

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Air Pollution Control

SUBJECT: Annual Emission Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-201-101 et seq.

EFFECTIVE DATES: April 8, 2013 through June 30, 2014

FISCAL IMPACT: It is estimated that this revision will result in increased state revenues of approximately \$1.2 million. The agency reports that the increase in fees is necessary because insufficient funds were collected to fund the program for 2011-2012, and the fund balance was reduced by \$1.1 million. Expenditures are predicted to increase by approximately \$100,000 for the 2012-2013 fiscal year.

STAFF RULE ABSTRACT: This rule increases the annual emission fees for major (Title V) sources of pollution. The increase is \$1 per annual ton of emissions for sources that are not electric utility generating units (EGUs) and \$17 per annual ton of emissions for EGU sources.

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.

Comments received from Wayne K. Scharber, Executive Vice-President for Environmental Affairs, Tennessee Chamber of Commerce and Industry.

Comment: The Chamber supports a fee level that is predicated on a tonnage fee and a base charge for minimum fees of no greater than necessary to fund the projected/authorized expenditures for Fiscal Year 2012-2013.

Response: The Division appreciates the Chamber's support and cooperation in the fee process. The projected fees are estimated to provide only sufficient funds to operate the Title V permit program for fiscal year 2012-2013.

Comment: Likewise, in the funding needs analysis, we remain concerned about the growth of administrative overhead costs and the allocation charged to the Title V program as it continues to increase and we do desire that the administrative overhead areas should be reviewed thoroughly and not be increasing simply because the program expenditures may be increasing.

Response: The Department has met with members of the Chamber to discuss this concern and will continue to evaluate the comments 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.

This rulemaking amendment to subparagraph (d) of paragraph (9) of rule 1200-03-26-.02 Construction and Annual Emission Fees is federally mandated and, hence, exempt from the provisions of the Regulatory Flexibility Act of 2007, Acts 2007, § 6 of Public Chapter 464. The rule subject to this amendment is part of the requirements of § 502(b)(3)(A) of the Federal Clean Air Act which is the source of the requirement for Tennessee to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title".

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 Department anticipates that this amended rule will not have a financial impact on local governments.

Department of State**Division of Publications**

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For Department of State Use Only

Sequence Number: 01-04-13
 Rule ID(s): 5358
 File Date: 01/08/13
 Effective Date: 04/08/13

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:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	9 th Floor L & C Annex 401 Church Street Nashville, Tennessee
Zip:	37243-1531
Phone:	(615) 532-0554
Email:	Lacey.Hardin@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
1200-03-26	Administrative Fees Schedule
Rule Number	Rule Title
1200-03-26-.02	Construction and Annual Emission Fees

(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>)

Amendments

Chapter 1200-03-26 Administrative Fees Schedule

Subparagraph (d) of paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (d) in its entirety and replacing it with the following so that, as amended, subparagraph (d) shall read as follows:

- (d) The rate at which major source actual-based annual emission fees are assessed for non-EGU sources shall be \$39.00 \$40.00 per ton for the annual accounting period July 1, 2011 through June 30, 2012. The and the rate at which major source allowable-based annual emission fees are assessed for non-EGU sources shall be \$28.50 \$29.50 per ton for the annual accounting period July 1, 2012 through June 30, 2012. Notwithstanding any calculation of an annual fee using these rates, the annual fee that each major source is to pay shall not be less than \$7,500 for the annual accounting period July 1, 2011 through June 30, 2012. An annual The rate at which major source actual-based annual emission fees are assessed for EGU sources shall be \$56.00 per ton and the rate at which major source allowable-based annual emission fees are assessed for EGU sources shall be \$45.50 per ton. These annual emission fee rates remain in effect until the effective date of an amendment to this subparagraph. Any revision to these rates and the minimum fee must result in the collection of sufficient fees to fund the activities identified in subparagraph (1)(c) of this rule. These annual fee rates and the minimum fee shall be supported by the Division's annual workload analysis that is approved by the Board. For purposes of this subparagraph, an electric utility generating unit (EGU) means any steam electric generating unit or stationary combustion turbine that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected EGU.

Authority: T.C.A. §§ 68-201-101 et seq., and 4-5-201 et seq.

* 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)
J. Ronald Bailey				✓	
Elaine Boyd	✓				<i>Elaine Boyd</i>
Brian Christman				✓	
Karen Cisler	✓				<i>Karen Cisler</i>
Wayne T. Davis	✓				<i>Wayne T. Davis</i>
Stephen Gossett	✓				<i>Stephen Gossett</i>
Tommy Green				✓	
Shawn A. Hawkins	✓				<i>Shawn A. Hawkins</i>
Helen Hennon	✓				<i>Helen A. Hennon</i>
Richard Holland	✓				<i>Richard Holland</i>
John Roberts	✓				<i>John A. Roberts</i>
Larry Waters	✓				<i>Larry Waters</i>
Jimmy West	✓				<i>James R. West</i>
Alicia Wilson	✓				<i>A. Wilson</i>

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 12/12/2012, 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: 10/18/12

Rulemaking Hearing(s) Conducted on: (add more dates). 12/10/12



Date: Dec. 13, 2012

Signature: Barry R. Stephens

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: December 13, 2012

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 6, 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
1-8-13
Date

Department of State Use Only

Filed with the Department of State on: 01/08/13

Effective on: 04/08/13

Tre Hargett
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Office of Policy, Planning and Assessment

DIVISION: Health Statistics

SUBJECT: Reporting of Claims Data

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-1-119

EFFECTIVE DATES: June 30, 2013 through June 30, 2014

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking amends the rule relative to reporting of claims data by ambulatory surgical treatment centers to include reporting by outpatient diagnostic centers in accordance with Tennessee Code Annotated, Section 68-1-119.

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.

This proposed rule does not affect small businesses.

Impact on Local Governments

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

This rule will have no impact on local governments.

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Sequence Number: 01-20-13
Rule ID(s): 5367
File Date: 1/29/13
Effective Date: 6/30/13

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:	Office Of Policy, Planning and Assessment
Division:	Health Statistics
Contact Person:	Teresa Hendricks
Address:	425 5th Avenue North, Nashville TN
Zip:	37243
Phone:	615-741-1954
Email:	Teresa.Hendricks@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
1200-07-04	Ambulatory Surgical Treatment Center Data System
Rule Number	Rule Title
1200-07-04-.01	Definitions
1200-07-04-.02	Purpose
1200-07-04-.03	Reporting Requirements
1200-07-04-.04	Required Data Elements
1200-07-04-.05	Submission Schedule
1200-07-04-.06	Penalty Assessment
1200-07-04-.07	Vendor Requirements
1200-07-04-.08	Processing and Verification
1200-07-04-.09	Data Availability
1200-07-04-.10	Confidential Information

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
BUREAU OF HEALTH INFORMATICS
OFFICE OF HEALTH STATISTICS**

**CHAPTER 1200-7-4
~~AMBULATORY SURGICAL TREATMENT CENTER DATA SYSTEM~~**

TABLE OF CONTENTS

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1200-7-4-.03 Reporting Requirements	1200-7-4-.08 Processing and Verification
1200-7-4-.04 Required Data Elements	1200-7-4-.09 Data Availability
1200-7-4-.05 Submission Schedule	1200-7-4-.10 Confidential Information

~~1200-7-4-.01~~ DEFINITIONS.

- ~~(1) "Ambulatory Surgical Treatment Center" shall be defined as in T.C.A. §68-11-201.~~
- ~~(2) "CMS-1500" is defined to be form Centers for Medicare & Medicaid Services 1500. In July 2001, the Health Care Financing Administration (HCFA) became the Centers for Medicare & Medicaid Services (CMS). Prior to this name change, the CMS-1500 form had been known as the HCFA-1500 form.~~
- ~~(3) "Commissioner" shall mean the commissioner of the Tennessee Department of Health.~~
- ~~(4) "Department" shall mean the Tennessee Department of Health.~~
- ~~(5) "Error" is defined as data that are incomplete or inconsistent with the specifications in the Ambulatory Surgical Treatment Center Data System Procedural Manual.~~
- ~~(6) "Final Joint Annual Report" is defined as the most recent Joint Annual Report filed by an Ambulatory Surgical Treatment Center where the data contained in the report have been edited, queried, and updated when appropriate, by the Department of Health.~~
- ~~(7) "Outpatient" shall be defined as a person receiving reception and care in an Ambulatory Surgical Treatment Center (ASTC) for a continuous period less than twenty-four (24) hours for the purpose of giving advice, diagnosis, nursing service, or treatment bearing on the physical health of the person, excluding persons receiving maternity care involving labor and delivery.~~
- ~~(8) "Personal Identifiers" shall be defined to include the following data elements:
Insured's ID Number
Patient's Name
Insured's Name
Patient's Address: No., Street
Patient's Zip Code (digits 6-9)
Patient's Telephone Number
Insured's Address: No., Street
Insured's Zip Code (digits 6-9)
Insured's Telephone Number
Other Insured's Name
Other Insured's Policy or Group Number
Insured's Policy Group or FECA Number
Patient's Account No.
Patient's Social Security Number~~

(Rule 1200-7-4-.01, continued)

- ~~(9) "Processed Data" is defined as data that have been analyzed by the Department's designated data vendor(s) and errors, inconsistencies, and/or incomplete elements in the data set, if any, have been identified.~~
- ~~(10) "Public" shall be defined as anyone other than the THA and the Department of Health.~~
- ~~(11) "THA" shall be defined as the administrative offices and staff of the Tennessee Hospital Association.~~
- ~~(12) "Verified Data" is defined as data that have been processed by the Department of Health after the health facilities have had the opportunity to suggest corrections, and/or deletions; and all appropriate revisions have been made to the data by the Department of Health.~~

~~*Authority:* T.C.A. §§4-5-202, 4-5-204, and 68-1-119. *Administrative History:* Original rule filed January 27, 2005; effective April 12, 2005.~~

~~1200-7-4-.02 PURPOSE.~~

~~The reporting of ambulatory patient data will provide a statewide integrated database of ambulatory surgical procedures and certain radiological procedures and permit assessment of variations in utilization, practice parameters, access to ambulatory care and estimates of cost trends for ambulatory procedures.~~

~~*Authority:* T.C.A. §§4-5-202, 4-5-204, and 68-1-119. *Administrative History:* Original rule filed January 27, 2005; effective April 12, 2005.~~

~~1200-7-4-.03 REPORTING REQUIREMENTS.~~

- ~~(1) Each licensed Ambulatory Surgical Treatment Center (ASTC) shall report to the Tennessee Department of Health all claims data found on the appropriate form on every patient visit. Claims for discharges reported by ASTCs to the Department under Section 68-3-505 shall not be required.~~
- ~~(2) Each ASTC shall submit the data through third party entities, hereafter referred to as "vendors", approved by the Department of Health for the purpose of editing the data according to rules and regulations established by the Commissioner.~~
- ~~(3) The format for reporting the required data elements, and the standards for completeness are defined by the Department in the Ambulatory Surgical Treatment Center Procedural Manual.~~
- ~~(4) Each ASTC shall be responsible for the costs associated with processing of the data by the approved vendors.~~
- ~~(5) Each ASTC shall report the claims data at least quarterly to its approved vendor with a separate data set for each facility location.~~
- ~~(6) Each ASTC shall designate one staff member to be responsible for reporting the claims data and shall notify the Department and its approved vendor of the individual's name, title, work address, work telephone number, and e-mail address.~~

~~*Authority:* T.C.A. §§4-5-202, 4-5-204, and 68-1-119. *Administrative History:* Original rule filed January 27, 2005; effective April 12, 2005.~~

1200-7-4-.04 REQUIRED DATA ELEMENTS.

- (1) ~~The Tennessee Department of Health, Office of Health Statistics (TDH-HS) will oversee the development of the Ambulatory Surgical Treatment Center Data System (ASTC) Procedural Manual that will list the variables to be reported, their descriptions and reporting format, and other information associated with data submission. The Department of Health shall make future changes in the Procedural Manual when the Commissioner deems changes to be necessary. The Department will notify reporting entities of all revisions. These revisions become effective one hundred and eighty (180) days following the date of notification. At that time, failure to meet the amended requirements is subject to the penalties as prescribed by T.C.A. §68-1-119.~~

- (2) ~~The data set for each reported discharge, regardless of payer, will include, but is not limited to, the following data elements, as listed on form CMS-1500:~~
 1. ~~Type of Insurance~~
 - 1a. ~~Insured's ID Number~~
 2. ~~Patient's Name~~
 3. ~~Patient's Date of Birth and Sex~~
 4. ~~Insured's Name~~
 5. ~~Patient's Address: No., Street~~
 5. ~~Patient's Address: City, State~~
 5. ~~Patient's Zip Code~~
 5. ~~Patient's Telephone Number~~
 6. ~~Patient Relationship to Insured~~
 7. ~~Insured's Address: No., Street~~
 7. ~~Insured's Address: City, State~~
 7. ~~Insured's Zip Code~~
 7. ~~Insured's Telephone Number~~
 8. ~~Patient Status~~
 9. ~~Other Insured's Name~~
 - 9a. ~~Other Insured's Policy or Group Number~~
 - 9b. ~~Other Insured's Date of Birth and Sex~~
 - 9c. ~~Other Insured's Employer's/School Name~~
 - 9d. ~~Insurance Plan/Program Name~~
 - 10a. ~~Patient's Condition Related to Employment~~
 - 10b. ~~Patient's Condition Related to Auto Accident~~
 - 10c. ~~Patient's Condition Related to Other Accident~~
 11. ~~Insured's Policy Group or FECA Number~~
 - 11a. ~~Insured's Date of Birth and Sex~~
 - 11b. ~~Insured's Employer's/School Name~~
 - 11c. ~~Insurance Plan/Program Name~~
 - 11d. ~~Another Health Benefit Plan~~
 14. ~~Date of Current Illness/Injury/Pregnancy~~
 15. ~~First Date of Same/Similar Illness~~
 16. ~~Dates Patient Unable to Work~~
 17. ~~Name of Referring Physician or Other Source~~
 - 17a. ~~ID of Referring Physician~~
 18. ~~Hospitalization Dates Related to Current Services~~
 20. ~~Outside Lab & Charges~~
 21. ~~Diagnoses or Nature of Illness or Injury~~
 22. ~~Medicaid Resubmission: Code & Original Ref. No.~~
 23. ~~Prior Authorization Number~~
 - 24A. ~~Date(s) of Service~~
 - 24B. ~~Place of Service~~
 - 24C. ~~Type of Service~~

(Rule 1200-7-4-.04, continued)

- 24D. Procedures, Services, or Supplies
- 24E. Diagnosis Code
- 24F. Charges
- 24G. Days or Units
- 24H. EPSDT Family Plan
- 24I. EMG
- 24J. COB
- 25. Federal Tax ID Number & Type
- 26. Patient's Account No.
- 27. Accept Assignment
- 28. Total Charge
- 29. Amount Paid
- 30. Balance Due
- 32. Name and Address of Facility Where Services Were Rendered
- 33. Physician's, Supplier's Billing Name, Address, Zip Code, & Phone number
- 33. PIN number
- 33. GRP number

(3) ~~If collected by the ASTC, the data set for each reported discharge will include the following data elements:~~

- 1. Patient's Social Security Number
- 2. Patient's Race/Ethnicity (optional)

~~Authority: T.C.A. §§4-5-202, 4-5-204, and 68-1-119. Administrative History: Original rule filed January 27, 2005; effective April 12, 2005.~~

1200-7-4-.05 SCHEDULE OF SUBMISSION.

(1) ~~All data submitted to the approved vendor by the ASTCs must be in a format and medium approved by the vendor.~~

(2) ~~Submission of required data by the ASTCs to their approved vendor shall adhere to the following quarterly schedule:~~

Quarter	Time Span	Submission Due Date
Q1	January 1 - March 31	May 30
Q2	April 1 - June 30	August 29
Q3	July 1 - September 30	November 29
Q4	October 1 - December 31	March 1

(3) ~~The approved vendor must receive all required data within 60 days following the close of the quarter.~~

~~Authority: T.C.A. §§4-5-202, 4-5-204, and 68-1-119. Administrative History: Original rule filed January 27, 2005; effective April 12, 2005.~~

1200-7-4-.06 PENALTY ASSESSMENT.

(1) ~~Beginning with records due on or before January 1, 2004, the Department of Health will assess a civil penalty of five cents (\$.05) per record per day for delinquent discharge reports. A claims data report is delinquent if the approved vendor does not receive it within sixty (60) days after the end of the quarter.~~

(Rule 1200-7-4-.06, continued)

- ~~(2) If the vendor receives the report in incomplete form, the Commissioner shall notify the ASTC and provide fifteen (15) additional days for the ASTC to correct the error, prior to the imposition of any civil penalty.~~
- ~~(3) For ASTCs not submitting any discharge reports by the submission deadline, the number of quarterly discharge reports delinquent, for a particular facility per quarter, will be estimated by dividing the number of total discharges or admissions reported in Schedule D Availability and Utilization of Services of the most current, final Joint Annual Report of Ambulatory Surgical Treatment Centers (JAR ASTC) on file with the Department of Health for that facility by four (4).~~
- ~~(4) The Department will allow a 5% error rate on data submitted for discharges occurring before January 1, 2006. For discharges occurring on or after January 1, 2006, the acceptable error rate will be 2%. Records that fall within the acceptable error rate will not be subject to any penalties. Facilities that exceed the acceptable error rate will be penalized based on total errors (not on errors minus 5% or minus 2%).~~
- ~~(5) The Commissioner shall send notice of an approximate daily assessment of the civil penalty to the delinquent ASTC. The assessment will estimate the approximate penalty per day based on the estimated number of discharge reports. The assessment will state that penalties will begin to accrue on the due date and will accrue until the delinquent discharge reports are received or the maximum penalty is reached. The maximum civil penalty for a delinquent report is ten dollars (\$10) for each discharge record.~~
- ~~(6) Upon receipt of the penalty assessment, the ASTC has the right to an informal conference with the Commissioner. The Commissioner must receive a written request for an informal conference within thirty (30) days of the assessment, with a copy being sent to the Director of Health Statistics within the same time frame.~~
- ~~(7) After the informal conference with the Commissioner, or if no conference is requested, or the time frame for requesting a conference has expired, the Department may proceed to collect the penalty by setting the penalty off against funds owed to the ASTC or by billing the facility for the amount of the penalty. If the facility fails to submit the required amount to the Department within 60 days of the date of the bill, the Department may institute litigation.~~
- ~~(8) The Commissioner has the authority to delay any penalty for not correcting any particular data element and can grant a waiver from penalties if the failure is due to an act of God or other events of extraordinary circumstances clearly beyond the control of the ASTC. The facility must make a written request for the waiver and the informal conference within the first thirty (30) days following notification of the assessment. The proceedings before the Commissioner involving penalty waivers are not subject to the Uniform Administrative Procedures Act.~~

~~*Authority:* T.C.A. §§ 4-5-202, 4-5-204, and 68-1-119. *Administrative History:* Original rule filed January 27, 2005; effective April 12, 2005.~~

~~1200-7-4-.07 VENDOR REQUIREMENTS.~~

- ~~(1) An applicant desiring to be approved as a statewide data processing vendor shall make written application to the Department of Health, Office of Health Statistics. The Department will approve a maximum of three vendors.~~
- ~~(2) The format for reporting the required codes and the standards for completeness and quality are defined by the Department in the ASTC Procedural Manual. Each record must include the ID number approved by the Department for the reporting ASTC and all generated fields specified by the~~

(Rule 1200-7-4-.07, continued)

~~Department in the ASTC Procedural Manual. All records submitted to the Department must be in an electronic or magnetic medium approved by the Department.~~

- ~~(3) The applicant must demonstrate that it is capable of receiving, and compiling, from ASTCs throughout the State the patient data elements specified in 1200-7-4-.04 (2) of this rule.~~
- ~~(4) The applicant must demonstrate that it is capable of examining the patient data it receives for accuracy, informing the ASTC submitting the patient data of all potential errors in the data which are discovered as a result of the examination of accuracy, and correcting the patient data as directed by the ASTC and/or the Department.~~
- ~~(5) The applicant shall affirm that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable and current HIPAA requirements in the course of doing business with the State. The applicant shall affirm that it will cooperate with the State in the course of its performance so that both parties will be in compliance with HIPAA, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations. The applicant will sign any documents that are reasonably necessary to keep both parties in compliance with HIPAA, including, but not limited to, business associate agreements.~~
- ~~(6) If an approved vendor fails to carry out its requirements as specified in the rules of the Tennessee Department of Health, the Department may remove its certification as an approved vendor.~~

~~*Authority:* T.C.A. §§ 4-5-202, 4-5-204, and 68-1-119. *Administrative History:* Original rule filed January 27, 2005; effective April 12, 2005.~~

~~1200-7-4-.08 PROCESSING AND VERIFICATION.~~

- ~~(1) Discharge data reported in an incorrect format or with elements inconsistent with this rule will be considered in error and returned to the reporting entity.~~
- ~~(2) Discharge data considered in error is subject to the penalties as prescribed in T.C.A. §68-1-119, unless the errors are corrected within fifteen (15) days after the ASTC receives notification of existing errors.~~
- ~~(3) Each approved vendor shall report quarterly to the Department the reporting status of all facilities utilizing its services. An update to the original report to update the status of facilities that failed to report, that were delinquent in reporting, or that exceeded the acceptable error rate shall be provided to the Department on an as requested basis. Each vendor shall maintain and report to the Department any information the Department deems necessary for penalty assessment.~~
- ~~(4) Each approved vendor shall report all data received each quarter, including additions and corrections, to the Department no more than one hundred and twenty (120) days following the close of the quarter. If any facility's data is incomplete or incorrect at that time, the vendor shall contact the Department for a decision on whether the quarterly submission should be delayed to allow for the completion or correction of the data, or if that facility's data should be held for inclusion in the next quarterly submission.~~
- ~~(5) After all data have been computerized, edited, updated, and determined to be the final corrected set by the Department, each ASTC shall be given the opportunity to review the entire data set relating to their facility prior to the data being released to the public, if they so desire.~~

(Rule 1200-7-4-.08, continued)

- (6) ~~The Ambulatory Surgical Treatment Center shall notify Health Statistics in writing of any errors in the data set. Valid explanations of the errors and documentation including correct data must be provided with the notification. The ASTC shall provide corrected records for the data set.~~

~~*Authority:* T.C.A. §§4-5-202, 4-5-204, and 68-1-119. *Administrative History:* Original rule filed January 27, 2005; effective April 12, 2005.~~

~~**1200-7-4-.09 DATA AVAILABILITY.**~~

- (1) ~~Within thirty (30) days after all ASTC claims data has been verified and deemed final, the Department shall promptly make the data available to the Tennessee Hospital Association for review and copying.~~
- (2) ~~No data will be released to the public until the verification process is completed.~~
- (3) ~~The Commissioner has the authority to delay release of any particular data element(s) if it is determined that the quality or completeness of the information is not acceptable.~~
- (4) ~~The data file will be made available for release and purchase; however, the personal identifiers on the patient records will be removed to protect the confidentiality of the patients.~~
- (5) ~~The fee for preparation and release of the annual data file, or any subset of the annual file, will be \$220 per copy. No fee will be charged to an ASTC for its own finalized data.~~

~~*Authority:* T.C.A. §§4-5-202, 4-5-204, and 68-1-119. *Administrative History:* Original rule filed January 27, 2005; effective April 12, 2005.~~

~~**1200-7-4-.10 CONFIDENTIAL INFORMATION.**~~

- (1) ~~All information reported to the Commissioner under this part is confidential until processed and verified by the Department.~~
- (2) ~~In no event may personal identifiers be released to anyone except qualified vendors nor shall information be made available to anyone by either the Department, vendors or the THA that reasonably could be expected to reveal the identity of a patient including those items contained in 45 C.F.R. § 514 (a) and (b).~~
- (3) ~~Information regarding the name of an employer will not be released to the public. Information about any employer may be released to the employer identified in the data record. ASTCs may receive information regarding the name of employer for their claims only.~~
- (4) ~~Neither the Department of Health nor THA shall release information to the public in violation of any other statutory provisions for confidentiality of health related matters or the providers of health services.~~
- (5) ~~The Department may use or authorize use of the compiled data, including the personal identifiers, for purposes that are necessary to provide for or protect the health of the population and as permitted by law.~~

~~*Authority:* T.C.A. §§4-5-202, 4-5-204, and 68-1-119. *Administrative History:* Original rule filed January 27, 2005; effective April 12, 2005.~~

(Rule 1200-7-4-.08, continued)

Chapter 1200-07-04

Ambulatory Surgical Treatment Center Data System and Outpatient Diagnostic Center Data System

- 1200-07-04-.01 Definitions
- 1200-07-04-.02 Purpose
- 1200-07-04-.03 Reporting Requirements
- 1200-07-04-.04 Required Data Elements
- 1200-07-04-.05 Submission Schedule
- 1200-07-04-.06 Vendor Requirements
- 1200-07-04-.07 Processing and Verification
- 1200-07-04-.08 Penalty Assessment
- 1200-07-04-.09 Data Availability
- 1200-07-04-.10 Confidential Information

1200-07-04-.01 Definitions

- (1) "Ambulatory Surgical Treatment Center" shall have the same definition as contained in T.C.A. § 68-11-201.
- (2) "ASTC" is the acronym for ambulatory surgical treatment center.
- (3) "Claim" shall mean a charge or bill for services rendered, billed to the patient, to another private individual, or to a third party payer, public or private.
- (4) "Claims Data" shall mean all data elements collected for all patients for whom an ASTC or ODC provides services that are entered on any claim form prepared by the ASTC or ODC and shall always include those required data elements identified in the subparagraphs listed in rule 1200-07-04-.04, paragraphs (1) and (2).
- (5) "CMS-1500" shall mean the claim form "Centers for Medicare & Medicaid Services 1500" or its successor form.
- (6) "Commissioner" shall mean the commissioner of the Tennessee Department of Health.
- (7) "Data Element" shall mean any individual piece of information collected from a patient by an ASTC or ODC during the process of providing services to that patient for which the ASTC or ODC will file a claim.
- (8) "Department" shall mean the Tennessee Department of Health.
- (9) "Error" shall mean data that are incomplete or inconsistent with the specifications in the ASTC Data System Procedural Manual, the ODC Data System Procedural Manual, or these rules.
- (10) "Final Joint Annual Report" shall mean the most recent Joint Annual Report filed by an ASTC or ODC where the data contained in the report have been edited, queried, and updated when appropriate, by the Department.
- (11) "JAR" is the acronym for Joint Annual Report.
- (12) "ODC" is the acronym for outpatient diagnostic center.

(Rule 1200-7-4-.08, continued)

- (13) "Outpatient Diagnostic Center" shall have the same definition as contained in T.C.A. §68-11-201.
- (14) "Personal Identifiers" shall be defined to include all the identifiers contained in 45 C.F.R. § 164.514 (b) or (e).
- (15) "Processed Data" shall mean data that have been analyzed by the Department or the Department's designated data vendor(s) and errors, inconsistencies, and/or incomplete elements in the data set, if any, have been identified.
- (16) "Public" shall mean anyone other than the Tennessee Department of Health, its vendors, and its contracted agencies.
- (17) "Record Level Data" shall mean a set of data that is specific to individual patient claims.
- (18) "State" shall mean the government of the State of Tennessee including all its agencies.
- (19) "UB-04" shall mean the CMS Form 1450, [a.k.a. "the Uniform Hospital Billing Form"], or its successor forms as established by the National Uniform Billing Committee and the State Uniform Billing Implementation Committee.
- (20) "Vendor" shall mean a third party entity, approved by the Department, through whom an ASTC or ODC submits its claims data for the purpose of compilation and editing according to these rules and the instructions of the Department.
- (21) "Verified Data" shall mean data that have been processed by the Department after the ASTCs or ODCs have had the opportunity to suggest corrections and/or deletions, and all appropriate revisions have been made to the data and approved by the Department.

Authority: T.C.A. §§ 68-1-103 and 68-1-119.

1200-07-04-.02 Purpose

- (1) The reporting of ambulatory surgical and outpatient diagnostic data will provide two statewide databases and permit assessment of variations in utilization, practice parameters, access to care, and charges.

Authority: T.C.A. §§ 68-1-103 and 68-1-119.

1200-07-04-.03 Reporting Requirements

- (1) Each ASTC and ODC shall contract with one of the approved vendors and shall report through its vendor all its claims data. Claims data for all free or charity services provided by any ASTC or ODC that otherwise submits claims for reimbursement shall also be reported to the vendor.
- (2) No claim reporting is required for any of the following:
 - (a) From a licensed ASTC or ODC that provides only free care and never bills for any services.

