

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Alarm Systems Contractors Board

DIVISION: Regulatory Boards, Department of Commerce and Insurance

SUBJECT: Employee Registration, Qualifying Agent and Contractor Standards, and Continuing Education Requirements

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 62-32-307

EFFECTIVE DATES: June 28, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rules add new definitions, exclusions, employee registration requirements, qualifying agent requirements, continuing education requirements, and new alarm systems contractor requirements.

There were no public comments or written comments submitted to the Board in regards to the proposed rules at the Rulemaking Hearing, conducted on February 24, 2011.

Regulatory Flexibility Addendum

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

Economic Impact Statement:

1. Types and estimated number of small businesses directly affected:

All businesses, small or large, applying for company certification and those businesses that currently possess an alarm systems contractors license.

2. Projected reporting, recordkeeping, and other administrative costs:

There are no additional projected reporting, recordkeeping, or other administrative costs associated with these proposed rules.

3. Probable effect on impacted small businesses and consumers:

There will be no probable effect on impacted small businesses and consumers as a result of these proposed rules.

4. Less burdensome, intrusive, or costly alternative methods:

There is no known less burdensome, intrusive or costly alternative methods.

5. Comparison with federal and state counterparts:

These rules appear to comport with other similar state and federal laws.

6. Effect of possible exemption of small businesses:

There will be no exemptions created by 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules, adopted herein by the Tennessee Alarm Systems Contractors Board at the rulemaking hearing held on February 24, 2010, will have no significant impact on local governments.

Chapter 0090-01
General Provisions

Amendments

Rule 0090-01-.02 Definitions is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) ~~QUALIFYING AGENT—An individual licensed by the Board whose qualifications have been demonstrated to the Board for overseeing and supervising alarm systems contractor operations of fire, burglar, closed circuit television, and/or monitoring.~~
- (2) ~~DESIGNATED QUALIFYING AGENT—The Qualifying Agent designated by the certified contractor to be responsible for compliance with state law.~~
- (3) ~~RESPONSIBLE CHARGE—Capable of answering questions relevant to the technical and business decisions regarding alarm systems contracting in sufficient detail as to leave little doubt as to the Qualifying Agent's proficiency for the work performed and familiarity with the alarm systems contractor's day to day business operations.~~
- (4) ~~CLERICAL EMPLOYEE—An employee of an alarm systems contractor whose primary responsibility is maintenance of records, letters, or correspondence related to specific alarm systems.~~
- (5) ~~MANAGERIAL EMPLOYEE—An employee of an alarm systems contractor whose primary responsibility is supervising the activity of other employees.~~
- (6) ~~TECHNICAL EMPLOYEE—An employee of an alarm systems contractor whose primary responsibility is the installation, service, or repair of equipment used in alarm systems.~~
- (7) ~~SALES REPRESENTATIVE—An employee of an alarm systems contractor whose primary responsibility is direct contact with an existing or potential customer with the intent to sell alarm equipment or services.~~
- (8) ~~MONITORING CENTER EMPLOYEE—An employee of an alarm systems contractor whose primary responsibility is to monitor alarm systems and/or receive signals and provide an appropriate response to an alarm condition.~~
- (9) ~~ALARM RUNNER—An employee of a licensed contract security company or alarm systems contractor whose primary responsibility is direct response to an alarm condition at the premises where the alarm signal originated.~~
- (10) ~~CERTIFICATION—The authority granted by the Board to a business entity to do business as an alarm systems contractor.~~
- (11) ~~REGISTRANT—An individual employee of an alarm systems contractor, other than a Qualified Agent, who has been found to meet the requirements established by the Board for their job classification.~~
- (12) ~~LICENSURE—The authority granted by the Board for an individual to serve as a Qualifying Agent.~~
- (13) ~~BOARD—The Alarm Systems Contractors Board as established by T.C.A., Title 62, Chapter 32.~~
- (14) ~~PORTABLE INVESTIGATIVE EQUIPMENT—Surveillance equipment, devices and associated wiring that is not permanently attached to a building or other structure.~~

- (15) ~~NATIONALLY RECOGNIZED TRAINING PROGRAM~~—A course or educational training program as further described in Chapter 0090-3 of the Board's rules, for one or more segments of the alarm industry that is recognized for high quality training of alarm professionals.
- (16) ~~CLOSED CIRCUIT TELEVISION~~—An alarm system that provides video surveillance of events primarily by means of transmission and recording of visual signals through the use of film, cameras, receivers, and other visual imaging systems. Closed-circuit television systems may also include as secondary functions audio and related electrical signals.
- (17) ~~SERVICE~~—The inspection, maintenance or repair of an alarm system.
- (18) ~~BURGLAR ALARM SYSTEM~~—An alarm or monitoring system, including but not limited to access control, which has the primary function of detecting and/or responding to emergencies other than fire.
- (19) ~~ACCESS CONTROL~~—Electronic, electrical, or computer-based devices, designed to detect or signal an alarm, which controls the access of a person, vehicle, or object through a door, gate, or entrance into the controlled area of a residence or business. For licensing and certification purposes, access control would be considered a burglar alarm system. The term does not include:
- ~~(a)~~—A mechanical device, such as a deadbolt or lock; or
 - ~~(b)~~—An operator for opening or closing a commercial gate or door or an accessory, such as a fixed or portal transmitter, if the operator or accessory is used only to activate the gate or door and is not monitored by an alarm system.
- (1) ACCESS CONTROL – Electronic, electrical, or computer-based devices that is designed to detect or signal an alarm and controls the access of a person, vehicle, or object through a door, gate, or entrance into the controlled area of a residence or business. For licensing and certification purposes, access control would be considered a burglar alarm system. The term does not include:
- (a) A mechanical device, such as a deadbolt or lock; or
 - (b) An operator for opening or closing a commercial gate or door or an accessory, such as a fixed or portal transmitter, if the operator or accessory is used only to activate the gate or door and is not monitored by an alarm system.
- (2) ALARM RUNNER – An employee of a licensed contract security company or alarm systems contractor whose primary responsibility is direct response to an alarm condition at the premises where the alarm signal originated.
- (3) BRANCH OFFICE – Any physical location at which an alarm systems contractor conducts any activity relating to the sale, installation, servicing and/or monitoring of alarm systems, including but not limited to offices where administrative, marketing and/or other alarm business functions are performed. The only exceptions shall be as follows:
- (a) Warehouse facilities which are utilized solely for storage purposes; and
 - (b) Locations not accessible to the general public which have no signage, advertising or other outward indication to the public that the alarm systems contractor conducts its business there and from which no direct sales, marketing or installations take place.
- (4) BURGLAR ALARM SYSTEM – An alarm or monitoring system, including but not limited to access control that has the primary function of detecting or responding to emergencies other than fire.

- (5) CLERICAL EMPLOYEE – An employee of an alarm systems contractor whose primary responsibility is maintenance of records, letters, or correspondence related to specific alarm systems.
- (6) CLOSED CIRCUIT TELEVISION – An alarm system that provides video surveillance of events primarily by means of transmission and recording of visual signals through the use of film, cameras, receivers, and other visual imaging systems. Closed circuit television systems may also include as secondary functions audio and related electrical signals.
- (7) DESIGNATED QUALIFYING AGENT – The Qualifying Agent designated by the certified contractor to be responsible for compliance with state law.
- (8) LICENSURE – The authority granted by the Board for an individual to serve as a Qualifying Agent.
- (9) MANAGERIAL EMPLOYEE – An employee of an alarm systems contractor whose primary responsibility is supervising the activity of other employees.
- (10) MONITORING CENTER EMPLOYEE – An employee of an alarm systems contractor whose primary responsibility is to monitor alarm systems and/or receive signals and provide an appropriate response to an alarm condition.
- (11) NATIONALLY RECOGNIZED TRAINING PROGRAM – A course or educational training program as further described in Chapter 0090-3 of the Board's rules, for one or more segments of the alarm industry that is recognized for high quality training of alarm professionals.
- (12) PORTABLE INVESTIGATIVE EQUIPMENT – Surveillance equipment, devices and associated wiring that is not permanently attached to a building or other structure.
- (13) REGISTRANT – An individual employee of an alarm systems contractor, other than a Qualified Agent, who has been found to meet the requirements established by the Board for his or her job classification.
- (14) RESPONSIBLE CHARGE – The duty of answering questions relevant to the technical and business decisions regarding alarm systems contracting in sufficient detail as to leave little doubt as to the Qualifying Agent's proficiency for the work performed and familiarity with the alarm systems contractor's day to day business operations.
- (15) SALES REPRESENTATIVE – An employee of an alarm systems contractor whose primary responsibility is direct contact with an existing or potential customer with the intent to sell alarm equipment or services.
- (16) SERVICE – The inspection, maintenance or repair of an alarm system.
- (17) TECHNICAL EMPLOYEE – An employee of an alarm systems contractor whose primary responsibility is the installation or service of equipment used in alarm systems.

Authority: T.C.A. §§62-32-303, 62-32-303, and 62-32-307.

Paragraph (5) of Rule 0090-01-.03 Restrictions and Exclusions is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (5) shall read:

- (5) ~~The Board recognizes that Portable Investigative Equipment is not an alarm system as defined by T.C.A. §62-32-303(1)(A).~~
- (5) A licensed private investigator or investigations company may sell a closed circuit television system to a client without obtaining a certification from the Board only under the following circumstances:

- (a) The system was initially installed for a client on a temporary basis to aid in an investigation that was being performed by the licensed private investigator or investigations company; and
- (b) The client subsequently made a request to purchase the system.

Authority: T.C.A. §§62-32-303, 62-32-304, 62-32-305, and 62-32-307.

Rule 0090-01-.03 Restrictions and Exclusions is amended by adding new paragraphs (9), (10), (11), (12), (13), (14), (15), and (16) as follows:

- (9) Manually activated fire suppression (extinguishing) systems and fire suppression systems not connected to a fire alarm system are not alarm systems as defined by T.C.A. §62-32-303(1)(A). Fire alarm systems that activate fire suppression systems are considered alarm systems as defined by T.C.A. §62-32-303(1)(A).
- (10) The manufacture and sale of mobile homes containing alarm systems do not require certification under the Alarm Contractors Licensing Act of 1991. The servicing and monitoring of such systems do require certification.
- (11) Non-profit organizations may furnish and/or install single station smoke detectors, which are not part of an alarm system, in a residential occupancy without obtaining a certification from the Board.
- (12) For purposes of T.C.A. §62-32-305(13), an affiliate of a hospital shall include, but is not limited to, nursing home facilities, mental health care facilities, home health care agencies, home care agencies, and any other governmental health agency. The Tennessee Home and Community Based Services Waiver Program shall be considered an affiliate of a hospital. Companies or organizations which offer medical monitoring services shall be exempt from licensure under this chapter only if such services are made available by a hospital or an affiliate of a hospital.
- (13) A certified alarm systems contractor possessing a classification to engage in one type of alarm system activity (e.g., fire or burglar) may engage in installations outside of the designated classification without obtaining an additional classification provided that such work is minor, incidental, and/or supplemental to the performance of work in the classification possessed by the certified alarm systems contractor. The submission of bids outside of an alarm systems contractor's certified classification shall not be deemed minor, incidental, and/or supplemental to the performance of work in the classification possessed by the certified alarm systems contractor.
- (14) A company installing, servicing, maintaining, and/or monitoring its own burglar and/or fire alarm system(s) on the premises of the company shall not be required to be certified by this Board, so long as the following conditions are satisfied:
 - (a) The alarm system(s) shall be the exclusive property of, or leased by, the company;
 - (b) The alarm system(s) shall be designed to protect only premises owned or leased by the company;
 - (c) Personnel engaging in the installation, servicing, maintenance, and/or monitoring of the alarm system(s) shall be employees of the company; and
 - (d) If the company is engaged in the monitoring of its own alarm system(s), such monitoring shall be performed on the premises by the company's own employees upon the premises.
- (15) For purposes of T.C.A. §62-32-303(2), the term "alarm systems contractor" shall not include individuals or entities who own contracts or lease documents relative to alarm equipment, installation, and/or monitoring and whose activities are limited as follows:

- (a) The individual or entity does not actually sell, install, service, or monitor alarm systems; however, they may enter into subcontracts with Tennessee licensed alarm systems contractors for the provision of equipment servicing and/or monitoring services; and
- (b) The individual or entity, its officers, employees, and/or agents do not have access to sensitive information relative to the system or the system user unless such officer, employee, and/or agent shall have undergone a criminal background check satisfactory to the Board.

(16) Red light violation monitoring systems are not alarm systems as defined in T.C.A. § 62-32-303(1).

Authority: T.C.A. §§62-32-303, 62-32-304, 62-32-305, and 62-32-307.

Rule 0090-01-.05 Employee Registration Requirements is amended by adding new paragraphs (10), (11), (12), (13), and (14) as follows:

- (10) A registration applicant is not eligible to transfer to another alarm systems contractor while still under application. An applicant who does not complete the application process to become a registrant prior to changing employment to another alarm systems contractor shall be required to reapply and shall submit a new application under the new alarm systems contractor, along with the appropriate application fees, fingerprint cards, and photos.
- (11) An active registrant who voluntarily changes employment to another alarm systems contracting company must submit a completed transfer form, two (2) photos, and the required fifty dollar (\$50.00) transfer fee.
- (12) Any registrant who works for more than one alarm systems contractor must complete a separate application for each employer, with all required documentation and fees. A separate identification badge will be issued under each company employer.
- (13) Operators and/or dispatchers who monitor burglar or fire alarm systems and/or closed circuit television systems must be licensed or registered with the Board, as they are deemed to have access to sensitive information pursuant to T.C.A. § 62-32-312(a).
- (14) An employee of an alarm systems contractor which is required to be registered under this Act, is not permitted to engage in alarm systems contracting unless such employee's application has been received by the Board within thirty (30) working days of employment. "Working days" shall be defined as Monday through Friday and shall include any holidays which may fall on those days, except where the thirtieth day falls on a state or federal holiday, in which case the contractor shall have until 4:30 p.m. central time on the next day during which the State of Tennessee offices are open for business to file an application.

Authority: T.C.A. §§ 62-32-307, 62-32-312, 62-32-312, 62-32-318 and 62-32-320.

Rule 0090-01-.06 Qualifying Agent Requirements is amended by adding new paragraphs (10), (11), (12), and (13) as follows:

- (10) A qualifying agent applicant is not eligible to transfer to another alarm systems contractor while still under application. An applicant who does not complete the application process to become a licensed qualifying agent prior to changing employment to another alarm systems contractor shall be required to reapply and shall submit a new application under the new alarm systems contractor, along with the appropriate application fees, fingerprint cards, and photos.
- (11) Qualifying agent applicants who, prior to the issuance of their license, change from an alarm systems contractor employee to "independent" or from "independent to an alarm systems contractor employee, shall be eligible to transfer one (1) time during the application process by

submitting a completed transfer form without the fifty dollar (\$50.00) transfer fee. An applicant must submit a new application along with the appropriate fee for any additional transfers.

- (12) A qualifying agent who voluntarily changes employment to another alarm systems contractor must submit a completed transfer form, two (2) photos, and the required fifty dollar (\$50.00) transfer fee.
- (13) A designated qualifying agent shall respond in writing within twenty (20) business days to any complaint filed against the designated qualifying agent or the alarm systems contractor by which the designated qualifying agent is employed.

Authority: T.C.A. §§ 62-32-303, 62-32-304, 62-32-307, 62-32-313, 62-32-316, and 62-32-320.

Rule 0090-01-.07 Alarm Systems Contractor Requirements is amended by adding new paragraphs (12), (13), and (14) as follows:

- (12) The requirements of T.C.A. § 62-32-316(d) shall apply to all forms of advertising including, but not limited to, print, radio, television, or internet advertising. The term "display" shall include verbal or audio broadcast of the certification number. Signs or letters attached to or in front of a building in which the alarm contractor's place of business is located need not contain the contractor's certification number if intended solely to notify the public of the location of the alarm systems contractor. If such sign contains any other wording regarding specific services and/or specials offered with regard to alarm systems, the sign will be deemed to be an advertisement and must contain the contractor's certification number.
- (13) "Regular place of business at a permanent fixed location," as used in T.C.A. § 62-32-314(a)(1) refers to the permanent physical location of the alarm systems contractor. The alarm systems contractor must provide the address of its physical location to the Board upon initial application and within thirty (30) days of a change of business address. Post office boxes and mail drops do not satisfy this requirement.
- (14) An alarm systems contractor shall respond in writing within twenty (20) business days to any complaint filed against the contractor. Failure by an alarm systems contractor to respond to such complaint shall be grounds for discipline, including but not limited to, a civil penalty of up to five thousand dollars (\$5,000.00) and/or suspension or revocation of licensure in accordance with T.C.A. § 62-32-320.

Authority: T.C.A. §§ 62-32-307, 62-32-314, 62-32-316, and 62-32-320.

