. **Administrative History:** Original rule filed November 4, 2004; effective January 18, 2005. Repeal and new rule filed April 6, 2006; effective June 20, 2006. Stay of effective date of rule filed April 19, 2006; new effective date of rule June 26, 2006.

#### 1240-02-04-.08 WORKSHEETS AND INSTRUCTIONS.

- (1) General Instructions.

(Rule 1240-2-4-.08, continued)

- (a) The Child Support Worksheet and Credit Worksheet provided by the Department are mandatory for use in calculating the appropriate child support obligation under these Guidelines. The completed Worksheet(s) must be maintained as part of the official record either by filing them as exhibits in the tribunal's file or as attachments to the order [except in cases where the child is in state custody. See 1240-02-04-.03(4)(a)6].
  - (b) The Child Support Worksheet, Credit Worksheet, Instructions for Worksheets, and Child Support Schedule are part of the Tennessee Child Support Guidelines [and can be found on the Department's website]. In the event that the language contained in the Worksheets, Instructions or CS Schedule conflicts in any way with the language of subchapters 1240-02-04-.01 – .07, the language of those subchapters is controlling.
  - (c) The designations in the Instructions correspond to the designations on the Worksheet, including parts and line numbers, to allow simple correlation of the Instructions to the Worksheets. The headings for each part are only for ease of identification of the various parts on the Worksheet.
  - (d) Use of Columns on the Worksheets.
    - 1. Column A shall be used for the ~~Mother's~~ [Mother's or Parent 1's] information.
    - 2. Column B shall be used for the ~~Father's~~ [Father's or Parent 2's] information.
    - 3. Column C shall be used for the non-parent Caretaker's information.
- (2) Instructions for Child Support Worksheet.
- (a) Part I – Identification.
    - 1. In Part I of the Child Support Worksheet, enter the case specific information on the top section of the form: name of ~~mother~~ [Mother or Parent 1] and father [Father or Parent 2] (and/or non-parent caretaker where applicable), each parent designated as either PRP, ARP, or split (if split, both parents shall be designated as such), the docket number, court name, and TCSES case number (if applicable), name and date of birth of each child for whom support is being determined, and the number of days each child spends with each parent and/or non-parent caretaker.
    - 2. If the parents spend an equal amount of time with any child, enter one hundred eighty-two point five (182.5) days for each parent with that child.
    - 3. If calculating support owed by both parents to a non-parent caretaker, enter both TCSES numbers and both docket numbers on the same line, separated by a forward slash (/).
  - (b) Part II – Adjusted Gross Income.
    - 1. Monthly Gross Income. [Rule 1240-2-4-.04]
      - (i) Line 1 – Enter each parent's monthly gross income in the appropriate column. Do not include child support payments received on behalf of other children or benefits received from means-tested public assistance programs.

(Rule 1240-2-4-.08, continued)

(ii) Line 1a – Social Security Benefit for Child – Enter in the parent’s column the amount of any social security benefit paid to a child on the account of that parent.

(iii) Line 1b – Self-Employment Tax. [Rule 1240-2-4-.04(4)]

Enter on Line 1b of this Worksheet the average monthly amount of any self-employment tax paid by the parent.

(iv) Line 1c – To the amount on Line 1, add the amount on Line 1a and subtract the amount on Line 1b. Enter the result on Line 1c.

2. Line 1d / 1e – Adjustments Against Gross Income for Qualified Other Children. [Rule 1240-2-4-.04(5)]

Adjustments shall be considered for either parent for qualified other children who are receiving support from the parent. A parent seeking credit for qualified other children must enter all pertinent information on the Credit Worksheet in order to calculate the correct amount of the credit. Instructions for the Credit Worksheet are below in Rule 1240-2-4-.08(3)].

(i) Line 1d - For qualified other children living in the home of the parent fifty percent (50%) or more of the time, enter in the appropriate column on Line 1d the amount of the credit from Line 5 of the Credit Worksheet.

(ii) Line 1e - For qualified other children living in the home of the parent less than fifty percent (50%) of the time, enter in the appropriate column on Line 1e the amount of the credit from Line 10b of the Credit Worksheet.

3. Line 2 – Adjusted Gross Income (AGI). [Rule 1240-2-4-.02(1)].

Subtract any amounts on Lines 1d and 1e from Line 1c. Enter the remainder as each individual parent’s AGI in the appropriate column of Line 2.

4. Line 2a – Combined Adjusted Gross Income (AGI). [Rule 1240-2-4-.02(1)].

Add together the amounts on Line 2, Columns A and B, to arrive at the combined AGI and enter this amount in the space provided on Line 2a.

5. Line 3 – Percentage Share of Income (PI). [Rule 1240-2-4-.02(19) and .04]

Calculate the individual parent’s percentage share (PI) of the combined Adjusted Gross Income by dividing each parent’s Line 2 by the combined figure on Line 2a. Enter the resulting percentages on Line 3 in Column A and B as appropriate. The sum of Line 3, Column A and Column B, must equal one hundred percent (100%).

(i) For this purpose, standard rounding rules apply.

(ii) If application of standard rounding rules should cause the total of both parent’s PI to exceed 100%, the lower PI should be rounded down and the higher PI should be rounded up.

[6. Line 3a – Means-Tested Income. [Rule 1240-02-04-.04(3)(c)2]

(Rule 1240-2-4-.08, continued)

Means-tested income is a payment available to people who can demonstrate that their income is below specified limits, such as Supplemental Security Income (SSI) received under Title XVI of the Social Security Act.

- (i) A 'Y' for Yes should be placed on the worksheet if the parent has no other source of income other than means-tested income.
  - (ii) Support should be set at zero if the only source of income for the obligor is means-tested.]
- (c) Part III – Each Parent’s Share of the BCSO.
1. Line 4 – Basic Child Support Obligation (BCSO). [Rule 1240-2-4-.02(5), .04(6) and .09]
    - (i) Standard Parenting.
      - (I) Determine the “Basic Child Support Obligation” from the CS Schedule based upon the combined Adjusted Gross Income of the parents from Line 2a and the number of children for whom support is being determined. Enter the amount on Line 4 in the column of the PRP.
      - (II) An amount will be entered in only one column on Line 4.
    - (ii) Split Parenting.
      - (I) A BCSO shall be calculated for each parent based upon the combined Adjusted Gross Income of the parents from Line 2a and the number of children living more than 50% of the time in the household of that parent.
      - (II) An amount shall appear in each parent’s column on Line 4.
    - (iii) Fifty-fifty/Equal Parenting.
      - (I) Except as provided below in item (iii)(II) and subpart (iv), the Mother [Mother or Parent 1] assumes the role of PRP for all children in fifty-fifty/equal parenting situations for purposes of calculating the BCSO, therefore, the BCSO for these children shall be entered in the Mother’s [Mother’s or Parent 1’s] column.
      - ~~(II) When calculating support in a fifty-fifty/equal parenting situation in conjunction with a standard parenting situation, the BCSO for the child(ren) in the fifty-fifty/equal parenting situation will be assigned to the Father in situations where he is the PRP for all other children in the case under consideration.~~
      - [(II) When calculating support in a fifty-fifty/equal parenting situation in conjunction with a standard parenting situation, the BCSO for the child(ren) in the fifty-fifty/equal parenting situation will be assigned to the Father or Parent 2 in situations where the Father or Parent 2 is the PRP for all other children in the case under consideration.]
    - (iv) Non-parent Caretaker Situations.

(Rule 1240-2-4-.08, continued)

- (I) If only one parent is available, a BCSO shall be calculated based upon the Adjusted Gross Income of that parent.
  - (II) If both parents are available, a BCSO shall be calculated based upon the combined Adjusted Gross Income of both parents.
  - (III) The amount calculated pursuant to item (I) or (II) above shall be entered in the column of the non-parent caretaker on Line 4.
  - (v) When the combined Adjusted Gross Income falls between two amounts on the Schedule, round up to the next higher amount. Use the rounded-up number to determine the BCSO on the CS Schedule for the number of children for whom support is being determined. [Rule 1240-2-4-.04(6)(b)]
2. Line 4a – Share of BCSO Owed. [Rule 1240-2-4-.02(19), (22) and .04]
- (i) Standard Parenting.
    - (I) The ARP's share of the BCSO owed to the PRP shall be calculated by multiplying the BCSO in the column of the PRP on Line 4 by the ARP's PI from Line 3. The result shall be placed in the ARP's column on Line 4a. [However, if the obligor's adjusted gross income on Line 2 falls within the shaded area of the CS Schedule and is used in Part II of the worksheet, the BCSO is computed using only the obligor's income and shall not be multiplied.]
    - (II) No amount shall be calculated for the PRP. A zero (\$0.00) amount shall be entered in the PRP's column.
  - (ii) Split Parenting.
    - (I) Each parent's share of the BCSO entered on Line 4 in the column of the other parent shall be calculated by multiplying the BCSO by the parent's PI from Line 3.
      - I. Mother's [Mother's or Parent 1's] child support obligation for the children for whom the Father [Father or Parent 2] is the PRP is calculated by multiplying the BCSO entered in Father's [Father's or Parent 2's] column on Line 4 by the Mother's [Mother's or Parent 1's] PI from Line 3.
      - II. Father's [Father's or Parent 2's] child support obligation for the children for whom the Mother [Mother or Parent 1] is the PRP is calculated by multiplying the BCSO entered in Mother's [Mother's or Parent 1's] column on Line 4 by the Father's [Father's or Parent 2's] PI from Line 3.
    - (II) An amount shall be calculated for each parent and entered in the appropriate column on Line 4a.
  - (iii) Fifty-fifty/Equal Parenting.
    - (I) ~~When calculating support in fifty-fifty/equal parenting situations, whether alone or in conjunction with a split parenting situation, the~~

(Rule 1240-2-4-.08, continued)

~~Father will owe his pro-rata share of the BCSO entered for the Mother on Line 4. The amount shall be entered in the Father's column on Line 4a. See Rule 1240-2-4-.08(2)(c)1(iii) and (c)5(iv) for exception.~~

- [(I) When calculating support in fifty-fifty/equal parenting situations, whether alone or in conjunction with a split parenting situation, the Father or Parent 2 will owe a pro-rata share of the BCSO entered for the Mother or Parent 1 on Line 4. The amount shall be entered in the Father's or Parent 2's column on Line 4a. See Rule 1240-2-4-.08(2)(c)2(iii) and (c)5(iv) for exception.]
  - (II) When calculating support in a fifty-fifty/equal parenting situation in conjunction with a standard parenting situation, the ARP will owe his/her share of the BCSO entered for the PRP on Line 4. The amount shall be entered in the ARP's column on Line 4a.
- (iv) Non-parent Caretaker Situations.
- (I) If only one parent is available, one hundred percent (100%) of the BCSO entered on Line 4 shall be transferred to the parent's column on Line 4a.
  - (II) If both parents are available, each parent's pro-rata share of the BCSO from Line 4 shall be calculated and entered in the appropriate column on Line 4a.
- [3. Line 4b – BCSO if SSR is applied. [Rule 1240-02-04-.02(25)]
- (i) Standard Parenting.
    - (I) If the ARP's monthly AGI and the respective number of children for whom support is being ordered falls within the shaded area of the CS Schedule, enter that amount on ARP's Line 4b.
  - (ii) Split Parenting.
    - (I) If the Mother's or Parent 1's AGI only (Line 2) and the number of children for whom the Father or Parent 2 is the PRP falls within the shaded area of the CS Schedule, enter that amount on Line 4b.
    - (II) If the Father's or Parent 2's AGI only (Line 2) and the number of children for whom the Mother or Parent 1 is the PRP falls within the shaded area of the CS Schedule, enter that amount on Line 4b.
  - (iii) Fifty-fifty/Equal Parenting.
    - (I) If a parent's monthly AGI and the respective number of children for whom support is being ordered falls within the shaded area of the CS Schedule, enter that amount on Line 4b unless there is a split parenting situation.
    - (II) If there is fifty-fifty/equal parenting and split custody, use the split parenting BCSO adjusted for the SSR as defined in (ii) "Split Parenting" above, enter that amount on Line 4b.

(Rule 1240-2-4-.08, continued)

- (iv) Non-parent Caretaker Situations.
  - (I) If only one parent is available and the parent's monthly AGI and the respective number of children for whom support is being ordered falls within the shaded area of the CS Schedule, enter that amount on Line 4b.
  - (II) If both parents are available and either or both parent's monthly AGI and the respective number of children for whom support is being ordered falls within the shaded area of the CS Schedule, enter that amount on Line 4b.]

3[4]. Line 5 – Each Parent's Average Parenting Time. [Rule 1240-2-4-.04(7)(b)]

- (i) If there are multiple children in the case under consideration and each child has the same amount of parenting time, then this amount shall be used for purposes of calculating the parenting time adjustment.
- (ii) If there are multiple children in the case under consideration and each child has a different amount of parenting time, then an average amount of parenting time is used for calculating the parenting time adjustment.
  - (I) Calculate the average number of days of parenting time for the ARP by adding together the number of days for the children with whom the ARP spends one hundred eighty-two and one-half (182.5) days or less and dividing the total by the number of such children. For instance, if the ARP spends one hundred forty (140) days with Child A, one hundred fifty (150) days with Child B, and one hundred eighty-two and one-half (182.5) days with Child C, the ARP's average parenting time to be entered on Line 5 is one hundred fifty-eight (158) days [ $140 + 150 + 182.5 = 472.5 / 3 = 158$ ].
  - (II) For split parenting, a separate average will be calculated for each parent as an ARP, including for the Mother [Mother or Parent 1] only the days for the children with whom the Mother [Mother or Parent 1] spends less than one hundred eighty-two and one-half (182.5) days. For the Father [Father or Parent 2], all children with whom the Father [Father or Parent 2] spends one hundred eighty-two and one-half (182.5) days or less shall be included. For instance, if the Mother [Mother or Parent 1] spends two hundred (200) days with Child A, one hundred eighty-two and one-half (182.5) days with Child B, one hundred forty (140) days with Child C, and eighty-six (86) days with Child D, Mother's [Mother's or Parent 1's] average parenting time is one hundred thirteen (113) days [ $140 + 86 = 226 / 2 = 113$ ]. [See Rule 1240-2-4-.04(7)(b)]
- (iii) Enter the amount of each parent's parenting time, or average parenting time, in the appropriate column on Line 5.

4[5]. Line 6 – Parenting Time Adjustment [Parenting Time Adjustment. The following provisions apply to the parenting time adjustments which may be applicable to Lines 5a, 5b, 6a, or 6b depending on the ARP's parenting days]. [Rule 1240-2-4-.02(18) and .04(7)]

(Rule 1240-2-4-.08, continued)

- (i) Parenting time adjustments may be used to reduce or to increase the BCSO of the ARP.
  - (ii) In split parenting situations, the adjustment may be applicable to the BCSO of either or both parents in the role as ARP.
  - (iii) Except as otherwise provided in subpart (iv) below, when calculating a parenting time adjustment for a fifty-fifty/equal parenting situation, the Father [Father or Parent 2] assumes the role of the ARP for the child in the fifty-fifty/equal parenting situation and, as such, the adjustment for the child in the fifty-fifty/equal parenting situation shall be assigned to the Father [Father or Parent 2]. If calculating a parenting time adjustment for a fifty-fifty/equal parenting situation in conjunction with either a standard or split parenting situation, the BCSO allocated to the Mother's [Mother's or Parent 1's] household shall be pro-rated between the child in the fifty-fifty/equal situation and the child living primarily with the Mother [Mother or Parent 1], and two separate parenting time adjustments shall be calculated for the Father [Father or Parent 2]. For instance, if a \$1200 BCSO has been allocated to Mother's [Mother's or Parent 1's] household for 3 children, one of whom spends 182.5 days with each parent, \$400 would be allocated to the child in the fifty-fifty/equal parenting situation, and \$800 would be allocated to the other two children living primarily with the Mother [Mother or Parent 1]. A parenting time adjustment for 182.5 days would be calculated for a BCSO of \$400. A separate parenting time adjustment would be calculated for the remaining \$800 based upon the Father's [Father's or Parent 2's] average parenting time with the other two children.
  - (iv) When calculating a parenting time adjustment in a fifty-fifty/equal parenting situation in conjunction with a standard parenting situation in which the Father [Father or Parent 2] has primary custody of all children who are not in the fifty-fifty/equal parenting situation, the adjustment for the children in the fifty-fifty/equal parenting situation will, instead, be assigned to the Mother [Mother or Parent 1].
- [6. Line 5a – Parenting Time Adjustment (68 or less days). Complete Line 5a only if a parent has the child(ren) for 68 or less days; otherwise leave Line 5a blank.
- (i) Calculating Increase for Lack of Parenting Time.
    - (I) The ARP's child support obligation may be increased for the lack of the ARP's parenting time. This amount is calculated by using the following formula:
      - I. Subtract number of days (Line 5) from 69 and divide the result by 365
      - II. Next, multiply the result above by the lower BCSO amount from Line 4a or Line 4b.
      - III. Enter the results on Line 5a.
        - A. For standard parenting or fifty-fifty/equal parenting, enter in ARP parent column on Line 5a.

(Rule 1240-2-4-.08, continued)

- B. For non-parent caretaker situations, enter in both Mother or Parent 1 and Father or Parent 2 columns on Line 5a.
  - C. For split parenting, enter in both Mother or Parent 1 and Father or Parent 2 columns on Line 5a.
- (II) For example, when the combined gross income (Line 2a) is \$8,150, the ARP's parenting days are 65 (Line 5) and the Share of BCSO is \$600 (Line 4a).
- I.  $(69 \text{ days} - 65 \text{ days}) / 365 = .010958904 \times \$600 = \$6.58$
  - II. \$6.58 would be entered on Line 5a for this example.
7. Line 5b – Adjusted BCSO (68 or less days). Complete Line 5b only if a parent has the child(ren) for 68 or less days; otherwise leave Line 5b blank.
- (i) Take the lower BCSO from Line 4a or 4b and add Line 5a to this amount. Enter the calculated amount on Line 5b.
    - (I) For standard parenting or fifty-fifty/equal parenting, enter in ARP parent column on Line 5b.
    - (II) For non-parent caretaker situations, enter in both Mother or Parent 1 and Father or Parent 2 columns on Line 5b.
    - (III) For split parenting, enter in both Mother or Parent 1 and Father or Parent 2 columns on Line 5b.
8. Line 6a – Parenting Time Adjustment (92 or more days). Complete Line 6a only if a parent has the child(ren) for 92 or more days; otherwise leave Line 6a blank.
- (i) Calculation of the Parenting Time Credit.
    - (I) The ARP's child support obligation may be decreased for additional parenting time. This amount is calculated by using the following formula:
      - I. Multiply .0109589 by Line 5 (Avg Days with Children) and subtract 1.
      - II. Next, take the result from above and multiply that amount by Line 4 (BCSO for PRP).
      - III. Lastly, multiply the result from above by Line 3 (PRP's PI%) and enter on Line 6a.
    - (II) For example, when the combined gross income (Line 2a) is \$8,150, the ARP's parenting days are 145 (Line 5), the BCSO is \$1000 (Line 4) and the Mother or Parent 1's Percentage of Income (Line 3) is 40%
      - I.  $(.0109589 \times 145) - 1 = 0.5890405 \times \$1000 \times .40 \times = \$235.62$
      - II. \$235.62 would be entered on Line 6a for this example.

(Rule 1240-2-4-.08, continued)

9. Line 6b – Adjusted BCSO (92 or more days). Complete Line 6b only if a parent has the child(ren) for 92 or more days; otherwise leave Line 6b blank.
    - (i) The amount calculated on Line 6a is used to decrease the BCSO.
    - (ii) Subtract the amount on Line 6a from the amount on Line 4a. This amount must be entered on to Line 6b.
      - (I) For standard parenting or fifty-fifty/equal parenting, enter in ARP parent column on Line 6b.
      - (II) For non-parent caretaker situations, enter in both Mother or Parent 1 and Father or Parent 2 columns on Line 6b.
      - (III) For split parenting, enter in both Mother or Parent 1 and Father or Parent 2 columns on Line 6b.
    - (iii) If the difference between the ARP's Line 4a and the ARP's Line 6a is positive, it is placed on the ARP's Line 6b. If the difference is negative, it is placed on the PRP's Line 6b.
  10. Line 7 – Calculated BCSO.
    - (i) Parenting Time between 69 to 91 days.

The calculated BCSO is the lower of the ARP's Line 4a and the ARP's Line 4b.
    - (ii) Parenting Time of 68 days or less.

The calculated BCSO is the amount shown on Line 5b.
    - (iii) Parenting Time of 92 or more days.

The calculated BCSO is the lower amount shown on Line 4b and that parent's Line 6b.
    - (iv) Split Parenting.

The calculated BCSO is the lower of the amount shown on Line 6b and that parent's Line 4b.
    - (v) Any negative amount in a parent's column resulting from the calculation on Line 6b shall be entered on Line 7 as a positive amount in the column of the other parent.]
- (d) Part IV – Adjustments for Additional Expenses. [Rule 1240-2-4-.04(8)]
1. General Instructions.
    - (i) This Part includes only health insurance premiums, recurring uninsured medical expenses, and work-related childcare expenses.

(Rule 1240-2-4-.08, continued)

- (ii) If expenses are not incurred regularly, a monthly amount shall be calculated by averaging the expense over a twelve (12) month period.
- (iii) Only amounts actually paid are included in the calculation. Payments that are made by a parent's employer, but not deducted from the parent's wages, shall not be included.
- (iv) Only the portion of the health insurance premium actually attributable to the children for whom support is being determined and actually paid by the parent is included. If the actual amount of the health insurance premium that is attributable to the child who is the subject of the current action for support is not available or cannot be verified, the total cost of the premium shall be divided by the number of persons covered by the policy to determine a per person cost. This amount is then multiplied by the number of children who are the subject of this action and are covered by the policy.

$$\frac{\$ \text{Total Premium}}{\text{No. of Persons Covered by Policy}} = \$ \text{Per Person Cost} \times \frac{\text{No. of Children Subject to Order}}{\text{Child's Portion of Premium}} = \text{Child's Portion of Premium}$$

- (v) Additional expenses of a non-parent caretaker shall be included in calculating the amount of these expenses.
2. Line 8a – Children's Portion of Health Insurance Premium. [Rule 1240-2-4-.04(8)(b)]

Enter on Line 8a in the column of the parent, or non-parent caretaker, responsible for payment the amount that is, or will be, paid by a parent for health insurance for the children for whom support is being determined.

3. Line 8b – Recurring Uninsured Medical Expenses. [Rule 1240-2-4-.04(8)(d)]
- (i) If uninsured medical expenses are routinely incurred so that a specific monthly amount can be reasonably established, enter that amount on Line 8b in the column of the parent, or non-parent caretaker, responsible for payment. These known expenses shall be divided between the parents pro rata.
  - (ii) If uninsured medical expenses are not routinely incurred so that a specific monthly amount cannot be reasonably established, no amount should be entered on Line 8b. Every child support order shall specify that these unknown expenses shall be paid by the parents as they are incurred, to be divided pro-rata unless otherwise ordered by the tribunal.

4. Line 8c – Work-related Childcare Expenses. [Rule 1240-2-4-.04(8)(c)]

On Line 8c, enter in the column of the parent, or non-parent caretaker, responsible for paying the amount of any work-related childcare expense for the child for whom support is being determined.

5. Line 9 – Total Additional Expenses. [Rule 1240-2-4-.04(8)]

Total the amounts on Lines 8a, 8b, and 8c, Columns A, B, and C and enter the results for each column on Line 9, representing the total amount of additional expenses paid by each parent and/or non-parent caretaker.

(Rule 1240-2-4-.08, continued)

## 6. Line 10 – Each Parent’s Share of Additional Expenses. [Rule 1240-2-4-.04(8)]

## (i) Two Parents.

Calculate each parent’s share of the total additional expenses paid by the other parent by multiplying each parent’s percentage of income (PI) from Line 3 times the other parent’s total additional expenses from Line 9. Enter the results on Line 10. [Line 3, Column A, times Line 9, Column B for the Mother’s [Mother’s or Parent 1’s] share of additional expense paid by Father [Father or Parent 2]; Line 3, Column B times Line 9, Column A for the Father’s [Father’s or Parent 2’s] share of additional expenses paid by Mother [Mother or Parent 1].]

## (ii) Two Parents With a Non-Parent Caretaker on Same Docket.

## (I) Expenses Paid by Non-parent Caretaker.

Calculate each parent’s share of the total additional expenses paid by the non-parent caretaker by multiplying each parent’s percentage of income (PI) from Line 3 times the total additional expenses of the non-parent caretaker from Line 9. [Line 3, Column A, times Line 9, Column C for the Mother’s [Mother’s or Parent 1’s] share of additional expenses paid by the non-parent caretaker; Line 3, Column B times Line 9, Column C for the Father’s [Father’s or Parent 2’s] share of additional expenses paid by the non-parent caretaker.]

## (II) Expenses Paid by a Parent.

Calculate each parent’s share of the total additional expenses paid by the other parent as indicated above in subpart (i).

(III) Subtract the larger obligation calculated in subpart (ii)(II) above from the smaller. In the column with the larger amount, add the difference to any amount calculated in subpart (ii)(I) above. In the column with the smaller amount, subtract the difference to any amount calculated in subpart (ii)(I) above. Enter results on Line 10 in Columns A and B.

## (iii) One Parent With a Non-parent Caretaker.

The full amount of any additional expenses paid by a non-parent caretaker is owed by the parent and shall be placed in the parent’s column on Line 10.

## 7. Line 11 – Adjusted Support Obligation – BCSO Plus Parent’s Share of Additional Expenses. [Rule 1240-2-4-.02(2) &amp; .04(9)]

To calculate each parent’s total obligation to the other parent for the parent’s pro-rata share of the BCSO and the parent’s pro-rata share of additional expenses paid by the other parent, add the amount on Line 7 in each column to the amount on Line 10 in each column. The result is each parent’s adjusted support obligation and shall be entered on Line 11.

## (e) Part V – Presumptive Child Support Order / Modification of Current Support.

(Rule 1240-2-4-.08, continued)

1. Line 12 – Presumptive Child Support Order. [Rule 1240-2-4-.02(20) & .04(11)]
  - (i) Except as indicated below in subpart (ii), the PCSO to be entered on Line 12 is the difference between the larger ASO on Line 11 and the smaller ASO on Line 11. The parent with the larger ASO on Line 11 is the obligor, and the PCSO shall be entered in that parent's column on Line 12.
  - (ii) In non-parent caretaker situations, the amount on Line 11, in either or both columns, represents an amount of support owed by that parent to the non-parent caretaker. The amount from either or both columns shall be entered in total on Line 12 as the PCSO for that parent.
  - (iii) Statutory Threshold.
    - (I) Standard Parenting Situations.

If the amount of the PCSO exceeds the amount specified in 1240-2-4-.07(2)(g)1 for the number of children for whom support is being calculated, then the amount of the PCSO entered on Line 12 shall be limited to the amount specified in 1240-2-4-.07(2)(g)1 for the number of children for whom support is being calculated. An opportunity to rebut this limitation is provided in 1240-2-4-.07(2)(g)2.
    - (II) Split Parenting Situations.

If the ASO on Line 11 for either parent exceeds the amount specified in 1240-2-4-.07(2)(g)1 for the number of children for whom support is being calculated, then that amount shall be limited to the amount specified in 1240-2-4-.07(2)(g)1 for the number of children for whom support is being calculated prior to making the calculation required in subpart (i) above. An opportunity to rebut this limitation is provided in 1240-2-4-.07(2)(g).
2. Line 13a – For Modification of Current Child Support Order. [Rule 1240-2-4-.05]
  - (i) To determine if a modification is possible, first calculate an order on Lines 1-12 of the Child Support Worksheet using current evidence of the parties' circumstances.
  - ~~(ii) Indicate whether the significant variance percentage is fifteen percent (15% or .15) (for most cases) or seven and one-half percent (7.5% or .075) (for low income cases).~~
  - ~~(iii)(ii) Indicate whether the order to be modified is an order most recently established or modified under the flat percentage guidelines or under the income shares guidelines.~~
  - (iv)(iii) On Line 13a, enter the amount of the current child support order in the case under consideration. If the order is calculated under the flat percentage guidelines, use the current support amount. If the order is calculated under income shares, use the presumptive child support order (PCSO).
3. Line 13b – Amount Required for Variance to Exist.

(Rule 1240-2-4-.08, continued)

To determine the amount needed to comply with the significant variance requirement, multiply the amount from Line 13a by the percentage required in part 2(ii) above. Enter the result on Line 13b.

4. Line 13c – Significant Variance Amount. [Rule 1240-2-4-.05]

- (i) For flat percentage orders, from the column of the obligor parent, subtract the lesser of Lines 4a and 13a from the greater and enter the result on Line 13c. If Line 13c is equal to or greater than Line 13b, the significant variance requirement has been met and the child support obligation may be modified to the presumptive amount entered on Line 12.
- (ii) For income shares orders, subtract the lesser of Lines 12 and 13a from the greater and enter result on Line 13c. If Line 13c is equal to or greater than Line 13b, the significant variance requirement has been met and the child support obligation may be modified to the presumptive amount entered on Line 12.

~~(f) Part VI – Deviations and Final Child Support Obligation.~~

~~1. Line 14 – Deviations. [Rule 1240-2-4-.07]~~

- ~~(i) Specify the reason for the deviation and enter on Line 14 the amount that will be added to or subtracted from the Presumptive Support Order.~~
- ~~(ii) The order must include written findings supporting the deviation as outlined in 1240-2-4-.07(1).~~

~~2. Line 15 – Final Child Support Order. [Rule 1240-2-4-.02(13)]~~

~~To the Presumptive Support Order amount on Line 12, add/subtract as appropriate any amount on Line 14 and enter the result on Line 15 as the Final Child Support Order.~~

~~3. Line 16 – Social Security Benefits.~~

~~If a child to be supported under the order receives social security benefits on the account of the parent who will pay support under this order, and such benefit was added to that parent's gross income on Line 1a according to rule 1240-2-4-.04(3)(a)5, then enter the amount of that child's benefit entered on Line 1a and subtract that amount from that parent's obligation. The parent is relieved from directly making that portion of the obligation so long as the benefit is being paid by social security.~~

~~4. The completed Worksheet must be maintained as part of the official record either by filing it as an exhibit in the tribunal's file or as an attachment to the order. Payments of child support shall be ordered to be paid in a specific dollar amount on a weekly, biweekly (every two weeks), semi-monthly (twice a month), or monthly basis.~~

[(f) Part VI – Deviations and Final Child Support Obligation.

1. Line 14 – Deviations. [Rule 1240-2-4-.07]

(Rule 1240-2-4-.08, continued)

- (i) Specify the reason for the deviation and enter on Line 14 the amount that will be added to or subtracted from the Presumptive Support Order.
  - (ii) The order must include written findings supporting the deviation as outlined in 1240-2-4-.07(1).
2. Line 15 – Adjusted for Minimum Order (Y/N). [Rule 1240-2-4-.04(12) and Rule 1240-2-4-.05(6)]
- (i) ‘Y’ for Yes should be placed on the Worksheet if the minimum order should be applied. Once a ‘Y’ is placed on the Worksheet, the Final Child Support Order will be set at \$100.
  - (ii) ‘N’ for No should be placed on the Worksheet if the minimum order is not applied.
3. Line 16 – Final Child Support Order. [Rule 1240-2-4-.02(13)]
- To the Presumptive Support Order amount on Line 12, add/subtract as appropriate any amount on Line 14 and enter the result on Line 16 as the Final Child Support Order.
4. Line 17 – Social Security Benefits.
- If a child to be supported under the order receives social security benefits on the account of the parent who will pay support under this order, and such benefit was added to that parent’s gross income on Line 1a according to rule 1240-2-4-.04(3)(a)5, then enter the amount of that child’s benefit entered on Line 1a and subtract that amount from that parent’s obligation. The parent is relieved from directly making that portion of the obligation so long as the benefit is being paid by social security.
5. The completed Worksheet must be maintained as part of the official record either by filing it as an exhibit in the tribunal’s file or as an attachment to the order. Payments of child support shall be ordered to be paid in a specific dollar amount on a weekly, biweekly (every two weeks), semimonthly (twice a month), or monthly basis.]

## (3) Instructions for Credit Worksheet.

- (a) The Credit Worksheet is to be utilized to calculate the available credit against the parent’s gross income for qualified other children. The amount of any credit calculated on the Credit Worksheet shall be transferred to the appropriate line on the Child Support Worksheet.
- (b) Part I – Identification.  
  
In Part I of the Credit Worksheet, enter the case specific information: name of ~~mother~~ [Mother or Parent 1] and father [Father or Parent 2] (and/or non-parent caretaker where applicable), each parent designated as either PRP, ARP, or split (if split, both parents shall be designated as such), the docket number, court name, and TCSES case number (if applicable).
- (c) Part II – Calculation of Credit for Qualified Other Children.

(Rule 1240-2-4-.08, continued)

1. A child is qualified for the credit available in this Part II if the parent is legally responsible for the child's support, the parent is actually supporting the child, and the child is not before the tribunal to set, modify, or enforce support in the case immediately under consideration.

2. Line 1 – Applicable Gross Income from Child Support Worksheet. [Rule 1240-2-4-.04(3)]

From the Child Support Worksheet, subtract the amount on Line 1b from the amount on Line 1 and enter the result on Line 1 of the Credit Worksheet.

3. Line 2 – Identify Qualified Other Children Living 50% or More of the Time in the Home of the Parent Seeking the Credit. [Rule 1240-2-4-.04(5)]

In the spaces provided, enter the names and dates of birth of the qualified other children living fifty percent (50%) or more of the time in the home of the parent seeking the credit. Do not consider children for whom support is being calculated in the case for which credit is being considered, step-children, or other minors in the home that the parent has no legal obligation to support. If more space is needed, use the Additional Credit Worksheet promulgated by the Department.

4. Line 3 – Number of Qualified Other Children in the Parent's Home.

Enter on Line 3 of the Credit Worksheet the number of qualified other children from Line 2 living fifty percent (50%) or more of the time in the parent's home. If there are no qualified other children, skip to Line 6.

5. Line 4 – Calculate Theoretical Order.

- (i) Using the gross income of the parent from Line 1 and the number of qualified other children from Line 3, find the amount of child support on the CS Schedule that the parent would pay for the qualified other children living fifty percent (50%) or more of the time in the parent's home if a theoretical order were issued for those children. Enter this amount on Line 4 of the Credit Worksheet.

- (ii) If the amount of the theoretical order exceeds the amount specified in 1240-2-4-.07(2)(g)1 for the number of children for whom support is being calculated, then the amount of the theoretical order entered on Line 4 shall be limited to the amount specified in 1240-2-4-.07(2)(g)1 for the number of children for whom support is being calculated.

6. Line 5 – Calculate Credit Amount.

Multiply the theoretical order amount from Line 4 by seventy-five percent (75% or 0.75). Enter the result on Line 5 of the Credit Worksheet and on Line 1d of the Child Support Worksheet.

7. Line 6 – Identify Qualified Other Children Living Less Than 50% of the Time in the Home of the Parent Seeking the Adjustment. [Rule 1240-2-4-.04(5)]

In the spaces provided, enter the names and dates of birth of the qualified other children living in the parent's home less than fifty percent (50%) of the time. Do not consider children for whom support is being calculated in the case for which

(Rule 1240-2-4-.08, continued)

credit is being considered, step-children or other minors for whom the parent has no legal obligation. If more space is needed, attach an additional sheet to this Worksheet.

8. Line 7 – Number of Qualified Other Children Living in the Parent's Home Less Than 50% of the Time.

Enter on Line 7 the number of qualified other children from Line 6 who reside less than fifty percent (50%) of the time in the home of the parent claiming the credit.

9. Line 8 – Determine Actual Support. [Rule 1240-2-4-.04(5)(e)2(ii)]

Determine the dollar amount of documented monetary support actually provided by the parent to the caretaker, such as canceled checks or money orders, over the most recent twelve (12) month period, expressed as a monthly average. Documented monetary support can include evidence of payment of child support under another child support order. Determine the monthly average by dividing the annual amount of support provided by twelve (12). Enter the result on Line 8 of the Credit Worksheet.

10. Line 9 – Calculate Theoretical Order.

- (i) Using the income for this parent from Line 1 and the number of qualified other children from Line 7, use the CS Schedule to find the amount of child support the parent would pay for the qualified other children living in the parent's home less than fifty percent (50%) of the time if a theoretical order were issued for those children. Enter the amount on Line 9.
- (ii) If the amount of the theoretical order exceeds the amount specified in 1240-2-4-.07(2)(g)1 for the number of children for whom support is being calculated, then the amount of the theoretical order entered on Line 9 shall be limited to the amount specified in 1240-2-4-.07(2)(g)1 for the number of children for whom support is being calculated.

11. Lines 10a and 10b – Calculate Maximum Amount.

- (i) Line 10a – Multiply the theoretical order amount from Line 9 by seventy-five percent (75% or 0.75) and enter the result on Line 10a.
- (ii) Line 10b – Compare the results from Line 8 and Line 10a and enter the lesser amount for the credit on Line 10b of the Credit Worksheet and on Line 1e of the Child Support Worksheet. Do not exceed the lesser of the actual support or seventy-five percent (75%) of the theoretical order.

(Rule 1240-2-4-.08, continued)

(4) Child Support Worksheet.

State of Tennessee — Child Support Worksheet

**Part I. Identification**

Indicate the status of each parent or caretaker by placing an "X" in the appropriate column

	PRP	ARP	SPLIT
Name of Mother:			
Name of Father:			
Name of non-parent Caretaker:			
TCSES case #:			
Docket #:			
Court name:			

Name(s) of Child(ren)	Date of Birth	Days with Mother	Days with Father	Days with Caretaker

**Part II. Adjusted Gross Income**

	Mother / Column-A	Father / Column-B	Non-parent Caretaker / Column-C
1 Monthly Gross Income	\$	\$	
1a Federal benefit for child	+	+	
1b Self-employment tax paid	-	-	
1c Subtotal	\$	\$	
1d Credit for In-Home Children	-	-	
1e Credit for Not In-Home Children	-	-	
2 Adjusted Gross Income (AGI)	\$	\$	
2a Combined Adjusted Gross Income	\$		
3 Percentage Share of Income (PI)	%	%	

Use Credit Worksheet to calculate line items 1d and 1e.

**Part III. Parents' Share of BCSO**

4 BCSO allotted to primary parent's household	\$	\$	\$
4a Share of BCSO owed to primary parent	\$	\$	
5 ARP parent's average parenting time			
6 Parenting time adjustment	\$	\$	
7 Adjusted BCSO	\$	\$	

(Rule 1240-2-4-.08, continued)

State of Tennessee — Child Support Worksheet

Part IV. Additional Expenses

	Mother/ Column A	Father/ Column B	Non-parent Caretaker/ Column C
8a Children's portion of health insurance premium	\$	\$	\$
8b Recurring Uninsured Medical Expenses	\$	\$	\$
8c Work-related childcare	\$	\$	\$
9 Total expenses	\$	\$	\$
10 Share of additional expenses owed	\$	\$	
11 Adjusted Support Obligation (ASO)	\$	\$	

Part V. Presumptive Child Support / Modification of Current Support

Obligation Column			
12 Presumptive Child Support Order (PCSO)	\$	\$	
* Enter the difference between the greater and smaller numbers from Line 11, except in non-parent caretaker situations.			
Low Income? _____ (N = 15% Y = 7.5%)			
Current Order Flat % _____ (N / Y)			

Modification of Current Child Support Order

13a Current child support order amount for the obligor parent	\$	\$	
13b Amount required for significant variance to exist	\$	\$	
13c Actual variance between current order and PCSO / BCSO	\$	\$	

Part VI. Deviations and Final Child Support Order

Deviations must be substantiated by written findings in the Child Support Order

14 Deviations (Specify):	\$	\$	
_____			
_____			
_____			
15 Final Child Support Order (FCSO)	\$	\$	
16 FCSO adjusted for federal benefit, Line 1a, Obligor's column	\$	\$	

Comments, Calculations, or Rebuttals to Schedule

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Preparer's Use Only

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 Title: \_\_\_\_\_

(Rule 1240-2-4-.08, continued)

[(4) Child Support Worksheet.

State of Tennessee – Child Support Worksheet

**Part I. Identification**

Indicate the status of each parent or caretaker by placing an "X" in the appropriate column

Name of Mother or Parent 1:	PRP	ARP	SPLIT
Name of Father or Parent 2:			
Name of non-parent Caretaker:			
TCSES case #:			
Docket #:			
Court name:			

Name(s) of Child(ren)	Date of Birth	Days with Mother or Parent 1	Days with Father or Parent 2	Days with Caretaker

**Part II. Adjusted Gross Income**

Use Credit Worksheet to calculate line items 1d and 1e.

- 1 Monthly Gross Income
- 1a Federal benefit for child
- 1b Self-employment tax paid
- 1c Subtotal
- 1d Credit for In-Home Children
- 1e Credit for Not In Home Children
- 2 Adjusted Gross Income (AGI)
- 2a Combined Adjusted Gross Income
- 3 Percentage Share of Income (PI)
- 3a Means-tested Income only (Y/N)

	Mother or Parent 1 / Column A	Father or Parent 2 / Column B	Non-parent Caretaker / Column C
1	\$	\$	
1a	+	+	
1b	-	-	
1c	\$	\$	
1d	-	-	
1e	-	-	
2	\$	\$	
2a	\$	\$	
3	%	%	
3a			

**Part III. Parents' Share of BCSO**

- 4 BCSO allotted to primary parent's household
- 4a Share of BCSO owed to primary parent
- 4b BCSO if Self Support Reserve (SSR) is applied
- 5 ARP parent's average parenting time
- 5a Parenting time adjustment (68 or less days)
- 5b Adjusted BCSO (68 or less days)
- 6a Parenting time adjustment (92 or more days)
- 6b Adjusted BCSO (92 or more days)
- 7 Calculated BCSO

4	\$	\$	\$
4a	\$	\$	
4b	\$	\$	
5			
5a	\$	\$	
5b	\$	\$	
6a	\$	\$	
6b	\$	\$	
7	\$	\$	

(Rule 1240-2-4-.08, continued)

State of Tennessee – Child Support Worksheet

Part IV. Additional Expenses

	Mother or Parent 1 / Column A	Father or Parent 2 / Column B	Non-parent Caretaker / Column C
8a Children's portion of health insurance premium	\$	\$	\$
8b Recurring Uninsured Medical Expenses	\$	\$	\$
8c Work-related childcare	\$	\$	\$
9 Total expenses	\$	\$	\$
10 Share of additional expenses owed	\$	\$	
11 Adjusted Support Obligation (ASO)	\$	\$	

Part V. Presumptive Child Support / Modification of Current Support

		Obligation Column		
12	Presumptive Child Support Order (PCSO) * Enter the difference between the greater and smaller numbers from Line 11, except in non-parent caretaker situations.	\$	\$	
	Current Order Flat % _____ (N / Y)			
Modification of Current Child Support Order	13a Current child support order amount for the obligor parent	\$	\$	
	13b Amount required for significant variance to exist	\$	\$	
	13c Actual variance between current order and PCSO / BCSO	\$	\$	

Part VI. Deviations and Final Child Support Order

Deviations must be substantiated by written findings in the Child Support Order	14	Deviations (Specify):	\$	\$	
	15	Adjusted for minimum order (Y/N)			
	16	Final Child Support Order (FCSO)	\$	\$	
	17	FCSO adjusted for federal benefit, Line 1a, Obligor's column	\$	\$	

Comments, Calculations, or Rebuttals to Schedule

Preparer's Use Only

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 Title: \_\_\_\_\_

]

(Rule 1240-2-4-.08, continued)

(5) — Credit Worksheet

State of Tennessee — Credit Worksheet

Part I. Identification

		PRP	ARP	SPLI T
Indicate the status of each parent or caretaker by placing an "X" in the appropriate column	Name of Mother:			
	Name of Father:			
	Name of non-parent caretaker:			
	TCSES case #:			
	Docket #:			
	Court name:			

Part II. Other Children

		Column A	Column B
Parent Income Information	1	Applicable gross income from CS worksheet	
		\$	\$
In-Home Children	2	Below, list qualified children living in the parent's home (if none, skip to line 6):	
		Name(s) of Child(ren) for PRP	Date of Birth
		Name(s) of Child(ren) for ARP	Date of Birth
	3	Number of qualified children living in the parent's home	#
	4	Theoretical child support order (this parent's income on CS Schedule for number of children from line 3)	#
	5	75% of theoretical child support order from line 4	\$
			\$
Not-In-Home Children	6	Below, list qualified children not living in the parent's home:	
		Name(s) of Child(ren) for PRP	Date of Birth
		Name(s) of Child(ren) for ARP	Date of Birth
	7	Number of qualified children not living in the parent's home	#
	8	Average monthly amount of documented monetary support	\$
	9	Theoretical child support order (this parent's income on CS Schedule for number of children from line 7)	\$
	10	75% of theoretical child support order from line 9	\$
	a		\$
	10	Allowable credit for not-in-home children	\$
	b		\$

(Rule 1240-2-4-.08, continued)

[(5) Credit Worksheet.

State of Tennessee – Credit Worksheet

Part I. Identification		PRP	ARP	SPLIT
Indicate the status of each parent or caretaker by placing an "X" in the appropriate column	Name of Mother or Parent 1:			
	Name of Father or Parent 2:			
	Name of non-parent Caretaker:			
	TCSSES case #:			
	Docket #:			
	Court name:			

Part II. Other Children		Column A	Column B
Parent Income Information	1	Applicable gross income from CS worksheet	\$
In-Home Children	2	Below, list qualified children living in the parent's home (if none, skip to line 6):	
		Name(s) of Child(ren) for PRP	Date of Birth
		Name(s) of Child(ren) for ARP	Date of Birth
	3	Number of qualified children living in the parent's home	#
	4	Theoretical child support order (this parent's income on CS Schedule for number of children from line 3)	\$
	5	75% of theoretical child support order from line 4	\$
Not-In-Home Children	6	Below, list qualified children not living in the parent's home:	
		Name(s) of Child(ren) for PRP	Date of Birth
		Name(s) of Child(ren) for ARP	Date of Birth
	7	Number of qualified children not living in the parent's home	#
	8	Average monthly amount of documented monetary support	\$
	9	Theoretical child support order (this parent's income on CS Schedule for number of children from line 7)	\$
	10a	75% of theoretical child support order from line 9	\$
	10b	Allowable credit for not-in-home children	\$

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**Authority:** T.C.A. §§ 4-5-202, 36-5-101(a)(1), 36-5-101(e), 36-5-103(f), 71-1-105(a)(12), (15) and (16), and 71-1-132; 42 U.S.C. § 667; and 45 C.F.R. § 302.56 and 303.8. **Administrative History:** Original rule filed November 4, 2004; effective January 18, 2005. Emergency rules filed March 3, 2005; effective through August 15, 2005. Amendments filed June 1, 2005; effective August 15, 2005. Repeal and new rule filed April 6, 2006; effective June 20, 2006. Stay of effective date of rule filed April 19, 2006; new effective date of rule June 26, 2006. On July 10, 2008, the Government Operations Committee stayed amendments filed May 8, 2008; to be effective July 22, 2008; new effective date August 15, 2008.