(Rule 1200-7-4-.08, continued)

- (b) Regarding any procedures already reported by an ASTC or ODC to the Department under T.C.A. § 68-3-505 or services ancillary thereto such as counseling, testing, or follow-up.
- (3) The Department will prepare the ASTC and ODC Data System-Procedural Manuals that will list the variables to be reported, their descriptions and reporting format, and other information associated with data submission. The Department shall issue revisions to the Procedural Manuals when the Commissioner deems it necessary. The Department will notify each ASTC, ODC, and vendor of all revisions. These revisions become effective one hundred and eighty (180) days following the date of notification. At that time, failure to meet the amended requirements is subject to the penalties as prescribed by T.C.A. §68-1-119.
- (4) Each ASTC or ODC shall report all data elements using the actual values used for billing by the ASTC or the ODC. No data elements shall be encrypted or otherwise altered. This rule shall not be interpreted to prevent encryption of entire files for security in transmission to parties having the appropriate decryption software.
- (5) Each ASTC and ODC shall be responsible for submitting its data to the approved vendor in a format and medium approved by the State.
- (6) Each ASTC and ODC shall be responsible for the costs associated with the processing of the data by the approved vendors.
- (7) Each ASTC and ODC shall report in a format using the data elements which correspond with the claim form used by the ASTC or ODC for billing. If an ASTC or ODC submits claims using both the CMS-1500 and UB-04 forms, the claims data shall be submitted in separate data sets for each form.
- (8) Each ASTC and ODC shall report the claims data at least quarterly, pursuant to rule 1200-07-04-.05, to its approved vendor with a separate data set for each facility location.
- (9) Each ASTC and ODC shall designate one staff member to be responsible for reporting the claims data and shall notify the Department and its approved vendor of the name, title, work address, work telephone number, and e-mail address of the designated staff member.

Authority: T.C.A. §§ 68-1-103 and 68-1-119.

1200-07-04-.04 Required Data Elements

- (1) CMS-1500 Claims Forms
 - (a) Each ASTC and ODC must report to the Department all the following data elements for each and every claim based on the CMS-1500 form:
 - 1. Patient's Birth Date
 - 2. Patient's Sex
 - 3. Patient's Address (State)
 - 4. Patient's Address (Zip Code)

(Rule 1200-7-4-.08, continued)

- _____ 5. Dates of Service (Through Date)
- _____ 6. Diagnosis or Nature of Illness or Injury
- _____ 7. Total Charge
- _____ 8. Patient's Social Security Number
- _____ 9. Patient's Race/Ethnicity

(b) Each ASTC and ODC must report to the Department all CMS-1500 data elements listed in the relevant ASTC or ODC Procedural Manual whenever the data element is collected by the ASTC or ODC and/or used for billing.

(2) UB-04 Claims Forms

(a) Each ASTC and ODC must report to the Department all the following data elements for each and every claim based on the UB-04 form:

- _____ 1. Statement Covers Period
- _____ 2. Patient's Address (State)
- _____ 3. Patient's Address (Zip Code)
- _____ 4. Patient's Date of Birth
- _____ 5. Patient's Sex
- _____ 6. Revenue Codes
- _____ 7. Total Charges (By Revenue Code Category)
- _____ 8. Principal Diagnosis Code
- _____ 9. Patient's Social Security Number
- _____ 10. Patient's Race/Ethnicity

(b) Each ASTC and ODC must report to the Department all UB-04 data elements listed in the relevant ASTC or ODC Procedural Manual whenever the data element is collected by the ASTC or ODC and/or used for billing.

(3) Each ASTC and ODC shall report to the Department all data elements that it collected from patients and which it reported by making an entry in any or all of the data element spaces contained on any form other than the CMS-1500 or UB-04 on which it submits a claim. However, the data elements identified in paragraphs (1)(a) and (2)(a) above that must be collected, entered and reported to the Department by the ASTC or ODC for the identified claim form shall also be reported to the Department when any other claim form is used.

(4) Data elements collected by the ASTC or ODC that are not specifically identified in either paragraphs (1) through (3) of this rule or in the procedural manual shall not be reported to the vendor or the Department.

(Rule 1200-7-4-.08, continued)

Authority: T.C.A. §§ 68-1-103 and 68-1-119.

1200-07-04-.05 Submission Schedule

- (1) Each ASTC or ODC shall submit all required claims to its approved vendor according to the following quarterly schedule:

Quarter	Time Span	Submission Due Date
Q1	January 1 – March 31	May 30
Q2	April 1 – June 30	August 29
Q3	July 1 – September 30	November 29
Q4	October 1 – December 31	March 1

Authority: T.C.A. §§ 68-1-103 and 68-1-119.

1200-07-04-.06 Vendor Requirements

- (1) An applicant desiring to be approved as a statewide data processing vendor shall make written application to the Department. To be selected as a statewide vendor by the Department the applicant must demonstrate the ability to do all of the following:
- (a) Process the claims data as specified by the Department using the codes and the standards for completeness and quality specified by the Department.
 - (b) Include in each claims data record the ID number approved by the Department for the reporting ASTC or ODC and all vendor-generated fields specified by the Department.
 - (c) Examine the claims data it receives for accuracy, inform the ASTC or ODC submitting the data of all potential errors in the data which are discovered as a result of the examination of accuracy, and correct the data as directed by the ASTC, the ODC, and/or the Department.
 - (d) Submit the claims data to the Department in an electronic or magnetic medium or process approved by the Department.
 - (e) Report to the Department each ASTC or ODC that has either failed to submit claims data or is tardy in doing so.
 - (f) Affirm that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable and current HIPAA requirements in the course of doing business with the State. The applicant shall affirm that it will cooperate with the State in the course of its performance so that both parties will be in compliance with HIPAA, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations. The applicant will sign any documents that are reasonably necessary to keep both parties in compliance with HIPAA, including, but not limited to, business associate agreements.

(Rule 1200-7-4-.08, continued)

- (2) If any approved vendor fails to carry out its requirements as specified in the rules of the Tennessee Department of Health, the Department may remove its approval as a statewide data processing vendor.

Authority: T.C.A. §§ 68-1-103 and 68-1-119.

1200-07-04-.07 Processing and Verification

- (1) Each vendor must review all claims data submitted for completeness and accuracy. If errors, inconsistencies or incomplete elements are identified by the vendor, the vendor must report the errors to the ASTC or ODC in writing.
- (2) Upon receiving written notification of errors, the ASTC or ODC shall investigate the problem and shall supply correct information to the vendor within fifteen (15) days from notification.
- (3) Each approved vendor must report quarterly to the Department the reporting status of all ASTCs or ODCs utilizing its services. The status of facilities that failed to report, that were delinquent in reporting, or that exceeded the acceptable error rate shall be provided to the Department quarterly and then updated at the initiative of the vendor or upon request of the Department. Each vendor shall maintain and report to the Department any information the Department deems necessary for penalty assessment.
- (4) Each approved vendor must report all data received each quarter, including additions and corrections, to the Department no more than sixty (60) days following the submission due date specified in rule 1200-07-04-.05.
- (5) Each ASTC and ODC shall be given a ten (10) day period to review the quarterly data set relating to their facility after the quarterly data have been computerized, edited, updated, and determined to be the final corrected set by the Department. Upon the expiration of the ten (10) day period, absent receipt of corrections and/or revisions from an ASTC or ODC, the quarterly data is considered verified. If corrections and/or revisions are received by the Department within the ten day period, the quarterly data is considered verified only after the Department has made any corrections and/or revisions it considers appropriate.

Authority: T.C.A. §§ 68-1-103 and 68-1-119.

1200-07-04-.08 Penalty Assessment

- (1) The Department will assess the civil penalties authorized by T.C.A. § 68-1-119(b) each day claims data are reported later than the submission due date identified in rule 1200-07-04-.05 or not reported at all up to the statutory maximum for each claim record.
- (2) Any ASTC or ODC not submitting any claims data by the submission deadline will have the number of quarterly unreported claims records calculated, for purposes of civil penalty assessment, by dividing by four (4), the number of total discharges or admissions reported on Schedule D (Availability and Utilization of Services) of the most current final JAR of the ASTC or ODC on file with the Department for that facility.
- (3) An ASTC or ODC not submitting any claims data by the submission deadline will begin accruing penalties the day immediately following the submission deadline and ending the day when the actual claims data are received by the vendor or the maximum penalty is

(Rule 1200-7-4-.08, continued)

reached.

- (4) The Department will report the rate of error it identifies to the ASTC or ODC in writing. The acceptable error rate will be two percent (2%). Records that fall within the acceptable error rate will not be subject to penalties. ASTCs or ODCs that exceed the acceptable error rate will be penalized based on total errors.
- (5) An ASTC or ODC that does not timely submit corrected claims records will accrue delinquent penalties starting the sixteenth (16th) day after error notification and ending the day when the actual corrected claims data are received by the Department or the maximum penalty is reached.
- (6) Upon receipt of the notice of civil penalty assessment the ASTC or ODC has the right to an informal conference with the Commissioner or a formal hearing to contest the assessment.
 - (a) Informal conferences are governed by T.C.A. § 68-1-119(b) and (c).
 - (b) A request for a formal hearing must be made in writing and received by the Department within thirty (30) days of the receipt of the notice of assessment or, if an informal conference pursuant to subparagraph (a) was requested, within thirty (30) days of the receipt of the written disposition of the informal conference. Proceedings involving formal contests of civil penalties are subject to the contested case provisions of the Uniform Administrative Procedures Act.
 - (c) Civil penalties for any ASTC or ODC that continues to violate the law during the pendency of the informal conference will continue to accrue until either the violation ends or the maximum civil penalty is reached.
 - (d) Waiver of penalties is governed by T.C.A. § 68-1-119(c). However, the ASTC or ODC must make a request for the waiver in its request for an informal conference pursuant to subparagraph (a) or in its request for a formal hearing pursuant to subparagraph (b).
- (7) Unless a request for a formal hearing pursuant to subparagraph (6)(b) is timely received, the civil penalties become final and collectable either on the date that the time for requesting an informal conference has expired without a request being filed, or on the date on which the written final disposition of the informal conference is received.

Authority: T.C.A. §§ 68-1-103 and 68-1-119.

1200-07-04-.09 Data Availability

- (1) If the Commissioner determines that the quality or completeness of the information is not acceptable, he or she has the authority to delay release of any particular data element(s).
- (2) The Department may create reports for public release using any available processed and verified data. It may also provide custom reports, as requested by the public, using any available processed and verified data. Facility specific data reports will not be released to the public based on less than four (4) consecutive quarters of data.
- (3) The State, its agents and the vendors may receive reports of any record necessary, together with any needed patient identifiers, to carry out their contractual duties. This includes any organization contracted with to provide editing, quality control, database management services, or research for the State, or to provide keying of paper claims

(Rule 1200-7-4-.08, continued)

forms for the vendors. Any such contractual agent must agree in writing to establish and maintain appropriate controls to protect the confidentiality of the data and must agree to return or destroy any data or records at the termination of the contract.

- (4) The Department will make record level data files available for public release and purchase under the following conditions. The fee for a quarter of data for each data system will be two hundred fifty dollars (\$250.00). The fee for a subset of a quarter of data for each data system will be two hundred fifty dollars (\$250.00). The Department maintains a proprietary interest in all record level data it sells or distributes and such data are made available solely for use by the purchaser and may not be given or sold to another entity.

Authority: T.C.A. §§ 68-1-103 and 68-1-119.

1200-07-04-.10 Confidential Information

- (1) All information reported to the Commissioner under this part is confidential until processed and verified by the Department.
- (2) The Commissioner may use or authorize use of this data, including the personal identifiers, for purposes that are necessary to provide for or protect the health of the population and as permitted by law. In no event may personal identifiers be released to the public.
- (3) Information regarding the name of an employer will not be released to the public. Information about any employer may be released to the employer identified in the data record. A facility may receive information regarding the name of an employer for its claims only.
- (4) The data may be released pursuant to the provisions of 45 C.F. R. § 164.514 (b) or (e). However, any data released to the public, in addition to those items required by law to be deleted, will also not contain any of the following:
- (a) Any patient's address city;
 - (b) An insured's address city;
 - (c) The month and day of all dates;
 - (d) Any numbers after the first three numbers of all zip codes for areas having a population under 20,000;
 - (e) Any numbers after the first five numbers of all zip codes for areas having a population 20,000 or more;
 - (f) The year of birth and the actual age of any person over eighty nine (89) years of age; and
 - (g) Information that reasonably could be expected to reveal the identity of a patient, including those items contained in 45 C.F.R. § 164.514 (a) and (b)(2)(i).
- (5) Any agency of the State of Tennessee seeking confidential ASTC or ODC claims data or reports containing such confidential information, must agree in writing to follow all confidentiality restrictions of the Department concerning use of this data. The agency must also agree in writing to release no record level information to any other entity, and

(Rule 1200-7-4-.08, continued)

shall forward all such requests for record level information to the Department.

Authority: T.C.A. §§ 68-1-103 and 68-1-119.

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

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

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner of Health on 04/04/2012 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



MY COMMISSION EXPIRES:
May 5, 2015

Date: 4/4/2012

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 04/04/2012

Notary Public Signature: Barbara E. West

My commission expires on: 05/05/2015

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.

Attorney General and Reporter

1-22-13

Date

Department of State Use Only

Filed with the Department of State on: 1/29/13

Effective on: 6/30/13

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION: University of Tennessee at Chattanooga

SUBJECT: Library Fines

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-9-209

EFFECTIVE DATES: July 29, 2013 through June 30, 2014

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rules modifies the amounts of library fines for lost or overdue items at the University of Tennessee at Chattanooga.

For lost or billed items, borrowers will be assessed a flat replacement fee of \$100.00 plus a nonrefundable processing fee of \$5.00 for each item. Upon request, in lieu of the flat replacement fee, the borrower will be allowed to either pay the library the amount of the market cost to replace the item or to provide the library with a replacement item acceptable to the library.

Hourly reserve items and library equipment are subject to overdue fines of \$5.00 per hour, up to a limit of \$15.00 for each item.

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)

The University of Tennessee anticipates that this rule change will have minimal to no impact on local governments.

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For Department of State Use Only

Sequence Number: 02-14-13
Rule ID(s): 5378
File Date: 2/7/13
Effective Date: 7/29/13

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

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) 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
1720-02-07	Library Fines
Rule Number	Rule Title
1720-02-07-.01	Library Fines

**RULES
OF
THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA**

**CHAPTER 1720-2-7
LIBRARY FINES**

TABLE OF CONTENTS

1720-2-7-.01	Library Fines	1720-2-7-.03	Repealed
1720-2-7-.02	Repealed		

1720-2-7-.01 LIBRARY FINES.

- (1) There are no fines for overdue items borrowed from the library's regular book or audiovisual collections. For lost or billed items, however, borrowers are assessed a flat replacement fee of \$100.00 the current cost of replacement for each item plus a nonrefundable processing fee of \$45.00 for each bookitem. Upon request by a borrower, in lieu of the flat replacement fee, the borrower will be allowed to either pay the library the amount of the market cost to replace the item or provide the library with a replacement item acceptable to the library.
- (2) Hourly reserve items and library equipment are subject to an overdue fines of \$5.00²⁵ cents per hour, up to a limit of \$15.00 for each item. Daily reserve items are subject to an overdue fine of \$1.00 per hour, up to a limit of \$15.00 for each item.
- ~~(3) Other library resources (e.g., study rooms, laptops) are subject to an overdue fine of \$5.00 per hour, up to a limit of \$15.00 for each resource.~~
- (34) If fines for overdue books and charges for lost books are not paid as required, the borrowers will be blocked from use of the library and not permitted by the business office and registrar (on this or other campuses of the University) either to register or to receive course credits and transcripts until the outstanding obligations are fully cleared.

Authority: Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64. **Administrative History:** Original rule filed September 15, 1976; effective October 15, 1976. Amendment filed August 31, 1982; effective November 15, 1982. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed November 13, 1987; effective February 28, 1988; Amendment filed November 17, 2008; effective March 30, 2009.

1720-2-7-.02 REPEALED.

Authority: Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64. **Administrative History:** Original rule filed September 15, 1976; effective October 15, 1976. Amendment filed August 22, 1980; effective December 1, 1980. Amendment filed August 31, 1982; effective November 15, 1982. Repealed by Public Chapter 575; effective July 1, 1986.

1720-2-7-.03 REPEALED.

Authority: Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64. **Administrative History:** Original rule filed September 15, 1976; effective October 15,

March, 2009 (Revised)

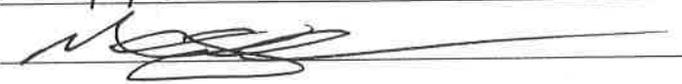
1976. Amendment filed August 22, 1980; effective December 1, 1980. Amendment filed August 31, 1982; effective November 15, 1982. Repealed by Public Chapter 575; effective July 1, 1986.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam	x				
Commissioner Julius Johnson	x				
Commissioner Kevin Huffman				x	
Dr. Joe DiPietro	x				
Dr. Richard D. Rhoda			Non-voting		
Charles C. Anderson, Jr.	x				
Ann Holt Blackburn	x				
George E. Cates	x				
Spruell Driver, Jr.	x				
J. Brian Ferguson	x				
Teresa K. Fowler	x				
John N. Foy	x				
Crawford Gallimore	x				
Vicky B. Gregg	x				
Monice Moore Hagler	x				
Douglas A. Horne	x				
Raja J. Jubran	x				
James L. Murphy, III	x				
Karl A. Schledwitz	x				
Shalin N. Shah			Non-voting		
Don Stansberry	x				
Dr. Victoria S. Steinberg			Non-voting		
Betty Ann Tanner	x				
Charles E. Wharton	x				
Tommy G. Whittaker				x	
Dr. Janet M. Wilbert	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on November 9, 2012, 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: 1/3/13

Signature: 

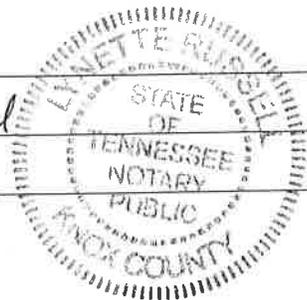
Name of Officer: Matthew Scoggins

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 1-3-13

Notary Public Signature: Lynette Russell

My commission expires on: 1-27-15



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

RE Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

1-28-13

Date

Department of State Use Only

Filed with the Department of State on:

2/7/13

Effective on:

7/29/13

Tre Hargett

Tre Hargett
Secretary of State

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SECRETARY OF STATE
TENNESSEE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Intellectual and Developmental Disabilities

DIVISION:

SUBJECT: Statewide Admission Review Committee

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 33-5-301 through 33-5-304

EFFECTIVE DATES: July 29, 2013 through June 30, 2014

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking repeals rules concerning Voluntary Admissions to Developmental Centers and replaces them with new rules encompassing a single Statewide Admission Review Committee to reflect the Department's current organization, structure, and resources.

Regulatory Flexibility Addendum

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

(If applicable, insert Regulatory Flexibility Addendum here)

This rule should have no effect on small businesses since it is only intended to deal with internal processes of the Department of Intellectual and Developmental Disabilities.

Impact on Local Governments

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

(Insert statement here)

This Rule should have no impact on local governments.

Department of State**Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower

Nashville, TN 37243

Phone: 615-741-2650

Fax: 615-741-5133

Email: register.information@tn.gov**For Department of State Use Only**Sequence Number: 02-15-13Rule ID(s): 5379File Date: 2/11/13Effective Date: 7/29/13

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:	Department of Intellectual and Developmental Disabilities
Division:	
Contact Person:	Steve Tepley
Address:	Frost Bldg., 161 Rosa L. Parks Blvd., Nashville, TN
Zip:	37243
Phone:	615-253-2025
Email:	Steve.tepley@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
0465-01-01	Statewide Admission Review Committee Rules
Rule Number	Rule Title
0465-01-01-.01	Purpose
0465-01-01-.02	Definitions
0465-01-01-.03	Statewide Admissions Review Committee
0465-01-01-.04	Voluntary Admissions
0465-01-01-.05	Emergency Respite Admissions
0465-01-01-.06	Short-Term Training Admissions
0465-01-01-.07	Other Provisions

(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>)

New Rules

0465-01-01

Statewide Admission Review Committee Rules

0465-01-01-.01 Purpose.

The purpose of these rules is to amend the former rules pertaining to Voluntary Admissions to Development Centers and establish new rules in light of the Department of Intellectual and Developmental Disabilities current organization, structure and resources.

0465-01-01-.02 Definitions.

- (1) "Department" means the Tennessee Department of Intellectual and Developmental Disabilities;
- (2) "Regular Voluntary Admission" means an admission authorized by the statewide admission review committee for a specified period of time;
- (3) "Statewide Admission Review Committee" means a committee established by the Tennessee Department of Intellectual and Developmental Disabilities in accordance with T.C.A. § 33-5-301 *et seq.*, appointed by the Commissioner of the Department, to review, consider and, when appropriate, approve admissions to the Department's developmental center(s);
- (4) "Short-term training admission" means an admission authorized by a written agreement between a developmental center and an applicant that the center provide services and supports for a person with intellectual or developmental disability to learn how to perform a certain function or functions for a specified period of time, not exceeding six (6) months, at the end of which the center will discharge the person with intellectual or developmental disability to the care, custody, and control of the applicant.
- (5) "Respite Admission" means an admission for up to forty-five (45) days authorized solely for the purpose of providing a respite for the person having responsibility for the care, custody, and control of a person with intellectual or developmental disability;
- (6) "Emergency respite admission" means an admission for up to forty-five (45) days authorized due to an emergency situation that results in the temporary inability of the person who has the care, custody, and control of a person with intellectual or developmental disability to provide proper care, custody, and control;
- (7) "ICF/ID" means an Intermediate Care Facility for persons with Intellectual Disabilities which is operated by the Department;
- (8) "Class member" means an individual meeting the requirements of the definition of the class in one of the following: People First vs. Clover Bottom Developmental Center or United States of America vs. State of Tennessee, et al (Arlington Developmental Center);

Authority: T.C.A. § 33-5-301, et seq.; T.C.A. § 4-3-2708; Public Acts of 2012, Chapter No. 636. Administrative History:

0465-01-01-.03 Statewide Admission Review Committee.

- (1) The purpose of the Statewide Admission Review Committee ("Committee") is to consider and approve or disapprove applications for voluntary admission to the centers operated by the Department including the Harold Jordan Center.
- (2) The Committee shall maintain at all times as its highest priority the best interest of the person with intellectual or developmental disabilities who is applying for admission. The Committee is expected to exercise its powers and duties with the goal of matching the best available services and supports to the needs of the applicant consistent with departmental resources and funding.
- (3) The voting membership of the Committee shall consist of the persons in the following Departmental positions:
 - (a) Health Services Director (who will serve as chairperson of the Board)
 - (b) Deputy Commissioner of Program Operations
 - (c) The Regional Director or designee from the referring grand region
 - (d) Director of Person Centered Practices
- (4) The Chief Officer (or appointed designee) of the center to which an admission is proposed shall serve as a non-voting member.
- (5) The voting membership of the Committee shall also include the following individuals who are Tennessee residents and not employed by the department:
 - (a) an Independent Support Coordinator (ISC) for persons with intellectual or developmental disabilities;
 - (b) a person who is employed by The ARC of Tennessee as an advocate for persons with intellectual or developmental disabilities; and
 - (c) a person who is a parent, child or sibling of a person with intellectual or developmental disabilities currently receiving services and supports from the State of Tennessee.
 - (d) Two member(s) from the community, service providers and/or other individuals interested in and supportive of the persons with disabilities.
- (6) The non-departmental members of the Committee shall serve for a term of three (3) year(s).
- (7) The Committee shall meet as often as necessary to carry out its functions. Members may participate by telephonic or video conferencing. There is no minimum advance notice requirement for a meeting; however, notice shall be given as soon as practicable.
- (8) A quorum for a meeting shall consist of a majority of voting members.
- (9) Decisions by the Board shall be subject to review by the Department in accordance with T.C.A. § 33-5-304.

Authority: T.C.A. § 33-5-301, et seq.; T.C.A. § 4-3-2708; Public Acts of 2012, Chapter No. 636. Administrative History: Original rule filed October 17, 1978; effective December 1, 1978. Amendment by Public Chapter 969; effective July 1, 1984. Amendment filed July 11, 1984; effective August 10, 1984.

0465-01-01-.04 Voluntary Admissions.

- (1) To be eligible for regular voluntary admission to a center, a person must be a resident of the State of Tennessee with intellectual or developmental disabilities who applies for voluntary admission and does

not lack capacity to apply under T.C.A. § 33-3-218, or an adult whose conservator or legal representative applies for voluntary admission.

- (2) Consistent with T.C.A. § 33-1-204, there is no right or entitlement to admission to a departmental facility of a person with intellectual or developmental disabilities. If suitable accommodations are not available, there is a less restrictive alternative available, or admission is not otherwise appropriate for an individual, alternative services should be considered by the applicant. The Department will develop admission criteria and specify what types of services are offered at such facility.
- (3) Applications.
 - (a) An application or request for voluntary admission shall be submitted to the center or to the appropriate Regional Director on behalf of the applicant. A complete package of information conforming to the criteria specified by the Committee shall accompany the application. The information submitted shall include, but is not limited to, the reason for the referral and the specific needs that can be met in the facility for which admission is sought.
 - (b) Upon receipt of an application, the Department shall undertake an evaluation of the applicant to assess the person's need for services and supports. In making this assessment, the Department shall also consider the least restrictive alternatives available to provide appropriate services and supports and whether suitable accommodations are available at the Department's facilities based upon the above criteria.
 - (c) The application and the Department's findings, reports and recommendations shall be forwarded to the Director of Person Centered Practices, and if complete, it shall be reviewed by the Health Services Director, who shall determine when and whether to convene a Statewide Admission Review Committee meeting.

Authority: T.C.A. § 33-1-204; T.C.A. § 33-5-301, et seq.; T.C.A. § 4-3-2708; Public Acts of 2012, Chapter No. 636. Administrative History: Original rule filed October 17, 1978; effective December 1, 1978. Amendment by Public Chapter 969; effective July 1, 1984. Amendment filed July 11, 1984; effective August 10, 1984.

0465-01-01-.05 Emergency Respite Admissions.

- (1) In an emergency when time does not permit consideration by the Statewide Admissions Review Committee, suitable accommodations are available, and all other feasible solutions have been considered, the Health Services Director and the Deputy Commissioner of Program Operations may, in their discretion, authorize an admission to a Department facility not to exceed forty-five (45) calendar days.
- (2) To initiate a request for an emergency respite admission, the Regional Director shall contact the Health Services Director and the Deputy Commissioner of Program Operations and furnish appropriate information as requested by them to support an Emergency Respite Admission.
- (3) The Statewide Admission Review Committee shall informally review a person's emergency respite admission within seven (7) days after the person is admitted. If this review is not done, then a called meeting shall be held by the Committee to review the propriety of the admission as in the case of regular voluntary admissions and shall make its decision within twenty-five (25) days after admission as to whether it should be continued, modified or terminated.
- (4) If an extension of the admission beyond forty-five (45) days is sought, the Health Services Director shall convene a meeting of the Statewide Admission Review Committee to review the admission. Provided that in no event shall any admission under this section exceed two hundred twenty-five (225) days within a twelve-month period from the first day of an emergency respite admission.

T.C.A. § 33-5-301, et seq.; T.C.A. § 4-3-2708; Public Acts of 2012, Chapter No. 636. Administrative History:

0465-01-01-06 Short-Term Training Admissions.

- (1) In an emergency when time does not permit consideration by the Statewide Admissions Review Committee, suitable accommodations are available, and all other feasible solutions have been considered, the Health Services Director and the Deputy Commissioner of Program Operations may, in their discretion, authorize an admission to a Department facility not to exceed six (6) months.
- (2) The purpose of an admission under this section is for training in specific skills needed for integration of the individual admitted into the community.

T.C.A. § 33-5-301, et seq.; T.C.A. § 4-3-2708; Public Acts of 2012, Chapter No. 636. Administrative History:

0465-01-01-.07 Other Provisions.

- (1) In all admissions except short-term training and emergency respite admissions, the Statewide Admission Review Committee shall determine in which region of the State and in which facility the person's need can best be served consistent with the resources of the Department and the availability of services.
- (2) A respite admission, emergency respite admission, short-term training admission, or combination of such admissions shall not be used to circumvent appearance before the Committee when regular voluntary admission is actually sought or appropriate.
- (3) Consistent with T.C.A. § 33-1-204, there is no right or entitlement of a person with intellectual or developmental disabilities to any category of admission, as defined or referred to in these Rules, to any departmental facility.

Authority: T.C.A. § 33-1-204; T.C.A. § 33-5-301, et seq.; T.C.A. § 4-3-2708; Public Acts of 2012, Chapter No. 636. Administrative History:

Repeals

Chapter 0940-04-01 Voluntary Admissions to Developmental Centers is repealed in its entirety.

Authority: T.C.A. § 33-5-301, et seq.; T.C.A. § 4-3-2708; Public Acts of 2012, Chapter No. 636. Administrative History: Original rule filed October 17, 1978; effective December 1, 1978. Amendment by Public Chapter 969; effective July 1, 1984. Amendment filed July 11, 1984; effective August 10, 1984.

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

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

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 12/19/2012 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rules with the Secretary of State.



Date: 12/19/12

Signature: James M. Henry

Name of Officer: James M. Henry

Title of Officer: Commissioner of DCD

Subscribed and sworn to before me on: Dec 19, 2012

Notary Public Signature: Liessa Michelle Stephenson

My commission expires on: May 3, 2014

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

2-6-13

Date

Department of State Use Only

Filed with the Department of State on: 2/11/13

Effective on: 7/29/13

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Radiological Health

SUBJECT: Licensing and Registration Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-202-101 et seq.