Rule 0090-01-.08 Insurance Requirements is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

~~No certification can be issued under this part until the applicant files with the Board, on a form approved by the Board, evidence of insurance that meets all of the requirements as set forth in T.C.A. § 62-32-315.~~

- (a) No certification can be issued under this part until the applicant files with the Board, on a form approved by the Board, evidence of insurance that meets all of the requirements as set forth in T.C.A. § 62-32-315.
- (b) All Board investigators and any other State of Tennessee Department of Commerce and Insurance investigators may request at any time proof of insurance from an alarm systems contractor. Failure by an alarm systems contractor to produce such proof immediately upon request shall be grounds for discipline, including but not limited to, a civil penalty of up to five thousand dollars (\$5,000.00) and/or suspension or revocation of licensure in accordance with T.C.A. § 62-32-320.

Authority: T.C.A. §§ 62-32-307, 62-32-315, and 62-32-320.

Paragraph (4) of Rule 0090-01-.10 Renewal of Certification and License is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (4) shall read:

~~(4) It shall be the duty of the Board to notify every company certificate holder and Qualifying Agent licensee by mail to the last known business address of the date of expiration of such certificate or license and the amount of fee required for its renewal for one (1) year.~~

(4) The Board shall notify every company certificate holder and qualifying agent licensee by mail to the last known business address of the date of expiration of such certificate or license and the fee required for its renewal for two (2) years.

Authority: T.C.A. §§62-32-307, 62-32-307(c), 62-32-313, and 62-32-317.

Paragraph (9) of Rule 0090-01-.10 Renewal of Certification and License is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (9) shall read:

(9) No company certificate holder or qualifying agent licensee shall receive a renewal when such company or agent has been in default in complying with T.C.A. § 62-32-301 et seq. for a period of three (3) months. In such an event, the alarm systems contractor or qualifying agent, in order to qualify under the law, shall make new application and meet all current requirements to obtain a new certificate or license.

Authority: T.C.A. §§62-32-307, 62-32-313, and 62-32-317.

Rule 0090-01-.12 Fingerprinting is amended by adding a new paragraph (4) as follows:

(4) In the event an applicant's fingerprint cards are rejected by the TBI or the FBI two (2) times, the applicant shall submit new fingerprint cards along with payment of any fees charged by the TBI or FBI for processing of such fingerprints prior to the third submission.

Authority: T.C.A. §§ 62-32-307, 62-32-312, 62-32-313, and 62-32-318.

Chapter 0090-5
Continuing Education

Amendments

Paragraph (1) of Rule 0090-05-.01 Continuing Education Requirements is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (1) shall read:

~~(1) A Qualifying Agent shall obtain eight (8) hours of classroom instruction in the alarm industry for each year for which the license is valid. This classroom instruction shall be completed prior to the expiration of the license.~~

(1) As a prerequisite for the renewal of a license, a qualifying agent shall obtain sixteen (16) hours of Board-approved instruction in the alarm industry during the two (2) year period prior to the expiration of such license.

Authority: T.C.A. §§ 62-32-307, and 62-32-313.

Paragraph (4) of Rule 0090-05-.01 Continuing Education Requirements is amended by deleting the text the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (4) shall read:

~~(4) For Fire Alarm Licensure the Qualifying Agent must complete a course in Fire Alarm Installation and Monitoring prior to their first renewal, unless this Certification was presented for approval of initial licensing. For purposes of meeting this requirement the individual must complete the National Institute for Certification in Engineering Technologies (NICET) Level II Certification, or the National Burglar and Fire Alarm Association, Inc. (NBFAA) National Training School (NTS) Level II B Certification, or the Southern Building Codes Congress International (SBCCI) Certification, or equivalent. This certification will be accepted by the Board as the required continuing education for the first renewal period if obtained during the first renewal period.~~

(4) For fire alarm licensure, the qualifying agent must complete a course in fire alarm installation and monitoring prior to the first renewal of such license unless this certification was presented for approval of initial licensing. For purposes of meeting this requirement, the individual must obtain certification by a national training program approved by the Board for qualifying education in the fire alarm classification.

Authority: T.C.A. §§ 62-32-307, and 62-32-313.

Rule 0090-05-.01 Continuing Education Requirements is amended by adding a new paragraph (6) as follows:

(6) The Board shall award qualifying agents four (4) hours of continuing education credits for attendance at the Board meeting. Qualifying agents who elect to attend a meeting for credit must complete the sign-in sheet for qualifying agents prior to the start of the Board meeting. The credits will only be available to qualifying agents for two (2) Board meetings per renewal period for a maximum of eight (8) hours of credit.

Authority: T.C.A. §§ 62-32-307, and 62-32-313.

* 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)
Ken Roberts	X				
Keith Harvey	X				
Vivian Hixson	X				
Karen Jones	X				
Steve Tucker				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Alarm Systems Contractors Board on February 24, 2011 and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/30/2010

Rulemaking Hearing(s) Conducted on: (add more dates), 02/24/2011



Date: March 16, 2012

Signature: [Handwritten Signature]

Name of Officer: Andrew H. Slagov

Title of Officer: Assistant General Counsel, Dept. of Commerce/Insurance

Subscribed and sworn to before me on: 3/16/12

Notary Public Signature: [Handwritten Signature]

My commission expires on: 5/16/12

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, and Chapter 5.

[Handwritten Signature]
 Robert E. Cooper, Jr.
 Attorney General and Reporter
3-28-12
 Date

Department of State Use Only

RECEIVED
 2012 MAR 30 AM 10:00
 SECRETARY OF STATE
 PINE BLUFF, TN

Filed with the Department of State on: 03/30/2012

Effective on: 06/28/2012

[Handwritten Signature]
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Labor and Workforce Development

DIVISION: Workers' Compensation

SUBJECT: Medical Fee Schedule; Drug Free Workplace

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 50-6-204

EFFECTIVE DATES: June 10, 2012 through June 30, 2013

FISCAL IMPACT: The agency has provided the following information:

State and local governments have the option to accept the provisions of the workers' compensation laws pursuant to Tennessee Code Annotated, § 50-6-106(6), but are not required to do so. For those governmental agencies that do adhere to the medical fee schedule and Drug Free Workplace Program, their workers' compensation premiums should decrease, though it is difficult at this time to ascertain by exactly how much.

STAFF RULE ABSTRACT:

The medical fee schedule for workers' compensation has been in place since 2005. These amendments make several changes, some substantive and some minor.

A substantive change is reducing the maximum professional fees, which are based upon a percentage above Medicare rates. Changes to Medicare's reimbursement formula have caused a steep increase in these rates that was not previously anticipated. The rule amendment would return the rates to more moderate levels, which will alleviate the burden on Tennessee employers.

Other substantive changes include: capping pathology fees at 200% of applicable Medicare; linking repackaged and compounded drugs to the average wholesale price of the original national drug code number; capping ground ambulance rates at 150% of applicable Medicare; allowing chiropractors to charge for an office visit on the same day as the initial treatment; and, removing the requirement that physical therapy must go through utilization review after six visits.

In addition, the amendments update the Drug Free Workplace drug-testing panel to the new U.S. Department of Transportation panel.

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.

1) Comment: The Department should consider revising the in-patient per diem and stop-loss amounts. Alternatively, the in-patient fees should be based on Medicare. Under either system, the in-patient rules should adhere to the Medicare bundling guidelines. Otherwise, hospital costs could experience a significant increase. Due to the complexities involved, this may be an issue that the Medical Care & Cost Containment Committee should study and then make a recommendation.

Response: Currently, the data on hospital reimbursements is insufficient to fully analyze this amendment. That data should be available in the next year. As such, the Department agrees that this is a change that should await more concrete data to analyze the impact and we will exclude it from the current amendments.

2) Comment: The wording in the in-patient bundling amendment should be changed from "are not controlling" to "do not apply" for clarity purposes.

Response: In light of the response to Comment #1, this comment is moot.

3) Comment: Maximum ambulance fees should remain as they currently are, rather than being based on Medicare, since Medicare covers different types of patients and emergencies than workers' compensation insurance.

Response: While the Department recognizes that Medicare covers a different type of patient than workers' compensation, we have used a Medicare-based fee schedule for most aspects of medical costs since the fee schedule was first implemented in 2005. The original reimbursement formula for ambulances was the lesser of submitted charges or the average price in the geographical locality. The database for the latter is now obsolete, so ambulance services have been able to receive up to their submitted charges, which can be significant amounts. In looking for ways to control those costs, the fairest and most accessible option appears to be setting a reimbursement amount as a percentage of Medicare. Going forward, we will continue to consider moving the medical fee schedule rates for all services away from a Medicare-based system as other commenters have also suggested.

4) Comment: Many commenters recommended that generic equivalent average price ("GEAP") should not be incorporated into the pharmacy fee schedule because it is inaccessible and only covers a small percentage of drugs.

Response: Due to the inaccessibility and lack of information in the GEAP database, the Department agrees with the commenters and will remove references to GEAP in the final rule.

5) Comment: There is support for addressing repackaged and/or compounded drugs, but the proposed wording should be clarified so that the responsibilities of the parties are clearer.

Response: The Department agrees that the language in the final rule should be revised to better convey the intent. While we received several suggestions on how the language should be revised, we will take the aspects of those suggestions that best convey the intent and reformulate the language.

6) Comment: There is concern that restricting the payments for repackaged and compounded drugs to average wholesale price ("AWP") will discourage physicians from dispensing, especially when dispensing physicians have a 100% fill rate, whereas pharmacy prescriptions have a 70-80% fill rate. This change could also lead to access to care problems if it is no longer financially viable for physicians to dispense drugs.

Response: Currently, the pharmacy fee schedule uses AWP as a basis for drug prices, but repackaged and compounded drugs are not adequately addressed by the current language. As such, the amendment is to fill a

gap and ensure that drug prices are based on AWP whenever possible. In no way does the rule amendment prohibit physician-dispensing or the practice of repackaging or compounding drugs.

7) Comment: There is opposition to the decrease in maximum professional fees from physicians, as well as chiropractors and physical therapists. Some providers have advised that the 11% cut in the maximum allowable amount may cause them to discontinue treating workers' compensation patients.

Response: Amendments to the medical fee schedule in 2009 designated a conversion factor of 38.0870 in the formula for maximum professional fees because of anticipated cuts to Medicare. In the last two years, the Medicare cuts have not materialized and, as a result, the medical fee schedule's maximum professional fees have increased by 20% since August 2009, which included an 8.8% increase at the beginning of 2011, according to the National Council on Compensation Insurance ("NCCI"). As such, the maximum professional fees have become significantly higher than was anticipated when the 2009 amendments took effect. The current amendment would update the designated conversion factor to current Medicare, which is 33.9764.

While we would be disappointed to see any physician decline to see workers' compensation patients because of this amendment and do recognize that such cases can provide more administrative hassles, the amended reimbursement formula would still allow for percentages significantly higher than Medicare (i.e., 275% for orthopaedic and neurosurgery, 200% for general surgery, 160% for office visits). In addition, the final amendment will insulate the providers from further decreases to Medicare's conversion factor.

8) Comment: The NCCI pricing method used in the law-only filing as a basis for the reduction in professional fees is flawed because it does not account for prices actually paid and it uses outdated Medicare studies.

Response: The pricing method used in NCCI's filing is based on trending. While actual prices paid are not used in the filing, the method accounts for increases and decreases by assuming that a certain percentage change in the medical fee schedule will correlate to a very similar change in actual prices paid. As for the Medicare study, that is only utilized with projected reductions in costs, whereas the commenters take issue with the projected increases in the filing. Accordingly, that study had no impact on the commenters' areas of interest.

9) Comment: A recent Workers Compensation Research Institute ("WCRI") study showed that Tennessee was the only one of 25 study states to have medical costs below its 2002 level. As such, there should be no reduction in maximum professional fees.

Response: The WCRI study did show that Tennessee's medical costs are lower than in 2002. The medical fee schedule did not go into effect, however, until 2005. As such, the data showing that costs are very close, albeit still lower, than the 2002 levels is actually disconcerting for the purposes of the medical fee schedule. In addition, the study only used data up to June 2010, whereas the largest increase from the previous conversion factor designation on maximum professional fees occurred in January 2011. Accordingly, that study has not yet accounted for the most recent increase in medical costs.

10) Comment: Going to a two-tiered surgical reimbursement system based on CPT codes will cause some codes that have traditionally been paid at the higher level to be paid at the lower level, which would significantly increase medical costs.

Response: Tennessee is the only state that uses a two-tiered surgical reimbursement system based on the board-certification/eligibility status of the physician, which has caused issues with improper reimbursements. Due to the concerns about increased costs, however, the Department will revise the proposed language to maintain the orthopaedic and neurosurgeon distinction, but with additional language aimed at alleviating the issues with improper reimbursements.

11) Comment: There is a concern among several commenters that the administrative hassles involved in workers' compensation will result in a decrease in the number of providers willing to see those patients.

Response: While many of the areas that concern the commenters are outside of the scope of these rule amendments, one change that should help ease this burden is the clarifying language mentioned in the response to Comment 10.

12) Comment: The multiple procedures reduction will reduce reimbursement for providers, especially physical therapists who perform several modalities in one session.

Response: The multiple procedures reduction has been in the medical fee schedule since its implementation in 2005. The present amendment merely clarifies which procedures are primary, i.e., to be paid in full, and which are secondary, i.e., to be paid at half. Accordingly, the amendment is only to clarify an ambiguous area and should not have a significant impact.

13) Comment: There is concern that the prohibition on line-by-line comparisons will increase costs and impede bill reviewers from applying contracted discounts.

Response: The Department has always interpreted the Medical Fee Schedule "lesser of" comparison to apply to entire bills, rather than a line-by-line comparison of each item in the bill. As such, the amendment is merely to clarify the rule. Nothing in the amendment should prevent contracting or negotiating for discounts below the maximum rates.

Regulatory Flexibility Addendum

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

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or in the construction industry, at least one employee. The rule amendments should result in premium decreases for such employers.
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: Employers' insurance carriers or third party administrators will be responsible for complying with changes to the medical fee schedule, so no administrative impact would be expected for small businesses. Drug testing companies will be responsible for complying with the updated drug testing, but the update merely mirrors the U.S. Department of Transportation's drug panel, which is widely utilized, so any administrative costs should be minimal.
3. A statement of the probable effect on impacted small businesses and consumers: Employers will pay lower workers' compensation premiums, which is a benefit that can then be passed on to employees and consumers.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of the amended rule.
5. Comparison of the proposed rule with any federal or state counterparts: The medical fee schedule rates are based on a percentage above Medicare rates. The Drug Free Workplace Program's drug panel is based on the U.S. Department of Transportation's rules (49 C.F.R. 40.87).
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: It would be detrimental to small businesses that fall under the Tennessee Workers' Compensation Laws to be exempt from the medical fee schedule since it contains costs.

Impact on Local Governments

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

Local governments have the option to accept the provisions of the workers' compensation laws pursuant to T.C.A. § 50-6-106(6), but are not required to do so. For those local governments that do accept the provisions of the workers' compensation laws, the impact of the rule amendments will be a decrease in their workers' compensation insurance premiums.

Department of State**Division of Publications**

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For Department of State Use Only

Sequence Number: 03-09-12
 Rule ID(s): 5165-5168
 File Date: 03/12/2010
 Effective Date: 06/10/2010

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Landon Lackey
Address:	220 French Landing Drive Nashville, Tennessee
Zip:	37243
Phone:	615-532-0370
Email:	landon.lackey@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0800-02-12	Drug Free Workplace Programs
Rule Number	Rule Title
0800-02-12-.03	Definitions
0800-02-12-.07	Testing

Chapter Number	Chapter Title
0800-02-17	Medical Cost Containment Program
Rule Number	Rule Title
0800-02-17-.06	Procedures for Which Codes Are Not Listed
0800-02-17-.09	Independent Medical Examination to Evaluate Medical Aspects of Case
0800-02-17-.10	Payment
0800-02-17-.12	Recovery of Payment
0800-02-17-.20	Utilization Review
0800-02-17-.21	Process for Resolving Differences Between Carriers and Providers Regarding Bills
0800-02-17-.24	Provider and Facility Fees for Copies of Medical Records

Chapter Number	Chapter Title
0800-02-18	Medical Fee Schedule
Rule Number	Rule Title
0800-02-18-.02	General Information and Instructions for Use
0800-02-18-.04	Surgery Guidelines
0800-02-18-.07	Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)

0800-02-18-.08	Chiropractic Services Guidelines
0800-02-18-.09	Physical and Occupational Therapy Guidelines
0800-02-18-.10	Durable Medical Equipment and Implant Guidelines
0800-02-18-.12	Pharmacy Schedule Guidelines
0800-02-18-.13	Ambulance Services Guidelines

Chapter Number	Chapter Title
0800-02-19	In-patient Hospital Fee Schedule
Rule Number	Rule Title
0800-02-19-.03	Special Ground Rules – Inpatient Hospital Services

CHAPTER 0800-2-12

DRUG FREE WORKPLACE PROGRAMS

0800-2-12-.03 DEFINITIONS.