~~1240-02-04-.09 CHILD SUPPORT SCHEDULE.~~

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
150.00	100	100	100	100	100
200.00	100	100	100	100	100
250.00	100	100	100	110	121
300.00	100	102	119	132	146
350.00	100	119	139	154	170
400.00	100	136	158	176	194
450.00	108	153	178	199	218
500.00	119	169	197	220	242
550.00	130	184	215	239	263
600.00	140	199	232	259	285
650.00	151	214	250	279	307
700.00	162	230	268	298	328
750.00	172	245	285	318	350
800.00	183	259	302	337	371
850.00	193	274	319	356	392
900.00	204	289	336	375	413
950.00	215	304	353	394	434
1000.00	225	319	371	413	454
1050.00	236	333	388	432	475
1100.00	246	348	404	450	495
1150.00	256	362	420	468	515
1200.00	266	375	436	486	535
1250.00	275	389	452	504	554
1300.00	285	403	468	522	574
1350.00	295	417	484	540	594
1400.00	305	431	500	558	613
1450.00	315	445	516	576	633
1500.00	325	459	532	593	653
1550.00	335	473	548	611	672
1600.00	345	487	564	629	692
1650.00	355	500	580	647	712
1700.00	365	514	596	665	731
1750.00	375	528	612	683	751
1800.00	384	542	628	701	771
1850.00	394	555	644	718	789

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule Of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
1900.00	403	568	657	733	806
1950.00	412	580	671	748	823
2000.00	421	592	685	764	840
2050.00	430	604	699	779	857
2100.00	439	616	713	795	874
2150.00	448	628	727	810	891
2200.00	457	641	741	826	908
2250.00	466	653	754	841	925
2300.00	475	665	768	857	942
2350.00	484	677	782	872	959
2400.00	493	689	796	887	976
2450.00	501	701	809	902	992
2500.00	510	712	821	916	1007
2550.00	518	724	834	930	1023
2600.00	527	735	847	945	1039
2650.00	536	747	860	959	1055
2700.00	544	758	873	973	1070
2750.00	553	770	886	987	1086
2800.00	561	781	898	1002	1102
2850.00	569	792	911	1015	1117
2900.00	577	802	922	1028	1130
2950.00	584	812	933	1040	1144
3000.00	592	822	945	1053	1159
3050.00	600	833	957	1067	1174
3100.00	608	844	970	1081	1190
3150.00	616	855	982	1095	1205
3200.00	624	866	995	1109	1220
3250.00	632	877	1007	1123	1236
3300.00	640	888	1020	1137	1251
3350.00	648	899	1032	1151	1266
3400.00	656	910	1045	1165	1282
3450.00	664	921	1058	1179	1297
3500.00	672	932	1070	1193	1312
3550.00	680	943	1083	1207	1328
3600.00	688	954	1095	1221	1343

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule Of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
3650.00	695	964	1106	1233	1356
3700.00	702	973	1116	1244	1368
3750.00	709	982	1126	1255	1381
3800.00	715	991	1136	1266	1393
3850.00	722	1000	1145	1277	1405
3900.00	729	1009	1155	1288	1417
3950.00	735	1018	1165	1299	1429
4000.00	742	1027	1175	1310	1441
4050.00	749	1036	1185	1322	1454
4100.00	756	1045	1195	1333	1466
4150.00	762	1054	1205	1344	1478
4200.00	769	1063	1215	1355	1490
4250.00	776	1072	1225	1366	1502
4300.00	779	1076	1228	1370	1507
4350.00	782	1079	1231	1372	1510
4400.00	785	1082	1233	1375	1512
4450.00	788	1085	1235	1377	1515
4500.00	791	1088	1238	1380	1518
4550.00	794	1091	1240	1383	1521
4600.00	797	1094	1242	1385	1524
4650.00	800	1097	1245	1388	1527
4700.00	803	1100	1247	1390	1529
4750.00	806	1104	1249	1393	1532
4800.00	809	1107	1252	1395	1535
4850.00	812	1110	1254	1398	1538
4900.00	815	1113	1256	1401	1541
4950.00	819	1117	1261	1406	1546
5000.00	823	1122	1266	1411	1552
5050.00	826	1126	1270	1417	1558
5100.00	830	1131	1275	1422	1564
5150.00	834	1135	1280	1427	1570
5200.00	838	1140	1285	1432	1576
5250.00	841	1145	1290	1438	1582
5300.00	845	1149	1294	1443	1587
5350.00	849	1154	1299	1448	1593
5400.00	853	1158	1304	1454	1599
5450.00	856	1163	1309	1459	1605

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule Of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
5500.00	860	1167	1313	1464	1611
5550.00	864	1172	1318	1470	1617
5600.00	868	1177	1324	1476	1623
5650.00	872	1182	1329	1482	1630
5700.00	876	1187	1334	1488	1636
5750.00	880	1192	1339	1493	1643
5800.00	884	1197	1345	1499	1649
5850.00	888	1201	1350	1505	1656
5900.00	892	1206	1355	1511	1662
5950.00	896	1211	1361	1517	1669
6000.00	900	1216	1366	1523	1675
6050.00	904	1221	1371	1528	1681
6100.00	907	1225	1376	1534	1687
6150.00	911	1230	1381	1540	1694
6200.00	915	1235	1386	1545	1700
6250.00	919	1239	1391	1551	1706
6300.00	923	1244	1396	1557	1712
6350.00	926	1249	1401	1562	1718
6400.00	930	1254	1406	1568	1725
6450.00	934	1258	1411	1573	1731
6500.00	938	1263	1416	1579	1737
6550.00	941	1267	1420	1583	1742
6600.00	942	1268	1421	1584	1743
6650.00	943	1269	1422	1585	1744
6700.00	944	1270	1423	1586	1745
6750.00	945	1271	1424	1587	1746
6800.00	946	1272	1424	1588	1747
6850.00	947	1273	1425	1589	1748
6900.00	948	1274	1426	1590	1749
6950.00	949	1275	1427	1591	1750
7000.00	950	1276	1428	1592	1751
7050.00	951	1277	1429	1593	1752
7100.00	952	1278	1430	1594	1753
7150.00	953	1279	1430	1595	1754
7200.00	954	1280	1431	1596	1755
7250.00	955	1281	1432	1597	1757
7300.00	956	1282	1433	1598	1758

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
7350.00	957	1283	1434	1599	1759
7400.00	958	1284	1435	1600	1760
7450.00	959	1285	1436	1601	1761
7500.00	960	1286	1437	1602	1762
7550.00	961	1288	1438	1603	1763
7600.00	962	1289	1439	1604	1765
7650.00	963	1290	1440	1605	1766
7700.00	964	1291	1441	1606	1767
7750.00	965	1292	1442	1607	1768
7800.00	967	1293	1442	1608	1769
7850.00	969	1297	1446	1613	1774
7900.00	974	1304	1454	1621	1783
7950.00	979	1310	1461	1629	1792
8000.00	984	1317	1469	1637	1801
8050.00	990	1324	1476	1646	1810
8100.00	995	1331	1483	1654	1819
8150.00	1000	1337	1491	1662	1829
8200.00	1005	1344	1498	1671	1838
8250.00	1010	1351	1506	1679	1847
8300.00	1015	1358	1513	1687	1856
8350.00	1020	1364	1521	1695	1865
8400.00	1025	1371	1528	1704	1874
8450.00	1030	1378	1535	1712	1883
8500.00	1035	1385	1543	1720	1892
8550.00	1040	1391	1550	1728	1901
8600.00	1045	1398	1558	1737	1910
8650.00	1050	1405	1565	1745	1920
8700.00	1055	1412	1572	1753	1929
8750.00	1060	1418	1580	1762	1938
8800.00	1065	1425	1587	1770	1947
8850.00	1070	1432	1595	1778	1956
8900.00	1075	1439	1602	1786	1965
8950.00	1080	1445	1610	1795	1974
9000.00	1085	1452	1617	1803	1983
9050.00	1090	1459	1624	1811	1992
9100.00	1094	1464	1629	1817	1998
9150.00	1098	1468	1634	1822	2004

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
9200.00	1101	1472	1639	1827	2010
9250.00	1105	1477	1643	1832	2016
9300.00	1108	1481	1648	1838	2021
9350.00	1112	1486	1653	1843	2027
9400.00	1115	1490	1657	1848	2033
9450.00	1119	1495	1662	1853	2038
9500.00	1122	1499	1667	1858	2044
9550.00	1126	1504	1671	1863	2050
9600.00	1129	1508	1676	1869	2055
9650.00	1133	1513	1681	1874	2061
9700.00	1136	1517	1685	1879	2067
9750.00	1140	1521	1690	1884	2073
9800.00	1143	1526	1694	1889	2078
9850.00	1147	1530	1699	1894	2084
9900.00	1150	1535	1704	1900	2090
9950.00	1154	1539	1708	1905	2095
10000.00	1158	1544	1713	1910	2101
10050.00	1161	1548	1718	1915	2107
10100.00	1165	1553	1722	1920	2112
10150.00	1168	1557	1727	1926	2118
10200.00	1172	1562	1732	1931	2124
10250.00	1175	1566	1736	1936	2130
10300.00	1179	1570	1741	1941	2135
10350.00	1182	1575	1746	1946	2141
10400.00	1186	1579	1750	1951	2147
10450.00	1189	1584	1755	1957	2152
10500.00	1193	1588	1759	1962	2158
10550.00	1196	1593	1764	1967	2164
10600.00	1200	1597	1769	1972	2169
10650.00	1203	1602	1773	1977	2175
10700.00	1207	1606	1778	1983	2181
10750.00	1210	1610	1783	1988	2187
10800.00	1214	1615	1787	1993	2192
10850.00	1217	1619	1792	1998	2198
10900.00	1221	1624	1797	2003	2204
10950.00	1224	1628	1801	2008	2209
11000.00	1227	1632	1805	2013	2214

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule Of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
11050.00	1230	1636	1809	2018	2219
11100.00	1233	1639	1814	2022	2225
11150.00	1236	1643	1818	2027	2230
11200.00	1239	1647	1822	2032	2235
11250.00	1242	1651	1826	2037	2240
11300.00	1245	1655	1831	2041	2245
11350.00	1248	1659	1835	2046	2251
11400.00	1251	1663	1839	2051	2256
11450.00	1254	1667	1844	2056	2261
11500.00	1257	1671	1848	2060	2266
11550.00	1260	1674	1852	2065	2272
11600.00	1263	1678	1856	2070	2277
11650.00	1266	1682	1861	2075	2282
11700.00	1269	1686	1865	2079	2287
11750.00	1272	1690	1869	2084	2292
11800.00	1275	1694	1873	2089	2298
11850.00	1278	1698	1878	2094	2303
11900.00	1281	1702	1882	2098	2308
11950.00	1284	1706	1886	2103	2313
12000.00	1287	1709	1890	2108	2319
12050.00	1289	1713	1895	2113	2324
12100.00	1292	1717	1899	2117	2329
12150.00	1295	1721	1903	2122	2334
12200.00	1298	1725	1907	2127	2340
12250.00	1301	1729	1912	2132	2345
12300.00	1304	1733	1916	2136	2350
12350.00	1307	1737	1920	2141	2355
12400.00	1310	1741	1925	2146	2360
12450.00	1313	1744	1929	2151	2366
12500.00	1316	1748	1933	2155	2371
12550.00	1319	1752	1937	2160	2376
12600.00	1322	1756	1942	2165	2381
12650.00	1325	1760	1946	2170	2387
12700.00	1328	1764	1950	2174	2391
12750.00	1331	1767	1954	2178	2396
12800.00	1334	1771	1958	2183	2401
12850.00	1336	1774	1962	2187	2406

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
<b>Monthly Combined Child Support Obligation</b>					
12900.00	1339	1778	1966	2192	2411
12950.00	1342	1782	1970	2196	2416
13000.00	1345	1785	1974	2201	2421
13050.00	1347	1789	1978	2205	2425
13100.00	1350	1793	1982	2209	2430
13150.00	1353	1796	1985	2214	2435
13200.00	1356	1800	1989	2218	2440
13250.00	1358	1803	1993	2223	2445
13300.00	1361	1807	1997	2227	2450
13350.00	1364	1811	2001	2231	2455
13400.00	1367	1814	2005	2236	2459
13450.00	1370	1818	2009	2240	2464
13500.00	1372	1821	2013	2245	2469
13550.00	1375	1825	2017	2249	2474
13600.00	1378	1829	2021	2254	2479
13650.00	1381	1832	2025	2258	2484
13700.00	1383	1836	2029	2262	2489
13750.00	1386	1839	2033	2267	2493
13800.00	1388	1842	2036	2270	2497
13850.00	1391	1845	2038	2273	2500
13900.00	1393	1848	2041	2276	2503
13950.00	1395	1850	2044	2279	2506
14000.00	1398	1853	2046	2282	2510
14050.00	1400	1856	2049	2285	2513
14100.00	1402	1858	2052	2288	2516
14150.00	1405	1861	2054	2291	2520
14200.00	1407	1864	2057	2294	2523
14250.00	1409	1867	2060	2297	2526
14300.00	1411	1869	2062	2300	2529
14350.00	1414	1872	2065	2303	2533
14400.00	1416	1875	2068	2306	2536
14450.00	1418	1877	2070	2309	2539
14500.00	1421	1880	2073	2312	2543
14550.00	1423	1883	2076	2315	2546
14600.00	1425	1885	2078	2317	2549
14650.00	1428	1888	2081	2320	2553
14700.00	1430	1891	2084	2323	2556

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule Of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
14750.00	1432	1894	2087	2326	2559
14800.00	1434	1896	2089	2329	2562
14850.00	1437	1899	2092	2332	2566
14900.00	1439	1902	2095	2335	2569
14950.00	1441	1904	2097	2338	2572
15000.00	1444	1907	2100	2341	2576
15050.00	1446	1910	2103	2344	2579
15100.00	1448	1913	2105	2347	2582
15150.00	1451	1915	2108	2350	2585
15200.00	1453	1918	2111	2353	2589
15250.00	1455	1921	2113	2356	2592
15300.00	1457	1923	2116	2359	2595
15350.00	1460	1926	2119	2362	2599
15400.00	1462	1929	2121	2365	2602
15450.00	1464	1932	2124	2368	2605
15500.00	1467	1934	2127	2371	2609
15550.00	1469	1937	2130	2374	2612
15600.00	1471	1940	2132	2377	2615
15650.00	1474	1942	2135	2380	2618
15700.00	1476	1945	2138	2383	2622
15750.00	1478	1948	2140	2386	2625
15800.00	1480	1950	2143	2389	2628
15850.00	1483	1953	2146	2392	2632
15900.00	1485	1956	2148	2395	2635
15950.00	1487	1959	2151	2398	2638
16000.00	1490	1961	2154	2401	2641
16050.00	1492	1964	2156	2404	2645
16100.00	1494	1967	2159	2407	2648
16150.00	1497	1969	2162	2410	2651
16200.00	1499	1972	2164	2413	2655
16250.00	1501	1975	2167	2416	2658
16300.00	1503	1978	2170	2419	2661
16350.00	1506	1980	2172	2422	2665
16400.00	1508	1983	2175	2425	2668
16450.00	1510	1986	2178	2428	2671
16500.00	1513	1988	2181	2431	2674

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule Of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
16550.00	1515	1991	2183	2434	2678
16600.00	1517	1994	2186	2437	2681
16650.00	1520	1997	2189	2440	2684
16700.00	1522	1999	2191	2443	2688
16750.00	1524	2002	2194	2446	2691
16800.00	1526	2005	2197	2449	2694
16850.00	1529	2007	2199	2452	2697
16900.00	1531	2010	2202	2455	2701
16950.00	1533	2013	2205	2458	2704
17000.00	1536	2015	2207	2461	2707
17050.00	1538	2018	2210	2464	2711
17100.00	1540	2021	2213	2467	2714
17150.00	1543	2024	2215	2470	2717
17200.00	1545	2026	2218	2473	2721
17250.00	1547	2029	2221	2476	2724
17300.00	1550	2032	2223	2479	2727
17350.00	1552	2034	2226	2482	2730
17400.00	1554	2037	2229	2485	2734
17450.00	1556	2040	2232	2488	2737
17500.00	1559	2043	2234	2491	2740
17550.00	1561	2045	2237	2494	2744
17600.00	1563	2048	2240	2497	2747
17650.00	1566	2051	2242	2500	2750
17700.00	1568	2053	2245	2503	2753
17750.00	1570	2056	2248	2506	2757
17800.00	1573	2059	2250	2509	2760
17850.00	1575	2062	2253	2512	2763
17900.00	1577	2064	2256	2515	2767
17950.00	1579	2067	2258	2518	2770
18000.00	1582	2070	2261	2521	2773
18050.00	1584	2072	2264	2524	2777
18100.00	1586	2075	2266	2527	2780
18150.00	1589	2078	2269	2530	2783
18200.00	1591	2081	2272	2533	2786
18250.00	1593	2083	2275	2536	2790
18300.00	1596	2086	2277	2539	2793

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
<b>Monthly Combined Child Support Obligation</b>					
18350.00	1598	2089	2280	2542	2796
18400.00	1600	2091	2283	2545	2800
18450.00	1602	2094	2285	2548	2803
18500.00	1605	2097	2288	2551	2806
18550.00	1607	2099	2291	2554	2809
18600.00	1609	2102	2293	2557	2813
18650.00	1612	2105	2296	2560	2816
18700.00	1614	2108	2299	2563	2819
18750.00	1616	2110	2301	2566	2823
18800.00	1619	2113	2304	2569	2826
18850.00	1621	2116	2307	2572	2829
18900.00	1623	2118	2309	2575	2833
18950.00	1625	2121	2312	2578	2836
19000.00	1628	2124	2315	2581	2839
19050.00	1630	2127	2318	2584	2842
19100.00	1633	2130	2321	2588	2847
19150.00	1637	2134	2324	2592	2851
19200.00	1640	2138	2328	2596	2855
19250.00	1643	2141	2331	2600	2859
19300.00	1646	2145	2335	2603	2864
19350.00	1650	2149	2338	2607	2868
19400.00	1653	2152	2342	2611	2872
19450.00	1656	2156	2345	2615	2877
19500.00	1660	2160	2349	2619	2881
19550.00	1663	2163	2352	2623	2885
19600.00	1666	2167	2356	2627	2889
19650.00	1669	2171	2359	2631	2894
19700.00	1673	2175	2363	2634	2898
19750.00	1676	2178	2366	2638	2902
19800.00	1679	2182	2370	2642	2906
19850.00	1683	2186	2373	2646	2911
19900.00	1686	2189	2377	2650	2915
19950.00	1689	2193	2380	2654	2919
20000.00	1692	2197	2384	2658	2923
20050.00	1696	2200	2387	2662	2928
20100.00	1699	2204	2390	2665	2932

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
20150.00	1702	2208	2394	2669	2936
20200.00	1705	2211	2397	2673	2940
20250.00	1709	2215	2401	2677	2945
20300.00	1712	2219	2404	2681	2949
20350.00	1715	2223	2408	2685	2953
20400.00	1719	2226	2411	2689	2958
20450.00	1722	2230	2415	2693	2962
20500.00	1725	2234	2418	2696	2966
20550.00	1728	2237	2422	2700	2970
20600.00	1732	2241	2425	2704	2975
20650.00	1735	2245	2429	2708	2979
20700.00	1738	2248	2432	2712	2983
20750.00	1741	2252	2436	2716	2987
20800.00	1745	2256	2439	2720	2992
20850.00	1748	2259	2443	2724	2996
20900.00	1751	2263	2446	2727	3000
20950.00	1755	2267	2450	2731	3004
21000.00	1758	2271	2453	2735	3009
21050.00	1761	2274	2457	2739	3013
21100.00	1764	2278	2460	2743	3017
21150.00	1768	2282	2463	2747	3021
21200.00	1771	2285	2467	2751	3026
21250.00	1774	2289	2470	2755	3030
21300.00	1778	2293	2474	2758	3034
21350.00	1781	2296	2477	2762	3038
21400.00	1784	2300	2481	2766	3043
21450.00	1787	2304	2484	2770	3047
21500.00	1791	2307	2488	2774	3051
21550.00	1794	2311	2491	2778	3056
21600.00	1797	2315	2495	2782	3060
21650.00	1800	2318	2498	2786	3064
21700.00	1804	2322	2502	2789	3068
21750.00	1807	2326	2505	2793	3073
21800.00	1810	2330	2509	2797	3077
21850.00	1814	2333	2512	2801	3081
21900.00	1817	2337	2516	2805	3085

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
21950.00	1820	2341	2519	2809	3090
22000.00	1823	2344	2523	2813	3094
22050.00	1827	2348	2526	2817	3098
22100.00	1830	2352	2530	2820	3102
22150.00	1833	2355	2533	2824	3107
22200.00	1837	2359	2536	2828	3111
22250.00	1840	2363	2540	2832	3115
22300.00	1843	2366	2543	2836	3119
22350.00	1846	2370	2547	2840	3124
22400.00	1850	2374	2550	2844	3128
22450.00	1853	2378	2554	2848	3132
22500.00	1856	2381	2557	2851	3137
22550.00	1859	2385	2561	2855	3141
22600.00	1863	2389	2564	2859	3145
22650.00	1866	2392	2568	2863	3149
22700.00	1869	2396	2571	2867	3154
22750.00	1873	2400	2575	2871	3158
22800.00	1876	2403	2578	2875	3162
22850.00	1879	2407	2582	2879	3166
22900.00	1882	2411	2585	2882	3171
22950.00	1886	2414	2589	2886	3175
23000.00	1889	2418	2592	2890	3179
23050.00	1892	2422	2596	2894	3183
23100.00	1896	2426	2599	2898	3188
23150.00	1899	2429	2602	2902	3192
23200.00	1902	2433	2606	2906	3196
23250.00	1905	2437	2609	2910	3200
23300.00	1909	2440	2613	2913	3205
23350.00	1912	2444	2616	2917	3209
23400.00	1915	2448	2620	2921	3213
23450.00	1918	2451	2623	2925	3218
23500.00	1922	2455	2627	2929	3222
23550.00	1925	2459	2630	2933	3226
23600.00	1928	2462	2634	2937	3230
23650.00	1932	2466	2637	2941	3235
23700.00	1935	2470	2641	2944	3239

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
23750.00	1938	2473	2644	2948	3243
23800.00	1941	2477	2648	2952	3247
23850.00	1945	2481	2651	2956	3252
23900.00	1948	2485	2655	2960	3256
23950.00	1951	2488	2658	2964	3260
24000.00	1955	2492	2662	2968	3264
24050.00	1958	2496	2665	2972	3269
24100.00	1961	2499	2669	2975	3273
24150.00	1964	2503	2672	2979	3277
24200.00	1968	2507	2675	2983	3281
24250.00	1971	2510	2679	2987	3286
24300.00	1974	2514	2682	2991	3290
24350.00	1977	2518	2686	2995	3294
24400.00	1981	2521	2689	2999	3299
24450.00	1984	2525	2693	3003	3303
24500.00	1987	2529	2696	3006	3307
24550.00	1991	2533	2700	3010	3311
24600.00	1994	2536	2703	3014	3316
24650.00	1997	2540	2707	3018	3320
24700.00	2000	2544	2710	3022	3324
24750.00	2004	2547	2714	3026	3328
24800.00	2007	2551	2717	3030	3333
24850.00	2010	2555	2721	3034	3337
24900.00	2014	2558	2724	3037	3341
24950.00	2017	2562	2728	3041	3345
25000.00	2020	2566	2731	3045	3350
25050.00	2023	2569	2735	3049	3354
25100.00	2027	2573	2738	3053	3358
25150.00	2030	2577	2742	3057	3362
25200.00	2033	2581	2745	3061	3367
25250.00	2036	2584	2748	3065	3371
25300.00	2040	2588	2752	3068	3375
25350.00	2043	2592	2755	3072	3380
25400.00	2046	2595	2759	3076	3384
25450.00	2050	2599	2762	3080	3388
25500.00	2053	2603	2766	3084	3392

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
25550.00	2056	2606	2769	3088	3397
25600.00	2059	2610	2773	3092	3401
25650.00	2063	2614	2776	3096	3405
25700.00	2066	2617	2780	3099	3409
25750.00	2069	2621	2783	3103	3414
25800.00	2073	2625	2787	3107	3418
25850.00	2076	2628	2790	3111	3422
25900.00	2079	2632	2794	3115	3426
25950.00	2082	2636	2797	3119	3431
26000.00	2086	2640	2801	3123	3435
26050.00	2089	2643	2804	3127	3439
26100.00	2092	2647	2808	3130	3443
26150.00	2095	2651	2811	3134	3448
26200.00	2099	2654	2814	3138	3452
26250.00	2102	2658	2818	3142	3456
26300.00	2105	2662	2821	3146	3460
26350.00	2109	2665	2825	3150	3465
26400.00	2112	2669	2828	3154	3469
26450.00	2115	2673	2832	3158	3473
26500.00	2118	2676	2835	3161	3478
26550.00	2122	2680	2839	3165	3482
26600.00	2125	2684	2842	3169	3486
26650.00	2128	2688	2846	3173	3490
26700.00	2132	2691	2849	3177	3495
26750.00	2135	2695	2853	3181	3499
26800.00	2138	2699	2856	3185	3503
26850.00	2141	2702	2860	3189	3507
26900.00	2145	2706	2863	3192	3512
26950.00	2148	2710	2867	3196	3516
27000.00	2151	2713	2870	3200	3520
27050.00	2154	2717	2874	3204	3524
27100.00	2158	2721	2877	3208	3529
27150.00	2161	2724	2880	3211	3533
27200.00	2164	2728	2884	3215	3537
27250.00	2167	2731	2887	3219	3541
27300.00	2170	2735	2890	3223	3545

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five+ Children
<b>Monthly Combined Child Support Obligation</b>					
27350.00	2173	2738	2894	3227	3549
27400.00	2177	2742	2897	3230	3553
27450.00	2180	2746	2900	3234	3557
27500.00	2183	2749	2904	3238	3562
27550.00	2186	2753	2907	3242	3566
27600.00	2189	2756	2911	3245	3570
27650.00	2193	2760	2914	3249	3574
27700.00	2196	2764	2917	3253	3578
27750.00	2199	2767	2921	3257	3582
27800.00	2202	2771	2924	3260	3586
27850.00	2205	2774	2927	3264	3590
27900.00	2208	2778	2931	3268	3595
27950.00	2212	2781	2934	3272	3599
28000.00	2215	2785	2938	3275	3603
28050.00	2218	2789	2941	3279	3607
28100.00	2221	2792	2944	3283	3611
28150.00	2224	2796	2948	3287	3615
28200.00	2227	2799	2951	3290	3619
28250.00	2231	2803	2954	3294	3624
For combined adjusted gross income in excess of \$28,250.00:					
	One child:	2231 plus 6.81% of all income in excess of 28250			
	Two children	2803 plus 7.22% of all income in excess of 28250			
	Three children	2954 plus 7.77% of all income in excess of 28250			
	Four children	3294 plus 8.05% of all income in excess of 28250			
	Five+ children	3624 plus 8.66% of all income in excess of 28250			

## [1240-02-04-.09CHILD SUPPORT SCHEDULE.

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
<b>Monthly Combined Child Support Obligation</b>					
150-1100.00	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
1150.00	<b>100</b>	<b>100</b>	<b>107</b>	<b>119</b>	<b>131</b>
1200.00	<b>100</b>	<b>127</b>	<b>142</b>	<b>154</b>	<b>166</b>
1250.00	<b>135</b>	<b>162</b>	<b>177</b>	<b>189</b>	<b>201</b>
1300.00	<b>170</b>	<b>197</b>	<b>212</b>	<b>224</b>	<b>236</b>
1350.00	<b>205</b>	<b>232</b>	<b>247</b>	<b>259</b>	<b>271</b>
1400.00	<b>240</b>	<b>267</b>	<b>282</b>	<b>294</b>	<b>306</b>
1450.00	<b>275</b>	<b>302</b>	<b>317</b>	<b>329</b>	<b>341</b>
1500.00	<b>310</b>	<b>337</b>	<b>352</b>	<b>364</b>	<b>376</b>
1550.00	335	<b>372</b>	<b>387</b>	<b>399</b>	<b>411</b>
1600.00	345	<b>407</b>	<b>422</b>	<b>434</b>	<b>446</b>
1650.00	355	<b>442</b>	<b>457</b>	<b>469</b>	<b>481</b>
1700.00	365	<b>477</b>	<b>492</b>	<b>504</b>	<b>516</b>
1750.00	375	<b>512</b>	<b>527</b>	<b>539</b>	<b>551</b>
1800.00	384	542	<b>562</b>	<b>574</b>	<b>586</b>
1850.00	394	555	<b>597</b>	<b>609</b>	<b>621</b>
1900.00	403	568	<b>632</b>	<b>644</b>	<b>656</b>
1950.00	412	580	<b>667</b>	<b>679</b>	<b>691</b>
2000.00	421	592	685	<b>714</b>	<b>726</b>
2050.00	430	604	699	<b>749</b>	<b>761</b>
2100.00	439	616	713	<b>784</b>	<b>796</b>
2150.00	448	628	727	810	<b>831</b>
2200.00	457	641	741	826	<b>866</b>
2250.00	466	653	754	841	<b>901</b>
2300.00	475	665	768	857	<b>936</b>
2350.00	484	677	782	872	959
2400.00	493	689	796	887	976
2450.00	501	701	809	902	992
2500.00	510	712	821	916	1007
2550.00	518	724	834	930	1023
2600.00	527	735	847	945	1039
2650.00	536	747	860	959	1055
2700.00	544	758	873	973	1070
2750.00	553	770	886	987	1086
2800.00	561	781	898	1002	1102

(Rule 1240-2-4-.09, continued)

2850.00		569	792	911	1015	1117
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(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule Of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
2900.00	577	802	922	1028	1130
2950.00	584	812	933	1040	1144
3000.00	592	822	945	1053	1159
3050.00	600	833	957	1067	1174
3100.00	608	844	970	1081	1190
3150.00	616	855	982	1095	1205
3200.00	624	866	995	1109	1220
3250.00	632	877	1007	1123	1236
3300.00	640	888	1020	1137	1251
3350.00	648	899	1032	1151	1266
3400.00	656	910	1045	1165	1282
3450.00	664	921	1058	1179	1297
3500.00	672	932	1070	1193	1312
3550.00	680	943	1083	1207	1328
3600.00	688	954	1095	1221	1343
3650.00	695	964	1106	1233	1356
3700.00	702	973	1116	1244	1368
3750.00	709	982	1126	1255	1381
3800.00	715	991	1136	1266	1393
3850.00	722	1000	1145	1277	1405
3900.00	729	1009	1155	1288	1417
3950.00	735	1018	1165	1299	1429
4000.00	742	1027	1175	1310	1441
4050.00	749	1036	1185	1322	1454
4100.00	756	1045	1195	1333	1466
4150.00	762	1054	1205	1344	1478
4200.00	769	1063	1215	1355	1490
4250.00	776	1072	1225	1366	1502
4300.00	779	1076	1228	1370	1507
4350.00	782	1079	1231	1372	1510
4400.00	785	1082	1233	1375	1512
4450.00	788	1085	1235	1377	1515
4500.00	791	1088	1238	1380	1518
4550.00	794	1091	1240	1383	1521
4600.00	797	1094	1242	1385	1524

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule Of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
4650.00	800	1097	1245	1388	1527
4700.00	803	1100	1247	1390	1529
4750.00	806	1104	1249	1393	1532
4800.00	809	1107	1252	1395	1535
4850.00	812	1110	1254	1398	1538
4900.00	815	1113	1256	1401	1541
4950.00	819	1117	1261	1406	1546
5000.00	823	1122	1266	1411	1552
5050.00	826	1126	1270	1417	1558
5100.00	830	1131	1275	1422	1564
5150.00	834	1135	1280	1427	1570
5200.00	838	1140	1285	1432	1576
5250.00	841	1145	1290	1438	1582
5300.00	845	1149	1294	1443	1587
5350.00	849	1154	1299	1448	1593
5400.00	853	1158	1304	1454	1599
5450.00	856	1163	1309	1459	1605
5500.00	860	1167	1313	1464	1611
5550.00	864	1172	1318	1470	1617
5600.00	868	1177	1324	1476	1623
5650.00	872	1182	1329	1482	1630
5700.00	876	1187	1334	1488	1636
5750.00	880	1192	1339	1493	1643
5800.00	884	1197	1345	1499	1649
5850.00	888	1201	1350	1505	1656
5900.00	892	1206	1355	1511	1662
5950.00	896	1211	1361	1517	1669
6000.00	900	1216	1366	1523	1675
6050.00	904	1221	1371	1528	1681
6100.00	907	1225	1376	1534	1687
6150.00	911	1230	1381	1540	1694
6200.00	915	1235	1386	1545	1700
6250.00	919	1239	1391	1551	1706
6300.00	923	1244	1396	1557	1712
6350.00	926	1249	1401	1562	1718
6400.00	930	1254	1406	1568	1725
6450.00	934	1258	1411	1573	1731

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule Of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
6500.00	938	1263	1416	1579	1737
6550.00	941	1267	1420	1583	1742
6600.00	942	1268	1421	1584	1743
6650.00	943	1269	1422	1585	1744
6700.00	944	1270	1423	1586	1745
6750.00	945	1271	1424	1587	1746
6800.00	946	1272	1424	1588	1747
6850.00	947	1273	1425	1589	1748
6900.00	948	1274	1426	1590	1749
6950.00	949	1275	1427	1591	1750
7000.00	950	1276	1428	1592	1751
7050.00	951	1277	1429	1593	1752
7100.00	952	1278	1430	1594	1753
7150.00	953	1279	1430	1595	1754
7200.00	954	1280	1431	1596	1755
7250.00	955	1281	1432	1597	1757
7300.00	956	1282	1433	1598	1758
7350.00	957	1283	1434	1599	1759
7400.00	958	1284	1435	1600	1760
7450.00	959	1285	1436	1601	1761
7500.00	960	1286	1437	1602	1762
7550.00	961	1288	1438	1603	1763
7600.00	962	1289	1439	1604	1765
7650.00	963	1290	1440	1605	1766
7700.00	964	1291	1441	1606	1767
7750.00	965	1292	1442	1607	1768
7800.00	967	1293	1442	1608	1769
7850.00	969	1297	1446	1613	1774
7900.00	974	1304	1454	1621	1783
7950.00	979	1310	1461	1629	1792
8000.00	984	1317	1469	1637	1801
8050.00	990	1324	1476	1646	1810
8100.00	995	1331	1483	1654	1819
8150.00	1000	1337	1491	1662	1829
8200.00	1005	1344	1498	1671	1838
8250.00	1010	1351	1506	1679	1847
8300.00	1015	1358	1513	1687	1856

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
8350.00	1020	1364	1521	1695	1865
8400.00	1025	1371	1528	1704	1874
8450.00	1030	1378	1535	1712	1883
8500.00	1035	1385	1543	1720	1892
8550.00	1040	1391	1550	1728	1901
8600.00	1045	1398	1558	1737	1910
8650.00	1050	1405	1565	1745	1920
8700.00	1055	1412	1572	1753	1929
8750.00	1060	1418	1580	1762	1938
8800.00	1065	1425	1587	1770	1947
8850.00	1070	1432	1595	1778	1956
8900.00	1075	1439	1602	1786	1965
8950.00	1080	1445	1610	1795	1974
9000.00	1085	1452	1617	1803	1983
9050.00	1090	1459	1624	1811	1992
9100.00	1094	1464	1629	1817	1998
9150.00	1098	1468	1634	1822	2004
9200.00	1101	1472	1639	1827	2010
9250.00	1105	1477	1643	1832	2016
9300.00	1108	1481	1648	1838	2021
9350.00	1112	1486	1653	1843	2027
9400.00	1115	1490	1657	1848	2033
9450.00	1119	1495	1662	1853	2038
9500.00	1122	1499	1667	1858	2044
9550.00	1126	1504	1671	1863	2050
9600.00	1129	1508	1676	1869	2055
9650.00	1133	1513	1681	1874	2061
9700.00	1136	1517	1685	1879	2067
9750.00	1140	1521	1690	1884	2073
9800.00	1143	1526	1694	1889	2078
9850.00	1147	1530	1699	1894	2084
9900.00	1150	1535	1704	1900	2090
9950.00	1154	1539	1708	1905	2095
10000.00	1158	1544	1713	1910	2101
10050.00	1161	1548	1718	1915	2107
10100.00	1165	1553	1722	1920	2112
10150.00	1168	1557	1727	1926	2118

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
10200.00	1172	1562	1732	1931	2124
10250.00	1175	1566	1736	1936	2130
10300.00	1179	1570	1741	1941	2135
10350.00	1182	1575	1746	1946	2141
10400.00	1186	1579	1750	1951	2147
10450.00	1189	1584	1755	1957	2152
10500.00	1193	1588	1759	1962	2158
10550.00	1196	1593	1764	1967	2164
10600.00	1200	1597	1769	1972	2169
10650.00	1203	1602	1773	1977	2175
10700.00	1207	1606	1778	1983	2181
10750.00	1210	1610	1783	1988	2187
10800.00	1214	1615	1787	1993	2192
10850.00	1217	1619	1792	1998	2198
10900.00	1221	1624	1797	2003	2204
10950.00	1224	1628	1801	2008	2209
11000.00	1227	1632	1805	2013	2214
11050.00	1230	1636	1809	2018	2219
11100.00	1233	1639	1814	2022	2225
11150.00	1236	1643	1818	2027	2230
11200.00	1239	1647	1822	2032	2235
11250.00	1242	1651	1826	2037	2240
11300.00	1245	1655	1831	2041	2245
11350.00	1248	1659	1835	2046	2251
11400.00	1251	1663	1839	2051	2256
11450.00	1254	1667	1844	2056	2261
11500.00	1257	1671	1848	2060	2266
11550.00	1260	1674	1852	2065	2272
11600.00	1263	1678	1856	2070	2277
11650.00	1266	1682	1861	2075	2282
11700.00	1269	1686	1865	2079	2287
11750.00	1272	1690	1869	2084	2292
11800.00	1275	1694	1873	2089	2298
11850.00	1278	1698	1878	2094	2303
11900.00	1281	1702	1882	2098	2308
11950.00	1284	1706	1886	2103	2313
12000.00	1287	1709	1890	2108	2319

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule Of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
12050.00	1289	1713	1895	2113	2324
12100.00	1292	1717	1899	2117	2329
12150.00	1295	1721	1903	2122	2334
12200.00	1298	1725	1907	2127	2340
12250.00	1301	1729	1912	2132	2345
12300.00	1304	1733	1916	2136	2350
12350.00	1307	1737	1920	2141	2355
12400.00	1310	1741	1925	2146	2360
12450.00	1313	1744	1929	2151	2366
12500.00	1316	1748	1933	2155	2371
12550.00	1319	1752	1937	2160	2376
12600.00	1322	1756	1942	2165	2381
12650.00	1325	1760	1946	2170	2387
12700.00	1328	1764	1950	2174	2391
12750.00	1331	1767	1954	2178	2396
12800.00	1334	1771	1958	2183	2401
12850.00	1336	1774	1962	2187	2406
12900.00	1339	1778	1966	2192	2411
12950.00	1342	1782	1970	2196	2416
13000.00	1345	1785	1974	2201	2421
13050.00	1347	1789	1978	2205	2425
13100.00	1350	1793	1982	2209	2430
13150.00	1353	1796	1985	2214	2435
13200.00	1356	1800	1989	2218	2440
13250.00	1358	1803	1993	2223	2445
13300.00	1361	1807	1997	2227	2450
13350.00	1364	1811	2001	2231	2455
13400.00	1367	1814	2005	2236	2459
13450.00	1370	1818	2009	2240	2464
13500.00	1372	1821	2013	2245	2469
13550.00	1375	1825	2017	2249	2474
13600.00	1378	1829	2021	2254	2479
13650.00	1381	1832	2025	2258	2484
13700.00	1383	1836	2029	2262	2489
13750.00	1386	1839	2033	2267	2493
13800.00	1388	1842	2036	2270	2497
13850.00	1391	1845	2038	2273	2500

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
13900.00	1393	1848	2041	2276	2503
13950.00	1395	1850	2044	2279	2506
14000.00	1398	1853	2046	2282	2510
14050.00	1400	1856	2049	2285	2513
14100.00	1402	1858	2052	2288	2516
14150.00	1405	1861	2054	2291	2520
14200.00	1407	1864	2057	2294	2523
14250.00	1409	1867	2060	2297	2526
14300.00	1411	1869	2062	2300	2529
14350.00	1414	1872	2065	2303	2533
14400.00	1416	1875	2068	2306	2536
14450.00	1418	1877	2070	2309	2539
14500.00	1421	1880	2073	2312	2543
14550.00	1423	1883	2076	2315	2546
14600.00	1425	1885	2078	2317	2549
14650.00	1428	1888	2081	2320	2553
14700.00	1430	1891	2084	2323	2556
14750.00	1432	1894	2087	2326	2559
14800.00	1434	1896	2089	2329	2562
14850.00	1437	1899	2092	2332	2566
14900.00	1439	1902	2095	2335	2569
14950.00	1441	1904	2097	2338	2572
15000.00	1444	1907	2100	2341	2576
15050.00	1446	1910	2103	2344	2579
15100.00	1448	1913	2105	2347	2582
15150.00	1451	1915	2108	2350	2585
15200.00	1453	1918	2111	2353	2589
15250.00	1455	1921	2113	2356	2592
15300.00	1457	1923	2116	2359	2595
15350.00	1460	1926	2119	2362	2599
15400.00	1462	1929	2121	2365	2602
15450.00	1464	1932	2124	2368	2605
15500.00	1467	1934	2127	2371	2609
15550.00	1469	1937	2130	2374	2612
15600.00	1471	1940	2132	2377	2615
15650.00	1474	1942	2135	2380	2618
15700.00	1476	1945	2138	2383	2622

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule Of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
15750.00	1478	1948	2140	2386	2625
15800.00	1480	1950	2143	2389	2628
15850.00	1483	1953	2146	2392	2632
15900.00	1485	1956	2148	2395	2635
15950.00	1487	1959	2151	2398	2638
16000.00	1490	1961	2154	2401	2641
16050.00	1492	1964	2156	2404	2645
16100.00	1494	1967	2159	2407	2648
16150.00	1497	1969	2162	2410	2651
16200.00	1499	1972	2164	2413	2655
16250.00	1501	1975	2167	2416	2658
16300.00	1503	1978	2170	2419	2661
16350.00	1506	1980	2172	2422	2665
16400.00	1508	1983	2175	2425	2668
16450.00	1510	1986	2178	2428	2671
16500.00	1513	1988	2181	2431	2674
16550.00	1515	1991	2183	2434	2678
16600.00	1517	1994	2186	2437	2681
16650.00	1520	1997	2189	2440	2684
16700.00	1522	1999	2191	2443	2688
16750.00	1524	2002	2194	2446	2691
16800.00	1526	2005	2197	2449	2694
16850.00	1529	2007	2199	2452	2697
16900.00	1531	2010	2202	2455	2701
16950.00	1533	2013	2205	2458	2704
17000.00	1536	2015	2207	2461	2707
17050.00	1538	2018	2210	2464	2711
17100.00	1540	2021	2213	2467	2714
17150.00	1543	2024	2215	2470	2717
17200.00	1545	2026	2218	2473	2721
17250.00	1547	2029	2221	2476	2724
17300.00	1550	2032	2223	2479	2727
17350.00	1552	2034	2226	2482	2730
17400.00	1554	2037	2229	2485	2734
17450.00	1556	2040	2232	2488	2737
17500.00	1559	2043	2234	2491	2740

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule Of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
17550.00	1561	2045	2237	2494	2744
17600.00	1563	2048	2240	2497	2747
17650.00	1566	2051	2242	2500	2750
17700.00	1568	2053	2245	2503	2753
17750.00	1570	2056	2248	2506	2757
17800.00	1573	2059	2250	2509	2760
17850.00	1575	2062	2253	2512	2763
17900.00	1577	2064	2256	2515	2767
17950.00	1579	2067	2258	2518	2770
18000.00	1582	2070	2261	2521	2773
18050.00	1584	2072	2264	2524	2777
18100.00	1586	2075	2266	2527	2780
18150.00	1589	2078	2269	2530	2783
18200.00	1591	2081	2272	2533	2786
18250.00	1593	2083	2275	2536	2790
18300.00	1596	2086	2277	2539	2793
18350.00	1598	2089	2280	2542	2796
18400.00	1600	2091	2283	2545	2800
18450.00	1602	2094	2285	2548	2803
18500.00	1605	2097	2288	2551	2806
18550.00	1607	2099	2291	2554	2809
18600.00	1609	2102	2293	2557	2813
18650.00	1612	2105	2296	2560	2816
18700.00	1614	2108	2299	2563	2819
18750.00	1616	2110	2301	2566	2823
18800.00	1619	2113	2304	2569	2826
18850.00	1621	2116	2307	2572	2829
18900.00	1623	2118	2309	2575	2833
18950.00	1625	2121	2312	2578	2836
19000.00	1628	2124	2315	2581	2839
19050.00	1630	2127	2318	2584	2842
19100.00	1633	2130	2321	2588	2847
19150.00	1637	2134	2324	2592	2851
19200.00	1640	2138	2328	2596	2855
19250.00	1643	2141	2331	2600	2859
19300.00	1646	2145	2335	2603	2864

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
19350.00	1650	2149	2338	2607	2868
19400.00	1653	2152	2342	2611	2872
19450.00	1656	2156	2345	2615	2877
19500.00	1660	2160	2349	2619	2881
19550.00	1663	2163	2352	2623	2885
19600.00	1666	2167	2356	2627	2889
19650.00	1669	2171	2359	2631	2894
19700.00	1673	2175	2363	2634	2898
19750.00	1676	2178	2366	2638	2902
19800.00	1679	2182	2370	2642	2906
19850.00	1683	2186	2373	2646	2911
19900.00	1686	2189	2377	2650	2915
19950.00	1689	2193	2380	2654	2919
20000.00	1692	2197	2384	2658	2923
20050.00	1696	2200	2387	2662	2928
20100.00	1699	2204	2390	2665	2932
20150.00	1702	2208	2394	2669	2936
20200.00	1705	2211	2397	2673	2940
20250.00	1709	2215	2401	2677	2945
20300.00	1712	2219	2404	2681	2949
20350.00	1715	2223	2408	2685	2953
20400.00	1719	2226	2411	2689	2958
20450.00	1722	2230	2415	2693	2962
20500.00	1725	2234	2418	2696	2966
20550.00	1728	2237	2422	2700	2970
20600.00	1732	2241	2425	2704	2975
20650.00	1735	2245	2429	2708	2979
20700.00	1738	2248	2432	2712	2983
20750.00	1741	2252	2436	2716	2987
20800.00	1745	2256	2439	2720	2992
20850.00	1748	2259	2443	2724	2996
20900.00	1751	2263	2446	2727	3000
20950.00	1755	2267	2450	2731	3004
21000.00	1758	2271	2453	2735	3009
21050.00	1761	2274	2457	2739	3013
21100.00	1764	2278	2460	2743	3017