EFFECTIVE DATES: May 14, 2013 through June 30, 2014

FISCAL IMPACT: The agency has provided the following fiscal impact information:

The annual projected revenue increase is approximately \$1,288,000 for all facilities affected by these amendments. The Division of Radiological Health (DRH) has not raised fees since 2001. Every effort has been made to reduce cost before seeking the fee increase. The State General Fund dollars that DRH receives are not adequate to support the services that the Division is obligated to provide by law. Also, several years ago, the Nuclear Regulatory Commission (the NRC) decided to abolish an environmental monitoring contract between the NRC and state agencies. This contract had previously reimbursed the Division for routine environmental monitoring around the TVA nuclear power plants and Nuclear Fuel Services in Erwin, Tennessee. Therefore, the Division had to come up with ways to cover the costs of this program, such as cutting back on other routine sampling relative to radioactive material licensee sites not related to the original NRC contract.

STAFF RULE ABSTRACT:

This rulemaking affects Chapter 0400-20-10. Its various additions and modifications will incorporate:

(1) Increasing existing fees listed in Rules 0400-20-10-24 titled REGISTRATION and 0400-20-10-.31 titled FEES FOR LICENSES.

(2) Adding a fee for a staff member of a registered facility who performs inspection services or who assembles, installs, or services equipment only for that registrant.

(3) Adding a fee category for persons operating facilities for the fabrication of nuclear fuel and for persons engaged in the business of producing electricity by utilizing nuclear energy.

(4) Adding Rule 0400-20-10-.34 to establish a one time supplemental fee assessment for calendar year 2013. Adequate funds are required to facilitate the proper administration of The Radiological Health Service Act and The Medical Radiation Inspection Safety Act. Failure to properly administer these acts threatens the health and safety of the citizens of the state. Operating revenue for the administration of these acts is collected on a calendar year basis. Projected revenue needs of the Division in 2013 cannot be met by current registration and licensing fees. Since a rulemaking to increase 2013 fees could not be completed prior to the first assessment date, January 1, 2013, it was necessary to add this new rule to collect a supplemental fee for calendar year 2013 only.

Public Hearing Comments

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

Comment: Wording for 0400-20-10-.31(20) does not clearly state the type of facilities included in this fee category.

Response: The Department agrees. Wording for 0400-20-10-.31(20) will be changed to:

(20) CATEGORY ----- Actual cost of program
NUCLEAR POWER PLANTS AND OTHER FUEL FACILITIES

The Department may set and collect an annual fee from persons engaged in the business of producing electricity by utilizing nuclear energy and persons operating facilities for the fabrication of nuclear fuel. The amount of fees collected may not exceed the actual expenses that arise from emergency planning and implementation and environmental surveillance activities.

Comment: Wording for 0400-20-10-.34(2)(b) does not clearly state the type of facilities included in this fee category.

Response: The Department agrees. The wording will be changed to:

Category Nuclear Power Plants and Other Fuel Facilities Actual expenses that arise from emergency planning and implementation and environmental surveillance activities

Comment: 0400-20-10-.34(2)(a) class III equipment should be \$86.00 per tube.

Response: The Department agrees.

Comment: 0400-20-10-.34(2)(b) category 1 should be \$125 instead of \$75 and category 12 should be \$75,000 instead of \$125,000.

Response: The Department agrees.

Comment: Rule 0400-20-10-.34 proposes supplemental fees for 2013 to x-ray registrants and license holders. The fees per tube should be adjusted to just 18% of the total for x-ray registrants who meet the requirements for reduced fees as outlined in 0400-20-10-.24(3)(d).

Response: Subparagraph (3)(d) of Rule 0400-20-10-.24 will apply to the comparable fees of Rule 0400-20-10-.34 for qualified registrants.

Comment: Would the fees associated with staff inspectors/installers/assemblers be per person or per facility? We would like the Division to consider allowing institutions to pay one fee per institution.

Response: Currently, the fees associated with inspections will be one per person and the fees associated with assembly/installation/servicing will be one per registered entity.

Comment: Please also consider making changes to 0400-20-10-.27(5)(f). We recognize that this rule has been recently amended. However, we feel the Division's policy regarding penalties and fees for registrants who miss the inspection deadline for an x-ray tube is much more punitive to multi-tube registrants as opposed to single tube registrants in the State. If a single tube registrant misses the inspection deadline, the regulations describe that the 18% discount will not be applicable for that registrant. For multi-tube registrants, we lose the 18% discount for all tubes. Currently, the process allows us to submit a formal appeal to the Division to request that the discount be applied to all other tubes. The appeal process is timely; meanwhile, penalties and fees are compounding on all the tubes possessed by the registrant. The penalties for this rule violation associated with a registrant like the University of Tennessee that possesses approximately 50 tubes is far greater than a veterinary practice with one x-ray tube. We both violated the same rule; however, the disciplinary actions for the multi-tube registrant are much more detrimental. We fully understand and respect the Division's prerogative to assess swift penalties for this rule violation. Our request is if a tube is inspected late, the 18% discount would still automatically apply to all other tubes possessed by the registrant if their inspections are satisfactory to the Division. We also request that the penalties and fees be described to the registrant in the regulations if the inspection does not meet the Division's terms. We understand the Division's need for economic deterrent from future violations. But the civil and criminal penalties described in T.C.A. 68-202-212 are not clear for this situation. Rules similar to those described under T.C.A. 68-202-506(c) for registration violations would be helpful to limit the number of days between the notification of violation and the settlement.

Response: These comments suggest modifications to rules that are beyond the scope of these amendments. The Department will consider these suggestions for a future rulemaking.

Comment: Paragraphs (6-20) of Rule 0400-20-10-.31 address fees for licenses, into different categories – both general licenses and then tiered specific licenses. Currently, license fees for general licenses are not assessed for certain institutions possessing a specific license. Your rules do not state any differentiation from current practice, but can you provide assurance that this will still be the case?

Response: Currently, the Division will not be assessing a general license fee for certain institutions that possess a specific license.

Comment: Will general license fees be assessed in the same manner as x-ray fees, whereby institutions will be assessed the fee for each registered usage of a general license subject to leak testing or will institutions be assessed one fee for use of any combination of General Licenses?

Response: Institutions will be assessed one fee for use of any combination of General Licenses.

Comment: The proposed change to paragraph 0400-20-10-.24(3) eliminates the exemption for registered inspectors and registered assemblers/installers/servicers who are also employees of the registrant for who they are providing the inspection or assembly/installation work therefore subparagraph 0400-20-10-.24(3)(f) should be deleted.

Response: The Department agrees and will delete subparagraph 0400-20-10-.24(3)(f) and amend 0400-20-10-.24(3)(b) and (c) to delete references to 0400-20-10-.24(3)(f). References to 0400-20-10-.24(3)(f) in 0400-20-10-.34(2)(a) will also be deleted.

Comment: The proposed new rule 0400-20-10-.34 establishes one-time supplemental fees for calendar year 2013. While the urgent need for additional financial support for the Division to maintain operations is apparent, this approach is impractical in that it creates a new section of regulations

that will only apply for a few months but will linger on in the regulations for far longer, creating confusion and thereby increasing the administrative workload of both the regulated community and the Division. Also, the regulated community will already face considerable difficulty in absorbing the unbudgeted increase in operating expenses represented by these rule changes. Adding these additional one-time fees will make that task more difficult, again diverting time and resources away from the business of maintaining safety and compliance.

Response: The Division of Radiological Health (DRH) has not raised fees since 2001. Every effort has been made to reduce cost before seeking the fee increase. The State General Fund dollars that DRH receives are not adequate to support the services that the Division is obligated to provide by law. DRH must add the supplemental fees in order to maintain these services.

Comment: While the need for these fee increases to maintain the Division's operations is apparent, it must also be acknowledged that societally, these higher fees will increase the costs of health care, and thereby reduce access to health care for uninsured, underinsured, and other members of our community who are facing financial hardships.

Response: The Division of Radiological Health (DRH) has not raised fees since 2001. Every effort has been made to reduce cost before seeking the fee increase. The State General Fund dollars that DRH receives are not adequate to support the services that the Division is obligated to provide by law. DRH must increase fees in order to maintain these services.

Regulatory Flexibility Addendum

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

- (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 businesses with possession of radioactive material, x-ray equipment, and persons that inspect/assemble/install/service x-ray equipment. The estimated number of small businesses included under these rules is approximately 5,400 facilities.

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

There are no projected additional reporting, recordkeeping or administrative costs as a result of the amendments to the current fee categories. A new fee category has been proposed for programs related to nuclear fuel fabrication and for persons engaged in the business of producing electricity by utilizing nuclear energy. There will be minimal reporting, recordkeeping, and other administrative costs as a result of this fee category.

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

The annual projected revenue increase is approximately \$1,288,000 for all facilities affected by these amendments. The probable effect on small businesses is an increase of approximately \$325,000 which will be divided among approximately 5,400 facilities. For most small businesses, this rule will increase the annual fee amount by \$20 to \$250 per tube for x-ray registrants or per category for radioactive material licensees.

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

The Department is unaware of alternatives to the proposed rules. The Division has done many things to be fiscally responsible and save money. There are expenses the Division has no control over such as increases in salaries and benefits, rent, the cost of state and leased cars, equipment needed to perform our job duties (e.g., survey instruments, PPE, sample containers, x-ray film). Costs associated with these items have increased since the last time fees were increased, 12 years ago.

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

This fee increase will make the State of Tennessee's fees comparable to other states that have agreement state programs. DRH fees are much lower than the NRC's fees. If the Division does not get this additional revenue, we will not be able to continue this level of oversight and run a significant risk of losing our radiation regulatory program back to the federal government. Since the federal agency's (the NRC) fees are much higher, Tennessee's businesses would be impacted by the increase in fees.

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

Exemption from regulatory requirements could compromise the Department's oversight ability to protect public health and the environment at these facilities.

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 Department anticipates that these amended rules will have a financial impact on local governments.

**Department of State
Division of Publications**

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

Sequence Number: 02-17-13
Rule ID(s): 5381
File Date: 2/13/13
Effective Date: 5/14/13

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:	Environment and Conservation
Division:	Radiological Health
Contact Person:	Beth Shelton
Address:	3 rd Floor L & C Annex 401 Church Street Nashville, Tennessee
Zip:	37243-1532
Phone:	(615) 532-0364
Email:	beth.shelton@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
0400-20-10	Licensing and Registration
Rule Number	Rule Title
0400-20-10-.24	Registration
0400-20-10-.31	Fees for Licenses
0400-20-10-.34	Supplemental Fees For Calendar Year 2013

(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>)

Chapter 0400-20-10
Licensing and Registration

Amendments

Subparagraph (a) of paragraph (3) of Rule 0400-20-10-.24 Registration is amended by deleting the subparagraph and substituting the following so that, as amended, subparagraph (a) shall read as follows:

(a) Radiation Machines

CLASS I

Dental Radiation Machines:

~~\$ 65.00~~ \$85.00 per tube

All diagnostic equipment used exclusively for dental diagnostic procedures.

CLASS II

Priority Two Medical Radiation Machines:

~~\$150.00~~ \$195.00 per tube

All medical diagnostic x-ray equipment, not in Class III, used exclusively for medical or veterinary diagnostic procedures.

CLASS III

Priority One Medical Radiation Machines:

~~\$200.00~~ \$286.00 per tube

All diagnostic x-ray equipment used in radiologists' offices, orthopedic surgeon's offices or hospitals exclusively for medical diagnostic procedures.

CLASS IV

Therapy Medical Radiation Machines:

~~\$300.00~~ \$390.00 per tube

All x-ray equipment with energies less than 0.9 MeV used for the purpose of medical or veterinary radiation therapy.

CLASS V

Priority Two Industrial and Educational Radiation Machines:

~~\$600.00~~ \$780.00 per tube

Closed-beam analytical radiation machines, gauges or industrial radiation machines used in shielded room or cabinet radiography.

CLASS VI

Priority One Industrial and Educational Radiation Machines:

~~\$900.00~~ \$1,170.00 per tube

All x-ray machines used for industrial radiography and all open-beam analytical x-ray machines and all radiation machines not specifically included in Class I, II, III, IV, V, VII.

CLASS VII

Accelerators: \$2,000.00 ~~\$2,600.00~~ annual fee, plus an initial fee of \$375.00 per maximum nominal rated MeV for initial certified registration review (initial review fee not to exceed \$150,000.00)

All devices defined as accelerators as per "State Regulations for Protection Against Radiation."

Subparagraph (b) of paragraph (3) of Rule 0400-20-10-.24 Registration is amended by deleting the subparagraph and substituting the following so that, as amended, subparagraph (b) shall read as follows:

(b) ~~A person providing assembly/installation/servicing, except as provided by subparagraph (3)(f) of Rule 0400-20-10-.24, shall pay an annual registration fee of six hundred dollars. A person providing inspection services as permitted by paragraph (4) of Rule 0400-20-10-.27 shall pay an annual registration fee of eight hundred fifty dollars.~~ \$600.00 ~~\$850.00~~

Subparagraph (c) of paragraph (3) of Rule 0400-20-10-.24 Registration is amended by deleting the subparagraph and substituting the following so that, as amended, subparagraph (c) shall read as follows:

(c) ~~A person providing assembly/installation/servicing, except as provided by subparagraph (3)(f) of Rule 0400-20-10-.24, shall pay an annual registration fee of six hundred fifty dollars.~~ \$600.00 ~~\$850.00~~

Subparagraph (f) of paragraph (3) of Rule 0400-20-10-.24 Registration is amended by deleting it in its entirety.

~~(f) A person providing inspection services, as permitted by paragraph (4) of Rule 0400-20-10-.27, or a person providing assembly/installation/servicing, who is a staff member of the facility registered pursuant to Tennessee Code Annotated (T.C.A.) § 68-202-101 et seq. and these Regulations, and who performs such inspection services or assembly/installation/servicing only for that registrant, shall not be subject to subparagraphs (b) and (c) above.~~

Authority: T.C.A. §§ 68-202-201 et seq. and 4-5-201 et seq.

Paragraph (6) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$150.00" from the paragraph and replacing it with "\$350.00" so that, as amended, paragraph (6) shall read as follows:

(6) CATEGORY GL ----- ~~\$150.00~~ \$350.00

Any person possessing radioactive material, under the terms of any general license issued these regulations, in a form or device on which a test for leakage of radioactive material is required.

Paragraph (7) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$300.00" from the paragraph and replacing it with "\$425.00" so that, as amended, paragraph (7) shall read as follows:

(7) CATEGORY 1 ----- ~~\$300.00~~ \$425.00

A specific license for source material used exclusively for shielding radiation.

Paragraph (8) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$600.00" from the paragraph and replacing it with "\$850.00" so that, as amended, paragraph (8) shall read as follows:

(8) CATEGORY 2 ----- ~~\$600.00~~ \$850.00

(a) Reserved.

- (b) The application, use or possession of radioactive material as chromatography sources or gauges not requiring assignment to another category.
- (c) The application, use or possession of radioactive material for in vitro use only, total quantity not to exceed 200 microcuries.
- (d) Any person who packages or containerizes, loads transport vehicles or ships radioactive materials to a licensed disposal/processing facility in Tennessee. In addition to application and annual maintenance fees, there is also a levied fee of two cents per pound (\$0.02/lb) on all items contaminated or potentially contaminated with radioactive material or on low-level radioactive waste received at a processing, storage, disposal or refurbishing facility in Tennessee.

Notwithstanding the requirements of this paragraph and Rule 0400-20-10-.32, licensees with multiple sites within the state will be levied only one fee if items are moved directly from one site to another.

The operator of the disposal/processing facility shall collect the fee of two cents per pound (\$0.02/lb). For each calendar month, he shall remit the total of fees collected for the month to the Division of Radiological Health by the 25th day of the following month.

- (e) The application, use or possession of radioactive material for the calibration for hire of radiation detection, monitoring and measuring instruments.
- (f) The performance for hire of leak tests on sealed sources of radioactive material.

Paragraph (9) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$900.00" from the paragraph and replacing it with "\$1170.00" so that, as amended, paragraph (9) shall read as follows:

- (9) CATEGORY 3 -----~~\$900.00~~ \$1,170.00
- (a) The application, use or possession of radioactive material, unless specific to a higher numbered category, by an academic institution, but does not include licenses authorizing all radioisotopes with atomic number 3 through 83.
 - (b) The possession and use of radioactive material for civil defense activities.
 - (c) The application, use or possession of radioactive material by a medical, institution or physicians for use in radiopharmaceuticals for the diagnosis or therapy of humans.
 - (d) Reserved.
 - (e) Reserved.
 - (f) Reserved.
 - (g) The application, use or possession of radioactive material for demonstration or training purposes.
 - (h) The application, use or possession of radioactive material for in vitro use only, total quantity exceeding 200 microcuries.

- (i) The use of sealed sources for soil and/or construction materials testing at temporary job-sites by licensees with licensed authorization for no more than two (2) devices.
- (j) The use of radioactive material as chromatography sources at temporary job-sites by licensees with licensed authorization for no more than two (2) devices.
- (k) The use of gauging and measuring devices at temporary job-sites by licensees with licensed authorization for no more than two (2) devices.

Paragraph (10) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$1500.00" from the paragraph and replacing it with "\$1950.00" so that, as amended, paragraph (10) shall read as follows:

- (10) CATEGORY 4 ----- ~~\$1,500.00~~ \$1,950.00
- (a) The application, use or possession of radioactive material by a medical institution or physicians for interstitial, intracavitary or superficial treatment of humans using sealed sources, seeds or wires.
 - (b) The application, use or possession of radioactive material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-contained irradiators).
 - (c) The application, use or possession of radioactive material for analytical testing purposes.

Paragraph (11) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$2100.00" from the paragraph and replacing it with "\$2730.00" so that, as amended, paragraph (11) shall read as follows:

- (11) CATEGORY 5 ----- ~~\$2,100.00~~ \$2,730.00
- (a) The use of radioactive material in research and development, manufacturing, testing, processing and assembling of products. This group includes the use of source material in the manufacture of items such as mantles, alloys, gases, liquids, metals, ceramics, glass or photographic products.
 - (b) The use of radioactive material in a process that incorporates that material into a product in exempt concentrations.
 - (c) The possession and use of radioactive material in curie quantities in a number of sources in gauges and gauging applications that require frequent changes and therefore frequent review of the program to ensure that the hazard potential does not exceed the scope of the radiation safety program.
 - (d) The use of a single radioactive material in the fabrication of sealed sources or ampoules.
 - (e) The receipt of prepackaged radioactive material waste from other persons by a nuclear waste handler for storage for less than three (3) months before, transfer only to persons licensed to receive or dispose of the material.
 - (f) The use of sealed sources for soil and/or construction materials testing at temporary job-sites by licensees with licensed authorization for more than two (2) devices.

- (g) The use of radioactive material as chromatography sources at temporary job-sites by licensees with licensed authorization for more than two (2) devices.
- (h) The use of gauging and measuring devices at temporary job-sites by licensees with licensed authorization for more than two (2) devices.
- (i) The application, use or possession of radioactive material by a medical institution or physicians for the treatment of humans with sealed sources contained in teletherapy devices.
- (j) The application, use or possession of radioactive material by a veterinarian for the treatment of animals using sealed sources, seeds or wires.

Paragraph (12) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$6,000.00" from the paragraph and replacing it with "\$7,800.00" so that, as amended, paragraph (12) shall read as follows:

(12) CATEGORY 6 ----- ~~\$6,000.00~~ \$7,800.00

- (a) The application, use or possession of radioactive material including source and/or special nuclear material in unsealed form in less than multi-curie quantities for use in the fabrication of sealed sources without regard to amount of contained radioactivity.
- (b) The manufacture of devices and/or sources that require in-depth review before approval by the Division. Each device and/or source reviewed shall be subject to this fee.
- (c) The preparation, use or distribution of radiopharmaceuticals to locations other than the licensee's address for use in medical diagnosis or therapy.
- (d) The use of radiography (the examination of the structure of materials by nondestructive methods using radioactive material) on the licensee's premises in a permanent shielded facility or temporary job-sites.
- (e) The possession and use of radioactive material by academic and medical institutions under a license authorizing all radioisotopes with atomic numbers 3 through 83.
- (f) Reserved.
- (g) The application of radioactive material to soil, water, air, plants and animals, if the application involves an actual or potential release in or to unrestricted areas.
- (h) The possession, use and distribution of radioactive material at one or more satellite facilities, or the possession and use of radioactive material at one or more satellite facilities, by medical institutions.
- (i) The application, use or possession of radioactive material by a medical institution or physicians for research using humans and/or animals.

Paragraph (13) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$4,000.00" from the paragraph and replacing it with "\$5,200.00" so that, as amended, paragraph (13) shall read as follows:

(13) CATEGORY 7 ----- ~~\$4,000.00~~ \$5,200.00

- (a) Reserved.
- (b) Reserved.

- (c) The application, use or possession of radioactive material for well logging, well surveys or tracer studies.

Paragraph (14) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$11,250.00" from the paragraph and replacing it with "\$14,625.00" so that, as amended, paragraph (14) shall read as follows:

- (14) CATEGORY 8 ----- ~~\$11,250.00~~ \$14,625.00
 - (a) The receipt of radioactive material waste from other persons by a nuclear waste handler, for the purpose of packaging or repackaging the material prior to transfer only to persons licensed to receive or dispose of the material.
 - (b) The commercial collection, laundering or dry cleaning of wearing apparel that is contaminated with radioactive material.

Paragraph (15) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$15,000.00" from the paragraph and replacing it with "\$19,500.00" so that, as amended, paragraph (15) shall read as follows:

- (15) CATEGORY 9 ----- ~~\$15,000.00~~ \$19,500.00
 - (a) The possession of radioactive material or equipment contaminated or potentially contaminated with radioactive material as a result of operations involving the recovery of an element, compound or mixture from ores not subject to licensure because of the radioactive material content of the ore.
 - (b) Facilities that possess radioactive material as a result of operations (not directly involving radioactive decontamination activities) involving recovery of materials or other manufacturing processes (not directly manufacturing radioactive items or products).

Paragraph (16) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$22,500.00" from the paragraph and replacing it with "\$27,000.00" so that, as amended, paragraph (16) shall read as follows:

- (16) CATEGORY 10 ----- ~~\$22,500.00~~ \$27,000.00
 - (a) Facilities storing radioactive material, contaminated equipment and/or potentially contaminated equipment for transfer to authorized recipients as a service to the nuclear industry.
 - (b) Possession and refurbishment of contaminated equipment and/or potentially contaminated equipment that has been used at nuclear power plants.

Paragraph (17) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$30,000.00" from the paragraph and replacing it with "\$36,000.00" so that, as amended, paragraph (17) shall read as follows:

- (17) CATEGORY 11 ----- ~~\$30,000.00~~ \$36,000.00
 - (a) The collection, transfer, sorting and/or brokerage of radioactive material as sealed source, residue, product or as material in or on equipment; and/or

The decontamination of products and/or equipment containing radioactive material and/or contaminated with radioactive material; and/or

The possession, storage and incineration of radioactive material or items contaminated with radioactive materials.

- (b) On site possession and storage of radioactive material and/or equipment contaminated with radioactive material as a result of operations involving the recovery of an element, compound or mixture from ores subject to licensure because of the radioactive material content of the ore or concentration of the radioactive material during the processing of the ore.
- (c) Facilities involved in the manufacture of product lines containing radioactive material in the manufactured product.
- (d) Possession of radioactive material for processing. This material may exist in ores, concentrates, compounds or metals.
- (e) The possession of multi-curie quantities of unsealed radioactive material either as waste or for further processing and/or conversion into specific marketable products.
- (f) Operations involving the fabrication of sealed sources or manufacture of compounds for distribution to other specific or general licensees.
- (g) The possession and use of radioactive material in a sealed source for irradiation of materials in which the source is exposed for irradiation purposes (non self-contained irradiators).

Paragraph (18) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$375,000.00" from the paragraph and replacing it with "\$450,000.00" so that, as amended, paragraph (18) shall read as follows:

- (18) CATEGORY 12 ----- ~~\$375,000.00~~ \$450,000.00
- (a) The application for and/or operation of a low-level radioactive waste disposal facility.
 - (b) The maximum length of reviewing time (the period of time when there are no outstanding unanswered questions) after receipt of a new application and the appropriate fee for a Category 12 specific license and the issuance of a license is 60 months.

Paragraph (19) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$150.00" from the paragraph and replacing it with "\$200.00" so that, as amended, paragraph (19) shall read as follows:

- (19) CATEGORY 13 ----- ~~\$150.00~~ \$200.00 At least \$200.00 not greater than \$375,000.00
- The application, use or possession of radioactive material for uses or procedures not specifically included in any other category.
- The fee shall be determined on a case-by-case basis.
- The determination shall be based on an analysis of the hazard, the scope of the difficulty encountered in the review process and the specifics of the activity pursuant to the categories established ~~above in~~ paragraphs (6) through (18) of this rule.

Rule 0400-20-10-.31 Fees for Licenses is amended by adding paragraph (20) so that, as amended, paragraph (20) shall read as follows:

- (20) CATEGORY NUCLEAR POWER PLANTS AND OTHER FUEL FACILITIES ----- Actual cost of program

The Department may set and collect an annual fee from persons engaged in the business of producing electricity by utilizing nuclear energy and persons operating facilities for the fabrication of nuclear fuel. The amount of fees collected may not exceed the actual expenses that arise from emergency planning and implementation and environmental surveillance activities.

Authority: T.C.A. §§ 68-202-201 et seq. and 4-5-201 et seq.

Chapter 0400-20-10
Licensing and Registration

New Rules

Chapter 0400-20-10 Licensing and Registration is amended by adding 0400-20-10-.34 that shall have the title Supplemental Fees for the Calendar year 2013 and contains the following:

0400-20-10-.34 Supplemental Fees for Calendar Year 2013

(1) Purpose

Adequate funds are required to facilitate the proper administration of The Radiological Health Service Act and The Medical Radiation Inspection Safety Act. Failure to properly administer these acts threatens the health and safety of the citizens of the state. Operating revenue for the administration of these acts is collected on a calendar year basis. Projected revenue needs of the Division in 2013 cannot be met by current registration and licensing fees. Rulemaking to increase 2013 fees cannot be completed prior to the first assessment date, January 1, 2013. Therefore, one time supplemental fees are hereby established to provide the Division with additional revenue during Calendar Year 2013. Division invoices will establish due dates for payment of these supplemental fees.

(2) Supplemental Fees Schedules

(a) In addition to the fees established in paragraph (3) of Rule 0400-20-10-.24 Registration, persons subject to registration anytime during Calendar Year 2013 shall pay a supplemental fee to be determined according to Schedule I of this paragraph:

SCHEDULE I

<u>Class I Equipment</u>	<u>\$20.00 per tube</u>
<u>Class II Equipment</u>	<u>\$45.00 per tube</u>
<u>Class III Equipment</u>	<u>\$86.00 per tube</u>
<u>Class IV Equipment</u>	<u>\$90.00 per tube</u>
<u>Class V Equipment</u>	<u>\$180.00 per tube</u>
<u>Class VI Equipment</u>	<u>\$270.00 per tube</u>
<u>Class VII Equipment</u>	<u>\$600.00 per tube</u>
<u>A person providing inspection services under paragraph (4) of Rule 0400-20-10-.27</u>	<u>\$250.00</u>
<u>A person providing assembly/installation/servicing</u>	<u>\$250.00</u>

(b) In addition to the fees established in paragraphs (6) through (19) of Rule 0400-20-10-.31 Fees for Licenses, persons subject to licensure anytime during Calendar Year 2013 shall pay a supplemental fee to be determined according to Schedule II of this paragraph:

SCHEDULE II

<u>Category GL</u>	<u>\$200.00</u>
<u>Category 1</u>	<u>\$125.00</u>
<u>Category 2</u>	<u>\$250.00</u>
<u>Category 3</u>	<u>\$270.00</u>
<u>Category 4</u>	<u>\$450.00</u>
<u>Category 5</u>	<u>\$630.00</u>
<u>Category 6</u>	<u>\$1,800.00</u>
<u>Category 7</u>	<u>\$1,200.00</u>
<u>Category 8</u>	<u>\$3,375.00</u>
<u>Category 9</u>	<u>\$4,500.00</u>
<u>Category 10</u>	<u>\$4,500.00</u>
<u>Category 11</u>	<u>\$6,000.00</u>
<u>Category 12</u>	<u>\$75,000.00</u>
<u>Category 13</u>	<u>At least \$50.00 and not greater than \$125,000.00</u>

The Category 13 supplemental fee shall be determined on a case-by-case basis. The determination shall be based on an analysis of the hazard, the scope of the difficulty encountered in the review process and the specifics of the activity, following the categories established in paragraphs (6) through (19) of Rule 0400-20-10-.31.

Category Nuclear Power Plants and Other Fuel Facilities Actual expenses that arise from emergency planning and implementation and environmental surveillance activities

Authority: T.C.A. §§ 68-202-201 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Tennessee Department of Environment and Conservation on 01/31/2013 (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: 11/26/12

Rulemaking Hearing(s) Conducted on: (add more dates), 01/23/13



Date: 1-31-13

Signature: Robert J. Martineau, Jr.