(17) (a) "Prohibited Levels" for a drug or a drug's metabolites means cut-off levels on screened specimens which are equal to or exceed the following and shall be considered to be presumptively positive;

1. Cut-off levels on initially screened specimens:

Amphetamines	.....	10 <u>500</u> ng/mL
Marijuana (cannabinoids)	.....	50 ng/mL
Cocaine (benzoyllecgonine)	.....	30 <u>150</u> ng/mL
Opiates (codeine, morphine, heroin)	.....	2,000 ng/mL
PCP (phencyclidine)	.....	25 ng/mL
<u>6-Acetylmorphine (heroin)</u>	.....	<u>10 ng/mL</u>
<u>MDMA (ecstasy)</u>	.....	<u>500 ng/mL</u>

2. Cut-off levels on confirmation specimens:

Amphetamines	.....	50 <u>250</u> ng/mL
Marijuana (cannabinoids)	.....	15 ng/mL
Cocaine (benzoyllecgonine)	.....	15 <u>100</u> ng/mL
Opiates (codeine, morphine, heroin)	.....	2,000 ng/mL
PCP (phencyclidine)	.....	25 ng/mL
<u>6-Acetylmorphine (heroin)</u>	.....	<u>10 ng/mL</u>
<u>MDMA (ecstasy)</u>	.....	<u>250 ng/mL</u>

0800-2-12-.07 TESTING.

(1) A covered employer shall be required to test employees and job applicants for the following drugs:

- (a) Alcohol-Not required for job applicant testing.
- (b) Amphetamines
- (c) Cannabinoids, (THC)
- (d) Cocaine
- (e) Opiates
- (f) Phencyclidine
- (g) 6-Acetylmorphine (heroin)
- (h) MDMA (ecstasy)

Chapter 0800-02-17
Medical Cost Containment Program

0800-02-17-.06 PROCEDURES FOR WHICH CODES ARE NOT LISTED.

(1) If a procedure is performed which is not listed in the Medicare Resource Based Relative Value Scale ("RBRVS"), the health care provider must use an appropriate CPT procedure code or revenue code, as applicable. The provider must submit an explanation, such as copies of operative reports, consultation reports, progress notes, office notes or other applicable documentation, or description of equipment or supply (when that is the bill).

0800-02-17-.09 INDEPENDENT MEDICAL EXAMINATION TO EVALUATE MEDICAL ASPECTS OF CASE.

- (2) An independent medical examination, performed to evaluate the medical aspects of a case (other than one conducted under the Division's MIRR Program), shall be billed using the appropriate independent medical examination procedure, and shall include the practitioner's time only. Time spent shall include face-to-face time with the patient, time spent reviewing records, reports and studies, and time spent preparing reports. The office visit bill is included with the code and shall not be billed separately. The total amount for an IME under this Rule shall not exceed \$500.00 per hour, and shall be pro-rated per quarter hour, i.e. two and one half hours may not exceed \$1,250.00. Physicians may only require pre-payment of \$500.00 for an IME; provided, that following the completion of the IME and report, the physician may bill for other amounts appropriately due and the payer may recover any amounts that were overpaid.
- (4) Physicians who perform consultant services and/or records review in order to determine whether to accept a new patient shall not bill for an IME. Rather, such physicians shall bill using CPT codes 99358 and 99359. The reimbursement shall be \$200.00 for the first hour of review and \$100.00 for each additional hour; provided, that each quarter hour shall be pro-rated.

0800-02-17-.10 PAYMENT.

- (4) Billing for provider services shall be submitted on forms approved by the Division, UB-92 and CMS-1500, or their official replacement forms. If the Division does not designate a specific form, then the proper form shall be according to Medicare guidelines.
- (12) Payments to providers for initial examinations and treatment authorized by the carrier or self-insured-employer shall be paid by that carrier or self-insured-employer and shall not later be subject to reimbursement by the employee ~~or~~, even if the injury or condition for which the employee was sent to the provider is later determined non-compensable under the Act.

0800-02-17-.12 RECOVERY OF PAYMENT.

- (1) Nothing in these Rules shall preclude the recovery of payment already made for services and bills which may later be found to have been medically paid at an amount which exceeds the maximum allowable payment. Likewise, nothing in these Rules shall preclude any provider from receiving additional payment for services or supplies if it is properly due that provider and does not exceed the amount allowed by these Rules. If the timeframes in these Rules are not met, then the Medical Care and Cost Containment Committee will decline to review the dispute, but such failure shall not provide an independent basis for denying payment or recovery of payment.

0800-02-17-.20 UTILIZATION REVIEW.

- (1) Scope of this part:
 - (a) Requirements contained in this Rule pertain to Utilization Review activity as defined by Tenn. Code Ann. § 50-6-102(178) (Repl. 2005) with respect to services by a provider for health care or health related services furnished as a result of a compensable injury, illness or occupational disease arising out of and in the course of employment. The Division's Utilization Rules, Chapter 0800-02-6, provide detailed specifics regarding Utilization Review and must be consulted

as they are incorporated in this Rule as if set forth fully herein. Notwithstanding any other provision in this Chapter which may be to the contrary, this Rule is intended to merely supplement Chapter 800-2-6 on Utilization Review and does not in any way displace the Utilization Review Rules, Chapter 0800-02-6.

0800-02-17-.21 PROCESS FOR RESOLVING DIFFERENCES BETWEEN CARRIERS AND PROVIDERS REGARDING BILLS.

- (4) Disputes
 - (b) ~~Valid requests for Administrative Review do not require a particular form but must be accompanied by a form prescribed by the Division, must be legible and contain copies of the following:~~
 - (d) If the request for review does not contain proper documentation, then the MCCCC will decline to review the dispute. Likewise, if the timeframes in this Rule are not met, then the MCCCC will decline to review the dispute, but such failure shall not provide an independent basis for denying payment or recovery of payment.

0800-02-17-.24 PROVIDER AND FACILITY FEES FOR COPIES OF MEDICAL RECORDS.

- (1) Health care providers and facilities are entitled to recover an amount in accordance with Tenn. Code Ann. § 50-6-204 to cover the cost of copying documents requested by the carrier, self-insured employer, employee, attorneys, etc. Documentation which is submitted by the provider and/or facility, but was not specifically requested by the carrier, shall not be allowed a copy charge. The cost set forth in this subsection shall also apply to paper records transmitted on a disc or by other electronic means based upon the number of pages reproduced on the disc or other media.
- (2) Health care providers and facilities must furnish an injured employee or the employee's attorney and carriers/self-insureds or their legal representatives copies of records and reports upon request. The maximum charge allowed shall be the same as that set out as set forth in Tenn. Code Ann. § 50-6-204, as amended.

**Chapter 0800-02-18
Medical Fee Schedule**

0800-02-18-.02 GENERAL INFORMATION AND INSTRUCTIONS FOR USE.

- (b) Reimbursement to all providers shall be the lesser of the following:
 - 6. The "lesser of" comparison among (1) the provider's usual charge, (2) the maximum allowable amount pursuant to these Rules, or (3) any other contracted amount, should be determined based on the entire bill or amount due for a particular service, rather than on a line-by-line basis.
- (4) ~~(a) Monetary Conversion Factors are based on the CMS' unit amount in effect on March 4, 2008. These Factors are subject to change based upon any change in the Medicare unit amount. If the Medicare Conversion Factor falls below the unit amount in effect on March 4, 2008, the Department will adjust the Tennessee Medical Fee Schedule Conversion Factors listed on the Division's website to maintain the equivalent maximum allowable reimbursement which would have been allowed had the Medicare Conversion Factor remained at the amount in effect on March 4, 2008. In no event shall reimbursement amounts under this Chapter be less than the amounts applicable~~

on March 4, 2008.

(b) The appropriate conversion factor must be determined by the type of CPT code for the procedure performed in all cases except those involving orthopedic and neurosurgery. Board-eligible and certified neurosurgeons and orthopedic surgeons shall use the separate neurosurgery and orthopedic surgery conversion factors listed on the Division's website for all surgery CPT codes.

Practitioner fees shall be based on the conversion factor of 33.9764, which shall be used in conjunction with the most current Medicare RVUs. The Division may designate another baseline conversion factor at any time through the rulemaking process. The Tennessee-specific conversion factors listed below should be applied to the service category in order to calculate the appropriate amount.

<u>Service Category</u>	<u>TN Conversion Factor</u>
<u>Anesthesiology.....</u>	<u>\$75.00 per unit</u>
<u>Orthopaedic and Neurosurgery*</u>	<u>.275%</u>
<u>General Surgery.....</u>	<u>.200%</u>
<u>Radiology.....</u>	<u>.200%</u>
<u>Pathology.....</u>	<u>.200%</u>
<u>Physical/Occupational Therapy.....</u>	<u>.130%</u>
<u>Chiropractic.....</u>	<u>.130%</u>
<u>General Medicine (including evaluation & management).....</u>	<u>.160%</u>
<u>Emergency Care.....</u>	<u>.200%</u>
<u>Dentistry.....</u>	<u>.100%</u>

* Orthopaedic and neurosurgeons may use the modifier "ON" on the HCFA 1500 form when submitting surgical charges. If the modifier or another indicator is not placed on the form, then the Tennessee Department of Health's database may be consulted in order to determine the provider's specialty.

0800-02-18-.04 SURGERY GUIDELINES.

- (1) Multiple Procedures: Maximum Reimbursement shall be based on 100% of the physician's usual charge of the appropriate Medical Fee Schedule amount for the major procedure (not to exceed 100% of the TDWC Medical Fee Schedule amount allowable) plus 50% of the physician's usual charge for the lesser or secondary procedure (s) (not to exceed 50% of the TDWC Medical Fee Schedule allowable). The major procedure shall be determined to be the procedure with the highest Medicare reimbursement.

0800-02-18-.07 AMBULATORY SURGICAL CENTERS AND OUTPATIENT HOSPITAL CARE (INCLUDING EMERGENCY ROOM FACILITY CHARGES).

- (1) (c) Under the Medical Fee Schedule Rules, the OPSS reimbursement system shall be used for reimbursement for all outpatient services, wherever they are performed, in a free-

standing ASC or hospital setting. The most current, effective Medicare APC rates shall be used as the basis for facility fees charged for outpatient services and shall be reimbursed at a maximum of 150% of current value for such services. Depending on the services provided, ASCs and hospitals may be paid for more than one APC for an encounter. When multiple surgical procedures are performed during the same surgical session, the maximum reimbursement shall be made at 100% of the appropriate rate Medical Fee Schedule amount for the highest charge surgical procedure and 50% of the appropriate rate for all additional surgical procedures; provided, that the major procedure shall be determined to be the procedure with the highest Medicare reimbursement. Only separate and distinct surgical procedures shall be billed. Medicare guidelines shall be consulted and used in determining separate and distinct surgical procedures.

- (h) 2. Laboratory services (including pathology, ~~which is reimbursed at the usual and customary amount regardless of where performed~~)
- (k) There may be occasions in which the patient was scheduled for outpatient surgery and it becomes necessary to admit the patient. All hospitals with ambulatory patients who are admitted to the hospital and stay longer than 23 hours past ambulatory surgery and are formally admitted to the hospital as an inpatient will be paid according to the In-patient Hospital Fee Schedule Rules, 0800-2-19. All ASCs shall be paid pursuant to this Rule 0800-02-18-.07 regardless of the patient's length of stay.

0800-02-18-.08 CHIROPRACTIC SERVICES GUIDELINES.

- (2) For chiropractic services, an office visit ~~shall not~~ may only be billed on the same day as a manipulation is billed when it is the patient's initial visit with that provider.

0800-02-18-.09 PHYSICAL AND OCCUPATIONAL THERAPY GUIDELINES.

- (5) Whenever physical therapy and/or occupational therapy services exceed ~~six (6) visits, or in cases which are post-operative, twelve (12) visits,~~ such treatment shall be reviewed pursuant to the carrier's utilization review program in accordance with the procedures set forth in Chapter 0800-02-06 of the Division's Utilization Review rules before further physical therapy and/or occupational therapy services may be certified for payment by the carrier. Such certification shall be completed within the timeframes set forth in Chapter 0800-02-06 to assure no interruption in delivery of needed services. Failure by a provider to properly certify such services as prescribed herein shall result in the forfeiture of any payment for uncertified services. Failure by an employer or utilization review agent to conduct utilization review in accordance with this Chapter 0800-02-18 and Chapter 0800-02-06 shall result in no more than twelve (12) additional visits being deemed certified. The initial utilization review of physical therapy and/or occupational therapy services shall, if necessary and appropriate, certify an appropriate number of visits. If necessary, further subsequent utilization review shall be conducted to certify additional physical therapy and/or occupational therapy services as is appropriate; provided, that further certifications are not required to be in increments of twelve (12) visits.

0800-02-18-.10 DURABLE MEDICAL EQUIPMENT AND IMPLANT GUIDELINES.

- (1) Reimbursement for durable medical equipment and implants for which billed charges are \$100.00 or less shall be limited to eighty (80%) of billed charges. Durable medical equipment and implants for which billed charges exceed \$100.00 shall be reimbursed at a maximum amount of the supplier or manufacturer's invoice amount, plus the lesser of 15% of invoice or \$1,000.00, and coded using the HCPCS codes. These calculations are per item and are not cumulative. Charges for durable medical equipment and implants are in addition to, and shall be billed separately from, all facility and professional service

fees. Codes to be used are found in the HCPCS. Charges should be submitted on a HCFA 1500 form or, for hospital reimbursements, a UB 04 form.

0800-02-18-.12 PHARMACY SCHEDULE GUIDELINES.

- (1) The Pharmacy Fee Guideline maximum allowable amount for prescribed drugs (medicines by pharmacists and dispensing practitioners) under the Tennessee workers' compensation laws is the lesser of:

(c) The fees established by the formula for brand-name and generic pharmaceuticals as described in ~~subsection (5) of this section~~ the following subsections.

(e) Reimbursement

2. (v) If allowable payment for prescriptive drugs is not paid by employers or carriers for prescriptions provided to employees who have suffered a compensable work-related injury under the Workers' Compensation Law within thirty-one (31) days from the date of receipt by the employer or insurer of the bill for prescriptive drugs provided to such an employee, interest at the rate of 2.08% /month of the payment allowed pursuant to these rules may be charged by a hospital, pharmacy, or provider of such service as set forth in Rule 0800-2-174.10 of the Medical Cost Containment Program Rules.

(f) "Patent" or "Proprietary Preparations"

2. Generic substitution as discussed in ~~(4)(b)~~ (e)(2) above applies also to "over-the-counter" preparations.

(h) Repackaged or Compounded Products

All pharmaceutical bills submitted for repackaged or compounded products must include the NDC Number of the original manufacturer registered with the U.S. Food & Drug Administration or its authorized distributor's stock package used in the repackaging or compounding process. The reimbursement allowed shall be based on the current published manufacturer's AWP of the product or ingredient, calculated on a per unit basis, as of the date of dispensing. A repackaged or compounded NDC Number shall not be used and shall not be considered the original manufacturer's NDC Number. If the original manufacturer's NDC Number is not provided on the bill, then the reimbursement shall be based on the AWP of the lowest priced therapeutically equivalent drug, calculated on a per unit basis. The filling fees otherwise provided in these Rules shall be payable when applicable.

0800-02-18-.13 AMBULANCE SERVICES GUIDELINES.

- (4) Reimbursement shall be based upon the lesser of the submitted charge or 150% of the current Medicare rate. To the extent permitted by federal law, the rates determined in the preceding sentence shall also apply to air ambulance services, the average reimbursement rate for ambulances within the geographic locality. These charges shall not exceed the average charges in that locality for comparable services under comparable circumstances and commensurate with the services actually performed. Ambulance services shall be paid on a two (2) part basis, the first level being the level of care, the second being a mileage allowance. The services rendered are independent of the type of call received.

0800-02-19-.03 SPECIAL GROUND RULES – INPATIENT HOSPITAL SERVICES.

(2) General Information

(e) The items listed in subsection (d)(4) shall be reimbursed according to the Medical Cost Containment Program Rules (Chapter 0800-02-17) and Medical Fee Schedule Rules (Chapter 0800-02-18) payment limits. Refer to the maximum rates set forth in Rule 0800-02-18-.02(4) for practitioner fees. Items not listed in the Rules shall be reimbursed at the usual and customary rate as defined in Rule 0800-02-17-.03(80), unless otherwise indicated herein.