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
21150.00	1768	2282	2463	2747	3021
21200.00	1771	2285	2467	2751	3026
21250.00	1774	2289	2470	2755	3030
21300.00	1778	2293	2474	2758	3034
21350.00	1781	2296	2477	2762	3038
21400.00	1784	2300	2481	2766	3043
21450.00	1787	2304	2484	2770	3047
21500.00	1791	2307	2488	2774	3051
21550.00	1794	2311	2491	2778	3056
21600.00	1797	2315	2495	2782	3060
21650.00	1800	2318	2498	2786	3064
21700.00	1804	2322	2502	2789	3068
21750.00	1807	2326	2505	2793	3073
21800.00	1810	2330	2509	2797	3077
21850.00	1814	2333	2512	2801	3081
21900.00	1817	2337	2516	2805	3085
21950.00	1820	2341	2519	2809	3090
22000.00	1823	2344	2523	2813	3094
22050.00	1827	2348	2526	2817	3098
22100.00	1830	2352	2530	2820	3102
22150.00	1833	2355	2533	2824	3107
22200.00	1837	2359	2536	2828	3111
22250.00	1840	2363	2540	2832	3115
22300.00	1843	2366	2543	2836	3119
22350.00	1846	2370	2547	2840	3124
22400.00	1850	2374	2550	2844	3128
22450.00	1853	2378	2554	2848	3132
22500.00	1856	2381	2557	2851	3137
22550.00	1859	2385	2561	2855	3141
22600.00	1863	2389	2564	2859	3145
22650.00	1866	2392	2568	2863	3149
22700.00	1869	2396	2571	2867	3154
22750.00	1873	2400	2575	2871	3158
22800.00	1876	2403	2578	2875	3162
22850.00	1879	2407	2582	2879	3166
22900.00	1882	2411	2585	2882	3171

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
22950.00	1886	2414	2589	2886	3175
23000.00	1889	2418	2592	2890	3179
23050.00	1892	2422	2596	2894	3183
23100.00	1896	2426	2599	2898	3188
23150.00	1899	2429	2602	2902	3192
23200.00	1902	2433	2606	2906	3196
23250.00	1905	2437	2609	2910	3200
23300.00	1909	2440	2613	2913	3205
23350.00	1912	2444	2616	2917	3209
23400.00	1915	2448	2620	2921	3213
23450.00	1918	2451	2623	2925	3218
23500.00	1922	2455	2627	2929	3222
23550.00	1925	2459	2630	2933	3226
23600.00	1928	2462	2634	2937	3230
23650.00	1932	2466	2637	2941	3235
23700.00	1935	2470	2641	2944	3239
23750.00	1938	2473	2644	2948	3243
23800.00	1941	2477	2648	2952	3247
23850.00	1945	2481	2651	2956	3252
23900.00	1948	2485	2655	2960	3256
23950.00	1951	2488	2658	2964	3260
24000.00	1955	2492	2662	2968	3264
24050.00	1958	2496	2665	2972	3269
24100.00	1961	2499	2669	2975	3273
24150.00	1964	2503	2672	2979	3277
24200.00	1968	2507	2675	2983	3281
24250.00	1971	2510	2679	2987	3286
24300.00	1974	2514	2682	2991	3290
24350.00	1977	2518	2686	2995	3294
24400.00	1981	2521	2689	2999	3299
24450.00	1984	2525	2693	3003	3303
24500.00	1987	2529	2696	3006	3307
24550.00	1991	2533	2700	3010	3311
24600.00	1994	2536	2703	3014	3316
24650.00	1997	2540	2707	3018	3320
24700.00	2000	2544	2710	3022	3324

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
24750.00	2004	2547	2714	3026	3328
24800.00	2007	2551	2717	3030	3333
24850.00	2010	2555	2721	3034	3337
24900.00	2014	2558	2724	3037	3341
24950.00	2017	2562	2728	3041	3345
25000.00	2020	2566	2731	3045	3350
25050.00	2023	2569	2735	3049	3354
25100.00	2027	2573	2738	3053	3358
25150.00	2030	2577	2742	3057	3362
25200.00	2033	2581	2745	3061	3367
25250.00	2036	2584	2748	3065	3371
25300.00	2040	2588	2752	3068	3375
25350.00	2043	2592	2755	3072	3380
25400.00	2046	2595	2759	3076	3384
25450.00	2050	2599	2762	3080	3388
25500.00	2053	2603	2766	3084	3392
25550.00	2056	2606	2769	3088	3397
25600.00	2059	2610	2773	3092	3401
25650.00	2063	2614	2776	3096	3405
25700.00	2066	2617	2780	3099	3409
25750.00	2069	2621	2783	3103	3414
25800.00	2073	2625	2787	3107	3418
25850.00	2076	2628	2790	3111	3422
25900.00	2079	2632	2794	3115	3426
25950.00	2082	2636	2797	3119	3431
26000.00	2086	2640	2801	3123	3435
26050.00	2089	2643	2804	3127	3439
26100.00	2092	2647	2808	3130	3443
26150.00	2095	2651	2811	3134	3448
26200.00	2099	2654	2814	3138	3452
26250.00	2102	2658	2818	3142	3456
26300.00	2105	2662	2821	3146	3460
26350.00	2109	2665	2825	3150	3465
26400.00	2112	2669	2828	3154	3469
26450.00	2115	2673	2832	3158	3473
26500.00	2118	2676	2835	3161	3478

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

Monthly Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five + Children
Monthly Combined Child Support Obligation					
26550.00	2122	2680	2839	3165	3482
26600.00	2125	2684	2842	3169	3486
26650.00	2128	2688	2846	3173	3490
26700.00	2132	2691	2849	3177	3495
26750.00	2135	2695	2853	3181	3499
26800.00	2138	2699	2856	3185	3503
26850.00	2141	2702	2860	3189	3507
26900.00	2145	2706	2863	3192	3512
26950.00	2148	2710	2867	3196	3516
27000.00	2151	2713	2870	3200	3520
27050.00	2154	2717	2874	3204	3524
27100.00	2158	2721	2877	3208	3529
27150.00	2161	2724	2880	3211	3533
27200.00	2164	2728	2884	3215	3537
27250.00	2167	2731	2887	3219	3541
27300.00	2170	2735	2890	3223	3545
27350.00	2173	2738	2894	3227	3549
27400.00	2177	2742	2897	3230	3553
27450.00	2180	2746	2900	3234	3557
27500.00	2183	2749	2904	3238	3562
27550.00	2186	2753	2907	3242	3566
27600.00	2189	2756	2911	3245	3570
27650.00	2193	2760	2914	3249	3574
27700.00	2196	2764	2917	3253	3578
27750.00	2199	2767	2921	3257	3582
27800.00	2202	2771	2924	3260	3586
27850.00	2205	2774	2927	3264	3590
27900.00	2208	2778	2931	3268	3595
27950.00	2212	2781	2934	3272	3599
28000.00	2215	2785	2938	3275	3603
28050.00	2218	2789	2941	3279	3607
28100.00	2221	2792	2944	3283	3611
28150.00	2224	2796	2948	3287	3615
28200.00	2227	2799	2951	3290	3619
28250.00	2231	2803	2954	3294	3624

(Rule 1240-2-4-.09, continued)

Tennessee  
Schedule of Basic Child Support Obligations

For combined adjusted gross income in excess of \$28,250.00:		
	One child:	2231 plus 6.81% of all income in excess of 28250
	Two children:	2803 plus 7.22% of all income in excess of 28250
	Three children:	2954 plus 7.77% of all income in excess of 28250
	Four children:	3294 plus 8.05% of all income in excess of 28250
	Five + children:	3624 plus 8.66% of all income in excess of 28250

**Authority:** T.C.A. §§ 4-5-202; 36-5-101(e); 71-1-105(a)(12), (16); 71-1-132; 42 U.S.C. § 667; and 45 C.F.R. § 302.56. **Administrative History:** Original rule filed November 4, 2004; effective January 18, 2005.

\* 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 Human Services (board/commission/ other authority) on 01/14/2020 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/14/19

Rulemaking Hearing(s) Conducted on: (add more dates). 08/06/19; 08/07/19

Date: 1/14/2020

Signature: Cherrell Campbell-Street

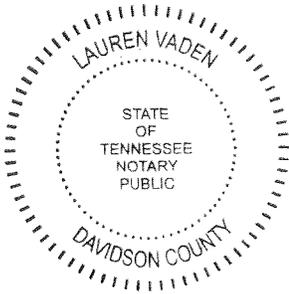
Name of Officer: Cherrell Campbell-Street

Title of Officer: Deputy Commissioner, Programs and Services

Subscribed and sworn to before me on: January 14, 2020

Notary Public Signature: [Signature]

My commission expires on: October 2, 2023



Agency/Board/Commission: Department of Human Services

Rule Chapter Number(s): Chapter 1240-02-04

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

1/31/2020  
Date

Department of State Use Only

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SECRETARY OF STATE  
PUBLICATIONS

Filed with the Department of State on: 2/10/2020

Effective on: 5/10/2020

Tre Hargett

Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Air Pollution Control Board

SUBJECT: Administrative Fee Schedule

STATUTORY AUTHORITY: Section 502(b)(3)(A) of the federal Clean Air Act (CAA) requires Tennessee, as a state approved by the Environmental Protection Agency ("EPA"), to administer a Title V major source operating permit program ("Title V program") to collect "an annual fee or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements[.]".

To comply with this requirement, the Air Pollution Control Board ("Board") adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit ("EGU") and non-EGU sources. Tennessee Code Annotated section 68-203-103 authorizes the Board to establish fees under the Tennessee Air Quality Act.

EFFECTIVE DATES: April 14, 2020 through June 30, 2021

FISCAL IMPACT: This rulemaking will result in increased revenues of approximately \$1.16 million.

STAFF RULE ABSTRACT: These rulemaking hearing rule amendments revise the fees charged for visible emission evaluation courses ("Smoke School"). Smoke opacity is an indicator of pollution in certain circumstances, and some regulated entities are required to read smoke as part of proving compliance with the limitations in their permits. Smoke School is offered to industry representatives, environmental consultants, and the general public, and certifies qualifying attendees in "reading" the density of smoke (opacity). The Department has historically offered this course at a much lower cost than found in the private sector, and the cost will still be lower after this change. Currently, the Air Pollution Control Board's rules establish

a lower fee to attendees located within the state than is charged to attendees from outside the state. This revision increases the rates and establishes the same rates for all attendees. For Title V annual fees, the rulemaking increases the existing base fee of \$4,000 to \$5,000, the existing minimum fee of \$7,500 to \$9,000, the dollar per ton for non-EGU sources from \$33.50/ton allowable to \$40.20 and from \$53.50/ton actual to \$64.20, and the dollar per ton for EGU sources from \$47.00/ton allowable to \$57.00 and from \$75.00/ton actual to \$90.00. In addition to the changes described above, the Board is clarifying certain other provisions in Chapter 1200-03-26 that apply to all sources, including, but not limited to: • Revising the payee for fee payments from "Division" to "State of Tennessee" throughout the chapter • Correction of grammatical and typographical errors • Revising current language to clarify application of the rules.

## Public Hearing Comments

Comment: A commenter requested information regarding four specific items pertaining to Visible Emissions Evaluation Course ("Smoke School") Fees.

1. How the proposed increased costs compare to offerings in the private sector.
2. Why the Board has chosen to move away from a dual fee structure (in which out-of-state applicants pay a higher fee than Tennessee applicants) to a uniform fee structure.
3. Why the Division, unlike previous years, has decided not to provide training in East Tennessee in 2020.
4. The number of individuals the Division has trained, certified or recertified in the past years and where the people are from in the state of Tennessee.

Response:

1. The proposed rates for Smoke School will be very competitive with privately offered schools. The recertification fee of \$180 is at least \$20 below the current published rate of the lowest provider (Aeromet).
2. Due to the increase of private company offerings of Smoke Schools in surrounding states, the Division does not receive the amount of out-of-state participants that it has in the past. Tennessee is the only state that the Division is aware of that still uses the dual fee structure. Eliminating the dual fee structure will reduce confusion and tracking costs and align Tennessee's structure with other providers in this area.
3. The Division does have schools at Roane State Community College in East Tennessee currently scheduled through the 2021 season and has no plans to discontinue these schools in the future.
4. The Division certifies approximately 150 people, which includes approximately 30 Division staff, every six months at six Smoke Schools per year. Individuals attend from every part of the state at each school.

Comment: A commenter noted that the language of subparagraph 1200-03-26-.02(1)(a), which contains the description of the purpose of 1200-03-26-.02, is changed from "to establish construction fees, annual emission fees, and permit review fees" to simply "to establish fees". The commenter claimed that this change grants the Division the broad authority to create new fees beyond these categories.

Response: The existing minimum and base fees are not technically emission fees, although the minimum fees are related to emissions. This change merely aligns the wording of the rule to the existing contents and streamlines the wording. The Board, not the Division, has the sole authority to promulgate rules, and any changes must always go through public participation procedures before being taken to the Board for approval or denial.

Comment: Throughout the proposal, the term "annual emissions fee" is replaced with the term "annual fee". A commenter asserted that changing this term in a wholesale manner is too broad and that moving away from this terminology will cause confusion. The commenter stated that "until such time that the department proposes a fee collection method that does not rely on the amount of allowable or actual emissions, the term 'annual emissions fee' should be retained."

Response: The existing Title V minimum and base fees are not technically emission fees. This change merely aligns the wording of the rule to agree with the existing structure to increase transparency and cause less confusion.

Comment: A commenter requested an explanation of the variation in the fee payment schedule for Cotton Gin Operations. In particular, the commenter inquired as to why they pay at the end of the year while other entities have a rotating schedule based on county location.

Response: Cotton gins are seasonal operations and many are not staffed year-round. Because of this, the Division found it difficult to ensure delivery of fee invoices, and many companies failed to pay fees in a timely manner, resulting in the assessment of penalties and interest pursuant to 1200-03-26-

.02(8) as provided below. The State of Tennessee's Department of Finance and Administration reports the current rate of interest is 10% annually.

If any part of any fee imposed under this Rule 1200-03-26-.02 not paid within fifteen (15) days of the due date, a late payment penalty of five percent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of five percent (5%) of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within fifteen (15) days after the due date, shall bear interest at the maximum lawful rate from the due date to the date paid, compounded monthly.

The change being proposed improves customer service to these facilities that may not be in operation during the month in which their invoice would arrive.

- Comment: A commenter proposed that the Division survey those facilities that pay only the minimum fee to determine if they would qualify as a "small business stationary source" under Section 507(c) of the Clean Air Act (using only subparts (A) and (B) of that definition). The commenter suggested that if there are a meaningful number of facilities that are truly small businesses then it would be reasonable to retain their minimum fee level at \$7,500 for those sources. Another commenter also proposed that a special rate could be established for a small business if small business could be defined.
- Response: The Division currently does not require facilities to identify themselves as small businesses and does not have the means to identify small businesses on its own. Therefore, the Board does not currently have the information necessary to implement the proposals or to investigate any potential revenue impact that would occur from such a provision. This proposal was not brought up or developed during any of the previous Title V fee stakeholder or listening sessions; therefore, the Board will evaluate this proposal in future rulemakings.
- Comment: A commenter supported retaining the current alternative minimum fee of \$5500 for "once in always in sources".
- Response: The Board appreciates the commenter's support for retaining the current alternative minimum fee of \$5500 for "once in always in sources". However, this alternative minimum fee may soon become obsolete as the result of US EPA's January 25, 2018, guidance memorandum withdrawing the "once in always in" policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act and EPA's July 26, 2019, proposed rule "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act".
- Comment: A number of commenters supported increasing the base fee from \$4000 to \$5000. Two of these commenters also supported increasing the minimum fee from the current rate of \$7500 to \$9000.
- Response: The Board appreciates the support of the proposed base fee and minimum fee.
- Comment: A commenter stated that it would be appropriate for the Board to provide a justification for the \$9000 minimum fee.
- Response: During the 2016 stakeholder process, TDEC's Policy Office conducted an analysis of the estimated cost of implementing the Title V program for several facilities of different levels of emissions. The average annual cost of implementing the Title V program for the two lowest emitting sources ranged from \$5,189.37 to \$29,065.87 depending largely on how certain costs (e.g., administrative, Small Business Environmental Assistance Program, regulatory and guidance development, ambient monitoring, and training) were allocated among Title V facilities. The proposed \$9000 minimum fee falls within that range.
- Comment: A commenter objected to the proposed budget for multiple years (2020-2022) without annual evaluation after a fee increase. In addition, a number of commenters requested that the proposed rule should be modified to reflect adjustments to the Title V emission fees for FY2021 only. In support of this request, a commenter stated that annual discussions of the of the Division's

budgetary needs, including production of the annual Title V Workload Analysis, are an effective and appropriate part of the Board's oversight of the Division. This commenter noted that the significant reduction in emissions in recent years has proved challenging to the Title V fee revision process and that the commenter does not foresee this trend of emission reductions reversing course, requiring continued examination of the Division's expenses to keep costs growing beyond reasonable funding levels. This comment was supported by another commenter. A third commenter noted that the Department recently presented a budget request for fiscal year 2020-2021 before Governor Lee and the Title V fee rule, therefore, should only establish a fee for one year. Another commenter asserted that the current board should establish a fee rate for fiscal year 2020-2021 and future boards should set the rates for future years.

**Response:** Based on these comments, the Board will remove the proposed fee increase for fiscal year 2021-2022 from the rule. The Board agrees that the significant reduction in emissions in recent years and the challenge that this reduction has created regarding Title V fees will require continued examination of the revenue and expenses necessary to maintain a properly funded Title V program. However, the Board understands that the Division has no reason to expect the same level of dramatic reductions that have occurred in the last 5-10 years to continue into the future at comparable levels. The Board expects that the Division will evaluate the need for a fee increase and will present that evaluation to the Board each year, in accordance with provisions of 1200-03-26-.02(9)(d). At a minimum, this evaluation will examine the impact of inflationary costs, such as increased costs of rent, employee benefits, and pay for performance salary increases as required under the TEAM Act. Based on the reduced fiscal year 2020-2021 fees discussed elsewhere in this response to comments document, the analysis for fiscal year 2021-2022 will also need to include an evaluation of any fee increase necessary to ensure that the Title V program is fully funded and maintains an adequate Title V fee reserve.

**Comment:** A commenter encouraged TDEC to reconsider its proposal and see if a more reasonable increase could sustain the Title V program in Tennessee. Several commenters asserted that an increase in fees exceeding 20% (or 20.6%) annually could not be supported. One commenter provided the following table comparing the proposed fee increase for fiscal year 2020-2021 and a 20% (20.6%) increase.

Fee Rates	Status quo	Proposed in Rule		Chamber's upper limit	
	2019 current	FY2021 proposal	% increase	if 20% increase	% increase
NEGU Allowable	\$33.50	\$43.50	29.9%	\$40.20	20%
NEGU Actual	\$53.50	\$69.50	29.9%	\$64.20	20%
EGU Allowable	\$47.00	\$61.00	29.8%	\$57.00	20%
EGU Actual	\$75.00	\$97.50	30.0%	\$90.00	20%
with current base & min fee	\$5,656,986	\$7,050,443	24.6%	\$6,590,389	16.5%
<b>&amp; adjust Base &amp; Min. Fee</b>	<b>n/a</b>	<b>\$7,278,333</b>	<b>28.7%</b>	<b>\$6,819,868</b>	<b>20.6%</b>
new funds collected		\$1,621,347		\$1,162,882	

**Response:** Based on comments received, the Division recommended two separate proposals for the Board to consider, both of which were lower than the noticed proposal. One proposal was the 20.6% fee increase recommended by the commenters. The second proposal was an approximate 25% increase illustrated in the table below that was recommended by the department. However, it is important to note that both proposals would result in Title V fee revenue below the estimates of the Title V fee program expenses and would result in a significant reduction or complete depletion of the Title V fee reserve. The Board adopted the 20.6% proposal. As a result, the Board expects that the Division will evaluate the need for a fee increase each year in the future and the analysis for fiscal year 2021-2022 will also include an evaluation of any fee increase necessary to fully fund the Title V program and rebuild a reserve.

The commenters' proposal results in estimated Title V fee collections of \$6,819,868. This is \$990,971 less than the projected Title V expenses for fiscal year 2020-2021 and would likely deplete the Title V reserve (estimated to be \$1,000,000 at the beginning of fiscal year 2020-2021). While not significant, the commenters' proposal also deviates from the Division's historical practice that dollar per ton rates are rounded to the nearest 50 cents and deviates slightly from the actual-to-allowable ratio of 1.6 to 1 and EGU to non-EGU ratio of 1.4 to 1, which has consistently received approval from both stakeholders and the Board.

The department recommended option is an approximate 25% increase as indicated below.

	Status quo	Proposed in Rule		Division's Recommended Option	
Fee Rates	2019 current	FY2021 proposal	% increase		% increase
NEGU Allowable	\$33.50	\$43.50	29.9%	\$42.00	25.4%
NEGU Actual	\$53.50	\$69.50	29.9%	\$67.00	25.2%
EGU Allowable	\$47.00	\$61.00	29.8%	\$59.00	25.5%
EGU Actual	\$75.00	\$97.50	30.0%	\$94.00	25.3%
<b>with adjust Base &amp; Min.</b>	<b>n/a</b>	<b>\$7,278,333</b>	<b>28.7%</b>	<b>\$7,066,366</b>	<b>24.9%</b>
new funds collected		\$1,621,347		\$1,409,398	

Comment: Several commenters noted that the staffing size of the Division could be reduced in order to reduce the amount of revenue needed to administer the Title V program. One commenter pointed to the significant reduction in emissions since enactment of the Clean Air Act amendments of 1990 resulting from substantial capital improvements and cleaner fuel sources. The commenter predicted continued improvements will occur in industry's efforts to reduce emissions, placing additional downward pressures on revenue in the years ahead and, quoting Commissioner Salyers regarding the air quality in Tennessee, suggested that the Division be redesigned to focus on maintenance of standards rather than a regulatory regime.

Another commenter suggested that that the level of effort required by TDEC to provide governance and oversight to the Title V program, while not directly proportional, should at least mirror the direction of the state emissions profile.

Response: The Board agrees that air quality in Tennessee has significantly improved since 1990, as evidenced in the Commissioner's statement. However, an equally important aspect of the Clean Air Act is that the positive improvements in air quality must be maintained through a responsible regulatory program. The status of attainment under the Clean Air Act, in and of itself, does not provide opportunity for the Board or the Division to relax implementation of regulatory requirements. Nor does the status of attainment, in and of itself, remove critical regulatory program elements such as the issuance of permits, performing full compliance evaluations, conducting ambient air quality monitoring and responding to citizen complaints. In fact, it is because of the Board's and the Division's efforts to ensure compliance with applicable regulatory requirements, with the support of our Title V industry partners, that the state of Tennessee is able to enjoy the cleanest air since the dawn of the industrial era today and hopefully well into the future.

The regulatory requirements that make up the Title V program are mandated by federal regulation and statute. The requirements for facilities to obtain Title V permits, what those permits must contain, and the process for issuing and amending those permits are all specified in federal Part 70 regulations. Even though there have been significant emission reductions from Title V facilities (billable tons have dropped from 287,382 in 2004 to 113,135 tons in 2019), the number of Title V facilities is basically the same as it was ten years ago (221 in fiscal year 2009-2010 and 220 in the current fiscal year 2019-2020). Many Title V facilities are subject to federal NESHAP, NSPS, section 111(d), and section 129 standards and federal regulations require the Division to incorporate these standards and appropriate compliance methods into Title V permits. The

Division is also required to enforce provisions of its federally approved State Implementation Plan and incorporate those requirements into Title V permits. Major new source review requirements, which require both permitting and modeling staff, are required by federal PSD and Nonattainment NSR regulations. The requirements for enforcing Title V permits, including inspections, report reviews, source testing, enforcement actions, and reporting when violations are discovered, are all established by federal regulations or guidelines. Engaging the public through public process requirements and responding to complaints is also a critical aspect of Title V program requirements. Emission inventory and Title V regulatory and SIP development are all required by or driven by federal regulations. The requirement to operate and maintain an ambient monitoring program is done in accordance with Part 58 regulations and a large compendium of federal guidance documents. Part 70 regulations require the Department's Small Business Environmental Assistance Program to be funded by Title V fees. Federal Part 70 regulations require that these costs, as well as the general administrative costs of running the Title V permit program, be funded using Title V fees. Many of these activities can easily be attributed to individual Title V facilities and must be charged to Title V funds. A few of these activities, such as ambient monitoring, may or may not be specifically linked to specific Title V sources, but are collectively measuring the level of air pollution in the ambient air from all sources of air pollution within specific distances from the monitors, including air emission from Title V sources. The Division has begun the process of evaluating various approaches for determining what portion of the ambient monitoring should be funded by Title V fees. The Division has also begun an evaluation of the Title V inspection frequency to see if changes can be made while still ensuring that the current compliance rate for Title V facilities is not eroded. In summary, each of the activities that comprise Tennessee's Title V program today are required by federal regulations and cannot be simply eliminated or diminished in a way that would impact the adequacy of Tennessee's operation of the Title V program.

While some Title V facilities have not had to deal with changing air quality requirements for a significant amount of time and may be able to move towards a "maintenance of standards" mindset, that is not the case with all Title V facilities in the state and is not the case for the Board or the Division. Recent work in transition from a geographic-based permitting organization to a sector-based organization identified 73 separate industry categories (sectors) in Tennessee subject to 109 different federal regulations. The Division's staff is responsible for having a working knowledge of and staying up to date with the state and federal regulations that apply to each sector. Based on information contained on EPA's Residual Risk/Technology Rules website, EPA has promulgated 40 new or revised standards in the past 10 years, 20 more have been signed but not yet published in the Federal Register, and 35 more are scheduled to be reviewed and potentially revised within the next two years. This trend is expected to continue as EPA proposes and promulgates residual risk standards as required under the federal Clean Air Act. In addition, the Board and Division are tasked by federal regulation to develop several new air quality plans and revisions over the next few years including Regional Haze (due June 2021), the Affordable Clean Energy rule (due July 2022), and a 111(d) plan for existing Municipal Waste Landfills that was due in August 2019. Additionally, the Division is responsible for addressing the one remaining nonattainment area in Kingsport, Tennessee.

In addition to these specific regulatory changes, the Clean Air Act requires U.S. EPA to review federal ambient air quality standards every five years and revise them if necessary. Revision of federal air quality standards often leads to additional regulatory and permitting burdens for Title V facilities and additional responsibilities for the Division. Changes to federal air quality standards may also change or increase ambient air monitoring requirements for the Division. In September 2019, EPA issued a Policy Assessment for review of the PM standard and in October 2019, EPA issued a similar document for the ozone standard. Either or both of these could lead to tighter standards in the near future that may impact the workload of the Division. The Division and the Department have also spent a considerable amount of time addressing ozone transport challenges from other states by responding to EPA petitions or participating in matters as they proceed through the court system. Much of this work is specific to Title V facilities in the state and, while not mandated by federal law, is beneficial to Tennessee and the facilities at issue.

While the Board and the Division cannot change the requirements of the Title V program, they can and have undertaken efforts to streamline processes and increase the efficiency of the Title V program. Tennessee's Title V industry partners have been a driver to improve the Division's work

product. As good stewards, the Division has pursued workforce modernization. The Title V program in Tennessee has undergone many changes since inception. It is the intention of the Division to continue to evolve and modernize the Title V program to meet the evolving needs of the public and regulated community. As with any workforce, modernization can create efficiencies, promote effectiveness, and reduce overhead. However, providing staff the tools to do the best job they can does come at a cost.

Some examples are:

- Development of an on-line system (known as SLEIS) for facilities to submit emissions inventory reports, permit fee AEAR reports, and compliance reports;
- Recent changes to air quality rules that will allow sources that are subject to federal standards to be considered insignificant activities for Title V purposes once those federal rules have been adopted into Tennessee's rules;
- Changes to Tennessee's construction permitting process (which were identified and developed through a LEAN process that included industry stakeholders) that should benefit Title V as well as non-Title V facilities;
- Reorganization to sector-based permitting that will provide for consistency and improve efficiency across industry sectors;
- Automation of non-Title V and semi-automation of Title V invoicing; and
- Modernization of the ambient monitoring network to reduce required staff travel time and make critical ambient data available anywhere in the state.

Many of these changes have already or will soon be implemented, while others will take longer to come to fruition.

The Division's Field Services Program has recently implemented and will continue to develop changes to improve the efficiency of its operations. Each Field Office has its own region with its own assigned counties. In the past, each Field Office was responsible only for its region. The Division has shifted workload between the Field Offices in order to use its resources more efficiently and effectively. This has allowed the Division to shift work, such as Title V inspections and report reviews, from one Field Office to another when needed, thereby spreading the workload more evenly and maximizing use of our resources. Previously, the program combined periodic Field Services meetings with the Smoke School training. The Division has reevaluated how it accomplished this training to ensure that we are using its resources effectively. The Division added an East Tennessee VEE school, which required only day travel for staff. All Field Services meetings and ambient monitor training are now conducted by WebEx, and the Division is currently developing self-instructional training courses. As a result of these adjustments, the program has eliminated almost all overnight travel, resulting in substantial savings of both time and money.

The department is currently reviewing the Alternate Workplace Solutions (AWS), a program which allows staff members to work from home in lieu of traditional offices. Programs within the Division have participated in AWS since 2017 and more will implement AWS in 2020. When fully implemented, AWS will allow the Division to substantially reduce office space needs, while increasing efficiency and maintaining workload productivity. The Division will continue to work with the department on the implementation of AWS.

As expectations for ready access to information and transparency have increased with the advent of mobile technology, the Division has met those expectations through its publicly available dataviewer and by maintaining its website pages. The Division has also improved response times for requests for information by digitizing all paper files across the state. The database (known as Smog Log) that maintains that information is now the backbone for the Division and is used daily in our permitting, inspection, and administrative work, and also for federally mandated reporting, invoicing, reports to the Board and the Tennessee General Assembly. The support and maintenance of this system is critical to the daily functionality of the Division.

In order to meet the requirements of a 100 percent digital work space, the Division had to transition from a historical clerical based administration group to a professional administrative services group. Becoming more sophisticated has required reclassification of clerical positions to

professional administrative services positions. A large portion of this group operate as data entry and administration specialists by receiving and entering applications, reports, and modifications; updating official information; and reviewing and uploading other documents to the database. Others continue to provide a face and voice to the citizens and regulated community by staffing a front desk and providing phone coverage for the Division, but now also spend considerable time using its website and the Internet to provide information to the public. In this regard, they work to ensure the Division's website and the Board's website are updated and include accurate information. Finally, they continue to manage Division personnel activities, time and activity, training, assistance with travel and expense reimbursements, required public participation processes for the Division, facilities and supplies support, procurement support, and Board administrative support. EPA requires Title V reporting semiannually that is conducted by the administrative staff by running queries of the database. In modernizing and moving to a digital work environment, the Division has eliminated seven administrative positions since 1993. As a whole, the Division has less staff than it has had since the very early days of the Title V program. The Board understands that the Division is committed to operating a program that is right sized for the needs of Tennessee and will continue to evaluate and implement opportunities for further efficiency gains in 2020.

Comment: Two commenters provided two specific suggestions of efficiencies that should be utilized by the Division. An additional commenter supported these suggestions generally but for future budgets. Another commenter mentioned the first suggestion in its comments.

1. One commenter noted that the Title V Workload Analysis is based on annual Title V inspection frequencies when EPA guidance allows for bi-annual inspections. The commenter asserted that Title V is a self-reporting and compliance certification based program and that sources should not be paying for inspections beyond the EPA recommendation. Another commenter requested the Division examine whether annual inspections are necessary or whether a less frequent and more focused approach would be more effective. One commenter estimated that cutting the number of inspections in half would move 3.19 FTEs from Title V to non-Title V. This commenter estimated that this change would also move 1.49 FTEs related to the Field Services program's program management and meetings to non-Title V, resulting in a total of 4.7 FTEs being moved from Title V to non-Title V activities. Another commenter also suggested shifting certain positions. Two of these commenters also asserted that it appears that the Title V program has been charged for Conditional Major source inspections.
2. Commenters questioned ambient monitoring expenditures. One commenter questioned the assumption in the Workload Analysis that 42% of the ambient air program should be borne by Title V and 38% by non-Title V (the remainder is funded by an EPA grant). This commenter pointed out that TDEC's ambient air monitoring network plan shows only four source oriented monitors versus about 20 population-oriented monitors. Another commenter proposed that the five source-oriented monitors be assigned to Title V and the remaining 19 be assigned to non-Title V. This commenter estimated that this would shift 3.4 FTEs from Title V to non-Title V funding. Another commenter requested the Division determine more accurately the relative burden of ambient monitoring expenditures that should be borne by Title V Sources.

Response:

1. The Division follows the Federal Fiscal year (October 1st to September 30th) for its inspection cycle. The Division's current inspection frequency began on October 1, 2019, and each Field Office manager developed his or her annual Field Office workload plan. The Division has operated the Title V program in Tennessee for over twenty years and has had a fairly consistent approach to conducting inspections during that operation. The suggestion for a change to the Title V inspection frequency was made during the second listening session held with stakeholders, but had not been previously discussed or suggested by stakeholders in the previous three years of stakeholder engagement regarding Title V fees. Following the September listening session, the Division began evaluating data related to compliance for Title V facilities in Tennessee and what impact a revision of the inspection frequency for Title V facilities may have on compliance. The Board understands that the Division is committed to conducting a full evaluation that assesses whether and how a program change involving a less frequent on-site facility inspection could be designed and implemented to accomplish

some level of Title V workload relief, but would also ensure compliance levels within the Title V program are not unnecessarily diminished. Once completed, this evaluation and any associated recommendations will be presented to the Board for feedback and direction before any changes to inspection frequency are implemented. Based on the data and information assessed to date, the Board understands that the Division anticipates that there may be an increase in High Priority Violations (HPVs) should inspection frequencies be reduced. (HPVs are a subset of violations that receive additional scrutiny by U.S. EPA to ensure that enforcement agencies respond to them in a timely and appropriate manner.) Reduced inspection frequencies may also result in a longer duration of non-compliance at a facility. The Board understands that the Division does agree that Title V regulations and permits do require self-reporting (generally semi-annually) and annual compliance certifications. However, the Division states that these requirements have not necessarily resulted in lower compliance rates when compared to facilities that are not subject to Title V requirements. The Division has compiled data regarding Title V, conditional major (CM), and true minor (TM) source inspections from 2008 through 2019. This data shows that Title V sources have a higher rate of non-compliance than non-Title V sources.

<b>Inspection Period*</b>	<b>Title V</b>	<b>Title V Non-Compliance Rate</b>	<b>CM</b>	<b>CM Non-Compliance Rate</b>	<b>TM</b>	<b>TM Non-Compliance Rate</b>
2008-2009	258	9%	385	10%	209	8%
2009-2010	247	9%	373	9%	234	14%
2010-2011	245	18%	370	11%	308	17%
2011-2012	230	20%	369	12%	254	15%
2012-2013	209	15%	358	12%	325	18%
2013-2014	206	24%	349	18%	501	19%
2014-2015	213	17%	339	15%	324	23%
2015-2016	237	17%	324	12%	226	25%
2016-2017	234	19%	329	10%	216	18%
2017-2018	231	26%	327	12%	438	6%
2018-2019	227	13%	343	8%	321	3%
Total	2537	427- 17%	3866	410 - 11%	3356	497 - 15%

\*Inspection period is October 1 through September 30.

The Board also understands that the Division anticipates that an adjustment to the Title V facility's inspection frequency would not result in a 50% decrease in workload hours worked to determine compliance associated with Title V sources as the commenter suggests. According to the EPA's October 4, 2016 memo, a Full Compliance Evaluation (FCE) should be conducted at a minimum of once every two Federal fiscal years at all Title V major sources, except those classified as mega-sites. An on-site inspection is only one part of a FCE; it also includes the review of all required reports<sup>1</sup>, visible emission observation (as needed), a review of facility records and operating logs, an assessment of process parameters, an assessment of control equipment performance parameters, and (if applicable or deemed appropriate) a stack test. The Division currently has eight facilities that are classified as mega-sites. Seven of these facilities are inspected on a three year cycle, and one is currently inspected on a two year cycle. A three year cycle is one in which the inspectors will inspect one-third of the emission sources at these facilities each year until a FCE is completed within the three year cycle.

Each Title V facility is required to submit semi-annual reports and annual compliance certifications to the Division. The Division is required to review these reports in a timely manner and to enter the data into EPA's database (ICIS-Air) within sixty days of receipt. Inspectors must review the reports and enter the data in a timely manner in order to meet

<sup>1</sup> Reports include- continuous emission monitoring, continuous parameter monitoring, malfunction, excess emission, semi-annual, annual compliance certification, periodic monitoring reports, and any other reports required by the permit.

federal requirements; therefore, workload associated with a facility's full compliance evaluation will occur on an annual basis regardless of the frequency of the facility inspection.

The Division receives complaints regarding Title V facilities. When the Division receives a complaint about a permitted facility, the inspectors conduct an on-site inspection to ensure that the facility is complying with its permit conditions. If a complaint is received regarding a Title V facility, the Division will complete an on-site inspection in order to verify compliance with the permit conditions and be responsive to the complainant regardless of the frequency of the facility inspections.

<b>Inspection Period</b>	<b>Title V complaints</b>
2008-2009	47
2009-2010	75
2010-2011	34
2011-2012	13
2012-2013	13
2013-2014	18
2014-2015	18
2015-2016	24
2016-2017	27
2017-2018	26
2018-2019	32

Since the Field Services Program's program management and meetings workload is due to a variety of activities, the Board understands that the Division cannot at this time determine how many, if any FTEs associated with these tasks would be moved from Title V to non-Title V, but the Division will include this in its assessment.

The Board understands that the Division has confirmed that all time associated with conditional major facilities is charged as non-Title V time. A facility may initially be classified as a Title V source until it is issued a permit that includes conditions that limit its emissions to below major source thresholds (i.e., a conditional major permit). While the facility is still classified as a Title V source, activities related to that facility will be charged to Title V. There are currently three facilities in Tennessee that fit into this category. Once a conditional major permit is issued, the facility will be reclassified as a conditional major source and activity will be charged to non-Title V.

2. The Division currently operates 28 ambient air quality monitors within the state located at 24 different monitoring sites. The various monitoring sites are classified as maximum concentration, background, population weighted emission index (PWEI), transport, population oriented, and source oriented in accordance with federal regulations. The cost of operating and maintaining an ambient monitoring network is an eligible Title V cost under both state (1200-03-06-.02(1)(c)5) and federal regulations (40 CFR 70.9(b)(iv)(v)). Five of Tennessee's sites are classified as source oriented or maximum concentration. The cost of operating these source oriented and maximum concentration monitors are charged to Title V or non-Title V, based on the type of source they are located near (four are near a single Title V source and the fifth near a now-closed non-Title V facility).

The monitors that are not source oriented or maximum concentration measure air pollution emitted from or formed from emissions from a wide variety of sources, including Title V facilities. Since it is impossible to determine where the air pollution measured at the non-source oriented monitors originated, permitting authorities have the discretion to determine what portion of ambient monitoring costs should be charged to Title V fees.

The Board does not agree with the comments suggesting the costs associated with all non-source oriented monitors should be charged to non-Title V. The commenters provide no basis for this suggestion, but the suggestion assumes that emissions from Title V facilities

have nothing to do with the requirements or necessity for those monitors. The population associated monitors that measure ozone and particulate matter are sited following federal requirements and guidance. The monitor siting objective is to place the monitor where there is likely to be the most amount of people exposed to air pollution coming from any source, including Title V facilities. For ozone, EPA regulations and guidance advise to locate monitors within about 30 miles from where the ozone precursor emissions of NO<sub>x</sub> and VOCs may originate, although it is readily acknowledged that the area of influence for ozone is likely much larger. Within Tennessee, there are about 99 Title V facilities located within a 30 miles radius of the ozone monitors. Additionally, mechanisms under the Clean Air Act like the Good Neighbor Provision and EPA's historic NO<sub>x</sub> SIP call rule that was aimed at reducing impacts to ozone levels in neighboring states provide ready evidence that large Title V facilities can have an impact on air quality a large distance from the actual facility. The reach of particulate matter pollution is longer and can occur within up to 400 miles from the source; therefore, Tennessee's Title V sources with particulate matter and particulate matter precursor emissions may impact many of Tennessee's particulate monitors as may sources from other states. Finally, the calculations made by the commenter suggesting shifting cost from Title V to non-Title V included some incorrect assumptions regarding the monitoring program. First, one of the five source-oriented monitors is a lead monitor in Bristol which is near a now-closed non-Title V site and is therefore charged to non-Title V not Title V. Second, the commenter included a vacant position in the calculations that the Division has no current plans to fill.

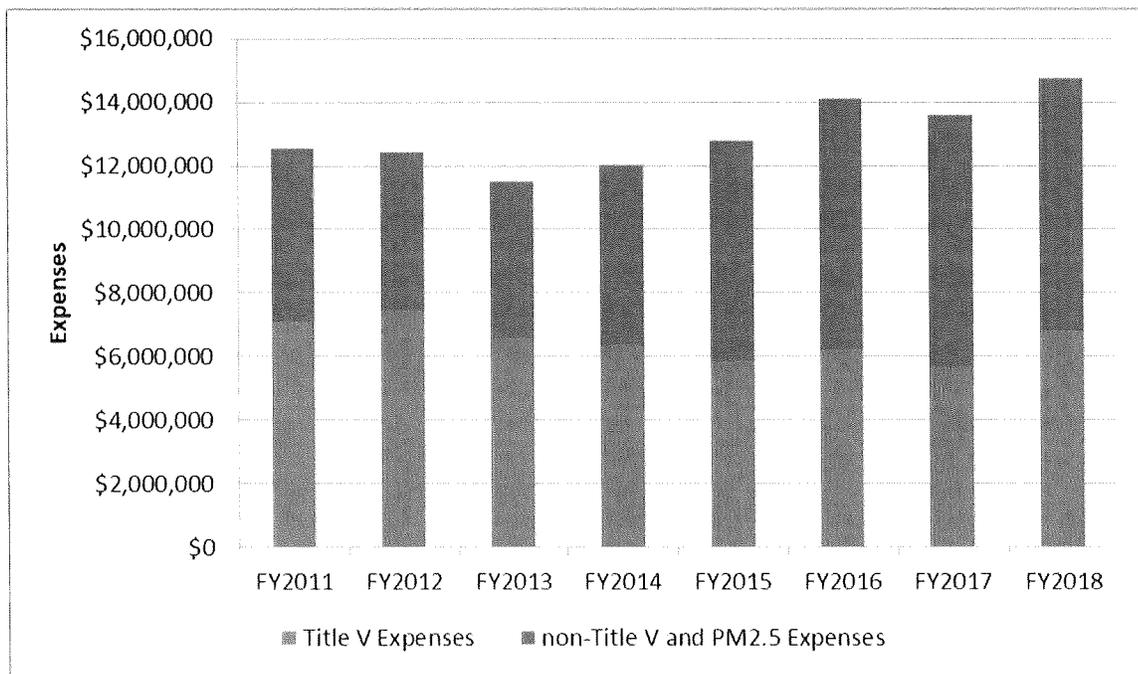
Since fiscal year 2017-2018, the Division has charged the costs of operating and maintaining its ambient monitoring network (excluding source oriented and maximum concentration monitors) using a "default ratio" of 52% Title V/48% non-Title V. The Division also receives approximately \$210,000 per year from an EPA section 103 PM<sub>2.5</sub> grant that is used to fund a portion of the fine particulate monitoring network. When considering the amounts charged to Title V and non-Title V for source-oriented monitors, the amount charged to the PM<sub>2.5</sub> grant, and the amount charged to the default ratio, the portion of the total ambient monitoring cost covered by Title V fees is approximately 42%. Since initiating this approach in 2017, the approach has been discussed and has received general support during stakeholder meetings and from the Board. The Division agrees that there are likely other evidence based approaches for charging ambient monitoring costs, but until such alternatives have been fully developed and vetted with stakeholders and the Board, the Board believes it is appropriate to retain the current approach. The Board understands that the Division is committed to conducting an analysis and providing the Board a proposed allocation between Title V and non-Title V for the costs of the monitoring program that has some connection to the state's relative emissions profile or other factors that influence the need for the monitors.

**Comment:** A commenter encouraged department leadership to examine expenses currently assigned as Title V activities that may not serve the purpose of the Title V program. The commenter presented data indicating that the average Title V expenses from fiscal year 2009-2010 through fiscal year 2017-2018 averaged \$6.7 million dollars per year compared to the projected fiscal year 2020-2021 Title V expenses of \$7,810,839. The commenter also referred to the Division's September 11, 2019, presentation to the Board that projects Title V expenses reaching \$9,784,927 in fiscal year 2025-2026.

**Response:** The Board understands that the Division reviews expenses charged to all funding sources, including Title V, on at least a monthly basis. Those reviews are conducted on a routine basis by the Division's Business Administrator and the managers of each program within the Division to ensure that they are legitimate Division expenses and have been charged to the proper funding source. When an incorrect charge is found, the Business Administrator corrects the error and, when necessary, initiates process changes to prevent similar errors in the future. This process allows the department and the Division to ensure that activities charged to Title V are eligible costs for the program under federal and state law.

As indicated in the draft fiscal year 2020-2021 Title V Workload Analysis, previous workload analyses, and during numerous stakeholder and Board meetings, the Division made changes to how employee time and other expenses are entered into the Department's time and expense management system to ensure that expenses are charged to the proper funding sources.

Therefore, the levels of Title V expenses prior to fiscal year 2017-2018 are not representative of the actual cost of running Tennessee's Title V program. As can be seen from the following graph, the Division's total expenses have increased steadily since fiscal year 2012-2013 (FY2013). (Expenses in FY2016 were somewhat elevated due to increased equipment purchases that were funded by a significantly higher EPA grant that year and expenses in FY2017 were slightly reduced due to a large number of positions held vacant pending a reorganization of the Division and the completion of fee rules that would adequately fund both the non-Title V and Title V programs. There was also a significant reduction between FY2012 and FY2013 due to a reduction in the amount of indirect expenses for the Department and the Bureau of Environment that were charged to the Division.) However, even though total Division expenses increased from FY2013 through FY2017, Title V expenses dropped. This is due to the fact that expenses were intentionally shifted from Title V to non-Title V because of 1) an anticipated decline in Title V fees due to reduced emissions, and 2) a misperception that the Division had surplus funds available in its non-Title V fee reserve. (It was later discovered that a significant amount of non-Title V expenses were being charged to Title V. This was corrected and the expenses were reallocated in 2016. These expenses are properly allocated in the figure below as well as in Table 15 of the Title V Workload Analysis.) Projected FY2021 expenses were developed using best available information as explained in the draft FY2021 Title V workload analysis. If the actual FY2021 Title V expenses were to be estimated by simply increasing FY2018 Title V expenses by the actual rate of increase for the past several years of 4.6%, one would arrive at an estimate very close to projected FY2021 Title V expense amount specified in the draft FY2021 Title V Workload Analysis of \$7,810,839



Comment: General and Administrative Expenses

One commenter described its comments as being with respect to a portion of the Title V expenses labeled "TDEC General & Administrative Expenses" in the Workload Analysis prepared by the Division of Air Pollution Control (the "Division"), which the commenter described as the basis for the proposed increase in Title V fees in these proposed rules. The commenter stated that the workload analysis lists a series of expenses, without amounts, and then states that "G&A (General & Administrative) expenses are charged to the Division according to formulae based on the percentage of the Division's budget in proportion to that of other BOE division budgets and special reserve funds and the Division's headcount. The Division's G&A expenses are charged to Title V funds, non-Title V funds, and federal grant revenue."

The commenter had concerns that the amount of G&A charged to the Title V program may be greater than is reasonable. The commenter stated that it has repeatedly in this budgeting process, and in prior years, asked for the specific formulae used to allocate G&A expenses among the various divisions in the Department, and further allocate the Division's allocated portions to the Title V and non-Title V programs. The commenter further stated that while the commenter had been advised as described in this quoted language that it is based on the percentages of budgets, reserve funds and headcount, the Chamber has not been provided any specifics on this. The commenter requested that it be provided with these formulae, and also requested that the specifics of how these formulae are applied in the allocations among the divisions and within the Division between Title V and non-Title V programs, including the dollar amounts of these allocations.