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

My Commission Expires JULY 6, 2015 Subscribed and sworn to before me on: 1-31-13

Notary Public Signature: Beth B. Smith

My commission expires on: July 6, 2015

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
2-11-13
Date

Department of State Use Only

Filed with the Department of State on: 2/13/13

Effective on: 5/14/13

Tre Hargett
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation
DIVISION: Water Resources
SUBJECT: Rock Harvesting
STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 69-3-143 through 69-3-147
EFFECTIVE DATES: May 16, 2013 through June 30, 2014
FISCAL IMPACT: Minimal
STAFF RULE ABSTRACT:

These rules were developed to implement Public Chapter 341 of 2011 which added § 69-3-143 through § 69-3-147 to the Tennessee Water Quality Control Act of 1977. Points addressed in the rules, consistent with the new law, require rock harvesting operators to:

- (1) Obtain coverage under Sector J of the Industrial Stormwater general permit or, in some cases, obtain an individual NPDES permit;
- (2) Provide proof of their legal right to harvest minerals on the area(s) involved;
- (3) Provide proof of general liability insurance;
- (4) Provide proof of Workers' Compensation insurance;
- (5) Provide proof of registration with the Tennessee Department of Revenue; and
- (6) In cases where the surface and mineral rights are severed, provide notice to the surface owner of the intent to harvest minerals and provide a copy of the approved permit.

The rules outline standards for other elements of the new law, e.g., maps, grading, revegetation, and reclamation success. Also addressed are standards for sediment and erosion control measures to be utilized during and after rock harvesting activities.

Public Hearing Comments

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

There were no comments received during the public comment 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) 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.

On average, 15 new applications for rock harvesting are received per year depending on economic conditions. The rules are not retroactive to existing operations.

- (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.

Public Chapter 341 of 2011 imposed new application requirements including proof of right to enter harvesting area, general liability insurance, Workers' Compensation Insurance (if applicable) and registration with the TN Dept. of Revenue. In addition, notification to the surface owner (if surface and mineral rights are severed), new mapping standards and a reclamation plan are required by the new law and these regulations. Most operators fill out application forms themselves so any additional costs should be negligible.

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

The probable effect on businesses will amount to the small amount of time required to assemble the additional information required by the underlying law. There should be no effect on 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.

None.

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

Most other states considerer rock harvesting to be mining and require a mining permit along with varying fees. Almost all rock harvesting sites in Tennessee are eligible for coverage under a Sector J, Industrial Stormwater permit which requires no fee. A few sites require an individual NPDES permit which does require a fee. Overall, these rules are somewhat less stringent than other states.

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

The underlying statute for these rules was passed in order to ensure that all rock harvesting operations meet the same criteria required of all businesses. Exemption of any businesses would nullify this goal.

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 Department does not anticipate any impact on local governments.

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 02-33-13
Rule ID(s): 5382
File Date: 2/15/13
Effective Date: 5/16/13

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:	Environment and Conservation
Division:	Water Resources
Contact Person:	Bruce Ragon
Address:	Knoxville Environmental Field Office 3711 Middlebrook Pike Knoxville, Tennessee
Zip:	37921-6538
Phone:	(865) 594-5547
Email:	Bruce.Ragon@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
0400-40-18	Rock Harvesting
Rule Number	Rule Title
0400-40-18-.01	Purpose
0400-40-18-.02	Application or Notice of Intent
0400-40-18-.03	Requirements for Sediment and Erosion Control During and After Harvesting

(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>)

New Rules

0400-40-18 Rock Harvesting

Table of Contents

0400-40-18-.01 Purpose

0400-40-18-.02 Application or Notice of Intent

0400-40-18-.03 Requirements for Sediment and Erosion Control During and After Harvesting

0400-40-18-.01 Purpose

The purpose of these regulations is to implement T.C.A. §§ 69-3-143 through 69-3-147 which govern rock harvesting operations as defined in T.C.A. §§ 69-3-144 (1) through (3).

0400-40-18-.02 Application or Notice of Intent

- (1) Operators shall submit a Notice of Intent for coverage under Sector J of the Tennessee Storm Water Multi-Sector General Permit for Industrial Activities unless the division informs them that an individual NPDES permit is required. The reasons for requiring an individual permit include the following:
 - (a) There will be stone processing operation(s) on the site;
 - (b) There will be a discharge of any waste water other than storm water from the site;
 - (c) There will be a discharge to Exceptional Tennessee Waters;
 - (d) The receiving stream is listed as impaired for the pollutant(s) to be discharged from the site; or
 - (e) The division determines that an individual permit is required in order to adequately protect water quality in the receiving stream(s).
- (2) An original and two copies of all application forms and notices of intent and supporting materials shall be submitted.
- (3) Written proof of general liability insurance coverage shall be submitted by the operator along with the permit application or notice of intent.
 - (a) Liability coverage shall be in an amount no less than one million dollars (\$1,000,000).
 - (b) Insurance coverage shall remain in effect for the life of the rock harvesting operation.
 - (c) The policy shall provide that the insurer will notify the department at least thirty (30) days prior to the effectiveness of any cancellation of coverage by the insurer.
 - (d) The operator shall notify the department of any change in insurance coverage during the life of the rock harvesting operation and provide a copy of any new policy after the initial one no later than one week after it becomes effective.
- (4) Written proof of Workers' Compensation insurance coverage, if applicable, shall be submitted by the operator along with the permit application or notice of intent.
- (5) Written proof of registration with the Tennessee Department of Revenue for all operators and any subcontractors shall be submitted with the permit application or notice of intent.
- (6) Evidence of the operator's legal right to harvest minerals on the land covered by the permit application or

notice of intent, in the form of a properly executed deed, lease, or other appropriate document, shall be submitted with the permit application or notice of intent.

- (7) If the surface and mineral rights of any portion of the land covered by the permit application or notice of intent have been severed, the operator shall:
- (a) Notify the surface owner, by certified mail, return receipt required, of the intent to begin rock harvesting operations, at least thirty (30) days prior to beginning such operations including a copy of the permit or notice of coverage from the department;
 - (b) Prior to beginning rock harvesting operations, forward copies of all records relating to the notification required by subparagraph (a) of this paragraph to the department; and
 - (c) Bear all costs pertaining to the notification and transmission of documents required by subparagraphs (a) and (b) of this paragraph.
- (8) A general location map taken from a USGS 7 ½ minute quadrangle map that shows the location of the mining area(s) and haul road(s) and which includes the name of the operation and the name and number of the quadrangle shall be submitted with the application or notice of intent.
- (9) A site/operations map at a scale of 1" = 500', or larger as needed to provide sufficient detail and avoid a cluttered look, shall be submitted with the application or notice of intent. The site/operations map shall include, at a minimum:
- (a) A title block which contains:
 1. The name of the operator;
 2. The name of the owner of the surface rights and the name of the owner of the mineral rights;
 3. The county(s) in which the operation is located;
 4. The total number of acres to be disturbed by mining operations and haul roads; and,
 5. The date the map was prepared along with a certification of its accuracy by the preparer.
 - (b) The body of the site/operations map shall show:
 1. The proposed permit boundary, including haul roads, marked in red;
 2. The location and type of all water treatment structures, including Best Management Practices;
 3. The location and name(s) of all stream(s) receiving drainage from the operation;
 4. The location and names of all property owners within 500 feet of the permit boundary;
 5. The location of any onsite structures (i.e. buildings, scales, processing equipment, stockpiles, storage areas, etc.);
 6. The location of significant features such as cemeteries, public roads, railroad tracks, oil and gas wells, surface mines, underground mines, transmission lines, pipelines or utility lines within 500 feet of the permit boundary;
 7. The location of initial cuts or excavation and the subsequent cut sequence and direction of mining; and
 8. The location(s) where topsoil and/or other materials suitable for revegetation will be stockpiled.

- (10) A reclamation plan shall be submitted with the application or notice of intent. The plan shall include, at a minimum:
- (a) A description of the manner in which topsoil, and/or other material(s) suitable for revegetation, will be segregated;
 - (b) A description of backfilling and grading operations to be carried out concurrently with mining excavation that addresses whether there will be sufficient overburden to return the land to its original conformation after mining; and if the land will not be returned to its original conformation, a reclamation plan map shall be submitted that depicts:
 - 1. The altered land conformation and drainage patterns that will exist after mining;
 - 2. The location of any permanent impoundment(s) proposed to remain when mining is complete; and
 - 3. The location of any roads to remain after mining, including information regarding the surfacing and drainage controls used to maintain road stability.
 - (c) A revegetation plan which specifies:
 - 1. The types and amounts of seed, fertilizer, lime and mulch that will be applied per acre, following the recommendations of the Tennessee Erosion and Sediment Control Handbook;
 - 2. The type(s) and spacing of trees to be planted; and
 - 3. If the surface and mineral rights on any portion of the land covered by the permit application or notice of intent have been severed, a notarized letter confirming the concurrence of the surface owner as to the size and location of any impoundment(s) or roads to remain after mining and whether or not trees are to be planted must be submitted.

0400-40-18-.03 Requirements for Sediment and Erosion Control During and After Harvesting

- (1) During Harvesting
- (a) Rock harvesting operations shall use best management practices following the recommendations of the Tennessee Erosion and Sediment Control Handbook to prevent erosion and control sediment.
 - (b) Operators shall select, design and install erosion prevention and sediment control measures to prevent discharges to waters of the state that would violate water quality standards or cause pollution.
 - (c) Approved sediment and erosion control measures must be in place prior to beginning rock harvesting operations.
 - (d) Approved sediment and erosion control measures must be maintained throughout the life of the harvesting operation until reclamation has been approved as being successful by the division.
 - (e) Operators shall operate and maintain harvesting sites so that there are no discharges of oil or other waste to waters of the state.
 - (f) Operators shall comply with all provisions of permits.
 - (g) Operators shall modify practices or control measures, as directed and/or approved by the division, to control discharges.

(2) Reclamation

- (a) The purpose of reclamation is to stabilize the site so that there will not be discharges of sediment or other waste into waters of the state.
- (b) Grading shall be conducted so as to return the affected area as closely as possible to its pre-harvesting conformation, considering the amount of available overburden, drainage control, post-harvesting land use and other factors.
- (c) Revegetation shall be deemed acceptable when an eighty percent (80%) groundcover of self-sustaining vegetation, with no bare areas exceeding one fourth (1/4) of an acre, has been established for two (2) growing seasons. If trees are planted, there shall be six hundred (600) surviving stems per acre after two (2) growing seasons.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

* 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)
James W. Cameron III	X				
Jill E. Davis	X				
Mayor Kevin Davis				X	
Derek Gernt	X				
John Guoynes	X				
C. Monty Halcomb				X	
Chuck Head	X				
Charlie R. Johnson	X				
Judy Manners				X	
John McClurkan	X				
Frank McGinley	X				
D. Anthony Robinson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Water Quality, Oil and Gas on 01/15/2013, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/20/12

Rulemaking Hearing(s) Conducted on: (add more dates). 03/20/12

Date: January 15, 2013

Signature: James W. Cameron III

Name of Officer: James W. Cameron III

Title of Officer: Chairman

Subscribed and sworn to before me on: January 15, 2013

Notary Public Signature: Carol L. Grice

My commission expires on: June 21, 2016



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.

RE Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

2-13-13

Date

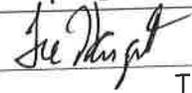
Department of State Use Only

Filed with the Department of State on:

2/15/13

Effective on:

5/16/13



Tre Hargett
Secretary of State

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SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Emergency Communications Board

DIVISION:

SUBJECT: Dispatcher Training

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 7-86-205

EFFECTIVE DATES: May 2, 2013 through June 30, 2014

FISCAL IMPACT: Minimal. The agency reports that the additional training required by the rules is offered at no cost by the National Center for Missing and Exploited Children.

STAFF RULE ABSTRACT: These rules add five hours of course of study requirements and two hours of continuing education involving missing or exploited children for dispatchers.

Public Hearing Comments

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

There were no public comments or written comments submitted to the Board in regards to the proposed rules at the Rulemaking Hearing, conducted on March 22, 2012.

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)

Economic Impact Statement:

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

Small businesses will not be affected by the proposed rules.

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:

The rules appear to comport with other similar state rules, with the exception of the additional training hours required for missing or exploited children. There is no basis for comparison to federal rules or statutes.

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 proposed rules will impact local governments that employ emergency call takers or public safety dispatchers, in that the proposed rules add an additional 5 hours of minimum course of study requirements and 2 hours of continuing education involving missing or exploited children. This additional training is offered at no cost from the National Center for Missing and Exploited Children.

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

For Department of State Use Only

Sequence Number: 02-04-13
 Rule ID(s): 5370
 File Date: 2/1/13
 Effective Date: 5/2/13

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 Emergency Communications Board
Division:	
Contact Person:	Curtis Sutton
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243-0582
Phone:	615-253-2164
Email:	TNECB@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
0780-06-02	Dispatcher Training Regulations
Rule Number	Rule Title
0780-06-02-.01	Purpose
0780-06-02-.02	Definitions
0780-06-02-.03	Minimum Training Requirements
0780-06-02-.04	Minimum Training Requirements

Chapter Number	Chapter Title
0780-06-02	Dispatcher Training Regulations
Rule Number	Rule Title
0780-06-02-.05	Minimum Supervised On-the-Job Training Requirements
0780-06-02-.06	Waiver

Rules
Of
Department of Commerce and Insurance
Emergency Communications Board

Chapter 0780-06-02
Dispatcher Training Regulations

Table of Contents

0780-06-02-.01	Purpose	0780-06-02-.05	Minimum Supervised On-the-Job Training Requirements
0780-06-02-.02	Definitions		
0780-06-02-.03	Minimum Training Requirements	0780-06-02-.06	Waiver
0780-06-02-.04	Minimum Course of Study Requirements		

0780-06-02-.01 Purpose.

The purpose of this chapter is to establish minimum requirements for the training of and course of study for each emergency call taker or public safety dispatcher who receives an initial or transferred 911 call from the public in Tennessee. Nothing in these regulations should be construed to limit or restrict any additional training that an agency may elect to provide. Existing public and private training programs are encouraged to establish new curricula and modify existing programs to incorporate these minimum requirements. Such programs are urged to develop meaningful methods for measuring the knowledge, skill and ability gained through their training programs and to offer continuing education programs.

Authority: T.C.A. §§ 7-86-205 and 7-86-306(a)(1). Administrative History: Original rule filed October 11, 2005; effective December 25, 2005.

0780-06-02-.02 Definitions.

In this chapter, unless the context requires otherwise, the definitions in T.C.A. § 7-86-103 shall apply.

Authority: T.C.A. §§ 7-86-103, 7-86-205, and 7-86-306(a)(1). Administrative History: Original rule filed October 11, 2005; effective December 25, 2005.

0780-06-02-.03 Minimum Training Requirements.

(1) Each 911 or public safety dispatcher who receives an initial or transferred 911 call from the public in Tennessee shall be subject to the following minimum training requirements.

(a) No less than forty (40) hours of supervised on-the-job training; and

(b) No less than ~~forty (40)~~ forty five (45) hours of public safety communications coursework which is administered or sponsored by an academy, agency, or post-secondary educational institution that:

1. Is capable of supporting a public safety communication student with practical experience on a communication console either through liaison with a Public Safety Communication Center or a fully functional communication console simulator; and
2. Maintains an accurate, comprehensive record system for all phases of the program which shall be available for inspection and shall include the following:

(i) Attendance records;

(ii) Course outlines; and

(iii) Lesson plans.

(c) Continuing education of no less than ~~eight (8)~~ ten (10) additional hours of public safety communications coursework every two (2) years after completion of the initial training. Two (2) hours must be related to 911 calls involving missing or exploited children.

(2) All emergency call takers or public safety dispatchers subject to T.C.A. § 7-86-205 employed after July 1, 2006 shall have six (6) months from the date of their employment to comply with the provisions of this rule.

Authority: T.C.A. §§ 7-86-205 and 7-86-306(a)(1). Administrative History: Original rule filed October 11, 2005; effective December 25, 2005.

0780-06-02-.04 Minimum Course of Study Requirements.

(1) The minimum course of study requirements for each 911 or public safety dispatcher who receives an initial or transferred 911 call from the public in Tennessee shall include course work of:

(a) No less than four (4) hours in the roles and responsibilities of 911 or public safety dispatchers, including but not limited to the following subjects:

1. The mission, ethics, and values of emergency communications providers;
2. Professionalism; telecommunicators as part of a public safety team;
3. Basic policies and procedures for telecommunicators and their organizations;
4. Overview of communities and agencies served;
5. Rules and regulations governing emergency communications;
6. Service area geography;
7. Emergency communications disaster plans;
8. Risk management;
9. CPR;
10. News/media relations;
11. Responder safety.

(b) No less than two (2) hours in legal concepts and principles, including but not limited to liability, applicable to the operation of:

1. Law enforcement agencies;
2. Fire/rescue agencies;

3. Emergency medical services ("EMS") agencies;
4. Public safety communications agencies.

(c) No less than five (5) hours in interpersonal communication skills, including but not limited to the following areas:

1. Communication techniques and information processing, such as listening, hearing, diction, empathy, perception, and intuitiveness;
2. Customer service, including but not limited to discrimination and harassment issues;
3. Diversity issues relating to effective emergency communications, including but not limited to race, nationality, age, speech/hearing impairment, non-English speaking callers, and demographics.

(d) No less than four (4) hours in emergency communications technology, including but not limited to the following areas:

1. Operation of telephones, including but not limited to wireline, portable, wireless (including cellular and personal communication service ("PCS")), and text telephones for the speech/hearing impaired;
2. Basic and Enhanced 911;
3. Automatic Location Identification ("ALI") and Automatic Number Identification ("ANI");
4. Call tracing and records retrieval procedures;
5. Computerized mapping;
6. Logging recorders;
7. Computer aided dispatch ("CAD") systems;
8. Wireless, Phase I and II;
9. Voice Over Internet Protocol.

(e) No less than eleven (11) hours in communication techniques and call processing, including but not limited to the following areas:

1. Public relations;
2. Call receipt;
3. Interviewing;
4. Controlling the call;
5. Managing high risk/difficult calls, including but not limited to domestic violence;

6. Managing differing call categories, including law enforcement, fire/rescue, EMS, HAZMAT, or acts of terrorism;
 7. Managing differing call types and events, including in-progress, just-occurred, late, events requiring specific instructions, notifications;
 8. The importance of obtaining proper information, including location, nature, injuries, weapons, chemicals, etc.;
 9. Telematics;
 10. Homeland Security issues, including but not limited to:
 - (i) Protocols and procedures (for example, call profiling, as in when to notify the FBI);
 - (ii) NIMS ("National Incident Management System"), if applicable; and
 - (iii) NORAD ("North American Aerospace Defense") call procedures and protocols (dealing with emergency calls from aircraft).
- (f) No less than twelve (12) hours in radio communications and dispatch techniques, including but not limited to the following areas:
1. Procedures and protocols;
 2. Radio discipline;
 3. Rules of the Federal Communications Commission ("FCC") related to radios;
 4. Radio coverage;
 5. Consoles;
 6. Responder safety.
- (g) No less than two (2) hours in stress management, including but not limited to the following areas:
1. Causes;
 2. Strategies for dealing with stress;
 3. Peer support;
 4. Critical incident stress debriefing.
- (h) No less than five (5) hours in 911 calls involving missing or exploited children.
- (2) Course work shall include practical exercises duplicating communication center practices in which the student performs the subject matter being taught.
- (3) Course work shall include testing.

Authority: T.C.A. §§ 7-86-205 and 7-86-306(a)(1). Administrative History: Original rule filed October 11, 2005; effective December 25, 2005.

0780-06-02-.05 Minimum Supervised On-The-Job Training Requirements.

(1) The minimum on-the-job training/course of study requirements for each 911 or public safety dispatcher who receives an initial or transferred 911 call from the public in Tennessee shall include a period of supervised instruction of no less than forty (40) hours related to the following:

- (a) Agency/department policies and procedures (including a written handbook containing such policies and procedures);
- (b) Agency/department geographical area;
- (c) Agency/department telephone system and equipment operations;
- (d) Structure of local government and agencies being served;
- (e) Local ordinances and requirements;
- (f) Governmental and private resources;
- (g) National Crime Information Center data and records, if applicable.

Authority: T.C.A. §§ 7-86-205 and 7-86-306(a)(1). Administrative History: Original rule filed October 11, 2005; effective December 25, 2005.

0780-06-02-.06 Waiver.

In the event of a natural or manmade disaster which renders local emergency communications unable to remain operational without the assistance of individuals who have not completed the requirements included herein, said requirements are waived.

Authority: T.C.A. §§ 7-86-205 and 7-86-306(a)(1). Administrative History: Original rule filed October 11, 2005; effective December 25, 2005.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Mark Archer	X				
Barbara Blanton	X				
Hal Buttram				X	
Robert T. Lee	X				
Ike Lowry	X				
Randy Porter			X		
Freddie Rich	X				
Steve Smith	X				
James Sneed	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board (board/commission/ other authority) on 08/30/2012, 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: 01/24/2012

Rulemaking Hearing(s) Conducted on: (add more dates). 03/22/2012

Date: 11/19/2012

Signature: [Handwritten Signature]

Name of Officer: Lynn Questell

Title of Officer: Executive Director



Subscribed and sworn to before me on: November 19, 2012

Notary Public Signature: [Handwritten Signature]

My commission expires on: April 12, 2014

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
1-22-13
 Date

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Department of State Use Only

Filed with the Department of State on: 2/1/13

Effective on: 5/2/13

[Handwritten Signature]
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Qualifications for Criminal Justice Teachers

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

EFFECTIVE DATES: July 29, 2013 through June 30, 2014

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rules adjust the qualifications for trade and industrial education teachers to accommodate a need for a larger pool of qualified applicants to work as criminal justice teachers.

These rules make changes in the requirements set out in Rule 0520-02-04-.13(2)(ii) to provide for alternate pathways to the existing options for prospective teachers who hold a bachelor's degree or master's degree in criminal justice as those degrees relate to the requisite work experience.

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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For Department of State Use Only

Sequence Number: 02-08-13
 Rule ID(s): 5371-5372
 File Date: 2/6/13
 Effective Date: 7/29/13

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
0520-01-02	Administrative Rules and Regulations
Rule Number	Rule Title
0520-01-02-.03	Employment Standards

Chapter Number	Chapter Title
0520-02-04	Licensure
Rule Number	Rule Title
0520-02-04-.13	Requirements for Occupational Education License

Rules
Of
The State Board of Education
Chapter 0520-01-02
Administrative Rules and Regulations

(9) Career and Technical Education.

- (a) A teacher of agricultural education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have appropriate work experience.
- (b) A teacher of marketing education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have two (2) years of appropriate experience in marketing education.
- (c) A teacher of health science education shall have completed three (3) years of successful employment experience as a registered nurse or in an allied health occupation within the seven (7) years prior to initial employment as a teacher.
- (d) A teacher of trade and industrial education shall be a high school graduate or the equivalent, as determined by the General Education Development (GED) test. The teacher shall have a minimum of five (5) years of appropriate and current work experience in the field for which application is made. A combination of career and technical education at the postsecondary level from a state technical institute, Tennessee Technology Center, or other accredited public or private institution may also be evaluated. The amount of credit awarded for postsecondary related education shall not exceed two (2) years with the exception of criminal justice in which case a bachelor's degree in criminal justice may count for four (4) years of paid or unpaid work experience or a master's degree or higher may be substituted for five (5) years of paid or unpaid work experience. ~~A teacher of trade and industrial education shall be a high school graduate or the equivalent, as determined by the General Education Development (GED) test. The teacher shall have a minimum of five (5) years of appropriate and current work experience in the field for which application is made. A combination of career and technical education at the postsecondary level from a state technical institute, Tennessee Technology Center, or other accredited public or private institution may also be evaluated. The amount of credit awarded for postsecondary related education shall not exceed two (2) years.~~

Chapter 0520-02-04
Licensure

0520-02-04-.13 Requirements for Occupational Education License.

(1) Apprentice Occupational Education License.

(a) Issuance of License.

2. Trade and Industry.

- (i) Effective September 1, 2002, trade and industry teachers shall hold and maintain a current industry certification, where available, in the specific endorsement area for which they are licensed. This Industry Certification may be acquired prior to Apprentice license, but must be presented at the time the teacher advances from Apprentice to Professional Occupational License.

- (ii) Endorsements in Trade and Industrial Education can be obtained through one of five (5) different pathways using work experience, industry certification and postsecondary training. The five (5) possible pathways are
~~Endorsements in Trade and Industrial Education can be obtained through one of four different pathways using work experience, industry certification and post-secondary training. The four possible pathways are:~~
- (I) Credentialed (certificate or diploma) postsecondary training in the endorsed area, or associate degree, or industry certification may substitute for two (2) years of work experience. In addition, applicant must also have at least three (3) years of work experience in the endorsed area in the last eight (8) years for a total of five (5) years; or
~~Credentialed (certificate or diploma) post-secondary training in the endorsed area, or associate degree, or industry certification may substitute for two (2) years of work experience. In addition, applicant must also have at least three (3) years of work experience in the endorsed area in the last eight (8) years for a total of five (5) years; or~~
 - (II) A combination of an associate degree related to the endorsed area and industry certification may be substituted for four (4) years of work experience. In addition, applicant must have at least one (1) year of work experience in the endorsed area in the last eight years (8) for a total of five (5) years; or
~~A combination of an associate degree related to the endorsed area and industry certification may be substituted for four (4) years of work experience. In addition, applicant must have at least one (1) year of work experience in the endorsed area in the last eight years (8) for a total of five (5) years; or~~
 - (III) A bachelor's degree or higher degree in the endorsed area may be substituted for four (4) years of work experience. In addition, applicant must also have at least one (1) year of work experience in the endorsed area—paid or unpaid in the field of criminal justice—in the last eight (8) years for a total of five (5) years; or
~~A bachelor's degree or higher degree in the endorsed area may be substituted for four (4) years of work experience. In addition, applicant must also have at least one (1) year of work experience in the endorsed area in the last eight (8) years for a total of five (5) years; or~~
 - (IV) Five (5) years of full-time work experience accrued in the occupational area of endorsement within the last eight (8) years.
~~Five (5) years of full-time work experience accrued in the occupational area of endorsement within the last eight (8) years.~~
 - (IV)(V) A master's degree or higher in criminal justice may be substituted for the five (5) years of work experience in criminal justice.

* 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 7/27/12, 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: October 1, 2012

Signature: *Gary L. Nixon*

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director

Subscribed and sworn to before me

on:

October 1, 2012

Notary Public Signature:

Beth Cooper

My commission expires on:

January 26, 2016

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.

REC Cooper Jr

Robert E. Cooper, Jr.

Attorney General and Reporter

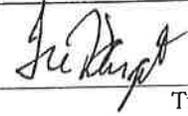
1-28-13

Date

Department of State Use Only

Filed with the Department of State on: 2/6/13

Effective on: 7/29/13



Tre Hargett
Secretary of State

2012 FEB -6 AM 11:18
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Date for Determining Eligibility to Enroll in Kindergarten

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-6-201

EFFECTIVE DATES: July 29, 2013 through June 30, 2014

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Pursuant to Public Chapter 991 of 2012, the date for determining when a child residing in Tennessee is eligible to enroll in kindergarten has changed.

The previous statute required a child to be at least five years of age on or before September 30th. The new statute requires a child to be at least five years of age on or before August 31st for the 2013-2014 school year and at least five years of age on or before August 15th for all subsequent school years.

This rule reflects this change to comply with the public chapter and statutory law.

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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For Department of State Use Only

Sequence Number: 02-09-13
 Rule ID(s): 5373
 File Date: 2/6/13
 Effective Date: 7/29/13

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

(10) Admission and Enrollment of Students.

~~(a) During the 2013- 2014 school year, a child entering kindergarten shall be no less than five years of age on or before August 31. For all years thereafter, a child entering kindergarten shall be no less than five years of age on or before August 15. However, a child does not have to enroll in school at five years of age, but enrollment must occur no later than the beginning of the academic year following the child's sixth birthday. A child entering kindergarten shall be no less than five years of age on or before September 30. However, a child does not have to enroll in school at five years of age, but enrollment must occur no later than the child's sixth birthday.~~

~~(b)(a)~~ Any transfer student applying for admission who was legally enrolled in an approved kindergarten in another state and who will be five years of age no later than December 31 of the current school year, shall be enrolled.

~~(c)(b)~~ A child must attend school until his/her 18th birthday unless:

1. He or she has received a diploma or other certificate of completion of high school;
2. He or she is enrolled in a course of instruction leading to a GED; or
3. He or she is enrolled in a home school and has reached their 17th birthday.

* 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 7/27/12, 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: October 1, 2012

Signature: *Gary Nixon*

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me

on: October 1, 2012

Notary Public Signature: *Beth Cooper*

My commission expires on: January 24, 2016

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.

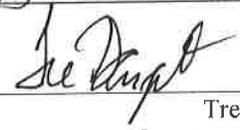
RE Cooper
 Robert E. Cooper, Jr.
 Attorney General and Reporter
1-28-13

Date

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Filed with the Department of State on: 2/16/13

Effective on: 7/29/13



Tre Hargett
Secretary of State

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RECEPTIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Commercial Advertising on School Buses

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-6-2109

EFFECTIVE DATES: July 29, 2013 through June 30, 2014

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Public Chapter 665 of 2012 removed the limitation on commercial advertising on school buses that required such advertising to "be composed of lettering on a background color." The statute now allows pictures and logos to be used in such advertising.