(4) Stop-Loss Method

(d) Example: DRG 222: Knee Procedures W/O CC

Hospital Peer Group: 1 – Surgical admission
 Maximum rate per day: \$1,800 for first 7 days; 1,500 for 2 additional days
 Number Billed Days: 9
 Total Billed Charges:\$37,600.00
(after subtracting amounts for implants, radiology, etc.):\$53,650.00

Maximum allowable payment for-Normal DRG stay \$15,600.00

Versus: billed charges \$37,600.00

Amount Payable Before Stop-Loss,
 Lower-of-Charge-vs. Maximum Allowable\$15,600.00

Total difference, charges over and above maximum
 payments.....\$22,000.0038,050.00
(if this amount is \$15,000 or less, then stop-loss is not applicable)

Difference over and above \$15,000 Stop-loss
 is.....\$7,000.0023,050.00
 Payable under Stop-loss (80% of
 7,000.00)23,050.00).....\$5,600.0018,440.00

Amounts due hospital for implants, radiology, etc.....\$3,525.00

Total payment
 due hospital: \$21,200.00 (15,600+5,600)

Maximum fee schedule amount:15,600.00 + 18,440.00 + 3,525.00 =
\$37,565.00

Proper reimbursement would be the lesser of billed charges, maximum fee schedule amount, or other contracted or negotiated rate

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

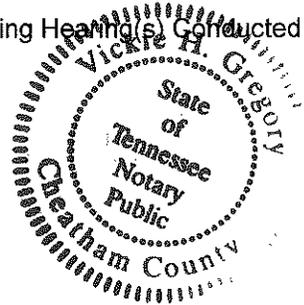
Board Member	Aye	No	Abstain	Absent	Signature (if required)

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 11/7/11 (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: 8/8/11

Rulemaking Hearing(s) Conducted on: (add more dates). 9/28/11



Date: 11/7/11

Signature: Karla Davis

Name of Officer: Karla Davis

Title of Officer: Commissioner of Labor & Workforce Development

Subscribed and sworn to before me on: November 7, 2011

Notary Public Signature: Vickie H. Gregory

My commission expires on: December 31, 2013

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.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter

12-6-11
Date

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OPERATIONS

Filed with the Department of State on: 03/12/2012

Effective on: 06/10/2012

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Charter Schools

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-13-112

EFFECTIVE DATES: August 29, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

New paragraph three (3) of Rule 0520-14-01-.03 regarding local funding quotes directly from Public Chapter 507 of 2011:

"Each LEA shall include as part of its budget submitted pursuant to Tennessee Code Annotated, § 49-2-203, the per pupil amount of local money it will pass through to charter schools during the upcoming school year. Allocations to the charter schools during that year shall be based on that figure. The LEA shall distribute the portion of local funds it expects to receive in no fewer than nine (9) equal installments to the charter schools in the same manner as state funds are distributed. If the amount of local funds received increases or decreases from the budgeted figure, the LEA may adjust payments to the charter schools in February or June. Before adjusting payments to the charter schools, the LEA shall receive approval from the commissioner."

The priorities and sample enrollment chart from Rule 0520-14-01-.04 were deleted in accordance with the removal of enrollment limitations in Public Chapter 466 of 2011. This rule changes the date when projected enrollments will be used to determine funding for new charter schools or charter schools adding a new grade from May 1 to March 1.

Regulatory Flexibility Addendum

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

Not Applicable

Impact on Local Governments

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

This will have no impact on local governments.

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Division of Publications**

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For Department of State Use Only

Sequence Number: 03-15-12
Rule ID(s): 5170
File Date: 03/21/2012
Effective Date: 08/29/2012

Proposed Rule(s) Filing Form

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Dannelle F. Walker
Address:	9 th Floor, 710 James Robertson Parkway, Andrew Johnson Tower, Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.Walker@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

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

Chapter Number	Chapter Title
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.04	Enrollment

CHAPTER 0520-14-01
CHARTER SCHOOLS
0520-14-01-.03 ALLOCATION OF STATE AND LOCAL FUNDS.
Amendments

- (1) State and local funds to charter schools shall be allocated pursuant to T.C.A. § 49-13-112. State and local fund allocations are determined for each LEA on the basis of prior year average daily membership (ADM).
- (a) Allocations shall be based on one hundred percent (100%) of state and local funds received by the LEA, including current funds allocated for capital outlay purposes (excluding the proceeds of debt obligations and associated debt service).
- (b) Student enrollments used in allocations shall be for the same period used in allocating state funds to the LEA under the basic education program.
- (c) Allocations to the charter school may not be reduced by the LEA for administrative, indirect or any other category of cost or charge except as specifically provided in a charter agreement. Any educational or operational services the authorizer provides for a fee may also exist in a separate contractual agreement between the charter school and the authorizer. However, approval of a separate services contract may not be a condition of approval of the charter agreement.
- (d) If students attended a non-chartered public school in the prior year, and attend a public charter school in the same LEA in the current year, those students are being funded through the BEP formula, and funds for those students must be passed through to the public charter school in an amount equal to the per student state and local funds received by the LEA.
- (e) If students are new to the LEA and enroll first in a public charter school, their enrollment would not be reflected in the BEP formula used to determine the initial distributions to the LEA. But their enrollment would be reflected in the growth funds distributed in February and June. Thus, as the LEA receives increased funding in subsequent distributions to reflect the increased ADM, the LEA must allocate the funds for those students to the public charter schools they attend. LEAs can determine the amount to allocate by determining pro-rata shares of growth money based on the current district-wide ADM, and then divide the growth money by that figure to determine the amount to allocate to the public charter schools for each student.
- (f) If an LEA does not generate increased funding due to growth, the public charter school would receive no additional funding in the current year for the students new to the LEA.

- (g) New charter schools or charter schools adding a new grade are funded based on anticipated enrollment in the charter agreement. Those figures are then subsequently adjusted to reflect the actual number of students enrolled. Initial payments will be based on enrollment projections for the next school year as of March 1.
- (2) All ten (10) payments distributed by the State Department of Education are based on prior year weighted average daily membership (ADM) figure. However, twice a year, once in February and once in June, funds are adjusted based on actual enrollment in the current year. If payments to an LEA from the Department of Education are increased or reduced based on actual enrollment, and a charter school's actual enrollment is higher or lower than its prior year enrollment, or than its anticipated enrollment in the charter agreement, the payments to the charter schools shall be adjusted by determining pro-rata shares of adjusted distributions based on the current year's ADM for the LEA.
- (3) Local funds. Each LEA shall include as part of its budget submitted pursuant to T.C.A. § 49-2-203, the per pupil amount of local money it will pass through to charter schools during the upcoming school year. Allocations to the charter schools during that year shall be based on that figure. The LEA shall distribute the portion of local funds it expects to receive in no fewer than nine (9) equal installments to the charter schools in the same manner as state funds are distributed. If the amount of local funds received increases or decreases from the budgeted figure, the LEA may adjust payments to the charter schools in February or June. Before adjusting payments to the charter schools, the LEA shall receive approval from the commissioner. The per pupil amount of local money budgeted for charter schools is not budgeted in a separate line item in the budget; but rather is part of the entire amount of budgeted local revenue.
- (4) Pursuant to T.C.A. § 49-13-124, the chartering authority may endorse the submission of the qualified zone academy bond application to the local taxing authority. The chartering authority may endorse such a bond application submitted by the charter school governing body, or the chartering authority may include the charter school's project as part of the chartering authority's bond application.
- (5) School Nutrition Programs. If charter schools provide school nutrition programs, they may provide their own programs in compliance with United States Department of Agriculture regulations and State law or they may contract with the LEA for the provision of school nutrition programs.
- (4)-(6) Transportation. Charter schools that provide transportation in accordance with the provisions of T.C.A. § 49-6-2100 et seq., other than through an agreement with the LEA, shall receive the State and local funds generated through the BEP for such transportation. State and local funds to charter schools shall be allocated pursuant to T.C.A. § 49-13-112.

- (a) ~~Allocations shall be based on one hundred percent (100%) of state and local funds received by the LEA, including current funds allocated for capital outlay purposes (excluding the proceeds of debt obligations and associated debt service);~~
 - (b) ~~Student enrollments used in allocations shall be for the same period used in allocating state funds to the LEA under the basic education program; and~~
 - (c) ~~Allocations to the charter school may not be reduced by the LEA for administrative, indirect or any other category of cost or charge except as specifically provided in a charter agreement. Any educational or operational services the authorizer provides for a fee may also exist in a separate contractual agreement between the charter school and the authorizer. However, approval of a separate services contract may not be a condition of approval of the charter agreement.~~
 - (d) ~~Allocations must be delivered to the school at the time of receipt by the LEA.~~
- (2) ~~Allocations may be prepaid pursuant to agreement between the LEA and the charter school.~~
- (3) ~~State and local fund allocations are determined for each LEA on the basis of prior year average daily membership (ADM). All ten (10) payments distributed by the State Department of Education are based on that figure. However, twice a year, once in February and once in June, funds are adjusted based on actual enrollment in the current year. The following specific criteria apply to allocations from the Department of Education:~~
- (a) ~~If payments to an LEA from the Department of Education are increased or reduced based on actual enrollment, and a charter school's actual enrollment is higher or lower than its prior year enrollment, or than its anticipated enrollment in the charter agreement, the payments to the charter schools shall be adjusted by determining prorata shares of adjusted distributions based on the current year's ADM for the LEA.~~
 - (b) ~~If students attended a non-chartered public school in the prior year, and attend a public charter school in the same LEA in the current year, those students are being funded through the BEP formula, and funds for those students must be passed through to the public charter school in an amount equal to the per student state and local funds received by the LEA.~~
 - (c) ~~If students are new to the LEA and enroll first in a public charter school, their enrollment would not be reflected in the BEP formula used to determine the initial distributions to the LEA. But their enrollment would be reflected in the growth funds distributed in February and June. Thus, as the LEA receives increased funding in subsequent distributions to reflect the increased ADM, the LEA must allocate the funds for those students to the public charter schools they attend. LEAs can determine the amount to allocate by determining pro-rata shares of growth money based on the current district-wide ADM, and then divide the growth money by that figure to determine the amount to allocate to the public charter schools for each student.~~
 - (d) ~~If an LEA does not generate increased funding due to growth, the public charter school would receive no additional funding in the current year for the students new to the LEA.~~
 - (e) ~~New charter schools or charter schools adding a new grade are funded based on anticipated enrollment in the charter agreement. Those figures are then subsequently adjusted to reflect the actual number of students enrolled.~~
- (4) ~~Pursuant to T.C.A. § 49-13-124, the chartering authority may endorse the submission of the qualified zone academy bond application to the local taxing authority. The chartering authority may endorse such a bond application submitted by the charter school governing body, or the chartering authority may include the charter school's project as part of the chartering authority's bond application.~~

~~(5)(1) School Nutrition Programs. If charter schools provide school nutrition programs, they may provide their own programs in compliance with United States Department of Agriculture regulations and State law or they may contract with the LEA for the provision of school nutrition programs.~~

Authority: T.C.A. §§ 49-13-112 and 49-13-126.

**CHAPTER 0520-14-01
CHARTER SCHOOLS
0520-14-01-.04 ENROLLEMNT.
Amendments**

0520-14-01-.04 Enrollment

- (1) Enrollment of eligible students, as defined in T.C.A. § 49-13-106, shall comply with T.C.A. § 49-13-113.
- (2) Students currently enrolled in a specific charter school do not need to re-apply if they remain in that specific charter school. Students moving from one charter school to another- even if both schools share a sponsor or governing body- are subject to the priority and preferences outlined in T.C.A. § 49-13-113.
- (3) Charter schools shall apply the enrollment preferences in T.C.A. § 49-13-113(b) and (c).
 - (a) Charter schools shall conduct an initial student application period of at least thirty (30) days. During this period, all eligible students may apply.
 - (b) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled exceeds the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined on the basis of a lottery. Any such lottery shall be conducted within seven (7) calendar days of the close of the initial student application period. Charter schools must either have an independent accounting firm or law firm certify that each lottery conducted complied with the statutory requirements or, prior to the lottery, have their lottery process approved by the department of education.
- (1)(c) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled does not exceed the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students may proceed on a first come, first served basis. Enrollment of eligible students, as defined in T.C.A. § 49-13-106, shall comply with T.C.A. § 49-13-113.
- (2) Students currently enrolled in a specific charter school do not need to re-apply if they remain in that specific charter school. Students moving from one charter school to another, however—even if both schools share a sponsor or governing body—are subject to the priority and preferences outlined in T.C.A. § 49-13-113.
- (3) Charter schools operating in local education agencies (LEAs) in which students are not eligible to enroll in charter schools pursuant to T.C.A. § 49-13-106(a)(1)(E) shall apply the enrollment preferences in T.C.A. § 49-13-113(b) and (c) only.

(4) Charter schools operating in LEAs in which students are eligible to enroll in charter schools pursuant to T.C.A. § 49-13-106(a)(1)(E) shall apply the enrollment priorities in T.C.A. § 49-13-113(d), as well as the enrollment preferences in T.C.A. § 49-13-113(b) and (c).

(a) Charter schools in these LEAs shall conduct an initial student application period of at least thirty (30) days. During this period, all eligible students may apply.

(b) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled exceeds the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined on the basis of a lottery. Any such lottery shall be conducted within seven (7) calendar days of the close of the initial student application period.

1. If the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A) exceeds the capacity of the school or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined by a lottery among those students only.

2. If the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A) does not exceed the capacity of the school or the capacity of a program, class, grade level or building, but the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(D) does, then the enrollment of eligible students in the slots remaining after all students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A) have been enrolled shall be determined by a lottery among the students meeting the requirements of T.C.A. § 49-13-106(a)(1)(B)-(D).

3. If the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(D) does not exceed the capacity of the school or the capacity of a program, class, grade level or building, but the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(E) does, then the enrollment of eligible students in the slots remaining after all students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(D) have been enrolled shall be determined by a lottery among the students meeting the requirements of T.C.A. § 49-13-106(a)(1)(E).

(c) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled does not exceed the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students may proceed on a first come, first served basis.

(d) If applicable, the preferences in T.C.A. § 49-13-113(b) and (c) shall be used in enrollment of students in charter schools operating in LEAs in which students are eligible to enroll in charter schools pursuant to T.C.A. § 49-13-106(a)(1)(E). Prioritizing enrollment according to the following chart shall satisfy the Department of Education review and approval process pursuant to T.C.A. § 49-13-113(d)(3).

	Siblings and children (fewer than 25 and 40%)* (49-13-113(e))	Previously enrolled in a charter (49-13-106(a)(1)(A))	Assigned to a school missing AYP, or (49-13-106(a)(1)(B)) Failing to test proficient on the TCAP/Gateway (49-13-106(a)(1)(C-D))	Eligible for free and reduced meals (49-13-106(a)(1)(E))
Enrolled in a school that converts to a charter (49-13-113(b)(2)(A)(i))	4	5	9	13
Attending a	2	6	10	14

public school in the LEA <small>(49-13-113(b)(2)(A)(ii))</small>				
Attending a non-public school in the LEA area <small>(49-13-113(b)(2)(A)(iii))</small>	3	7	44	15
Residing outside the LEA <small>(49-13-113(b)(2)(A)(iv))</small>	4	8	42	16

* Per TCA § 49-13-113 (c), a charter school may give initial preference to the siblings of a pupil already enrolled and to children of teachers, sponsors, and board members. This preference is limited to ten percent (10%) of enrollment or twenty-five (25) students, whichever is less.

Authority: T.C.A. §§ 49-13-113 and 49-13-126.

* 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)
Ayers	X				
Edwards	X				
Justice	X				
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 1/27/12, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: February 6, 2012

Signature: _____

Gary Nixon

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



MY COMMISSION EXPIRES:
January 9, 2016

Subscribed and sworn to before me on: 2/24/12

Notary Public Signature: _____

Phyllis E. Childress

My commission expires on: _____

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

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

3-9-12

Date

Department of State Use Only

Filed with the Department of State on: 03/21/2012

Effective on: 08/29/2012

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Virtual Schools

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-16-102

EFFECTIVE DATES: August 29, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

The 107th General Assembly created the "Virtual Public Schools Act." This act gives local education agencies the authority to establish virtual schools; and permits LEAs to contract for services with nonprofit or for-profit entities to manage and operate virtual schools.

The proposed rules clarify several issues relative to virtual schooling relative to establishment, enrollment, attendance, and transfer. The proposed rules also make clear that students with disabilities and limited English proficiency are not excluded from enrolling and participating in virtual schooling.

Regulatory Flexibility Addendum

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

Not Applicable

Impact on Local Governments

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

This will have no impact on local governments.

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Sequence Number: 03-16-12
Rule ID(s): 5771
File Date: 03/21/2012
Effective Date: 08/29/2012

Proposed Rule(s) Filing Form

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Dannelle F. Walker
Address:	9 th Floor, 710 James Robertson Parkway, Andrew Johnson Tower, Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.Walker@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-01-03	Minimum Requirements for the Approval of Public Schools
Rule Number	Rule Title
0520-01-03-.03	Administration of Schools, Requirement B

Chapter Number	Chapter Title
Rule Number	Rule Title

RULES
OF
THE STATE BOARD OF EDUCATION
CHAPTER 0520-01-03
MINIMUM REQUIREMENTS FOR THE APPROVAL
OF PUBLIC SCHOOLS

(11) Students Transferring From One School To Another.