A commenter noted that in the department's comments during its budget hearing with the Governor's office the week of November 4, the Commissioner stated that approximately \$24 million, or about 6% of the Department's budget, was for department-wide support services. The G&A expenses allocated to the Title V program have consistently been over twice this percentage of the Title V program budget, other than the two years when the G&A expense was not allocated to the Title V program. The commenter stated that it presumed that there are some expenses included in this Title V G&A expense number that were not included in the 6% figure for department-wide support services, but the commenter did not know what those are. The commenter requested that the department provide a description of the department-wide support services that are included in the G&A expenses in the Title V workload analysis and the total costs thereof to provide an apples-to-apples comparison with the 6% department budget figure, or otherwise provide information that would explain the difference in the percentage of the G&A expenses in the Title V workload analysis and the 6% department-wide support services.

A commenter made an oral comment during the hearing that the Chamber had not been informed of what constitutes "special reserve funds" that are referred to in the general verbiage included in the Title V workload analysis. This commenter stated that he had not seen the formulae and the numbers of how they are allocated: the number of people in each division, the dollars in each division, and how decisions are made with respect to how allocations are made from reserve funds. He stated that it is difficult for the Chamber and its members to determine whether these allocations are fair are appropriate and comment accordingly. He commented that the Chamber believes this is a flaw in this process and that excess amounts may be allocated to Title V. He stated that the Chamber has had specific discussions regarding costs that they believe should be allocated to non-Title V, and the Chamber has been rebuffed on every suggestion so far to move those costs. His concern is that this is driven more by the inability to fund them with non-Title V than the fairness or accuracy of those suggestions. He stated that these are his assumptions and that the Chamber hasn't seen these numbers yet. He stated that his personal concern is further magnified by the fact that when the Chamber pressed on this approximately 10 years ago and had a sit down with the head economic person at the Department, there were changes in allocations that were made and there were things that they agreed were not fair. He stated that the Chamber is concerned that we may be there again. He said that this is a statement of ignorance because the Chamber has not seen the numbers and not because he knows that this is the case.

Response: Each Division that collects Environmental Protection Fund (EPF) fees and or Other Special Revenue Fund (OSR) fees contributes a portion of those annual fees to 32701, which is characterized as department wide administrative support services, and 32730, which is characterized as environmental administrative support (collectively TDEC General and Administrative Expenses or TDEC G&A).

The methodology for funding department administrative support services is based on prorating all of the eligible Environmental Divisions budgets to determine the percentage share of liability to fund Administrative Services (32701). For example, if Division A's budget is 25% of the total eligible divisions' budgets, then Division A would be responsible for 25% of the Environmental Divisions funding required for Administrative Services (32701).

The methodology for funding 32730, Environmental Administration, would be prorated based on the full time position count at the environmental field offices (EFOs). All divisions with a presence in a field office would be included in the funding pool and be required to fund their percentage based on positions. For example, if Division A had 25% of the positions in the EFOs, then Division A would be responsible for 25% of the Environmental Divisions' funding required for Environmental Administration, 32730.

As the TDEC budget changes each year, this calculation is performed at the beginning of each fiscal year using the new budget numbers for both administrative support service divisions and eligible Bureau of Environment divisions. A new memo is sent to the Department of Finance and Administration (F&A) each year which approves it. Attached is a copy of the May 2, 2019, memo from the department to F&A.

TDEC G&A is shared among two Air Pollution Control programs, Title V and non-Title V. A portion of non-Title V TDEC G&A is covered by federal grants. The TDEC G&A expenses are calculated based on the percentage of the Division's total employees to perform the respective services. The Division's Title V workload analysis is prepared annually which outlines the number of employees necessary to perform the services for the Title V program.

The Department's proposed FY2021 budget includes funding for both the Bureau of Environment (BOE) and Parks and Conservation. While the \$24,000,000 referenced in the Governor's hearing is 6% of the overall Department budget of \$416,000,000, this amount is inclusive of only department-wide administrative services, of which \$11.3 million is supported by various divisions of the BOE based on the funding formulae described herein. These administrative support services are provided by the Office of General Counsel, Commissioner's Office, Internal Audit, Procurement, Communications, Human Resources, Talent Management, shared services for technology and accounting, and other administrative functions. It is important to note that this figure does not include support services from the eight Environmental Field Offices (EFOs). These services are inclusive of EFO facility rent, utilities, maintenance, BOE leadership, and administrative staff.

The legislature can designate any fund a special reserve fund when it is created. Special reserve funds are statutory reserves that are held for a specific, "special" purpose. There are a variety of special reserve funds throughout the BOE. For example, the UST fund is a special reserve fund, specifically for UST fees. The funds in the UST account are used for the operation of the division, including personnel, and their related work such as cleanups. Another example is the Hazardous Waste Remedial Action Fund, which is also used for their operations and related cleanup or other work.

Comment: A commenter stated that it was the commenter's understanding that that the budget request is two million dollars more than the loss that will occur with the loss of revenue from elimination of the vehicle emissions inspection program and that all of these funds are going to the non-Title V program. The commenter's position is that if additional monies granted by the legislature go to the Air Pollution Control Division that some of these should go to the help with Title V fees either directly to fund some of the costs that the commenter has suggested are currently charged to Title V but should be funded with non-Title V fees.

Response: The Department of Environment and Conservation has submitted a request to the Governor's office for 3.6 million dollars in additional recurring funds for the Division of Air Pollution Control. As shown in the table titled "SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – Proposed Rule" and the end of this response to comments document, the Division has projected a 3.4 million dollar shortfall in non-Title V revenue following elimination of the vehicle emissions testing program. A portion of this shortfall is due to the loss of the inspection and maintenance program, but roughly 1.6 million dollars of the shortfall is due to the revenue in the non-Title v program not being adequate to cover the costs of the program. Therefore, should the Governor choose to include the Department's request in his budget and should the legislature adopt the budget as requested, there will be few if any funds available to

cover shifted Title V costs.<sup>2</sup> Furthermore, the Clean Air Act and federal Title V regulations require that Title V programs be funded entirely with Title V fees. The Board understands that the Division has determined that all of the projected Title V expenses indicated in the FY2021 Title V Workload Analysis are legitimate Title V expenses and have been legitimately allocated to Title V. As indicated elsewhere in this response to comments document, the Division has begun the process of evaluating the inspection frequency of Title V sources, with the goal of ensuring that any changes would not reduce the compliance rate of these facilities, and evaluating alternative methodologies for determining the percentage of ambient monitoring costs that should be charged to Title V. It would be imprudent for the Board and Division to implement either of these changes until these analyses have been completed.

Comment: One commenter asserted that the Board has proposed to add five new positions and has proposed a very significant increase in fees.

Response: The Board understands that the Division is not proposing to add any new positions. During the September 11, 2019, Board meeting the Division provided a table showing the number of filled positions (as of January of each year) going back to fiscal year 2010-2011. This information shows that between fiscal year 2010-2011 and fiscal year 2015-2016, the Division averaged between 110 and 114 positions. Starting in calendar year 2016, many positions that became vacant due to retirement or other reasons were not filled while the Division was undergoing reorganization and working to develop and implement fee rules that would adequately fund both the non-title V and Title V programs. That reorganization was completed in 2019 with several staff moving to positions with new responsibilities. During this period, workload was prioritized and staff worked excessive hours in order to meet regulatory deadlines and meet the needs of the businesses of Tennessee. A number of efficiency projects have been put on hold and permit backlogs are starting to build. Operation at the current level of staffing is not sustainable. This rule will simply allow the Division to restore its previous staffing levels. If all positions that the Division intends to staff are filled, the Division would have 114 filled positions.

The Board acknowledges that the proposed fee increase is significant compared to the current fee rule. However, the amount that would be collected as a result of the department's recommended fee rule (which is estimated to be approximately a 25% increase from the current rule) is roughly equivalent to the Title V collections that occurred prior to the significant reduction in emissions that has been seen in the past few years. The Division has been forthcoming and transparent with the Title V regulatory community and the Board about the significant impact reduced emissions would have on the financial adequacy of the Title V program since at least 2016. Additionally, this circumstance is not unique to Tennessee and various states throughout the region have needed to raise Title V fees to address the dramatic decline in emissions that has occurred. In February of 2016, the Division held a stakeholder meeting and presented a graph showing Title V Revenue and Expenses. That graph projected that Tennessee's Title V program would have about a 2.8 million dollar deficit in 2018. In May of 2016, the Division presented to the Board and showed the same graph, but with updated projections indicating that the 2018 deficit may be closer to three million dollars. The Division conducted significant stakeholder outreach in 2016 and again in 2017 to discuss rule changes that would address the deficit and the overwhelming recommendation from the regulatory community was to keep the structure of the program funding as it is and increase the dollar per ton rates. A rulemaking proceeded and was adopted by the Board in December 2017, became effective July 1, 2018 and actually applied to Title V fees that were due in 2019. These changes added an additional \$980,000 to Title V fee revenue, but did not address the full program deficit nor did they address inflationary costs like pay for performance, rent, or IT cost increases. Neither proposal presented to the Board would result in emission fees that are the highest in the region. For non-EGU sources, there are currently three other states with higher emission fees and some of those states have various other fees associated with work activities within their Title V programs that Tennessee does not have. Additionally, other states within the region are currently working to address the financial adequacy of their Title V programs. The proposed fee increase is necessary in order to ensure proper funding of Tennessee's Title V program as required by state and federal law.

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<sup>2</sup> A similar version of this document was provided to Mr. Drew Goddard by Director Michelle Owenby on 8/8/2019 and was included in the September 11, 2019, Board package. That version still shows expenses and revenue of vehicle testing program. Removal of those revenues and expenses will show a \$3.4 million deficit.

As can be seen from the table of historical Title V collections and expenses below, the proposed fee for fiscal year 2020-2021 is lower than the Title V fee program collected a decade ago (fiscal years 2007-2008 through 2009-2010) and the Division's recommended fee schedule is about the same as it was in 2015. However, because of the large reduction in emissions that have occurred over this period (see table), it is necessary to significantly increase the dollar per ton rates in order to achieve a similar level of funding. Hence, the proposed increase in fee rates is necessary due to decreased emissions and not as the result of increased personnel.

Projected expenses for fiscal year 2020-2021 are consistent with the level of expenses that occurred in fiscal years 2010-2011 and 2011-2012, prior to the Division's shifting of expenses from Title V to non-Title V (see earlier response to comment), particularly when considering inflationary costs since that time period. Title V expenses have decreased almost every year since 2012, and the Division has undertaken significant efforts to ensure that Title V activities are properly charged to Title V funds and to develop streamlining and efficiency measures where possible. However, federal law requires that eligible Title V program costs be paid at least in part through fees. It is not reasonable to assume that expenses would continue to decrease but instead it is logical to conclude that expense increases are necessary to cover the cost of inflation, including salary increases, rent increases, and the state's share of the increased costs of health insurance, among other things. Since Tennessee's Title V fee rules do not include a provision to account for inflationary costs, such increases must be accomplished through rulemaking. If rulemakings are not undertaken or accomplished on an annual basis, as has been the case in Tennessee, annual inflationary costs build up and the resulting necessary increases are larger when done.

Fiscal Year	Fees	Billable Tons	Expenses
FY2004	\$5,780,573.30	287,382	\$5,299,426.96
FY2005	\$5,773,095.32	290,031	\$6,289,281.06
FY2006	\$6,806,903.33	259,420	\$6,604,384.65
FY2007	\$6,170,217.54	236,937	\$6,993,064.19
FY2008	\$7,116,004.10	234,615	\$7,254,796.79
FY2009	\$7,939,773.17	232,996	\$6,613,669.61
FY2010	\$7,587,853.93	211,345	\$6,415,182.16
FY2011	\$5,800,630.50	204,961	\$7,075,587.11
FY2012	\$6,336,163.20	190,232	\$7,442,955.03
FY2013	\$6,891,980.16	186,001	\$6,539,361.37
FY2014	\$6,844,856.89	170,198	\$6,355,428.77
FY2015	\$7,040,610.80	164,758	\$5,818,609.26
FY2016	\$5,321,521.83	141,624	\$6,094,831.92
FY2017	\$4,617,895.15	136,292	\$5,687,186.70
FY2018	\$6,294,657.17	113,364	\$6,818,383.34
FY2019	\$6,355,230.48	113,135	\$5,703,359.09

Collection and expense data are taken from Table 15 of the Title V workload analysis. Expenses have been revised to account for a transfer of non-Title V funds to the Title V EPF that occurred in FY2016 to correct previous misallocations of expenses.

**Comment:** A commenter asked to know why the Title V fee rule needs to be adopted in December 2019, although the increased fees will not be due until April 1, 2021. The commenter noted the budget request of 3.6 million dollars in funding for the Division discussed in the budget hearings and asserted that if the funding is enacted, it will significantly affect what money is necessary for the Division to run its programs. The commenter wanted to know if there was any way to defer the December board adoption until there is a better understanding of what becomes of the budget request.

**Response:** Effective July 1, 2013, Tennessee Code Annotated section 4-5-229 provides that any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following expiration of the ninety (90) days as provided in T.C.A. § 4-5-207. The majority of Title V fees are due April 1 of the state fiscal year for which the fees are being collected. This means that the fees for a specific fiscal year must be effective the first day of that fiscal year. (The state fiscal year is July 1 to June 30.) As an example, the currently effective fee rules were adopted by the Board in

December 2017. Although the portions of the rule that did not increase the fee or create the base fee were effective April 11, 2018, the actual fee rates did not change until July 1, 2018, the first day of state fiscal year 2018-2019. If the current rulemaking is approved by the Board December 11, the fee rate changes will be effective July 1, 2020, the first day of fiscal year 2021, and will be due between April 1, 2021 and September 28, 2021, depending on the permittee's choice of fee bases. Other changes in the current rulemaking will be effective prior to July 1, 2020. In addition, state rulemaking timelines and review by the Office of the Attorney General and Reporter are established in state statutes. Adoption in December is necessary in order to comply with state law, account for delays, and ensure that the effective date of the fee increases in this rulemaking is no later than June 30, 2020 (for an effective date pursuant to the statute cited above of July 1, 2020). Specifically waiting until the General Assembly passes and the Governor signs the budget for adoption of the rules (estimated to be April or May) would mean that the deadline would be missed.

The Department has requested 3.6 million dollars in recurring funding to support the non-Title V program. These funds cannot be applied to the Title V program due to federal law and are needed to administer the non-Title V program as described in an earlier response.



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
NASHVILLE, TENNESSEE 37243-0435

DAVID W. SALYERS, P.E.  
COMMISSIONER

BILL LEE  
GOVERNOR

DATE: May 2, 2013  
TO: Benny Romero, Controller for TDEC, Department of Finance and Administration  
From: David W. Salyers, P.E., Commissioner  
Subject: Administrative Services (32701) and Environmental Administration (32730) Funding Methodology

Each Environmental Division currently contributes funding to support the Administrative Services Division and Environmental Administration. The funding for 32701 and 32730 from the Environmental Divisions comes from three primary sources:

1. State Appropriations - Both Administrative Divisions receive general fund appropriations.
2. Federal Grants - Each Division contributes a portion of its federal grant funds to support the Administrative Groups based on TDEC's EPA approved federal indirect cost rate.
  - a. The Department negotiates an indirect cost rate each year with the federal government (the U.S. Environmental Protection Agency). Regardless of the Division that receives the grant, the same percentage of that grant's personnel and benefits expenditures is used to fund 32701.
3. Environmental Protection and Other Special Revenue Funds - Each Division that collects Environmental Protection Fund (EPF) fees and/or Other Special Revenue Fund (OSRF) fees contributes a portion of those annual fees to 32701 and 32730.
  - a. The Methodology for funding 32701 will be based on prorating all of the eligible Environmental Divisions budgets to determine the percentage share of liability to fund Administrative Services 32701. For example, Division A's budget is 25% of the total eligible divisions budgets, therefore Division A would be responsible for 25% of the Environmental Divisions funding required for Administrative services 32701.
  - b. The methodology for funding 32730 Environmental Administration would be prorated based on the full time position count at the environmental field offices. All divisions with a presence in a field office would be included in the funding pool and be required to fund their percentage based on positions.

Journals will be requested to be processed monthly to effectuate this funding methodology from the EPF and SRF divisions. This method will be in effect until further modification is made.

DWS/sq

SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – Proposed Rule

<b>TITLE V, NON-TITLE V, AND PM2.5 GRANT FTES BY FUNCTIONAL UNIT</b>			
<b>FUNCTIONAL UNIT</b>	<b>TITLE V</b>	<b>NON-TITLE V AND PM2.5</b>	<b>TOTAL</b>
Administrative Services	4.7	5.5	10.2
Director's Office	3.1	2.9	6.0
SBEAP	2.0	-	2.0
Compliance Validation Activities	4.1	2.8	6.9
Enforcement Activities	2.6	3.0	5.6
Field Services	15.3	17.7	33.0
Permitting	13.8	13.9	27.7
Regulatory Development	1.9	5.1	7.0
Emissions Inventory	2.6	1.8	4.4
Technical Services	2.5	3.5	6.0
Quality Assurance	2.3	3.1	5.4
<b>Total FTEs</b>	<b>54.9</b>	<b>59.3</b>	<b>114.2</b>
<b>PROJECTED EXPENSES AND FILLED POSITIONS</b>			
<b>EXPENSE DESCRIPTION</b>	<b>TITLE V</b>	<b>NON-TITLE V AND PM2.5</b>	<b>TOTAL</b>
Regular Salaries, Longevity, and Bonus	\$3,903,332	\$4,126,106	\$8,029,438
Benefits	\$1,676,903	\$1,801,822	\$3,478,725
APC G&A Expenses	\$1,110,000	\$1,020,000	\$2,130,000
County I/M Payments	-	-	-
TDEC G&A Expenses	\$1,120,604	\$894,452 <sup>3</sup>	\$2,015,056
<b>Total</b>	<b>\$7,810,839</b>	<b>\$7,842,380</b>	<b>\$15,653,219</b>
<b>PROJECTED INCOME</b>			
<b>INCOME TYPE</b>	<b>TITLE V</b>	<b>NON-TITLE V AND PM2.5</b>	<b>TOTAL</b>
Title V Fees <sup>4</sup>	\$7,278,833	-	\$7,278,833
Visible Emissions Control Fee	-	\$15,903	\$15,903
Construction Permit Fee	-	\$54,543	\$54,543
Annual Non-Title V Emission Fee	-	\$1,714,161	\$1,714,161
Vehicle Emission Inspection Fee <sup>5</sup>	-	-	-
EPA Air Quality Grant	-	\$1,191,101	\$1,191,101
EPA PM2.5 Grant	-	\$257,681	\$257,681
State Funds	-	\$1,200,000	\$1,200,000
<b>TOTAL</b>	<b>\$7,278,833</b>	<b>\$4,433,389</b>	<b>\$11,712,222</b>
<b>SHORTFALL<sup>6</sup></b>	<b>\$532,006</b>	<b>\$3,408,991</b>	<b>\$3,940,997</b>

<sup>3</sup> A total of \$305,206 in federal grant funds are taken off of the Division's Air Quality and PM2.5 Grant awards to pay for Non-Title V TDEC G&A Expenses. The amount taken off is not included in the projected grant income.

<sup>4</sup> Revised based on data received August-September, 2019

<sup>5</sup> The Motor Vehicle Inspection Program is expected to be eliminated during or prior to FY2021. This will result in a loss of all or a portion of the Vehicle Emission Inspection Fee income and County I/M Payment expenses.

<sup>6</sup> Shortfall is expensed minus income and does not take into account available reserve funds.

SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – TCCI Proposal

<b>TITLE V, NON-TITLE V, AND PM2.5 GRANT FTES BY FUNCTIONAL UNIT</b>			
<b>FUNCTIONAL UNIT</b>	<b>TITLE V</b>	<b>NON-TITLE V AND PM2.5</b>	<b>TOTAL</b>
Administrative Services	4.7	5.5	10.2
Director's Office	3.1	2.9	6.0
SBEAP	2.0	-	2.0
Compliance Validation Activities	4.1	2.8	6.9
Enforcement Activities	2.6	3.0	5.6
Field Services	15.3	17.7	33.0
Permitting	13.8	13.9	27.7
Regulatory Development	1.9	5.1	7.0
Emissions Inventory	2.6	1.8	4.4
Technical Services	2.5	3.5	6.0
Quality Assurance	2.3	3.1	5.4
<b>Total FTEs</b>	<b>54.9</b>	<b>59.3</b>	<b>114.2</b>
<b>PROJECTED EXPENSES AND FILLED POSITIONS</b>			
<b>EXPENSE DESCRIPTION</b>	<b>TITLE V</b>	<b>NON-TITLE V AND PM2.5</b>	<b>TOTAL</b>
Regular Salaries, Longevity, and Bonus	\$3,903,332	\$4,126,106	\$8,029,438
Benefits	\$1,676,903	\$1,801,822	\$3,478,725
APC G&A Expenses	\$1,110,000	\$1,020,000	\$2,130,000
County I/M Payments	-		
TDEC G&A Expenses	\$1,120,604	\$894,452 <sup>7</sup>	\$2,015,056
<b>Total</b>	<b>\$7,810,839</b>	<b>\$7,842,380</b>	<b>\$15,653,219</b>
<b>PROJECTED INCOME</b>			
<b>INCOME TYPE</b>	<b>TITLE V</b>	<b>NON-TITLE V AND PM2.5</b>	<b>TOTAL</b>
Title V Fees <sup>8</sup>	\$6,819,868		\$6,819,868
Visible Emissions Control Fee		\$15,903	\$15,903
Construction Permit Fee		\$54,543	\$54,543
Annual Non-Title V Emission Fee		\$1,714,161	\$1,714,161
Vehicle Emission Inspection Fee <sup>9</sup>			
EPA Air Quality Grant		\$1,191,101	\$1,191,101
EPA PM2.5 Grant		\$257,681	\$257,681
State Funds		\$1,200,000	\$1,200,000
<b>TOTAL</b>	<b>\$6,819,868</b>	<b>\$4,433,389</b>	<b>\$11,253,257</b>
<b>SHORTFALL<sup>10</sup></b>	<b>\$990,971</b>	<b>\$3,408,991</b>	<b>\$4,399,962</b>

<sup>7</sup> A total of \$305,206 in federal grant funds are taken off of the Division's Air Quality and PM2.5 Grant awards to pay for Non-Title V TDEC G&A Expenses. The amount taken off is not included in the projected grant income.

<sup>8</sup> Revised based on data received August-September, 2019

<sup>9</sup> The Motor Vehicle Inspection Program is expected to be eliminated during or prior to FY2021. This will result in a loss of all or a portion of the Vehicle Emission Inspection Fee income and County I/M Payment expenses.

<sup>10</sup> Shortfall is expensed minus income and does not take into account available reserve funds.

SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – TDEC Recommendation

<b>TITLE V, NON-TITLE V, AND PM2.5 GRANT FTES BY FUNCTIONAL UNIT</b>			
<b>FUNCTIONAL UNIT</b>	<b>TITLE V</b>	<b>NON-TITLE V AND PM2.5</b>	<b>TOTAL</b>
Administrative Services	4.7	5.5	10.2
Director's Office	3.1	2.9	6.0
SBEAP	2.0	-	2.0
Compliance Validation Activities	4.1	2.8	6.9
Enforcement Activities	2.6	3.0	5.6
Field Services	15.3	17.7	33.0
Permitting	13.8	13.9	27.7
Regulatory Development	1.9	5.1	7.0
Emissions Inventory	2.6	1.8	4.4
Technical Services	2.5	3.5	6.0
Quality Assurance	2.3	3.1	5.4
<b>Total FTEs</b>	<b>54.9</b>	<b>59.3</b>	<b>114.2</b>
<b>PROJECTED EXPENSES AND FILLED POSITIONS</b>			
<b>EXPENSE DESCRIPTION</b>	<b>TITLE V</b>	<b>NON-TITLE V AND PM2.5</b>	<b>TOTAL</b>
Regular Salaries, Longevity, and Bonus	\$3,903,332	\$4,126,106	\$8,029,438
Benefits	\$1,676,903	\$1,801,822	\$3,478,725
APC G&A Expenses	\$1,110,000	\$1,020,000	\$2,130,000
County I/M Payments	-	-	-
TDEC G&A Expenses	\$1,120,604	\$894,452 <sup>11</sup>	\$2,015,056
<b>Total</b>	<b>\$7,810,839</b>	<b>\$7,842,380</b>	<b>\$15,653,219</b>
<b>PROJECTED INCOME</b>			
<b>INCOME TYPE</b>	<b>TITLE V</b>	<b>NON-TITLE V AND PM2.5</b>	<b>TOTAL</b>
Title V Fees <sup>12</sup>	\$7,066,366	-	\$7,066,366
Visible Emissions Control Fee	-	\$15,903	\$15,903
Construction Permit Fee	-	\$54,543	\$54,543
Annual Non-Title V Emission Fee	-	\$1,714,161	\$1,714,161
Vehicle Emission Inspection Fee <sup>13</sup>	-	-	-
EPA Air Quality Grant	-	\$1,191,101	\$1,191,101
EPA PM2.5 Grant	-	\$257,681	\$257,681
State Funds	-	\$1,200,000	\$1,200,000
<b>TOTAL</b>	<b>\$7,066,366</b>	<b>\$4,433,389</b>	<b>\$11,499,755</b>
<b>SHORTFALL<sup>14</sup></b>	<b>\$744,473</b>	<b>\$3,408,991</b>	<b>\$4,153,464</b>

<sup>11</sup> A total of \$305,206 in federal grant funds are taken off of the Division's Air Quality and PM2.5 Grant awards to pay for Non-Title V TDEC G&A Expenses. The amount taken off is not included in the projected grant income.

<sup>12</sup> Revised based on data received August-September, 2019

<sup>13</sup> The Motor Vehicle Inspection Program is expected to be eliminated during or prior to FY2021. This will result in a loss of all or a portion of the Vehicle Emission Inspection Fee income and County I/M Payment expenses.

<sup>14</sup> Shortfall is expensed minus income and does not take into account available reserve funds.

## Regulatory Flexibility Addendum

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

The rule amendment to paragraph (2) of Rule 1200-03-26-.01 Construction and Annual Emission Fees relative to Visible Emission Evaluation Course ("Smoke School") fees may minimally impact small businesses. The rule amendment to paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees relative to the amount of Title V source annual fees and emission fee rates is federally mandated and exempt from the provisions of the Regulatory Flexibility Act pursuant to Tennessee Code Annotated section 4-5-404. Due to increased program expenses and diminishing revenues, the rule amendment proposes to increase Title V fee rates in order to generate sufficient revenue to administer the major source "Title V" permitting program as mandated by federal law. Small businesses that are Title V sources will experience increased fees. The number of small businesses that are Title V sources is not known as data relative to number of employees is not collected. If the Department fails to collect adequate revenue to fund this permitting program EPA may revoke its approval of the program and regulate Tennessee businesses directly. Other changes in this rulemaking improve clarity of the rule and will not have an impact on small businesses.

The review below addresses the following proposed rule amendments:

- (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.

Any small business with a Title V air pollution permit or that is required to conduct visible emission evaluations may be affected by these rule amendments. Very few small businesses are required to regularly conduct visible emission evaluations and thus would not be directly impacted by the proposed changes to the visible emission evaluation course fees because they hire consultants to conduct the evaluations instead of using their own employees. The changes to Title V fee rates ensure collection of adequate revenue to meet federal requirements so Tennessee sources will continue to be directly regulated by Tennessee and not by EPA.

- (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.

It is not anticipated that the proposed rule amendments will increase compliance costs relative to reporting, recordkeeping, or other administrative costs.

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

The proposed rule amendments will increase fees owed for small businesses required to have Title V operating permits. It is not anticipated that consumers will be measurably impacted.

- (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.

Based on a comment received during the public comment period, the Department will conduct a review of the impact on revenues if affected sources that are small businesses are allowed to request an alternative minimum fee. If the impact is determined to be acceptable an alternative will be considered during the next Title V fee rulemaking. The Department does not have this data currently.

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

Each state's fee system is unique, so direct comparisons cannot be made. The federal presumptive fee rate (\$/ton) is the rate states must charge unless they provide proof to EPA that their program meets federal requirements with an alternative fee rate or structure. The federal presumptive fee rate effective for the 12-month period of September 1, 2019 through August 31, 2020 is \$52.03 per ton of actual emissions. Tennessee's current fees are more complex than the federal fees, with different fee rates for actual emissions and allowable emissions as well as different rates for electric utility generating units and non-electric utility generating units. Tennessee also has an existing minimum fee and an existing base

fee in these amendments. For these reasons, and because the Title V fee rates actually assessed by EPA for sources they permit are more complex than a single rate, a direct comparison to the federal fees cannot be made. The fee rates in this proposed rule for FY21 are: a base fee of \$5,000 and minimum fee of \$9,000; for fees based on actual emissions, \$64.20 per ton for non-EGU sources and \$90.00 per ton for EGU sources; and, for fees based on allowable emissions, \$40.20 per ton for non-EGU sources and \$57.00 per ton for EGU sources.

- (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 of small businesses could result in the collection of insufficient fees to operate the Title V operating permit program as required by federal law or, alternatively, increase the fees paid by businesses that do not meet the definition of a 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 Department anticipates that these amended rules will have a financial impact on local governments with a Title V permit.

## 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 rule amendments revise the fees charged for visible emission evaluation courses ("Smoke School"). Smoke opacity is an indicator of pollution in certain circumstances, and some regulated entities are required to read smoke as part of proving compliance with the limitations in their permits. Smoke School is offered to industry representatives, environmental consultants, and the general public, and certifies qualifying attendees in "reading" the density of smoke (opacity). The Department has historically offered this course at a much lower cost than found in the private sector, and the cost will still be lower after this change. Currently, the Air Pollution Control Board's rules establish a lower fee to attendees located within the state than is charged to attendees from outside the state. This revision increases the rates and establishes the same rates for all attendees.

For Title V annual fees, the rulemaking increases the existing base fee of \$4,000 to \$5,000, the existing minimum fee of \$7,500 to \$9,000, the dollar per ton for non-EGU sources from \$33.50/ton allowable to \$40.20 and from \$53.50/ton actual to \$64.20, and the dollar per ton for EGU sources from \$47.00/ton allowable to \$57.00 and from \$75.00/ton actual to \$90.00. In addition to the changes described above, the Board is clarifying certain other provisions in Chapter 1200-03-26 that apply to all sources, including, but not limited to:

- Revising the payee for fee payments from "Division" to "State of Tennessee" throughout the chapter
- Correction of grammatical and typographical errors
- Revising current language to clarify application of the rules.

- (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;

Section 502(b)(3)(A) of the federal Clean Air Act (CAA) requires Tennessee, as a state approved by the Environmental Protection Agency ("EPA") to administer a Title V major source operating permit program ("Title V program"), to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements[.]" To comply with this requirement, the Air Pollution Control Board ("Board") adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit ("EGU") and non-EGU sources. Tennessee Code Annotated section 68-203-103 authorizes the Board to establish fees under the Tennessee Air Quality Act.

- (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;

Owners and operators of sources in the state required to have Title V operating permits. Most of these sources are major sources of air pollution. These persons recognize the necessity of fee collections and of increases to the currently effective fees; comments received from representatives of some of these sources included alternative fee increases to those originally proposed. This rule, as approved by the Board, contains lower fee increases than originally proposed by the Department in response to comments received during the public comment period. It also only establishes fee increases for state fiscal year 2021 and beyond rather than the proposed increases over fiscal years 2021 and 2022.

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

The Board is not aware of any opinions that directly relate to the rulemaking.

- (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 rulemaking will result in increased revenues of approximately \$1.16 million.

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

James Johnston and Lacey Hardin  
Division of Air Pollution Control  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 15th Floor  
Nashville, Tennessee 37243  
[James.Johnston@tn.gov](mailto:James.Johnston@tn.gov)  
[Lacey.Hardin@tn.gov](mailto:Lacey.Hardin@tn.gov)

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

Emily Urban  
Deputy General Counsel  
Office of 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

Office of General Counsel  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2nd Floor  
Nashville, Tennessee 37243  
(615) 532-0108  
[Emily.Urban@tn.gov](mailto:Emily.Urban@tn.gov)

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

Economic Impact Statement [Tenn. Code Ann. § 4-33-104(b)]

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

The rule amendments revise the fees charged for visible emission evaluation courses ("Smoke School"). Smoke opacity is an indicator of pollution in certain circumstances, and some regulated entities are required to read smoke as part of proving compliance with the limitations in their permits. Smoke School is offered to industry representatives, environmental consultants, and the general public, and certifies qualifying attendees in "reading" the density of smoke (opacity). The Department has historically offered this course at a much lower cost than found in the private sector, and the cost will still be lower after this change. Currently, the Board's rules establish a lower fee to attendees located within the state than is charged to attendees from outside the state. This revision increases the rates and establishes the same rates for all attendees.

Tennessee Code Annotated section 68-203-103 authorizes the Board to establish fees for the various services and functions the Department performs. Section 502(b)(3)(A) of the federal Clean Air Act (CAA) requires Tennessee, as a state approved by the Environmental Protection Agency ("EPA") to administer a Title V major source operating permit program ("Title V program"), to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements[.]" To comply with this requirement, the Board adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit ("EGU") and non-EGU sources. The Board is proposing the Title V annual fee structure that it has determined to be adequate for funding needs and the most responsive to comments received from stakeholders during the development process. The proposal increases the existing base fee of \$4,000 to \$5,000, the existing minimum fee of \$7,500 to \$9,000, the dollar per ton for non-EGU sources from \$33.50/ton allowable to \$40.20 and from \$53.50/ton actual to

\$64.20, and the dollar per ton for EGU sources from \$47.00/ton allowable to \$57.00 and from \$75.00/ton actual to \$90.00. In addition to the changes described above, the Board is clarifying certain other provisions in Chapter 1200-03-26 that apply to all sources, including, but not limited to:

- Revising the payee for fee payments from "Division" to "State of Tennessee" throughout the chapter
- Correction of grammatical and typographical errors
- Revising current language to clarify application of the rules

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

Smoke School fee revisions: Tennessee is one of only a few states that offer this certification. The proposed rates will be very competitive with privately offered schools. The recertification fee of \$180 is at least \$20 below the current published rate of the lowest competitor (Aeromet). Because the Division's air inspectors are required to be certified every six months, it is significantly more cost effective for the Department to provide the school than to pay for the inspectors to be certified by a private entity. Allowing non-State employees to attend the training is a customer-friendly way to subsidize the cost of certifying Department staff.

T5 fees: Because the U.S. Clean Air Act requires that fee payers pay all costs, direct and indirect, to operate the Title V operating permit program, the Division prepares a detailed Workload Analysis each year that must be approved by the Board. This analysis must show that the fees assessed will be adequate to fund the program. The Board has determined that these amendments are necessary to support continuing operation of the Title V permitting program and are the least-costly method of achieving the purposes of these amendments.

- (3) A comparison of the cost-benefit relation of the action to non-action.

For Smoke School, not revising the fees as proposed will result in the Division paying more of the cost to train its inspectors. Not amending the Title V fee rules to ensure adequate collections to fund the Title V operating permit program would place operation of the program by the State of Tennessee in jeopardy and could result in direct regulation of the affected sources by the U.S. EPA.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

The Board, comprised of members that represent both public and private interests, believes that these amendments are an efficient allocation of public and private resources. For Smoke School, offering the class to non-State employees provides a way to offset some of the costs to certify Department employees while offering an alternative for training to private sector participants.

- (5) A determination of the effect of the action on competition.

No impact on competition is expected.

- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

These amendments are applied equally across Tennessee and are not anticipated to have a measurable impact on the cost of living.

- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

These amendments are applied equally across Tennessee and are not anticipated to have a measurable impact on employment.

- (8) The source of revenue to be used for the action.

Existing revenues will be used to implement these revisions.

- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which

persons will benefit directly and indirectly from the action.

Changes to the Smoke School rates will have a minimal impact on attendees. For Title V fees, major sources of air pollution in the state will be affected by this action. The effects of this action will vary based on the magnitude of emissions from the source. Citizens of the state of Tennessee will benefit directly from this action through continued maintenance of the National Ambient Air Quality Standards assured by adequate regulation and oversight of major sources of air pollution by the Department.

**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](mailto:publications.information@tn.gov)

**For Department of State Use Only**

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Rule ID(s): 9292  
File Date: 1/15/20  
Effective Date: 4/14/20

# 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 Air Pollution Control Board  
**Division:** Air Pollution Control  
**Contact Person:** Lacey J. Hardin  
**Address:** William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 15th Floor  
Nashville, Tennessee  
**Zip:** 37243  
**Phone:** (615) 532-0545  
**Email:** [Lacey.Hardin@tn.gov](mailto:Lacey.Hardin@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
1200-03-26	Administrative Fee Schedule
Rule Number	Rule Title
1200-03-26-.01	Tennessee Visible Emission Evaluation Course Fees
1200-03-26-.02	Construction and Annual Emission 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 <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 1200-03-26  
Administrative Fee Schedule

Amendments

Paragraph (1) of Rule 1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees is amended by deleting it in its entirety and substituting instead the following:

- (1) The effective date of this the fee schedule in subparagraph (2)(b) of this rule shall be July 16, 1990 July 1, 2020. The fee schedule in subparagraph (2)(a) of this rule continues to apply until June 30, 2020.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Paragraph (2) of Rule 1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees is amended by deleting it in its entirety and substituting instead the following:

- (2) Fee Schedule schedules.

(a) Until June 30, 2020, the following course fees apply:

Initial Certification Tennessee Applicant \$125.00  
Recertification Tennessee Applicant \$95.00  
Initial Certification Out-of-State Applicant \$175.00  
Recertification Out-of-State Applicant \$125.00

(b) Beginning July 1, 2020, the following course fees apply:

Initial Certification \$180.00  
Recertification \$150.00

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Subparagraph (a) of paragraph (1) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (a) ~~It is the purpose of this rule to establish construction fees, annual emission fees, and permit review fees for sources subject to permitting pursuant to Division 1200-03 sufficient to supplement existing state and federal funding that covers reasonable costs (direct and indirect) associated with the development, processing, and administration of the air pollution control program. This will provide for better quality evaluation of the impact of air emissions on the citizens of Tennessee, and timely permitting services for sources subject to permitting requirements.~~

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Subpart (iii) of part 5 of subparagraph (i) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting the language "subjected" and substituting instead the language "subject" so that as amended the subpart shall read:

- (iii) Any pollutant that is ~~subjected~~ subject to any standard promulgated under section 111 of the Federal Act; provided, however, that any such pollutant shall not be a regulated pollutant solely because the pollutant is a constituent of greenhouse gases;

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Part 12 of subparagraph (i) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

12. Each hazardous air pollutant listed below actually emitted or allowed to be emitted from a source subject to paragraph (11) of Rule 1200-03-09-.02.

<u>CAS No.</u>	<u>Chemical name</u>
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate(DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans

96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethylbenzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	<u>Ethyl</u> acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl Chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichlorethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Hepotachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
60344	Methyl hydrazine

74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Arochlors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)

95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide compounds <sup>1</sup>
0	Glycol ethers <sup>2 6</sup>
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers <sup>3</sup>
0	Nickel Compounds
0	Polycyclic Organic Matter <sup>4</sup>
0	Radionuclides (including radon) <sup>5</sup>
0	Selenium Compounds

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<sup>1</sup> X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)<sub>2</sub>

<sup>2</sup> Include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>- OR'.

Where:

n = 1, 2, or 3:

R = alkyl C7 or less; or

R = phenyl or alkyl substituted phenyl;

R' = H or alkyl C7 or less; or

OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

This action deletes each individual compound in a group called the surfactant alcohol ethoxylates and their derivatives (SAED) from the glycol ethers category in the list of hazardous air pollutants (HAP) established by section 112(b)(1) of the Clean Air Act (CAA).

<sup>3</sup> Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

<sup>4</sup> Includes organic compounds with more than or equal to 100°C one benzene ring, and which have a boiling point greater than or equal to 100°C

<sup>5</sup> A type of atom which spontaneously undergoes radioactive decay.

<sup>6</sup> The substance ethylene glycol monobutyl ether (EGBE, 2-Butoxyethanol) (Chemical Abstract Service (CAS) Number 111-76-2) is deleted from the list of hazardous air pollutants established by 42 U.S.C. § 7412(b)(1).

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Subparagraph (b) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(b) ~~On or after December 1, 1994, all All annual emission fees must be paid in full by the due date dates specified in paragraph subparagraph (6)(c) and paragraph (9) of this rule. Major sources subject to the provisions of paragraph 1200-03-26-.02(9) shall continue to pay annual emission fees under the provisions of paragraph 1200-03-26-.02(6) until July 1, 1994. In the year of their transition from the provisions of the aforementioned paragraph to the provisions of paragraph 1200-03-26-.02(9), the major source must pay the fractional balance of their schedule I fee calculation period (number of months from the due date to July 1, 1994 divided by 12, that quotient being multiplied against the appropriate annual emission fee from Schedule III). Thereafter, the provisions of paragraph 1200-03-26-.02(9) shall apply.~~

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Subparagraph (i) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (i) Where more than one ~~(4)~~ allowable emission limit is applicable to a regulated pollutant, the allowable emissions for the regulated pollutants shall not be double counted.
1. Major sources subject to the provisions of paragraph ~~1200-03-26-.02(9)~~ of this rule shall apportion their emissions as follows to ensure that their fees are not double counted.
- (i) Sources that are subject to federally promulgated hazardous air pollutant standards that can be imposed under Chapter 1200-03-11, or Chapter 1200-03-31, or Chapter 0400-30-38 will place such regulated emissions in the specific hazardous air pollutant under regulation. If the pollutant is also in the family of volatile organic compounds or the family of particulates, the pollutant shall not be placed in that respective family category.
  - (ii) A miscellaneous category of hazardous air pollutants shall be used for hazardous air pollutants listed at part ~~1200-03-26-.02(2)(i)12~~ of this rule that do not have an allowable emission standard under Chapter 1200-03-11, Chapter 1200-03-31, or Chapter 0400-30-38. A pollutant placed in this category shall not be subject to being placed in any other category such as volatile organic compounds or particulates.
  - (iii) Each individual hazardous air pollutant and the miscellaneous category of hazardous air pollutants is subject to the 4,000 ton cap provisions of subparagraph ~~1200-03-26-.02(2)(i)~~ of this rule.
  - (iv) Major sources that wish to pay annual emission fees for PM10 on an allowable emission basis may do so if they have a specific PM10 allowable emission standard. If a major source has a total particulate emission standard, but wishes to pay annual emission fees on an actual ~~PM 10~~ PM10 emission basis, it may do so if the PM10 actual emission levels are proven to the satisfaction of the Technical Secretary. The method to demonstrate the actual PM10 emission levels must be made as part of the source's major source operating permit in advance in order to exercise this option. The PM10 emissions reported under these options shall not be subject to fees under the family of particulate emissions. The 4,000 ton cap provisions of subparagraph ~~1200-03-26-.02(2)(i)~~ of this rule shall also apply to PM10 emissions.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Subparagraph (c) of paragraph (4) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (c) The Division shall denote the date that all applications for construction permits are received in its Nashville Central office. Applications received after 4:30 p.m. local time will be stamped considered as being received the next working day.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Subparagraph (d) of paragraph (4) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (d) Upon receipt of a construction permit application, the Division must examine it to ~~insure~~ ensure that it is complete and within 30 days. ~~If the application is found to be incomplete, advise the applicant in writing of its findings via certified mail parts 1 through 4 of this subparagraph apply. Thirty (30) days will be allowed for the review. The thirty (30) days completeness evaluation time period is extended to ninety (90) days for minor and conditional major sources of the nonattainment pollutant or its precursor pollutants as identified in part (4)(b)47 of Rule 1200-03-09-.01 located within the boundary of a nonattainment area so designated by the Board and/or the United States Environmental Protection Agency. [Note: For ozone nonattainment the pollutant is Volatile Organic Compounds (VOC) and/or oxides of nitrogen.]~~

1. If an application for a construction permit is determined to be incomplete, the Division must notify the applicant in writing via certified mail of the finding with a brief explanation of the deficiencies. The application filing/processing fee shall be retained by the Division.
2. After receiving notice from the Division that the application was incomplete, the applicant shall have ~~one hundred eighty (180)~~ calendar days to correct the deficiencies. If properly corrected, the application will be processed and no additional fee is required. The permit will then be granted or denied in accordance with ~~Division Rules this chapter and Chapter 1200-03-09~~. If the deficiencies are not corrected within the ~~one hundred eighty (180)~~ 180-day correction period, the fee will be forfeited in its entirety to the Division and the Division will officially deny the permit based on the incomplete permit application. If the applicant re-applies, a new application/processing fee must be paid in full along with the re-application.
3. It is the express intent of the Board that the ~~one hundred eighty (180)~~ 180-day permit application correction period is not to be construed by an applicant as permission to construct or modify a source without the permit required by ~~Division Rules Chapter 1200-03-09~~.
4. Upon receipt of a corrected application revised pursuant to part ~~4, 2, or 3~~ 1, 2, or 3 of this subparagraph, the Division shall re-evaluate the application and notify the applicant of its finding as to whether or not the application is considered to be complete. If the application is still deemed incomplete the ~~source applicant~~ has the remainder of the initial ~~one hundred eighty (180)~~ 180-day period to correct the deficiencies or forfeit the fee in its entirety. Unless a determination that a corrected application is not complete is made by the Division and communicated to the applicant via certified mail within ~~thirty (30)~~ days of receipt, the corrected application shall be deemed to be complete for the purpose of starting the Division's permit processing deadline schedule. However, if additional information is still needed to process the permit, the applicant has a duty to furnish said information or face denial of the permit.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Subparagraph (a) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (a) On and after October 24, 1991, a responsible official applying for the construction permit [i.e. construction as defined in ~~subparagraph rule 1200-03-26-.02(2)(j) of this rule~~] required by ~~rule Rule 1200-03-09-.01~~ must pay a construction permit application filing/processing fee as set forth in subparagraph (5)(g), Schedule A, of this rule unless they are exempted from construction permit fees pursuant to ~~subparagraph 1200-03-26-.02(9)(a) of this rule~~. The fee determined from ~~subparagraph (5)(g), Schedule A of this rule~~ shall be calculated based on increases in emissions of regulated pollutants.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Subparagraph (c) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (c) ~~On and after October 24, 1991, a~~ A responsible official applying to make a change to a source ~~or permit~~ such that a new construction permit is required, must pay a permit ~~filing/processing~~ fee equal to one-half the Schedule A fee corresponding to the applicant's anticipated maximum emission rate, not to exceed \$500. This fee is determined by the anticipated maximum increase in emissions from the anticipated maximum emission rate of the previous construction permit for the source.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Subparagraph (f) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (f) In the event that the Division fails to process the construction permit application within the time lines established in subparagraph (e) of this paragraph, the Division will refund the permit filing/processing fee to the applicant in full. The refund will be made within ~~thirty (30)~~ days following the date that the deadline for a decision on that particular permit application was established. For refunds in excess of \$1,000, additional time to permit allow review and approval of the refund by the ~~Tennessee Attorney General's Office~~ Office of the Attorney General shall be allowed.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (6) ~~ANNUAL EMISSION FEES FOR MINOR AND CONDITIONAL MAJOR SOURCES AND PERMIT REVIEW FEES FOR CONDITIONAL MAJOR SOURCES~~ Annual Fees for Minor and Conditional Major Sources.