This rulemaking conforms the rules with the recent statutory change.

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: 02-10-13
 Rule ID(s): 5377
 File Date: 2/6/13
 Effective Date: 7/29/13

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
0520-01-05	Pupil Transportation
Rule Number	Rule Title
0520-01-05-.03	Commercial Advertising on School Buses

Chapter Number	Chapter Title
Rule Number	Rule Title

Rules
Of
The State Board of Education
Chapter 0520-01-05
Pupil Transportation

0520-01-05-.03 Commercial Advertising on School Buses.

(1) Commercial advertising may be displayed on school buses as follows:

- (a) The local board of education shall adopt a policy to regulate commercial advertising on school buses. Such policy shall address the following minimum standards:
1. Cost of the commercial advertising.
 2. Designation of the individual(s) with the authority to sell and approve commercial advertising.
 3. Definition of appropriate commercial advertising.
 4. Specification of how the advertising will be attached, if not painted on the school bus.
 5. Issues relating to contracts with independent contractors.
 - (i) All contracts for commercial advertising must comply with board policy.
 - (ii) Contracts with independent bus owners must indicate how the revenue from the commercial advertising will be allocated.
- (b) Commercial advertising shall be permitted only on the rear quarter panels of the school bus; no more than two (2) advertisements per rear quarter panel shall be permitted.
- (c) The size of commercial advertising per quarter panel shall not exceed sixteen (16") inches in height and sixty (60") inches in length, including any border or framing.
- (d) ~~The commercial advertising shall consist of lettering on a background color.~~
- (e)(d) No commercial advertising of tobacco or alcohol products shall be permitted. Political campaign advertising shall be expressly prohibited.
- (f)(e) Commercial advertising shall not cover any structural or sheet metal damage or alteration.
- (g)(f) No commercial advertising of food items that pursuant to T.C.A. § 49-6-2307 cannot be sold or offered for sale to pupils

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* 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	

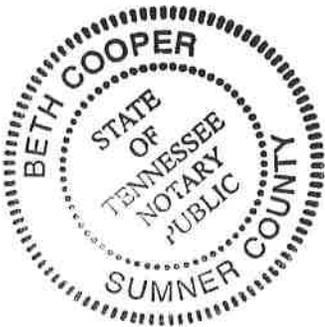
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 7/27/12, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed 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: October 1, 2012

Signature: *Gary L. Nixon*

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me

on: October 1, 2012

Notary Public Signature: *Beth Cooper*

My commission expires on: January 26, 2016

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

1-28-13

Date

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Filed with the Department of State on: 2/6/13

Effective on: 7/29/13



Tre Hargett
Secretary of State

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REGISTRATION

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Special Education Diplomas

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-6-6005

EFFECTIVE DATES: July 29, 2013 through June 30, 2014

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Public Chapter 772 of 2012 directs that a special education diploma shall be awarded to students who have satisfactorily completed an individualized education program and who have satisfactory records of attendance and conduct, but have not met the proficiency requirements of Tennessee Code Annotated, Section 49-6-6001.

The agency reports that implementation of this law requires the State Board of Education to amend the rules to change the name of the document awarded from an IEP Certificate to a Special Education Diploma.

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: 02-11-13
 Rule ID(s): 5376
 File Date: 2/6/13
 Effective Date: 7/29/13

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-.06	Graduation. Requirement E

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

(2) Graduation Requirements - Effective with the ninth (9th) grade class of 2009-2010 and thereafter.

(a) High School Diploma and Special Education Diploma.

1. The high school diploma will be awarded to students who (1) earn the specified twenty-two (22) units of credit, and (2) have satisfactory records of attendance and conduct.

~~2. A special education diploma may be awarded at the end of their fourth year of high school to students with disabilities who have (1) not met the requirements for a high school diploma, (2) have satisfactorily completed an individualized education program, and (3) have satisfactory records of attendance and conduct. Students who obtain the special education diploma may continue to work towards the high school diploma through the end of the school year in which they turn twenty-two (22) years old.~~

~~2. A transition certificate may be awarded at the end of the fourth (4th) year of high school to students with disabilities who have (1) taken classes toward a high school diploma (twenty-two (22) units of credit), (2) have satisfactorily completed an individualized education program (IEP), and (3) have satisfactory records of attendance and conduct. Students who obtain the transition certificate may continue to work towards the high school diploma through the end of the school year in which they turn twenty-two (22) years old.~~

~~An individualized education program (IEP) certificate will be awarded to students with disabilities who have (1) satisfactorily completed an IEP, (2) successfully completed a portfolio, and (3) have satisfactory records of attendance and conduct.~~

* 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 7/27/12, 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: October 1, 2012

Signature: *Gary L. Nixon*

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: October 1, 2012

Notary Public Signature: *Beth Cooper*

My commission expires on: January 26, 2016

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
1-28-13

Date

Department of State Use Only

Filed with the Department of State on: 2/6/13

Effective on: 7/29/13



Tre Hargett
Secretary of State

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PUBLIC RELATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Qualifications for Health Science Teachers

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

EFFECTIVE DATES: July 29, 2013 through June 30, 2014

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rules adjust the qualifications of health science teachers to accommodate a need for a larger pool of qualified applicants to teach in the field of health science education.

Currently, teachers of health science education are required to have completed three years of successful employment experience in a related health occupation within the seven years prior to initial employment as a teacher. The revisions change this requirement to be one year of employment, obtained through either full-time or part-time status, within the past five years prior to teaching.

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: 02-12-13
 Rule ID(s): 5374-5375
 File Date: 2/6/13
 Effective Date: 7/29/13

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
0520-01-02	Administrative Rules and Regulations
Rule Number	Rule Title
0520-01-02-.03	Employment Standards

Chapter Number	Chapter Title
0520-02-04	Licensure
Rule Number	Rule Title
0520-02-04-.13	Requirements for Occupational Education License

Rules
Of
The State Board of Education
Chapter 0520-01-02
Administrative Rules and Regulations

(9) Career and Technical Education.

- (a) A teacher of agricultural education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have appropriate work experience.
- (b) A teacher of marketing education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have two (2) years of appropriate experience in marketing education.
- (c) ~~A teacher of health science education shall have completed one (1) year of successful employment experience, obtained through full-time or part-time status, within the past five (5) years in a related health occupation prior to teaching.~~
- (d) A teacher of trade and industrial education shall be a high school graduate or the equivalent, as determined by the General Education Development (GED) test. The teacher shall have a minimum of five (5) years of appropriate and current work experience in the field for which application is made. A combination of career and technical education at the postsecondary level from a state technical institute, Tennessee Technology Center, or other accredited public or private institution may also be evaluated. The amount of credit awarded for postsecondary related education shall not exceed two (2) years.

Deleted: A teacher of health science education shall have completed three (3) years of successful employment experience as a registered nurse or in an allied health occupation within the seven (7) years prior to initial employment as a teacher.

Chapter 0520-02-04
Licensure

0520-02-04-.13 Requirements for Occupational Education License.

(1) Apprentice Occupational Education License.

(a) Issuance of License.

An apprentice occupational education license may be issued to individuals who meet the following requirements. Qualifications including experience and educational preparation shall be reviewed by the Department of Education staff who shall recommend issuance of the apprentice occupational education license.

1. Health Sciences Education.

- (i) ~~The secondary health science teacher shall have completed one (1) year of successful employment, obtained through full-time or part-time status, within the past five (5) years in a related health occupation prior to teaching.~~
- (ii) Health science teachers must hold an associate or higher degree in a health-related area and hold current licensure registration or certification in an allied health occupation or current

Deleted: <#>The health science education teacher must hold an associate or higher degree that is related to their health care license. The license, registration or certification must be in an allied health occupation, or as a registered nurse, or in an appropriate medical profession in Tennessee that can be verified by Tennessee Department of Health Licensure or a national license accreditation agency. (EX: Radiological Technologist, Nuclear Medicine, etc.)]

licensure as a registered nurse in Tennessee. Teachers must successfully complete a comprehensive test administered or accepted by the Tennessee Health Related Boards.

Deleted: Applicant shall have completed three years of full-time successful employment within the past five years in a health care clinical setting having a current active health care license. (Ex: hospital, long-term care facility, rehabilitation or athletic training facility, dental or medical office, home health, day surgery center, etc.)

* 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 7/27/12, 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: October 1, 2012

Signature: *Gary L. Nixon*

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: October 1, 2012

Notary Public Signature: *Beth Cooper*

My commission expires on: January 26, 2016

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

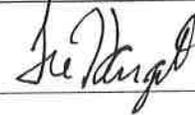
1-28-13

Date

Department of State Use Only

Filed with the Department of State on: 2/6/13

Effective on: 7/29/13



Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Insurance

SUBJECT: Custodians for Insurance Company Securities

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 56-3-901 and 56-3-905

EFFECTIVE DATES: May 26, 2013 through June 30, 2014

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

Public Chapter 680 of 2012, codified as Tennessee Code Annotated § 56-3-901 through § 56-3-905, authorizes the Commissioner to promulgate rules in order to establish the standards for national banks, state banks, federal home loan banks, trust companies, and broker/dealers to qualify as custodians for insurance company securities.

The proposed amendments clarify what the standards are for national banks, state banks, federal home loan banks, trust companies, and broker/dealers to qualify as custodians for insurance company securities. Further, these rules are designed to allow the insurance companies greater flexibility in choosing the custodian of their securities.

Public Hearing Comments

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

The Department of Commerce and Insurance received no comments.

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.

The Department of Commerce and Insurance has considered whether the proposed rules in this notice of rulemaking hearing are such that they will have an economic impact on small business (business with fifty (50) or fewer employees). The proposed rule is anticipated not to have a significant economic impact affecting small business. Acts 2012 ch. 680, codified as T.C.A. §§ 56-3-901 through 56-3-905, authorize the Commissioner to promulgate rules in order to establish the standards for national banks, state banks, federal home loan banks, trust companies, and broker/dealers to qualify as custodians for insurance company securities. The proposed amendments clarify what the standards are for national banks, state banks, federal home loan banks, trust companies, and broker/dealers to qualify as custodians for insurance company securities. Further, these rules are designed to allow the insurance companies greater flexibility in choosing the custodian of their securities.

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

- (1) The proposed rule will only apply to insurance companies licensed in this state.
- (2) Insurance companies licensed in this State are required to have custodial agreements. The proposed rule does not change that requirement, but rather allows insurance companies greater flexibility in choosing who they want to be the custodian of their securities. This rule will not increase any record keeping requirements for insurance companies.
- (3) The effect on small businesses is negligible. The proposed amendment will have no effect on consumers and will only affect insurance companies.
- (4) There are no alternative methods to make the rule less costly, less intrusive or less burdensome.
- (5) There are no other counterparts in the State of Tennessee; however, this regulation is similar to regulations in effect in the states surrounding Tennessee.
- (6) Only insurance companies are subject to this rule. Most insurance companies licensed in this State have greater than 50 employees. Nevertheless, exempting any insurance from this regulation would deny them the flexibility in choosing a custodian as contained in this regulation.

Impact on Local Governments

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

This rule will not have an impact on local governments.

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For Department of State Use Only

Sequence Number: 02-38-13
 Rule ID(s): 5383
 File Date: 2/25/13
 Effective Date: 5/26/13

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 Commerce and Insurance
Division:	Insurance
Contact Person:	Tony Greer, Chief Counsel for Insurance and TennCare Oversight
Address:	The Davy Crockett Tower 500 James Robertson Parkway, 2 nd Floor Nashville, TN 37243
Zip:	37243
Phone:	615-741-2199
Email:	tony.greer@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)

Rule(s) Revised

Chapter Number	Chapter Title
0780-01-46	Permissible Methods of Holding Securities and Securities to be Deposited with the Department of Commerce and Insurance
Rule Number	Rule Title
0780-01-46-.01	Purpose
0780-01-46-.02	Definitions
0780-01-46-.03	Permissible Methods of Holding Securities
0780-01-46-.04	Securities Held on Deposit with the Commissioner
Appendix A	Custodial Agreement
Appendix B	Custodian Affidavit A
Appendix C	Custodian Affidavit B
Appendix D	Custodian Affidavit C

0780-01-46
 Permissible Methods of Holding Securities and Securities to be Deposited with the Department of Commerce and Insurance
 Amendment

Chapter 0780-01-46 Permissible Methods of Holding Securities and Securities to be Deposited with the Department of Commerce and Insurance is amended by deleting the current language of the Chapter in its entirety and replacing it with the language below:

RULES
OF
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF INSURANCE

CHAPTER 0780-1-46
PERMISSIBLE METHODS OF HOLDING SECURITIES
AND SECURITIES TO BE DEPOSITED WITH THE
DEPARTMENT OF COMMERCE AND INSURANCE

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0780-1-46-.01 Purpose	Appendix A Custodial Agreement
0780-1-46-.02 ¹ Definitions	Appendix B ^A Custodian Affidavit A
0780-1-46-.03 ² Permissible Methods of Holding Securities Custody Agreement; Requirements	Appendix C ^B Custodian Affidavit B
0780-1-46-.04 ³ Securities Held on Deposit with the Commissioner	Appendix D ^C Custodian Affidavit C

~~0780-1-46-.01 PURPOSE.~~

- ~~(1) The purpose of this Chapter is to expedite the verification of insurance company assets during examinations conducted by the Department; to reduce costs and simplify delivery and receipt procedures involved in security transactions by insurance companies; to reduce the exposure of securities to loss, theft, misplacement, damage, and other destruction; and to better provide for the storage, inspection, transportation, counting, and insuring of securities.~~
- ~~(2) Further purposes are to establish procedures for the verification of securities which insurance companies deposit in banks under custodial agreements; to permit insurance companies to hold securities in other than definitive certificates; to better safeguard the actual securities; to facilitate checking assets of an insurance company; and to recognize that definitive securities no longer represent the only tangible evidence of security obligations held by an insurance company.~~

~~Authority: T.C.A. § 56-3-112. Administrative History: Original rule filed October 27, 1980; effective December 11, 1980. Repeal and new rule filed April 28, 2005; effective July 17, 2005.~~

July, 2005 (Revised)

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0780-1-46-.021 DEFINITIONS.

~~(1) The following words and terms, when used in this Chapter, shall have, unless the context clearly indicates otherwise, the following meanings:~~

~~(a) "Definitive Security" includes but is not limited to bonds, notes, debentures, stock certificates and other like securities.~~

~~(b) "Department" means the Tennessee Department of Commerce and Insurance.~~

~~(c) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance.~~

~~(d) "Clearing Corporation" means a depository corporation which maintains a book entry accounting system which meets the requirements of the definition of the terms in T.C.A. § 47-8-102, including the Depository Trust Company or any other like entity which meets similar standards of depository safeguards and regulatory control.~~

~~Authority: T.C.A. § 56-3-112. Administrative History: Original rule filed October 27, 1980; effective December 11, 1980. Repeal and new rule filed April 28, 2005; effective July 12, 2005.~~

When used in this Chapter, the term:

(1) "Agent" means a national bank, state bank, federal home loan bank, trust company or broker/dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities System (TRADES) or Treasury Direct systems, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "agent" may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities.

(2) "Clearing corporation" means a clearing corporation as defined in Section 8-102(a)(5) of the Uniform Commercial Code, as adopted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, as amended from time to time, that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements

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PERMISSIBLE METHODS OF HOLDING SECURITIES AND
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pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation that is organized or existing under the laws of a foreign country and which is legally qualified under those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes "Treasury/Reserve Automated Debt Entry Securities System" and "Treasury Direct" book-entry securities systems established pursuant to 31 U.S.C. § 3100 et seq., 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301.

(3) "Custodian" means:

(a) A national bank, state bank, federal home loan bank or trust company that shall at all times during which it acts as a custodian pursuant to this Chapter be no less than adequately capitalized as determined by the standards adopted by the regulator charged with establishing standards for, and assessing, the institution's solvency and that is regulated by either federal or state banking laws or the Federal Home Loan Bank Act, as amended, or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "custodian" may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to this Chapter be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or

(b) A broker/dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars (\$250,000,000).

(4) "Custodied securities" means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Equity Securities System (TRADES) or Treasury Direct systems.

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PERMISSIBLE METHODS OF HOLDING SECURITIES AND
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- (5) "Tangible net worth" means shareholders equity, less intangible assets, as reported in the broker/dealer's most recent Annual or Transition Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (SEC Form 10-K) filed with the Securities and Exchange Commission, or as determined by the most recent audited financial statement that broker/dealers file with the Securities and Exchange Commission pursuant to Exchange Act Rule 17a-5.
- (6) "Treasury/Reserve Automated Debt Entry Securities System" ("TRADES") and "Treasury Direct" mean the book entry securities systems established pursuant to 31 U.S.C. § 3100 et seq., 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301. The operation of TRADES and Treasury Direct are subject to 31 C.F.R. pt. 357 et seq.
- (7) "Security" has the same meaning as that defined in Section 8-102(a)(15), as adopted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, of the Uniform Commercial Code, as amended from time to time.
- (8) "Securities' certificate" has the same meaning as that defined in Section 8-102(a)(16), as adopted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, of the Uniform Commercial Code, as amended from time to time.

Authority: Acts 2012, ch. 680 and T.C.A. § 56-3-901, et seq., T.C.A. § 56-2-301 and T.C.A. § 56-2-104.

**0780-1-46-.032 PERMISSIBLE METHODS OF HOLDING SECURITIES CUSTODY AGREEMENT;
REQUIREMENTS.**

- (1) ~~An insurance company may hold its securities in the following authorized manners:~~
- (a) ~~An insurance company may hold its securities in definitive certificates;~~

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PERMISSIBLE METHODS OF HOLDING SECURITIES AND
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CHAPTER 0780-1-46

(Rule 0780-1-46-.032, continued)

- ~~(b) An insurance company may hold its securities pursuant to its participation in the book entry system of the Federal Reserve through a member bank of the Federal Reserve System which as a custodian can transact and maintain book entry securities for the insurance company.~~
- ~~1. This subparagraph shall not be interpreted so as to preclude an insurance company from participation in the Federal Reserve book entry system under a custodial agreement with a state chartered bank which has redeposited securities with a member bank for participation in the Federal Reserve book entry program.~~
- ~~(c) An insurance company may hold its securities pursuant to its participation in depository systems of clearing corporations through a custodian bank.~~
- ~~(2) All insurance companies choosing to hold its securities in the manner described in subparagraphs (1)(b) or (1)(c) of this Rule shall execute a proper custodial agreement and appropriate custodian affidavits for its securities held under custodial agreements.~~
- ~~(a) The custodial agreement required by this Rule shall contain the following:~~
- ~~1. A provision stating that the standard of responsibility on the part of the custodian shall not be less than that of the responsibility of a bailee for hire or a fiduciary under statutory or case law of Tennessee;~~
 - ~~2. A provision stating that the securities held by the custodian are subject to instructions of the insurance company;~~
 - ~~3. A provision stating that the securities may be withdrawn immediately upon demand of the insurance company; and~~
 - ~~4. A provision stating that the agreement is between the custodian and the insurance company, and not the parent or affiliate of the insurance company.~~
- ~~(b) Such executed affidavits as well as the underlying agreement between the insurance company and the custodian shall be available to the Commissioner upon request pursuant to examinations conducted under T.C.A. §§ 56-1-408 through 56-1-413.~~
- ~~(c) Examples of an acceptable custodial agreement as well as acceptable custodial affidavits are included in this Rule as appendices hereto.~~

July, 2005 (Revised)

PERMISSIBLE METHODS OF HOLDING SECURITIES AND
SECURITIES TO BE DEPOSITED WITH THE DEPARTMENT OF
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CHAPTER 0780-1-46

(Rule 0780-1-46-.032, continued)

- ~~(3) Each insurance company which enters into a custodial agreement must determine that the custodian maintains sufficient records to verify information which the insurance company reports on the Schedule D of the insurance company's Annual Statement blank(s).~~
- ~~(4) Failure to execute a proper custodial agreement or custodian affidavit may result in the Commissioner's non-admission of the insurance company's assets which are not held in a manner authorized by this Rule.~~

~~**Authority:** T.C.A. 5-56-3-112. **Administrative History:** Original rule filed October 27, 1980; effective December 11, 1980. Repeal and new rule filed April 28, 2005; effective July 12, 2005.~~

- ~~(1) An insurance company may, by written agreement with a custodian, provide for the custody of its securities with that custodian. The securities that are the subject of the agreement may be held by the custodian or its agent or in a clearing corporation.~~
- ~~(2) The agreement shall be in writing and shall be authorized by a resolution of the board of directors of the insurance company or of an authorized committee of the board. The terms of the agreement shall comply with the following:~~
- ~~(a) Securities' certificates held by the custodian shall be held separate from the securities' certificates of the custodian and of all of its other customers.~~
- ~~(b) Securities held indirectly by the custodian and securities in a clearing corporation shall be separately identified on the custodian's official records as being owned by the insurance company. The records shall identify which securities are held by the custodian or by its agent and which securities are in a clearing corporation. If the securities are in a clearing corporation, the records shall also identify where the securities are and, if in a clearing corporation, the name of the clearing corporation and if through an agent, the name of the agent.~~
- ~~(c) All custodied securities that are registered shall be registered in the name of the company or in the name of a nominee of the company or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.~~
- ~~(d) Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company except that custodied securities used to meet the deposit requirements set forth in TCA §§ 56-2-104, 56-3-904 and 56-3-905 of this Insurance Law shall, to the extent required by those sections, be under the~~

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PERMISSIBLE METHODS OF HOLDING SECURITIES AND
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(Rule 0780-1-46-.032, continued)

- control of the Department of Commerce and Insurance and shall not be withdrawn by the insurance company without the approval of the Department of Commerce and Insurance.
- (e) The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish no less than monthly the insurance company with reports of holdings of custodied securities at times and containing information reasonably requested by the insurance company. The custodian's trust committee's annual reports of its review of the insurer's trust accounts shall also be provided to the insurer. Reports and verifications may be transmitted in electronic or paper form.
- (f) During the course of the custodian's regular business hours, an officer or employee of the insurance company, an independent accountant selected by the insurance company and a representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company.
- (g) The custodian and its agents shall be required to send to the insurance company:
1. All reports which they receive from a clearing corporation on their respective systems of internal accounting control, and
 2. Reports prepared by outside auditors on the custodian's or its agent's internal accounting control of the custodied securities that the insurance company may reasonably request.
- (h) The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in an audit of the financial statements of the insurance company.
- (i) The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits, substantially in the form of Forms A, B or C as found in Appendices A, B, and C of this regulation, with respect to custodied securities.
- (j) A national bank, state bank, federal home loan bank or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company's duties and activities as custodian for the insurer's assets, and shall state in the custody agreement that protection is in compliance with the requirements of the

July, 2005 (Revised)

(Rule 0780-1-46-.032, continued)

- custodian's banking regulator. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided by the Securities Investor Protection Corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.
- (k) The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees, or burglary, robbery, holdup, theft, or mysterious disappearance, including loss by damage or destruction.
- (l) In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in subparagraph (k) above, the custodian shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from the loss of securities.
- (m) The agreement may provide that the custodian will not be liable for a failure to take an action required under the agreement in the event and to the extent that the taking of the action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control.
- (n) In the event that the custodian gains entry in a clearing corporation through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian. However, if the agent shall be subject to regulation under the laws of a jurisdiction that is different from the jurisdiction the laws of which regulate the custodian, the Commissioner of Insurance of the state of domicile of the insurance company may accept a standard of liability applicable to the agent that is different from the standard of liability applicable to the custodian.
- (o) The custodian shall provide written notification to the insurer's domiciliary commissioner if the custodial agreement with the insurer has been terminated or if 100% of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the insurance commissioner within three (3) business days of the receipt by the custodian of the insurer's written notice of termination or within three (3) business days of the withdrawal of 100% of the account assets.

PERMISSIBLE METHODS OF HOLDING SECURITIES AND
SECURITIES TO BE DEPOSITED WITH THE DEPARTMENT OF
COMMERCE AND INSURANCE

CHAPTER 0780-1-46

(Rule 0780-1-46-.032, continued)

Authority: Acts 2012, ch. 680 and T.C.A. § 56-3-901, *et seq.*, T.C.A. § 56-2-301 and T.C.A. § 56-2-104.

**0780-1-46-.043 ~~SECURITIES HELD ON DEPOSIT WITH THE COMMISSIONER~~ DEPOSIT WITH AFFILIATES;
REQUIREMENTS.**

- (1) ~~Securities to be placed on deposit with the Commissioner, pursuant to the provisions of T.C.A. §§ 56-2-104, 56-21-102, 56-35-116 and 56-13-117 must be maintained under a separate depository agreement between the depository institution (commercial bank or clearing corporation), the insurance company and the Commissioner.~~
- (2) ~~The depository agreement required by this Paragraph (1) of this Rule must contain the following:~~
 - (a) ~~A provision requiring the depository institution to provide verification of securities on deposit to the Commissioner;~~
 - (b) ~~A provision allowing the Commissioner to require such verification from the custodian at any time the Commissioner deems that verification is appropriate. Examples of appropriate verification documents are included in this Chapter as Appendices B, C and D; and~~
 - (c) ~~A provision requiring an authorized signature of the insurance company and the Commissioner, and/or the Commissioner's deputy, to concurrently appear on any withdrawal notices to the depository institution.~~

~~Authority: T.C.A. §§ 56-2-117 and 56-3-112. Administrative History: Original rule filed October 27, 1980; effective December 11, 1980. Repeal and new rule filed April 28, 2005; effective July 12, 2005.~~

- (1) Nothing in this Chapter shall prevent an insurance company from depositing securities with another insurance company with which the depositing insurance company is affiliated, provided that the securities are deposited pursuant to a written agreement authorized by the board of directors of the depositing insurance company or an authorized committee thereof and that the receiving insurance company is organized under the laws of one of the states of the United States of America or of the District of Columbia. If the respective states of domicile of the depositing and receiving insurance companies are not the same, the depositing insurance company shall have given notice of the deposit to the insurance commissioner in the state of its domicile and the insurance commissioner shall not have objected to it within thirty (30) days of the receipt of the notice.

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PERMISSIBLE METHODS OF HOLDING SECURITIES AND
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(Rule 0780-1-46-.032, continued)

(2) The terms of the agreement shall comply with the following:

- (a) The insurance company receiving the deposit shall maintain records adequate to identify and verify the securities belonging to the depositing insurance company.
- (b) The receiving insurance company shall allow representatives of an appropriate regulatory body to examine records relating to securities held subject to the agreement.
- (c) The depositing insurance company may authorize the receiving insurance company:
 - 1. To hold the securities of the depositing insurance company in bulk, in certificates issued in the name of the receiving insurance company or its nominee, and to commingle them with securities owned by other affiliates of the receiving insurance company, and
 - 2. To provide for the securities to be held by a custodian, including the custodian of securities of the receiving insurance company or in a clearing corporation.

Authority: Acts 2012, ch. 680 and T.C.A. § 56-3-901, et seq., T.C.A. § 56-2-301 and T.C.A. § 56-2-104.

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July, 2005 (Revised)

APPENDIX A

CUSTODIAL AGREEMENT

(For use by an insurance company which deposits its securities with a custodial depository institution.)

1. The Principal is the owner of certain securities, held on book entry with <BANK>, in the name of <BANK> and evidenced by trade orders from the <INSURANCE COMPANY> to <BANK>, delivered for the settlement of securities trades by brokers and evidenced by trade orders from <INSURANCE COMPANY> to <BANK> or received as income from assets held by <BANK> for <INSURANCE COMPANY>, some of which are subject to a separate Depository Agreement among <INSURANCE COMPANY> and the Commissioner of the Commerce and Insurance for the State of Tennessee, the terms and conditions of which take precedence over any conflicting terms and conditions in this agreement.

2. Custody of Assets

<BANK> shall hold and manage these assets for the benefit of, and at the direction of, <INSURANCE COMPANY>.

a. <BANK>, a member of the Federal Reserve System, may utilize the Federal Reserve book entry program. <BANK> shall hold such securities on deposit in an account with the name <INSURANCE COMPANY>. <BANK>, on its accounting system, will designate any securities so deposited as belonging to <INSURANCE COMPANY>.

b. <BANK> may hold any securities not eligible for book entry at <BANK> in the following manner:

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PERMISSIBLE METHODS OF HOLDING SECURITIES AND
SECURITIES TO BE DEPOSITED WITH THE DEPARTMENT OF
COMMERCE AND INSURANCE

CHAPTER 0780-1-46

(Rule 0780-1-46, Appendix A, continued)

(1) ~~items eligible for book entry at the Depository Trust Company ("DTC")—an account directly with DTC or in an account with another bank or trust company who has an account at DTC, and~~

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(2) ~~items not eligible for book entry at DTC—in an account with another bank, trust company, or registered open-end management investment company or in the <BANK>'s own vault in either registered or bearer form.~~

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~~Securities so deposited will at all times be kept separate and apart from other such deposits with <BANK> so that they may be identified as belonging to <INSURANCE COMPANY>. The records of any other bank, trust company or registered open-end management investment company, with which <BANK> may hold the securities (either at DTC or otherwise), shall designate the account name for which it is being held.~~

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e. ~~Upon request from the Department of Commerce and Insurance, <BANK> shall provide verification of securities on deposit. Examples of appropriate verification documents are Custodian Affidavits Forms A, B, and C.~~

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d. ~~The collection of principal cash shall be made by <BANK> in accordance with its usual and customary business practice and in accordance with the usual and customary business practices for the banking and securities industries.~~

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3. ~~Income Collection and Investment~~

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~~Income from the securities in this account shall be deposited into the demand deposit account of <INSURANCE COMPANY> as directed from time to time by an authorized agent of <INSURANCE COMPANY>. The collection of income shall be made by <BANK> in accordance with its usual and customary business practice and in accordance with the usual and customary business practices for the banking and securities industries. <BANK> will collect all income from~~

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July, 2005 (Revised)

(Rule 0780-1-46, Appendix A, continued)

investments held by it for <INSURANCE COMPANY> except any securities that are registered in the name of <INSURANCE COMPANY>.