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

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

Amend Rule 0520-01-03-.03 by inserting a new subsection (12) and renumbering the following subsections accordingly.

(12) Public Virtual SchoolsRecords and Reports.

- (a) Public virtual schools must comply with all applicable Tennessee State Board of Education policies and rules and regulations.
- (b) Public virtual schools shall:
 - 1. be approved by the local board of education;
 - 2. use technology to deliver a significant portion of instruction to its students via the Internet in a virtual or remote setting;
 - 3. review and provide access to a sequential curriculum that meets or exceeds the curriculum standards adopted by the Tennessee State Board of Education;
 - 4. meet the equivalent of the 180 days of instruction and 6.5 hours per day per academic year pursuant to T.C.A. § 49-6-3004;
 - 5. monitor participation and progress to ensure students meet participation requirements and make progress toward successful completion of courses;
 - 6. administer all state tests required of public school students to students enrolled in a virtual school in a proctored environment consistent with state test administration guidelines;
 - 7. be evaluated annually and report the extent to which the school demonstrates increases in student achievement, along with academic, fiscal, and operational performance;
 - 8. ensure that students with special needs, including students with disabilities and limited English proficiency are not excluded from enrolling and participating, further, the public virtual school is responsible for providing the services in the student's Individualized Education Program (IEP);
 - 9. assign a highly qualified teacher to each student enrolled;
 - 10. ensure that all teachers employed to provide services to the students are endorsed in their grade or course and qualified to teach in Tennessee;

11. ensure access to instructional materials, access to technology such as a computer and printer that may be necessary for participation in the program, and access to an Internet connection used for school work; and
12. meet class size standards established by T.C.A. § 49-1-104.

(c) Public virtual schools must comply with State Board Rule 0520-01-03-.03(11).

1. For a student who is currently enrolled or was enrolled the previous semester in a public school to transfer to a public virtual school after the open transfer time has lapsed:
 - a. the student must apply to and be approved for acceptance in the public virtual school; and
 - b. once acceptance has been determined, the public virtual school must obtain permission from the sending district before enrolling the student in the public virtual school. A public virtual school shall not be eligible for state education funds for students who are improperly enrolled.
2. Students not registered in a public school the previous semester but who were enrolled instead in a private school or a home school do not require approval from a sending district.

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

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

* 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)
Ayers	X				
Edwards	X				
Justice	X				
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 1/27/12, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: February 6, 2012

Signature: Gary Nixon

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



MY COMMISSION EXPIRES:
January 9, 2016

Subscribed and sworn to before me on: 2/24/12

Notary Public Signature: Phyllis E. Childress

My commission expires on: _____

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

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

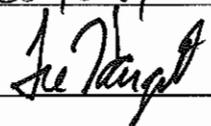
3-7-12

Date

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Filed with the Department of State on: 03/21/2012

Effective on: 08/29/2012


Tre Hargett
Secretary of State

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2012 MAR 21 PM 4:30
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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Isolation or Restraint of Children with Disabilities Receiving Special Education Services

STATUTORY AUTHORITY: Chapter 457 of Public Acts of 2011

EFFECTIVE DATES: August 29, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The proposed rules mandate a standard reporting format to be used by LEAs when reporting incidents of isolation or restraint of children with disabilities.

Regulatory Flexibility Addendum

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

Not Applicable

Impact on Local Governments

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

This will have no impact on local governments.

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 03-17-12
Rule ID(s): 5172
File Date: 03/21/2012
Effective Date: 08/29/2012

Proposed Rule(s) Filing Form

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

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Dannelle F. Walker
Address:	9 th Floor, 710 James Robertson Parkway, Andrew Johnson Tower, Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.Walker@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-01-09	Special Education Programs and Services
Rule Number	Rule Title
0520-01-09-.23	Isolation and Restraint for Students Receiving Special Education Services

Chapter Number	Chapter Title
Rule Number	Rule Title

CHAPTER 0520-01-09
Special Education Programs and Services
0520-01-09-.23 ISOLATION AND RESTRAINT FOR STUDENTS RECEIVING SPECIAL EDUCATION
SERVICES.
Amendment

(1) Definitions

- ~~(a) "Emergency situation" means that a child's behavior places the child or others at risk of violence or injury if no intervention occurs.~~
- ~~(b)(a) "Extended isolation" means isolation which lasts longer than one (1) minute per year of the student's age or isolation which lasts longer than the time provided in the child's individualized education program (IEP).~~
- ~~(c)(b) "Extended restraint" means a physical holding restraint lasting longer than five (5) minutes or physical holding restraint which lasts longer than the time provided in the child's IEP.~~
- ~~(d) "Isolation room" means a space designed to isolate a student that is unlocked, cannot be locked from the inside, without structural barriers to exit, free of any condition that could be a danger to the student, well-ventilated, sufficiently lighted, and where school personnel are in direct visual contact with the student at all times. Such spaces must comply with all applicable state and local fire codes.~~
- ~~(e)(c) "Noxious substance" means a substance released in proximity to the student's face or sensitive area of the body for the purpose of limiting a student's freedom of movement or action, including but not limited to Mace and other defense sprays.~~

(2) Local education agencies are authorized to develop and implement training programs that include:

- (a) Use of positive behavioral interventions and supports;
- (b) Nonviolent crisis prevention and de-escalation;
- (c) Safe administration of isolation and restraint; and
- (d) Documentation and reporting requirements.

(3) Local education agencies are authorized to determine an appropriate level of training commensurate with the job descriptions and responsibilities of school personnel.

(4) Local education agencies shall develop policies and procedures governing:

- (a) Personnel authorized to use isolation and restraint;
- (b) Training requirements; and
- (c) Incident reporting procedures.

(5) Only the principal, or the principal's designee, may authorize the use of isolation or restraint.

(6) When the use of restraint or isolation is proposed at an IEP meeting, parents/guardians shall be advised of the provisions of T.C.A. § 49-10-1301, et seq., this rule and the IDEA procedural safeguards.

- (7) An IEP meeting convened pursuant to T.C.A. § 49-10-1304(b) may be conducted on at least twenty-four (24) hours notice to the parents.
- (8) State agencies providing educational services within a residential therapeutic setting to children in their legal and physical custody shall develop and adhere to isolation and restraint policies in such educational settings which conform to the TDMHDD (Tennessee Department of Mental Health and Developmental Disabilities) state standards as applicable and at least one of the following national standards: ACA (American Correctional Association), COA (Council on Accreditation), CMS (Centers for Medicare & Medicaid Services), JCAHO (Joint Commission for Accreditation of Healthcare Organizations), CARF (Commission on Accreditation of Rehabilitation Facilities), as they apply in the educational environment. Development of, and adherence to, such policies shall be overseen by a licensed qualified physician or licensed doctoral level psychologist.

(9) Reports.

School personnel who must isolate or restrain a student shall report the incident to the school principal or the principal's designee. The Department of Education shall develop a report form which shall be used by school personnel when reporting isolation or restraint to the school principal or the principal's designee.

(a) The report form must include the following information:

1. Student's name, age and disability;
2. Student's school and grade level;
3. Date, time and location of the isolation or restraint;
4. Length of time student was isolated or restrained;
5. Names, job titles and signatures of the personnel who administered the isolation or restraint;
6. Whether the personnel who administered the isolation or restraint were certified for completing a behavior intervention training program;
7. Names and job titles of other personnel who observed or witnessed the isolation or restraint;
8. Name of the principal or designee who was notified following the isolation or restraint and time of notification;
9. Description of the antecedents that immediately preceded the use of isolation or restraint and the specific behavior being addressed;
10. A certification that any space used for isolation is at least forty (40) square feet;

11. A certification that school personnel are in continuous direct visual contact at all times with a student who is isolated;
 12. How the isolation or restraint ended, including the student's demeanor at the cessation of the isolation or restraint;
 13. Physical injury or death to the student, school personnel or both;
 14. Medical care provided to the student, school personnel or both;
 15. Description of property damage, if relevant; and
 16. Date, time and method of parent notification.
- (b) A copy of the report form must be provided to the local education agency's director of special education who shall determine whether an IEP Team meeting must be convened pursuant to T.C.A. § 49-10-1304.

Authority: T.C.A. §§ 49-10-1306.

* 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)
Ayers	X				
Edwards	X				
Justice	X				
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 1/27/12, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: February 6, 2012

Signature: _____

Gary Nixon

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



MY COMMISSION EXPIRES:
January 9, 2016

Subscribed and sworn to before me on: 2/24/12

Notary Public Signature: _____

Phyllis E. Childress

My commission expires on: _____

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

RE Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

3-9-12

Date

Department of State Use Only

Filed with the Department of State on: 03/21/2012

Effective on: 08/29/2012

Tre Hargett
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Education

DIVISION: Charter Schools

SUBJECT: Achievement School District

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-13-126

EFFECTIVE DATES: August 29, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule provides for an application process for charter school sponsors applying to operate a school in the Achievement School District.

Regulatory Flexibility Addendum

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

(If applicable, insert Regulatory Flexibility Addendum here)

Impact on Local Governments

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

This rule shall have no impact on local governments.

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For Department of State Use Only

Sequence Number: 03-25-12

Rule ID(s): 5781

File Date: 03/28/2012

Effective Date: 08/29/2012

Proposed Rule(s) Filing Form

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

Agency/Board/Commission:	State Department of Education
Division:	Charter Schools
Contact Person:	Rich Haglund
Address:	710 James Robertson Pkwy, 5 th Floor
Zip:	37243
Phone:	615-741-8486
Email:	rich.haglund@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0520-14-03	Achievement School District
Rule Number	Rule Title
0520-14-03-.01	Authorization of Charter Schools

Chapter 0520-14-03
Achievement School District
New Rule

Title 0520-14 is amended by inserting a new chapter 0520-14-03 Achievement School District and by inserting the following as a new, appropriately numbered rule:

Rule 0520-14-03-.01 Authorization of Charter Schools

- (1) Charter schools may be authorized by the achievement school district through an application process established by the achievement school district (ASD).
 - (a) The application shall be reviewed according to procedures established by the superintendent of the ASD.
 - (b) By signing and submitting an application, the sponsor requests a waiver of all education statutes and rules of the state board or department of education, except those listed in T.C.A. § 49-13-105 or included by reference (such as statutes and rules related to licensing of charter school teachers) in Title 49, Chapter 13 (the Tennessee Public Charter Schools Act). The approval of a charter school by the superintendent shall include the approval of these waivers by the commissioner of education, and such automatic waivers shall be reflected in the contract between the charter school and the ASD.
 - (c) Decisions of the superintendent to grant or deny ASD charter applications are final and not subject to appeal.

Authority: T.C.A. §§ 49-13-112, 49-13-126.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner of Education on 10/04/2011, and is in compliance with the provisions of T.C.A. §4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: 3/7/12

Signature: [Handwritten Signature]

Name of Officer: Kevin Huffman

Title of Officer: Commissioner of Education

Subscribed and sworn to before me on: March 7, 2012

Notary Public Signature: Allison Williams

My commission expires on: November 7, 2012

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

[Handwritten Signature]

Robert E. Cooper, Jr.
Attorney General and Reporter

3-21-12

Date

Department of State Use Only

Filed with the Department of State on: 03/28/2012

Effective on: 08/29/2012

[Handwritten Signature]

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Accountancy

DIVISION: Regulatory Boards, Department of Commerce and Insurance

SUBJECT: Licensing and Registration Requirements; Educational and Experience Requirements; Continuing Professional Education; Peer Review; Fee increase for late-filed certificates or firm permits

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 62-1-105

EFFECTIVE DATES: June 24, 2012 through June 30, 2013

FISCAL IMPACT: The agency has provided the following information:

With the exception of the proposed change to Rule 0020-1-.4(f), these rule changes are not expected to result in any increase or decrease in state and/or local government revenue and expenditures. The proposed change to Rule 0020-1-.4(f) will result in a revenue increase for the agency. However, the expected revenue increase will be minimal because the expected revenue increase is not more than 2% of the agency's annual budget and is not more than \$500,000.00.

STAFF RULE ABSTRACT:

- 1.) Rule 0020-1-.1(1): Subsection (h) was added to this rule to provide a definition for "expired license." Under the current rule, substantial ambiguity exists regarding what is required of a licensee to reinstate his license after his license expires. This definition clarifies when a license is in "expired" status, which means that the licensee must file a reinstatement application in order to get his license reinstated to good standing.
- 2.) Rule 0020-1-.4(1): Even though the rule heading under the current rules reads "Fees," subsections (f) and (g) under current rules incorrectly refer to the fees for the late filing of a certificate and for the reinstatement of a license as a "penalty." This ambiguity has caused confusion for licensees who are disciplined by the Board by being ordered to pay a civil penalty. More than one licensee who was subject to board discipline asked why he was being required to pay a "penalty" for a late-filed certificate or reinstatement application when he had already paid a civil penalty as part of the Consent Order which resolved the disciplinary complaint

against him. Therefore, the purpose of this rule change is to clarify that money paid by licensees for a late-filed certificate or for reinstatement of a license are properly labeled as a "fee," not as a "penalty". Additionally, as part of the rule change for subsection (f), the Board approved an increase in the fee for the late filing of a certificate or firm permit from fifty dollars (\$ 50.00) to one hundred dollars (\$ 100.00) in order to defray the costs incurred by the Board staff in bringing past due licenses current. The fiscal impact of this proposed fee increase is minimal.

3.) Rule 0020-1-.6: Subsection (6) and subsection (7)(b) were both deleted because these subsections refer to the written CPA exam. The CPA exam is now only offered electronically via computer. Therefore, these subsections are obsolete.

4.) Rule 0020-1-.8: Subsection (5) was amended by deleting the second sentence of the current rule regarding the listing of CPE courses on license renewal forms. This language caused some confusion for licensees regarding what they had to list on their renewal forms regarding CPE courses. Because the first sentence of subsection (5) was and is sufficient to specify the Board's authority to request additional information from licensees regarding their CPE credits, the second sentence was deleted. Subsection (6) was amended to clarify that money paid to the Board by a licensee for the late renewal of a license is a fee, not a penalty. Additionally, subsection (6) was amended to specify that the amount of the fee assessed to a licensee for late renewal of a license will be \$ 100.00, whereas the current rule does not specify the amount of the late renewal fee. Subsection (7) was deleted in its entirety because the subject matter covered by current subsection (7) is now thoroughly addressed in amended subsection (6). Renumbered subsection (7), formerly subsection (8), was amended to clarify that a license which is not renewed within one (1) year of its expiration date has expired. Whereas the current rule states that a license not renewed within one (1) year of expiration has "lapsed" (a term not defined anywhere in the law or rules). The amended rule refers to such licenses as expired, a term which is now defined as a result of these rule changes.

5.) Rule 0020-1-.13: Subsections (2)(a) and (2)(b) were deleted because they referred to temporary practice permits. Because multi-jurisdictional practice in and from Tennessee is now governed by mobility, Tennessee no longer issues temporary practice permits. Therefore, these subsections are obsolete. New subsection (4) was added to ensure that any Tennessee licensee who practices under mobility in another state must maintain his Tennessee license in good standing in order to do so.

6.) Rule 0020-2-.2: Subsection (1)(a) increases the number of accounting hours, including the elementary level, which must be obtained as part of the 150 hours of education required of all licensees from twenty-four (24) semester or thirty-six (36) quarter hours to thirty (30) semester hours or forty-five (45) quarter hours. Subsection (1)(b) is not substantively amended in any way. Rather, it is amended to reflect the 24/36 to 30/45 credit hour change described in the amended subsection (1)(a). Subsection (3) was amended to increase the number of upper level course credit hours required of licensees from twelve (12) semester or eighteen (18) quarter hours to twenty-four (24) semester or thirty-six (36) quarter hours. These changes shall only apply to individuals applying for a new CPA license after the effective date of these proposed changes.

7.) Rule 0020-3-.16: Paragraph 1 is amended to require that a licensee provide an e-mail address to the Board, and that he notify the Board whenever there is a change in his e-mail address.

8.) Rule 0020-5-3: Subparagraph (1)(b) is amended to require a licensee to complete two (2) hours of Tennessee state-specific Ethics CPE as part of his 80 hour biannual CPE requirement, whereas the current rule requires a four (4) hour Ethics course which is not required to be state-specific. Because some jurisdictions have no Ethics CPE requirement, new subparagraph (7)(c) is added to ensure that any CPA practicing in Tennessee complete at least the minimum amount of Ethics CPE required by Tennessee's law and rules.

9.) Rule 0020-5-4: Paragraph (6) is amended to provide specific guidance to licensees as to how much CPE credit they may be granted for any articles or books they write. Specifically, the amendment makes clear that the article or book for which the licensee is attempting to claim CPE credit must be published, and that the Board has sole discretion regarding how much, if any, CPE credit they decide to award for such articles or books.