- (a) A responsible official of a minor source and/or a conditional major source must pay an annual emission fee to the ~~Division~~ State of Tennessee. The annual emission fee shall be based on the source's allowable emissions as defined in subparagraph ~~4200-03-26-.02(2)(d)~~ of this rule.
- (b)
  - 1. The minor source and conditional major source annual emission fee must be calculated as using the sum of ~~the~~ allowable emissions of all regulated pollutants at a source. Upon mutual agreement of the responsible official and the Technical Secretary, a more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee. The more restrictive requirement must be specified ~~on~~ in the permit, and must include the method(s) used to determine compliance with the limitation(s). The documentation procedure to be followed by the source owner or operator must also be included to ~~insure~~ ensure that the limit is not exceeded. Exceedances of the mutual agreement limit will be considered by the Board as circumvention of the required annual emissions fee and a matter in which enforcement action must be pursued.
  - 2. To reduce the amount of the fee as provided in part 1 of this subparagraph, the responsible official must submit a letter to the Technical Secretary requesting reduced allowable emissions and providing the method or methods that will be used to ensure compliance with the requested limit or limits. This request must be received at least ~~ninety (90)~~ days prior to the applicable due date of the annual emission fee. Any request received after that deadline may only apply to the fee for the following year and not for the year being invoiced.
- (c) ~~Beginning December 1, 1991 all~~ All minor and conditional major source annual emission fees are due and payable to the ~~Division~~ State of Tennessee in full according to Schedule I of this subparagraph. The county that in which a source is located ~~in~~ determines when the ~~minor source source's~~ annual emission fee is due. If a source is located on contiguous property in more than one county, the county appearing earliest in the calendar year shall be used to determine the due date of the annual emission fee. Due to seasonal operations, cotton gin source annual fees are due and payable annually to the State of Tennessee by December 1 of each year regardless of the county in which the source is located. The fee must be paid to the ~~Division~~ State of Tennessee in full by the first ~~(1st)~~ day of the month that the fee is due. The Technical Secretary may extend this due date an additional ~~ninety (90)~~ days where ~~he finds~~ that the ~~minor source owner or operator's~~ fee notice was mailed by the ~~Division~~ Department to an incorrect mailing address.

#### SCHEDULE I

Month the Annual Emissions Fee is Due (Accounting Period)

Counties in the Monthly Grouping

January	Anderson, Bedford, Benton, Bledsoe, Blount, Bradley and Campbell
February	Cannon, Carroll, Carter, Cheatham, Chester, Claiborne, Clay and Cocke
March	Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer and Fayette
April	Fentress, Franklin, Gibson, Giles, Grainger, Greene and Grundy
May	Hamblen, Hamilton, Hancock, Hardeman, Hardin, Hawkins, Haywood and Henderson
June	Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lake, Lauderdale, Lawrence and Lewis
July	Lincoln, Loudon, McMinn, McNairy, Macon and Madison
August	Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore and Morgan
September	Obion, Overton, Perry, Pickett, Polk, Putnam and Rhea
October	Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, and Shelby
November	Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi and Union
December	Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson and Wilson

- (d) A newly constructed minor ~~and~~ or conditional major source beginning operation subsequent to the annual accounting period for the county in which it is located shall not be required to pay an annual ~~emission~~ fee for the remainder of the annual accounting period. A minor or conditional major source ~~company~~ ceasing operations during the annual accounting period will not receive a refund for annual ~~emission~~ fees paid.
- (e) The appropriate annual emissions fee for minor and conditional major sources in operation on or after July 1, 1993, shall be calculated at an emission fee rate of \$18.75 per ton of allowable emissions of regulated pollutants. Sources with allowable emissions less than 10 ~~(ten)~~ tons will not be subject to this fee, provided that such source has not taken a limitation on their permit that would render them a conditional major or synthetic minor source.
- (f) Deleted.
- (g) Deleted.
- (h) Deleted.
- (i) ~~The responsible official must pay an annual emission fee as per subparagraph (e) of this paragraph.~~ The annual emission fee will be calculated on no more than 4,000 tons per year of each regulated pollutant. An annual emission fee will not be charged for carbon monoxide or for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.
- (j) Deleted.
- (k) ~~Beginning one (1) month after the effective date of the rule amendment that added this subparagraph (k),~~ conditional Conditional major sources must pay a an annual permit review fee

in accordance with the table below in addition to the ~~minor source~~ annual emission fees specified in subparagraph (6)(e) of this rule ~~paragraph~~. This fee is due and payable to the Division State of Tennessee according to Schedule 4 I found in subparagraph (6)(c) of this rule ~~paragraph~~. When determining the permit review fee, the allowable tons per year shall be calculated in accordance with subparagraph (b) of this paragraph except that ~~When determining the allowable tons per year,~~ carbon monoxide emissions shall be included.

Allowable Tons Per Year	Review Fee
0-50	\$250
50.1-100 TPY	\$500
100.1-250 TPY	\$1,000
250.1 and up	\$2,000

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Paragraph (7) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(7) ~~PAYMENT OF FEES.~~ Payment of Fees.

- (a) All fees regulated by this chapter shall be payable to the ~~Division of Air Pollution Control~~ State of Tennessee.
- (b) Fees not paid, late fees, and returned checks are subject to the provisions of paragraph ~~1200-03-26-.02(8)~~ of this rule.
- (c) Returned checks for any reason (i.e. insufficient funds, account closed, etc.) are considered failure to pay until such time collected funds are forwarded to the ~~Division~~ State of Tennessee. Returned checks are subjected to an additional \$20.00 handling charges.
- (d) Annual emission fee payments and permit review fee payments shall be clearly identified with the "Emission Source Reference Number" or "Facility ID" specified in the source's permit(s) and the invoice number, if available, or by an alternative method proposed by the source and agreed to by the Technical Secretary. Major sources paying fees on more than one SIC code at their facility shall denote the SIC code on their check for the account upon which they are paying. Delivery of the payment shall be to the location prescribed by the Technical Secretary.
- (e) When a fee overpayment has been made as a result of an error by the source, an owner or operator may seek a credit or refund for such fee overpayment within ~~One~~ one year from the date on which the ~~Division of Air Pollution Control~~ State of Tennessee received payment of the fee.
- (f) Online payment can be made to the State of Tennessee for annual fees by following the established State of Tennessee online payment process. Online payments require the inclusion of the customer identification number and the invoice number, if available, to ensure proper crediting of payment.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

The title for paragraph (8) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it and replacing with a title that reads as follows:

(8) ~~LATE FEES – FAILURE TO PAY~~ Late Fees – Failure to Pay

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Subparagraph (b) of paragraph (8) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (b) If any part of any fee imposed under this ~~Rule 1200-03-26-.02 rule~~ is not paid within ~~fifteen (15)~~ days of the due date, a late payment penalty of ~~five percent (5%)~~ of the amount due shall at once

accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of ~~five percent (5%)~~ of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within ~~fifteen (15)~~ days after the due date, shall bear interest at the maximum lawful rate from the due date to the date paid, compounded monthly. The Division will consult with the State of Tennessee's Department of Finance and Administration to determine the appropriate rate of interest.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

Paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(9) ~~ANNUAL EMISSION FEES FOR MAJOR SOURCES AND SOURCES SUBJECT TO PARAGRAPH 11 OF RULE~~ Annual Fees for Major Sources and Sources Subject to Paragraph (11) of Rule 1200-03-09-.02.

- (a) 1. A responsible official of a major source or a source subject to paragraph (11) of Rule 1200-03-09-.02 (hereinafter, "Paragraph 11 source") must pay an annual ~~emission~~ fee to the ~~Division~~ State of Tennessee. A major source or Paragraph 11 source is not subject to the minor and conditional major source annual ~~emission~~ fees of paragraph (6) of this rule on or after July 1, 1994. Once a major stationary source or Paragraph 11 source begins to pay major source annual ~~emission~~ fees pursuant to this paragraph (9), it will not be subject to the construction permit fees of paragraph (5) of this rule for any additional construction occurring at the source as long as the source remains a major source or Paragraph 11 source.
2. Effective January 1, 2018, the following shall apply:
  - (i) Sources choosing to pay annual ~~emission~~ fees on an allowable emissions basis pursuant to subparagraph (b) of this paragraph shall pay ~~one hundred percent (100%)~~ of the fee due pursuant to subparagraph (d) of this paragraph:
    - (I) No later than April 1 of the year immediately following the annual accounting period for which the fee is due for sources paying on a calendar year basis pursuant to subparagraph (b) of this paragraph; or
    - (II) No later than April 1 of the current fiscal year for sources paying on a fiscal year basis pursuant to subparagraph (b) of this paragraph.
  - (ii) Sources choosing to pay annual ~~emission~~ fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a calendar year basis pursuant to subparagraph (b) of this paragraph shall pay ~~one hundred percent (100%)~~ of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the year immediately following the annual accounting period for which the fee is due, except as allowed by part ~~(g)3-~~ (g)3 of this paragraph.
  - (iii) Sources choosing to pay annual ~~emission~~ fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a fiscal year basis pursuant to subparagraph (b) of this paragraph shall pay an estimated ~~sixty-five percent (65%)~~ of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the current fiscal year. The remainder of the annual ~~emission~~ fee is due July 1 of each year, except as allowed by part ~~(g)3-~~ (g)3 of this paragraph.
- (b) 1. On or before December 31 of the annual accounting period, the responsible official must submit to the Division in writing the responsible official's determination to pay the annual ~~emission~~ fee based on:
  - (i) Either a calendar year or state fiscal year; and

- (ii) Actual emissions, allowable emissions, or a mixture of actual and allowable emissions of regulated pollutants.
2. If the responsible official does not declare a fee payment choice as provided in subparts ~~4.(i)~~ 1(i) or (ii) of this subparagraph, then the basis of the annual fee payment shall be the same as the responsible official's most recent choice of fee payment, or, if no such previous choice was made, the basis of the annual fee payment shall be that specified in the source's current major source operating permit.
  3. If the responsible official wishes to restructure allowable emissions for a major source or Paragraph 11 source for the purpose of lowering the annual emission fee, then an application must be filed at least ~~ninety~~ (90) days prior to December 31 of the annual accounting period as provided in subparagraph (g) of this paragraph.
  4. The responsible official of a newly constructed major source, Paragraph 11 source, or minor source modifying its operation such that the source becomes a major source or Paragraph 11 source shall pay an initial annual emission fee based on a calendar year and allowable emissions for the fractional remainder of the calendar year commencing upon the source's start-up.
  5. For purposes of the payment of annual emission fees due July 1, 2016, parts 1 and 2 of this subparagraph shall not apply. Annual emission fees due July 1, 2016, shall be based on the state fiscal year and the annual fee basis (actual emissions, allowable emissions, or a mixture) specified in a source's current major source operating permit. If a source does not have an effective major source operating permit on July 1, 2016, then the source's responsible official shall pay the annual emission fee based on the state fiscal year and allowable emissions.
- (c) Reserved.
- (d)
1. Notwithstanding the emission fee rates established by part 2 of this subparagraph, a responsible official of any source subject to this paragraph (9) shall pay an annual base emission fee of ~~\$4,000~~ \$5,000 for fees due on and after January 1, 2021. This base emission fee shall be paid in addition to the annual emission fee established by ~~part 2~~ subpart 2(iii) of this subparagraph, but shall be counted toward the applicable minimum fee set forth in ~~subpart 2.(ii)~~ 2(ii) of this subparagraph.
  2.
    - (i) For purposes of this part, an electric utility generating unit (EGU) means any steam electric generating unit or stationary combustion turbine that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected EGU.
    - (ii) Notwithstanding the annual emission fee rates established by subpart (iii) of this part, the annual emission fee required to be paid by a responsible official of any source subject to this paragraph (9) shall be no less than:
      - (l) \$5,500 for sources (once in always in or OIAI sources) subject to this paragraph (9) solely due to the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MACT Standards—Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors, provided that the source has permitted allowable emissions below the major source thresholds found in ~~part 14 of subparagraph (b) of paragraph (11)~~ (b)14 of Rule 1200-03-09-.02. If the source's permitted allowable emissions are not below those major source thresholds as of October 31

of the annual accounting period for which fees are due under this part, then item (II) of this subpart applies; and

- (II) ~~\$7,500~~ \$9,000 for all other sources subject to this paragraph (9) for fees due on and after January 1, 2021.
  - (iii) The emission fee rates applied to calculate the annual emission fee assessed pursuant to subparagraph (a) of this paragraph shall be as follows:
    - (I) Fee based on actual emissions: ~~\$53.50~~ \$64.20 per ton for non-EGU sources and ~~\$75.00~~ \$90.00 per ton for EGU sources; and
    - (II) Fee based on allowable emissions: ~~\$33.50~~ \$40.20 per ton for non-EGU sources and ~~\$47.00~~ \$57.00 per ton for EGU sources.
  - (iv) The emission fees and fee rates enumerated in ~~subpart (iii) of this part~~ this subparagraph (d) must be supported by the Division's annual workload analysis that is approved by the Board.
3. The emission fees and fee rates specified in this subparagraph (d) shall remain in effect until the effective date of an amendment to ~~part 2 of this subparagraph (d)~~. Any revision to the emission fees and fee rates must result in the collection of sufficient fee revenue to fund the activities identified in subparagraph (1)(c) of this rule and must be supported by the Division's annual workload analysis that is approved by the Board.
- (e)
    - 1. An emission cap of 4,000 tons per year per regulated pollutant per major source SIC code shall apply to actual or allowable based emission fees. A major source annual emission fee will not be charged for emissions in excess of the cap(s) or for carbon monoxide.
    - 2. No annual ~~emission~~ fee under this paragraph (9) will be charged for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.
  - (f) In the case where a source is shut down such that it has operated only during a portion of the annual accounting period and the source's permits are forfeited to the Technical Secretary, the appropriate fee shall be calculated on a prorated basis over the period of time that the source was operated in the annual accounting period. The responsible official of a major source or Paragraph 11 source that is shut down, but wishes to retain its permits, shall pay a maintenance fee equivalent to 40% of the fee that would be charged had the responsible official determined to base the annual ~~emission~~ fee on allowable emissions. If the responsible official chooses this option in the midst of an annual accounting period, then the fee will be prorated according to the number of months that the source was in the maintenance fee status. However, in no case shall the annual fee be less than the minimum annual fee established in subpart (d)2(ii) of this paragraph. The responsible official shall notify the Division no later than December 31 of the annual accounting period so that the Division will have sufficient time to adjust billing records for the maintenance fee status.
  - (g) Responsible officials required to pay the major source or Paragraph 11 source annual ~~emission~~ fee pursuant to subparagraph (a) of this paragraph must conform to the following requirements with respect to fee payments:
    - 1. (i) If a responsible official paying the annual ~~emission~~ fee based on allowable emissions wishes to restructure the allowable emissions of a major source subject to ~~paragraph (11) of Rule 1200-03-09-02 or Paragraph 11 source~~ for the purpose of lowering the annual ~~emission~~ fee, then upon mutual agreement of the responsible official and the Technical Secretary, a more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual ~~emission~~ fee. The more restrictive regulatory requirement, the method used to determine compliance with the limitation, and the documentation

procedure to be followed by the major source or Paragraph 11 source to ensure that the limit is not exceeded must be included in the application and specified in a permit through either the permit modification processes of paragraph (11) of Rule 1200-03-09-.02, or the construction permit processes of Rule 1200-03-09-.01, or both. The more restrictive requirement shall be effective for purposes of lowering the annual emission fee upon agreement by both the responsible official and the Technical Secretary and for all other purposes shall be effective upon issuance of the permit, modification, or both.

- (ii) To reduce the amount of the fee as provided in subpart (i) of this part, the responsible official must file a complete permit modification or construction permit application with the Division at least ~~ninety~~ (90) days prior to December 31 of the annual accounting period.
- 2. The responsible official shall file an analysis of actual emissions, allowable emissions, or both actual and allowable emissions, whichever is appropriate due to the basis of the annual emission fee payment, with the Technical Secretary on or before the date the fee is due pursuant to subparagraph (a) of this paragraph. The analysis shall summarize the emissions of all regulated pollutants at the air contaminant sources of the major source or Paragraph 11 source facility and shall be used to calculate the amount of the annual emission fee owed pursuant to subparagraph (a) of this paragraph.
  - (i) An annual emission fee based on both actual emissions and allowable emissions shall be calculated utilizing the 4,000 ton per year cap specified in subparagraph (2)(i) of this rule. In determining the tonnages to be applied toward the regulated pollutant 4,000 ton cap in a mixed base fee, the responsible official shall first calculate the actual emission-based fees for a regulated pollutant and apply that tonnage toward the regulated pollutant's cap. The remaining tonnage available in the 4,000 ton category of a regulated pollutant shall be subject to allowable emission-based fee calculations. Once the 4,000 ton per year cap has been reached for a regulated pollutant, no additional fee for that pollutant shall be required.
  - (ii) If the responsible official chooses to base the annual emission fee on actual emissions, then the responsible official must prove the magnitude of the source's emissions to the satisfaction of the Technical Secretary.
- 3.
  - (i) Responsible officials choosing to pay the annual emission fee based on actual emissions or a mixture of actual and allowable emissions may request an extension of time for filing the emissions analysis with the Technical Secretary. The extension may be granted by the Technical Secretary for up to ~~ninety~~ (90) days after the fee is due pursuant to subparagraph (a) of this paragraph. The request for extension must be received by the Division no later than 4:30 p.m. on April 1~~7~~, or the request for extension shall be denied. The request for extension to file must state the reason for the request and provide an adequate explanation. An estimated annual emission fee payment of no less than ~~sixty-five percent~~ (65%) of the annual emission fee must accompany the request for extension to avoid penalties and interest on the underpayment of the annual emission fee. The remaining balance due must accompany the emission analysis. If there has been an overpayment, the responsible official may request a refund in writing to the Division or the amount of the overpayment may be applied as a credit toward the next annual emission fee.
  - (ii) A responsible official choosing to pay the annual emission fee based on allowable emissions is not eligible for the extension of time authorized by subpart (i) of this part.
- (h) Reserved.
- (i) Reserved.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

The title of Rule 1200-03-26-.02 is amended by changing the title from "Construction and Annual Emission Fees" to "Construction and Annual Fees."

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

The table of contents to Chapter 1200-03-26 Administrative Fee Schedule is amended by changing the title of Rule 1200-03-26-.02 from "Construction and Annual Emission Fees" to "Construction and Annual Fees," so that as amended the table of contents shall read:

1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees  
1200-03-26-.02 Construction and Annual Emission Fees  
1200-03-26-.03 Repealed

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

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

<b>Board Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Signature (if required)</b>
<b>Dr. Ronne Adkins</b> Commissioner's Designee, Dept. of Environment and Conservation	X				
<b>Dr. John Benitez</b> Licensed Physician with experience in health effects of air pollutants				X	
<b>Karen Cisler</b> Environmental Interests	X				
<b>Stephen Gossett</b> Working for Industry with technical experience	X				
<b>Dr. Shawn A. Hawkins</b> Working in field related to Agriculture or Conservation	X				
<b>Richard Holland</b> Working for Industry with technical experience	X				
<b>Caitlin Roberts Jennings</b> Small Generator of Air Pollution representing Automotive Interests	X				
<b>Ken Moore</b> Working in Municipal Government	X				
<b>Dr. Joshua Fu</b> Involved with Institution of Higher Learning on air pollution evaluation and control				X	
<b>Mike Haverstick</b> Working in management in Private Manufacturing	X				
<b>Amy Spann, PE</b> Registered Professional Engineer	X				
<b>Greer Tidwell, Jr.</b> Conservation Interests	X				
<b>Larry Waters</b> County Mayor	X				
<b>Jimmy West</b> Commissioner's Designee, Dept. of Economic and Community Development	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by Air Pollution Control Board on 12/11/2019, 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: (10/04/19)

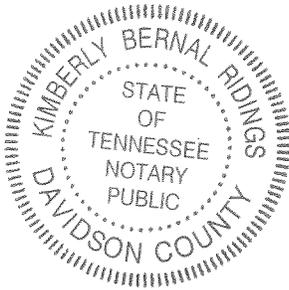
Rulemaking Hearing(s) Conducted on: (add more dates). (11/25/19)

Date: December 12, 2019

Signature: *Michelle W. Owenby*

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: 12/12/19

Notary Public Signature: *Kimberly Bernal Ridings*

My commission expires on: 9-6-22

Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): 1200-03-26

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

1/14/2020 Date

**Department of State Use Only**

Filed with the Department of State on: 1/16/20

Effective on: 4/14/20

*Tre Hargett*

Tre Hargett  
Secretary of State

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**G.O.C. STAFF RULE ABSTRACT**

AGENCY: Environment and Conservation

DIVISION: Natural Areas

SUBJECT: Rare Plant Protection and Conservation Regulations

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 70-8-301 et seq.

EFFECTIVE DATES: September 7, 2020 through June 30, 2021

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rulemaking hearing rule include modifications to Chapter 0400-06-02, Rare Plant Protection and Conservation Regulations, that remove some plants from the list, add some plants to the list and correct scientific names for some plants on the list.

## Public Hearing Comments

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

Comment: In the Departments response to comments would you list the geography, topography, and typical habitat, etc. for the plants that were added or removed from the list.

Our goal for your responses would be to assist in informing ordinary citizens, so they can be aware of where these plants are found in the state, so they may be sensitive to where they might encounter these plants. Obviously, we want people to remain sensitive to the plant types that are being removed; otherwise they will end back up on the list.

Response: The requested information is provided for the plants that were added to the list:

Latin Name: *Blephilia subnuda* Common name: Cumberland pagoda-plant  
Location: Franklin County, Tennessee  
Habitat/Topography: Limestone outcrop woodlands of the Cumberland Plateau

Latin name: *Helianthemum canadense* Common name: Canada frostweed  
Location: Monroe, Blount, and Sevier Counties, Tennessee  
Habitat/Topography: Dry ridges in the mountains  
Fact: This species was removed from the list in 2016 because the populations had not been seen in many years but the site in Blount county was rediscovered in 2018.

Latin name: *Schoenoplectus subterminalis* Common name: swaying bulrush  
Location: Cumberland County, Tennessee  
Habitat/Topography: In the Caney Fork River

Latin name: *Stachys appalachiana* Common name: Appalachian hedge-nettle  
Location: Johnson County, Tennessee  
Habitat/Topography: Bogs of Shady valley

The requested information is provided for the plants that were removed from the list:

Latin name: *Allium stellatum* Common name: glade onion  
Habitat/Topography: cedar glades of middle Tennessee  
Fact: The removal of this species is due to a realization that the few locations in Rutherford and Wilson counties where we have been using this name are actually the same as an undescribed entity which is frequently found on middle Tennessee cedar glades. The two are very similar and early workers didn't realize that what they were seeing was something new. *Allium stellatum* is not known to occur in Tennessee.

Latin name: *Melanthium woodii* Common name: Ozark bunchflower  
Location: Wayne, Hickman, Clay, Franklin, Grundy, Campbell and Morgan Counties, Tennessee  
Habitat/Topography: Dry woods on slopes that face south and west.  
Fact: In recent years much work has been conducted in these habitats and many more plants have been found.

Latin name: *Stellaria longifolia* Common name: longleaf stitchwort  
Location: Stewart, Johnson, Carter and Blount counties.  
Habitat/Topography: Bogs and meadows

Latin name: *Symphotrichum prealtum* Common name: willow aster  
Location: Davidson, Johnson, Shelby, Carroll and Fayette counties, Tennessee  
Habitat/Topography: Wet areas near rivers, bogs

## Regulatory Flexibility Addendum

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

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

There are no changes to the costs or benefits to small businesses in the proposed rule changes.

- (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.

There are no changes to reporting or recordkeeping in the proposed rule changes.

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

No effect on businesses or consumers is expected.

- (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.

Any measures less burdensome would not achieve the purpose of the rule.

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

The Endangered Species Act of 1973 (16 USC. 1531-1544) and the federal regulations promulgated thereunder provide special protection for species of plants that have been found to be endangered nationally. The Rare Plant Protection Act of 1985 (Tenn. Code Ann. § 70-8-301, et seq.) and the rules promulgated thereunder provide protection for plants found in Tennessee that are protected under the federal law and also protects additional species that have been found in Tennessee and are endangered but that may or may not be protected under federal law.

- (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 additional requirements in the rule changes.

### **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 Department does not anticipate that these amended rules will have a financial impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

This rulemaking includes modifications to Chapter 0400-06-02, Rare Plant Protection and Conservation Regulations, that remove some plants from the list, add some plants to the list and correct scientific names for some plants on the list.

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

The Rare Plant Protection Act of 1985 (T.C.A. § 70-8-301 et seq.) sets forth guidelines for establishing a rare plant list and maintaining a program to monitor the trade in endangered plant species.

- (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;

Rare plant dealers would be the only entities that could potentially be affected. However, the Division of Natural Areas has no knowledge that any of the newly listed plants have been traded to date. Public notice was provided, but no comments were received from dealers or other stakeholders.

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

The Department is not aware of any.

- (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 Department does not expect any increase or decrease in revenues or expenditures because there are no fees associated with this rule.

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

Todd Crabtree  
Division of Natural Areas  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2nd Floor  
Nashville, Tennessee 37243  
(615) 532-1378  
Todd.Crabtree@tn.gov

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

Horace Tipton  
Office of 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

Office of General Counsel  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2nd Floor  
Nashville, Tennessee 37243  
(615) 253-5339  
Horace.Tipton@tn.gov

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

Economic Impact Statement [Tenn. Code Ann. § 4-33-104(b)]

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.
- Updating the Tennessee Endangered Plant list is the proposed action and that involves removing plant species from or adding plant species to the list through a rule change. The purpose of the action is to update the status of endangered plants on the list based on the most up to date data and observations. The Rare Plant Protection Act of 1985 (T.C.A. § 70-8-301 et seq.) sets forth guidelines for establishing a rare plant list and maintaining it.
- (2) A determination that the action is the least-cost method for achieving the stated purpose.
- A rule change is the only method available for the action.
- (3) A comparison of the cost-benefit relation of the action to nonaction.
- No revenue expenditures are associated with this action.
- (4) A determination that the action represents the most efficient allocation of public and private resources.
- A rule change is the only method available for the action.
- (5) A determination of the effect of the action on competition.
- No effect on competition is expected.
- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.
- No effect on the cost of living is expected.
- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.
- No effect on employment is expected.
- (8) The source of revenue to be used for the action.
- This rulemaking was funded using existing revenue.
- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.
- No economic impact is expected from this action.

**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](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 06-13-20  
 Rule ID(s): 9358  
 File Date: 6/9/2020  
 Effective Date: 9/7/2020

# 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:** Environment and Conservation  
**Division:** Division of Natural Areas  
**Contact Person:** Todd Crabtree  
**Address:** William R. Snodgrass Tennessee Tower  
 312 Rosa L. Parks Avenue, 2nd Floor  
 Nashville, Tennessee  
**Zip:** 37243  
**Phone:** (615) 532-1378  
**Email:** [Todd.Crabtree@tn.gov](mailto:Todd.Crabtree@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
0400-06-02	Rare Plant Protection and Conservation Regulations
Rule Number	Rule Title
0400-06-02-.04	List of Endangered Species

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 <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 0400-06-02  
Rare Plant Protection and Conservation Regulations

Amendment

Rule 0400-06-02-.04 List of Endangered Species is amended by deleting it in its entirety and replacing it with the following new Rule 0400-06-02-.04 List of Endangered Species to read as follows:

0400-06-02-.04 List of Endangered Species.

The endangered plant list of Tennessee includes the following:

Latin Name	Common Name
<i>Aconitum reclinatum</i> A. Gray	trailing white monkshood
<i>Agalinis auriculata</i> (Michx.) Blake	ear-leaved false-foxglove
<i>Agalinis decemloba</i> (Greene) Pennell	ten lobe false foxglove
<i>Agalinis heterophylla</i> (Nutt.) Small ex Britton	prairie false foxglove
<i>Agalinis oligophylla</i> Pennell	ridge-stem false foxglove
<i>Agalinis plukenetii</i> (Ell.) Raf	purple gerardia
<i>Allium stellatum</i> Fraser	glade onion
<i>Anemone caroliniana</i> Walt.	Carolina anemone
<i>Apios priceana</i> Robbins	Price's potato-bean
<i>Arenaria lanuginosa</i> (Michx.) Rohrback	wooly sandwort
<i>Aristida ramosissima</i> Engelm. ex Gray	branched three-awn grass
<i>Asplenium scolopendrium</i> L. var. <i>americanum</i> (Fern.) Kartsz & Gandhi	Hart's-tongue fern
<i>Astragalus bibullatus</i> Barneby and Bridges	Pyne's ground-plum
<i>Betula papyrifera</i> Marsh var. <i>cordifolia</i> (Regel) Fern.	heart-leaved paper birch
<i>Blephilia subnuda</i> Simmers & Kral	Cumberland pagoda-plant
<i>Boechera patens</i> (Sull.) Al-Shehbaz	spreading rockcress
<i>Boechera perstellata</i> (E. L. Braun) Al-Shehbaz	Braun's rockcress
<i>Brachydontium trichodes</i> (Web.) Milde	peak moss
<i>Botrychium simplex</i> E. Hitchc.	least moonwort
<i>Bulbostylis ciliatifolia</i> (Ell.) Fern. var. <i>coarctata</i> (Ell.) Kral	capillary hairsedge
<i>Calamagrostis cainii</i> Hitchcock	Cain's reedgrass
<i>Calamagrostis porteri</i> A. Gray	Porter's reedgrass
<i>Caltha palustris</i> L.	marsh marigold
<i>Carex barrattii</i> Schweinitz and Torr.	Barratt's sedge
<i>Carex buxbaumii</i> Wahlenb.	Buxbaum's sedge
<i>Carex canescens</i> L. ssp. <i>disjuncta</i> Fern.	hoary sedge
<i>Carex fumosimontana</i> Estes	Smoky Mountain sedge
<i>Carex interior</i> L. H. Bailey	inland sedge
<i>Carex lonchocarpa</i> Willd. ex Spreng.	southern long sedge
<i>Carex manhartii</i> Bryson	Manhart's sedge
<i>Carex muskingumensis</i> Schweinitz	Muskingum sedge
<i>Carex pellita</i> Willd.	woolly sedge
<i>Carex tetanica</i> Schkuhr	rigid sedge
<i>Cephaloziella messalongi</i> (Spruce) K. Muell.	a liverwort
<i>Cerastium velutinum</i> Raf.	velvety cerastium
<i>Clematis fremontii</i> S. Wats.	Fremont's Leather Flower
<i>Clematis vinacea</i> Floden	wine colored leatherflower
<i>Clematis morefieldii</i> Kral	Huntsville vasevine
<i>Clethra alnifolia</i> L.	coastal pepperbush
<i>Coeloglossum viride</i> (L.) Hartman	long-bracted green orchis

var. <i>virescens</i> (Muhl. ex Willd.) Luer	
<i>Collinsia verna</i> Nutt.	blue-eyed Mary
<i>Comptonia peregrina</i> (L.) Coulter	sweet-fern
<i>Coreopsis latifolia</i> Michx.	broad-leaved tickseed
<i>Crataegus harbisonii</i> Beadle	Harbison's hawthorn
<i>Cypripedium kentuckiense</i> Reed	southern lady's-slipper
<i>Cypripedium reginae</i> Walt.	showy lady's-slipper
<i>Dalea foliosa</i> (A. Gray) Barneby	leafy prairie-clover
<i>Dalea purpurea</i> Vent.	purple prairie-clover
<i>Delphinium exaltatum</i> Ait.	tall larkspur
<i>Desmodium ochroleucum</i> M.A. Curtis ex Canby	creamflower tick-trefoil
<i>Diamorpha smallii</i> Britt.	Small's stonecrop
<i>Dichanthelium acuminatum</i> ssp. <i>spretum</i> (Schult.) Freckmann & Lelong	Eaton's witchgrass
<i>Dichanthelium ensifolium</i> ssp. <i>curtifolium</i> (Nash) Freckmann & Lelong	short-leaved panic grass
<i>Echinacea pallida</i> (Nutt.) Nutt.	pale purple coneflower
<i>Eleocharis elliptica</i> Kunth	elliptic spike rush
<i>Eleocharis equisetoides</i> (Ell.) Torr.	horse-tail spike-rush
<i>Eleocharis intermedia</i> J.A. Schultes	matted spike rush
<i>Eleocharis wolfii</i> A. Gray	Wolf's spike rush
<i>Eriocaulon decangulare</i> L.	ten-angle pipewort
<i>Eriogonum harperi</i> Goodman	Harper's umbrella-plant
<i>Eriophorum virginicum</i> L.	tawny cotton grass
<i>Erysimum capitatum</i> (Dougl.) Greene	western wallflower
<i>Eupatorium leucolepis</i> (DC.) Torr. and A. Gray	white-bracted thoroughwort
<i>Eurybia saxicastelli</i> (J. J. N. Campbell & Medley) G. L. Nesom	Rockcastle aster
<i>Euthamia gymnospermoides</i> Green	Great Plains goldentop
<i>Fimbristylis perpusilla</i> Harper	Harper's fimbristylis
<i>Gentiana puberulenta</i> J.S. Pringle	prairie gentian
<i>Geum aleppicum</i> Jacq.	yellow avens
<i>Geum geniculatum</i> Michx.	bent avens
<i>Geum radiatum</i> Michx.	spreading avens
<i>Glyceria laxa</i> (Scribn.) Scribn.	limp manna grass
<i>Gratiola floridana</i> Nutt.	Florida hedge-hyssop
<i>Hedyotis purpurea</i> (L.) Torr. & A. Gray var. <i>montana</i> (Small) Fosberg	Roan Mountain bluet
<i>Helenium brevifolium</i> (Nutt.) Wood	shortleaf sneezeweed
<i>Helianthemum canadense</i> (L.) Michx.	Canada frostweed
<i>Helianthemum propinquum</i> E.P. Bicknell	low frostweed
<i>Helianthus verticillatus</i> Small	whorled sunflower
<i>Homaliadelphus sharpii</i> (Williams) Sharp	Sharp's homaliadelphus moss
<i>Hydrocotyle americana</i> L.	American water-pennywort
<i>Hypericum adpressum</i> Barton	creeping St. John's-wort
<i>Hypericum ellipticum</i> Hook.	pale St. John's-wort
<i>Hypericum graveolens</i> Bickl.	mountain St. John's-wort
<i>Iris brevicaulis</i> Raf.	Lamance iris
<i>Isoetes appalachiana</i> D.F. Brunton & D.M. Britton	Appalachian quillwort
<i>Isoetes melanopoda</i> Gay and Durieu	blackfoot quillwort
<i>Isoetes tennesseensis</i> N.T. Luebke & J.M. Budke	Hiwassee quillwort
<i>Isotria medeoloides</i> (Pursh) Raf.	small whorled pogonia
<i>Lachnanthes caroliana</i> (Lam.)	Carolina redroot
<i>Lechea pulchella</i> Raf.	Leggett's pinweed
<i>Lejeunea sharpii</i> (Schust.) Schust.	Sharp's lejeunia
<i>Leptodontium viticulosoides</i> var. <i>sulphureum</i> (Müller Hal.) R. H. Zander	Grandfather Mountain leptodontium
<i>Leptohymerium sharpii</i> (Crum & Anders.) Buck & Crum	Mount Le Conte moss
<i>Leptoscyphus cuneifolius</i> (Hook.) Mitt.	a liverwort
<i>Lilium grayi</i> S. Wats.	Gray's lily

<i>Lilium philadelphicum</i> L.	wood lily
<i>Listera australis</i> Lindl.	southern twayblade
<i>Lithospermum parviflorum</i> Weakley, Witsell & D. Estes	softhair marbleseed
<i>Lithospermum subsetosum</i> (Mack. & Bush) Weakley, Witsell, & D. Estes	smooth false gromwell
<i>Lonicera prolifera</i> (Kirchner) Rehder	grape honeysuckle
<i>Lysimachia fraseri</i> Duby	Fraser's loosestrife
<i>Lysimachia quadriflora</i> Sims	fourflower yellow loosestrife
<i>Lysimachia terrestris</i> (L.) BSP.	swamp loosestrife
<i>Maianthemum stellatum</i> (L.) Link	starflower false solomom's-seal
<i>Marshallia grandiflora</i> Beadle and Boynton	large-flowered Barbara's-buttons
<i>Marshallia obovata</i> (Walt.) Beadle & F.E. Boynton	spoonshape Barbara's buttons
<i>Marsupella funckii</i> (Web. & Mohr) Dumort.	a liverwort
<i>Melanthium latifolium</i> Desr.	broadleaf bunchflower
<i>Melanthium virginicum</i> L.	Virginia bunchflower
<i>Melanthium woodii</i> (J.W. Robbins ex Wood) Bodkin	Ozark bunchflower
<i>Minuartia cumberlandensis</i> (Wofford & Kral) McNeill	Cumberland sandwort
<i>Minuartia godfreyi</i> (Shinners) McNeill	Godfrey's stitchwort
<i>Minuartia groenlandica</i> (Retzius) Ostenfeld	mountain sandwort
<i>Muhlenbergia cuspidata</i> (Torr.) Rydb.	plains muhly
<i>Muhlenbergia torreyana</i> (Shult.) Hitchcock	Torrey's dropseed
<i>Myriophyllum pinnatum</i> (Walt.) B.S.P.	cutleaf Watermilfoil
<i>Nabalis asper</i> (Michx.) Torr. & A. Gray	rough rattlesnake root
<i>Nestronia umbellula</i> Raf.	conjurer's nut
<i>Packera crawfordii</i> (Britt.) A.M. Mahoney & R.R. Lowal	Crawford's ragwort
<i>Patis racemosa</i> (Sm.) Romasch., P.M. Peterson & R. J. Soreng	mountain ricegrass
<i>Paxistima canbyi</i> A. Gray	Canby's mountain-lover
<i>Paysonia perforata</i> (Rollins) O'Kane & Al-Shehbaz	Spring Creek bladderpod
<i>Paysonia stonensis</i> (Rollins) O'Kane & Al-Shehbaz	Stones River bladderpod
<i>Penstemon kralii</i> D. Estes	Kral's beardtongue
<i>Perideridia americana</i> (Nutt. ex DC.) Reichenb.	thicket parsley
<i>Phegopteris connectilis</i> (Michx.) Watt	long beech fern
<i>Physaria globosa</i> (Desv.) O'Kane	globe bladderpod
<i>Pityopsis ruthii</i> (Small) Small	Ruth's golden-aster
<i>Plantago cordata</i> Lam.	heart-leaved plantain
<i>Platanthera grandiflora</i> (Bigelow) Lindl.	large purple fringed orchid
<i>Platanthera integra</i> (Nutt.) A. Gray ex Beck	yellow fringeless orchid
<i>Platanthera integrilabia</i> (Correll) Luer	white fringeless orchid
<i>Platanthera nivea</i> (Nutt.) Luer	snowy orchid
<i>Poa palustris</i> L.	owl bluegrass
<i>Pogonia ophioglossoides</i> (L.) Ker-Gawl.	rose pogonia
<i>Polygala nana</i> (Michx.) DC.	dwarf milkwort
<i>Polygala nuttallii</i> Torr. and A. Gray	Nuttall's milkwort
<i>Polygonella americana</i> (Fisch. and Mey)	small southern jointweed
<i>Ponthieva racemosa</i> (Walt.) Mohr	shadow-witch
<i>Porella gracillima</i>	hot porella
<i>Prunus pumila</i> L.	sand cherry
<i>Pycnanthemum beadlei</i> (Small) Fern.	Beadle's mountain mint
<i>Pycnanthemum torrei</i> Benth.	Torrey's mountain mint
<i>Pycnanthemum verticillatum</i> (Michx.) Pers.	whorled mountain-mint
<i>Pyrola americana</i> Sweet	American wintergreen
<i>Ranunculus aquatilis</i> var. <i>diffusus</i> Withering	eastern white water crowfoot
<i>Rhamnus alnifolia</i> L'Hér.	alderleaf buckthorn
<i>Rhynchospora capillacea</i> Torr.	horned beak-rush
<i>Rhynchospora debilis</i> Gale	savannah beak-rush
<i>Rhynchospora rariflora</i> (Michx.) Ell.	few-flowered beak-rush
<i>Rudbeckia triloba</i> var. <i>beadlei</i> (Small) Fernald	browneyed susan
<i>Rugelia nudicaulis</i> Shuttlw. ex Chapman	Rugel's ragwort
<i>Sabatia capitata</i> (Raf.) Blake	rose gentian

<i>Sagittaria rigida</i> Pursh	sessile-fruited arrowhead
<i>Sanguisorba canadensis</i> L.	canada burnet
<i>Saxifraga caroliniana</i> A. Gray	Carolina saxifrage
<i>Saxifraga pensylvanica</i> L.	swamp saxifrage
<i>Schoenoplectus subterminalis</i> (Torr.) Soják	<u>swaying bulrush</u>
<i>Scutellaria arguta</i> Buckl.	hairy scullcap
<i>Sedum nevii</i> A. Gray	Nevius' stonecrop
<i>Silene ovata</i> Pursh	ovate catchfly
<i>Silphium brachiatum</i> Gattinger	Cumberland rosinweed
<i>Solidago gattingeri</i> Chapm.	Gattinger's goldenrod
<i>Solidago lancifolia</i> Torr. and A. Gray	broadleaf goldenrod
<i>Solidago porteri</i> Small	Porter's goldenrod
<i>Solidago ptarmicoides</i> (Nees) Bovin	prairie goldenrod
<i>Solidago rupestris</i> Raf.	rock goldenrod
<i>Solidago spithamea</i> M.A. Curtis	Blue Ridge goldenrod
<i>Sparganium androcladum</i> (Engelm.) Morong	branching bur-reed
<i>Sphenobolopsis pearsoni</i> (Spruce) Shust. & Kitag.	a liverwort
<i>Spiraea alba</i> DuRoi	narrow-leaved meadow-sweet
<i>Spiraea virginiana</i> Britt.	Virginia spiraea
<i>Spiranthes magnicamporum</i> Sheviak	Great Plains ladies'-tresses
<i>Spiranthes ochroleuca</i> (Rydb.) Rydb.	yellow nodding ladies'-tresses
<i>Spiranthes odorata</i> (Nutt.) Lindl.	sweetscent ladies'-tresses
<i>Sporobolus junceus</i> (P.Beauv.) Kunth	Piney-woods dropseed
<i>Stachys appalachiana</i> D.B. Poind. & J.B. Nelson	<u>Appalachian hedge-nettle</u>
<i>Stellaria alsine</i> Grimm	trailing stitchwort
<i>Stellaria longifolia</i> Muhl.	longleaf-stitchwort
<i>Stenanthium diffusum</i> Wofford	Cumberland featherbells
<i>Sullivantia sullivantii</i> (Torr. & Gray) Britt.	Sullivan's coolwort
<i>Symphotrichum ericoides</i>	bushy aster
(L.) G.L. Nesom var. <i>ericoides</i>	
<i>Symphotrichum praealtum</i> (Poiret) G. L. Nesom	willow-aster
<i>Symphotrichum pratense</i> (Rafinesque) Nesom	barrens silky aster
<i>Symplocarpus foetidus</i> (L.) Nutt.	skunk-cabbage
<i>Taxus canadensis</i> Marsh.	American yew
<i>Thaspium pinnatifidum</i> (Buckley) A. Gray	cutleaf meadow parsnip
<i>Tortula ammoniana</i> Crum & Anders.	Ammon's tortula
<i>Tortula fragilis</i> Tayl.	fragile tortula
<i>Triantha glutinosa</i> (Walter) Small	sticky false asphodel
<i>Triantha racemosa</i> (Walter) Small	coastal false-asphodel
<i>Tridens flavus</i>	purpletop tridens
(L.) Hitchc. var. <i>chapmanii</i> (Small) Shinnery	
<i>Trichophorum cespitosum</i> (L.) Hartman	tufted club-rush
<i>Trifolium calcaricum</i> J.L. Collins & Wieboldt	running glade clover
<i>Trifolium reflexum</i> L.	buffalo clover
<i>Trillium decumbens</i> Harbison	trailing trillium
<i>Trillium lancifolium</i> Raf.	narrow-leaved trillium
<i>Trillium pusillum</i> Michx.	least trillium
<i>Trillium rugelii</i> Rendle	southern nodding trillium
<i>Trillium tennesseense</i> E.E. Schill. & Floden	Tennessee trillium
<i>Utricularia cornuta</i> Michx.	horned bladderwort
<i>Vaccinium elliotii</i> Chapm.	mayberry
<i>Veronica catenata</i> Pennell	sessile water-speedwell
<i>Veronica scutellata</i> L.	marsh-speedwell
<i>Viburnum molle</i> Michx.	softleaf arrow-wood
<i>Vitis rupestris</i> Scheele	rock grape
<i>Xyris ambigua</i> Beyr. ex. Kunth.	coastal-plain yellow-eyed-grass
<i>Xyris fimbriata</i> Ell.	fringed yellow-eyed-grass
<i>Xyris tennesseensis</i> R. Kral	Tennessee yellow-eyed-grass
<i>Zigadenus glaucus</i> Nutt.	white camas

Authority: T.C.A. §§ 4-5-201 et seq. and 70-8-301 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 12/18/2019 (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: 09/09/19

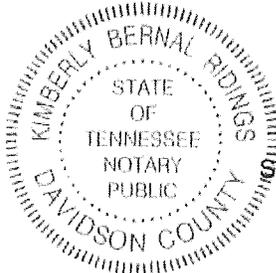
Rulemaking Hearing(s) Conducted on: (add more dates) 11/15/19

Date: 12/18/2019

Signature: [Handwritten Signature]

Name of Officer: David W. Salyers, P.E.

Title of Officer: Commissioner



Subscribed and sworn to before me on: 12-18-19

Notary Public Signature: Kimberly Bernal Tidings

My commission expires on: 9-6-22

Pursuant to T.C.A. §§ 70-8-305 and 70-8-313, I have reviewed and concur with the additions and deletions to the list of endangered species.

[Handwritten Signature]

Dr. Charlie Hatcher, Commissioner  
Department of Agriculture

Agency/Board/Commission: Commissioner of the Department of Environment and Conservation

Rule Chapter Number(s): 0400-06-02

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

[Handwritten Signature]

Herbert H. Slatery III  
Attorney General and Reporter

6/3/2020

Date

Department of State Use Only

Filed with the Department of State on: 6/9/2020

Effective on: 9/7/2020

  
\_\_\_\_\_  
Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

AGENCY: Commerce and Insurance

DIVISION: Tennessee Insurance Division

SUBJECT: Licensing Requirements for Insurance Procedures

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 56-6-124(a), 56-6-124(c)

EFFECTIVE DATES: September 10, 2020 through June 30, 2021

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The rulemaking hearing rule amends Tenn. Comp. R. & Regs. 0780-01-56-.06(3) [Pre-Licensing Education Requirements] by correcting the number of education hours from five (5) hours to twenty (20) hours, which a title insurance producer is required to have for purposes of initial licensure. T.C.A. § 56-6-106, the statute governing the initial licensure requirements for title insurance producers, was amended in 2014 to require twenty (20) hours of education for title insurance producers for initial licensure, but the rule was never updated to reflect this change. Since the statute was amended in 2014, the Insurance Division has enforced the language of the statute requiring title insurance producers to have twenty (20) education hours prior to initial licensure. The rulemaking hearing rule is being amended in order to reflect the language of the state statute.