4. Record-keeping and Reporting

<BANK> will keep records of all income and principal entries and will review statements of assets to <INSURANCE COMPANY> at least quarterly. All records of <BANK> concerning this account with <INSURANCE COMPANY> shall be available for inspection, during regular banking hours, by any duly authorized representative of <INSURANCE COMPANY>. Any errors or corrections on statements or in the account will be reported to <BANK> by <INSURANCE COMPANY> within a reasonable time of the receipt of the statement, but not to exceed ninety (90) days. Otherwise, all actions of <BANK> as reported shall be deemed to have been approved by <INSURANCE COMPANY>. <BANK>, when it becomes aware of the following events, shall notify <INSURANCE COMPANY> of matured but uncollected principal and interest, of securities called for redemption, of the expiration of the conversion privileged, of subscription or conversion rights and of similar proceedings relating to the assets in the account.

5. Indemnification

a. <BANK> is obligated to indemnify <INSURANCE COMPANY> for any loss of securities of <INSURANCE COMPANY> in <BANK>'s care, whether in <BANK>'s vault or in an account of <BANK> identified as belonging to <INSURANCE COMPANY> with another bank, trust company or registered open end management investment company, except that, unless domiciliary state law, regulation or administrative action otherwise require a stricter standard, <BANK> shall not be so obligated to the extent that such loss was caused by other than burglary, robbery, holdup, theft or mysterious disappearance, including loss by damage or destruction, or the negligence or dishonesty of <BANK>, of its agents or of any other bank, trust company or registered open end management investment company with which <BANK> is holding securities for <INSURANCE COMPANY>.

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July, 2005 (Revised)

PERMISSIBLE METHODS OF HOLDING SECURITIES AND
SECURITIES TO BE DEPOSITED WITH THE DEPARTMENT OF
COMMERCE AND INSURANCE

CHAPTER 0780-1-46

(Rule 0780-1-46, Appendix A, continued)

b. ~~If the domiciliary state law, regulation or administrative action requires a stricter standard of liability for custodians of insurance company securities than that set forth in Section 5.a., then such stricter standard shall apply.~~

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c. ~~In the event there is a loss of the securities for which <BANK> is obligated to indemnify <INSURANCE COMPANY>, the securities shall be promptly replaced or the value of the securities and the value of any loss of rights or privileges resulting from said loss of securities shall be promptly replaced.~~

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d. ~~<BANK> shall not be liable for any failure to take action required to be taken hereunder in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, laws, regulations, orders or other acts of any governmental or judicial authority, or any other cause beyond <BANK>'s reasonable control.~~

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e. ~~In addition to the preceding requirements of this Section 5, <BANK>'s standard of responsibility hereunder shall be that of a bailee for hire under statutory and case law of the State of Tennessee. Without limiting the generality of the foregoing, it is agreed and understood that <BANK> is not acting as a trustee and further that <BANK> is in no way responsible or liable for any decline in value of any securities.~~

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6. ~~Investment Responsibility~~

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~~<BANK> will have no investment responsibility or authority and will make investments only on the direction of <INSURANCE COMPANY>.~~

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7. ~~Fees~~

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July, 2005 (Revised)

PERMISSIBLE METHODS OF HOLDING SECURITIES AND
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CHAPTER 0780-1-46

(Rule 0780-1-46, Appendix A, continued)

~~<BANK> may be paid an annual fee by <INSURANCE COMPANY> for the services rendered under
this agreement.~~

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~~8. Termination~~

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~~This agreement may be terminated by either party upon thirty (30) days' written notice given to the other party. Since the transfer of assets may take more than thirty (30) days from the date of the termination notice, <BANK> shall have a reasonable time after receipt of the written notice to deliver the assets to <INSURANCE COMPANY> or the new custodian and <INSURANCE COMPANY> shall have a reasonable time after receipt of the written notice to prepare to receive the assets or appoint a new custodian to receive the assets of <INSURANCE COMPANY>'s behalf. If a new custodian is appointed to hold the assets for <INSURANCE COMPANY>, <INSURANCE COMPANY> shall give <BANK> the delivery instructions to the new custodian.~~

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~~9. Governing Law~~

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~~This agreement shall be construed and interpreted according to the laws of the State of Tennessee.~~

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~~<BANK>~~

July, 2005 (Revised)

PERMISSIBLE METHODS OF HOLDING SECURITIES AND
SECURITIES TO BE DEPOSITED WITH THE DEPARTMENT OF
COMMERCE AND INSURANCE

CHAPTER 0780-1-46

(Rule 0780-1-46, Appendix A, continued)

—————<INSURANCE COMPANY>

July, 2005 (Revised)

PERMISSIBLE METHODS OF HOLDING SECURITIES AND
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COMMERCE AND INSURANCE

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systems) which were in the custody of the Bankcorporation for the account of the Insurance Company as of the close of business on <DATE>; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the Insurance Company or its nominee or a ~~nominee of the Bank~~ of the corporation or its nominee, or were in the process of being registered in such form;

That the Bankcorporation as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the agreement between the Bankcorporation as custodian and the Insurance Company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, ~~said~~ the securities were the property of ~~said~~ the Insurance Company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this _____ day of _____,

(L.S.) _____

<AUTHORIZED BANK OFFICER> Vice
President [or other authorized officer]

July, 2005 (Revised)

PERMISSIBLE METHODS OF HOLDING SECURITIES AND
SECURITIES TO BE DEPOSITED WITH THE DEPARTMENT OF
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CHAPTER 0780-1-46

APPENDIX ~~CB~~

CUSTODIAN AFFIDAVIT B

(For use in instances where a custodian bankcorporation maintains securities on deposit with The Depository Trust Company or like entity.)

STATE OF)
) SS:
COUNTY OF)

<AUTHORIZED BANKCORPORATION OFFICER>, being duly sworn deposes and says that he or she is the <POSITION> of <BANKCORPORATION>, a banking corporation organized under and pursuant to the laws of the <STATE> with the principal place of business at <ADDRESS> (hereinafter called the "Bankcorporation");

That ~~my~~his or her duties involve supervision of activities of the Bankcorporation as custodian and records relating thereto;

That the Bankcorporation is custodian for certain securities of <INSURANCE COMPANY> ~~with~~having a place of business at <ADDRESS> (hereinafter called the "Insurance Company") pursuant to an agreement between the Bankcorporation and the Insurance Company;

That the Bankcorporation has caused certain of such securities to be deposited with ~~the~~ Depository Trust Company _____, and that the schedule attached hereto is a true and complete statement of the securities of the Insurance Company of which the

July, 2005 (Revised)

PERMISSIBLE METHODS OF HOLDING SECURITIES AND
SECURITIES TO BE DEPOSITED WITH THE DEPARTMENT OF
COMMERCE AND INSURANCE

CHAPTER 0780-1-46

Bankcorporation was custodian as of the close of business on <DATE>, and which were so deposited on such date;

That the Bankcorporation as custodian has the same responsibility for the safekeeping of ~~such~~the securities whetherboth in the possession of the Bankcorporation or deposited with _____ as that responsibility is specifically set forth in the agreement between the Bankcorporation as custodian and the Insurance Company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, ~~said~~the securities were the property of ~~said~~the Insurance Company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this _____ day of _____

(L.S.)

<AUTHORIZED BANK OFFICER>Vice President
[or other authorized officer]

July, 2005 (Revised)

APPENDIX ~~D~~C

CUSTODIAN AFFIDAVIT C

(For use where ownership is evidenced by book entry at a Federal Reserve Bank.)

STATE OF)
) SS:
COUNTY OF)

<AUTHORIZED ~~BANK~~CORPORATION OFFICER>, being duly sworn deposes and says that he or she is the <POSITION> of <BANKCORPORATION>, a banking corporation organized under and pursuant to the laws of the <STATE> with the principal place of business at <ADDRESS> (hereinafter called the "Bankcorporation");

That ~~my~~his or her duties involve the supervision of activities of the Bankcorporation as custodian and records relating thereto;

That the Bankcorporation is custodian for certain securities of <INSURANCE COMPANY> with a place of business at <ADDRESS> (hereinafter called the "Insurance Company") pursuant to an agreement between the Bankcorporation and the Insurance Company;

That <BANK>~~it~~ has caused certain of ~~such~~ securities to be credited to its book entry account with ~~at~~the Federal Reserve Bank of _____ under the ~~Federal Reserve book entry procedure~~TRADES or Treasury Direct systems; and that the schedule attached hereto is a true and complete statement of the securities of the Insurance Company of which the

July, 2005 (Revised)

PERMISSIBLE METHODS OF HOLDING SECURITIES AND
SECURITIES TO BE DEPOSITED WITH THE DEPARTMENT OF
COMMERCE AND INSURANCE

CHAPTER 0780-1-46

Bankcorporation was custodian as of the close of business on _____ which were in a "general" book entry account maintained in the name of the Bankcorporation on the books and records of ~~the~~ Federal Reserve Bank of _____ at such date;

That the Bankcorporation has the same responsibility for the safekeeping of such securities whether both in the possession of the Bankcorporation or in ~~said~~the "general" book entry account as that ~~responsibility~~ is specifically set forth in the agreement between the Bankcorporation as custodian and the Insurance Company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, ~~said~~the securities were the property of ~~said~~the Insurance Company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this _____ day of _____

(L.S.)

)}
~~<AUTHORIZED BANK OFFICER>~~ Vice President
[or other authorized officer]

~~Authority: T.C.A. § 56-3-112. Administrative History: Original rule filed October 27, 1980; effective December 11, 1980. Repeal and new rule filed April 28, 2005; effective July 12, 2005.~~

Authority: Acts 2012, ch. 680 and T.C.A. § 56-3-901, et seq., T.C.A. § 56-2-301 and T.C.A. § 56-2-104.

July, 2005 (Revised)

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

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 2/22/13 (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: 11/27/2012

Rulemaking Hearing(s) Conducted on: (add more dates). 01/16/2013

Date: 2/22/13

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner

Subscribed and sworn to before me on: 2/22/13

Notary Public Signature: Denise M Lewis

My commission expires on: 2/15/16



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

2-25-13

Date

Department of State Use Only

Filed with the Department of State on: 2/25/13

Effective on: 5/26/13

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Bureau of Health Licensure and Regulation
Division of Health Care Facilities

SUBJECT: Trauma Registry Data

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-11-259

EFFECTIVE DATES: May 13, 2013 through June 30, 2014

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking amends rules governing trauma centers, namely Rule 1200-08-12-.03 Definitions and Rule 1200-08-12-.06 Trauma Registry Data.

This rulemaking adds definitions pertinent to the release of medical data submitted to the state trauma registry and establishes the procedure for the release of data contained in the state trauma registry.

Public Hearing Comments

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

There were no verbal comments at the rulemaking hearing and no written comments 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.

(If applicable, insert Regulatory Flexibility Addendum here)

Regulatory Flexibility Analysis

- (1) The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.
- (2) The proposed rules exhibit clarity, conciseness, and lack of ambiguity.
- (3) The proposed rules are not written with special consideration for the flexible compliance and/or requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations. The rules are written to regulate the release of data from the state trauma registry.
- (4) The compliance requirements throughout the proposed rules are as "user-friendly" as possible while still allowing the division of health care facilities to achieve its mandated mission in regulating trauma care centers and the state trauma registry. There is sufficient notice between the rulemaking hearing and the final promulgation of these rules to allow services and providers to come into compliance with the proposed rules.
- (5) Compliance requirements in the proposed rules are not consolidated or simplified for small businesses for the protection of the health, safety and welfare of Tennesseans.
- (6) The standards required in the proposed rules are very basic and do not necessitate the establishment of performance standards for small businesses.
- (7) There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

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

Rulemaking hearing date: September 12, 2012

Types of small businesses that will be directly affected by the proposed rules:

These rule changes only affect hospitals, not small businesses.

Types of small businesses that will bear the cost of the proposed rules:

The rule changes impact hospitals only. Economic impact was considered when drafting the proposed rules with an effort to make sure that they have minimal additional costs for small businesses.

Types of small businesses that will directly benefit from the proposed rules:

It is likely that the attached rules would directly benefit hospitals designated as trauma centers, especially those involved in medical research, by regulating the release of data from the state trauma registry.

Description of how small business will be adversely impacted by the proposed rules:

The rule changes are not expected to adversely impact small businesses.

Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:

The Department of Health, Board for Licensing of Health Care Facilities does not believe there are less burdensome alternatives to the proposed rule amendments.

Comparison of the proposed rule with federal or state counterparts:

Federal: None.

State:

The proposed rule amendments will have no state counterpart because the Department of Health, Board for Licensing Health Care Facilities is the only agency in Tennessee charged with regulating the trauma registry and/or hospitals.

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 rule amendments and new rule are not expected to have an impact on local governments.

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For Department of State Use Only

Sequence Number: 02-16-13
 Rule ID(s): 5380
 File Date: 2/12/13
 Effective Date: 5/13/13

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 Health
Division:	Bureau of Health Licensure and Regulation Division of Health Care Facilities
Contact Person:	Keith D. Hodges, Assistant General Counsel
Address:	220 Athens Way, Suite 210, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Keith.D.Hodges@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
1200-08-12	Trauma Centers
Rule Number	Rule Title
1200-08-12-.03	Definitions
1200-08-12-.06	Trauma Registry Data

RULES
OF
THE TENNESSEE DEPARTMENT OF HEALTH
DIVISION OF HEALTH CARE FACILITIES

CHAPTER 1200-08-12
TRAUMA CENTERS

TABLE OF CONTENTS

1200-08-12-.01	Preamble	1200-08-12-.04	Requirements
1200-08-12-.02	Authority	1200-08-12-.05	Repealed
1200-08-12-.03	Definitions		

1200-08-12-.01 PREAMBLE. The Tennessee Department of Health is empowered to adopt such regulations and standards pertaining to the operation and management of hospitals as are necessary for the public interest. On November 24, 1982, the EMS Advisory Council prepared and presented to the Board for Licensing Health Care Facilities ("Board") a recommendation that a formal review of the issues involved in the designation of trauma centers for the State of Tennessee be explored. Subsequently, on February 17, 1983, the Board requested a presentation regarding the City of Memphis Hospital Trauma Center in an effort to further define the need for action on trauma center designation and/or categorization. As a result of that presentation, the Board created a Task Force to evaluate and recommend criteria concerning the development of trauma systems and the operation of trauma centers in the state.

The process of Designation and Reverification is voluntary on the part of hospitals in the state. It is meant to identify those hospitals that make a commitment to provide a given level of care of the acutely injured patient. Knowledge of statewide trauma care capabilities and the use of trauma triage protocols will enable providers to make timely decisions, promote appropriate utilization of the trauma care delivery system, and ultimately save lives.

Authority: T.C.A. § 68-11-201 et seq. **Administrative History:** Original rule filed September 18, 1985; effective October 18, 1985. Repeal and new rule filed December 5, 2011; effective March 4, 2012.

1200-08-12-.02 AUTHORITY. The Board for Licensing Health Care Facilities issues these regulations under the authority granted at T.C.A. 68-11-201 et seq.

Authority: T.C.A. § 68-11-201 et seq. **Administrative History:** Original rule filed September 18, 1985; effective October 18, 1985. Repeal and new rule filed December 5, 2011; effective March 4, 2012.

1200-08-12-.03 DEFINITIONS.

(1) "Advisory Council" means the Tennessee Trauma Care Advisory Council.

(1) "Board" means the Board for Licensing Health Care Facilities.

() "Commissioner" means the Commissioner of the Tennessee Department of Health.

() "Comprehensive Regional Pediatric Center (CRPC)" means a facility designated as CRPC that shall be capable of providing comprehensive specialized pediatric medical and surgical care to all acutely ill and injured children. The center shall be responsible for serving as a regional referral center for the specialized care of pediatric patients or in special circumstances provide safe and timely transfer of children to other resources for specialized care. Rules and regulations governing CRPCs are delineated in Chapter 1200-08-30.

(Rule 1200-08-12-.03, continued)

- (1) "Data" means the original information contained on the report required by the regulations, including, but not limited to, both identifying and non-identifying information.
- (2) "Department" means the Tennessee Department of Health.
- (3) "Facility" shall have the same meaning as defined in T.C.A. § 68-11-201(18).
- (1) "Health care practitioner" means a physician, surgeon, or other health care professional licensed under T.C.A. Title 63 or Title 68 who is engaged in diagnosing and/or treating patients within the trauma care system.
- (1) "Identifying information" means any information that could lead to the identification of a patient who has been diagnosed or treated within the trauma care system.
- (4) "Levels of Care" means the type of trauma service provided by the facility as shown by the degree of commitment in personnel and facilities made to the delivery of that service.
- (5) "Level I" means a facility providing optimum care for the acutely injured patient and which meets all requirements in these regulations defined as Level of Care I.
- (6) "Level II" means a facility providing optimum care for the acutely injured patient and which meets all requirements in these regulations defined as Level of Care II.
- (7) "Level III" means a facility providing a maximum trauma care commensurate with community resources. The Level III facility generally serves communities without all the resources usually associated with Level I or II facilities. Planning for care of the injured in small communities or suburban settings usually calls for transfer agreements and protocols for the most severely injured patients. Designation of the Level III facility may also require innovative use of the region's resources. For example, if there is no neurosurgeon in a large, sparsely populated region it may require that a general surgeon be prepared to provide the emergency decompression of mass lesions and arrangement for patient transfer to the most appropriate Level I or II hospital after the surgeon has carried out the patient's life-saving operation. Staffing of the Level III hospital is another example of the innovative use of a region's resources. It will be impractical to require a general surgeon to be in-house in many instances. With modern communication systems it seems reasonable that the surgeon should be promptly available and in a great majority of instances meet the patient in the emergency room on arrival. When a Level III hospital first receives notification of a critically injured patient, it can activate on-call personnel to respond promptly to the hospital. The intent of this flexibility should be clear: to provide the best possible care even in the most remote circumstances.
- ~~(8) "Comprehensive Regional Pediatric Center (CRPC)" means a facility designated as CRPC that shall be capable of providing comprehensive specialized pediatric medical and surgical care to all acutely ill and injured children. The center shall be responsible for serving as a regional referral center for the specialized care of pediatric patients or in special circumstances provide safe and timely transfer of children to other resources for specialized care. Rules and regulations governing CRPCs are delineated in Chapter 1200-08-30.~~
- (1) "Medical Record" means medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations, and other written, electronic, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to patients admitted or receiving care.
- (1) "Person" means any member of the "medical, scientific, and academic research community"

(Rule 1200-08-12-.03, continued)

- () "Policies and Procedures Manual" means the document(s) maintained in the offices of the Tennessee Trauma Registry giving specific written instructions for the implementation of policies and procedures utilized by the registry and which may be updated from time to time.
- (9) "Trauma Center" shall have the same definition as provided in T.C.A. § 68-59-102(6).
- (10) "Trauma Registry" means a central registry compiled of injury incidence information supplied by designated trauma centers and Comprehensive Pediatric Emergency Centers for the purpose of allowing the Board to analyze data and conduct special studies regarding the causes and consequences of traumatic injury.
- (11) "E" means essential.
- (12) "D" means desired.
- (13) "FAST" means focused abdominal sonography for trauma.
- (14) "ACS-COT" means American College of Surgeons Committee on Trauma.
- (15) "ATLS" means Advanced Trauma Life Support.
- (16) "PGY" means postgraduate year.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, and 68-11-209. **Administrative History:** Original rule filed September 18, 1985; effective October 18, 1985. Amendment filed March 31, 1989; effective May 15, 1989. Amendment filed August 16, 2006; effective October 30, 2006. Repeal and new rule filed December 5, 2011; effective March 4, 2012.

1200-08-12-.04 REQUIREMENTS.

- (1) Trauma registry requirements shall include the following:
 - (a) Each trauma center shall submit trauma registry data electronically to the trauma registry on all closed patient files.
 - (b) Each trauma center shall submit trauma registry data for receipt no later than one hundred twenty (120) days after each quarter of the year. Trauma centers shall receive confirmation of successful submission no later than two weeks after submission.
 - (c) Trauma centers which fail to submit required data to the trauma registry for three (3) consecutive quarters shall risk not receiving compensation from the Tennessee Trauma Center Fund.
- (2) Levels of Care
 - (a) Hospital Origination

	I	II	III
1. Trauma Service	E	E	E
A recognizable program within the hospital which has a surgeon as its director/coordinator/physician in charge. The intent is to ensure the coordination of services and performance improvement for the trauma patient. The service includes personnel and other resources necessary to ensure appropriate and efficient provision of care and will vary according to facility and level of designation.			

(Rule 1200-08-12-.04, continued)

15. Or substituted by current signed transfer agreement with burn center or hospital with burn unit.
16. Each Level I and II Center must have an organized protocol with a transplant team or service to identify possible organ donors and assist in procuring organs for donation.
17. All specialists must be available within 30 minutes.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, and 68-11-209. **Administrative History:** Original rule filed September 18, 1985; effective October 18, 1985. Amendment filed March 31, 1989; effective May 15, 1989. Amendment filed August 31, 1990; effective October 15, 1990. Amendment filed October 20, 1992; effective December 4, 1992. Amendment filed July 21, 1993; effective October 4, 1993. Amendment filed August 16, 2006; effective October 30, 2006. Repeal and new rule filed December 5, 2011; effective March 4, 2012.

1200-08-12-.05 REPEALED.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, and 68-11-209. **Administrative History:** Original rule filed March 31, 1989; effective May 18, 1989. Amendment filed July 21, 1993; effective October 4, 1993. Repeal filed December 5, 2011; effective March 4, 2012.

1200-08-12-.06 Trauma Registry Data

(1) Confidentiality.

- (a) T.C.A. § 68-11-259 provides for the confidentiality of data obtained from the reports of trauma patients.
- (b) Information contained in the trauma registry that reasonably could be expected to reveal the identity of any patient or a reporting facility may not be made available to the public.
- (c) Trauma registry responsibilities
 1. The trauma registry shall take strict measures to ensure that all patient identifying information is treated as confidential and privileged.
 2. All employees and consultants, including auditors of the trauma registry, shall sign a Tennessee Trauma Registry Employee Confidentiality Pledge and these signed pledges shall be kept on file.
 3. Protection of report sources. Hospitals, laboratories, facilities, or health care practitioners who disclose trauma care data to the trauma registry or its employees in conformity with T.C.A. § 68-11-259 and rules and regulations promulgated thereto shall not be held liable for the release of such data to the department, unless the person or entity has knowledge of any falsity of the information reported or disclosed.
- (d) Protection of patient identifying information obtained by special studies and other research studies
 1. All identifying information such as records of interviews, questionnaires, reports, statements, notes, and memoranda that are procured or prepared by employees or agents of the trauma registry shall be used solely for statistical, scientific and medical research purposes and shall be held strictly confidential by the trauma registry.

(Rule 1200-08-12-.05, continued)

2. This applies also to identifying information procured by any other person, agency, or organization, including public or private colleges and universities acting jointly with the trauma registry in connection with special health studies and research investigations.

(2) Release of Data

(a) Release of non-identifying information

1. To the Tennessee Department of Health:

- (i) The trauma registry shall work closely with the Tennessee Department of Health in investigating the causes and consequences of traumatic injuries and in evaluating programs.
- (ii) Because the trauma registry data are an integral part of the Tennessee Department of Health traumatic injury prevention and control programs, the use of trauma registry data by public health officials shall be considered an in-house activity.

2. To the general public:

- (i) Public reports published by the trauma registry shall include aggregate, not patient identifying information or facility identifying information.
- (ii) Information that would potentially identify a trauma patient shall not be published.
- (iii) Non-identifying information may be made available to the general public upon request to the department.
- (iv) The availability of any data shall depend upon the department's financial or other ability to comply with such requests. The trauma registry shall respond to public requests as quickly as possible, subject to staffing constraints.

(b) Release of identifying information

1. Identifying information collected from any hospital, laboratory, facility, or health care practitioner may be released to qualified persons for the purposes of traumatic injury prevention, control, care, and research, provided that each request for identifying information follows the established procedure outlined in the trauma registry Policies and Procedures Manual and receives prior approval by the department.

2. Identifying information that is collected solely by the trauma registry for its own special studies shall not be released.

- (c) Annual Report. A statistical report shall be prepared at the completion of each year's data collection cycle and will be distributed as requested.

(3) Request procedure for patient identifying information

(Rule 1200-08-12-.05, continued)

- (a) Requests for identifying information shall be reviewed and approved by the department according to the policies of the Tennessee Department of Health and the trauma registry.
- (b) A detailed description of the procedures for requesting identifying information can be obtained from the trauma registry.

Authority: T.C.A. §§ 68-11-209 and 68-11-259.

* 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)
Larry Arnold, MD	X				
Sylvia Burton	X				
Betsy Cummins	X				
Alex Gaddy				X	
Robert Gordon	X				
Jennifer Gordon-Maloney, DDS				X	
Luke Gregory	X				
Janice Hill	X				
Roy King, MD				X	
Carissa Lynch	x				
Annette Marlar	X				
John Marshall	X				
David Rhodes	X				
Jim Shulman				X	
Bobby Wood				X	
Vacant					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Licensing Health Care Facilities on 09/12/2012, 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: 07/06/12

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

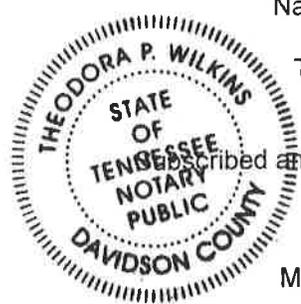
Date: October 2, 2012

Signature: [Handwritten Signature]

Name of Officer: Keith D. Hodges

Assistant General Counsel

Title of Officer: Department of Health



Subscribed and sworn to before me on: 10/2/12

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/3/13

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.

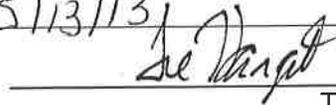
[Handwritten Signature]
 Robert E. Cooper, Jr.
 Attorney General and Reporter
2-6-13

Date

Department of State Use Only

Filed with the Department of State on: 2/12/13

Effective on: 5/13/13



Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: Long-Term Care Programs

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 71-5-105

EFFECTIVE DATES: July 29, 2013 through June 30, 2014

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking repeals obsolete rules on long-term care programs, third party resources, recipient abuse and overutilization, statewide home and community based waivers, and provider noncompliance or fraud.

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 rules have no effect on small businesses.

Impact on Local Governments

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

(Insert statement here)

The rules are not projected to have an impact on local governments.

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For Department of State Use Only

Sequence Number: 02-01-13
Rule ID(s): 5369
File Date: 2/1/13
Effective Date: 7/29/13

Proposed Rule(s) Filing Form

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

Agency/Board/Commission: Tennessee 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-.04	Third Party Resources
1200-13-01-.11	Recipient Abuse and Overutilization of Medicaid Program
1200-13-01-.17	Statewide Home and Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver)
1200-13-01-.21	Provider Noncompliance or Fraud of Medicaid Program

(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>)

Rule 1200-13-01-.04 Third Party Resources is deleted in its entirety.