10.) Rule 0020-6-4: Paragraph (2) is amended by deleting the word "location" from the current rule. CPA firms may have one location or more than one location. Regardless of the number of locations, the firm itself has only one peer review obligation to cover all its locations, not an obligation for every location of the firm to have a separate peer review. Paragraph (4) is also amended by deleting the word "location," and for the same reason as amended Paragraph (2) above.

Public Hearing Comments

There were two comments received in response to these proposed rule changes. Below is a summary of the comments and a summary of the Board's response to each comment:

The first comment was sent in writing to the Board from Mr. Gary Tucker, Jr., an Alabama-based CPA regarding the proposed change to Rule 0020-02-.02(1)(a), which would change the number of accounting hours, including elementary level courses, required as part of the overall one hundred and fifty hour educational requirement for all licensees from a minimum of twenty-four (24) hours to a minimum of thirty (30) hours. Because Mr. Tucker states in his letter that he has only twenty (20) hours of accounting education, he would appear to be unable to sit for the Tennessee CPA exam even under the twenty-four (24) hour requirement. Because he claims to have more than ten (10) years of experience in the profession, he requested that the Board consider offsetting up to ten (10) hours of the proposed new thirty (30) hour educational requirement with relevant work experience.

The Board thoroughly discussed and considered Mr. Tucker's proposal. The Board ultimately declined to adopt Mr. Tucker's suggested amendment because they believe that the proposed change in the educational requirement will strengthen the base of accounting knowledge for Tennessee licensees, thereby resulting in more competent CPAs to serve the citizens of Tennessee.

The second comment was sent in writing to the Board from David Costello, President and CEO of the National Associations of State Boards of Accountancy ("NASBA"). Mr. Costello wrote in opposition to the proposed change to Rule 0020-05-.03(1)(b), which would only require licensees to complete two (2) hours of Tennessee state-specific Ethics CPE for each two year renewal period, whereas the current rule require four (4) hours of general Ethics CPE. Mr. Costello's argued that more Ethics hours, not less, would be preferable, especially given the recent wave of accounting scandals around the nation over the past several years. As such, he recommended that the Board leave the current four (4) hour general Ethics CPE requirement in place.

The Board thoroughly discussed and considered Mr. Costello's proposal. The Board ultimately decided to proceed with the rule change on the basis that the proposed rule change would still require licensees to obtain Ethics CPE every renewal period, that it would free up two (2) hours of CPE credit each renewal period to allow licensees to increase their technical knowledge of the profession, and that it would also expose licensees to Tennessee state-specific Ethics issues every renewal period.

Regulatory Flexibility Addendum

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

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There will be no overlap, duplication, or conflict with other federal, state or local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rules:

The rules are clear in purpose and intended execution. The implementation of the proposed rule changes will increase clarity and conciseness and decrease ambiguity in the rules as a whole.

3. Flexible compliance and/or reporting requirements for small businesses:

The proposed rule changes impose no compliance and reporting requirements on small businesses.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

The proposed rule changes impose no additional compliance and reporting requirements on small businesses beyond those which already exist.

5. Consolidation or simplification of compliance or reporting requirements:

The proposed rule changes impose no additional compliance and reporting requirements on small businesses beyond those which already exist.

6. Performance standards for small businesses:

The proposed rule changes impose no new performance standards on small businesses.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

Rule 0020-01-.04(1)(f) increases the fee for licensees who are late in filing for the renewal of their permit, certificate, or registration from \$ 50.00 to \$ 100.00. This Board rarely increases fees, and it does so sparingly, mindful of the impact fee increases can have on individual licensees and CPA firms. However, the Board has determined that this small fee increase is necessary in order to defray the costs of bringing licensees whose licenses have expired into legal compliance and back into good standing to practice accountancy.

Impact on Local Governments

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

None of these rule changes are projected to have any impact on local governments.

Department of State
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Sequence Number: 03-2(-12)
 Rule ID(s): 5176-5180
 File Date: 03/26/2012
 Effective Date: 06/24/2012

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee State Board of Accountancy
Division:	Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person:	Chris Whittaker
Address:	500 James Robertson Parkway; Nashville, TN
Zip:	37243
Phone:	(615) 741-3072
Email:	Chris.Whittaker@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0020-01	Licensing and Registration Requirements
Rule Number	Rule Title
0020-01.01	Definitions
0020-01.04	Fees
0020-01.06	Examinations
0020-01.08	Renewal of Licenses
0020-01.13	Interstate Practice

Chapter Number	Chapter Title
0020-02	Educational and Experience Requirements
Rule Number	Rule Title
0020-02.02	Education

Chapter Number	Chapter Title
0020-03	Rules of Professional Conduct
Rule Number	Rule Title
0020-03.16	Notification to the Board

Chapter Number	Chapter Title
0020-05	Continuing Education
Rule Number	Rule Title
0020-05.03	Basic Requirements
0020-05.04	Qualifying Programs

Chapter Number	Chapter Title
0020-06	Peer Review Program
Rule Number	Rule Title
0020-06.04	Basic Requirements

Chapter 0020-01
Board of Accountancy, Licensing and Registration Requirements

Amendments

Rule 0020-01-.01(1) Definitions is amended to add a definition for "Expired License" as new subparagraph (h), to read as follows:

- (h) "Expired License" means a license that is more than one year past the expiration date of the license;

Authority: T.C.A. §§ 62-1-103, 62-1-105, 62-1-105(e), 62-1-108 and 62-1-111(a)(12).

Rule 0020-01-.04(1) Fees is amended by amending subparagraphs (f) and (g) to read as follows:

- (f) Fee for late filing of permit, certificate, or registration renewal application
One hundred dollars (\$100.00)
- (g) Fee for application for reinstatement Two hundred and fifty dollars (\$250.00)

Authority: T.C.A. §§ 62-1-105 and 62-1-107.

Rule 0020-01-.06 Examinations is amended by deleting paragraph (6) in its entirety and by deleting subparagraph (7)(b) in its entirety.

~~(6) All examination candidates who took a written examination prior to April, 2004 shall be required to pass all sections of the examination provided for in T.C.A. § 62-1-106(d), in order to qualify for a certificate.~~

~~(7) The following shall apply to the computer-based Uniform CPA Examination:~~

- ~~(b) Candidates having earned conditional credits on the written examination, as of the start date of the computer-based Uniform CPA Examination, will retain conditional credits. "Conditional credits" means credits earned by a candidate from the written exam that are credited toward the computerized exam. The following conditional credits are for the corresponding test sections of the computer-based CPA Examination:~~

<u>Written Examination</u>		<u>Computer-Based Examination</u>
Auditing	=	Auditing and Attestation
Financial Accounting and Reporting (FARE)	=	Financial Accounting and Reporting (FAR)
Accounting and Reporting (ARE)	=	Regulation (REG)
Business Law and Professional Responsibilities (LPR)	=	Business Environment and Concepts (BEC)

- ~~1. A candidate who has attained conditional credits as of the start date of the computer-based Uniform CPA Examination will be allowed a transition period to complete any remaining test sections of the CPA examination. The transition is the maximum number of opportunities that candidates who have attained conditional credits under the written examination have remaining, at the launch of the computer-based examination, to complete all remaining test sections, or the number of remaining opportunities under the written examination, multiplied by six (6) months, whichever is first exhausted.~~
- ~~2. If a candidate with conditional credits does not pass all remaining test sections during the transition period, the conditional credits earned under the paper and pencil examination will expire and the candidate will lose credit for the test sections passed under the paper and pencil examination. Any test section(s) passed during the transition period is subject~~

~~to the conditional provisions indicated in this section. However, a candidate with conditional credits will not lose credit for a test section of the computer-based examination that is passed during the transition period, even though more than six (6) three-month cycles may have elapsed from the date the test section is passed, until the end of the transition period.~~

Authority: T.C.A. §§ 62-1-105 and 62-1-106.

Rule 0020-01-.08 Renewal of Licenses is amended by deleting paragraph (8) in its entirety and by amending paragraphs (5), (6), and (7) to read as follows:

- ~~(5) The Board may request additional evidence from licensees for continuing professional education requirements including continuing professional education audits (which require CPE course completion documentation). Listings of CPE courses on renewal forms are required; however, the listings are not considered evidence for this rule.~~
- (5) The Board may request additional evidence from licensees for continuing professional education requirements including continuing professional education audits (which require CPE course completion documentation).
- ~~(6) Licensees that renew more than thirty-one (31) days but less than three (3) months following their expiration date will be assessed a late penalty.~~
- (6) Licensees that renew more than thirty-one (31) days but less than one (1) year following their expiration date will be assessed a late fee in the amount of \$ 100.00.
- ~~(7) Licensees that renew more than three (3) months but less than one (1) year after their expiration date will be assessed an additional late penalty.~~
- ~~(8) Licenses not renewed within one (1) year of the expiration date shall be deemed to have lapsed. Any individual desiring to reinstate a lapsed license shall comply with the requirements of paragraph four (4) of this rule and paragraph six (6) of rule 0020-5-.03. The CPE hours required to be completed to reinstate a lapsed license are considered penalty hours and may not be used to offset the CPE hours required for the renewal of a license.~~
- (7) Licenses not renewed within one (1) year of the expiration date shall be deemed to have expired. Any individual wishing to reinstate an expired license shall comply with paragraph (4) of this rule and paragraph (6) of rule 0020-5-.03. The CPE hours required to be completed to reinstate an expired license are considered penalty hours and may not be used to offset the CPE hours required for the renewal of a license.

Authority: T.C.A. §§ 62-1-105, 62-1-107, 62-1-108, 62-1-109, and 62-1-111.

Rule 0020-01-.13 Interstate Practice is amended by deleting subparagraph (2)(a) in its entirety, deleting subparagraph (2)(b) in its entirety, and by adding a new paragraph (4) to read as follows:

- (2) Fees
- ~~(a) An individual intending to practice public accountancy in Tennessee under T.C.A. § 62-1-117 shall make application and file a notice of such intent with the Board's designee, NASBA. The application shall be accompanied by the applicable nonrefundable fee.~~
- ~~(b) Alternatively, an individual CPA may choose to file a notification form with the Board office stating the intent to practice public accountancy in Tennessee. The individual CPA must be in good standing and licensed in any other state. The CPA may practice in this manner as long as the individual does not reside in Tennessee and pays the Board an annual fee as determined by the Board. Each notice shall be accompanied by a nonrefundable fee of fifty dollars (\$ 50.00).~~
- (4) Any Tennessee licensee who lives in another state and who wishes to practice accountancy under this chapter must maintain his or her Tennessee license in good standing in order to do so.

Authority: T.C.A. §§ 62-1-105, 62-1-107, 62-1-110, 62-1-111, 62-1-113, and 62-1-114.

Chapter 0020-02
Educational and Experience Requirements

Amendments

Rule 0020-02-.02 Education is amended by amending subparagraphs (1)(a), (1)(b), and paragraph (3) to read as follows:

- (1) An applicant will be deemed to have met the educational requirement if the applicant has earned a baccalaureate or higher degree from an accredited educational institution and obtained the minimum number of hours required by Tenn. Code Ann. § 62-1-106(c) which includes:
 - ~~(a) At least twenty-four (24) semester or thirty-six (36) quarter hours of accounting education including the elementary level;~~
 - (a) At least thirty (30) semester or forty-five (45) quarter hours of accounting education including the elementary level;
 - ~~(b) Not more than three (3) semester or four (4) quarter hours may be internship programs which may be applied to the twenty-four (24) semester hours or thirty-six (36) quarter hours in accounting; and,~~
 - (b) Not more than three (3) semester or four (4) quarter hours may be internship programs which may be applied to the thirty (30) semester or forty-five (45) quarter hours in accounting; and,
- ~~(3) For purposes of this rule, candidates must have at least twelve (12) semester or eighteen (18) quarter hours of accounting education and at least twelve (12) semester or eighteen (18) quarter hours of general business courses at the upper division level, junior level courses or higher.~~
- (3) For purposes of this rule, candidates must have at least twenty-four (24) semester or thirty-six (36) quarter hours of accounting courses at the upper division level, junior level courses or higher.

Authority: T.C.A. §§ 62-1-105 and 62-1-106.

Chapter 0020-03
Rules of Professional Conduct

Amendments

Rule 0020-03-.16 Notification to the Board is amended by amending paragraph (1) to read as follows:

- ~~(1) A licensee shall notify the Board in writing within thirty (30) days of any change of name, address, and, in the case of individual licensees, change of employment.~~
- (1) A licensee shall notify the Board in writing within thirty (30) days of any change of name, mailing address, e-mail address, and, in the case of individual licensees, change of employment.

Authority: T.C.A. §§ 62-1-105 and 62-1-111.

Chapter 0020-05
Continuing Education

Amendments

Rule 0020-05-.03 Basic Requirements is amended by amending subparagraph (1)(b) and by adding a new subparagraph (7)(c) to read as follows:

- (1) A license holder seeking regular biennial renewal shall, as a prerequisite for such renewal, show that he or she has completed no less than eighty (80) hours of qualified continuing professional education during the two (2)-year period immediately preceding renewal with a minimum of twenty (20) hours in each year with specifications as follows:
 - ~~(b) All license holders shall complete a board-approved four (4) hour ethics course designed to familiarize the licensee with the accountancy law and rules as well as professional ethics.~~
 - (b) All license holders shall complete a board-approved two (2) hour state-specific ethics course designed to familiarize the licensee with accountancy law and rules as well as professional ethics;
- (7) A non-resident licensee seeking renewal of a license in this state shall meet the CPE requirement of this rule by meeting the CPE requirements for renewal of a license in the state in which the licensee's principal office is located.
 - (c) If the state in which a non-resident licensee's principal office is located does not require a course in ethics, the non-resident licensee shall complete the ethics requirement for this state as set forth in rule 0020-5-.03(1)(b).

Authority: T.C.A. §§ 62-1-105, 62-1-107, and 62-1-111.

Rule 0020-05-.04 Qualifying Programs is amended by amending paragraph (6) to read as follows:

- ~~(6) Continuing education credit may be allowed for writing articles and books, provided that their preparation contributes to the professional competence of the license holder. Credit for such preparation may be awarded on a self-declaration basis of up to fifty percent (50%) of the two (2) year continuing education requirement. Additional credit may be awarded in exceptional circumstances, upon the written request of the license holder, accompanied by a copy of the article(s) or book(s) and a statement of justification.~~
- (6) In the Board's discretion, continuing education credit may be allowed for writing articles and books, provided that their preparation contributes to the professional competence of the license holder. Credit for such preparation may be awarded on a self-declaration basis of up to fifty percent (50%) of the two (2) year continuing education requirement. Additional credit may be awarded in exceptional circumstances, upon the written request of the license holder, accompanied by a copy of the article(s) or books(s) and a statement of justification. No credit shall be given for unpublished book(s) or article(s).

Authority: T.C.A. §§ 62-1-105 and 62-1-107.

Chapter 0020-06
Peer Review Program

Amendments

Rule 0020-06-.04 Basic Requirements is amended by amending paragraph (2) and paragraph (4) to read as follows:

- ~~(2) Each firm location that performs one (1) or more audit engagement(s) shall have an on-site peer review. Firm locations that perform only compilations or reviews in accordance with SSARS shall have either an on-site or off-site peer review.~~
- (2) Each firm that performs one or more audit engagements shall have an on-site peer review. Firms that perform only compilations or reviews in accordance with SSARS shall have either an on-site or off-site peer review.
- ~~(4) Failure of a firm location to be included in a peer review performed in a timely manner may result in the denial of the location's permit to practice.~~
- (4) Failure of a firm to be enrolled in a Board-approved peer review program in a timely manner will result in

the denial of the firm's permit to practice.

Authority: T.C.A. §§ 62-1-105 and 62-2-201.

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

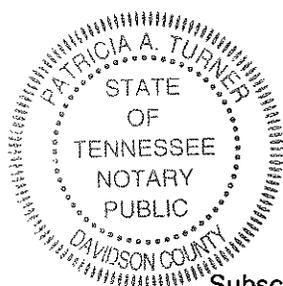
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Stanley Sawyer	X				
C. Don Royston	X				
Lisa Stickel	X				
Douglas Warren	X				
R. Kenneth Cozart	X				
Alfred Creswell	X				
Shannone Raybon	X				
Casey Stuart	X				
William Blaufuss	X				
Jennifer Brundige	X				
Vic Alexander				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee State Board of Accountancy (board/commission/ other authority) on 05/06/2011 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (03/10/11)

Rulemaking Hearing(s) Conducted on: (add more dates). (05/06/11)



Date: 03/05/12

Signature: [Handwritten Signature]

Name of Officer: Christopher R. Whittaker, Esq.