The rulemaking hearing rule also amends Tenn. Comp. R. & Regs. 0780-01-56-.08(2) [Continuing Education; Qualifying Programs] by adding a new subparagraph (e). The new subparagraph permits a licensed agent to receive two (2) general continuing education credit hours to be applied toward the twenty-four (24) hours that are required on a biennial basis for license renewal, based on membership in an insurance trade association and attending a national, statewide, or intrastate regional meeting in the previous year. A maximum of two (2) general continuing education credit hours, based on

association membership, will be allowed per year. In order to qualify, the insurance trade association must: be approved as a continuing education provider as required by this rule; have been in existence for at least five (5) years; have been formed for purposes other than providing continuing education; and, provide the Commissioner with a copy of the association's Articles of Incorporation on file with the Tennessee Secretary of State. The insurance trade association shall pay a course reporting fee of one dollar (\$1.00) each year that a licensed agent's membership is reported for purposes of receiving continuing education credit. Currently, there is a one dollar (\$1.00) fee for each continuing education credit hour reported, and membership status will be reported in the same way.

## Public Hearing Comments

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

Jim Layman, Director of Government Relations for the Insurors of Tennessee, appeared and showed support for the rule amendments. Mr. Layman submitted written comments to the rules prior to the hearing. The written comments were read aloud at the rulemaking hearing along with one (1) additional comment made at the hearing. The comments include the following:

### Comment 1

0780-01-56-.08(2)(e)(5)

It was commented that there should be an addition of the word "and" at the end of 0780-01-56-.08(2)(e)(5) to clarify that an insurance trade association must meet all of the criteria found in (e)(1)-(6) in order for its members to receive continuing education credit hours.

### Agency Response to Comment 1

The Department thanks Mr. Layman for his participation. The Department confirmed the error named in the comment which has been corrected for the final filing.

### Comment 2

0780-01-56-.08(2)(e)(5)(i)

It was commented that the term "professional insurance association" used at 0780-01-56-.08(2)(e)(5)(i) should be changed to "insurance trade association" for consistency with other portions of the rule.

### Agency Response to Comment 2

The Department thanks Mr. Layman for his participation. The Department agrees that the language should be changed for consistency and the changes have been made for the final filing.

### Comment 3

0780-01-56-.08(2)(e)

It was commented that 0780-01-56-.08(2)(e) contains the phrase "two (2) general continuing education credits" and should be replaced with "two (2) general continuing education credit hours" for consistency with other portions of the rules.

### Agency Response to Comment 3

The Department thanks Mr. Layman for his participation. The Department agrees that the language should be changed for consistency and the changes have been made for the final filing.

### Comment 4

0780-01-56-.08(2)

It was commented that the first word of subparagraphs (e)(1)-(6) of 0780-01-56-.08(2) should be capitalized for consistency with other portions of the rule.

### Agency Response to Comment 4

The Department thanks Mr. Layman for his participation. The Department agrees that the language should be changed for consistency and the changes have been made for the final filing.

## Regulatory Flexibility Addendum

### Regulatory Flexibility Analysis pursuant to T.C.A. § 4-5-402

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

It is not anticipated that the proposed rules will overlap or conflict with other federal, state, or local governmental rules. The rule changing the number of pre-licensing title insurance course education hours reflects the current Tennessee statute.

The Department modeled the continuing education rule permitting licensed insurance producers to earn two (2) general continuing education credit hours based on insurance trade association membership and attendance at a national, statewide, or intrastate regional meeting in the previous year after a similar North Carolina regulation.

2. Clarity, conciseness, and lack of ambiguity in the rule.

The proposed rules have been drafted to be clear, concise, and unambiguous.

3. The establishment of flexible compliance and reporting requirements for small businesses.

The proposed rules are not anticipated to alter the standard practices of reporting and recordkeeping currently utilized by small business. The rule regarding continuing education is allowing flexibility for licensed insurance producers to obtain continuing education by permitting credit based on insurance trade association membership and attendance at association meetings.

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

The proposed rules are not anticipated to establish unfriendly schedules or unreasonable deadlines for compliance and reporting requirements for small businesses. The rule regarding continuing education is providing additional methods for licensed insurance producers to meet the continuing education requirements for renewal.

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

The proposed rules are not anticipated to alter the standard practices of reporting and recordkeeping currently utilized by small business. The association membership information will be reported in the same manner as general continuing education courses are currently reported.

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

The proposed rules do not establish any performance standards for small businesses.

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

These rules are not anticipated to create any unnecessary entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs. The rule is allowing a less restrictive and less burdensome means for licensed insurance producers to obtain the continuing education requirements for renewal.

Economic Impact Statement pursuant to T.C.A. § 4-5-403.

1. Types and estimated number of small businesses directly affected:

Small businesses operated by or employing licensed insurance producers will be affected by the promulgation of these rules by providing them the benefit of earning two (2) general continuing education credit hours based on membership in an insurance trade association and attendance of association meetings.

2. Projected reporting, recordkeeping, and other administrative costs:

There is no foreseeable alteration in existing reporting or recordkeeping utilized by small businesses that will result from the promulgation of these rules.

3. Probable effect on small businesses:

Small businesses operated by or employing licensed insurance producers will be affected by the promulgation of these rules by providing them the benefit of earning two (2) general continuing education credit hours based on membership in an insurance trade association and attendance of association meetings.

4. Less burdensome, intrusive, or costly alternative methods:

In this instance, the rule is allowing a less restrictive and less burdensome means for licensed insurance producers to obtain the continuing education requirements for renewal.

5. Comparison with federal and state counterparts:

There are no federal counterparts to the rule. Multiple state counterparts in the southeast have similar regulations permitting general continuing education credit hours based on membership in an insurance trade association and attendance of association meetings.

6. Effect of possible exemption of small businesses:

An exemption from the rule would not benefit small businesses because the rule is allowing a less restrictive and less burdensome means for licensed insurance producers to obtain the continuing education requirements for renewal.

### **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 will not impact local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

The rule amends Tenn. Comp. R. & Regs. 0780-01-56-.06(3) [Pre-Licensing Education Requirements] by correcting the number of education hours from five (5) hours to twenty (20) hours, which a title insurance producer is required to have for purposes of initial licensure. T.C.A. § 56-6-106, the statute governing the initial licensure requirements for title insurance producers, was amended in 2014 to require twenty (20) hours of education for title insurance producers for initial licensure, but the rule was never updated to reflect this change. Since the statute was amended in 2014, the Insurance Division has enforced the language of the statute requiring title insurance producers to have twenty (20) education hours prior to initial licensure. The rule is being amended in order to reflect the language of the state statute.

The rule also amends Tenn. Comp. R. & Regs. 0780-01-56-.08(2) [Continuing Education; Qualifying Programs] by adding a new subparagraph (e). The new subparagraph permits a licensed agent to receive two (2) general continuing education credit hours to be applied toward the twenty-four (24) hours that are required on a biennial basis for license renewal, based on membership in an insurance trade association and attending a national, statewide, or intrastate regional meeting in the previous year. A maximum of two (2) general continuing education credit hours, based on association membership, will be allowed per year. In order to qualify, the insurance trade association must: be approved as a continuing education provider as required by this rule; have been in existence for at least five (5) years; have been formed for purposes other than providing continuing education; and, provide the Commissioner with a copy of the association's Articles of Incorporation on file with the Tennessee Secretary of State. The insurance trade association shall pay a course reporting fee of one dollar (\$1.00) each year that a licensed agent's membership is reported for purposes of receiving continuing education credit. Currently, there is a one dollar (\$1.00) fee for each continuing education credit hour reported, and membership status will be reported in the same way.

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

Tenn. Code Ann. § 56-6-124(a) authorizes the Commissioner to promulgate reasonable regulations as are necessary or proper to carry out the purposes of T.C.A. § 56-6-101 *et seq.*

Tenn. Code Ann. § 56-6-124(c) requires the Commissioner to promulgate continuing education requirements for individuals licensed under T.C.A. § 56-6-101 *et seq.*

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

This rule affects those seeking to be insurance producers and current licensed insurance producers. The amendment regarding continuing education credit affects individuals seeking biennial renewal of an insurance producer license. Insurance trade associations are also affected by the rule, as they will have to follow the requirements as stated in the rule in order to effectuate their members earning two (2) general continuing education credit hours based on membership and attending a trade association meeting.

It is likely that all persons engaged in the insurance industry will be proponents of the amendment to the rule related to pre-licensing course hours as the amendment ensures that the regulation accurately reflects the statutory language. The Insurers of Tennessee and National Association of Insurance and Financial Advisors support the rule allowing for association membership to be counted towards continuing education requirements.

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

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate

is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Minimal. In order for an insurance producer to receive the continuing education credit based on membership and attendance at a national, statewide, or intrastate regional meeting in the previous year, the insurance trade association must report the membership using the same online method in which attendance at standard continuing education courses are reported. The insurance trade association shall pay a course reporting fee of one dollar (\$1.00) per member each year that a licensed agent's membership is reported for purposes of receiving continuing education credit. Currently, there is a one dollar (\$1.00) fee for each continuing education credit hour reported, and membership status will be reported in the same way. This one dollar (\$1.00) fee is paid to a third-party contractor that handles all aspects of online licensing and renewals for the Insurance Division of the Department. The Department does not expect any additional revenue as the membership status will be reported with the same fee as required with all other reporting of continuing education and the proposed rules do not increase the number hours required, but provides another method to obtain continuing education hours.

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

Rachel Jrade-Rice, Assistant Commissioner for Insurance  
Kimberly Biggs, Director, Agent Licensing Section

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

Rachel Jrade-Rice, Assistant Commissioner for Insurance  
Kimberly Biggs, Director, Agent Licensing Section  
Jenny Taylor, Associate General Counsel and Supervising Attorney for Insurance

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

500 James Robertson Parkway  
Nashville, TN 37243  
  
Rachel.Jrade-Rice@tn.gov (615) 741-3450  
Kimberly.Biggs@tn.gov (615) 741-2693  
Jenny.Taylor@tn.gov (615) 741-2325

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

N/A

**Department of State**  
**Division of Publications**  
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**For Department of State Use Only**

Sequence Number: 06-18-20  
 Rule ID(s): 9363  
 File Date: 6/12/2020  
 Effective Date: 9/10/2020

## 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 Commerce and Insurance  
**Division:** Tennessee Insurance Division  
**Contact Person:** Jenny Taylor  
**Address:** 500 James Robertson Parkway, Nashville, Tennessee  
**Zip:** 37243  
**Phone:** (615) 426-1084  
**Email:** [Jenny.Taylor@tn.gov](mailto:Jenny.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
0780-01-56	Licensing Requirements for Insurance Producers
Rule Number	Rule Title
0780-01-56-.06	Pre-Licensing Education Requirements
0780-01-56-.08	Continuing Education

The rule corrects the amount of education hours a title insurance producer is required to have prior to initial licensure from five (5) hours to twenty (20) hours. T.C.A. § 56-6-106, the statute governing the initial licensure requirements for title insurance producers, was amended in 2014 to require twenty (20) hours of education hours for initial licensure. The rule is being amended in order to correctly reflect the language of the statute. Tenn. Code Ann. § 56-6-124(a) authorizes the Commissioner to promulgate reasonable regulations as are necessary or proper to carry out the purposes of T.C.A. § 56-6-101 *et seq.*

The rule amends continuing education requirements for renewals of licensed insurance agents. The rule permits a licensed insurance agent to receive two (2) general continuing education credit hours, which would be applied toward the twenty-four (24) hours that are required on a biennial basis for license renewal, based on membership in an insurance trade association and attendance at a national, statewide, or intrastate regional meeting in the previous year. Tenn. Code Ann. § 56-6-124(c) requires the Commissioner to promulgate continuing education requirements for individuals licensed under T.C.A. § 56-6-101 *et seq.*

Chapter 0780-01-56  
Licensing Requirements for Insurance Producers  
Amendments

Paragraph (3) of Rule 0780-01-56-.06 Pre-Licensing Education Requirements is deleted in its entirety and replaced with the following:

- (3) The amounts of total hours which an insurance producer is required to take are listed as follows:

<u>Lines of Insurance</u>	<u>Number of Hours</u>
Title	520
Life	20
Accident and Health	20
Property	20
Casualty	20
Personal Lines	20

Authority: T.C.A. §§ 56-6-105, 56-6-106, 56-6-107, 56-6-109, 56-6-124, 56-32-114, 56-35-122 and 56-35-201.

Rule 0780-01-56-.08(2) Continuing Education is amended by adding a new subparagraph (e) and relettering the subsequent subparagraphs accordingly, so that Rule 0780-1-56-.08(2) shall read as follows:

- (2) Qualifying Programs.
- (a) In order to qualify for credit towards satisfaction of the requirements of this Rule, an educational program must be a formal program of learning which contributes directly to the professional competence of the insurance producer and such program must meet the standards outlined for continuing educational programs.
  - (b) Formal programs requiring attendance may be considered for credit if:
    1. A detailed outline is prepared and presented to the commissioner for approval;
    2. The program is at least one (1) credit hour [fifty (50) minutes] in length; and
    3. The program is conducted by a qualified instructor, discussion leader or lecturer.
  - (c) An instructor of a certified continuing education program shall receive continuing education credit. Credit for presenting a certified continuing education program will be awarded only for the first presentation, unless a program has been substantially revised since credit was last awarded. The amount of credit awarded shall be two (2) times the number of approved class hours for the program.

- (d) The list of subjects that will be acceptable for continuing education credits includes, but is not limited to the following:
1. Insurance, annuities, and risk management;
  2. Insurance laws and regulations;
  3. Mathematics, statistics, and probability;
  4. Economics;
  5. Business law;
  6. Finance;
  7. Taxes;
  8. Business environment, management or organization; and
  9. Subjects other than those listed above may be acceptable if the insurance producer can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this Rule. The responsibility for substantiating that a particular program meets the requirements of this Rule rests solely upon the insurance producer.
- (e) A member of an insurance trade association shall receive two (2) general continuing education credit hours annually based on membership in an insurance trade association. A maximum of two (2) general continuing education credit hours, based on association membership, are allowed per year. The two (2) general continuing education credit hours are allowable if the insurance trade association:
1. Is approved as a continuing education provider as required by this rule;
  2. Has been in existence for at least five (5) years;
  3. Was formed for purposes other than providing continuing education;
  4. Provides the commissioner with the association's Articles of Incorporation on file with the Tennessee Secretary of State;
  5. Provides to the commissioner a certification that:
    - (i) Those members are active in the insurance trade association; and
    - (ii) Those members attended a national, statewide, or intrastate regional meeting in the previous year; and
  6. Pays a course reporting fee of one dollar (\$1.00) for each continuing education credit hour reported in accordance with the Department's or its designee's internet credit recording procedure.
- (e)(f) Subjects that will not be acceptable for continuing education credits include, but are not limited to the following:
1. Any course used to prepare for taking an insurance licensing examination;
  2. Committee service in any professional organization;
  3. Computer science courses;
  4. Motivational, psychology, or sales training courses; and

5. Securities courses, other than variable annuities.

~~(f)~~(g) Continuing education programs which shall be deemed to meet the commissioner's standards, if properly submitted to the commissioner and approved, are:

1. Any part of the Life Underwriter Training Counsel Life Course Curriculum or Health Course;
2. Any part of the American College Life Underwriter Training Counsel Fellow (LUTFC) and Financial Services Specialist (FSS) designation curriculum;
3. Any part of the American College Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Chartered Advisor for Senior Living (CASL), or Master of Science in Financial Services (MSFS) diploma curriculum;
4. Any part of the Insurance Institute of America's programs;
5. Any part of the American Institute for Property and Liability Underwriters Chartered Property Casualty Underwriter (CPCU) professional designation program;
6. Any part of the National Alliance for Insurance Education programs;
7. Any part of the American Land Title Association's, the Land Title Institute's, or the Tennessee Land Title Association's programs;
8. Any program relating to the field of real property law or title insurance law approved by the Committee on Continuing Legal Education of the Supreme Court of Tennessee;
9. Successful completion of any insurance related course approved by the commissioner and taught by an accredited college or university per credit hour granted;
10. Any part of the Tennessee Association of Health Underwriters' or the National Association of Health Underwriters' programs;
11. Any part of the Independent Insurance Agents of Tennessee's programs;
12. Any part of the National Association of Insurance and Financial Advisors (NAIFA) of Tennessee programs; and
13. Any part of the Professional Insurance Agents of Tennessee (PIA) programs.

~~(g)~~(h) A producer may carry over a maximum of twelve (12) continuing education credit hours to the next renewal cycle for additional hours obtained during the biennium. However, carry over shall not apply to ethics continuing education credit requirements.

~~(h)~~(i) Any correspondence or self-study program approved by the commissioner shall qualify for the equivalent number of classroom hours, provided that:

1. All correspondence or self-study programs shall include a final examination; and
2. Any provider of correspondence or self-study programs shall be the originally published provider or have the written authorization of the originally published provider to present such program.

~~(i)~~(j) All programs for continuing education must be submitted for approval on a form prescribed by the commissioner and submitted at least thirty (30) days prior to the program's presentation. In the event the provider does not know the specific content of

the curriculum prior to program presentation due to the nature of the program, the provider may submit the course thirty (30) days after program presentation. However, the provider shall notify attendees and place prominently in all marketing materials that the continuing education course may or may not be approved for credit and that the approval may not occur until sixty (60) days after the course is taught. Any hours credited to a producer from a course approved after the course is given shall only be credited as of the day of the approval and not the day of the course's presentation.

- (j)(k) The commissioner specifically reserves the right to approve and disapprove credit for continuing education claimed under this Rule.
- (k)(l) The commissioner may require any original publisher or provider to submit all material to be used in the program to the commissioner for review.
- (l)(m) Any applicant who seeks approval as a provider of certified continuing education programs shall submit an application on a form prescribed by the commissioner with a non-refundable filing fee in the amount of five hundred (\$500) dollars. All providers shall be required to annually renew their authority to provide certified continuing education programs on a form prescribed by the commissioner with a non-refundable filing fee in the amount of two hundred and fifty (\$250) dollars. Any material change in or to a certified continuing education program shall require prior approval before an insurance producer may receive credit for such altered program. Program certification shall expire at such time as the commissioner may determine. State educational institutions are exempt from these filing fees, but must comply with all other requirements in order to obtain/maintain provider authority.
- (m)(n) All providers must maintain, for not less than four (4) years from the date the program was presented, a record of persons attending each program and upon completion of the program requirements, provide a certificate of completion with credit hours earned to each successful student. The certificate shall bear the provider's identification number as assigned by the commissioner upon the granting of authority to provide continuing education programs.
- (n)(o) Any insurance company, trade association, individual corporation, partnership, firm or agency that has been approved and been given authority by the commissioner to be a continuing education provider under this Rule shall meet the following continuing minimum operational standards:
  1. A minimum of one (1) business office open to the public, with a minimum of one (1) telephone to be answered by an employee or voice message service, during normal business hours, equipped with the usual office equipment such as a desk, filing cabinets, typewriter/word processor/computer, supplies, and other similar items; and
  2. Classroom(s) (not applicable to self-study programs) in compliance with the Americans with Disabilities Act (ADA), comprised of a room large enough to accommodate a minimum of ten (10) students with comfortable chairs and appropriate writing surfaces for each student and a chalk board or flip chart.
- (o)(p) Any individual or provider who violates the provisions of this Chapter shall be subject to disciplinary action and/or civil penalties pursuant to T. C. A. §§ 56-6-112 and 56-2-305.

Authority: T.C.A. §§ 56-2-305, 56-6-107, 56-6-112, 56-6-118(b), 56-6-124, 56-32-114, 56-35-122, 56-35-201, and 42 U.S.C. § 4011 (2004).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/other authority) on 06/03/2020 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/19/2019

Rulemaking Hearing(s) Conducted on: (add more dates). 02/14/2020

Date: Jun 3, 2020

Signature: 

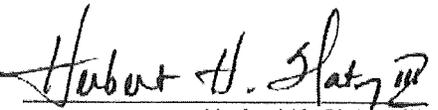
Name of Officer: Hodgen Mainda

Title of Officer: Commissioner

Agency/Board/Commission: Tennessee Department of Commerce and Insurance

Rule Chapter Number(s): 0780-01-56

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

  
 Herbert H. Slatery III  
 Attorney General and Reporter  
6/4/2020  
 Date

**Department of State Use Only**

Filed with the Department of State on: 6/12/2020

Effective on: 9/10/2020

  
 Tre Hargett  
 Secretary of State

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SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

AGENCY: Commerce and Insurance

DIVISION: Fire Prevention

SUBJECT: Volunteer Firefighter Equipment and Training Grant Program

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-102-154

EFFECTIVE DATES: September 21, 2020 through June 30, 2021

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The rulemaking hearing rule establishes guidelines for evaluating grant requests and determining which volunteer fire departments will receive grants pursuant to T.C.A. § 68-102-154. This is a new rulemaking hearing rule after Public Chapter 497 (2019) created the volunteer firefighter equipment and training grant program. The rulemaking hearing rule explains the application process for the match portion of the grant and the equipment grant directly from the State Fire Marshal's Office. Further, the rulemaking hearing rule establishes a grant award selection committee requiring representation from each grand division.

(Rule not submitted in redline form.)

### **Public Hearing Comments**

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

Deputy Chief David Windrow from Brentwood Fire and Rescue appeared on behalf of the Volunteer Chief Officers Association to support the rules. The Association includes the Fire Chiefs' Association, the TN Fire Safety Inspectors Association, the TN Electrical Service Association the sprinklers' associations and the TN Chapter of the IAAL.

The TN Fireman's Association submitted a letter of support for the rules and expressed gratitude to the General Assembly for acknowledging the needs of the volunteer fire service across the state.

The TN Fire Chiefs' Association submitted a letter of support for the rules thanking Senator Bell and Representative Hill for introducing the legislation to assist volunteer fire departments in serving their communities.

The Department thanks Deputy Chief Windrow and the Associations for the support for the rules.

**Regulatory Flexibility Addendum**

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

(Insert statement here)

The rule will not impact 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.)

(Insert statement here)

The rule will impact local governments if the volunteer departments in their jurisdictions receive grant awards.

**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 rule establishes guidelines for evaluating grant requests and determine which volunteer fire departments will receive grants pursuant to T.C.A. 68-102-154. This is a new rule after Public Chapter 497 (2019) created the volunteer firefighter equipment and training grant program. The rule explains the application process for the match portion of the grant and the equipment grant directly from the State Fire Marshal's Office. Further, the rules establish a grant award selection committee requiring representation from each grand division.

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

T.C.A. 68-102-154 (2019) requires the Commissioner of Commerce and Insurance to promulgate rules to establish guidelines for evaluating grant requests and determine which volunteer fire departments will receive grants.

- (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;

Volunteer fire departments and the communities in Tennessee those departments serve. No volunteer fire department has expressed objection or urged rejection of this rule.

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

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 fiscal impact is minimal, but if a volunteer fire department does receive a grant award through this program, it may decrease local expenditures if money had been allocated for the volunteer fire department.

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

Gary Farley, Assistant Commissioner for Fire Prevention  
Mary Beth Gribble, Director of Programs and Policy Development  
Greg Adams, Director of Education and Outreach

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

Gary Farley, Assistant Commissioner for Fire Prevention  
Mary Beth Gribble, Director of Programs and Policy Development  
Greg Adams, Director of Education and Outreach  
Leigh Ferguson, Chief Counsel for Fire Prevention and Law Enforcement

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

500 James Robertson Parkway, Nashville, TN 37243  
Gary Farley, Assistant Commissioner for Fire Prevention; 615-532-6391; gary.farley@tn.gov  
Mary Beth Gribble, Director of Programs and Policy Development; 615-532-3272; marybeth.gribble@tn.gov

Greg Adams, Director of Education and Outreach; 615-532-5844; greg.adams@tn.gov  
Leigh Ferguson, Chief Counsel for Fire Prevention and Law Enforcement; 615-360-4435;  
leigh.j.ferguson@tn.gov

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

In 2020, the Department received 178 applications from volunteer fire department across Tennessee requesting approximately \$3.7 million in funding. The initial appropriation from the General Assembly was \$500,000 in non-recurring funding to be awarded equally across the grand divisions. On April 9, 2020, the Selection Committee met and selected 41 applications to receive funding, ensuring that the grant distribution funding was equal across the grand divisions. All applications requesting a local match for a federal grant award were approved for funding. After those applications were selected, the Committee reviewed the remaining applications to award the balance of the funding. Applications from volunteer fire departments in distressed counties were given preference with 21 of the 41 awards being selected from distressed counties per Executive Order 1.

**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](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 06-25-20  
 Rule ID(s): 9367  
 File Date: 6/23/2020  
 Effective Date: 9/21/2020

## Rulemaking Hearing Rule(s) Filing Form

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

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

**Agency/Board/Commission:** Department of Commerce and Insurance  
**Division:** Division of Fire Prevention  
**Contact Person:** Leigh Ferguson  
**Address:** 500 James Robertson Parkway  
**Zip:** 37243  
**Phone:** 615-360-4435  
**Email:** [Leigh.j.ferguson@tn.gov](mailto:Leigh.j.ferguson@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
0780-02-24	Volunteer Firefighter Equipment and Training Grant Program
Rule Number	Rule Title
0780-02-24-.01	Definitions
0780-02-24-.02	Applications and Technical Requirements
0780-02-24-.03	Eligibility
0780-02-24-.04	Award Selections

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 <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

The Department has drafted the rule below, as required by T.C.A. § 68-102-154, to determine which grants to award as part of the Volunteer Firefighter Equipment and Training Grant Program for the purchase of firefighting equipment or to meet the local match requirement for federal grants to purchase firefighting equipment and training.

**NEW RULES  
OF  
DEPARTMENT OF COMMERCE AND INSURANCE  
DIVISION OF FIRE PREVENTION  
CHAPTER 0780-02-24  
VOLUNTEER FIREFIGHTER EQUIPMENT AND TRAINING GRANT PROGRAM  
TABLE OF CONTENTS**

0780-02-24-.01	Definitions
0780-02-24-.02	Applications and Technical Requirements
0780-02-24-.03	Eligibility
0780-02-24-.04	Award Selections

0780-02-24-.01 Definitions

- (1) "Career Fire Department" means a fire department recognized by the State Fire Marshal's Office, pursuant to T.C.A. § 68-102-304, comprised of fifty-one percent (51%) or more firefighters employed on a full-time basis.
- (2) "Department" means the Tennessee Department of Commerce and Insurance.
- (3) "Federal grants" means any federal discretionary grant program that awards financial assistance to be used for the purpose of the purchase of firefighting equipment and training including, but not limited to, the Federal Emergency Management Agency Assistance to Firefighters Grants (AFG).
- (4) "Firefighting equipment" means the equipment used by a firefighter to contain or extinguish fires and to protect the life of the firefighter, other than fire trucks or vehicles.
- (5) "Grantee" means an individual or organization that has been awarded financial assistance under one of the federal discretionary grant programs including, but not limited to, AFG, or under the volunteer firefighter equipment and training grant program from the State Fire Marshal's Office.
- (6) "Matching funds" means the amount of a project that a grantee agreed to provide in return for being awarded a federal grant.
- (7) "Personal Protective Equipment (PPE)" means items compliant with the most current Occupational Safety and Health Administration (OSHA) or National Fire Protection Association (NFPA) standards to enhance the operational safety of the firefighter.
- (8) "State Fire Marshal" means the Commissioner of the Department of Commerce and Insurance, or designee.
- (9) "State Fire Marshal's Office" means the Division of Fire Prevention at the Department of Commerce and Insurance.

- (10) "Volunteer fire department" means a fire department recognized by the State Fire Marshal's Office, pursuant to T.C.A. § 68-102-304, and classified by the Tennessee Fire Incident Reporting System (TFIRS) as a volunteer fire department.
- (11) "Volunteer firefighter" means a duly appointed member of a fire department on either a non-pay or part-pay basis who is neither employed in a full-time capacity with the department nor eligible to receive the educational incentive pay issued pursuant to T.C.A. § 4-24-202 as a member of the department. Volunteer firefighters may receive life insurance, health insurance, workmen's compensation insurance, length of service awards, pay per-call or per-hour, or similar compensation.

Authority: T.C.A. § 68-102-154.

#### 0780-02-24-.02 Applications and Technical Requirements

- (1) Fire department shall complete applications on forms provided by the State Fire Marshal's Office. The State Fire Marshal's Office will develop a form for the federal matching fund and a form for the firefighter equipment and training grant program. The application for the firefighter equipment and training grant program will include technical requirements established by the State Fire Marshal's Office to be used to determine grant recipients.
- (2) In addition to other technical requirements established by the State Fire Marshal's Office and published with the application, preference will also be given to the volunteer fire departments which:
  - (a) Comply with the fire reporting requirements pursuant to T.C.A. § 68-102-111;
  - (b) File an annual financial report with the Comptroller of the Treasury pursuant to T.C.A. § 68-102-309; and
  - (c) Meet the minimum training requirements established in T.C.A § 4-24-112(a)-(e).
- (3) Application deadlines will be established annually by the State Fire Marshal's Office based on available funding and will be published on the Department's website.
- (4) The applications shall be reviewed in accordance with state law and contracting rules and procedures established by the Central Procurement Office at the Department of General Services.
- (5) Applications for matching funds to meet local match requirements for federal grants shall include a copy of the award letter of the federal grant for firefighting equipment.

Authority: T.C.A. §§ 68-102-154, 68-102-304, and 68-102-309.

#### 0780-02-24-.03 Eligibility

- (1) To be eligible to receive an award for the volunteer firefighter equipment and training grant program or for the federal matching funds, a volunteer fire department shall:
  - (a) Be recognized by the State Fire Marshal's Office, pursuant to T.C.A. § 68-102-304; and
  - (b) Be classified as a volunteer fire department by the Tennessee Fire Incident Reporting System (TFIRS).

Authority: T.C.A. § 68-102-154.

#### 0780-02-24-.04 Award Selections

- (1) The grant award selection committee shall be comprised of seven (7) members: three (3) representatives from the Tennessee Fire Chief's Association, three (3) representatives from the Tennessee Firemen's Association, and the Assistant Commissioner of Fire Prevention. The representatives from the Associations shall be from the three (3) grand divisions of the state and shall serve for staggered terms not to exceed three (3) years.

- (2) The total amount of grants awarded annually must be divided equally among the three (3) grand divisions of the state.
- (3) The committee will prioritize awarding grants for matching funds.
- (4) The Commissioner shall endeavor to award all funds appropriated to the program each year, and any funds remaining will not revert to the general fund but will remain available for expenditure in subsequent fiscal years pursuant to T.C.A. § 68-102-154(d).

Authority: T.C.A. § 68-102-154.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/other authority) on May 13, 2020(mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: December 30, 2019

Rulemaking Hearing(s) Conducted on: (add more dates). February 28, 2020

Date: Jun 4, 2020

Signature:   
Hodgen Mainda (Jun 4, 2020 12:27 CDT)

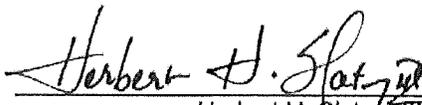
Name of Officer: Hodgen Mainda

Title of Officer: Commissioner

Agency/Board/Commission: Department of Commerce and Insurance—Division of Fire Prevention

Rule Chapter Number(s): 0780-02-24

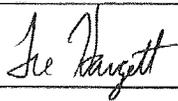
All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
Herbert H. Slatyer III  
Attorney General and Reporter  
6/22/2020  
Date

Department of State Use Only

Filed with the Department of State on: 6/23/2020

Effective on: 9/21/2020

  
Tre Hargett  
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

AGENCY: Health

DIVISION: Communicable and Environmental Disease Services

SUBJECT: Disease Control Health Threat Procedures

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-3-1803, 68-1-103, 68-1-104, 68-1-201, and 68-5-104 and Executive Order No. 36 of 2020

EFFECTIVE DATES: September 9, 2020 through June 30, 2021

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rulemaking hearing rules are being amended to change all existing references within the rule from "the General Sessions Court" to "a trial court of record". Additionally, the rules are being amended to add a provision to the current rules allowing witnesses to appear telephonically before a trial court of record because illness and/or isolation may prevent individuals from appearing in person. Lastly, the rules are being amended to add provisions to the current rules clarifying that the Commissioner or local health officer may seek orders of quarantine and/or isolation against an individual or a group of individuals in order to prevent the spread of COVID-19.

**Public Hearing Comments**

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

There were no public comments at the hearing.

## Regulatory Flexibility Addendum

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

- (1) **The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.** These amendments do not overlap, duplicate, or conflict with other rules.
- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.** The amendments are clear, concise, and are not ambiguous.
- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.** These amendments do not contain compliance or reporting requirements.
- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.** These amendments do not contain compliance or reporting requirements.
- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.** These amendments do not contain 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 rules do not contain performance standards.
- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.** These rules do not create any such barriers as these rules are required to further the objectives of Executive Order No. 36, which was signed by the Governor on May 12, 2020.

### **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.)

These rules are projected to have no impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

These rules are being amended to change all existing references within the rule from "the General Sessions Court" to "a trial court of record." Additionally, the rules are being amended to add a provision to the current rules allowing witnesses to appear telephonically before a trial court of record because illness and/or isolation may prevent individuals from appearing in person. Lastly, the rules are being amended to add provisions to the current rules clarifying that the Commissioner or local health officer may seek orders of quarantine and/or isolation against an individual or a group of individuals in order to prevent the spread of COVID-19.

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

T.C.A. §§ 4-3-1803, 68-1-103, 68-1-104, 68-1-201, 68-5-104, and Exec. Order No. 36. (2020).

- (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 amendments are required to accomplish the objectives of 2020 Executive Order No. 36 "An Order Suspending Provisions of Certain Statutes and Rules and Taking Other Necessary Measures in Order to Facilitate the Treatment and Containment of COVID-19," which was signed by the Governor on May 12, 2020.

- (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 rule amendments will not affect state and local government revenues or expenditures insofar as the rules are only changing existing references within the rule from "the General Sessions Court" to "a trial court of record."

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

Jane Young, 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;

Jane Young, 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, 710 James Robertson Parkway, 5th Floor, Nashville, TN, (615) 532-7663, Jane.Young@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](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 06-17-20  
 Rule ID(s): 9362  
 File Date: 6/11/2020  
 Effective Date: 9/9/2020

# Rulemaking Hearing Rule(s) Filing Form

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

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

**Agency/Board/Commission:** Department of Health  
**Division:** Communicable and Environmental Disease Services  
**Contact Person:** Jane Young, General Counsel  
**Address:** 710 James Robertson Parkway, Andrew Johnson Tower, 5th Floor, Nashville, Tennessee 37243  
**Phone:** (615) 532-7663  
**Email:** [Jane.Young@tn.gov](mailto:Jane.Young@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
1200-14-04	Disease Control Health Threat Procedures
Rule Number	Rule Title
1200-14-04-.02	Definitions
1200-14-04-.04	Health Directive
1200-14-04-.05	Temporary Hold in Emergency Situations
1200-14-04-.06	Petition to the Court for a Public Health Measure
1200-14-04-.07	Commitment to the Custody of the Commissioner

**RULES  
OF  
TENNESSEE DEPARTMENT OF HEALTH  
HEALTH SERVICES ADMINISTRATION  
COMMUNICABLE AND ENVIRONMENTAL DISEASE SERVICES**

**CHAPTER 1200-14-04  
DISEASE CONTROL HEALTH THREAT PROCEDURES**

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**1200-14-04-.01 INTRODUCTION.**

This chapter outlines procedures to be followed by the Commissioner, health officers, and their designees, in carrying out disease control enforcement activities involving persons or premises that pose a health threat to others.

**Authority:** T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104. **Administrative History:** Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.

**1200-14-04-.02 DEFINITIONS.**

- (1) Approved health care facility: a hospital or other health care facility approved by the Commissioner as having appropriate and necessary facilities, staff, and services for the diagnosis and treatment of people with a communicable disease.
- (2) Carrier: a person who harbors, or who the Commissioner, a health officer, or a designee reasonably believes to harbor, a specific pathogenic organism and who is potentially capable of spreading the organism to others, whether or not there are presently discernible signs and symptoms of the disease.
- (3) Chief Medical Officer: the State Health Officer who is appointed by the Commissioner of Health (as provided by T.C.A. § 68-1-102(c) to advise the Commissioner on all matters of state health policy or a physician who is the State Health Officer's designee.
- (4) Clear and convincing evidence: evidence which is positive and explicit, and which directly establishes the point to which it is adduced. It means greater than a preponderance of the evidence standard but less than a beyond a reasonable doubt standard.
- (5) Commissioner: the Commissioner of Health, or his designee, as provided at T.C.A. § 68-1-102(b) and (c).
- (6) Communicable Disease: a disease or condition resulting from infection by a pathogenic organism (infectious agent) that may cause serious illness, disability, or death and which may be transmitted from one person to another.
- (7) Competent medical experts: physicians who are trained and experienced in the diagnosis, treatment and control of infectious/communicable disease and rely on known clinical or epidemiological evidence. Generally, the standard for determining the existence of a significant risk to others is the reasonable medical judgment of the public health authorities.

(Rule 1200-14-04-.02, continued)

- (8) Department: the Tennessee Department of Health.
- (9) Emergency: a person or premises is a health threat to others and there is a clear and imminent danger to the public health unless the person is immediately separated from other persons or access to the premises is prevented or restricted, because no less restrictive alternatives exist which would reasonably protect the public health.
- (10) Health directive: a written statement (or, in compelling circumstances, an oral statement followed by a written statement), based on clinical or epidemiological evidence of the kind relied upon by competent medical experts, that is issued by the Commissioner or health officer, requiring a person to cooperate with health authorities' efforts to prevent or control transmission of a disease that poses a health threat to others.
- (11) Health Officer: the Chief Medical Officer for the State of Tennessee; a licensed physician who is authorized by the Department to function as a county, district, or regional health officer in Tennessee, a licensed physician who serves as the health director or health officer of any metropolitan public health department in Tennessee; a licensed physician in the central office of the Department's Health Services Administration.
- (12) Health threat to others: the direct threat of endangerment to others due to the presence of a cause or source of a disease on premises, or due to the inability, unwillingness, or failure of a carrier to act in such a manner as to not place others, without their consent, at significant risk of exposure to, based on the reasonable medical judgment and clinical or epidemiological understanding of public health authorities, a disease that may cause serious illness, disability, or death. A determination of whether or not premises or a person poses a health threat to others may include, but is not necessarily limited to, assessing the cause, source, and/or nature of a disease, the likelihood of infection, the modes of transmission, the risk of transmission, and the severity of harm that might result due to transmission of a disease. With respect to carriers, such a determination is not based solely on a person's past behavior but also involves an assessment of a person's current situation, including the effects of educational efforts and statements of intent. A person having a disease, such as active tuberculosis, even though rendered temporarily not capable of transmission because of receiving therapy, who discontinues treatment prior to reaching a curative result, may continue to be a health threat to others.
- (13) Isolation: the separation for the period of communicability of infected persons, or persons reasonably suspected to be infected, from other persons, in such places and under such conditions as will prevent the direct or indirect conveyance of the infectious agent from infected persons to other persons who are susceptible or who may spread the agent to others.
- (14) Least restrictive alternative: use of means sufficient to protect the public health but tailored to infringe upon any legally protected liberty interests, privacy interests, property interests, and/or association interests of a person or premises determined to be a health threat to others in the least restrictive manner.
- (15) Person: an individual or a group of individuals.
- ~~(15) Petitioner: the Commissioner or health officer who commences an action in General Sessions Court pursuant to these Rules.~~
- (16) Petitioner: the Commissioner or health officer who commences an action in a trial court of record pursuant to these Rules.

(Rule 1200-14-04-.02, continued)

- ~~(16) Public health measure: a measure or measures, consistent with the purpose of these Rules, imposed by a General Sessions Court against a carrier or owner or operator of premises in order to prevent the spread of a disease that poses a health threat to others.~~
- ~~(17) Public health measure: a measure or measures, consistent with the purpose of these Rules, imposed by a trial court of record against a carrier or owner or operator of premises in order to prevent the spread of a disease that poses a health threat to others.~~
- ~~(18)~~(17) Quarantine: limitation of freedom of movement or isolation of a person, or preventing or restricting access to premises upon which the person, cause or source of a disease may be found, for a period of time as may be necessary to confirm or establish a diagnosis, to determine the cause or source of a disease, and/or to prevent the spread of a disease. These limitations may be accomplished by placing a person in a health care facility or a supervised living situation, by restricting a person to the person's home, or by establishing some other situation appropriate under the particular circumstances.
- ~~(18) Respondent: a person against whom an action in General Sessions Court is commenced pursuant to these Rules.~~
- ~~(19) Respondent: a person or persons against whom an action in a trial court of record is commenced pursuant to these Rules.~~
- ~~(20)~~(19) Transmission: the transfer of an infectious agent from one person to another, including, but not limited to, airborne transmission, bloodborne transmission, foodborne transmission, sexual transmission, skin contact transmission, or waterborne transmission.

**Authority:** T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.

**Authority:** T.C.A. §§ 4-3-1803, 68-1-103, 68-1-104, 68-1-201, 68-5-104, and Executive Order No. 36 (2020).

**Administrative History:** Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.

#### 1200-14-04-.03 REPORTING A HEALTH THREAT TO OTHERS.

- (1) Any person licensed by the State of Tennessee to practice a healing art who has reasonable cause to believe that a person is or may be a health threat to others [as defined in 1200-14-04-.02(12) of these Rules] because the person is unable, is unwilling, or is failing to act in such a manner as to not place others at significant risk of exposure to infection that causes serious illness, disability, or death shall report that information to the Commissioner or a health officer.
- (2) In the event a carrier of a disease that poses a health threat to others uses interstate or international flight to avoid treatment and/or isolation and/or quarantine in Tennessee, such individual shall be deemed to have waived confidentiality as to his health status, and Tennessee health authorities can contact health authorities in the jurisdiction to which the individual fled regarding the health threat presented by the carrier.

**Authority:** T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104. **Administrative History:** Original rule filed January 11, 1994; effective March 27, 1994. Amendment filed December 16, 1999; effective February 29, 2000. Repeal and new rule filed March 30, 2004; effective July 29, 2004.

#### 1200-14-04-.04 HEALTH DIRECTIVE.

(Rule 1200-14-04-.04, continued)

- ~~(1) If the Commissioner or health officer reasonably believes, based upon clinical or epidemiological evidence of the kind relied upon by competent medical experts, that a health threat to others exists, then he/she shall have the authority to issue a health directive pursuant to the conditions set forth in these Rules, in order to protect the public health. A health directive shall be a written statement or, in compelling circumstances, an oral statement followed within three (3) days by a written statement. A health directive shall be individual and specific and shall not be issued to a class of persons. The purpose of a health directive is to direct a carrier or owner or operator of premises to cooperate with health authorities' efforts to prevent or control transmission of a disease that poses a health threat to others.~~
- (1) If the Commissioner or health officer reasonably believes, based upon clinical or epidemiological evidence of the kind relied upon by competent medical experts, that a health threat to others exists, then he/she shall have the authority to issue a health directive pursuant to the conditions set forth in these Rules, in order to protect the public health. A health directive shall be a written statement or, in compelling circumstances, an oral statement followed within three (3) days by a written statement. A health directive shall be specific and shall be issued to a person. The purpose of a health directive is to direct a carrier or owner or operator of premises to cooperate with health authorities' efforts to prevent or control transmission of a disease that poses a health threat to others.
- (2) A health directive may include, but is not necessarily limited to, participation in education and counseling, medical tests and examinations to verify carrier status, participation in treatment programs, isolation and/or or quarantine, or preventing or restricting access to premises upon which a person, cause or source of a disease may be found, for a period of time as may be necessary to confirm or establish a diagnosis, to determine the cause or source of a disease, and/or to prevent the spread of a disease. In no case may a person be isolated, held or detained, pursuant to these Rules, in a correctional facility.
- (3) If a carrier or owner or operator of premises refuses to undergo tests or examinations ordered in a health directive, the Commissioner or health officer may be limited in his or her ability to obtain sufficient evidence to evaluate a potential health threat to others and he/she, lacking the necessary tests or examinations, may be compelled to conclude for the sake of the public health that a health threat to others is present. Then the carrier must undergo testing sufficient to prove the health threat to others does not exist.
- ~~(4) Inability, unwillingness, or failure of a carrier or owner or operator of premises to comply with a health directive shall be grounds for proceeding with a petition in the General Sessions Court for a temporary hold in emergency situations and/or a public health measure.~~
- (4) Inability, unwillingness, or failure of a carrier or owner or operator of premises to comply with a health directive shall be grounds for proceeding with a petition in a trial court of record for a temporary hold in emergency situations and/or a public health measure.
- (5) Medical information contained in a health directive or in any other statement from the Commissioner or health officer or designee to a carrier pursuant to these Rules is confidential, except to the extent necessary for the administration and enforcement of public health laws and rules, and is not subject to public disclosure without appropriate authorization in accordance with state and/or federal law.
- (6) Prior to issuing a health directive, the Commissioner or health officer should review the written medical and other records pertinent to the matter, along with any measures that have been taken, and make findings using clinical or epidemiological evidence of the kind relied upon by competent medical experts. These findings should be included in the health directive itself.

(Rule 1200-14-04-.04, continued)

- (7) When a health directive is issued to a carrier or owner or operator of premises, such person may request a review of the decision. Any request for review must be submitted to the Office of the Chief Medical Officer. Within five (5) business days of the receipt of the request, the Chief Medical Officer or his designee shall review the underlying facts with the health officer issuing the directive and shall notify the person in writing of the review decision. A person against whom a health directive has been issued may also request that the conditions of the directive be obtained in the form of a public health measure. The health directive should be considered as remaining in force during the review process. Health directives should contain sufficient information to enable a person to avail himself of discussion and review, and a copy of these Rules should be attached to the health directive.
- (8) A health directive shall employ the least restrictive alternative, based on the reasonable medical judgment of competent medical experts relying on clinical or epidemiological evidence, that will adequately protect the public health and prevent the spread of a disease that poses a health threat to others.
- (9) Nothing in this Rule shall preclude a person to whom a health directive is issued from consulting with and being assisted by legal counsel.