~~1200-13-01-.04 THIRD PARTY RESOURCES.~~

~~(1) Definitions~~

- ~~(a) Third party resources shall mean any individual, entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished to a Tennessee Medicaid recipient.~~

~~Recipient resources acquired through medical malpractice or victim compensation actions or from indemnity insurance, which compensates for loss of work or loss of limb, shall not be considered a third party resource. An indemnity insurance policy which compensates for specific medical services such as inpatient hospital confinement, is a third party resource.~~

- ~~(b) Third party payment shall mean compensation provided to a Medical provider or to Medicaid by any third party resource which eliminates or reduces Medicaid's indebtedness for medical assistance furnished to a Tennessee Medicaid recipient.~~

- ~~(c) Direct billing shall mean the process used by Medicaid to collect/recover payments for covered services from any third party resource available to a Medicaid recipient.~~

- ~~(d) Recipient assignment of rights shall mean that a recipient or responsible party shall assign rights to Medicaid for medical support or other third party payments. The recipient and/or responsible party shall cooperate with Medicaid and providers in obtaining Medical support or payments.~~

- ~~(e) Third party documentation shall mean:~~

~~1. an insurance company's explanation of benefits (EOB) related to the specific claim, or~~

~~2. a statement on the provider's letterhead indicating contact with the insurance company and the reason for denial. The statement must be signed and dated by an authorized employee of the provider and include the insurance company name, policy and group number, the date of contact, the date of service, the recipient name and Medicaid identification number.~~

- ~~(2) Claims for Medicaid covered services provided to Medicaid eligibles shall not be made against Medicaid until Medicare and other probable third party resources to the recipient have been collected, unless prohibited by federal law except where third party resources are provided by other state agencies under contract with this Department which designated the agency as payor after Medicaid.~~

- ~~(a) Medicaid may be billed following formal notification from the third party resources that the services provided are not covered or payable or when third party payment has been received. All claims submitted shall indicate the third party payment amount received, if third party resources are found to be nonexistent, copies of letter(s) or other supporting documentation shall be attached to the claim.~~

~~1. If third party payment is less than the Medicaid allowable, Medicaid will pay the difference between the third party payment and the Medicaid allowable. No further claim shall be allowed against the recipient and/or the recipient's responsible party(s) for Medicaid services, or~~

- ~~2. If third party payment is equal to or exceeds the Medicaid allowable no further claim shall be allowed against Medicaid or the Medicaid recipient and/or that recipient's responsible party(s) for Medicaid covered services.~~
- ~~(3) Providers receiving third party payments following Medicaid payment shall notify and refund Medicaid within 60 days of receipt of the third party payment. The refund to Medicaid shall be the lesser of the third party or Medicaid payment. The provider shall submit a check to Medicaid, or may request Medicaid to setoff the refund amount from the provider's current claim. A Medicaid Title XIX Adjustment Void Request form identifying the recipient's name and Medicaid number, date(s) of service, remittance advice, number and the name and address of the third party resource, shall be submitted with a check or request for setoff to assure the proper credit is provided to the provider and recipient accounts.~~
- ~~(4) Providers having received third party payments which should have been reported and refundable in whole or in part to Medicaid as specified in parts (2) and (3), which were held more than 60 days and not refunded, and/or which are found in an audit/review shall be subject to any resulting federal monetary assessment against the State Medicaid program.~~
- ~~(5) Medicaid shall perform audits of provider records to identify third party resources unreported and/or unrefunded to Medicaid as specified in part (3). Provider(s) to be audited shall be selected based upon the potential of the provider and/or provider category (hospitals, physicians, etc.) to receive third party resources.~~
- ~~(6) Direct Billing~~
- ~~(a) Medicaid shall utilize direct billing when it is determined that a previously paid service(s) may have been covered by a third party. Additionally, notwithstanding Section (2), direct billing for some services may be more cost effective than requiring the provider to collect prior to billing Medicaid. These services shall be, but are not limited to, pharmacy claims.~~
- ~~(b) Medicaid shall identify to the third party resource, the recipient name and address, the third party group and/or policy number (if appropriate), the name of the responsible party/policyholder, the name of the provider of service, the description of the service that was provided, the date(s) of the service, the amount billed Medicaid by the provider of service, and the amount paid by Medicaid to the provider of service.~~
- ~~(c) The third party resources shall submit payment to Medicaid and/or notify Medicaid in writing of no coverage data such as the date the policy started and lapsed, services that are non-covered, and the identity of any other party having been paid by the third party resource for any of the identified service(s).~~
- ~~(d) Medicaid shall notify the Tennessee Department of Human Services in the event an absent parent, court ordered to provided for medical expenses, cannot be located and/or refuses to make full restitution to Medicaid.~~
- ~~(7) Reserved.~~
- ~~(8) Provider Billing Requirements~~
- ~~(a) Providers shall bill Medicaid for all covered services rendered under the plan and report third party collections.~~
- ~~(b) Unless otherwise allocated on the payor's explanation of benefits (EOB), third party payment reported to Medicaid shall be prorated equally over the institutional days or professional services billed.~~

~~(c) Medicaid will not make payment if the provider is aware of a third party resource prior to rendering service and is denied payment from the third party resource because of provider non-compliance with policy/contract provisions.~~

~~(9) Paid claims, for which a third party resource is later identified, may be voided by Medicaid if the date of service is within one year of the resource identification. The third party resource will be identified to the provider on the remittance advice which identifies the voided claim.~~

~~(10) Provider Discrimination~~

~~A provider who furnished services and is participating under the plan may not refuse to furnish services to a recipient because of a third party potential liability for payment for the service.~~

~~(11) Assignment of Benefits~~

~~(a) A recipient assigns rights to Medicaid when the recipient uses a Medicaid card to receive medical assistance.~~

~~(b) Any document released by a provider to a Medicaid recipient concerning the provision of a covered service shall have "Benefits Assigned" printed boldly on the statement. If a provider refunds third party payments to a recipient the provider is subject to recovery from Medicaid up to the Medicaid paid amount. If a third party pays the recipient directly Medicaid shall recover from the recipient.~~

~~(c) A provider shall immediately notify Medicaid of a request for medical records from a Medicaid recipient and/or agent or attorney. If proper authorization is received from the recipient the records may be released with the statement "Benefits Assigned." The notification to Medicaid must include:~~

- ~~1. name and Medicaid number of the recipient,~~
- ~~2. dates of service in question.~~
- ~~3. provider name and provider number,~~
- ~~4. attorney name, address and telephone number, and/or~~
- ~~5. insurance company name, address and telephone number.~~

~~(12) Recipient Shall Cooperate with Provider~~

~~If the provider documents at least two attempts to obtain recipient cooperation in meeting third party resource policy/plan requirements they may contact the Medicaid TPL Unit for assistance. The provider may bill Medicaid after 180 days with copies of the documentation attached to the claim. Medicaid shall pay the provider and attempt recovery from the recipient and/or third party resource.~~

~~(13) Absent Parents~~

~~(a) An absent parent obligated by court order to provide continuing health insurance, medical support or a combination of insurance and support shall:~~

- ~~1. be billed by Medicaid for reimbursement of costs incurred for his/her child, and~~
- ~~2. reimburse Medicaid promptly or provide adequate health insurance coverage information to Medicaid.~~

~~Medicaid may bill the insurance carrier directly and request provider assistance in the recovery. Medicaid will enter into a written cooperative agreement for the enforcement of rights to, and collection of, such third party benefits as provided in 42 CFR Section 433.151, as amended.~~

- ~~(b) An absent parent obligated by court order to pay for paternity expenses only shall be billed for costs incurred for the delivery of his/her child. Failure by the absent parent to reimburse Medicaid will initiate the recovery process in Section (13)(a).~~

~~(14) Subrogation Notice~~

~~Medicaid shall notify any third party or attorney of the state's claim of subrogation, when either is suspected of representing a Medicaid recipient who has received benefits. If an unauthorized settlement is distributed to the recipient and/or a responsible party after the receipt of the subrogation notice, the person responsible for the distribution shall be financially liable to the State for Medicaid's payments.~~

~~(15) Third Party Documentation/Explanation of Benefits~~

- ~~(a) A provider shall maintain third party documentation/explanation of benefits until audited but no longer than three (3) years from date of service, unless other record requirements apply.~~
- ~~(b) A provider shall attach explicit documentation of a third party resource denial to the Medicaid claim, except in the case of UB-82 and tape billing. This documentation must provide sufficient information for Medicaid to justify payment. The information will also be used by Medicaid to update its third party resource files as appropriate.~~
- ~~(c) If a third party resource denial is based on services in excess of an annual limitation, the documentation shall only be valid on claims for the applicable year. Documentation shall be appropriate to the claim submitted or the claim will be denied.~~

~~(16) Third party is established and available on the date of service.~~

~~If provider learns of a third party resource after billing Medicaid the provider shall immediately bill the third party. If third party payment is received the provider shall adjust the previous Medicaid payment using the Medicaid Adjustment/Void Request Form. The insurance company name and policy number should be entered on the form. If no third party payment is received the explanation of benefits should be kept on file by the provider.~~

~~(17) Third party is not established or available on the date of service (example: automobile accident party possibly at fault with liability coverage which may pay recipient medical claims.)~~

- ~~(a) A provider may elect to bill the anticipated liable third party for a covered Medicaid service, or~~
- ~~(b) If the provider elects to bill Medicaid, Medicaid will recover from the third party.~~
- ~~(c) The provider may not include charges for covered services billed to Medicaid in an independent claim to the potentially liable third party.~~
- ~~(d) The provider may void a claim previously paid by Medicaid at any time in an attempt to recover a larger payment from a potentially liable third party.~~
- ~~(e) Medicaid may not be billed for a covered service under the plan following the expiration of Medicaid's timely filing limits.~~

~~(18) A provider may keep the total third party payment even if it exceeds the Medicaid allowable amount.~~

- ~~(10) Medical assistance benefits shall be coordinated with third party resources and reimbursement shall not be made for services which would have been reimbursable by the third party except for failure to adhere to the third party's requirements.~~

Statutory Authority: T.C.A. §§ 4-5-202 and 71-5-105.

Rule 1200-13-01-.11 Recipient Abuse and Overutilization of Medicaid Program is deleted in its entirety.

~~1200-13-01-.11 RECIPIENT ABUSE AND OVERUTILIZATION OF MEDICAID PROGRAM.~~

~~(1) Definitions:~~

- ~~(a) Abuse: Recipient practices or recipient involvement in practices including overutilization of Medicaid Program service that result in costs to the Medicaid Program which are not medically necessary or medically justified.~~
- ~~(b) Commencement of Services: The time at which the first covered service(s) is rendered to a Medicaid recipient for each individual medical condition.~~
- ~~(c) Emergency: The sudden and unexpected onset of a medical condition requiring treatment immediately after onset or within 72 hours in order to prevent serious disability or death.~~
- ~~(d) Initiating Provider: The provider who renders the first covered service to a Medicaid recipient whose current medical condition requires the services of more than one (1) provider.~~
- ~~(e) Lock-in Provider: A provider whom a recipient on lock-in status has chosen and to whom a recipient is assigned by the Bureau for purposes of receiving medical services and referral to other providers.~~
- ~~(f) Lock-in Status: The restriction of a recipient to a specified and limited number of health care providers.~~
- ~~(g) Overutilization: Recipient initiated use of Medicaid services or items at a frequency or amount that is not medically necessary or medically justified.~~
- ~~(h) Prior Approval Status: The restriction of a recipient to a procedure wherein all health care services, except in emergency situations, must be approved by the Bureau prior to the delivery of services.~~
- ~~(2) When a determination is made by the Bureau that a recipient committed, attempted to commit or aided in the commission of an abuse or overutilization of the Medicaid Program it shall:~~
- ~~(a) Restrict the recipient by placing the recipient on lock-in status for an initial period of eighteen (18) months; or~~
- ~~(b) Restrict the recipient by placing the recipient on prior approval status for an initial period of eighteen (18) months.~~
- ~~(3) Activities or practices which may evidence overutilization of the Medicaid Program for which the commission or attempted commission justifies placement on lock-in status of all recipients involved, include but are not limited to:~~
- ~~(a) Treatment by several physicians for the same diagnosis.~~
- ~~(b) Obtaining the same or similar controlled substances from several physicians.~~

- ~~(c) — Obtaining controlled substances in excess of the maximum recommended dose.~~
 - ~~(d) — Receiving combinations of drugs which act synergistically or belong to the same class.~~
 - ~~(e) — Frequent treatment for diagnoses which are highly susceptible to abuse.~~
 - ~~(f) — Receiving services and/or drugs from numerous providers.~~
 - ~~(g) — Obtaining the same or similar drugs on the same day or at frequent intervals.~~
 - ~~(h) — Frequent use of emergency room in non-emergency situations.~~
- ~~(4) — Activities or practices which may evidence abuse of the Medicaid Program for which the commission or attempted commission justifies placement on prior approval status of all recipients involved, include but are not limited to:~~
- ~~(a) — Trading, swapping or selling of Medicaid cards.~~
 - ~~(b) — Forging or altering drug prescriptions.~~
 - ~~(c) — Selling Medicaid paid prescription drugs.~~
 - ~~(d) — Failing to promptly report loss or theft of a Medicaid card when the recipient knew or should have known the card was lost or stolen.~~
 - ~~(e) — Inability to provide for the security and integrity of assigned Medicaid card.~~
 - ~~(f) — Altering a Medicaid card.~~
 - ~~(g) — Failure to control overutilization activity while on lock-in status.~~
 - ~~(h) — Knowingly providing incomplete, inaccurate or erroneous information during Medicaid financial eligibility determination.~~
 - ~~(i) — Knowingly providing false, incomplete, inaccurate or erroneous information to provider(s) in order to receive covered services for which the recipient is ineligible.~~
 - ~~(j) — The use of a Medicaid card by a recipient other than the recipient to which it is assigned to receive or attempt to receive covered medical services.~~
- ~~(5) — The Bureau shall conduct a review of all recipients placed on lock-in or prior approval status upon the expiration of the initial and any additional restriction period(s) and shall:~~
- ~~(a) — Remove the recipient from lock-in or prior approval status and reinstate the recipient to the normal Medicaid status, or~~
 - ~~(b) — If the recipient's activity indicates continued or attempted abuse of overutilization, regardless of the exact nature of the activity, during the initial and/or additional restriction period(s),~~
 - ~~1. — continue the recipient on lock-in or prior approval status for an additional eighteen (18) months; or~~
 - ~~2. — change the recipient from lock-in or prior approval status for an additional eighteen (18) months; or~~

- ~~3. change the recipient from Prior approval to lock-in status for an additional eighteen (18) months.~~
- ~~(c) If at any time during which a recipient is on lock-in status, the recipient's activities indicate continued abuse or attempted abuse of the Medicaid Program, the Bureau may review the recipient's status and change the recipient from lock-in status to prior approval status for the remainder of the initial or additional restriction period.~~
- ~~(d) The Bureau may reconsider the need to continue a recipient on lock-in or prior approval status upon notification and written verification from a licensed physician that the recipient is suffering from a medical condition including but not limited to:
 - ~~1. a catastrophic illness such as terminal cancer or renal dialysis; or~~
 - ~~2. a condition which necessitates admission to an inpatient facility for an extended period of time.~~~~
- ~~(6) A recipient is entitled to a fair hearing in the following circumstances:
 - ~~(a) When the Bureau makes the initial determination to place the recipient on lock-in or prior approval status; and~~
 - ~~(b) When the Bureau, after any recipient status review, makes a determination to:
 - ~~1. continue the recipient on lock-in or prior approval status; or~~
 - ~~2. change the recipient from lock-in to prior approval status; or~~
 - ~~3. change the recipient from prior approval to lock-in status.~~~~
 - ~~(c) When the Bureau, pursuant to prior approval procedures, denies a prior approval status recipient's claim to or request for the provision of a covered service.~~
 - ~~(d) When the action of the Bureau placing a recipient on a restricted status would result or has resulted in the denial of reasonable access to Medicaid services of adequate quality pursuant to subsection (13) of this section.~~~~
- ~~(7) Fair Hearing Procedures: The following procedure shall apply when a recipient becomes entitled to a fair hearing pursuant to section (6):
 - ~~(a) The Bureau shall notify the recipient in writing by certified mail, return receipt requested, of its determination. The notice shall contain:
 - ~~1. the specific and comprehensive reasons for the determination, and~~
 - ~~2. a statement of the Bureau's intended action, and~~
 - ~~3. a statement of the recipient's right to a hearing pursuant to the Uniform Administrative Procedures Act (T.C.A. Section 4-5-101 et seq.).~~~~
 - ~~(b) A recipient must request a hearing within fifteen (15) days of receipt of the notice by filing such request in writing with the Bureau. The request for hearings pursuant to subsection 6(c) must be made in writing within fifteen (15) days of the date on which the claim to or request for services is denied.~~~~

- ~~(c) If a recipient fails to request a hearing within the designated time limit the recipient shall forfeit the right to a hearing on the action specified in the notice and the Bureau shall take such action as it specified in the notice.~~
 - ~~(d) If a recipient requests a hearing within the designated time limit, the Bureau shall schedule a hearing and notify the recipient of the time and place. The recipient's then existing status will not change pending a final determination after the hearing.~~
 - ~~(e) A hearing requested pursuant to subsection (6)(c) shall be scheduled within ten (10) days of receipt of the request.~~
- ~~(8) Lock-in Status Procedures: For services rendered to any lock-in status recipient the following shall apply:~~
- ~~(a) The Bureau shall request the recipient to submit the name(s) of the provider(s) from whom the recipient wishes to receive services.~~
 - ~~(b) If the recipient's condition necessitates the services of more than one (1) physician, other physicians will be allowed to provide needed services and submit a claim to Medicaid; however, the physicians must be of different specialties and Medicaid program participants.~~
 - ~~(c) The name(s) submitted by the recipient shall become the recipient's lock-in provider(s) unless the Bureau determines that the provider(s) is/are ineligible, unable or unwilling to become the lock-in provider(s) in which case additional provider names will be requested.~~
 - ~~(d) If the recipient fails to submit the requested provider name(s) within ten (10) days of the receipt of the Bureau's request, the Bureau may assign, as lock-in providers one (1) physician (non-specialist) and one (1) pharmacy from those utilized recently by the recipient, or the recipient will be placed on prior approval status until the requested provider name(s) are received and approved by the Bureau.~~
 - ~~(e) All referrals from a recipient's lock-in provider to a non-lock-in provider must be reported by telephone or in writing to the Bureau to avoid automatic denial of the referred providers claim.~~
 - ~~(f) A recipient who is on lock-in status may change providers by giving at least thirty (30) days written notice to the Bureau. Elective changes will only be allowed every six (6) months. Emergency changes (i.e., death of provider, discharge of recipient by provider, etc.) may be accomplished at any time by telephoning the Bureau, but must be followed by a written request within ten (10) days.~~
 - ~~(g) Upon the change of a lock-in provider pursuant to subsection (8)(f) of this section all referrals to other providers made by the previous lock-in provider shall no longer be valid.~~
 - ~~(h) All providers are responsible for ascertaining recipient Medicaid status and, except in the case of an emergency or approved referral or admission to a long term care facility, reimbursement for services rendered to a lock-in status recipient by any provider other than the recipient's lock-in provider shall be denied.~~
- ~~(9) Prior Approval Status Procedures: For services rendered to any prior approval status recipient the following shall apply:~~
- ~~(a) The provider is responsible for ascertaining the status of any Medicaid recipient.~~
 - ~~(b) The provider is responsible for securing prior approval by telephone from the Bureau in all cases, except emergencies, by calling the telephone number listed on the recipient's Medicaid care, in accordance with the following:~~

1. ~~If the commencement of services is during the normal office hours (8:00 a.m. to 4:30 p.m.) on any state working day, approval must be obtained prior to the commencement of services regardless of the number of services or the length of time services are provided.~~
 2. ~~If the commencement of services is during any time state offices are closed, approval must be obtained no later than the closing hour of the next state working day following the commencement of services regardless of the number of services or the length of time services are provided.~~
- (c) ~~In either of the circumstances listed in subsection (9)(b) of this section, if a recipient's current medical condition requires the services of more than one (1) provider the following shall apply:~~
1. ~~If the initiating provider secures prior approval in accordance with the rules, the subsequent provider(s) need not secure prior approval for any medically necessary services rendered.~~
 2. ~~If the initiating provider fails to secure prior approval in accordance with the rules, all other provider claims arising from that medical condition shall be denied except claims submitted by any subsequent provider who secures prior approval in accordance with the rules.~~
- (d) ~~The provider may not seek payment from Medicaid or the recipient for any medical services rendered without prior approval or for services rendered beyond the scope of the services contemplated by any prior approval.~~
- (e) ~~A long term care provider is not at risk of a claim denial under this rule for covered services rendered to a prior approval status recipient. Compliance with all other long term care rules is mandatory to provider reimbursement.~~
- (f) ~~A provider is not at risk of a claim denial for maintenance prescriptions filled during any time at which state offices are closed, however, prior approval procedures pursuant to subsection (9)(b) must still be followed.~~
- (g) ~~Services rendered or to be rendered shall be approved or denied based upon:~~
1. ~~The securing of prior approval;~~
 2. ~~Medical necessity;~~
 3. ~~The recipient's medical history;~~
 4. ~~The recipient's medical records;~~
 5. ~~The medical timeliness of the services; and~~
 6. ~~Review by the Medicaid Medical Director upon request by the recipient, provider or the Bureau prior to initial denial.~~
- (h) ~~A provider is not at risk of a claim denial for inpatient hospital admission and related medical services if preadmission approval has been obtained.~~
- (10) ~~Emergency Services: Any Medicaid provider may render services to a recipient on lock-in or prior approved status in the event of an emergency, provided however that reimbursement for services provided will be allowed only under the following circumstances:~~
- (a) ~~The provider notifies the Bureau by telephone no later than the end of the next state working day following the commencement of services;~~

- (b) ~~The provider presents sufficient medical evidence concerning the nature of the emergency to justify reimbursement; and~~
 - (c) ~~Review by the Medicaid Medical Director upon request by the recipient, provider or the Bureau prior to initial denial.~~
- (11) ~~Identification Verification of Medicaid Lock-In and Prior Approval Recipients. Medicaid Lock-In and Prior Approval Status Cards:~~
- (a) ~~These special cards are pink in color for ready identification and must be signed by the recipient.~~
 - (b) ~~The date of birth, eligibility period and sex designations on the card shall be utilized to assist in provider verification of card ownership as well as current eligibility status of the Card holder.~~
 - (c) ~~Each prescription dispensed shall be noted on the Medicaid card by marking through a circled number on the Medicaid card.~~
 - (d) ~~Pink cards indicating restrictions of SPECIAL PRIOR APPROVAL ONLY require that before commencement of services, the Bureau must be contacted at the telephone number specified on the card in accordance with the rules contained in subsection (9) of this section.~~
 - (e) ~~Pink cards indicating restrictions of SPECIAL LOCK IN/PHARMACY/MD limit service to the providers listed in the additional information block and in accordance with the rules contained in subsection (8) of this section.~~
- (12) ~~If reimbursement is denied based on a provider's failure to comply with any rules contained in this section the recipient or the recipient's family shall NOT be held financially responsible for payment for any covered services rendered.~~
- (13) ~~If the placement of a recipient on lock-in or prior approval status would result or has resulted in the denial of reasonable access taking into account geographic locations and reasonable travel time to Medicaid services of adequate quality, the Bureau shall:~~
- (a) ~~Prior to the placement on restricted status, take such action as is necessary to assure reasonable access to services of adequate quality; or~~
 - (b) ~~Reinstate the recipient to the normal Medicaid status until the Bureau can assure reasonable access to services of adequate quality.~~

Statutory Authority: T.C.A. §§ 4-5-202 and 71-5-105.

Rule 1200-13-01-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled (Statewide E/D Waiver) is deleted in its entirety.

~~1200-13-01-.17 STATEWIDE HOME AND COMMUNITY BASED COMMUNITY BASED SERVICES WAIVER FOR THE ELDERLY AND DISABLED (STATEWIDE E/D WAIVER).~~

(1) ~~Definitions. See Rule 1200-13-01-.02.~~

(2) ~~Waiver Services. Covered Waiver Services shall include the following:~~

- (a) ~~Case Management. All case management contacts shall be documented in the Enrollee's medical record and shall include one face-to-face visit per month, by a nurse or a social worker, with the Enrollee in the Enrollee's home. At least every 90 days, the home visit shall be made by a registered nurse unless otherwise directed in the waiver. Such monthly documentation shall note that the Individual Plan of Care has been reviewed and revised as appropriate.~~

~~(b) Home-delivered Meals.~~

- ~~1. The Administrative Lead Agency shall ensure that providers of home meals are properly licensed or certified by the appropriate regulatory authority and shall require that such providers comply with all laws, ordinances, and codes regarding preparation, handling, and delivery of food.~~
- ~~2. For those Enrollees who require medically prescribed diets, the Administrative Lead Agency shall ensure that such meals are planned by a registered dietitian who provides consultation to the licensed nurse supervising the Enrollee's care.~~
- ~~3. Services are limited to one (1) meal per day.~~

~~(c) Minor Home Modifications.~~

- ~~1. Minor home modifications shall not be provided unless specified in the Individual Plan of Care. The Administrative Lead Agency shall notify the Bureau of TennCare and obtain prior authorization for minor home modifications exceeding \$6,000 prior to initiating the intended modification.~~
- ~~2. The Bureau of TennCare shall be the payor of last resort for minor home modifications.~~

~~(d) Personal Care Services.~~

- ~~1. Personal care aides shall meet the standards of education and training required by the Administrative Lead Agency and approved by the Bureau of TennCare. Enrollees with a diagnosis of mental retardation shall receive personal care services only from an agency licensed as a personal support services agency or a home care organization.~~
- ~~2. The personal care aide shall report to the Case Manager any significant changes in the Enrollee's physical or mental status.~~

~~(e) Personal Emergency Response Systems. Personal Emergency Response Systems shall be provided, as specified in the Individual Plan of Care and Safety Plan, for Enrollees:~~

- ~~1. Who receive daily caregiver services but who are alone for significant parts of the day and who would otherwise require extensive routine supervision; and~~
- ~~2. Who, based on an assessment by the Administrative Lead Agency of the Enrollee's mental and physical capabilities, have the capability to effectively utilize such a system.~~
- ~~3. Installation is limited to one (1) installation per Waiver program year. A Waiver program year runs from October 1 through September 30.~~

~~(f) Homemaker Services. Homemakers shall meet TennCare standards for education and training.~~

~~(g) Respite Care.~~

- ~~1. Inpatient Respite Care services will be provided on a short-term basis in a NF or ACLF, not to exceed nine (9) days per Waiver program year (October 1 through September 30).~~
- ~~2. In-Home Respite will be provided on a short-term basis in the patient's residence (excluding NFs and ACLFs) not to exceed two hundred sixteen (216) hours per Waiver program year (October 1 through September 30).~~

~~(h) Adult Day Care. Services will be limited to 2080 hours per Waiver program year (October 1 through September 30).~~

- ~~(i) — ACLF Services.~~
 - ~~(j) — Assistive Technology. Services will be limited to nine (9) units of service or \$900.00 per Waiver program year (October 1 through September 30).~~
 - ~~(k) — Personal Care Assistance/Attendant. Services will be limited to 1080 hours per Waiver program year (October 1 through September 30).~~
 - ~~(l) — Pest Control Services will be limited to nine (9) occasions per Waiver program year (October 1 through September 30).~~
- ~~(3) — Documentation of Waiver Services.~~
- ~~(a) — The Administrative Lead Agency shall ensure that all services are accurately and timely documented.~~
 - ~~(b) — Documentation of Waiver services must adequately demonstrate that services are provided in accordance with the individual plan of care and the approved waiver service definitions.~~
- ~~(4) — Notification. Upon approval of a PreAdmission Evaluation for Nursing Facility care for an individual residing in Tennessee, the Bureau shall provide the individual with the following:~~
- ~~(a) — A simple explanation of the Waiver and Waiver Services;~~
 - ~~(b) — Notice of the opportunity to apply for enrollment in the Waiver and an explanation of the enrollment process; and~~
 - ~~(c) — A statement that participation in the Waiver program is voluntary.~~
- ~~(5) — Enrollment.~~
- ~~(a) — When an individual is determined to be likely to require the level of care provided by a Nursing Facility, the Administrative Lead Agency shall inform the individual or the individual's legal representative of all feasible alternatives available under the Waiver and shall offer the choice of either Nursing Facility or Waiver Services.~~
 - ~~(b) — Enrollment in the Waiver shall be voluntary and open to all Waiver Eligibles who reside in Tennessee, but shall be restricted to the maximum number of unduplicated participants specified in the Waiver for the Waiver program year, as approved by the Centers for Medicare and Medicaid Services for the State of Tennessee. Enrollment may also be restricted if sufficient funds are not appropriated by the legislature to support full enrollment.~~
 - ~~(c) — To be eligible for enrollment, an individual must meet all of the following criteria:~~
 - ~~1. — The individual must be Medicaid Eligible, must meet the Nursing Facility eligibility criteria specified in TennCare Rule 1200-13-01-10, and must have a PreAdmission Evaluation approved by the Bureau of TennCare.~~
 - ~~(i) — The PreAdmission Evaluation shall include the physician's initial plan of care which includes, but is not limited to, diagnoses and any orders for medications, diet, activities, treatments, therapies, restorative and rehabilitative services, or other physician-ordered services needed by the Enrollee.~~
 - ~~(ii) — The individual's physician must certify on the PreAdmission Evaluation that the individual requires Waiver Services.~~
 - ~~2. — The individual's medical, functional, and social needs must be such that they can be effectively and safely met through the Waiver, as determined by the Administrative Lead Agency based on a pre-enrollment screening.~~