Title of Officer: Asst. General Counsel, Tennessee Dept. of Commerce + Insurance

Subscribed and sworn to before me on: 3-5-12

Notary Public Signature: [Handwritten Signature]

My commission expires on: 5-15-15

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

[Handwritten Signature]
 Robert E. Cooper, Jr.
 Attorney General and Reporter
3-13-12
 Date

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Filed with the Department of State on: 03/26/2012

Effective on: 06/24/2012

Tre Hargett
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Collection Service Board

DIVISION: Regulatory Boards, Department of Commerce and Insurance

SUBJECT: Examination Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 62-20-104

EFFECTIVE DATES: June 20, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These amendments to Rule 0320-01-.02 and Rule 0320-01-.03 eliminate the fifty dollar (\$50.00) examination or re-examination fee and instead authorize the Board to set an examination fee by contract with an examination vendor.

Public Hearing Comments

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

No comments were received in response to the proposed rule changes.

Regulatory Flexibility Addendum

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

1. Types of small businesses directly affected:

It is estimated that at least 500 of the 638 collection services currently licensed to do business in Tennessee could be classified as "small businesses". Of these, it is anticipated that fewer than 100 currently licensed services will be affected by the proposed rules, as the proposed rules only apply to those currently licensed services that have lost a location manager for any reason and must replace such person pursuant to T.C.A. §62-20-126. Any collection service submitting a new license application will be affected by the proposed rules. The Board does not compile official statistics relative to the number of licensing applications received each calendar year; however, it is anticipated that seventy-five percent (75%) of new licensing applications filed will be small business filings.

2. Projected reporting, recordkeeping, and other administrative costs:

Collection service businesses that are seeking to do business in this state or that seek to continue doing business in this state following the loss of a location manager may bear the cost of a location manager licensing examination and incidental expenses (travel, lodging) reasonably related thereto.

3. Probable effect on small businesses:

It is anticipated that the enactment of these rules will not materially change any legal or other obligations to which collection service businesses operating in this state are currently subject.

4. Less burdensome, intrusive, or costly alternative methods:

The Board knows of no less burdensome, intrusive or costly alternative methods or means by which to accomplish the important objective of location manager licensing.

5. Comparison with federal and state counterparts:

There are no federal counterparts to the issues addressed by these rules.

6. Effect of possible exemption of small businesses:

As the majority of entities potentially affected by the adoption of these rules could be considered "small" businesses, to create an exemption for such entities would be impractical.

Impact on Local Governments

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

The proposed rule changes are not projected to have any impact on local governments.

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For Department of State Use Only

Sequence Number: 03-18-12
Rule ID(s): 5773
File Date: 03/22/2012
Effective Date: 06/20/2012

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Collection Service Board
Division:	Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person:	Terrance L. Bond, Assistant General Counsel
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	(615) 741-3072
Email:	terrance.bond@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0320-01	Licensing
Rule Number	Rule Title
0320-01-.02	Examinations
0320-01-.03	Fees

Chapter 0320-01
Licensing

Amendments

Rule 0320-01-.02 Examinations is amended by deleting subsection (1) of the rule in its entirety and substituting instead the following so that, as amended, the subsection shall read:

- (1) Upon being approved by the Collection Service Board, the candidate shall apply to the approved, independent educational testing organization, on the form supplied by the testing organization, accompanied by a test fee of fifty dollars (~~\$50.00~~) the testing fee as set by the board, pursuant to its contact with the testing organization, to take the location manager licensing examination.

Authority: Tenn. Code. Ann. §§ 62-20-104 and 62-20-108.

Rule 0320-01-.03 Fees is amended by deleting subsection (3) of the rule in its entirety and substituting instead the following so that, as amended, the subsection shall read:

- (3) In case of failure, ~~the fee for each reexamination shall be fifty dollars (\$50.00).~~ the failing location manager licensing examination candidate shall pay a reexamination fee as set by the board, pursuant to its contract with the testing organization.

Authority: Tenn. Code. Ann. §§ 62-20-104 and 62-20-108.

* 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)
Bart Howard, Chairman	x				
Elizabeth Dixon	x				
Chip Hellman	x				
Cecile Testerman				x	
Elizabeth Trinkler, Vice-Chairman				x	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Collection Service Board on January 11, 2012, 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: (09/23/11)

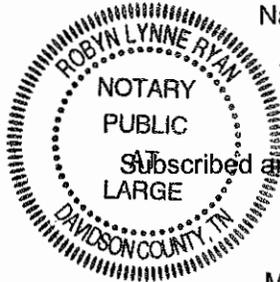
Rulemaking Hearing(s) Conducted on: (add more dates). (01/11/12)

Date: 3-6-12

Signature: [Signature]

Name of Officer: TERENCE L. BOND

Title of Officer: ASSISTANT GENERAL COUNSEL



Subscribed and sworn to before me on: 3/6/12

Notary Public Signature: [Signature]

My commission expires on: 3/10/14

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

[Signature]

Robert E. Cooper, Jr.
Attorney General and Reporter

3-19-12

Date

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Filed with the Department of State on: 03/22/2012

Effective on: 06/20/2012

[Signature]

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Human Rights Commission

DIVISION:

SUBJECT: Speak English Only; Definitions

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 4-21-401

EFFECTIVE DATES: June 21, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

Rule 1500-01-01-.04, "Incorporation of Federal Guidelines," has been amended by adding "Speak English-only rules" guidelines. This is to help clarify Tennessee Code Annotated, § 4-21-401(c) which was passed in 2010, and permits employers to require employees to speak English only in conducting business under certain circumstances.

Rule 1500-01-02-.01(1), "Practice and Procedure, Definitions," has been amended in three different paragraphs. The definition of "sex" is being added pursuant to Tennessee Code Annotated, § 4-21-102(20), which was passed in 2011. Two definitions, "reasonable cause" and "no reasonable cause" are being amended for clarity.

Public Hearing Comments

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

No oral or written comments were received at the public hearings.

Some typographical errors from the Notice of Rulemaking Hearing were corrected with regard to Rule 1500-01-01-.04(6).

Regulatory Flexibility Addendum

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

Not applicable.

Impact on Local Governments

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

These rules and regulations are not expected to have a projected financial impact on local governments.

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Sequence Number: 03-19-12
Rule ID(s): 5174-5175
File Date: 03/23/2012
Effective Date: 06/21/2012

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Human Rights Commission
Division:	
Contact Person:	Shalini Rose, General Counsel
Address:	710 James Robertson Parkway Suite 100 Nashville, TN
Zip:	37243
Phone:	615-741-5825 or 1-800-251-3589 (toll free)
Email:	Shalini.rose@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1500-01-01	General Provisions
Rule Number	Rule Title
1500-01-01-.04	Incorporation of Federal Guidelines

Chapter Number	Chapter Title
1500-01-02	Employment, Public Accommodation and Housing Complaints
Rule Number	Rule Title
1500-01-02-.01	Practice and Procedure

REDLINE

1500-01-01-.04 INCORPORATION OF FEDERAL GUIDELINES.

- (1) The guidelines on religious discrimination promulgated by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulation Part 1605, are adopted, as hereinafter amended, and are incorporated by reference.
- (2) The guidelines on sex discrimination promulgated by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulations Part 1604, are adopted, as hereinafter amended, and are incorporated by reference.
- (3) The guidelines on employment testing issued by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulations Part 1607, are adopted, as hereinafter amended, and are incorporated by reference.
- (4) The regulations on discriminatory housing advertisements issued by the United States Department of Housing and Urban Development, which appear in 24 Code of Federal Regulations Part 100.75, are adopted, as hereinafter amended, and are incorporated by reference.
- (5) The regulations applicable to the Title VI Compliance Program, which appear in 28 Code of Federal Regulations Subpart C, are adopted, as hereinafter amended, and are incorporated by reference.
- (6) The guidelines on "Speak-English-only rules" promulgated by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulations Part 1606.7, are adopted, as hereinafter amended, and are incorporated by reference.
- (67) Any federal guideline or regulation adopted and incorporated under this part that is inconsistent with the Tennessee Human Rights Act, or any regulation promulgated thereunder, shall be superseded by the Tennessee Human Rights Act or the appropriate regulation promulgated thereunder.

Authority: T.C.A. §§4-21-202, 4-21-303, 4-21-401, 4-21-601 and 4-21-602. **Administrative History:** Original rule certified June 10, 1974. Amendment filed December 5, 1978; effective January 19, 1979. Amendment filed April 30, 1997; effective August 28, 1997. Amendment filed September 7, 2000; effective January 29, 2001. Amendment filed June 18, 2003; effective October 28, 2003. Repeal and new rule filed August 9, 2007; effective October 23, 2007. Stay of effective date filed by the Joint Government Operations Committee of The State of Tennessee General Assembly for forty-five days; new effective date is December 6, 2007. Repeal and new rule filed November 15, 2010; effective February 13, 2011.

1500-01-02-.01 PRACTICE AND PROCEDURE.

- (1) Definitions. When used in this regulation:
 - (a) "Act" includes the Tennessee Human Rights Act, Tennessee Code Annotated (T.C.A.), Title 4, and Chapter 21, and the Tennessee Disability Act, Tennessee Code Annotated, Title 8, Chapter 50, Section 103.
 - (b) "Administrative Determination" means the determination reached by the Commission pursuant to the investigative findings made, and legal conclusions drawn, following an investigation under the Act.
 - (c) "Chairman" means the duly elected Chairman of the Tennessee Human Rights Commission or, in the event of his or her absence or inability to act, the Vice-chairman, who has been designated by the Commission, or if such Vice-chairman is unable to act, a Commissioner designated by the Commissioners.

- (d) "Commission" means the Tennessee Human Rights Commission.
- (e) "Commissioner" or "Commissioners" mean any person appointed by the Governor to serve on the Commission.
- (f) "Complainant" means the person by whom or on whose behalf a complaint is filed.
- (g) "Discriminatory Practice" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice which constitutes different treatment or preference of a person or persons based on race, creed, color, religion, sex, age, national origin, or disability.
- (h) "Employer" includes the state, or any political or civil subdivision thereof, any person employing eight (8) or more persons within the state, or any person acting as an agent of an employer, directly or indirectly;
- (i) "Employment agency" means any person or agency, public or private, regularly undertaking, with or without compensation, to procure employees for an employer or to procure for persons opportunities to work for an employer.
- (j) "Executive Director" means the individual appointed by the Commissioners pursuant to Commission bylaws as the administrative head of the Commission. The Executive Director shall be empowered with the authority to appoint the necessary professional, technical, and clerical staff, which shall be covered by and subject to the provisions of the rules and regulations, to carry out the provisions of the Act and these rules. Any powers vested in the Executive Director, and any duties imposed upon him or her by the Act or these rules and regulations, may be exercised or discharged by the Executive Director or the Executive Director's designee in his or her absence. In the event the Executive Director becomes incapacitated to the extent that he or she can no longer perform his or her duties, such duties may be performed by the Deputy Director, or, in the absence of the Deputy Director, a designee selected by the Executive Director before incapacitation.
- (k) "Financial institution" means a bank, banking organization, mortgage company, insurance company or other lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, maintenance or improvements of real property, or an individual employed by or acting on behalf of a financial institution.
- (l) "Disability" means, with respect to a person:
 - 1. A physical or mental impairment that substantially limits one (1) or more of such person's major life activities;
 - 2. A record of having such an impairment; or
 - 3. Being regarded as having such an impairment.
 - 4. "Disability" does not include current, illegal use of, or addiction to, a controlled substance.
- (m) "Hearing examiner" means one (1) or more persons or Commissioners, designated by the Commission to conduct a hearing. The Commission has the sole power to determine qualifications of the hearing examiner.

- (n) "Housing accommodation" includes improved and unimproved property and means a building, structure, lot or part thereof that is used or occupied, or is intended, arranged or designed to be used or occupied, as the home or residence of one (1) or more individuals.
- (o) "Investigator" shall mean a member of the Commission staff designated by the Executive Director, or an approved contractor designated by the Executive Director, empowered to investigate the allegations of a complaint.
- (p) "Labor organization" includes any organization that exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment or any agent acting for a labor organization.
- (q) "National origin" includes the national origin of an ancestor.
- (r) "No Reasonable Cause" means that after an investigation, the Commission has determined ~~by a preponderance of the evidence~~ that the respondent has not engaged in a discriminatory practice. Such determinations will be made using the standards set forth in the policies, regulations, statutes, and our contracts with the United States Equal Employment Opportunity Commission (EEOC) and the United States Department of Housing and Urban Development (HUD).
- (s) "Person" or "Persons" includes one (1) or more individuals, governments, governmental agencies, public authorities, labor organizations, corporations, legal representatives, partnerships, associations, trustees, trustees in bankruptcy, receivers, mutual companies, joint stock companies, trusts, unincorporated organizations or other organized groups of persons.
- (t) "Places of public accommodation, resort or amusement" includes any place, store or other establishment, either licensed or unlicensed, that supplies goods or services to the general public or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds, except that:
1. A bona fide private club is not a place of public accommodation, resort or amusement if its policies are determined solely by its members; and
 2. Its facilities or services are available only to its members and their bona fide guests.
- (u) "Real estate broker" or "real estate salesperson" means an individual, whether licensed or not, who, on behalf of others, for a fee, commission, salary, or other valuable consideration, or who with the intention or expectation of receiving or collecting the same, lists, sells, purchases, exchanges, rents or leases real estate, or the improvements thereon, including options, or who negotiates or attempts to negotiate on behalf of others such activity; or who advertises or holds such individual out as engaged in such activities; or who negotiates or attempts to negotiate on behalf of others a loan secured by mortgage or other encumbrance upon a transfer of real estate, or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby such individual undertakes to promote the sale, purchase, exchange, rental, or lease of real estate through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of a real estate broker or salesperson.
- (v) "Real estate operator" means any individual or combination of individuals, labor unions, joint apprenticeship committees, partnerships, associations,

corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers or other legal or commercial entities, or the county or any of its agencies, that is engaged in the business of selling, purchasing, exchanging, renting or leasing real estate, or the improvements thereon, including options, or that derives income, in whole or in part, from the sale, purchase, exchange, rental or lease of real estate; or an individual employed by or acting on behalf of a real estate operator.

- (w) "Real estate transaction" includes the sale, exchange, rental or lease of real property.
- (x) "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest in these.
- (y) "Reasonable Cause" means that after an investigation, the Commission has determined by a preponderance of the evidence that the respondent has engaged in a discriminatory practice. Such determinations will be made using the standards set forth in the policies, regulations, statutes, and our contracts with the United States Equal Employment Opportunity Commission (EEOC) and the United States Department of Housing and Urban Development (HUD).
- (z) "Respondent" means the person, employer, employment agency, labor organization, housing providers, real estate brokers, salespersons or operators, financial institutions, and persons owning or operating places of public accommodation, resort or amusement against whom a complaint is filed.
- (aa) "Sex" means and refers only to the designation of an individual person as male or female as indicated on the individual's birth certificate.
- (aabb) "Verified" means sworn to or affirmed before a notary public, or supported by a declaration in writing under penalty of perjury.

Authority: T.C.A. §§ 4-21-102, 4-21-302, 4-21-406, 4-21-602, 4-21-904, 4-21-905, and 8-50-103.
Administrative History: Original rule filed November 15, 2010; effective February 13, 2011.

* 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
Commissioner Dennis E. Blalock	X			
Commissioner David J. Cocke	X			
Commissioner Ralph E. Davis	X			
Commissioner Robert Earl Jones				X
Commissioner Stacey Garrett	X			
Commissioner Karla C. Hewitt	X			
Commissioner Paul A. McDaniel	X			
Commissioner Ruby A. Miller	X			
Commissioner Edwin Perry Osborne	X			
Commissioner Patricia A. Pierce	X			
Commissioner Nathan B. Pride				X
Commissioner A.J. Starling	X			
Commissioner Joseph Warren Walker				X
Commissioner Spencer Wiggins	X			
Commissioner Jocelyn Wurzburg	X			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Commissioners, Tennessee Human Rights Commission on 11/18/2011, 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: 11/18/2011

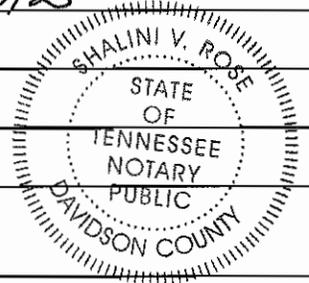
Rulemaking Hearings Conducted on: 01/23/2011, 01/24/2011, and 01/26/2011

Date: February 23, 2012

Signature: Beverly L. Watts

Name of Officer: Beverly L. Watts

Title of Officer: Executive Director



Subscribed and sworn to before me on: 02/23/12

Notary Public Signature: Shalini V. Rose

My commission expires on: 01/09/16

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.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
3-2-12

Date

Filed with the Department of State on: 03/23/2012

Effective on: 06/21/2012

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Mental Health

DIVISION: Administrative Services

SUBJECT: Indigent Care and Periodic Payments at Regional Mental Health Institutes

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 33-2-1102

EFFECTIVE DATES: June 28, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

Rules Chapter 0940-02-05, Regional Mental Health (RMHI) Care at the Expense of the State and Periodic Payments, establishes rules necessary to comply with Tennessee Code Annotated, § 33-2-1102 by establishing standards for determining indigency and the criteria for qualifying for a periodic payment plan at Regional Mental Health Institutes (RMHIs). As required by Tennessee Code Annotated, § 33-2-1102, Rules Chapter 0940-02-05 has been reviewed and approved by the Department of Finance & Administration and the Comptroller of the Treasury.