**Authority:** T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.

**Authority:** T.C.A. §§ 4-3-1803, 68-1-103, 68-1-104, 68-1-201, 68-5-104, and Executive Order No. 36 (2020).

**Administrative History:** Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.

#### **1200-14-04-.05 TEMPORARY HOLD IN EMERGENCY SITUATIONS.**

- ~~(1) In the case of an emergency, the Commissioner or health officer may petition the General Sessions Court of the county where the person lives or is to be found, or where the premises is located, to either: (1) order a peace officer to make a civil arrest and take the person to an appropriate health care facility for examination, isolation and/or appropriate treatment; or (2) prevent or restrict access to premises. The Commissioner or health officer shall set forth in an affidavit the specific facts upon which the order is sought, indicating why reasonable cause exists (upon the basis of sound clinical or epidemiological evidence of the type relied upon by competent medical experts) to believe that there is a substantial likelihood that the carrier or premises poses an imminent health threat to others, and the types of relief sought. If the carrier is already institutionalized, the court may be petitioned to order the facility to continue to hold the carrier.~~
- (1) In the case of an emergency, the Commissioner or health officer may petition a trial court of record of the county where the person lives or is to be found, or where the premises is located, to either: (1) order a peace officer to make a civil arrest and take the person to an appropriate health care facility for examination, isolation and/or appropriate treatment; or (2) prevent or restrict access to premises. The Commissioner or health officer shall set forth in an affidavit the specific facts upon which the order is sought, indicating why reasonable cause exists (upon the basis of sound clinical or epidemiological evidence of the type relied upon by competent medical experts) to believe that there is a substantial likelihood that the carrier or premises poses an imminent health threat to others, and the types of relief sought. If the carrier is already institutionalized, the court may be petitioned to order the facility to continue to hold the carrier.
- ~~(2) A person shall not be held, or premises quarantined, under temporary emergency hold for more than five working (5) days (excluding Saturdays, Sundays and legal State holidays)~~

(Rule 1200-14-04-.05, continued)

~~without a hearing being held before the General Sessions Court, unless the person so held, or owner or operator of premises quarantined, consents to delay the hearing. At this hearing the Commissioner or health officer may petition for a public health measure pursuant to 1200-14-04-.06 and/or may request that the temporary emergency hold be continued, due to an imminent health threat to others, for a period not to exceed an additional ten (10) working days. Within these time limits, the hearing on the temporary emergency hold will be held in accordance with the procedures set forth in 1200-14-04-.06(3).~~

- (2) A person shall not be held, or premises quarantined, under temporary emergency hold for more than five working (5) days (excluding Saturdays, Sundays and legal State holidays) without a hearing being held before the trial court of record, unless the person so held, or owner or operator of premises quarantined, consents to delay the hearing. At this hearing the Commissioner or health officer may petition for a public health measure pursuant to Rule 1200-14-04-.06 and/or may request that the temporary emergency hold be continued, due to an imminent health threat to others, for a period not to exceed an additional ten (10) working days. Within these time limits, the hearing on the temporary emergency hold will be held in accordance with the procedures set forth in Rule 1200-14-04-.06(3).
- (3) Unless the person so held, or owner or operator of premises quarantined, consents, in no event shall a person be held, or a premises quarantined, under a temporary emergency hold for more than fifteen (15) working days without a petition for a public health measure being heard pursuant to 1200-14-04-.06.

*Authority:* ~~T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.~~

*Authority:* T.C.A. §§ 4-3-1803, 68-1-103, 68-1-104, 68-1-201, 68-5-104, and Executive Order No. 36 (2020).

*Administrative History:* Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.

#### **1200-14-04-.06 PETITION TO THE COURT FOR A PUBLIC HEALTH MEASURE.**

- ~~(1) To protect the public against a disease that poses a health threat to others, the Commissioner or health officer shall have the authority to file a petition for relief in the form of a public health measure with the General Sessions Court in the county where the carrier lives or is to be found, or where the premises is located, setting forth in an affidavit the specific facts upon which the order is sought and what type of relief is sought. The Department shall have the burden of proving that reasonable cause exists, based on sound clinical or epidemiological evidence, to believe that there is a substantial likelihood that the carrier or premises poses a health threat to others by clear and convincing evidence.~~
- (1) To protect the public against a disease that poses a health threat to others, the Commissioner or health officer shall have the authority to file a petition for relief in the form of a public health measure with a trial court of record in the county where the carrier lives or is to be found, or where the premises is located, setting forth in an affidavit the specific facts upon which the order is sought and what type of relief is sought. The Department shall have the burden of proving by clear and convincing evidence that reasonable cause exists, based on sound clinical or epidemiological evidence, to believe that there is a substantial likelihood that the carrier or premises poses a health threat to others.
- (2) The petition shall set forth the grounds and underlying facts that demonstrate the carrier or premises poses a health threat to others, the proposed public health measure is the least restrictive alternative, and the type of relief sought. Public health measures may include, but are not limited to, the following:

(Rule 1200-14-04-.06, continued)

- (a) participation in a designated education program or a designated counseling program;
  - (b) notification of the carrier of appearance of the carrier before designated health officials for verification of carrier status or infectiousness, testing, treatment, or other purposes consistent with monitoring or communicable disease control;
  - (c) medical tests and examinations necessary to verify carrier status or infectiousness or for diagnosis, treatment, or confirmation of compliance with therapy;
  - (d) medically-accepted treatment necessary to make the carrier noninfectious or completion of the full course of a medically-accepted treatment program of sufficient duration to render the carrier noninfectious and to be curative;
  - (e) ceasing and desisting the actions or conduct that constitutes a health threat to others;
  - (f) living part time or full time in a setting supervised by the Commissioner for a designated period of time and under designated conditions;
  - (g) commitment to the custody of the Commissioner for placement in an appropriate institutional facility or other supervised living situation for a designated period and under designated conditions until the carrier is made noninfectious or until released based on a determination by the Chief Medical Officer, or the Chief Medical Officer's physician designee, that the carrier is appropriate for release to continue treatment as a voluntary patient in an approved health care facility or other appropriate supervised setting, whichever occurs first, unless good cause is shown for continued commitment;
  - (h) commitment to the custody of the Commissioner for placement in an appropriate institutional facility or other supervised living situation for a designated period and under designated conditions until the carrier completes the full course of a medically-accepted curative treatment program or until released based on a determination by the Chief Medical Officer or his/her physician designee that the carrier is appropriate for release to continue the treatment program in a less restrictive setting, whichever comes first;
  - (i) preventing or restricting access to premises for such time as is necessary to prevent the spread of a disease that poses a health threat to others; and/or
  - (j) requiring tests or examinations on premises to determine the source or cause of a disease that may pose a health threat to others.
- (3) The hearing on the petition for a public health measure shall not be set prior to five (5) days, excluding Saturdays, Sundays and legal State holidays, from the date the petition is served without the consent of the affected person. The notice of hearing shall contain the following information:
- (a) the time, date, and place of the hearing;
  - (b) the person's right to appear at the hearing and to subpoena, present and cross-examine witnesses;
  - ~~(c) the person's right to have a personally-selected physician perform an examination and the right to review the results of any examination or test being used to support the petition; and~~

(Rule 1200-14-04-.06, continued)

- (c) the person's right to have a personally-selected physician perform an examination and the right to review the results of any examination or test being used to support the petition;
- (d) the person's right to appear telephonically or through other electronic means, dependent on health condition and ability to travel; and
- ~~(e)~~(d) the person's right to counsel, including the right, if indigent, to counsel appointed by the court.
- (4) ~~A person may appeal an adverse General Sessions Court decision or file a petition for a writ of habeas corpus in a court of competent jurisdiction or the Department may appeal the General Sessions Court decision; however, the person's status as determined by the General Sessions Court shall remain unchanged and any remedy or relief ordered by the court shall remain in force while the appeal or writ of habeas corpus is pending.~~
- (4) A person may appeal an adverse trial court of record decision or file a petition for a writ of habeas corpus in a court of competent jurisdiction or the Department may appeal the court of record decision; however, the person's status as determined by the trial court of record shall remain unchanged and any remedy or relief ordered by the court shall remain in force while the appeal or writ of habeas corpus is pending.

*Authority:* T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.

*Authority:* T.C.A. §§ 4-3-1803, 68-1-103, 68-1-104, 68-1-201, 68-5-104, and Executive Order No. 36 (2020).

*Administrative History:* Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.

#### 1200-14-04-.07 COMMITMENT TO THE CUSTODY OF THE COMMISSIONER.

- (1) ~~Review prior to a petition for commitment. Before petitioning the General Sessions Court to commit a person to the custody of the Commissioner pursuant to Section 1200-14-04-.06(2)(g)-(h), the health officer seeking the petition shall notify the Chief Medical Officer or his/her physician designee from the Health Services Administration and shall present the underlying facts upon which the commitment is sought. This notification shall occur prior to petitioning the court, except in compelling extreme and unusual circumstances, in which event the notification shall occur as soon as possible thereafter. The Chief Medical Officer or designated physician from the Health Services Administration shall review the underlying facts, obtain consultations as necessary, and shall promptly (i.e., within twenty-four (24) hours) make a determination regarding the need to submit a petition for commitment.~~
- (1) Review prior to a petition for commitment. Before petitioning a trial court of record to commit a person to the custody of the Commissioner pursuant to Section 1200-14-04-.06(2)(g)-(h), the health officer seeking the petition shall notify the Chief Medical Officer or his/her physician designee from the Health Services Administration and shall present the underlying facts upon which the commitment is sought. This notification shall occur prior to petitioning the court, except in compelling extreme and unusual circumstances, in which event the notification shall occur as soon as possible thereafter. The Chief Medical Officer or designated physician from the Health Services Administration shall review the underlying facts, obtain consultations as necessary, and shall promptly (i.e., within twenty-four (24) hours) make a determination regarding the need to submit a petition for commitment.

(Rule 1200-14-04-.07, continued)

- ~~(2) Review after an order of commitment. When the General Sessions Court orders a person to be committed to the custody of the Commissioner for placement in an approved health care facility or other supervised living situation, the Chief Medical Officer or his/her physician designee shall review the treatment plan and written progress reports with the appropriate health officer and shall make a determination regarding the need for continued commitment or supervised living. At least every ninety-two (92) days (or more frequently if ordered by the court), the Chief Medical Officer or his/her physician designee shall send a written notification to the person or to the person's legal guardian or representative and to the appropriate health officer regarding the determination as to whether continued commitment or supervised living is needed.~~
- (2) Review after an order of commitment. When a trial court of record orders a person to be committed to the custody of the Commissioner for placement in an approved health care facility or other supervised living situation, the Chief Medical Officer or his/her physician designee shall review the treatment plan and written progress reports with the appropriate health officer and shall make a determination regarding the need for continued commitment or supervised living. At least every ninety-two (92) days (or more frequently if ordered by the court), the Chief Medical Officer or his/her physician designee shall send a written notification to the person or to the person's legal guardian or representative and to the appropriate health officer regarding the determination as to whether continued commitment or supervised living is needed.
- ~~(3) Duration of Commitment. A person shall not be committed to the custody of the Commissioner for placement in an institutional facility or other supervised living situation for a period longer than six (6) months unless a petition for continued commitment is filed with the General Sessions Court having jurisdiction of the matter, in which case the commitment shall continue until a hearing on the petition has been held and the court has issued an order. The Commissioner or health officer may petition the court for an order of continued commitment for as many times as necessary for the protection of the public health, and the court may order continued commitment if reasonable cause exists, based on sound clinical or epidemiological evidence, to believe that there is a substantial likelihood that the carrier poses a health threat to others, by clear and convincing evidence, if released.~~
- (3) Duration of Commitment. A person shall not be committed to the custody of the Commissioner for placement in an institutional facility or other supervised living situation for a period longer than six (6) months unless a petition for continued commitment is filed with a trial court of record having jurisdiction of the matter, in which case the commitment shall continue until a hearing on the petition has been held and the court has issued an order. The Commissioner or health officer may petition the court for an order of continued commitment for as many times as necessary for the protection of the public health, and the court may order continued commitment if reasonable cause exists, based on sound clinical or epidemiological evidence, to believe that there is a substantial likelihood that the carrier poses a health threat to others, by clear and convincing evidence, if released.

~~Authority: T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.~~

Authority: T.C.A. §§ 4-3-1803, 68-1-103, 68-1-104, 68-1-201, 68-5-104, and Executive Order No. 36 (2020).

**Administrative History:** *Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.*

#### **1200-14-04-.08 PATIENT BILL OF RIGHTS.**

The following are the rights of any patient pursuant to this chapter:

(Rule 1200-14-04-.08, continued)

- (1) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The approved treatment facility may adopt reasonable policies regarding the use of the telephone in the facility.
- (2) Patients in any approved facility shall be granted opportunities for visitation and communication with their families and friends consistent with an effective treatment program. Patients shall be permitted to consult with counsel at any time.
- (3) Any patient confined pursuant to the provisions of these Rules may be given treatment only with the patient's consent, or if the patient is adjudicated incompetent, then the consent of the guardian must be obtained. Patients must understand that refusal to cooperate with treatment will compel continued actions on the part of the health officer to protect the public's health.
- (4) Isolation of the patient from other patients in the confinement of an approved treatment facility setting shall be used only when medically necessary to prevent serious harm to others because the patient is infectious and there is an imminent danger that the patient will engage in high-risk behaviors. Isolation shall not be used when the condition no longer exists or there is no longer an imminent danger that the patient will engage in the behavior justifying isolation. Any use of isolation, together with the reasons therefor and the duration of its use, shall be made a part of the medical record of the patient.
- (5) No patient placed in confinement pursuant to these Rules shall, solely by reason of such placement, be denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, and vote, to the extent that such activities can be undertaken without jeopardizing the public health and unless such patient has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (6) A patient shall be provided the maximum freedom possible. Limitations on a patient's freedom are permitted only when reasonably necessary to protect the health of others in the facility or the public health. The patient shall be allowed, within these constraints, to exercise, recreate, and go outdoors for a reasonable period of time on a daily basis.
- (7) No mechanical restraint shall be applied in the care, training, or treatment of any person unless required by the person's medical or treatment needs. Only physicians may prescribe such restraint. Such restraint shall be removed whenever the condition justifying its use no longer exists. Any use of a mechanical restraint, together with the reasons therefor, and the duration of its use, shall be made a part of the medical or rehabilitation record of the person. Patients shall not be abused nor neglected nor administered corporal punishment. Mechanical restraints shall not be used in lieu of, or in place of, appropriate medical management for conditions such as drug or alcohol intoxication, habituation or addiction.
- (8) Confidentiality.
  - (a) All applications, certificates, records, reports, and all legal documents, petitions, and records made or information received pursuant to treatment in a facility directly or indirectly identifying a patient or former patient shall be kept confidential and shall not be disclosed by any person except insofar as any of the following consent:
    1. The individual identified who is fourteen (14) years of age or over;
    2. The legal guardian on behalf of the adult individual identified;
    3. The parent, guardian, or custodian of a minor;

(Rule 1200-14-04-.08, continued)

4. The executor, administrator or personal representative on behalf of a deceased patient or resident or former patient or resident; or
  5. As a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to public interest or to the detriment of either party to the proceedings, consistent with the provisions of T.C.A. §§ 10-7-504(a) or 68-10-113.
- (b) Nothing in this paragraph shall prohibit disclosure of medical record information of a patient or resident to the Commissioner or to health officers.
- (c) Nothing in this paragraph shall prohibit disclosure, upon proper inquiry and with the patient's consent, of information as to the current medical condition of a patient or resident to any members of the family of a patient or resident or to his relatives or friends.
- (9) Health directives and public health measures should be written in non-technical, patient-appropriate language and should include the reasons for the health directive or public health measure (including a statement of actions the Department has taken prior to the directive or court order), tests and/or treatments expected, anticipated duration of the directive/public health measure, and rights of review or appeal as set out in these Rules.

**Authority:** T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104. **Administrative History:** Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.

\* 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 Tennessee Department of Health, Communicable and Environmental Disease Services (board/commission/other authority) on 06/08/2020 (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: 4/23/2020 (mm/dd/yyyy)

Rulemaking Hearing(s) Conducted on: (add more dates). 06/08/2020 (mm/dd/yyyy)

Date: 06/08/2020

Signature: Jane Young

Name of Officer: Jane Young

General Counsel

Title of Officer: Tennessee Department of Health

Agency/Board/Commission: Tennessee Department of Health, Communicable and Environmental Disease Services

Rule Chapter Number(s): 1200-14-04

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  
6/8/2020 Date

**Department of State Use Only**

RECEIVED

Filed with the Department of State on: 6/11/2020

2020 JUN 11 PM 3:14

Effective on: 9/9/2020

SECRETARY OF STATE  
PUBLICATIONS

Tre Hargett  
Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

AGENCY: Austin Peay State University

SUBJECT: Student and Student Organization Conduct and Disciplinary Sanctions

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-101 et seq., 49-7-123(a)(1), and 49-8-203

EFFECTIVE DATES: September 13, 2020 through June 30, 2021

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rulemaking hearing rule describes that students are expected to conduct themselves as law-abiding members of each community at all times and authorizes the President of Austin Peay State University to take such action as may be necessary to maintain campus conditions and preserve the integrity of APSU and its educational environment. The rulemaking hearing rule further prescribes what disciplinary action can be taken against a student for violation of the policies and regulations which occur on APSU owned, leased or otherwise controlled property; while participating in international or distance learning programs; and off campus, when the conduct impairs, interferes with, or obstructs any APSU activity or the mission, processes, and functions of APSU. Finally, the rulemaking hearing rule describes the due process procedures for a student who wishes to contest a suspension or expulsion of a student or student organization from APSU.

(Rule not submitted in redline form.)

**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 rule.

**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.

These rules only affect students enrolled at Austin Peay State University and no small businesses will be impacted by their promulgation.

### **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)

These rules only affect students enrolled at Austin Peay State University and 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;

This rule describes that students are expected to conduct themselves as law-abiding members of each community at all times and authorizes the President of Austin Peay State University to take such action as may be necessary to maintain campus conditions and preserve the integrity of APSU and its educational environment. The rule further prescribes what disciplinary action can be taken against a student for violation of the policies and regulations which occur on APSU owned, leased or otherwise controlled property; while participating in international or distance learning programs; and off campus, when the conduct impairs, interferes with, or obstructs any APSU activity or the mission, processes, and functions of APSU. Finally, the rule describes the due process procedures for a student who wishes to contest a suspension or expulsion of a student or student organization from APSU.

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

T.C.A. §§ 4-5-101 et seq., 49-7-123(a)(1), and 49-8-203.

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

All students enrolled at Austin Peay State University will be affected by this rule. The Board urges adoption of this rule.

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

Not applicable.

- (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;

Not applicable.

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

Dr. Eric Norman  
Vice President for Student Affairs  
Austin Peay State University

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

Dannelle Whiteside  
General Counsel  
Austin Peay State University

Dr. Eric Norman  
Vice President for Student Affairs  
Austin Peay State University

(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

Dannelle Whiteside  
General Counsel  
Austin Peay State University  
931-221-7580  
[whitesided@apsu.edu](mailto:whitesided@apsu.edu)

Dr. Eric Norman  
Vice President for Student Affairs  
Austin Peay State University  
931-221-7341  
[singletong@apsu.edu](mailto:singletong@apsu.edu)

(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](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 06-19-20  
 Rule ID(s): 9364  
 File Date: 6/15/2020  
 Effective Date: 9/13/2020

## 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:** Austin Peay State University  
**Division:**  
**Contact Person:** Dannelle Whiteside  
**Address:**  
**Zip:** 37044  
**Phone:** 931-221-7580  
**Email:** whitesided@apsu.edu

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0240-05-02	Student and Student Organization Conduct and Disciplinary Sanctions
Rule Number	Rule Title
0240-05-02-.01	APSU Policy Statement
0240-05-02-.02	Disciplinary Offenses
0240-05-02-.03	Academic and Classroom Misconduct
0240-05-02-.04	Disciplinary Sanctions
0240-05-02-.05	Disciplinary Procedures

**Rules  
of  
Austin Peay State University**

**Chapter 0240-05-02  
Student and Student Organization Conduct and Disciplinary Sanctions**

Division 0240-05 is amended by adding Chapter 02 Student Conduct and Student Organization and Disciplinary Sanctions, a table of contents, and Rules .01, .02, .03, .04, .05 so that it shall read as follows:

0240-05-02-.01	APSU Policy Statement
0240-05-02-.02	Disciplinary Offenses
0240-05-02-.03	Academic and Classroom Misconduct
0240-05-02-.04	Disciplinary Sanctions
0240-05-02-.05	Disciplinary Procedures

0240-05-02-.01 APSU Policy Statement is added to Chapter 0240-05-02 Student and Student Organization Conduct and Disciplinary Sanctions and shall read as follows:

**0240-05-02-.01 APSU Policy Statement.**

- (1) Austin Peay State University ("University" or "APSU") students are expected to conduct themselves as law-abiding members of the community at all times. Admission to APSU carries with it special privileges and imposes special responsibilities apart from those rights and duties enjoyed by non-students. In recognition of the special relationship that exists between APSU and the academic community which it seeks to serve, the APSU Board of Trustees (the Board) has authorized the President of APSU (the President) to take such action as may be necessary to maintain campus conditions and preserve the integrity of APSU and its educational environment.
- (2) Pursuant to this authority and in fulfillment of its duties to provide a secure and stimulating atmosphere in which individual and academic pursuits may flourish, the Board has developed the following regulations, intended to govern student conduct on the APSU campus. The University under the jurisdiction of the Board is directed to implement policies subject to, and consistent with, these rules. In addition, students are subject to all federal, state, and local laws and ordinances. If a student's violation of such laws or ordinances also adversely affects APSU's pursuit of its educational objectives, APSU may enforce its own regulations regardless of any proceedings instituted by other authorities. Conversely, violation of any section of these rules may subject a student to disciplinary measures by APSU whether or not such conduct simultaneously violates state, local or national laws.
- (3) For the purpose of these rules, a "student" shall mean any person who is admitted and/or registered for study at APSU for any academic period. This shall include, but not be limited to any period of time following admission and/or registration, but preceding the start of classes for any academic period. It will also include any period which follows the end of an academic period through the last day for registration for the succeeding academic period, and during any period while the student is under suspension from APSU. Finally, "student" shall also include any person subject to a period of suspension or removal from campus as a sanction which results from a finding of a violation of the policies, rules, and regulations governing student conduct. Students are responsible for compliance with rules and policies including, but not limited to the Policies on Student Conduct and with similar APSU policies at all times.
- (4) Disciplinary action may be taken against a student for violation of the policies, rules, and regulations which occur on APSU owned, leased or otherwise controlled property, while participating in international or distance learning programs, and off campus, when the conduct impairs, interferes with, or obstructs any APSU activity or the mission, processes, and functions of APSU. The University may enforce their own rules regardless of the status or outcome of any external proceedings instituted in any other forum, including any civil or criminal proceeding.

- (5) These rules, and related material incorporated herein by reference, are applicable to registered student organizations as well as individual students. Registered student organizations are subject to discipline for the conduct and actions of individual members of the organization while acting in their capacity as members of, or while attending or participating in any activity of, the organization.
- (6) Confidentiality of Discipline Process. Subject to the exceptions provided pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA) and/or the Tennessee Open Records Act, a student's disciplinary files are considered educational records and are confidential within the meaning of those Acts.

**Authority:** T.C.A. §§ 4-5-101 et seq., 49-8-203, and § 10-7-504 et seq.

0240-05-02-.02 Disciplinary Offenses is added to Chapter 0240-05-02 Student and Student Organization Conduct and Disciplinary Sanctions and shall read as follows:

**0240-05-02-.02 Disciplinary Offenses.**

- (1) Generally, through appropriate due process procedures, APSU disciplinary measures may be imposed for conduct which adversely affects APSU's pursuit of its educational objectives, which violates or shows a disregard for the rights of other members of APSU's academic community or which endangers property or persons on APSU, or APSU-controlled property.
- (2) Individual students or registered student organizational misconduct which is subject to disciplinary sanction may include but not be limited to the following examples:
  - (a) Conduct dangerous to self or others. Any conduct, or attempted conduct, which poses a direct threat to the safety of others or where the student's behavior is materially and substantially disruptive of APSU's learning environment;
  - (b) Hazing. Violations of this section include any act of hazing on or off the University campus or APSU controlled property, by an APSU student, group of students or registered student organization. Hazing means any intentional or reckless act on or off the property of any higher education institution by one (1) student acting alone or with others which is directed against any other student, that endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger such student's mental or physical health or safety. Hazing does not include customary athletic events or similar contests or competitions, and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organizations;
  - (c) Discrimination or Discriminatory Harassment. Any student or group of students act against another individual or group in violation of these rules and University policies, as well as federal and/or state laws prohibiting discrimination and discriminatory harassment, including, but not limited to, APSU Policy 6:001 and 6:003, and 6:004;
  - (d) Disorderly Conduct. Any student or group of students whose behavior which is abusive, obscene, lewd, indecent, violent, excessively noisy, disorderly, or which unreasonably disturbs or may reasonably provoke other groups or individuals (this may include, but not be limited to verbal abuse, nonverbal gestures and inappropriate behavior resulting from the use of being under the influence of alcohol or drugs), etc.;

- (e) Obstruction of or Interference with APSU Activities or Facilities. Any intentional interference with or obstruction of any APSU program, event, or facility including, but not limited to the following:
1. Any unauthorized occupancy of APSU or APSU-controlled facilities or blockage of access to or from such facilities;
  2. Interference with the right of any APSU member or other authorized person to gain access to any APSU or APSU-controlled activity, program, event or facility;
  3. Any obstruction or delay of a campus security officer, public safety officer, police officer, firefighter, EMT, or any University official in the performance of his or her duty;
  4. Any form of disruptive behavior in the classroom, during any campus event; or activity or at any location on campus or
- (f) Misuse of or Damage to Property. Any act of misuse, vandalism, malicious or unwarranted damage or destruction, defacing, disfiguring or unauthorized use of property belonging to APSU or property being used, rented, owned or leased by a student, group of students or officially registered student organization not owned by APSU;
- (g) Theft, Misappropriation, or Unauthorized Sale. Any act of theft, misappropriation, or unauthorized possession, use or sale of APSU property or any such act against a member or organization of the APSU community or a guest of APSU;
- (h) Misuse of Documents or Identification Cards. Any forgery, alteration of or unauthorized use of APSU documents, forms, records or identification cards, including the giving of any false information, or withholding of necessary information, in connection with a student's admission, enrollment or status at APSU or; failure to carry the APSU ID card at all times or to show it upon proper request;
- (i) Firearms and Other Dangerous Weapons. Any possession of or use of firearms, dangerous weapons of any kind on APSU property or APSU controlled property. Firearms or dangerous weapons include, but are not limited to: rifles, handguns, replica/toy guns, BB guns, pellet guns, stun guns, non-culinary knives with a blade greater than four (4) inches, martial arts equipment, paint ball guns, water guns, bows and arrows, etc., or other objects with the intent to cause bodily harm, including mace and/or pepper spray;
- (j) Explosives, Fireworks, and Flammable Materials. The unauthorized possession, ignition or detonation of any object or article which would cause damage by fire or other means to persons or property or APSU controlled property or possession of any substance which could be considered to be and used as fireworks;
- (k) Alcoholic beverages. The use and/or possession of alcoholic beverages and/or public intoxication on APSU-owned or controlled property, violation(s) of any local ordinance or state or federal law concerning alcoholic beverages, on or off campus, or a violation of the terms of the APSU Drug-Free Policy Statement. It shall not be a violation for students twenty-one (21) years of age or older to consume alcohol within areas designated by the President where alcohol is permitted to be served. In addition, officially registered student organizations that sponsor events off campus, where alcoholic beverages are present and available for consumption, must adhere to all local, state and federal laws concerning alcoholic beverages and must follow APSU's Risk Management Guidelines for Student Organizations;

- (l) Drugs. The unlawful possession or use of any drug, controlled substance or drug paraphernalia (including, but not limited to, any prescription drug, stimulant, depressant, narcotic or hallucinogenic drug or substance, or marijuana), or sale or distribution of any such drug or controlled substance, or a violation of any terms of the APSU Drug-Free Policy Statement;
- (m) Gambling. Participation in any gambling or gambling-related activities on campus or on APSU controlled property or property being used, rented or leased by a student, group of students or registered student organization not owned by APSU that have not been approved and/or administered in accordance with the laws and regulations of the State of Tennessee. Any permitted gambling or gambling-related activity, e.g. raffles, must also be operated under the auspices of the APSU's Foundation;
- (n) Financial Irresponsibility. Failure to promptly meet financial responsibilities to APSU including, but not limited to, knowingly passing a worthless check or money order in payment to APSU or to a member of the APSU community acting in an official capacity;
- (o) Unacceptable Conduct in hearings. Any conduct at an APSU hearing involving contemptuous, disorderly behavior, or the giving of false testimony or other evidence at any hearing;
- (p) Failure to Cooperate with University Officials. Failure to comply with directions of APSU officials acting in the performance of their duties;
- (q) Violation of general rules and regulations. Any violation of the general rules and regulations of the University as published in an official APSU publication, whether in print or digital, including but not limited to, the intentional failure to perform any required action or the intentional performance of any prohibited action;
- (r) Attempts and aiding and abetting the commission of offenses. Any attempt to commit any of the offenses listed in this document, or the aiding and abetting of the commission of any of the offenses (an attempt to commit an offense is defined as the intention to commit the offense coupled with the taking of some action toward its commission);
- (s) Violations of state or federal laws. Any violation of state or federal laws or regulations proscribing conduct or establishing offenses, which laws and regulations are incorporated herein by reference;
- (t) Violation of imposed disciplinary sanctions. Intentional or unintentional violation of a disciplinary sanction officially imposed by an APSU official or a constituted body including, but not limited to, sanctions contained herein;
- (u) Violations of APSU Residence Hall or Apartment policies or regulations. The violation of any policies or regulations which appear in printed materials, whether in print or digital, distributed to resident students (i.e., housing license agreements, handbooks for resident students, etc.);
- (v) Sexual Battery/Rape. Any act of sexual battery or rape as defined by state law;
- (w) Sexual Misconduct. An offense including acts of sexual assault, domestic violence, dating violence and/or stalking as defined in APSU Policy 6:001. The handling procedures concerning allegations of sexual misconduct are set forth in APSU Policy 6:001;
- (x) Tobacco. Smoking, inclusive of electronic smoking devices and vapors, in all APSU buildings, grounds and state-owned vehicles is prohibited (except in otherwise designated areas as provided in APSU policy 9:022). Regardless of whether classes are

in session, smoking is prohibited in APSU all buildings, grounds and state-owned vehicles twenty-four (24) hours a day, year round. Students who want to use smoke-free tobacco products may do so thirty (30) feet from each building exit and entrance. Smoke-free tobacco product use is prohibited in APSU buildings and state-owned vehicles.

- (y) Pets. With the exception of service animals, emotional support animals, and animals used for academic research purposes, animals are prohibited on APSU campus except in designated housing areas. Students are required to provide the Office of Disability Services with medical documentation in requesting an accommodation for an emotional support animal.
- (z) Filing a false complaint or statement. Any behavior whereby a student knowingly submits a false complaint or statement alleging a violation of these regulations by a student or organization or APSU employee.
- (aa) Academic Misconduct includes, but is not limited to plagiarism, cheating, facilitation, fabrication or collusion. For purposes of this section the following definitions apply:
  - 1. Plagiarism. The adoption or reproduction of ideas, words, statements, images, or works of another person as one's own without proper attribution.
  - 2. Cheating. Using or attempting to use unauthorized materials, information, or aids in any academic exercise or test/examination. The term academic exercise includes all forms of work submitted for credit or hours.
  - 3. Fabrication. Unauthorized falsification or invention of any information or citation in an academic exercise.
  - 4. Facilitation or Collusion. Assisting or attempting to assist another to violate a provision of APSU's student code of conduct regarding academic misconduct.
- (bb) Unauthorized Duplication or Possession of Keys. Making, causing to be made or the possession of any key for an APSU facility without proper authorization.
- (cc) Litter. Dispersing litter in any form onto the grounds or facilities of the APSU campus;
- (dd) Abuse of Computer Resources and Facilities. Misusing and/or abusing computer resources including, but not limited to the following:
  - 1. Distribution or use of a student and/or another person's identification to gain access to APSU computer resources;
  - 2. Use of APSU computer resources and facilities to violate copyright laws, including, but not limited to, the act of unauthorized distribution of copyrighted materials using institutional information technology systems;
  - 3. Unauthorized access to a computer or network file, including but not limited to, altering, using, reading, copying, or deleting the file;
  - 4. Unauthorized transfer of a computer or network file;
  - 5. Use of computing resources and facilities to send abusive or obscene correspondence;
  - 6. Use of computing resources and facilities in a manner that interferes with normal operation of the APSU computing system;

7. Use of computing resources and facilities to interfere with the work of another student, faculty member, or APSU official;
  8. Violation of any published information technology resources policy; or
  9. Unauthorized peer-to-peer file sharing.
- (ee) Unauthorized Access to APSU Facilities and/or Grounds. Any unauthorized access and/or occupancy of APSU facilities and grounds is prohibited, including, but not limited to, gaining access to facilities and grounds that are closed to the public, being present in areas of campus that are open to limited guests only, being present in academic buildings after hours without permission, and being present in buildings when the student has no legitimate reason to be present;
- (ff) Unauthorized Surveillance. Making or causing to be made unauthorized video or photographic images of a person in a location in which that person has a reasonable expectation of privacy, without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian. This includes, but is not limited to, taking video or photographic images in shower/locker rooms, residence hall rooms, and men's or women's restrooms, and storing, sharing, and/or distributing of such unauthorized images by any means;
- (gg) Uncontrolled or Unsafe Rollerblading/Skateboarding/Other Coasting Device. Individuals are prohibited from using Rollerblades/skateboards/coasting devices in an unsafe and/or reckless manner on APSU campus. must comply with APSU Policy 4:012.
- (3) Disciplinary action may be taken against a student or registered student organization for violations of the foregoing rules which occur on APSU owned, leased or otherwise controlled property, or which occur off-campus when the conduct impairs, interferes with, or obstructs any APSU activity or the missions, processes and functions of APSU. In addition, disciplinary action may be taken on the basis of any conduct, on or off campus which violates local, state or federal laws, which violate APSU policies for student organizations, or which poses a substantial threat to persons or property within the APSU community. Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree including periods prior to or between semesters. Conduct occurring while a student is registered or enrolled at APSU, but not discovered until after the awarding of a degree is actionable under these provisions and may result in the retroactive application of a disciplinary sanction. Should a student withdraw from APSU with disciplinary action or academic misconduct action pending, the student's record may be encumbered by the appropriate APSU office until the proceedings have been concluded.

**Authority:** T.C.A. §§ 4-5-101 et seq., 49-7-123(a)(1), and 49-8-203.

0240-05-02-.03 Academic and Classroom Misconduct is added to Chapter 0240-05-02 Student and Student Organization Conduct and Disciplinary Sanctions and shall read as follows:

**0240-05-02-.03 Academic and Classroom Misconduct.**

- (1) The instructor has the primary responsibility for control over classroom behavior and maintenance of academic integrity, and can order the temporary removal or exclusion from the classroom of any student engaged in disruptive conduct or conduct that violates the general rules and regulations of APSU. Extended or permanent exclusion from the classroom, beyond the session in which the conduct occurred, or further disciplinary action can be effected only through appropriate procedures established by the Division of Student Affairs.

- (2) Academic dishonesty may be defined as any act of dishonesty in academic work. This includes, but is not limited to, plagiarism, the changing or falsifying of any academic documents or materials, cheating and giving or receiving of unauthorized aid in tests, examinations or other assigned work. Students guilty of academic misconduct, either directly or indirectly through participation or assistance, are immediately responsible to the instructor of the class. Penalties for academic misconduct will vary with the seriousness of the offense and may include, but are not limited to, a grade of "F" on the work in question, a grade of "F" in the course, reprimand, probation, suspension and expulsion. The student will be advised of his/her rights. The student may accept the instructor's finding, grade reduction, and/or other sanction and waive his/her hearing right. In the event a student believes he/she has been erroneously accused of academic misconduct, he/she may request a hearing. Hearings will be conducted pursuant to the procedures set forth at Rule 0240-05-02-.05, Disciplinary Procedures, below. If the student is found responsible for the allegation(s) of academic misconduct, the grade as assigned by the instructor will stand. Should the hearing source absolve the student of the allegations of academic misconduct, the faculty member will reassess the student's grade based upon the hearing source's finding. When necessary, grade changes will be made administratively.
- (3) Students may appeal a grade assignment associated with a finding of academic misconduct, as distinct from a student disciplinary action, through appropriate APSU academic grade appeal procedures. Courses may not be dropped pending the final resolution of an allegation of academic misconduct.
- (4) Disruptive behavior in the classroom may be defined, but is not limited to, behavior that obstructs or disrupts the learning environment (e.g., repeated outbursts from a student which disrupts the flow of instruction or prevents concentration on the subject taught, failure to cooperate in maintaining classroom decorum, the presence of non-enrolled visitors in the classroom (including but not limited to minors).), the continued use of any electronic or other noise or light emitting device which disturbs or interrupts the concentration of others (e.g., disturbing noises from beepers, text messaging, cell phones, palm pilots, laptop computers, games, etc.).
- (5) Class attendance and punctuality requirements are established by the faculty through the syllabus, whether print or digital, for each course. Students are expected to attend class regularly and on time and are responsible for giving explanations/rationale for absences and lateness directly to the faculty member for each course in which they are enrolled. In cases where student absences are the result of emergency circumstances (e.g., death in the family, a student's serious injury or incapacitating illness), for which student(s) are unable to make immediate contact with faculty, the student may contact the Central Student Affairs office for assistance in providing such immediate notification to faculty. However, the student remains responsible for verifying the emergency circumstances to faculty and for discussing arrangements with faculty for possible completion of coursework requirements, if feasible.

**Authority:** T.C.A. §§ 4-5-101 et seq. and 49-8-203.

0240-05-02-.04 Disciplinary Sanctions is added to Chapter 0240-05-02 Student and Student Organization Conduct and Disciplinary Sanctions and shall read as follows:

**0240-05-02-.04 Disciplinary Sanctions.**

- (1) APSU shall adopt and publish guidelines, providing notice of potential disciplinary sanctions consistent with these rules applicable to both individuals and organizations. The guidelines may include any appropriate sanction subject to prior review by the APSU Office of Legal Affairs and approval by the Board of Trustees. Upon a determination that a student or student organization has violated any of the disciplinary offenses set forth in these rules, disciplinary policies, general policies, and/or guidelines disciplinary sanctions may be imposed, either singly or in combination, by the appropriate school officials. (Note: Final results of disciplinary proceedings for violations that include violent acts or non-forcible sex offenses, as defined by Tennessee law, may be released without permission of the student perpetrator.)

- (2) Definition of Sanctions. The following provides a non-exhaustive list of possible sanctions with corresponding definitions:
- (a) Restitution. Restitution may be required in situations which involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. When restitution is required, the student or student organization is obligated by the appropriate judicial authority to monetarily compensate a party or parties for a loss suffered as a result of disciplinary violation(s). Any such monetary payment in restitution shall be limited to actual cost of repair, replacement or financial loss;
  - (b) Warning. The appropriate APSU official may notify the student or student organization that continuation or repetition of specified conduct may be cause for other disciplinary action;
  - (c) Reprimand. A written or verbal reprimand or censure may be given to any student or student organization whose conduct violates any part of these rules and provides notice that any further violation(s) may result in more serious penalties;
  - (d) Restriction. A restriction upon a student's or registered student organization's privileges for a period of time may be imposed. This restriction may include, but is not limited to, the following: denial of the right to represent APSU in any way, denial of the use of APSU facilities and/or parking privileges, restriction of participation in extracurricular activities, restriction of organizational privileges including registration, and restriction of the transfer of academic credit from another institution;
  - (e) University Probation. Continued enrollment of a student or student organization on probation may be conditioned upon adherence to these rules. Any student or registered student organization placed on probation will be notified of such in writing, either in hard copy or electronic, and will also be notified of the terms and length of probation. Probation may include restrictions upon the extracurricular activities of a student or registered student organization. Any conduct in violation of these rules while on probationary status or the failure to comply with the terms of the probationary period may result in the imposition of a more serious disciplinary sanction;
  - (f) Suspension. If a student or student organization is suspended, he/she or the organization is separated from APSU for a stated period of time with conditions for readmission stated in the notice of suspension;
  - (g) Expulsion. Expulsion entails a permanent separation from APSU. The imposition of this sanction is a permanent bar to the student's readmission, or a registered student organization's recognition by APSU. A student or registered student organization that has been expelled may not enter APSU property or facilities without obtaining prior approval from an appropriate campus official with knowledge of the expulsion directive;
  - (h) Interim or Summary Suspension. As a general rule, the status of a student or student organization accused of violations of these rules should not be altered until a final determination has been made in regard to the charges. Interim or Summary suspension may be imposed upon a finding by the appropriate APSU official that the continued presence of the accused on campus constitutes an immediate threat to the physical safety and well-being of the accused or of any other member of the APSU community or its guests, destruction of property, or substantial disruption of classroom or other campus activities. In any case of interim suspension, the student, or student organization, shall be given an opportunity at the time of the decision, or as soon thereafter as reasonably possible, to contest the suspension;
  - (i) Housing Probation. A student or registered student organization placed on housing probation is deemed not to be in good standing with the housing community, and his/her

continued residence is conditioned upon adherence to these rules and the Housing Contract. Any student or registered student organization placed on probation shall be notified in writing or via email of the terms and length of the probation. Probation may include restrictions upon the activities of the housing resident, including any other appropriate special condition(s). Any conduct of a similar or more serious nature in violation of the probation shall result in suspension from housing;

- (j) **Housing Suspension and Forfeiture.** A student or registered student organization suspended from housing may not reside in, visit, or make any use whatsoever of a housing facility or participate in any housing activity during the period for which the sanction is in effect. A suspended student or registered student organization shall be required to forfeit housing fees (including any unused portion thereof and the Housing deposit). A suspended student or registered student organization must vacate the housing unit within forty-eight (48) hours. Housing suspension shall remain a part of the student's disciplinary record;
- (k) **Service to the University.** A student or registered student organization may be required to donate a specified number of service hours to APSU, by way of performing reasonable tasks for the appropriate APSU office or official. This service shall be commensurate to the offense the student or registered student organization is guilty of violating (i.e., service to maintenance staff for defacing APSU property);
- (l) **Special Educational Program.** A student or student organization may be required to participate in any special educational programs relevant to the offense, to attend special seminars or educational programs or to prepare a project or report concerning a relevant topic;
- (m) **Smoking and Clean Air Policy Violation.** There will be graduated fines imposed for violation of the Smoking and Clean Air policy:
  - 1. First Offense- \$25.00
  - 2. Second Offense- \$50.00
  - 3. Third Offense or more- \$100.00 and for additional Disciplinary Charges;
- (n) **Interim or Summary Suspension from Campus Housing.** Though as a general rule, the status of a student or student organization accused of violations of these regulations should not be altered until a final determination has been made in regard to the charges against him or her, interim suspension from campus housing may be imposed upon a finding by the appropriate APSU official that the continued presence of the accused in APSU housing constitutes an immediate threat to the physical safety and well-being of the accused, or of any other member of the APSU community or its guests, or the destruction of property. A final determination of the charges against any student or student organization summarily suspended from campus housing shall be made through appropriate hearing procedures within seven (7) class days of such housing suspension during which time the accused shall forfeit the right to reside in or visit campus housing facilities. The accused student shall be permitted to attend classes during this interim period.
- (o) **Referral for Intervention, Assessment and/or Counseling.** The student is mandated to visit the appropriate APSU official for an initial intervention and assessment which may be followed by required participation and a prescribed plan of action or treatment plan. Parents or legal guardians may be notified;
- (p) **Fines.** Penalties in the form of fines may be enforced against a student or an organization whenever the appropriate hearing officer(s) or hearing body deems necessary. The sanction of fines may be imposed in addition to other forms of disciplinary sanctions.

Failure to pay fines to the Business Office within two (2) weeks of the decision will result in further disciplinary action;

- (q) Letter of Apology. A student or student organization may be required to write a letter of apology to APSU or its guests, another student or student organization, faculty or staff member, or any other constituent affected by the behavior for which the student or student organization has been found responsible. The letter shall be written and sent within seven (7) class days of notification of sanction and copies to the appropriate hearing body or official;
- (r) Revocation of Admission, Degree, or Credential; and,
- (s) Any alternate sanction deemed necessary and appropriate to address the misconduct at issue.

**Authority:** T.C.A. §§ 4-5-101 et seq. and 49-8-203.

0240-05-02-.05 Disciplinary Procedures is added to Chapter 0240-05-02 Student and Student Organization Conduct and Disciplinary Sanctions and shall read as follows:

**0240-05-02-.05 Disciplinary Procedures.**

- (1) Hearing Procedures:
  - (a) Procedures conforming to the Uniform Administrative Procedures Act (UAPA). All cases which may result in (i) suspension or expulsion of a student or student organization from APSU for disciplinary reasons, or (ii) revocation of registration of a student organization during the term of the registration are subject to the contested case provisions of the UAPA § T.C.A. 4-5-301 et seq. and shall be processed in accordance with the uniform contested case procedures adopted by the Board of Trustees, unless the student or student organization waives those procedures in writing and elects to have his or her case heard by either the University Hearing Board or an Administrative Hearing.
  - (b) Cases which are not subject to the contested case procedures under the Uniform Administrative Procedures Act and cases in which a student or student organization has waived the contested case procedures in writing shall be processed in accordance with APSU Hearing Procedures. APSU has established two (2) alternate APSU Hearing Procedures:
    - 1. A hearing conducted by one (1) or more Student Affairs Administrators; or
    - 2. A hearing conducted by the University Hearing Board. (Note: This option shall be available until the final ten (10) class days of each semester, or the final five (5) class days of the second summer term, during which time all disciplinary hearings will be conducted by appropriate Student Affairs Administrators, except those subject to UAPA procedures as selected by the accused student or student organization.)
  - (c) Cases which are not subject to the contested case procedures under the Uniform Administrative Procedures Act and which involve very minor first offenses by students or student organizations may be discussed informally with students or student organizations. In such cases, no formal record will be maintained in the judicial records of APSU. The Dean of Students or other designee, appointed by the Vice President for Student Affairs, shall note the name of the student or student organization involved in his/her personal records. The purpose of this notation is only to determine a student's or student organization's prior involvement in a minor offense, when and if a second offense

occurs at a later date. If the student or student organization is subsequently involved in another violation of regulations, at the discretion of the hearing body, this Informal Record will become a part of the student's or student organization's Formal Disciplinary Records.

(d) Alternative resolution methods may include, but are not limited to, mediation, diversion programs and/or negotiated resolutions.

(e) Jurisdiction of Cases to be heard by Student Affairs Administrators:

1. All formal cases involving incidents which occur in APSU residence halls and/or apartments and which involve on-campus residents shall be heard by the Residence Life staff or designee.

2. All other formal cases shall be heard by the Dean of Students for Student Affairs, or appropriate designee, except in cases where such staff member is unavailable or has a bias toward either party in the pending case. In such cases the Senior Student Affairs Officer shall assign one (1) or more Student Affairs Administrators to hear the case.

(2) Commencement of Disciplinary Proceedings.

(a) A student or registered student organization accused of violating APSU disciplinary policies, rules, or regulations shall be called before the Dean of Students or designee, appointed by the Vice President for Student Affairs, for a preliminary conference at which the student or registered student organization will be orally advised of the following:

1. The charges against him/her/or organization;

2. The rights afforded to him/her/or organization by the hearing procedures which are available;

3. The hearing procedure options available; and

4. The responsibilities of the accused student or registered student organization in the disciplinary procedures.

(b) A student or registered student organization may waive the right to a preliminary conference and an oral explanation of the items listed in (2) (a) above.

(c) Once advised of the hearing options, the accused student or registered student organization may elect to accept the finding and sanction from the Dean of Students or designee, or elect a hearing pursuant to UAPA (where appropriate), or a hearing before the University Hearing Board.

(d) The election must be made within three (3) class days of receipt of notice of pending charges against him/her or organization by completing, and signing, an Election of Procedure form and/or waiver form. Once the election is made, the decision is final and may not be changed during the course of the hearing.

(e) Procedural guidelines for all matters involving allegations of impermissible discrimination, harassment, or retaliation are set forth in an APSU policy that reflects the requirements of that guideline.

(f) Procedural guidelines regarding all matters involving allegations of sexual misconduct and/or stalking are set forth in the procedures outlined in APSU policy 6:001: Sexual Violence and Stalking.