3. ~~The State must reasonably expect that the cost of Waiver services and TennCare HH and PDN Services the individual will need would not exceed the average cost of Level 1 NF services.~~
 4. ~~An individual shall have one or more caregivers, as specified in (6)(a), designated to provide caregiver services each day in the Enrollee's home and, as needed, in other locations to ensure the health, safety, and welfare of the Enrollee. An individual shall have 24-hour caregiver services unless it is determined by an assessment that the needs of the individual can be met, and that the health, safety, and welfare of the individual can be assured, through the provision of daily (but less than 24-hour) caregiver services and through provision of a Personal Emergency Response System. Documentation of such assessment shall be included in an individualized Safety Plan that is developed, reviewed, and updated by the Administrative Lead Agency. If it is so determined that the health, safety, and welfare of the individual can be assured without 24-hour caregiver services, the individual shall have caregiver services provided for some portion of the day each day.~~
 5. ~~An individual who does not have 24-hour caregiver services shall have an individualized Safety Plan that is based on an assessment of the individual's medical, functional, and social needs and capabilities and that is approved, monitored, and updated as needed, but no less frequently than annually, by the Administrative Lead Agency. The Safety Plan shall describe:~~
 - (i) ~~The medical, functional, and social needs and capabilities of the individual and how such can be met without jeopardizing the health, safety, and welfare of the individual;~~
 - (ii) ~~The type and schedule of caregiver services to be provided each day, specifying hours per day and number of days per week;~~
 - (iii) ~~Personal Emergency Response Systems which are designed to enable Enrollees, who meet the requirements of (2)(e), to secure help in an emergency; and~~
 - (iv) ~~Other services, devices, and supports that ensure the health, safety, and welfare of the Enrollee.~~
 6. ~~All homes must provide an environment adequate to reasonably ensure the health, safety, and welfare of the Enrollee.~~
 - (d) ~~An individual who is capable of living alone or independently without waiver services shall not be eligible for enrollment or continued enrollment in the Waiver.~~
 - (e) ~~Enrollment of new Enrollees into the Waiver may be suspended when the average per capita fiscal year expenditure under the Waiver exceeds or is reasonably anticipated to exceed 100% of the average per capita expenditure that would have been made in the fiscal year if the care was provided in a Nursing Facility.~~
- (6) ~~Caregiver.~~
- (a) ~~Caregiver services shall be provided by one or more adult individuals, aged 18 or older, who sign an agreement with the Administrative Lead Agency to provide the following services to the Enrollee, as well as any additional services outlined in the Individual Plan of Care and the Safety Plan, to meet the needs of the Enrollee during the hours when Waiver Services are not being provided by the Administrative Lead Agency:~~
 1. ~~Assistance with grooming, bathing, feeding, and dressing;~~
 2. ~~Assistance with medications that are ordinarily self-administered;~~
 3. ~~Assistance with ambulation as needed;~~

4. ~~Household services essential to health care and maintenance in the home;~~
5. ~~Meal preparation; and~~
6. ~~Any other assistance necessary to support the Enrollee's activities of daily living.~~

~~(b) One or more caregivers shall be available full time or part time each day in the Enrollee's home, as determined appropriate by the Administrative Lead Agency and as specified in the Individual Plan of Care and the Safety Plan, to provide care to the Enrollee. Enrollees who do not have a 24-hour caregiver shall have a Personal Emergency Response System and shall be mentally and physically capable of using it based on an assessment by the Administrative Lead Agency.~~

~~(7) PreAdmission Evaluations, Transfer Forms, and PASRR Assessments.~~

~~(a) A PreAdmission Evaluation is required when a Medicaid Eligible is admitted to the Waiver.~~

~~(b) A Transfer Form is required in the following circumstances:~~

1. ~~When an Enrollee having an approved unexpired PAE transfers from the Waiver to Level 1 care in a NF.~~
2. ~~When a Waiver Eligible with an approved unexpired PAE transfers from a NF to the Waiver.~~

~~(c) A Level I PASRR assessment for MI and MR is required in the following circumstances:~~

1. ~~When an Enrollee with an approved, unexpired PAE transfers from the Waiver to a NF.~~
2. ~~When an Enrollee with an approved, unexpired PAE requires a short-term stay in a NF.~~

~~— A Level II PASRR evaluation is required if a history of MI or MR is indicated by the Level I PASRR assessment, unless criteria for exception are met.~~

~~(d) An Administrative Lead Agency that enrolls an individual without an approved PreAdmission Evaluation or, where applicable, an approved Transfer Form does so without the assurance of reimbursement. An Administrative Lead Agency that enrolls an individual who has not been determined by the Tennessee Department of Human Services to be financially eligible to have Medicaid make reimbursement for covered services does so without the assurance of reimbursement. If an Administrative Lead Agency enrolls a Medicaid Eligible without an approved PreAdmission Evaluation, the individual must be informed by the Administrative Lead Agency that Medicaid reimbursement will not be paid until and unless the PreAdmission Evaluation is approved.~~

~~(e) The Administrative Lead Agency shall maintain in its files the original PreAdmission Evaluation and, where applicable, the original Transfer Form.~~

~~(f) An updated Safety Plan for Enrollees who do not have 24-hour caregiver services shall be required as an attachment to the PreAdmission Evaluation or Transfer Form.~~

~~(8) Individual Plan of Care.~~

~~(a) The Individual Plan of Care shall be an individualized written plan of care that specifies the services designed to meet the medical, functional, and social needs of the Enrollee and that includes, but is not limited to, the following Enrollee information:~~

1. ~~Diagnoses;~~

2. ~~A description of Waiver Services and any other services regardless of payment source, including caregiver services, that the Enrollee requires to reside in the community as an alternative to care in a Nursing Facility, including the amount (specific number of hours or units per day rather than a range), frequency (number of days per week), and duration (length of time needed) of services and the type of provider to furnish each service;~~
 3. ~~Outcome objectives;~~
 4. ~~Any treatments, therapies, activities, social services, rehabilitative services, nursing related services, home health aide services, specialized equipment, medications (including dosage, frequency, and route of administration), diet, and other services needed by the Enrollee;~~
 5. ~~The names of each caregiver and each caregiver's schedule, including the amount (specific number of hours per day) and frequency (number of days per week) of caregiver services and provisions for alternate caregivers; and~~
 6. ~~A Safety Plan for Enrollees who do not have 24-hour caregiver services.~~
- (b) ~~Within thirty (30) working days after enrollment, the Case Management Team shall review the Physician's Plan of Care and shall develop the Individual Plan of Care. Within ten (10) working days of completion of the Individual Plan of Care, the Administrative Lead Agency shall review and approve the Individual Plan of Care.~~
- (c) ~~The Individual Plan of Care shall be periodically reviewed to ensure that the Waiver Services furnished are consistent with the nature and severity of the Enrollee's disability and to determine the appropriateness and adequacy of care and achievement of outcome objectives outlined in the Individual Plan of Care. The minimum schedule for reviews shall be as follows:~~
1. ~~The Individual Plan of Care shall be reviewed by a registered nurse or Social Worker Case Manager as needed, but no less frequently than every ninety (90) calendar days. If a Social Worker Case Manager is utilized, an in-home visit and review of the Plan of Care must be done by a Registered Nurse at least every ninety (90) days.~~
 2. ~~The Individual Plan of Care shall be reviewed and signed by the Case Management Team as needed, but no less frequently than annually. The attending physician is not required to sign the Individual Plan of Care if current signed physician orders are included with the Individual Plan of Care.~~
- (d) ~~Waiver Services shall be provided in accordance with the Enrollee's Individual Plan of Care.~~
- (9) ~~Physician Services.~~
- (a) ~~The Enrollee's attending physician or other licensed physician shall write new orders for the Enrollee as needed and, at a minimum, every ninety (90) calendar days.~~
 - (b) ~~The Administrative Lead Agency shall ensure that each Enrollee receives physician services as needed and, at a minimum, an annual medical examination or physician visit, and shall document such in the Enrollee's record.~~
- (10) ~~Reevaluation and Recertification of Need for Continued Stay.~~
- (a) ~~The Administrative Lead Agency shall perform reevaluations of the Enrollee's need for continued stay in the Waiver within 365 calendar days of the date of enrollment and at least annually thereafter.~~
 - (b) ~~Recertifications, documented in a format approved by the Bureau of TennCare, shall be performed by the Enrollee's physician within 365 calendar days of the initial certification date and at least annually thereafter. The Administrative Lead Agency shall maintain in its files a copy of the recertification of need for continued stay.~~

~~(11) Voluntary Disenrollment.~~

- ~~(a) Voluntary disenrollment of an Enrollee from the Waiver may occur at any time upon written notice from the Enrollee or the Enrollee's legal representative to the Administrative Lead Agency. A Level I PASRR assessment for mental illness and mental retardation is required when an Enrollee transfers to a Nursing Facility. If the Level I PASRR assessment indicates the need for a PASRR Level II evaluation of need for specialized services for mental illness or mental retardation, the Enrollee must undergo the PASRR Level II evaluation. Prior to disenrollment, the Administrative Lead Agency shall assist the Enrollee in locating alternate services to provide the appropriate level of care and shall assist in transitioning the enrollee to the new services.~~
- ~~(b) If the Enrollee's medical condition or social environment deteriorates such that the medical, functional, and social needs cannot be met by the Waiver, the Enrollee or the Enrollee's legal representative may request disenrollment from the Waiver. The Administrative Lead Agency shall assist the individual with placement in the appropriate level of care.~~
- ~~(c) Upon voluntary disenrollment from the Waiver, the individual shall be entitled to receive Medicaid-covered services only if still eligible for Medicaid.~~

~~(12) Involuntary Disenrollment.~~

- ~~(a) An Enrollee may be involuntarily disenrolled from the Waiver for any of the following reasons:~~
- ~~1. The Statewide Home and Community Based Services Waiver for the Elderly and Disabled is terminated.~~
 - ~~2. An Enrollee becomes ineligible for Medicaid or is found to be erroneously enrolled in the Waiver.~~
 - ~~3. An Enrollee is no longer a resident of Tennessee.~~
 - ~~4. The condition of the Enrollee improves such that the Enrollee no longer requires the level of care provided by the Waiver.~~
 - ~~5. The condition of the Enrollee deteriorates such that the medical, functional, and social needs of the Enrollee cannot be met by the Waiver.~~
 - ~~6. The State reasonably expects that the cost of Waiver services and TennCare HH and PDN Services the individual would receive will exceed the average cost of Level 1 NF services.~~
 - ~~7. The home or home environment of the Enrollee becomes unsafe to the extent that it would reasonably be expected that Waiver Services could not be provided without significant risk of harm or injury to the Enrollee or to individuals who provide covered services to the Enrollee.~~
 - ~~8. The Enrollee no longer has a caregiver, as defined herein, or the caregiver is unwilling or unable to provide services needed by the Enrollee, and an alternate caregiver cannot be arranged.~~
 - ~~9. The Enrollee or the Enrollee's caregiver refuses to abide by the Individual Plan of Care, the Physician's Plan of Care, or related Waiver policies, resulting in the inability of the Waiver to assure quality care.~~
 - ~~10. A provider of Waiver Services is unwilling or unable to continue to provide services and an appropriate alternate service provider cannot be arranged.~~

11. ~~The health, safety, and welfare of the Enrollee cannot be assured due to the lack of an approved Safety Plan or an approved Individual Plan of Care, or the continuing need for Waiver Services is not recertified by the Enrollee's physician.~~
 12. ~~The Enrollee does not receive Waiver services for a period exceeding 120 days if such period began prior to March 1, 2010, or a period exceeding 90 days if such period begins on or after March 1, 2010, due to the need for inpatient services in a hospital, NF, or other institutional setting.~~
- (b) ~~If the individual is involuntarily disenrolled from the Waiver, the Administrative Lead Agency shall assist the Enrollee in locating a Nursing Facility or other alternative providing the appropriate level of care and in transferring the Enrollee. Pursuant to TennCare Rules 1200-13-01-.10 and 1200-13-01-.23, a Level I PASRR screen for mental illness and mental retardation must be completed prior to admission when an Enrollee transfers to a Nursing Facility. If the Level I PASRR screen indicates the need for a PASRR Level II evaluation of need for specialized services for mental illness or mental retardation, the Enrollee must undergo the PASRR Level II evaluation prior to admission to the Nursing Facility.~~
 - (c) ~~The Administrative Lead Agency shall notify the Bureau of TennCare in writing a minimum of 2 working days prior to issuing involuntary disenrollment notice to an Enrollee.~~
 - (d) ~~Waiver Services shall continue until the date of discharge of the Enrollee from the Waiver.~~
 - (e) ~~Notice of Disenrollment.~~
 1. ~~Except under circumstances when the Statewide E/D Waiver is terminated, or an Enrollee is no longer categorically or financially eligible for Medicaid, or no longer meets medical eligibility (or NF LOC) requirements, the ALA shall provide an Enrollee written advance notice of involuntary disenrollment with an explanation of the Enrollee's right to a hearing pursuant to T.C.A. §71-5-113.~~
 2. ~~When the Statewide E/D Waiver is terminated in a Grand Division upon implementation of the CHOICES program, notice of transition to the CHOICES program shall be provided in accordance with the State's approved Section 1115 Waiver amendment.~~
 3. ~~If a person is involuntarily disenrolled from the Statewide E/D Waiver because his Medicaid eligibility has ended, the Medicaid eligibility termination notice, including the right to request a fair hearing regarding such eligibility decision, shall constitute notice of action for termination of all Medicaid-reimbursed (including Waiver) services. Additional notice regarding involuntary disenrollment from the Waiver shall not be provided.~~
- (13) ~~Reduction of Services. If the Enrollee's condition substantially improves, the Administrative Lead Agency and the Bureau of TennCare shall have the right to reduce Waiver Services.~~
 - (14) ~~Administration of Services. The Administrative Lead Agency shall ensure the delivery of Waiver Services to Enrollees and shall ensure that related activities including, but not limited to, the following are performed:~~
 - (a) ~~Pre-enrollment screening of individuals, including assessment of the individual's medical, functional, and social capabilities and needs; appropriateness for placement in the Waiver; and the ability of the caregiver to adequately care for the Enrollee in the home setting;~~
 - (b) ~~Annual reevaluations of the Enrollee's need for continued stay in the Waiver;~~
 - (c) ~~Enrollment of Waiver Eligibles into the Waiver after screening;~~
 - (d) ~~Development, implementation, and monitoring of the Individual Plan of Care, including the Safety Plan if a Safety Plan is required;~~

- ~~(e) Coordinating and monitoring the total range of services for Enrollees, regardless of payment source;~~
- ~~(f) Initial certification by the Enrollee's physician of the Enrollee's need for care in a Nursing Facility and annual recertification of the medical necessity of the continuation of Waiver Services for the Enrollee;~~
- ~~(g) Supervision of support service staff;~~
- ~~(h) Ongoing monitoring of Enrollee and family situations and needs;~~
- ~~(i) Maintenance of comprehensive medical records and documentation of services provided to Enrollees;~~
- ~~(j) Expenditure and revenue reporting in accordance with state and federal requirements;~~
- ~~(k) Any marketing activities performed for the purpose of providing information about the program to potential Enrollees;~~
- ~~(l) Assurance of quality and accessible Waiver services which are provided in accordance with State and Federal Waiver rules, regulations, policies and definitions;~~
- ~~(m) Contacts with Enrollees, caregivers, and service providers in accordance with state and federal requirements;~~
- ~~(n) Assurance that each Enrollee has appropriate caregiver services provided each day in the Enrollee's home by one or more competent adult individuals who sign an agreement with the Administrative Lead Agency;~~
- ~~(o) Assurance of the safety of the Enrollee through appropriate caregiver services, supervision, and other services and supports, as described in the Individual Plan of Care and the Safety Plan;~~
- ~~(p) Implementation of an appeals process approved by the Bureau of TennCare;~~
- ~~(q) Provision of expert testimony by appropriate professionals during contested case hearings; and~~
- ~~(r) Compliance with all applicable rules of the Tennessee Medicaid Program.~~

~~(15) Reimbursement.~~

- ~~(a) The average per capita fiscal year expenditure under the Waiver shall not exceed 100% of the average per capita expenditure that would have been made in the fiscal year if care was provided in a Nursing Facility. The total Medicaid expenditure for Waiver Services and other Medicaid services provided to Enrollees shall not exceed 100% of the amount that would have been incurred in the fiscal year if care was provided in a Nursing Facility.~~
- ~~(b) The provider of Waiver Services shall be reimbursed based on a rate per unit of service.~~
- ~~(c) The Administrative Lead Agency shall ensure that a diligent effort is made to collect patient liability if it applies to the Enrollee in accordance with 42 CFR § 435.726. The Administrative Lead Agency shall complete appropriate forms showing the individual's amount of monthly income and shall submit them to the Tennessee Department of Human Services. The Tennessee Department of Human Services shall issue the appropriate forms to the Administrative Lead Agency and to the Bureau of TennCare's fiscal agent, specifying the amount of patient liability to be applied toward the cost of care for the Enrollee.~~
- ~~(d) The Provider of waiver services shall submit bills for services to the Bureau of TennCare's fiscal agent using a claim form approved by the Bureau of TennCare. On the claim forms, the waiver service provider shall use a provider number assigned by the Bureau of TennCare.~~

- ~~(e) Reimbursement shall not be made to the provider of Waiver Services on behalf of Enrollees for therapeutic leave or fifteen-day hospital leave ("Bed holds") normally available to Level 1 NF patients pursuant to rule 1200-13-01-.03.~~
- ~~(f) Medicaid covered services other than those specified in the Waiver's scope of services shall be reimbursed by the Bureau of TennCare as otherwise provided for by federal and state rules and regulations.~~
- ~~(g) The Administrative Lead Agency shall ensure that the physician's initial certification and subsequent recertifications are obtained. Failure to perform recertifications in a timely manner and in the format approved by the Bureau of TennCare shall require a corrective action plan and shall result in full or partial recoupment of all amounts paid by the Bureau of TennCare during the time that recertification has lapsed.~~

~~(16) Subcontractors.~~

~~(a) The Administrative Lead Agency shall ensure that:~~

- ~~1. Services are provided by subcontractors who have signed contracts with the Administrative Lead Agency;~~
- ~~2. Subcontractors comply with the Quality Assurance Guidelines and other state and federal standards, rules, and regulations affecting the provision of Waiver Services; and~~
- ~~3. Subcontractors carry appropriate professional liability insurance and other insurance (e.g., auto insurance if Enrollees are being transported).~~

~~(b) Contracts between the Administrative Lead Agency and subcontractors for the provision of Waiver Services must be approved in writing by the Bureau of TennCare.~~

~~(17) Appeal Process.~~

~~(a) Eligibility for the Statewide E/D Waiver.~~

- ~~1. Appeals regarding categorical and financial eligibility for the Statewide E/D Waiver will be handled by DHS.~~
- ~~2. Appeals regarding medical (or LOC) eligibility for the Statewide E/D Waiver will be handled as set forth in Rule 1200-13-01-.10(6).~~

~~(b) Enrollment and involuntary disenrollment.~~

~~— Appeals regarding denial of enrollment into the Statewide E/D Waiver or involuntary disenrollment from the Statewide E/D Waiver for reasons other than categorical or financial eligibility or medical eligibility will be handled by the Bureau Division of Long-Term Care.~~

~~(c) Adverse actions regarding Waiver services.~~

~~— Appeals regarding adverse actions pertaining to Waiver services covered under the Statewide E/D Waiver will be processed in accordance with TennCare Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits.~~

Statutory Authority: T.C.A. §§ 4-5-202 and 71-5-105.

Rule 1200-13-01-.21 Provider Noncompliance or fraud of Medicaid Program is deleted in its entirety.

~~1200-13-01-.21 PROVIDER NONCOMPLIANCE OR FRAUD OF MEDICAID PROGRAM.~~

~~(1) Definitions:~~

- ~~(a) Agent means any person who has been delegated the authority to obligate or act on behalf of a provider.~~
- ~~(b) Bureau of TennCare (herein referred to as "Bureau"). The division of the Tennessee Department of Finance and Administration (the single state Medicaid agency) that administers the TennCare Program. For the purposes of this Rule, the Bureau of TennCare shall represent the State of Tennessee.~~
- ~~(c) Convicted means that a judgment of conviction has been entered by a federal, state, or local court, regardless of whether an appeal from that judgment is pending.~~
- ~~(d) Exclusion means that period of time that a provider is suspended or terminated from participation in the Medicaid program. Any items or services furnished by an excluded provider shall not be reimbursed under Medicaid.~~
- ~~(e) Flagrant noncompliance means one or more activities identified in section (3).~~
- ~~(f) Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law.~~
- ~~(g) Managing employee means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of, an institution, organization, or agency.~~
- ~~(h) Noncompliance means provider practices that are inconsistent with sound fiscal or business practices or inconsistent with Medicaid rules and regulations, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.~~
- ~~(i) Person with an ownership or control interest means a person or corporation that:
 - ~~1. has an ownership interest totaling five (5) percent or more in a disclosing entity,~~
 - ~~2. has an equity in the capital, the stock or profit (indirect membership) of the disclosing entity equal to five (5) percent or more in a disclosing entity,~~
 - ~~3. has a combination of direct and indirect ownership interests equal to five (5) percent or more in a disclosing entity;~~
 - ~~4. owns an interest of five (5) percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least five (5) percent of the value of the property or assets of the disclosing entity;~~
 - ~~5. is an officer or director of a disclosing entity that is organized as a corporation; or~~
 - ~~6. is a partner in a disclosing entity that is organized as a partnership.~~~~
- ~~(j) Provider means an individual or entity which furnishes items or services for which payment is claimed under Medicaid.~~

- ~~(k) Provider responsibility means the obligation of any health care provider who furnishes or orders health care services to assure that, to the extent of his influence or control, those services are:~~
- ~~1. furnished only when, and to the extent that, they are medically necessary, and~~
 - ~~2. of a quality that meets professionally recognized standards of health care.~~
- ~~(l) Records means all paper and electronic media records which contain information relative to medical assistance provided for which payment has been made or sought under the Medicaid program, and/or which contain any other information relative to payments received or sought under the Medicaid program. It shall include records for services which are non-covered or not billed, but which initiate a covered service.~~
- ~~(m) Records access means paper and electronic media records shall be made available during normal business hours by a provider for a stringent onsite review audit and to allow Medicaid to make copies on-site in order to review at a later date and/or to document audit findings. Upon written request the provider shall make copies of records (not to exceed five (5) recipients) to document services previously paid. If electronic media records are provided to Medicaid the data layout shall also be provided to Medicaid.~~
- ~~(n) Unit means the Tennessee Bureau of Investigation, Medicaid Fraud Control Unit.~~
- ~~(2) (a) In addition to the sanctions set out in T.C.A. §71-5-118, the provider may be subject to stringent review/audit procedures which may include clinical evaluation of claim services and a prepayment requirement for documentation and for justification of each claim,~~
- ~~(b) Medicaid may withhold payments to a provider in cases of fraud, willful misrepresentation, or flagrant noncompliance,~~
- ~~(c) Medicaid may refuse to enter into or may suspend a provider participation agreement with a provider if any person who has an ownership or controlling interest in the provider, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid or the U.S. Title XX Services Program,~~
- ~~(d) Medicaid may refuse to enter into or may suspend a provider participation agreement if it determines that the provider did not fully and accurately make any disclosure of any person who has ownership or controlling interest in the provider, or is an agent or managing employee of the provider and has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid or the U.S. Title XX Services Program since the inception of these programs,~~
- ~~(e) Medicaid shall refuse to enter into or shall suspend a provider participation agreement if the appropriate State Board of Licensing or Certification fails to license or certify, the provider at any time for any reason or suspends or revokes a license or certification,~~
- ~~(f) Medicaid shall refuse to enter into or shall suspend a provider participation agreement upon notification, by the U.S. Office of Inspector General Department of Health and Human Services that the provider is not eligible under Medicare or Medicaid for federal financial participation,~~
- ~~(g) Medicaid may refuse to enter into or may terminate a provider participation agreement if it is determined that the provider has been flagrantly noncompliant in its violation of segments of section (3) of this chapter, and~~

- ~~(h) Medicaid may recover from a provider any payments made by a recipient and/or his family for a covered service when evidence of recipient billing by the provider is determined by Medicaid and repayment by the provider to the recipient and/or his family is not made within 30 days of receiving notification from Medicaid to make repayment. If a provider knowingly bills a recipient and/or family for a Medicaid covered service, in total or in part, except as otherwise permitted by State rules, Medicaid may terminate the provider participation agreement.~~
- ~~(3) In addition to the grounds for actions set out in T.C.A. §71-5-118, activities or practices which justify sanctions against the contract and/or recoupment of monies incorrectly paid shall include, but not be limited to:~~
- ~~(a) noncompliance with contractual terms;~~
 - ~~(b) billing for a service in a quantity which is greater than the amount provided;~~
 - ~~(c) billing for a service which is not provided or not documented;~~
 - ~~(d) knowingly providing incomplete, inaccurate, or erroneous information to Medicaid or its agent(s);~~
 - ~~(e) continued provision of poor record keeping or inappropriate/inadequate medical care;~~
 - ~~(f) medical assistance of a quality below recognized standards;~~
 - ~~(g) provider suspension from the Medicare/Medicaid program(s) by the authorized U.S. enforcement agency;~~
 - ~~(h) partial or total loss (voluntary or otherwise) of a providers federal Drug Enforcement Agency (DEA) dispensing or prescribing certification;~~
 - ~~(i) restriction to and/or loss of practice by a state licensing board action;~~
 - ~~(j) acceptance of a pretrial diversion, in state or federal court from a Medicaid or Medicare fraud charge and/or evidence from same;~~
 - ~~(k) violation of the responsible state licensing board license and/or certification rules;~~
 - ~~(l) convictions of a felony, conviction of any offense under state or federal drug laws, or conviction of any offense involving moral turpitude;~~
 - ~~(m) dispensing, prescribing, or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical and/or mental infirmity or disease;~~
 - ~~(n) dispensing, prescribing, or otherwise distributing to any person a controlled substance or other drug if such person is addicted to the habit of using control substances without making a bona fide effort to cure the habit of such patient;~~
 - ~~(o) dispensing, prescribing or otherwise distributing any controlled substance or other drug to any person in violation of any law of the state or of the United States of America;~~
 - ~~(p) engaging in the provision of medical/dental service when mentally or physically unable to safely do so;~~
 - ~~(q) billing Medicaid an amount that is greater than the provider's usual and customary charge to the general public for that service, and~~

- ~~(r) falsifying or causing to be falsified dates of service, dates of certification or recertification or back dating any record which results in or could result in an inappropriate cost to Medicaid.~~
 - ~~(s) Reserved.~~
 - ~~(t) Fragmentation or submitting claims separately on the component parts of a procedure instead of claiming the single procedure code, (which includes the entire procedure, or all component parts) when such approach results in Medicaid paying a greater amount for the component(s) than it would for the entire procedure.~~
 - ~~(u) Submitting claims for a separate procedure which is commonly carried out as a component part of a larger procedure, unless it is performed alone for a medically justified specific purpose.~~
- ~~(4) Term of Provider Exclusion~~
- ~~(a) A provider exclusion based upon either section (2)(c), (d), (e) or (f) shall continue until the excluding re-establishes the license or the Medicare/Medicaid eligibility previously denied or suspended. The provider may resubmit to Medicaid with documentation from the State Board or the U.S. Office of Inspector General Department of Health and Human Services that the provider's exclusion has been lifted or removed. The provider may then apply to Medicaid for reinstatement consideration as determined by Medicaid.~~
 - ~~(b) A provider exclusion based upon section (2)(g) shall be eligible for reinstatement as a Medicaid provider as determined by Medicaid.~~
- ~~(5) Access to Records — The Bureau shall in the furtherance of the administration of the Medicaid Program have access to all provider records. Such access shall include the right to make copies of these records during normal business hours.~~
- ~~(6) Confidentiality — The Bureau shall be bound by all applicable federal and/or State statutes and regulations relative to confidentiality of records.~~
- ~~(7) Provider Cooperation — The provider is to cooperate, with Medicaid and/or its agent(s) in the provision of records and in the timely completion of any post review audit. Failure to cooperate may subject the provider to actions identified in section (2) of this rule. Cooperation in a post review audit includes but is not limited to:~~
- ~~(a) the provision of a private work area,~~
 - ~~(b) the availability of provider personnel at an initial and exit conference,~~
 - ~~(c) the furnishing of records as needed,~~
 - ~~(d) the provision of access to provider owned copying equipment to expedite the completion of an on site segment of an audit, and~~
 - ~~(e) the provision of records, requested in writing, for a desk review where ten (10) or less recipient records are at issue.~~
- ~~(8) Request for Hearing — All provider hearing requests shall be received by Medicaid within fifteen (15) days of the providers receipt of notification of Medicaid action taken under this chapter.~~
- ~~(9) For services provided prior to January 1, 1994, the rules as set out at 1200-13-01 .21 (1) — (9) shall apply. Effective January 1, 1994, the rules of TennCare as set out at rule chapter 1200-13-12 shall apply except for noncompliance or fraud of Medicaid program as it relates to nursing facilities, intermediate care facilities for the mentally retarded (ICF-MR), Home and Community Based Waiver~~

~~Services, and payment of Medicare premiums, deductibles and copayments for QMBs and Special Low-Income Medicare Beneficiaries (SLIMBs) which will continue to be enforced in accordance with Medicaid rules in effect prior to January 1, 1994, and as may be amended.~~

Statutory Authority: T.C.A. §§ 4-5-202 and 71-5-105.

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 07/23/2012 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: 7/23/12

Signature: Patti Killingsworth

Name of Officer: Patti Killingsworth
Chief, Long-Term Services and Supports, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 7/23/12

Notary Public Signature: Cheryl D Kline

My commission expires on: 9/3/12

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
1-29-13
Date

Department of State Use Only

Filed with the Department of State on: 2/1/13

Effective on: 7/29/13

Tre Hargett
Tre Hargett
Secretary of State

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