In the past, the determination of indigency status for service recipients receiving care at a RMHI was governed by TDMH Policy (TDMH Policy Numbers: 09-2 and 09-4). Rules Chapter 0940-02-05 moves the indigency determination formula from policy to rule and changes the formula for calculating indigency. Currently the formula uses gross income and assets to determine indigency. The new indigency formula uses income and net worth to establish indigency and determine eligibility for a periodic payment plan.

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.

A public hearing on Rules Chapter 0940-02-05 Regional Mental Health (RMHI) Care at the Expense of the State and Periodic Payments was held on November 14, 2011 at 9:30 a.m. in the third floor large conference room of the Cordell Hull Building in Nashville, Tennessee. The following departmental staff attended the hearing: Kurt Hippel, Director of the Office of Rules and Legislation; Karen Edwards, Senior Policy Analyst and Research Coordinator; Robert Martin, Director of Fiscal Services; and Rachel Jones, Administrative Services Assistant. No one else attended the hearing. No written or oral comments were received.

Regulatory Flexibility Addendum

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

Rules Chapter 0940-02-05 Regional Mental Health (RMHI) Care at the Expense of the State and Periodic Payments will not affect small businesses.

Impact on Local Governments

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

Rules Chapter 0940-02-05 Regional Mental Health (RMHI) Care at the Expense of the State and Periodic Payments does not have a projected impact on local governments.

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For Department of State Use Only

Sequence Number: 03-23-12
 Rule ID(s): 5182
 File Date: 03/20/2012
 Effective Date: 06/28/2012

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Department of Mental Health
Division:	Administrative Services Division
Contact Person:	Kurt Hippel
Address:	710 James Robertson Parkway 11 th Floor, Andrew Johnson Tower Nashville, TN
Zip:	37243
Phone:	615-532-9439
Email:	Kurt.Hippel@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0940-02-05	Regional Mental Health (RMHI) Care at the Expense of the State and Periodic Payments
Rule Number	Rule Title
0940-02-05-.01	Purpose
0940-02-05-.02	Definitions
0940-02-05-.03	RMHI Care at the Expense of the State for Indigent Service Recipients
0940-02-05-.04	Periodic Payments by Non-Indigent Service Recipients or Responsible Relatives

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

0940-02-05-.01 Purpose.

- (1) The purpose of these rules is to describe the Department's policy for determining:
 - (a) Indigence such that a service recipient may receive care from a Regional Mental Health Institute (RMHI) at the expense of the state; and
 - (b) The periodic payments to be made by non-indigent service recipients or responsible relatives for care by a RMHI.
- (2) These rules do not apply to a person subject to evaluation, diagnosis or treatment under Title 33, Chapter 5; or Chapter 7, Part 3.
- (3) These rules only apply to Tennessee residents who are legally in the United States of America. Services recipients who are not Tennessee residents or are not legally in the United States of America shall be liable for the total charge for services provided and shall not be eligible for a periodic payment plan under this chapter.
- (4) Pursuant to T.C.A. § 33-1-204, these rules shall not create an entitlement to services from the state.

Authority: T.C.A. §§ 4-4-103, 33-1-204, 33-1-302, 33-1-305, 33-1-309, 33-2-1102; and 33-2-1108.

0940-02-05-.02 Definitions.

- (1) "Assets" means, excluding income, the total value of an individual's equity in real and personal property of whatever kind or nature. Assets include, but are not limited to, the individual's stocks, bonds, cash, accounts receivable, moneys due, or any other interests whether they are self-managed or held by the service recipient's authorized representative or by any other individual or entity on behalf of the service recipient.
- (2) "Charges" means the cost per patient day calculated under Rule 0940-02-01 Determination of Average Daily Cost, unless the actual cost exceeds 200% of the Average Daily Cost, in which case the Chief Officer of the RMHI may charge all or some portion of the actual bill to the service recipient, responsible relative, or third party payor.
- (3) "Department" or "TDMH" means the Tennessee Department of Mental Health.
- (4) "Federal Poverty Guidelines" means the latest federal poverty measurement guidelines, for all contiguous states and the District of Columbia, issued by the United States Department of Health and Human Services and published annually in the Federal Register under 42 U.S.C. 9902(2).
- (5) "Income" means gross income and is the total of earned and unearned income used by the Internal Revenue Service of the United States of America to determine whether an income tax return shall be filed.
- (6) "Liabilities" are debts and obligations. Liabilities consist of current liabilities, which are bills that are due to creditors to settle debts within a relatively short period of time (usually within one year) and include such obligations as utilities, rent insurance premiums, taxes, medical bills, repair bills, credit card balances. Liabilities also include long-term liabilities, which are debts that are not expected to be liquidated within one year and include mortgages and long-term leases, student and automobile loans and other structured and amortized loans.
- (7) "Net Worth" means the value of a person's assets compared to their liabilities.
- (8) "Period of indigence" means the period of time during which a service recipient has received or is

receiving RMHI services and was determined to be indigent under this chapter.

- (9) "Period of non-indigence" means the period of time when a service recipient has received or is receiving RMHI services and was determined to be non-indigent under this chapter.
- (10) "Regional Mental Health Institute or RMHI" means a mental health hospital operated by TDMH for service recipients with mental illness or serious emotional disturbance.
- (11) "Responsible relative" means the parent of an unemancipated child with mental illness, serious emotional disturbance, alcohol dependence, drug dependence, or developmental disabilities who is receiving service in programs of the Department.
- (12) "Service recipient" means a person who is receiving care or has received care from a RMHI.
- (13) "Tennessee resident" means a person living in Tennessee with the intention of living there permanently or for an indefinite period of time.

Authority: T.C.A. §§ 4-4-103, 33-1-101, 33-1-302, 33-1-305, 33-1-309, and 33-2-1102.

0940-02-05-.03 RMHI Care at the Expense of the State for Indigent Service Recipients.

- (1) Any service recipient who receives care at a RMHI while indigent under this chapter shall receive that care at the expense of the state.
- (2) Nothing in this rule exempts any public or private third-party payor from financial liability for any allowable charges for care from an RMHI.
- (3) For the purposes of this rule, a service recipient is indigent during any period of time within which both of the following are true:
 - (a) The service recipient's income is less than 100% of the Federal Poverty Guidelines.
 - (b) The service recipient's net worth falls below the sum of \$50,000 plus 500% of the Federal Poverty Guidelines.
- (4) If an indigent service recipient has any responsible relatives, then an indigency determination will be made for the responsible relatives in addition to the service recipient. Only when the service recipient and all responsible relatives are found to be indigent, may a service recipient receive care at the expense of the state.
- (5) The determination of indigence shall be made by person(s) designated by the RMHI Chief Officer.
- (6) If the service recipient or responsible relative does not agree with the initial or subsequent determination, either person may request that the RMHI's Chief Officer review the decision. If the service recipient or responsible relative does not agree with the determination of the RMHI's Chief Officer, then either person may request that the Commissioner or designee make a final determination.
- (7) The Department may review and alter an indigency determination at any time, but shall review at least annually the indigency status of any service recipient continuously receiving care by an RMHI for one year or longer.
- (8) The service recipient or responsible relative may request a review and alteration of an indigency determination any time a change in income or net worth can be demonstrated.
- (9) The Department may access information to determine indigence from any relevant source of data, including but not limited to, state and federal agencies administering benefits to a service recipient or responsible relative.

- (10) The Department shall document the method by which indigence was determined in addition to all backup information used to substantiate the determination.
- (11) A service recipient or responsible relative shall be found to be non-indigent if:
 - (a) A service recipient or responsible relative does not meet the criteria set forth in 0940-02-05-.03(3); or
 - (b) Insufficient information is available to determine indigence.
- (12) A person shall be liable for the total charges for care by an RMHI and for the amount of the state's expense incurred in recovering the amounts, including attorney salaries or fees, unless declared indigent under this rule. In order to be declared indigent, the person or responsible relative shall:
 - (a) Provide TDMH with information TDMH deems necessary for the determination of indigency; or
 - (b) Provide TDMH with a written release allowing TDMH to access any information TDMH deems necessary to determine indigency.
- (13) A person or responsible relative shall notify TDMH of any change in status that may affect an indigency determination.
- (14) A person or responsible relative who knowingly provides false information that results in an inaccurate determination of indigence shall be liable for the total charges for care by an RMHI and for the amount of the state's expense incurred in recovering the amounts, including attorney salaries or fees.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-1102, 33-2-1103, 33-2-1105 and 33-2-1109.

0940-02-05-.04 Periodic Payments by Non-Indigent Service Recipients or Responsible Relatives.

- (1) Service recipients and their responsible relatives, if any, shall be liable for charges incurred for care received at a RMHI during any period of non-indigence as determined under this chapter.
- (2) The state has a continuing claim against a service recipient or responsible relative or his or her estate for any unpaid difference between the amount owed and the amount paid for care from a RMHI for any period of non-indigence.
- (3) At any time, a service recipient or responsible relatives may request a periodic payment plan under which a monthly payment amount will be established.
- (4) In cases where the service recipient or responsible relatives have a public or private third party payor, the periodic payment plan may apply to the agreed deductible, co-payments or any portion of the charges not reimbursed by the third party provided that the RMHI has not agreed to accept the third party payment as payment in full.
- (5) A payment plan may be established only when the service recipient's and all responsible relatives' net worth is less than the sum of \$50,000 plus 500% of the Federal Poverty Guidelines.
- (6) Person(s) designated by the RMHI Chief Officer shall determine whether a service recipient or responsible relative meets net worth requirements specified in Rule 0940-02-05-.04(5) to be eligible for a payment plan, and, if so, establish the amount of the monthly payment according to the schedule in Rule 0940-02-05-.04(11).
- (7) The Department may review and alter a periodic payment plan at any time.
- (8) If the service recipient or responsible relative does not agree with the initial or subsequent

determination, either person may request that the RMHI's Chief Officer review the decision. If the service recipient or responsible relative does not agree with the determination of the RMHI's Chief Officer, then either person may request that the Commissioner or designee make a final determination.

- (9) The service recipient or responsible relative may request review and alteration of a payment plan determination any time a change in income or net worth can be demonstrated.
- (10) A person shall be liable for the total charges for care by an RMHI and for the amount of the state's expense incurred in recovering the amounts, including attorney salaries or fees, unless declared eligible to receive a payment plan under this rule. In order to be declared eligible to receive a payment plan, the person or responsible relative shall:
 - (a) Provide TDMH with information TDMH deems necessary to establish a payment plan; or
 - (b) Provide TDMH with a written release allowing TDMH to access any information TDMH deems necessary to establish a payment plan.
- (11) A person or responsible relative who knowingly provides false information that results in an inaccurate establishment of a payment plan shall be liable for the total charges for care by an RMHI and for the amount of the state's expense incurred in recovering the amounts, including attorney salaries or fees.
- (12) The following monthly payment plan shall be established for service recipients or responsible relatives who request a payment plan and meet the net worth requirement stated in Rule 0940-02-05-.04(5).

Service recipient's income as a percentage of Federal Poverty Guidelines (FPG)	Formula for monthly payment amount
100% but less than 150% FPG	5% of the monthly equivalent of 100% FPG for a family size of one
150% but less than 200% FPG	5% of the monthly equivalent of 150% FPG for a family size of one
200% but less than 250% FPG	5% of the monthly equivalent of 200% FPG for a family size of one
250% but less than 500% FPG	5% of the monthly equivalent of 250% of FPG for a family size of one
Over 500% FPG	5% of average monthly income

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-1102, 33-2-1103, 33-2-1104, 33-2-1105, and 33-2-1107.

* 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 Mental Health on 2/23/2012 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/23/2011

Rulemaking Hearing(s) Conducted on: (add more dates) 11/14/2011

Date: 2/23/12

Signature: [Signature]

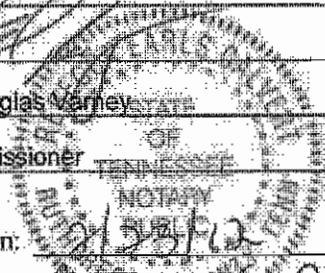
Name of Officer: E. Douglas Varney

Title of Officer: Commissioner

Subscribed and sworn to before me on: 2/23/12

Notary Public Signature: [Signature]

My commission expires on: 03/30/13



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

[Signature]
Robert E. Cooper, Jr.
Attorney General and Reporter
3-21-12
Date

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PUBLICATIONS

Filed with the Department of State on: 03/30/2012

Effective on: 06/28/2012

[Signature]
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: ICF/MR Rates

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 71-5-105 and 71-5-109

EFFECTIVE DATES: June 12, 2012 through June 30, 2013

FISCAL IMPACT: The promulgation of this rule is anticipated to decrease state annual expenditures by \$1,435,100.

STAFF RULE ABSTRACT: This rule replaces an emergency rule on the same subject.

This rule permits the agency to adjust ICF/MR rates to contain them within budgetary limits.

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.

Copy of response to comment is included with filing.

Regulatory Flexibility Addendum

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

(If applicable, insert Regulatory Flexibility Addendum here)

The rule is not anticipated to have an effect on small businesses.



Impact on Local Governments

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

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

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For Department of State Use Only

Sequence Number: 03-13-12
Rule ID(s): 5769
File Date: 03/14/2012
Effective Date: 06/12/2012

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road
Zip:	37243
Phone:	(615) 507-6446
Email:	George.woods@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-13-01	TennCare Long – Term Care Programs
Rule Number	Rule Title
1200-13-01-.30	TennCare ICF/MR Services

For a copy of this emergency rule contact: George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

Darin J. Gordon
Director, Bureau of TennCare

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

Chapter Number	Chapter Title
1200-13-01	TennCare Long-Term Care Programs
Rule Number	Rule Title
1200-13-01-.30	TennCare ICF/MR Services

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.in.us/sos/rules/1360/1360.htm>)

Subparagraph (a) of Paragraph (5) of Rule 1200-13-01-.30 TennCare ICF/MR Services is amended by adding two new sentences at the end of Subparagraph (a) so as amended Subparagraph (a) shall read as follows:

- (a) Private for-profit and private not-for-profit ICFs/MR shall be reimbursed at the lower of Medicaid cost or charges. An annual inflation factor will be applied to operating costs. The trending factor shall be computed for facilities that have submitted cost reports covering at least six (6) months of program operations. For facilities that have submitted cost reports covering at least three (3) full years of program participation, the trending factor shall be the average cost increase over the three-year (3-year) period, limited to the seventy-fifth (75th) percentile trending factor of facilities participating for at least three (3) years. Negative averages shall be considered zero (0). For facilities that have not completed three (3) full years in the program, the one-year (1-year) trending factor shall be the fiftieth (50th) percentile trending factor of facilities participating in the program for at least three (3) years. For facilities that have failed to file timely cost reports, the trending factor shall be zero (0). Capital-related costs are not subject to indexing. Capital-related costs are property, depreciation, and amortization expenses included in Section F.18 and F.19 of the Nursing Facility Cost Report Form. All other costs, including home office costs and management fees, are operating costs. Once a per-diem rate is determined from a clean cost report, the rate will not be changed until the next rate determination except for audit adjustments, correction of errors, or termination of a budgeted rate. Reimbursement is not to exceed the amount budgeted by the State for private ICF/MR reimbursement. The Comptroller's Office shall be authorized to adjust per diem rates up or down as necessary during the year.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tenn. Dept. of Finance & Administration (board/commission/ other authority) on 03/08/2012 (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: 12/12/11

Rulemaking Hearing(s) Conducted on: (add more dates). 02/29/12

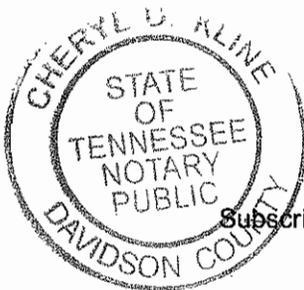
Date: 3/8/2012

Signature: D. J. Gordon

Name of Officer: Darin J. Gordon

Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 3/8/2012

Notary Public Signature: Cheryl D Kline

My commission expires on: 9/13/2012

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.

Robert E. Cooper, Jr.
Attorney General and Reporter
3-13-12

Date

Department of State Use Only

Filed with the Department of State on: 03/14/2012

Effective on: 06/12/2012

Tre Hargett by [Signature]
Tre Hargett
Secretary of State

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