- (3) APSU Hearing Rights. These rights shall be afforded the accused student/organization in all APSU Hearings before the appropriate Student Affairs administrator or the University Hearing Board.
- (a) The right to choose the appropriate hearing option. (This right must be exercised within three (3) class days of the presentation of charges. Note: This option shall be available until the final ten (10) class days of each semester, or the final five (5) class days of the second summer term, during which time all discipline hearings will be conducted by appropriate Student Affairs administrators, except those subject to UAPA procedures.)
  - (b) The right to written notice, by United States mail, courier service, hand delivery to the permanent or local address on file for the student, or APSU email, of the time, place, and date of the hearing at least three (3) days in advance of the hearing. A justified delay may be granted. (This right may be waived in writing by the accused student/organization.) When notice is sent by United States Mail.
  - (c) The right to a written statement of the charges in time and detail sufficient to enable the student/organization to prepare a defense.
  - (d) The right to be accompanied by an advisor of the student's/organization's choice, but such advisor participation shall be limited to advising the student/organization.
  - (e) The right to a statement of the possible sanctions that may be imposed as a result of a finding of a violation of the Student Code, at least three (3) days in advance of the hearing.
  - (f) The right to present witnesses in the student's/registered student organization's behalf and to question any witnesses presented against the student. The student/organization is responsible for the attendance of any witnesses to be present in the student's /organization's behalf.
  - (g) The right to be informed in writing, delivered either by United States mail, courier service, hand delivery to the permanent or local address on file for the student, or via email, of:
    - 1. The final administrative decision in the case.
    - 2. The proper procedure for appeal.
  - (h) The right to be provided copies, upon request and in accordance with APSU policies, rules, and guidelines, of all complaints, reports, witness statements and other written materials used in determining the charges.
  - (i) In cases involving sexual misconduct, the right to the name of each witness APSU expects to present at the student disciplinary proceeding and those APSU may present if the need arises.
  - (j) In cases involving sexual misconduct, the right to request a copy of the institution's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974.
  - (k) In cases involving sexual misconduct, the student's right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the institution has in its possession, custody, or control and may use to support claims or defenses, unless the use would solely be for impeachment.
- (4) Rights of Complainant and/or Victim. The APSU member (student, faculty or staff) who authors "complaints" or "statements" as a victim in the alleged violation shall have the following rights:

- (a) To be notified of his/her rights prior to making a statement.
  - (b) To be informed that any written statement made or signed will be shared with the accused student/organization and that the accused student/organization may request a copy of the statement.
  - (c) To attend the hearing.
  - (d) To have an advisor present during the hearing.
  - (e) To be given the opportunity to question all witnesses and the accused during the hearing.
  - (f) To be provided a copy of any statement he/she has written or dictated to others.
  - (g) To be able to submit a list of witnesses to be called to the hearing.
  - (h) To be permitted to drop the charges only up to the date of the hearing.
  - (i) To be notified of the outcome of the hearing, including the finding concerning responsibility and any sanctions taken.
  - (j) In cases involving sexual misconduct, the right to the name of each witness APSU expects to present at the student disciplinary proceeding and those APSU may present if the need arises.
  - (k) In cases involving sexual misconduct, the right to request a copy of the APSU's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974.
  - (l) In cases involving sexual misconduct, the student/organization's right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that APSU has in its possession, custody, or control and may use to support claims or defenses, unless the use would solely be for impeachment.
- (5) APSU Hearing Procedures.
- (a) Hearings before a Student Affairs Administrator. The appropriate Student Affairs Administrator shall act as hearing officer in the hearing, shall determine student's/organization's innocence or guilt and shall apply sanctions as appropriate.
  - (b) Hearings before the University Hearing Board ("Hearing Board"). Procedures for the Board include the following:
    1. The Hearing Board shall be composed of nine (9) persons: five (5) students, (two (2) automatically selected from the Student Tribunal Justices of the Student Government Association, and three (3) selected at large from the student body who meet the same qualifications and are selected via the same procedures as those for Student Tribunal Justices as listed in the APSU SGA Constitution), two (2) faculty and two (2) administrators, all appointed by the President, for a term of one (1) academic year. Additionally, student, faculty and administrator alternate members shall be selected to serve in the absence of regular members and shall be appointed by the President for a term of one (1) academic year.
    2. The Chair of the Hearing Board shall be appointed by the President.

3. A minimum of five (5) members of the Hearing Board are required to hear a disciplinary case, composed of at least two (2) students, one (1) faculty member, and one (1) administrator.
4. The Dean of Students shall train and advise all regular and alternate members of this Hearing Board in appropriate disciplinary procedures.
5. The hearing shall be conducted consistent with the rights described above in paragraphs (3) and (4) of this rule.
6. All hearings shall be closed unless the respondent and the complainant both elect in writing to have an open hearing.
7. Formal rules of evidence shall not be applicable. The adjudicating body may exclude evidence which in its judgment is immaterial, irrelevant, or unduly repetitious.
8. The standard of proof required to overturn a finding of violation of the Student Discipline Policy made by the Dean of Students, or designee, shall be the preponderance of the evidence and the charged student bears the burden of proof.
9. The hearing source shall issue a written decision within three (3) class days after the conclusion of the hearing.
10. The student will be advised in writing via ASPU email (and USPS mail if requested by the student) of the Hearing Board or Student Affairs Administrator decision and all sanctions imposed as a result of the disciplinary hearing.
11. Any sanction imposed as a result of a hearing conducted under the Code of Conduct shall be effective immediately upon written notification of the student/organization unless the hearing authority deems a stay of such sanction desirable pending appeal.
12. In any case where the decision results in separation from APSU, the decision shall be reviewed by the Senior Student Affairs Officer prior to notifying the Office of the Registrar and the Academic Department in which the student has been enrolled.

(6) Appeals.

- (a) The student may appeal a decision of the University Hearing Board or the Student Affairs Administrator to the Senior Student Affairs Officer, or designee.
- (b) An appeal in writing setting forth grounds for the appeal and addressed to the appropriate appellate authority must be received in the Office of the Senior Student Affairs Officer within three (3) class days after the student/organization is notified of the sanction imposed at any hearing or appellate level.
- (c) Appeals shall be limited to the following grounds on the following issues:
  1. Were procedures properly followed in the hearing?
  2. Was the evidence presented at the hearing determined by "preponderance"?
  3. Was the sanction imposed proportional to the violation?

4. New information, not available at the time of the original hearing, has become available which would substantially alter the outcome of the hearing.
- (d) Review shall be based solely on a consideration of the record generated through the hearing together with the written appeal document and relevant attachments filed by the student.
- (e) Appellate Authority. The Senior Student Affairs Officer, or designee, shall have the authority to do any of the following upon review of an appeal:
  1. Sustain the previous decision including the penalty imposed;
  2. Sustain the previous decision but impose a greater or lesser penalty;
  3. Remand the case for further consideration; or
  4. Reverse the previous decision.
- (f) The Senior Student Affairs Officer shall issue a written decision within ten (10) class days after the appeal is filed by the student.
- (g) The decision of the Senior Student Affairs Officer is final.
- (7) Student Organization Disciplinary Procedures. Sanctions against Student Organizations. Any registered student organization may be given a warning, reprimand, placed on probation, suspension, or restriction or may have its registration withdrawn by the Dean of Students, or by a Student Affairs Administrator appointed by the Senior Student Affairs Officer. Such actions may be taken after having a hearing conducted in accordance with the procedures outlined in these rules for disciplinary procedures. In the case of Withdrawal of Registration of an organization, the procedures to be used will be the contested case provisions of the UAPA, unless those provisions have been waived in writing by an authorized representative of the student organization. Such action may be taken for any one of the following reasons:
  - (a) The organization fails to maintain compliance with the initial requirements for registration.
  - (b) The organization ceases to operate as an active organization.
  - (c) The organization requests withdrawal.
  - (d) The organization operated or engaged in any activity in violation of the policies, rules, and regulations of APSU, of any governing body of federal or state laws.

**Authority:** T.C.A. §§ 4-5-101 et seq. and 49-8-203.

\* 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)
Billy Atkins	X				
Katherine Cannata	X				
Larry Carroll	X				
Don Jenkins	X				
Gary Luck	X				
Valencia May	X				
Robin Mealer	X				
Mike O'Malley	X				
Mickey Wadia	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by Austin Peay State University on 11/22/19, 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: 09/16/19

Rulemaking Hearing(s) Conducted on: (add more dates). 11/05/19



Date: 12/10/19

Signature: [Handwritten Signature]

Name of Officer: Dannelle Whiteside

Title of Officer: Vice President for Legal Affairs and General Counsel

Subscribed and sworn to before me on: 1/30/20

Notary Public Signature: [Handwritten Signature]

My commission expires on: 12/16/20

Agency/Board/Commission: Austin Peay State University

Rule Chapter Number(s): 0240-05-02

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

[Handwritten Signature]  
 Herbert H. Slatery III  
 Attorney General and Reporter  
5/20/2020  
 Date

Department of State Use Only

Filed with the Department of State on: 6/15/2020

Effective on: 9/13/2020

*Tre Hargett*  
Tre Hargett  
Secretary of State

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**G.O.C. STAFF RULE ABSTRACT**

AGENCY: Austin Peay State University

SUBJECT: Use of University Property

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-8-203(a)(1)(D)

EFFECTIVE DATES: September 13, 2020 through June 30, 2021

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The purpose of this rulemaking hearing rule is to describe the access to and use of APSU's campuses, facilities, and property.

(Rule not submitted in redline form.)

**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 rule.

### **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.

No small businesses will be impacted by the promulgation of these rules.

### **Impact on Local Governments**

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

These rules will not have an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

The purpose of these regulations is to describe the access to and use of APSU's campuses, facilities, and property.

- (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. § 49-8-203(a)(1)(D); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; and Public Acts of Tennessee, 1807, Chapter 64.

- (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;

It is essential that the Board adopt rules concerning use of university property to provide guidance to students, faculty, staff, and visitors to APSU. Similar rules were in place when APSU was under the Tennessee Board of Regents. Now that APSU has its own Board of Trustees, it is necessary to promulgate this rule. The rule impacts all persons accessing property owned and/or controlled by APSU. The Board urges 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;

Not applicable.

- (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;

Not applicable.

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

Mitch Robinson  
Vice President for Finance and Administration  
Austin Peay State University

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

Dannelle Whiteside  
General Counsel  
Austin Peay State University

Mitch Robinson  
Vice President for Finance and Administration  
Austin Peay State University

- (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

Dannelle Whiteside  
General Counsel  
Austin Peay State University  
931-221-7580  
[whitesided@apsu.edu](mailto:whitesided@apsu.edu)

Mitch Robinson  
Vice President for Finance and Administration  
Austin Peay State University  
(931) 221-7784  
[robinsonm@apsu.edu](mailto:robinsonm@apsu.edu)

(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](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 06-20-20  
 Rule ID(s): 9365  
 File Date: 6/15/2020  
 Effective Date: 9/13/2020

# 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:** Austin Peay State University  
**Division:**  
**Contact Person:** Dannelle Whiteside  
**Address:** 601 College Street, P.O. Box 4628 Clarksville, TN  
**Zip:** 37044  
**Phone:** 931-221-7580  
**Email:** whitesided@apsu.edu

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0240-05-03	Use of University Property
Rule Number	Rule Title
0240-05-03-.01	Dedication of University Property
0240-05-03-.02	Definitions
0240-05-03-.03	Access to Facilities and Prioritized Users
0240-05-03-.04	Use by Non-affiliated Individuals/Entities
0240-05-03-.05	Denial of the Use of Facilities or Property
0240-05-03-.06	General Conditions for Use of Property or Facilities
0240-05-03-.07	Distribution of Leaflets, Literature, Pamphlets
0240-05-03-.08	No-Trespass Notices

**Rules  
of  
Austin Peay State University**

**Chapter 0240-05-03  
Use of University Property**

A Table of Contents is added to Chapter 0240-05-03 and shall read as follows:

**Table of Contents**

0240-05-03-.01	Dedication of University Property
0240-05-03-.02	Definitions
0240-05-03-.03	Access to Facilities and Prioritized Users
0240-05-03-.04	Use by Non-affiliated Individuals/Entities
0240-05-03-.05	Denial of the Use of Facilities or Property
0240-05-03-.06	General Conditions for Use of Property or Facilities
0240-05-03-.07	Distribution of Leaflets, Literature, Pamphlets
0240-05-03-.08	No-Trespass Notices

Rule 0240-05-03-.01 Dedication of University Property is added to Chapter 0240-05-03 Use of University Property and shall read as follows:

**0240-05-03-.01 Dedication of University Property.** Austin Peay State University ("APSU" or "University") dedicates its property exclusively to the advancement of the University's principal missions of teaching, research, and service. The University regulates its property to preserve it for the advancement of the University's principal missions.

**Authority:** T.C.A. § 49-8-203(a)(1)(D); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; and Public Acts of Tennessee, 1807, Chapter 64.

0240-05-03-.02 Definitions is added to Chapter 0240-05-03 Use of University Property and shall read as follows:

**0240-05-03-.02 Definitions.**

- (1) The term "University Property" means all land, grounds, structures, facilities, and any other physical property owned, controlled, or operated by Austin Peay State University.
- (2) The term "University Unit" means any academic, administrative, or auxiliary department or division of the University or any other official entity of the University, functioning through University employees acting within the scope of their University employment.
- (3) The term "Unmanned Aircraft" means a device that is used or is intended to be used for flight in the air without an individual in or on the device (including but not limited to drone, model aircraft).
- (4) The term "Affiliated Entities" means an officially registered student, student group or student organization.
- (5) The term "Affiliated Individuals" means persons officially connected with the University including students, faculty, and staff.
- (6) The term "Non-affiliated individual or Entity" means any person who is not an "Affiliated Individual" or "Affiliated Entity" as defined in paragraph (4) or (5).

- (7) The term "Student" means a person who is currently registered for a credit course or courses, non-credit course or program at the University, including but not limited to reciprocal study abroad programs and clinical placements, including any such person during any period which follows the end of an academic period which the student has completed until the last day for registration for the next succeeding regular academic period.
- (8) The term "University Facilities" means any structure or outdoor or indoor properties owned, controlled, or operated by Austin Peay State University.
- (9) The term "University Official" means an individual employed by the institution with the authority to make decisions on behalf of the University.

**Authority:** T.C.A. § 49-8-203(a)(1)(D); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; and Public Acts of Tennessee, 1807, Chapter 64.

0240-05-03-.03 Access to Facilities and Prioritized Users is added to Chapter 0240-05-03 Use of University Property and shall read as follows:

**0240-05-03-.03 Access to Facilities and Prioritized Users**

- (1) Access to and use of APSU's campuses, facilities, and property are restricted to the University, the University administration for official functions, affiliated individuals/entities, and the University's invited or sponsored guests, or when part or all of a campus, its buildings or facilities are open to the general public for a designated period of time and purpose, or when access/use by Non-Affiliated Entities or Individuals has been allowed pursuant to the provisions of this rule.
- (2) Denial of a request to access/use campus facilities and/or University Property shall be based solely on factors related to reasonable regulations in light of the University's educational mission and the nature of the facility or property requested and rendered in a content/viewpoint neutral manner.
- (3) Priority for the use of University Facilities is in the following order: 1) credit and non-credit classes and programs, 2) University-sponsored activities, 3) all other requests for usage. When considering requests for use, priority shall be given to affiliated individual/entities whose proposed use is consistent with the University's educational mission, with highest priority for use of University buildings, facilities, and/or property always being reserved for administrative and educational uses. Educational and administrative uses include, but are not limited to: classes, university wide events, commencement, awards programs, and recruitment and/or registration events.
- (4) All requests for use of University Facilities must be made via APSU's website, where there is an online list of the facilities/areas available for use/rental by affiliated and/or non-affiliated entities and individuals. Applications will be evaluated and processed in the order they are received. Facilities use requests not related to class scheduling are reviewed and approved/denied in the University Facilities Office, except for the following:
  - (a) All Athletic spaces (Dunn Center and associated athletic fields) approved by the Office of Athletic Director.
  - (b) Music/Mass Communications Concert Hall approved by Office of the School of Music.
  - (c) Foy Recreation Center and Intramural Field approved by the Office of University of Recreation.
- (5) Applications to reserve facility space for priority use (administrative and educational) should be submitted prior to April 1 for the following academic year. After that date, facility space scheduling for the following academic year will be open to affiliated entities/individuals for all other uses. After the Spring Semester is concluded, scheduling will open to non-affiliated entities/individuals. However, the scheduling or the rescheduling of classes, no matter the time of the year, takes priority over all other scheduling.

- (6) Notification of approval or denial of an application to reserve University/Facilities/Space will be provided by email.
- (7) All approved users of University Facilities or University Property are subject to all APSU rules, polices, and procedures and federal, state and local laws. Further, they must adhere to any conditions of facility usage as outlined in this rule or stated by the approving body.

**Authority:** T.C.A. § 49-8-203(a)(1)(D); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; and Public Acts of Tennessee, 1807, Chapter 64

0240-05-03-.04 Use by Non-affiliated Individuals/Entities is added to Chapter 0240-05-03 Use of University Property and shall read as follows:

**0240-05-03-.04 Use by Non-affiliated Individuals/Entities.**

- (1) Non-affiliated Individuals/Entities may apply for use or access to designated University Property.
- (2) The University has designated the Morgan University Center as the main location on campus for use by Non-affiliated Individuals/Entities to request. Campus auditoriums and gyms may be available for rent on a space available basis if the event does not interfere with the educational mission of the University.
- (3) The University Center Plaza is the designated space on campus, where access may be granted to Non-affiliated Individuals/Entities without an associated fee. A fee may be assessed should the requesting party require fees including but not limited to additional set up, security, cleanup or audio visual (AV) support. All other assignable University space will have, at a minimum, a rental fee associated with the space.
- (4) Long term use of (more than once and less than four (4) months) assignable University Facilities and/or Property is subject to a review of request and the impact of the ongoing operations of APSU.
- (5) A contract may be required based on the nature of the requested event. Non-affiliated Individuals/Entities will be required to submit a deposit for the space equal to half (1/2) of their total estimated costs.
- (6) A forfeiture of a deposit will be applied to non-affiliated individuals/entities based on the following:
  - (a) Cancellation one hundred and twenty (120) days before the start of their event- 100% refund;
  - (b) Cancellation ninety (90) to one hundred and twenty (120) days before the start of their event- 75% refund;
  - (c) Cancellation thirty (30) to sixty (60) days before the start of their event- 25% refund; and
  - (d) Cancellation less than thirty (30) days- no refund.

**Authority:** T.C.A. § 49-8-203(a)(1)(D); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; and Public Acts of Tennessee, 1807, Chapter 64.

0240-05-03-.05 Denial of the Use of Facilities or Property is added to Chapter 0240-05-03 Use of University Property and shall read as follows:

**0240-05-03-.05 Denial of the Use of Facilities or Property.** Denial of a request to access/use University Property and/or Facilities shall be based solely on factors related to reasonable regulations in light of the

University's educational mission and the nature of the facility or property requested and rendered in a content/viewpoint neutral manner. Such reasons may include, but are not limited to, the following:

- (1) The Property or Facilities have been previously reserved by another group, organization or individual with equal or higher priority;
- (2) Frequency of previous use during an academic period in comparison to that of a contemporaneous applicant;
- (3) Use of the Property or Facilities requested would be impractical due to scheduled usage prior to or following the requested use, or due to other extenuating circumstances;
- (4) The applicant or sponsor of the activity has not provided accurate or complete information required on the application for registration;
- (5) The applicant or sponsor of the activity has been responsible for violation of University policy during a previously registered use of campus Property or Facilities;
- (6) The applicant has previously violated any conditions or assurances specified in a previous registration application;
- (7) The Facility or Property requested has not been designated as available for use for the time/date;
- (8) The anticipated size or attendance for the event will exceed building/fire codes, established safety standards, and/or the physical or other limitations for the Facility or Property requested;
- (9) The activity is of such nature or duration that it cannot reasonably be accommodated in the Facility or area for which application is made;
- (10) The size and/or location of the requested use would cause substantial disruption or interference with the normal activities of the University, the educational use of other facilities or services on campus or the flow of vehicular or pedestrian traffic;
- (11) The activity conflicts with existing contractual obligations of the University;
- (12) The activity presents a clear and present danger for physical harm, coercion, intimidation, or other invasion of lawful rights of the University's officials, faculty members, or students, the damage or destruction, or seizure and subversion, of the University's or school's buildings, other property, or for other campus disorder of a violent or destructive nature. In determining the existence of a clear and present danger, the responsible official may consider all relevant factors; or
- (13) The requested use would be contrary to local, state, or federal law, and regulation, or the University's rules, policies, regulations, procedures, or mission.

**Authority:** T.C.A. § 49-8-203(a)(1)(D); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; and Public Acts of Tennessee, 1807, Chapter 64.

0240-05-03-.06 General Conditions for Use of Property or Facilities is added to Chapter 0240-05-03 Use of University Property and shall read as follows:

**0240-05-03-.06 General Conditions for Use of Property or Facilities.** Once an Affiliated Individual or Entity or a Non-Affiliated Individual or Entity has permission to use University Property or Facilities, including open access areas, the requirements outlined in this section, as well as all other requirements put forth in this rule, must be met. Violation of, or failure to comply with, the requirements set forth in this rule or other University policies may result in the immediate revocation of previously granted approval for access/use of University Property or Facilities.

- (1) Applicable building, fire codes, and safety standards applicable to a particular facilities and/or property must be met.

- (2) All APSU rules and/or policies must be followed.
- (3) Sound amplification equipment may be used only when prior approval has been requested and approved by the appropriate official taking into account the University's educational mission and the nature of the facility or property requested, location, and time of day.
- (4) Any rental of University equipment must follow the University Facilities guidelines as defined in .02.
- (5) All persons operating motor vehicles in conjunction with an approved use/access of University Facilities and/or Property shall be subject to University rules, regulations, policies and procedures regarding traffic and parking.
- (6) Users of University Facilities or Property and/or their sponsor(s) are responsible for all activities associated with the event.
- (7) Use of the requested University Facility and/or Property shall be limited to the declared purpose in the application for use/access to University Facilities and/or Property.
- (8) Access to, or use of, University Facilities shall not be permitted overnight unless specifically requested and approved pursuant to the requirements of this rule and/or other applicable University rules and guidelines. Such use shall be limited to the specific time and location set forth in the notice of approval/registration document.
- (9) All persons on campus in conjunction with an approved application for use/access shall provide adequate identification upon request to appropriate officials and security personnel of the University. Persons or groups who refuse to provide such identification may be subject to immediate removal from campus and/or disciplinary action. In appropriate circumstances, such persons may become subject to arrest and/or prosecution.
- (10) Austin Peay State University has the right to terminate the use of University Property or Facilities by any group, organization or individual that violates any provision of this rule, University policy, local, state, or federal law or regulation. Failure to comply with the requirements set forth in this rule or other University rules, Guidelines, and policies may result in the immediate revocation of previously granted approval for access/use of University Facilities or Property, and student disciplinary sanctions, if appropriate.
- (11) Non-affiliated Entities/Individuals using APSU facilities, shall indemnify the institution. In certain circumstances or events, the University reserves the right to require:
  - (a) Adequate bond or other security for damage to University property;
  - (b) Personal injury and property damage insurance coverage;
  - (c) A performance bond or other insurance guaranteeing or insuring performance of its obligations under the contract; and/or
  - (d) Other types of insurance, if approved by APSU.
- (12) Insurance policies must list APSU as additionally insured and be for \$1 million. See APSU website for a matrix for when additional insurance maybe required.

**Authority:** T.C.A. § 49-8-203(a)(1)(D); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; and Public Acts of Tennessee, 1807, Chapter 64.

0240-05-03-.07 Distribution of Leaflets, Literature, Pamphlets is added to Chapter 0240-05-03 Use of University Property and shall read as follows:

**0240-05-03-.07 Distribution of Leaflets, Literature, Pamphlets.**

- (1) Distribution of leaflets, literature, pamphlets is not permitted within:
  - (a) Classroom, library or other academic buildings or facilities;
  - (b) Administrative and employee offices and work areas; or
  - (c) Student residence halls, dormitories or apartment buildings.
- (2) No obscene literature or material, as defined by law, shall be distributed on any University Property or Facility.
- (3) Placement of flyers, leaflets, literature, etc., is not permitted on motor vehicles parked on the Austin Peay State University campus.
- (4) University Property and Facilities may not be used for commercial or profit-making activities except when engaged in a business relationship, pursuant to a contract, with the University and/or when a rental/or lease agreement or facilities reservation is in place specifically for such temporary purpose.
- (5) The University will not establish permitting requirements that prohibit spontaneous outdoor assemblies or outdoor distribution of literature, although it may maintain a policy that grants members of the University community the right to reserve certain outdoor spaces in advance.
- (6) Any literature which is distributed or sold and any advertisement shall comply with all applicable laws policies, regulations, and rules of APSU. Requests to distribute or sell literature shall be included with the underlying application to use University Facilities and/or Property through the online reservation system. Literature and/or advertisements may only be sold or distributed in conjunction with an approved application for use of Facilities.
- (7) The University has designated the University Center Post Office area and the outdoor campus bulletin boards as the posting locations for the Non-affiliated Individuals/Entities.

**Authority:** T.C.A. § 49-8-203(a)(1)(D); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; and Public Acts of Tennessee, 1807, Chapter 64

0240-05-03-.08 No-Trespass Notices is added to Chapter 0240-05-03 Use of University Property and shall read as follows:

**0240-05-03-.08 No-Trespass Notices.**

- (1) A No-Trespass Notice ("Notice") is a written directive requiring a Non-affiliated Individual to leave and/or not enter all or part of University Property or Facilities.
- (2) A sworn law enforcement officer employed by the University may issue a Notice to a Non-affiliated Individual:
  - (a) who is not authorized to use University Property as defined in Section .03(1), and who has refused to leave University Property, or a specified part of University Property, within a reasonable time after the person has received an oral request to leave by a University official;
  - (b) who has engaged in a use of University Property that is prohibited by Section .03(2), and who has refused to cease the prohibited conduct within a reasonable time after receiving an oral request to do so from a University official;
  - (c) who, in the good faith judgment of the law enforcement officer issuing the Notice, poses an unreasonable threat to the health, safety, or welfare of a person(s) affiliated with the University while on University property; or

- (d) who, in the good faith judgment of the law enforcement officer issuing the Notice, has engaged in conduct that substantially disrupts or interferes with University operations, events, or activities, or is likely to cause such a disruption or interference.
- (3) A Notice must specify: the reason for the Notice; the geographical scope of the restriction; the duration of the restriction, which may be for an indefinite period; the potential consequences of a violation of the Notice; and the process for appealing the issuance of the Notice. The scope and duration of the restriction imposed must be proportional to the underlying misconduct. In appropriate circumstances, with respect to conduct on University Property, a Notice also may prohibit a non-affiliated person from contacting or being within a certain distance from a person affiliated with the University.
- (4) Appeals.
- (a) A Non-affiliated Individual to whom a Notice has been issued may appeal the decision to the chief of police for the University.
- (b) A Non-affiliated Individual must submit the appeal in writing. The written appeal must be received by the Chief of Police within twenty (20) calendar days of the date on which the Notice was provided to the Non-affiliated Individual. Any Notice mailed (or e-mailed) to a Non-affiliated Individual shall be deemed to have been provided on the date on which it was mailed (or e-mailed). The written appeal should include the Non-affiliated Individual's reason for being on University property, the Non-affiliated Individual's future need to be on University Property, and any other information the Non-affiliated Individual wishes the University official who issued the Notice to consider.
- (c) Upon receipt of a written appeal, the chief of police will consult as needed with other University officials to verify the Non-affiliated Individual's need for access to University property, to gather additional information or advice, or to review the impact that granting the appeal may have on persons affiliated with the University.
- (d) Within twenty (20) calendar days of the receipt of an appeal submitted in accordance with this Chapter, the Chief of Police will sustain, rescind or modify the Notice in a written decision that will be mailed to the address provided by the Non-affiliated Individual. The decision of the Chief of Police is final and not appealable within the University.
- (e) The restrictions set forth in the Notice will remain in effect while an appeal of the Notice is pending.
- (f) If the Chief of Police issued the Notice, then the Non-affiliated Individual may appeal to the supervisor of the Chief of Police.
- (5) The law enforcement officer who issued the Notice (or, if the Notice is appealed, the Chief of Police or the Chief of Police's Supervisor), with the approval of the Chief of Police or his/her supervisor, may rescind or modify the Notice at any time. Notification of any such rescission or modification shall be provided to the Non-affiliated Individual to whom the Notice was issued.
- (6) Failure to comply with a Notice may result in issuance of a citation or an arrest for trespassing pursuant to applicable state criminal trespass statutes or local ordinances. Nothing in this section shall limit or be construed to limit the exercise of the statutory authority of sworn law enforcement officers of the University's police department to arrest in accordance with the laws of this state or local ordinances. Nor shall anything in this rule limit or be construed to limit the authority of sworn law enforcement officers of the University's police department to issue an oral request instructing a person to leave and/or not enter all or part of University Property.

**Authority:** T.C.A. § 49-8-203(a)(1)(D); Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; and Public Acts of Tennessee, 1807, Chapter 64.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Billy Atkins	X				
Katherine Cannata	X				
Larry Carroll	X				
Don Jenkins	X				
Gary Luck	X				
Valencia May	X				
Robin Mealer	X				
Mike O'Malley	X				
Mickey Wadia	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by Austin Peay State University on 11/22/19, 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: 9/16/19

Rulemaking Hearing(s) Conducted on: (add more dates). 11/5/19



Date: 1/28/2020

Signature: [Handwritten Signature]

Name of Officer: Dannelle Whiteside

Title of Officer: Vice President for Legal Affairs and General Counsel

Subscribed and sworn to before me on: 1/30/20

Notary Public Signature: [Handwritten Signature]

My commission expires on: 12/16/20

Agency/Board/Commission: Austin Peay State University

Rule Chapter Number(s): 0240-05-03

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.

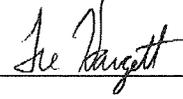
[Handwritten Signature]  
Herbert H. Slatery III  
Attorney General and Reporter

2/10/2020  
Date

Department of State Use Only

Filed with the Department of State on: 6/15/2020

Effective on: 9/13/2020



Tre Hargett  
Secretary of State

RECEIVED  
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SECRETARY OF STATE  
PUBLICATIONS

### G.O.C. STAFF RULE ABSTRACT

AGENCY: Austin Peay State University

SUBJECT: Classifying Students In-State and Out-of-State

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 49-8-203 and 49-8-104

EFFECTIVE DATES: September 13, 2020 through June 30, 2021

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The purpose of this rulemaking hearing rule is to apply uniform rules, as described in this rulemaking hearing rule, in determining whether students shall be classified "in-state" or "out-of-state" for fees and tuition purposes and for admission purposes.

(Rule not submitted in redline form.)

**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 rule.

**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.

No small businesses will be impacted by the promulgation of these rules.

### **Impact on Local Governments**

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

These rules will not have an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

The purpose of these regulations is to apply uniform rules, as described in these regulations in determining whether students shall be classified "in-state" or "out-of-state" for fees and tuition purposes and for admission purposes.

- (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. §§ 49-8-203 and 49-8-104.

- (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;

It is essential that the Board adopt rules concerning the classifying of students as in-state and out-of-state to provide guidance to APSU students. Similar rules were in place when APSU was under the Tennessee Board of Regents. Now that APSU has its own Board of Trustees, it is necessary to promulgate this rule. The rule impacts all APSU students. The Board urges 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;

Not applicable.

- (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;

Not applicable.

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

Mitch Robinson  
Vice President for Finance and Administration  
Austin Peay State University

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

Dannelle Whiteside  
General Counsel  
Austin Peay State University

Mitch Robinson  
Vice President for Finance and Administration  
Austin Peay State University

- (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

Dannelle Whiteside  
General Counsel

Dannelle Whiteside  
General Counsel  
Austin Peay State University  
931-221-7580  
[whitesided@apsu.edu](mailto:whitesided@apsu.edu)

Mitch Robinson  
Vice President for Finance and Administration  
Austin Peay State University  
(931) 221-7784  
[robinsonm@apsu.edu](mailto:robinsonm@apsu.edu)

(l) 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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**For Department of State Use Only**

Sequence Number: 06-21-20  
 Rule ID(s): 9366  
 File Date: 6/15/2020  
 Effective Date: 9/13/2020

# 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:** Austin Peay State University  
**Division:**  
**Contact Person:** Dannelle Whiteside  
**Address:** 601 College Street, P.O. Box 4628 Clarksville, TN  
  
**Zip:** 37044  
**Phone:** 931-221-7580  
**Email:** whitesided@apsu.edu

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0240-05-05	Classifying Students In-State and Out-of-State
Rule Number	Rule Title
0240-05-05-.01	Intent
0240-05-05-.02	Definitions
0240-05-05-.03	Rules for Determination of Status
0240-05-05-.04	Out-of-state Students Who Are Not Required to Pay Out-of-State Tuition
0240-05-05-.05	Presumption
0240-05-05-.06	Evidence to Consider for Establishment of Domicile
0240-05-05-.07	Appeal
0240-05-05-.08	Effective Date for Reclassification

**Rules  
of  
Austin Peay State University**

**Chapter 0240-05-05  
Classifying Students In-State and Out-of-State**

A Table of Contents is added to Chapter 0240-05-05 and shall read as follows:

**Table of Contents**

0240-05-05-.01	Intent
0240-05-05-.02	Definitions
0240-05-05-.03	Rules for Determination of Status
0240-05-05-.04	Out-of-state Students Who Are Not Required to Pay Out-of-State Tuition
0240-05-05-.05	Presumption
0240-05-05-.06	Evidence to Consider for Establishment of Domicile
0240-05-05-.07	Appeal
0240-05-05-.08	Effective Date for Reclassification

0240-05-05-.01 Intent is added to Chapter 0240-05-05 Classifying Students In-State and Out-of-State and shall read as follows:

**0240-05-05-.01 Intent.** It is the intent that Austin Peay State University (APSU or University) shall apply uniform rules, as described in these regulations and not otherwise, in determining whether students shall be classified "in-state" or "out-of-state" for fees and tuition purposes and for admission purposes.

**Authority:** Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; Public Acts of Tennessee, 1807, Chapter 64; and Tenn. Code Ann. § 49-8-104.

0240-05-05-.02 Definitions is added to Chapter 0240-05-05 Classifying Students In-State and Out-of-State and shall read as follows:

**0240-05-05-.02 Definitions.** Wherever used in these regulations:

- (1) "Continuous Enrollment" or "Continuously Enrolled" shall mean enrollment at a public higher educational institution or institution of this State as a full-time student, as such term is defined by the governing body of said Public Higher Educational Institution or Institutions, for a normal academic year or years or the appropriate portion or portions thereof since the beginning of the period for which continuous enrollment is claimed. Such person need not enroll in summer sessions or other such inter-sessions beyond the normal academic year in order that his or her enrollment be deemed continuous, notwithstanding lapses in enrollment occasioned solely by the scheduling of the commencement and/or termination of the academic years, or appropriate portion thereof, of the Public Higher Educational Institutions in which such person enrolls.
- (2) "Domicile" shall mean a person's true, fixed, and permanent home and place of habitation; it is the place where he or she intends to remain, and to which he or she expects to return when he or she leaves without intending to establish or having established a new domicile elsewhere. Undocumented immigrants cannot establish domicile in Tennessee, regardless of length of residence in Tennessee.
- (3) "Emancipated Person" shall mean a person who has attained the age of eighteen (18) years and whose parents have entirely surrendered the right to the care, custody, and earnings of such person and are no longer under any legal obligation to support or maintain such person.

- (4) "Parent" shall mean a person's father or mother. If there is a non-parental guardian or legal custodian of an unemancipated person, then "parent" shall mean such guardian or legal custodian; provided, that there are not circumstances indicating that such guardianship or custodianship was created primarily for the purpose of conferring the status of an in-state student on such emancipated person.
- (5) "Public Higher Education Institution" shall mean a university or community college supported by appropriations made by the Legislature of this State.
- (6) "Residence" shall mean continuous physical presence and maintenance of a dwelling place within this State, provided that absence from the State for short periods of time shall not affect the establishment of a residence.
- (7) " U.S. Armed Forces" shall mean the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard.
- (8) "Veteran" means:
  - (a) a former member of the U.S. Armed Forces; or
  - (b) a former or current member of a reserve or Tennessee national guard unit who was called into active military service of the United States, as defined in Tennessee Code Annotated § 58-1-102.

**Authority:** Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; Public Acts of Tennessee, 1807, Chapter 64; and Tenn. Code Ann. § 49-8-104.

0240-05-05-.03 Rules for Determination of Status is added to Chapter 0240-05-05 Classifying Students In-State and Out-of-State and shall read as follows:

**0240-05-05-.03 Rules for Determination of Status.**

- (1) Every person having his or her domicile in Tennessee shall be classified "in-state" for fee and tuition purposes and for admission purposes.
- (2) Every person not having his or her domicile in Tennessee shall be classified "out-of-state" for fee and tuition purposes and for admission purposes.
- (3) The domicile of an unemancipated person is that of his or her parent, except as provided in paragraph (4) of this Section .03. Unemancipated students of divorced parents shall be classified "in-state" when one (1) parent, regardless of custodial status, is domiciled in Tennessee, except as provided in paragraph (4) of this Section .03.
- (4) A student shall be classified as "in-state" for fee and tuition purposes if the student is a citizen of the United States, has resided in Tennessee for at least one (1) year immediately prior to admission, and has:
  - (a) Graduated from a Tennessee public secondary school;
  - (b) Graduated from a private secondary school that is located in Tennessee; or
  - (c) Earned a Tennessee high school equivalency diploma.
- (5) The spouse of a student classified as "in-state" shall also be classified "in-state."

(6) All classifications shall be subject to the Eligibility Verification for Entitlements Act, Tennessee Code Annotated § 4-58-101 *et seq.*

**Authority:** Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; Public Acts of Tennessee 1807, Chapter 64; and Tenn. Code Ann. § 49-8-104.

0240-05-05-.04 Out-of-State Students Who Are Not Required to Pay Out-of-State Tuition is added to Chapter 0240-05-05 Classifying Students In-State and Out-of-State and shall read as follows:

**0240-05-05-.04 Out-of-State Students Who Are Not Required to Pay Out-of-State Tuition.**

- (1) An unemancipated, currently enrolled student in a higher educational institution shall be reclassified out-of-state should his or her parent, having theretofore been domiciled in Tennessee, relocate out-of-state. However, such student shall not be required to pay out-of-state tuition nor be treated as an out-of-state student for admission purposes so long as his or her enrollment at a Public Higher Educational Institution or Institutions shall be continuous.
- (2) An unemancipated person whose parent is not domiciled in Tennessee but is a member of the armed forces and stationed at Fort Campbell pursuant to military orders shall be classified out-of-state, but shall not be required to pay out-of-state tuition. Such a person, while in continuous attendance toward the degree for which he or she is currently enrolled, shall not be required to pay out-of-state tuition if his or her parent thereafter is transferred on military orders.
- (3) A person whose domicile is in a county of another state lying immediately adjacent to Montgomery County, or whose place of residence is within thirty (30) miles of Austin Peay State University shall be classified out-of-state but shall not be required to pay out-of-state tuition at Austin Peay State University.
- (4) A person, who is not domiciled in Tennessee, but has a bona fide place of residence in a county which is adjacent to the Tennessee state line and which is also within a 30 mile radius (as determined by THEC) of a city containing a two-year institution, shall be classified out-of-state, but admitted at in-state tuition rate.
  - (a) The waiver of out-of-state tuition granted to a border county student at an admitting institution will follow the student only from a community college to the University if the student transfers from the community college after successfully completing an associate's degree unless this condition is waived by the community college as being in the student's best interest; provided, in any case the student must complete the general education requirement at the TBR community college.
- (5) Part-time students who are not domiciled in Tennessee but who are employed full-time in the state, or who are stationed at Fort Campbell pursuant to military orders, shall be classified out-of-state but shall not be required to pay out-of-state tuition. This shall apply to part-time students who are employed in the State by more than one employer, resulting in the equivalent of full-time employment.
- (6) Military personnel and their spouses stationed in the State of Tennessee who would be classified out-of-state in accordance with other provisions of these regulations will be classified out-of-state but shall not be required to pay out-of-state tuition. This provision shall not apply to military personnel and their spouses who are stationed in Tennessee primarily for educational purposes.
- (7) Dependent children who qualify and are selected to receive a scholarship because their parent is a law enforcement officer, fireman, or emergency medical service technician who was killed or totally and permanently disabled while performing duties within the scope of their employment shall not be required to pay out-of-state tuition.

(8) Active-duty military personnel who begin working on a college degree at a the University while stationed in Tennessee or at Fort Campbell, Kentucky, and who are transferred or deployed prior to completing their degrees, can continue to completion of the degrees at the University without being required to pay out-of-state tuition, as long as he/she completes at least one (1) course for credit each twelve (12) month period after the transfer or deployment. Exceptions may be made in cases where the service member is deployed to an area of armed conflict for periods exceeding twelve (12) months.

(9) Students who participate in a study abroad program, when the course/courses in the study abroad program is/are the only course/courses for which the student is registered during that term, shall not be required to pay out-of-state tuition.

(10) Students who are awarded tuition waiver scholarships for participation in bona fide campus performance-based programs, according to established guidelines, shall not be required to pay out-of-state tuition.

(11) A Veteran enrolled at the University shall not be required to pay out-of-state tuition or any out-of-state fee, if the Veteran:

- (a) Has not been dishonorably discharged from a branch of the United States armed forces or the national guard;
- (b) Is eligible for Post-9/11 GI Bill benefits or Montgomery GI Bill benefits; and
- (c) Enrolls in the University, after satisfying all admission requirements, within three (3) years from the date of discharge as reflected on the veteran's certificate of release or discharge from active duty, Form DD-214, or an equivalent document.

1. To continue to qualify for in-state tuition and fees, a Veteran shall:

- (i) Maintain continuous enrollment as defined by the University; and
- (ii) Demonstrate objective evidence of established residency in Tennessee by presenting at least two (2) of the following:
  - (I) Proof of voter registration in the state;
  - (II) A Tennessee driver license;
  - (III) A Tennessee motor vehicle registration;
  - (IV) Proof of established employment in Tennessee; or
  - (V) Other documentation clearly evidencing domicile or residence in Tennessee, as determined by the Tennessee Higher Education Commission.

**Authority:** Tenn. Code Ann. §§ 49-4-704, 49-7-1304; Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; Public Acts of Tennessee, 1807, Chapter 64; 20 U.S.C. § 1015d; and 38 U.S.C. § 3679.

0240-05-05-.05 Presumption is added to Chapter 0240-05-05 Classifying Students In-State and Out-of-State and shall read as follows:

**0240-05-05-.05 Presumption.** Unless the contrary appears from clear and convincing evidence, it shall be presumed that an emancipated person does not acquire domicile in Tennessee while enrolled as a full-time student at the University, as such status is defined by APSU.

**Authority:** Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; Public Acts of Tennessee, 1807, Chapter 64; and Tenn. Code Ann. § 49-8-104.

0240-05-05-.06 Evidence to Consider for Establishment of Domicile is added to Chapter 0240-05-05 Classifying Students In-State and Out-of-State and shall read as follows:

**0240-05-05-.06 Evidence to Consider for Establishment of Domicile.** If a person asserts that he or she has established domicile in Tennessee he or she has the burden of proving that he or she has done so. Such a person is entitled to provide to APSU by which he/she seeks to be classified or reclassified in-state, any and all evidence which he or she believes will sustain his or her burden of proof. APSU will consider any and all evidence provided to it concerning such claim of domicile but will not treat any particular type or item of such evidence as conclusive evidence that domicile has or has not been established.

**Authority:** Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; Public Acts of Tennessee, 1807, Chapter 64; and Tenn. Code Ann. § 49-8-104.

0240-05-05-.07 Appeal is added to Chapter 0240-05-05 Classifying Students In-State and Out-of-State and shall read as follows:

**0240-05-05-.07 Appeal.** Initially, the Office of Admissions clerk is responsible for classifying applicants for admission or readmission as either "in-state" or "out-of-state." A decision by the Office of Admission clerk may be appealed in writing to the residency classification officer in the Office of Admissions on an Application for Residency Classification form.

Students currently/continually enrolled may appeal in writing to the residency classification officer in the Office of the Registrar on an Application for Residency Classification form. An appeal of the decision made by either office may be taken to the Residency Appeals Committee. Appointments for students to appear before the committee and copies of written appeals for committee members will be made by the Office of the Registrar. Appeals from students who appear will be heard before the committee. Appeal applications made in abstentia will be considered by the committee after consideration of in-person appeal appointments. Unless additional guests are requested in advance and approved by the committee chair, only the student may appear before the committee. Students may bring additional material to support their appeal at the committee meeting. The committee shall include five (5) faculty representatives (including the chair), two staff representatives, two (2) student representatives, as well as up to three (3) ex-officio members currently made up of the Coordinator of Graduate Admissions, the Director of Admissions, and the Registrar. The committee chair will prepare a record of the student appeals including the name of the student, the date of the committee meeting, the committee members present, name(s) of any other guest(s) and a statement of the resulting decision of the committee. A copy of this record will be kept in the student's permanent file. The appealing student will be contacted by the Office of the Registrar and informed of the committee's recommendation. A decision by the Residency Appeals Committee may be appealed in writing to the associate provost for enrollment management and academic support. All appeals must be received within five (5) class days of receipt by the student of the committee's decision. The decision of the associate provost will be final.

**Authority:** Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; Public Acts of Tennessee, 1807, Chapter 64; and Tenn. Code Ann. § 49-8-104.

0240-05-05-.08 Effective Date for Reclassification is added to Chapter 0240-05-05 Classifying Students In-State and Out-of-State and shall read as follows:

**0240-05-05-.08 Effective Date for Reclassification.** If a student classified out-of-state applies for in-state classification and subsequently is classified thusly, his or her in-state classification shall be effective as of the date on which reclassification was sought. However, out-of-state tuition will be charged for any term or semester during

which reclassification is sought and obtained unless application for reclassification is made on or before the last day of registration prior to classes.

**Authority:** Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; Public Acts of Tennessee, 1807, Chapter 64; and Tenn. Code Ann. § 49-8-104.

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

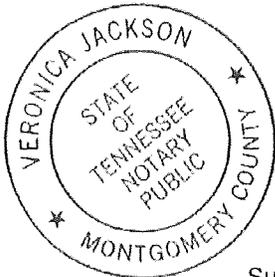
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Billy Atkins	X				
Katherine Cannata	X				
Larry Carroll	X				
Don Jenkins	X				
Gary Luck	X				
Valencia May	X				
Robin Mealer	X				
Mike O'Malley	X				
Mickey Wadia	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by Austin Peay State University on 11/22/19, 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: 9/16/19

Rulemaking Hearing(s) Conducted on: (add more dates). 11/5/19



Date: 12/10/19

Signature: [Handwritten Signature]

Name of Officer: Dannelle Whiteside

Title of Officer: Vice President for Legal Affairs and General Counsel

Subscribed and sworn to before me on: 1/30/20

Notary Public Signature: [Handwritten Signature]

My commission expires on: 12/10/20

Agency/Board/Commission: Austin Peay State University

Rule Chapter Number(s): 0240-05-05

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

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

2/10/2020  
Date

Department of State Use Only

Filed with the Department of State on: 6/15/2020

Effective on: 9/13/2020

*Tre Hargett*

Tre Hargett  
Secretary of State

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